No. 25-1081

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

MICHAEL MENDENHALL,

Plaintiff–Appellant,

v.

CITY AND COUNTY OF DENVER,

Defendant–Appellee.

On Appeal from the United States District Court
For the District of Colorado
Civil Action No. 1:24-cv-00574
The Honorable Philip A. Brimmer

MOTION OF THE NATIONAL POLICE ACCOUNTABILITY PROJECT AND THE LAW ENFORCEMENT ACTION PARTNERSHIP FOR LEAVE TO FILE AMICI CURIAE BRIEF SUPPORTING APPELLANT AND REVERSAL

Lauren Bonds
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June 5, 2025

MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Pursuant to Federal Rules of Appellate Procedure 27 and 29(a)(3), *amici curiae* the National Police Accountability Project and Law Enforcement Action Partnership hereby move for leave to file the attached *amicus curiae* brief in support of Plaintiff-Appellant Michael Mendenhall.

MOVANTS' INTEREST

The National Police Accountability Project (NPAP) was founded in 1999 by members of the National Lawyers Guild to address misconduct by law enforcement officers through coordinating and assisting civil rights lawyers. NPAP has approximately 500 attorney members practicing in every region of the United States, including more than thirty-five in states within the Tenth Circuit. Every year, NPAP members litigate thousands of egregious cases of law enforcement abuse that do not make news headlines as well as high-profile cases that capture national attention. NPAP provides training and support for these attorneys and resources for non-profit organizations and community groups working on police and corrections officer accountability issues. NPAP also advocates for legislation to increase police accountability and

appears regularly as *amicus curiae* in cases, such as this one, presenting issues of particular importance for its members and their clients.

The Law Enforcement Action Partnership (LEAP) is a non-profit organization whose members include police, prosecutors, judges, corrections officials, and other law enforcement officials advocating for criminal justice and drug policy reforms that will make our communities safer and more just. Founded by five police officers in 2002 with a sole focus on drug policy, today LEAP's speakers bureau numbers more than 200 criminal justice professionals advising on police community relations, incarceration, harm reduction, drug policy, and global issues. Through speaking engagements, media appearances, testimony, and support of allied efforts, LEAP reaches audiences across a wide spectrum of affiliations and beliefs, calling for more practical and ethical policies from a public safety perspective.

CONSENT OF THE PARTIES

Amici have obtained the affirmative consent of the Plaintiff-Appellant to the filing of the proposed *amicus curiae* brief. On May 30, 2025, *amici* sought consent from Defendant-Appellee for filing of the

proposed *amicus* brief; Defendant-Appellee stated they do not consent to any amicus briefs in support of Plaintiff-Appellant.

REASONS FOR AND RELEVANCE OF AMICUS CURIAE BRIEF

Amici submit this brief to support reversal of the district court's decision. NPAP offers specialized expertise in civil rights litigation challenging law enforcement misconduct, representing a national membership of attorneys directly engaged in litigating the types of constitutional violations at issue in this case. LEAP regularly advocates around issues in the criminal justice system that affect public safety. This brief provides critical context and analysis regarding the systemic harms associated with warrant applications based on secondhand information—particularly from confidential informants—and the insufficient judicial scrutiny such applications typically receive. *Amici* address the broader implications of the precedent at issue, including how the current legal framework facilitates unjustified home raids and undermines accountability mechanisms for unlawful searches. The brief thus presents relevant legal and empirical perspectives that may not be fully developed in the parties' submissions but are highly pertinent to the Court's consideration of the Fourth Amendment issues raised on appeal.

CONCLUSION

For the foregoing reasons, *amici* respectfully request that the Court grant leave to file an *amicus curiae* brief in support of Plaintiff-Appellant Michael Mendenhall.

Respectfully submitted,

/s/ Lauren Bonds

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Counsel for Amici Curiae

June 5, 2025

CERTIFICATE OF COMPLIANCE

In accordance with Federal Rule of Appellate Procedure 27(d), I certify that this motion:

(i) complies with the type-volume limitation of Rule 27(d)(2) because it contains 534 words, excluding the parts of the motion exempted by Rule 32(f); and

(ii) complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared using Microsoft Office Word 16.97.1, set in Century Schoolbook 14-point type.

/s/ Lauren Bonds

Lauren Bonds

June 5, 2025

CERTIFICATE OF SERVICE

I certify that on June 5, 2025, this motion was filed using the Court's CM/ECF system. All participants in the case are registered CM/ECF users and will be served electronically via that system.

/s/ Lauren Bonds

Lauren Bonds

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CORPORATE DISLCOSURE STATEMENT

Amici are nonprofit organizations. The National Police Accountability Project and Law Enforcement Action Partnership have no parent corporations, and no publicly held corporation owns any portion of the organizations.

/s/ Lauren Bonds

Lauren Bonds

June 5, 2025

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INTEREST OF THE AMICI CURIAE

The National Police Accountability Project (NPAP) was founded in 1999 by members of the National Lawyers Guild to address misconduct by law enforcement officers through coordinating and assisting civil rights lawyers. NPAP has approximately 500 attorney members practicing in every region of the United States, including more than thirty-five in states within the Tenth Circuit. Every year, NPAP members litigate thousands of egregious cases of law enforcement abuse that do not make news headlines as well as high-profile cases that capture national attention. NPAP provides training and support for these attorneys and resources for non-profit organizations and community groups working on police and corrections officer accountability issues. NPAP also advocates for legislation to increase police accountability and appears regularly as *amicus curiae* in cases, such as this one, presenting issues of particular importance for its members and their clients.

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safer and more just. Founded by five police officers in 2002 with a sole focus on drug policy, today LEAP's speakers bureau numbers more than 200 criminal justice professionals advising on police community relations, incarceration, harm reduction, drug policy, and global issues. Through speaking engagements, media appearances, testimony, and support of allied efforts, LEAP reaches audiences across a wide spectrum of affiliations and beliefs, calling for more practical and ethical policies from a public safety perspective.[1]

INTRODUCTION

In *Jones v. United States*, 362 U.S. 257 (1960), the Supreme Court eliminated the oath requirement from the Fourth Amendment, allowing warrants to issue based on hearsay testimony. This ruling unacceptably widened the power of the government to reach into areas of individual privacy with arrests and searches based on flimsy justifications in contravention of the Fourth Amendment's original text and intent. Leaving *Jones* in place continues a harmful practice, leaving citizens

[1] This brief has not been authored in whole or in part by counsel to any party in this appeal. No party or counsel to any party, nor any other person, contributed money intended to fund preparing or submitting this brief.

precariously at threat for unjustified searches and seizures. This leads to severe harms to individuals and communities, as the current system of judicial scrutiny does not offer protections sufficient to overcome the reliability gap left by hearsay in warrant applications. Reversing *Jones* would severely curtail these problematic raids. We respectfully urge the court to consider the negative impact the current precedent has outside of Mr. Mendenhall's case.

ARGUMENT

I. Severe Harms Result from Warrant Applications That Rely on Secondhand Information.

Jones's dispensation of the firsthand knowledge requirement enables officers to lawfully obtain warrants based on the testimony of confidential informants and a broad range of other sources with questionable motives and limited knowledge. As a result, countless innocent, law-abiding people have been subjected to invasive government intrusions based on inaccurate or fabricated information.

In particular, inaccurate informant statements often serve as the sole probable cause evidence to support house raids. *See* Laurent Sacharoff, *The Broken Fourth Amendment Oath*, 74 Stan. L. Rev. 603, 610 (2022). In many cases, officers executing warrants in house raids

based on secondhand information have caused severe physical and emotional injuries as well as significant property damage. Worse, because the raids bear the imprimatur of judicial approval, victims face additional barriers in holding officers accountable for damages incurred. Reversing *Jones* would reduce the frequency of these dangerous raids and remove barriers from accountability when they do occur.

A. Warrants That Rely on Secondhand Information Routinely Result in Wrong House Raids.

Relying on confidential informant statements to obtain a warrant carries obvious and well-documented risks. The International Association for Chiefs of Police (IACP) warned law enforcement agencies that confidential informants often have perverse motives and are prone to providing inaccurate tips. *Confidential Informants: Model Policy*, International Association of Chiefs of Police 19 (December 2020).[2] Accordingly, IACP's model policy background document lists exaggerated or fabricated evidence as the top concern with using confidential informants. *Id.* at 18. Despite the implicit credibility issues with informant statements, officers regularly swear out warrants based on

[2] Available at https://www.theiacp.org/sites/default/files/2021-02/Confidential%20Informants_All%20Documents.pdf.

this secondhand information, including no-knock warrants and barely knock warrants.

Wrong house raids are routinely the product of warrants obtained by an officer relying on a confidential informant's statement. *See* Paige Fernandez & Carl Takei, *The Use of 'Confidential Informants' Can Lead to Unnecessary and Excessive Police Violence*, ACLU (Sept. 21, 2019);[3] Jonathan Blanks, *Criminally Confidential*, Democracy Journal (Oct. 16, 2018).[4] These raids present significant danger to residents of the home and officers executing the warrant, as well as risks of damage to the property. These raids are intentionally and inherently abrupt and often result in civilians and police being seriously injured or killed. *See War Comes Home: The Excessive Militarization of American Policing*, ACLU 40 (June 2014)[5] (noting that "SWAT officers . . . typically deploy wearing 'BDUs' (battle dress uniforms), carry large semi-automatic rifles, which they sometimes point at people during deployment, and often use force,

[3] Available at https://www.aclu.org/news/criminal-law-reform/the-use-of-confidential-informants-can-lead-to-unnecessary-and-excessive-police-violence.

[4] Available at https://democracyjournal.org/arguments/criminally-confidential.

[5] Available at https://assets.aclu.org/live/uploads/publications/jus14-warcomeshome-text-rel1.pdf.

throwing people onto the floor and handcuffing them"); Radley Balko, *Overkill: The Rise of Paramilitary Police Raids in America*, Cato Institute 4-5 (2006).[6] After entry, police forcefully incapacitate everyone inside the home by handcuffing them and forcing them to lay prone on the floor, often at gunpoint, while police ransack their home, often demolishing their furniture and possessions. *Id.*

Executed in the small hours of the night and without warning, no-knock home raids are designed to strike individuals at their most vulnerable. *See Bravo v. City of Santa Maria*, 665 F.3d 1076, 1086 (9th Cir. 2011) (such raids represent "much greater intrusions on one's privacy . . . and carry a much higher risk of injury to persons and property"). The "home is first among equals" and the "very core" of private space, held free from government intrusion. *Florida v. Jardines*, 569 U.S. 1, 6 (2013); *Silverman v. United States*, 365 U.S. 505, 511 (1961). The extraordinary power of a no-knock home raid therefore makes it imperative that law enforcement officers exercise diligence to identify the correct home. *Rush v. City of Mansfield*, 771 F. Supp. 2d 827, 858 (N.D.

[6] Available at https://www.cato.org/white-paper/overkill-rise-paramilitary-police-raids-america.

Ohio 2011) (imploring officers to "be particularly vigilant in executing an extraordinarily intrusive search").[7]

There are countless tragic examples of no-knock warrants obtained based on false information provided by confidential informants. For instance, the high-profile raid of social worker Anjanette Young's home in Chicago was the product of an unverified tip by a confidential informant. Dave Savini, *et al.*, *'You Have the Wrong Place:' Body Camera Video Shows Moments Police Handcuff Innocent, Naked Woman During Wrong Raid*, CBS NEWS (Dec. 17, 2020).[8] During the raid, Chicago Police officers handcuffed an unclothed Ms. Young while they searched her home for over twenty minutes. *Id.* The informant had claimed that a

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[7] No-knock entries should not be "undertaken in the ordinary course." *Penate v. Sullivan*, 73 F.4th 10, 19 (1st Cir. 2023). Requiring police to knock and announce their presence safeguards "human life and limb, because an unannounced entry may provoke violence in supposed self-defense." *Hudson v. Michigan*, 547 U.S. 586, 594 (2006); see also *Miller v. United States*, 357 U.S. 301, 313 n.12 (1958) ("Compliance [with knock-and-announce] is also a safeguard for the police themselves who might be mistaken for prowlers and be shot down by a fearful householder.")

[8] Available at https://www.cbsnews.com/chicago/news/you-have-the-wrong-place-body-camera-video-shows-moments-police-handcuff-innocent-naked-woman-during-wrong-raid.

twenty-three-year-old male suspect lived in Ms. Young's home, when, in fact, the suspect resided next door. *Id.*

In Maryland, two Prince George's County officers were shot while conducting a wrong house raid after a confidential informant provided officers with an incorrect address for the house of a suspected drug dealer. Lynh Bui & Clarence Williams, *Pr. George's police thought they were bursting into home of a drug dealer. They were at an innocent man's door instead*. Wash. Post (Sept. 21, 2018).[9] The suspect the officers were searching for had no connection to the apartment that was raided and it was unclear whether the suspect even resided in the vicinity of where the raid was executed. *Id.*

In 2021, a confidential informant's false identification of a home led to the wrong house raid of a family in Flint, Michigan. Winter Keefer, *Flint family calls for Justice Department investigation after MSP house raid*, MLIVE (June 8, 2021).[10] The family, which included three children under the age of ten, was held at gunpoint by a Michigan State Police

[9] Available at https://www.washingtonpost.com/local/public-safety/two-police-officers-shot-in-prince-georges-county-officials-said/2018/09/19/4ff9d2e0-bc84-11e8-b7d2-0773aa1e33da_story.html.

[10] Available at https://www.mlive.com/news/flint/2021/06/flint-family-calls-for-justice-department-investigation-after-msp-house-raid.html.

SWAT team for nearly an hour while their home was searched for a suspect in a homicide case who had no relationship to the family. *Id.*

In some cases, informants are providing officers with nothing more than an address. In a Buffalo raid that resulted in the innocent homeowner's dog being shot, "the informant was unable to name the individual—not even a first name, or to describe the age, ethnicity, height, weight, color of hair, color of eyes, race or any distinguishing features of the man he claimed he purchased drugs from." Frank Parlato, *Sergeant Aljoe takes first step in lawsuit against police who killed his dog in wrong house raid*, ArtVoice (Mar. 2, 2017).[11] The informant could only provide the address and color of the house and that he had allegedly purchased drugs at the house. *Id.*

Allowing officers to rely on confidential informants also makes it easier for them to fabricate evidence. Fernandez & Takei, *supra* (noting when a confidential informant program is "allowed to operate without adequate controls, law enforcement can completely fabricate an

[11] Available at https://artvoice.com/2017/03/02/sergeant-aljoe-takes-first-step-lawsuit-police-killed-dog-wrong-house-raid.

informant's existence").[12] There are numerous instances of officers lying that they got information from a confidential informant to obtain a warrant. Nicholas Bogel-Burroughs, *Breonna Taylor Raid Puts Focus on Officers Who Lie for Search Warrants*, NY Times (Aug. 6, 2022).[13] In 2019, a Houston officer relied on a fake confidential informant to obtain a warrant that resulted in a shootout that killed two people and injured four officers. *Id.* Similarly, in 2012, an officer who was part of an interagency drug task force claimed he received a text from a confidential informant that an innocent person's house was where a drug dealer lived. Dionne Cordell-Whitney, *Family Says Police Raid Was Wrong and Vile*, Courthouse News Service (July 18, 2012).[14] However, the officer received no such text and officers raided the wrong house causing substantial property damage. *Id.*

[12] Available at https://www.aclu.org/news/criminal-law-reform/the-use-of-confidential-informants-can-lead-to-unnecessary-and-excessive-police-violence.

[13] Available at https://www.nytimes.com/2022/08/06/us/breonna-taylor-police-search-warrants.html.

[14] Available at https://www.courthousenews.com/family-says-police-raid-was-wrong-and-vile.

B. It Is More Difficult to Challenge Illegal Searches and Seizures When They Are Supported by a Warrant, Even If the Warrant Was Deficient.

Warrants obtained through secondhand informants not only lead to immediate injuries in the form of wrong house raids and illegal seizures, but they also frequently create barriers to relief by depriving people from seeking relief and accountability. Courts generally presume searches and arrests made pursuant to a warrant are supported by probable cause. *See Illinois v. Gates*, 462 U.S. 213, 236 (1983) ("A magistrate's determination of probable cause should be paid great deference by reviewing courts."); *Malley v. Briggs*, 475 U.S. 335, 351 (1986) (Powell, J., concurring) ("In cases where a criminal defendant has asserted claims of unconstitutional search and seizure, this Court has consistently accorded primary evidentiary weight to a magistrate's determination of probable cause.") (citation omitted). In order to overcome this presumption that probable cause existed, a person must show the probable cause affidavit was "so lacking in indicia of probable cause as to render official belief in its existence unreasonable." *Poolaw v. Marcantel*, 565 F.3d 721, 734 (10th Cir. 2009) (*quoting Malley*, 475 U.S. at 351). Though not insurmountable, raids and searches conducted pursuant to a warrant require extra proof

to challenge and invalidate. Sacharoff, *supra* at 612. When the source of the information is a confidential informant, additional discovery may be needed to prove officers unreasonably relied on their statement. *Id.* at 613 (explaining that a person challenging a warrant based on confidential informant testimony "is not entitled to know the identity of the informant, get any type of discovery on that question, or otherwise probe whether the real accuser who provided the underlying purported facts lied, was seeking revenge, or was otherwise unreliable.").

As a result, research shows that there is minimal post-search review of issued warrants because they are not often challenged by defense, challenges that do occur rarely prevail, and rejections of those challenges are typically not appealed. Tracy Hresko Pearl, *On Warrants & Waiting: Electronic Warrants & The Fourth Amendment*, 99 Ind. L. J. 1, 25 (2023). In one study, motions to suppress were found to be successful for only 0.9% of warrants. Craig D. Uchida & Timothy S. Bynum, *Search Warrants, Motions to Suppress and Lost Cases: The Effects of the Exclusionary Rule in Seven Jurisdictions*, 81 J. Crim. L. & Criminology 1034, 1052-53 (1991). These challenges will fail unless the officer knowingly or intentionally included a false statement, even if the

application was deficient, hastily put together, used only boilerplate language, or received only seconds of review from a judge. Hresko Pearl, *supra* at 26. Further, even if a rejected challenge is appealed, *Illinois v. Gates* held that a judge's "determination of probable cause should be paid great deference by reviewing courts" and that a "grudging or negative attitude by reviewing courts toward warrants . . . is inconsistent with the Fourth Amendment's strong preference for searches conducted pursuant to a warrant . . . ." 462 U.S. at 236 (internal quotations omitted).

Immunity from civil liability removes personal deterrence from officers and judges for inadequate attention to the standards of probable cause requisite for a warrant. Qualified immunity protects officers who violate the Warrant Clause, and judges enjoy absolute immunity. Sacharoff, *supra* at 612; *Malley*, 475 U.S. at 343 ; *Pierson v. Ray*, 386 U.S. 547, 553-54 (1967). Individuals who have suffered a violation of their liberty or privacy due to reliance on verifiably false and flimsy hearsay will find themselves without avenues for relief. As a result, once "warrants issue, both the warrant itself and the resulting search are nearly impossible to challenge successfully." Hresko Pearl, *supra* at 28.

Reversing *Jones* and building an additional safeguard prior to obtaining the warrant would eliminate these accountability problems.

II. Minimal Oversight of Warrant Applications Render Appropriate Judicial Scrutiny of Tenuous Hearsay Evidence Unlikely.

Ideally, adequate judicial scrutiny of warrant applications could potentially overcome the reliability gap that exists when hearsay testimony is allowed as a basis for establishing probable cause. "But ours is not an ideal system, and it is possible that a magistrate, working under docket pressures, will fail to perform as a magistrate should." *Malley*, 475 U.S. at 345-46. Indeed, such fact-specific scrutiny of the reliability of hearsay statements does not usually occur; rather, in our current system, something closer to pro forma approval of warrants is the norm. As a result, individuals are subject to rubber-stamped search warrants based on unreliable testimony, contrary to the history and purpose of the Fourth Amendment.

A. Data Indicates Judges Do Not Thoroughly Scrutinize Warrant Applications.

Empirical data show that judges often do not spend more than a few minutes on each warrant application. Brian Dolan, *To Knock or Not to Knock? No-Knock Warrants and Confrontational Policing*, 93 St. John's

L. Rev. 201, 204-205 (2019). *See also* L. Joe Dunman, *Warrant Nullification*, 124 W. Va. L. Rev. 479, 509-10 (2022) (collecting reported instances nationwide where judges spent minimal or no time at all reading warrant applications before signing them); Mary Nicol Bowman, *Full Disclosure: Cognitive Science, Informants, and Search Warrant Scrutiny*, 47 Akron L. Rev. 431, 441-42, 461-64 (2014) (citing studies that show judges typically spend "between two and three minutes per warrant application" and that the warrant application process primes judges to defer to the police narrative of the case, which can often be incomplete or misleading); Richard Van Duizend, L. Paul Sutton, & Charlotte A. Carter, National Center for State Courts, *The Search Warrant Process: Preconceptions, Perceptions, and Practices* 29, 31, 43-44 (1984) (same); Jessica Miller Schreifels & Aubrey Wieber, *Warrants approved in just minutes: Are Utah judges really reading them before signing off?*, The Salt Lake Tribune (Jan. 14, 2018) (in a year-long period, over half of the 8,400 electronic warrants served were approved in ten minutes or less and two dozen warrants were approved as meeting probable cause requirements

in less than a minute).[15]

Consistently short review times of warrant applications indicate that judges do not uniformly subject them to the kind of intense scrutiny necessary to review the facts and ask questions. In making a probable cause determination, judges are expected to review the affidavit carefully and ensure that the facts support the affiant's conclusions, assess the veracity, reliability, and basis of knowledge of any informants, and consider the totality of the circumstances. Hresko Pearl, *supra* at 8-9. Yet, judges are approving warrants in mere minutes, if not seconds. *See* Van Duizend et al., *supra* at 31; Schreifels & Wieber, *supra*. When hearsay is the basis for probable cause, this amount of time for scrutiny is certainly inadequate for determining witness reliability, particularly in situations where the witness's identity is not disclosed.

B. Structural Features Incentivize Pro Forma Approval of Warrants.

This dismal level of scrutiny is inadequate for evaluating hearsay statements to the level needed to justify an intrusion on a person's liberty

[15] Available at https://www.sltrib.com/news/2018/01/14/warrants-approved-in-just-minutes-are-utah-judges-really-reading-them-before-signing-off.

or privacy. Eliminating hearsay as a source for probable cause adds a much-needed structural safeguard for personal liberty interests in such an environment.

High volume and time pressures, especially with after-hours requests, mean that many warrants receive only cursory review. As a result, rejections of warrants are rare. In a seminal study on warrant applications, the National Center for State Courts found that search warrants "are rejected infrequently." Van Duizend et al., *supra* at 43. In Utah, only about two percent of proposed warrants were denied in a year. Schreifels & Wieber, *supra*. In Denver, judges turned down only five out of 163 no-knock warrant requests in one year. Dara Lind, *Cops do 20,000 no-knock raids a year. Civilians often pay the price when they go wrong.*, Vox (May 15, 2015).[16]

Warrant applications are *ex parte*; by design, there is no opposing counsel to probe or challenge the facts. The magistrate hears from only one side: the "officer engaged in the often competitive enterprise of ferreting out crime." *Johnson v. United States*, 333 U.S. 10, 14 (1948).

[16] Available at https://www.vox.com/2014/10/29/7083371/swat-no-knock-raids-police-killed-civilians-dangerous-work-drugs.

Officers have an incentive to emphasize inculpatory facts and omit exculpatory details, knowing no adverse party is present to point out gaps. *See* Hresko Pearl, *supra* at 16-17.This structural imbalance means the judge's neutral and detached role can be undermined by unconscious deference to the unrebutted police narrative. Cognitive bias research indicates this is often the case: implicit bias, framing, and priming in officer affidavits lead judges to overweigh inculpatory facts and discount information gaps. Bowman, *supra* at 462-64. *See also* Nicholas A. Kahn-Fogel, *Power, Responsibility, and Judicial Deference to Police Expertise in Fourth Amendment Decisionmaking*, 98 St. John's L. Rev. 711, 715-16 (2025) (detailing judicial deference to police officers in the Fourth Amendment context, noting that "officer expertise might either bolster or undermine a finding of probable cause or reasonable suspicion. In practice, however, the Court has invoked an officer's experience or expertise only to reinforce a conclusion that reasonable suspicion or probable cause justified the Fourth Amendment intrusion at issue"). Allowing hearsay to support a probable cause determination amplifies the existing bias towards officer narratives.

C. The Advent of Electronic Warrants Further Minimizes Scrutiny of Warrants.

The advent of electronic warrant systems has further eroded judicial scrutiny of warrants. "E-warrants" allow officers to apply for a warrant remotely and judges to approve it with a few clicks, often without any discussion. Hresko Pearl, *supra* at 14. As of 2023, twenty-four states, the federal government, and the District of Columbia allow e-warrants. *Id.* at 12. Because e-warrants are easy to file and police seldom face consequences for filing warrant applications that are denied, the electronic system incentivizes officers to submit numerous and weakly supported applications, increasing the burdens on judges already spread thin and creating more pressure to provide only a cursory review of the application. *Id.* at 15-20. Further, preliminary studies suggest that e-warrants receive even less scrutiny than traditional warrant applications—which often do not receive much scrutiny at all. *Id.* at 22.

Rapid fire digital submissions blur the line between neutral magistrate and law enforcement partner. Without the formality of an in-person warrant application review, judges are under less pressure to give more than a perfunctory review or to question the veracity of facts submitted in the affidavit. *Id.* at 23. Further, officers can submit e-

warrant applications on-site, implying to judges that any protracted deliberation on the warrant will impede the officer's job, creating even more pressure to approve the warrant without scrutiny. *Id.*

With e-warrants amplifying the existing issues of warrant review—high volume and time pressure, the lack of adversarial parties, and deference to police officers—the risk only increases that hearsay goes unexamined when proffered in support of probable cause.

CONCLUSION

For the foregoing reasons, in addition to the reasons in Appellant's Brief, the judgment of the district court should be reversed.

Respectfully submitted,

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June 5, 2025

CERTIFICATE OF COMPLIANCE

In accordance with Federal Rule of Appellate Procedure 32(g)(1), I certify that this brief:

(i) complies with the type-volume limitation of Rule 32(a)(7)(B) because it contains 3,570 words, including footnotes and excluding the parts of the brief exempted by Rule 32(f); and

(ii) complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared using Microsoft Office Word 16.97.1, set in Century Schoolbook 14-point type.

/s/ Lauren Bonds

Lauren Bonds

June 5, 2025

CERTIFICATE OF SERVICE

I certify that on June 5, 2025 this brief was filed using the Court's CM/ECF system. All participants in the case are registered CM/ECF users and will be served electronically via that system.

/s/ Lauren Bonds

Lauren Bonds

June 5, 2025