No. 25-112

In the Supreme Court of the United States

OKELLO T. CHATRIE,

Petitioner,

v.

UNITED STATES,

Respondent.

On Writ of Certiorari to the U.S. Court of Appeals for the Fourth Circuit

BRIEF OF *AMICUS CURIAE* RESTORE THE FOURTH, INC. IN SUPPORT OF PETITIONER

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INTEREST OF THE *AMICUS CURIAE*[1]

Restore the Fourth, Inc. is a non-partisan nonprofit dedicated to robust enforcement of the Fourth Amendment's guarantee of privacy in one's person, home, papers, and effects. Restore the Fourth oversees a nationwide series of local chapters whose membership includes lawyers, academics, advocates, and ordinary citizens. Restore the Fourth also files amicus briefs in Fourth Amendment cases. *See, e.g.*, Brief of *Amicus Curiae* Restore the Fourth, Inc. in Support of Neither Party, *Barnes v. Felix,* 605 U.S. 73 (2025) (No. 23-1239); Brief of *Amicus Curiae* Restore the Fourth, Inc. in Support of the Petitioner, *Torres v. Madrid*, 592 U.S. 306 (2021) (No. 19-292).

Restore the Fourth cares about *Chatrie* because "Founding-era understandings" matter in applying the Fourth Amendment to new "surveillance tools." *Carpenter v. United States*, 585 U.S. 296, 305 (2018). Geofence warrants—like the one in *Chatrie*—render vast quantities of personal location data entrusted to tech companies open to exploratory searches for all phones and users "at or near a specific area during a given timeframe." *United States v. Smith*, 110 F.4th 817, 821–22 (5th Cir. 2024). Any Fourth Amendment analysis of this innovation should then account for "stark similarities to the reviled general warrants that the Fourth Amendment was intended to bar." *United States v. Chatrie*, 107 F.4th 319, 372 (4th Cir. 2024) (panel opinion) (Wynn, J., dissenting).

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[1] No counsel for a party wrote this amicus brief in whole or in part; nor has any person or any entity, other than Restore the Fourth and its counsel, contributed money intended to fund the preparation or submission of this amicus brief.

SUMMARY OF THE ARGUMENT

Geofence warrants authorize blanket searches of location data belonging to hundreds of millions of individuals without particularized suspicion. These warrants also leave many privacy-invading decisions to law enforcement and technology companies rather than to judges, while sweeping innocent bystanders into criminal investigations based on mere proximity. The Fourth Amendment does not permit any of this — indeed, the Amendment bars such abuse through its commands about when warrants may issue.

The Framers devised these commands to root out so-called "general warrants." English royalty used general warrants as instruments of oppression, empowering royal officers to search-and-seize as they pleased without judicial oversight or accountability. Common law jurists and scholars waged a century-long battle against general warrants, culminating in the landmark cases of *Wilkes v. Wood* and *Entick v. Carrington*. These cases ended general warrants in England. They also blazed a path that would inspire American adoption of the Fourth Amendment.

This founding-era history matters in deciding the validity of geofence warrants under the Fourth Amendment. So does the history of the many states that banned general warrants through their own constitutions and courts. What all this history then establishes is neither liberty nor privacy are possible without a strict rejection of warrants that sweep too broadly, that lack sworn particulars, and that allow police officers to do the work of judges. Against this backdrop, geofence warrants cannot stand.

ARGUMENT

I. English common law and colonial America reviled general warrants, which permitted blanket exploratory searches/seizures.

One of the "immediate evils" that motivated "adoption of the Fourth Amendment" was "searches and seizures conducted under … 'general warrants.'" *Payton v. New York*, 445 U.S. 573, 583 & n.21 (1980). This history remains important today in applying the Fourth Amendment to geofence warrants—a new surveillance tool that exploits the "vast amounts" of private location data that individuals entrust to tech companies. *Carpenter v. United States*, 585 U.S. 296, 301 (2018). To appreciate this point, one must begin at the beginning: with the "use of general warrants" as "instruments of oppression" from "the time of the Tudors, through the Star Chamber … and beyond." *Stanford v. Texas*, 379 U.S. 476, 482 (1965).

During the mid-1500s, Tudor-era monarchs in England imposed a "licensing system" on speech and the press. *Marcus v. Search Warrant*, 367 U.S. 717, 724 (1961). The Tudors enforced this system through the Stationers' Company—a corporation to which the Tudors granted a monopoly over printing. *See id.* The Company's royal charter authorized the Company's officers "to make search whenever it shall please them" for unlicensed publications "in any place, shop, house, chamber, or building of any printer, binder or bookseller" and "to seize" these publications.[2]

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[2] 1 REGISTERS OF THE COMPANY OF STATIONERS xxvii, xxxi (E. Arber ed., 1875), https://tinyurl.com/4kkh5a82.

The Court of the Star Chamber reaffirmed this general warrant. A "mixed executive and judicial" institution that lasted until 1641, the Star Chamber "specialized in trying 'political' offenses" under rules that disregarded "basic individual rights." *Faretta v. California*, 422 U.S. 806, 822–23 (1975). In 1637, the Star Chamber decreed: "for the better discovery of printing in corners without licenses … the Company of Stationers … shall have power … to search … houses and shops … especially printing-houses … and to view what is in printing."[3] The decree enabled the Company "to seize" any discovered unlicensed material along "with the … offenders" and to obtain "such assistance as [it] shall think needful."[4]

Yet even the Star Chamber had its limits when it came to general warrants. Sometime between 1587 and 1588, the Star Chamber heard the matter of a justice-of-the-peace who granted a party's request for a warrant "with a blank," leaving the party free "to put in" the name of anyone the party might wish to "attach upon suspicion of felony."[5] The Star Chamber "fined" the justice for "sen[ding] his warrant with a blank to put in the name of one [the justice] knew not" before issuing the warrant.[6] Other justices of the peace heeded the lesson, noting it was "not safe" for them "to grant … warrant[s] with a blank."[7]

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[3] 3 HISTORICAL COLLECTIONS App'x pp.306, 313 (Item XXV) (J. Rushworth, ed. 1680), https://tinyurl.com/2e6e9yem.

[4] *Id.*

[5] STAR-CHAMBER CASES 29–30 (M. Crompton, ed. 1630) (cleaned up), https://tinyurl.com/36pdf5h9.

[6] *Id.*

[7] MICHAEL DALTON, THE COUNTRY JUSTICE 439–40 (1690), https://tinyurl.com/mhbpvmc9.

Parliament likewise had its limits, impeaching Chief Justice Scroggs of the King's Bench for general warrants that Scroggs authorized in 1679 and 1680 to secure "the more speedy suppress[ion]" of seditious publications.[8] Addressing the "diverse ill-disposed persons who … print and publish many seditions."[9] the warrants empowered a royal censor (known as a "messenger") to invade "any book-sellers' or printers' shops or warehouses" as "he shall be informed"—meaning the messenger's own, untested suspicion.[10] The warrants also enabled all officials, as they "shall be informed," to "[a]pprehend" the "authors, printers, or publishers" of seditious papers.[11] These provisions prompted a House of Commons inquiry that led the House to impeach Justice Scroggs upon determining "the said warrants are arbitrary and illegal."[12]

Common law jurists and scholars joined this reprobation of general warrants. A posthumously published 1644 treatise by Sir Edward Coke—who on his deathbed was the victim of a general warrant[13]—established "justices of [the] peace cannot make a

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8 HOUSE OF COMMONS RESOLUTIONS FOR THE IMPEACHMENT OF SIR WM. SCROGGS (1680), https://tinyurl.com/2rydktuw.

9 *Id.* at 154–55 (cleaned up).

10 *Id.*

11 *Id.*

12 *See id.* at 155, 158–59.

13 *See* Oliver R. Barrett, *A Brief for Sir Edward Coke*, 28 A.B.A. J. 609, 611 (1942) ("[O]n the King's orders, Coke's home was searched as Coke lay dying and all his papers … were seized and carried to the King for his inspection to prevent the publication of any work Coke might have written that could be considered prejudicial to the [King's] prerogatives …. lest the people 'might be misled by anything that carried such authority as all things do that [Coke] either speaks or writes.'").

warrant upon a bare surmise to break any man's house to search for a felon or stolen goods."[14] In 1721, Sir William Hawkins built on this point: "a general warrant to search for felons or stolen goods" was facially "illegal" because it left to "the discretion of a common officer to arrest what persons, and search what houses, he thinks fit."[15] Hawkins further noted that "if a justice cannot legally grant a blank warrant … leaving it to the party to fill it up," then a justice "surely … cannot grant … a general warrant," which embodied "the effect of a hundred blank warrants."[16] Sir Matthew Hale agreed, explaining in 1736 that a "general warrant upon a complaint of a robbery to apprehend all persons suspected" was "void."[17] Hale determined that a justice "may grant his warrant to apprehend" based on a witness's sworn presentation of "probable cause" specific to a named person.[18]

Despite these admonitions, general warrants lacking judicially-decided specifics (names, locations, probable cause, etc.) persisted into the mid-1700s, reaching the American colonies. Colonial governors issued "writs of assistance" that authorized royal tax collectors to "enter … and search" all "vaults, cellars, warehouses, shops, and other places" that a collector might "suspect[] to be conceal[ing]" untaxed goods.[19]

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14 4 E. COKE, INSTITUTES OF THE LAWS OF ENGLAND 176–77 (1644) (cleaned up), https://tinyurl.com/mwzte4pf.

15 2 W. HAWKINS, TREATISE OF THE PLEAS OF THE CROWN 82 (1721) (cleaned up), https://tinyurl.com/5xpuaet2.

16 *Id.*

17 1 M. HALE, HISTORY OF PLEAS OF THE CROWN 580 (1736), https://tinyurl.com/2rx3mmpc.

18 *Id.* at 579–80.

19 Thomas Hutchinson's Draft of a Writ of Assistance (Dec. 1761), FOUNDERS ONLINE, https://perma.cc/M6TX-42RM.

In response, 63 Boston merchants "petitioned against the continued issuance of the writs." *See Commw. v. Haynes*, 116 A.3d 640, 649–50 (Pa. Super. Ct. 2015). American patriot and attorney James Otis "resigned … as advocate general to the vice-admiralty court … to avoid defending the writ." *Id.* The merchants hired Otis to plead their case in a Boston court. *Id.*

So in February 1761, Otis delivered a courtroom oratory that redefined American history. *Id.* "Otis's 1761 speech condemning writs of assistance was 'the first act of opposition to the arbitrary claims of Great Britain' and helped spark the Revolution itself." *Carpenter*, 585 U.S. at 303–04. As President John Adams, who witnessed Otis's speech, later remarked: "[t]hen and there, the child Independence was born." *Riley v. California*, 573 U.S. 373, 403 (2014).

Otis's speech followed Jeremiah Gridley, who argued for the Crown in favor of the writs.[20] Gridley admitted: "[i]t is true [that] the common privileges of Englishmen are taken away in this case."[21] Gridley insisted this reality was irrelevant because "having public taxes effectually and speedily collected" was of "infinitely greater moment to the whole, than the liberty of any individual."[22] Gridley went so far as to argue that royal tax collection was "more important" than "[jailing] thieves, or even murderers."[23]

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[20] Editorial Note–Legal Papers of John Adams, vol. 2, MASS. HIST. SOC'Y, https://perma.cc/QR3E-6BQ8 ("Adams' on-the-spot report indicates … Gridley spoke first for the Crown.").

[21] John Adams's 'Abstract of the Argument' (ca. Apr. 1761), FOUNDERS ONLINE, https://perma.cc/8Y4X-NWXX.

[22] *Id.*

[23] *Id.*

Otis answered that the writs required the court "to tear into rags this remnant of Star [C]hamber tyranny."[24] Otis distinguished the writs from "special warrants," which rested on particularized ("named") suspicion and "sworn" testimony.[25] "[M]odern books" validated "special warrants only," making the writs "illegal" given their "general" operation.[26]

Otis discussed three aspects of the writs that made them general warrants and thus illegal. **First**, the writs had "no return."[27] "[A] warrant return notifies the court when an officer executes a search warrant, and the officer reports back to the court what items he or she gathered during the search." *United States v. Chatrie*, 590 F. Supp. 3d 901, 920 (E.D. Va. 2022) (cleaned up). Lacking any return, the writs granted royal tax collectors a power to search that was "accountable to no person," putting every person's liberty "in the hands of every petty officer."[28] **Second**, the writs were universal, granting blanket authority to search "all houses, shops, [etc.]" without limit.[29] **Third**, the writs allowed searches on "bare suspicion without oath."[30] So even if a given use of the writ rested on mere "malice or revenge," nothing could be done—"no court … [could] inquire."[31]

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24 Adams's 'Abstract of the Argument,' *supra* note 21.

25 *Id.*

26 *Id.*

27 *Id.*

28 *Id.* Oxenbridge Thacher—another advocate for the Boston merchants at the hearing—equally stressed the writs being "not returnable." *Id.* Were a return required, Thacher predicted the court would "often find a wanton exercise of power." *Id.*

29 *Id.*

30 *Id.*

31 *Id.*

Otis provided a concrete example of this reality. Nathaniel Ware was a royal officer "who possessed the writ" as "Comptroller of Customs for the Port of Boston."[32] Through a constable, a justice of the peace called on Ware "to answer" for "profane swearing."[33] Ware replied by invoking the writ and ordering the justice to submit to a search of the justice's house.[34] Ware then "search[ed] [the justice's] house from the garret to the cellar" and next subjected the constable who arrested him to the "same" treatment.[35]

Such incidents proved the writs to be, in Otis's words, "the worst instrument of arbitrary power."[36] And so, while the Boston court ultimately rejected Otis's case for terminating the writs, it soon became "difficult for such writs to be enforced … even in the face of direct parliamentary authorization." *Haynes*, 116 A.3d at 650. After Otis's oratory, "[e]very man of a crowded audience appeared … ready to take arms against [the] writs." *Riley*, 573 U.S. at 403 (quoting President Adams). In the years that followed, courts in the colonies of Pennsylvania, Connecticut, and Virginia each refused to grant the writs.[37]

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32 Adams's 'Abstract of the Argument,' *supra* note 21.

33 *Id.*

34 *See id.*

35 *Id.*

36 *Id.*

37 *See* J. QUINCY, REPORTS OF CASES ARGUED & ADJUDGED IN THE SUPERIOR COURT OF JUDICATURE OF THE PROVINCE OF MASSACHUSETTS BAY BETWEEN 1761 & 1772, at 509–10 (1865), https://tinyurl.com/yp9ehmhb; *see also generally id.* at 395–540 (providing a comprehensive legal discussion and collection of primary-source texts related to writs of assistance, including many examples of the broad search-and-seizure powers codified by the writs as granted in England and the colonies).

England underwent its own Otis-like reckoning with general warrants just a few years later courtesy of *The North Briton*—an anonymous journal critical of Prime Minister Bute.[38] Published on April 23, 1763, No. 45 of *The North Briton* "lambasted Bute as usual, but then went a step further by obliquely casting aspersions on George [III] himself."[39] Against the King's praise for an unpopular peace treaty, No. 45 declared that: "[e]very friend of his country must lament that a prince of so many great and amiable qualities … can be brought to give the sanction of his sacred name to the most odious measures."[40]

"[W]ho was the libeller?"[41] The King's ministers "knew not" and were unwilling to "wait[] to inquire" though "accustomed forms of law."[42] Three days after No. 45's publication, Lord Halifax (one of the King's ministers) made out a general warrant authorizing four royal messengers "to make a strict and diligent search for the authors, printers, and publishers of a seditious … paper entitled The North Briton, No. 45, Saturday, April 23, 1763."[43] Halifax's warrant also allowed the messengers "to apprehend and seize" the listed entities "together with their papers."[44]

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38 THE NORTH BRITON (1763), https://tinyurl.com/2zbzbu7c.

39 Robin Eagles, *The Treaty of Paris, John Wilkes, & North Briton Number 45*, HISTORY OF PARLIAMENT (Apr. 23, 2013), https://tinyurl.com/mv8kk6b7.

40 THE NORTH BRITON, *supra* note 38, at PDF p.331.

41 THOMAS MAY, THE CONSTITUTIONAL HISTORY OF ENGLAND 246 (1863), https://tinyurl.com/2f436uwj.

42 *Id.*

43 *In re Wilkes* (C.P. 1763), *as reported in:* 19 COMPLETE COLLECTION OF STATE TRIALS 981, 981 (T. B. Howell ed., 1816), https://tinyurl.com/wyabucw9 (habeas corpus case).

44 MAY, *supra* note 41, at 246.

"[N]o one was named in this dread instrument" —the warrant identified "[t]he offence only … not the offender."[45] As a result, the messengers now "held in their hands the liberty of every man whom they were pleased to suspect."[46] The messengers exploited this power to the fullest. "In three days, they arrested no less than forty-nine persons on suspicion—many as innocent as Lord Halifax himself."[47] Among them was Dryden Leach, a printer who handled some past *North Briton* issues but had nothing to do with No. 45. Taken "from his bed at night" by the messengers, Leach was subsequently released without ever being brought before Lord Halifax for questioning.[48]

The messengers' "roving commission … in quest of unknown offenders" eventually yielded the capture of No. 45's publisher (Kearsley) and printer (Balfe), who cited John Wilkes—a member of Parliament—as No. 45's author.[49] Invoking Lord Halifax's warrant, a messenger stopped Wilkes on the street and tried to execute an arrest.[50] When Wilkes asked "to see the warrant," the messenger stated that the warrant was "against the authors, printers, and publishers" of No. 45.[51] Continuing his path home, Wilkes invited the messenger to follow so Wilkes might have the chance to establish "the illegality of the warrant."[52]

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45 MAY, *supra* note 41, at 246.

46 *Id.*

47 *Id.*

48 *Id.*

49 *Id.*

50 1 J. WILKES, ENGLISH LIBERTY: OR, THE BRITISH LION ROUSED 245 (1769), https://tinyurl.com/2vtjfz4f.

51 *Id.*

52 *Id.*

At Wilkes's home, the messenger produced a copy of Lord Halifax's warrant that Wilkes read and declared "absolutely illegal and void"—"a ridiculous warrant against the whole English nation."[53] Taken to Lord Halifax for questioning, Wilkes stood firm, telling Halifax: "I … [have been] brought before [you] … under a general warrant, which named nobody, in violation of the laws …."[54] Meanwhile, messengers under the direction of Robert Wood (Halifax's deputy) seized all of Wilkes's "private papers, including even his will and pocketbook," which they carried off "in a sack, without taking any list or inventory."[55]

Wilkes sued Wood for trespass.[56] Lord Camden (then known as Chief Justice Pratt) explained to the jury that Wood's defense rested on a claimed "right" to search-and-seize based on "a general warrant," meaning a warrant where "no inventory is made" and "no offenders' names are specified."[57] General warrants thus granted "a discretionary power … to search wherever [one's] suspicions may chance to fall."[58] Camden warned that "[i]f such a power [was] truly invested" in the King's ministers, this power stood to "affect the person and property of every man."[59] After a mere 30 minutes of deliberation, the jury awarded 1,000 pounds in Wilkes's favor.[60]

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53 1 WILKES, *supra* note 50, at 245–46.

54 *Id.* at 250.

55 MAY, *supra* note 41, at 247–48.

56 *Wilkes v. Wood* (C.P. 1763), *as reported in:* 19 COMPLETE COLLECTION OF STATE TRIALS 1153, 1153 (T. B. Howell ed., 1816), https://tinyurl.com/52tnxhcx.

57 *Id.* at 1167.

58 *Id.*

59 *Id.*

60 *See id.* at 1168.

Wilkes became a folk hero, inspiring others to fight against general warrants.[61] London clockmaker Matt Darly spoke up about a general warrant issued in 1747 that led royal agents to seize Darly's private papers.[62] Darly noted that before Wilkes's suit, the "bare mention" of a general warrant was "the terror of every Englishman" since no one knew "how to get redress."[63] Darly praised Wilkes, whose legal victory "[showed] the people of England, that their persons, cabinets, and property, were not to be taken away by arbitrary and nameless general warrants."[64]

More legal victories against general warrants followed. The printer Leach won 400 pounds in his suit against the royal messengers who seized him.[65] Affirming this judgment, Lord Mansfield and three fellow judges agreed general warrants were "illegal" as they left to officer "discretion" what "magistrate[s] ought to judge."[66] Similarly, reviewing a 300-pound award to another victim of Halifax's general warrant, Lord Camden upheld the award based on what the jury "heard": the King's agents trying "to destroy the liberty of the kingdom by insisting upon the legality of this general warrant before [the jury]."[67]

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61 *See* BATTLE OF THE QUILLS; OR WILKES ATTACKED & DEFENDED 5, 7 (1768), https://tinyurl.com/2z2t3f6t.

62 *Id.* at 50.

63 *Id.* at 51.

64 *Id.*

65 *Leach v. Money* (K.B. 1765), *as reported in:* 19 COMPLETE COLLECTION OF STATE TRIALS 1001, 1003–06, 1028 (T. B. Howell ed., 1816), https://tinyurl.com/52tnxhcx.

66 *Id.* at 1027.

67 *Huckle v. Money* (C.P. 1763), *as reported in:* 2 G. WILSON, REPORTS OF CASES ARGUED & ADJUDGED IN THE KING'S COURTS AT WESTMINSTER 205 (1799), https://tinyurl.com/4wfts7wv.

The final nail in the coffin for English general warrants came with John Entick—suspected author of *The Monitor,* an allegedly seditious newspaper.[68] Lord Halifax issued a warrant directing "a strict and diligent search for John Entick" and to "seize" Entick "together with his books and papers."[69] Entick sued the messengers who executed the warrant and won.[70] Lord Camden held that Halifax's warrant afforded no defense to the verdict: though limited to one person, the warrant was still "general" (and thus illegal) as it reached "all the party's papers" without limitation.[71] Any "search for evidence" required "particulars … explained and proved" to a judge, or else "innocent[s] would [likely] be confounded with the guilty."[72]

In sum: at common law, general warrants were reviled.[73] Written in "uncertain[]" terms designed to facilitate blanket exploratory searches and seizures, general warrants improperly allowed royal officers to assume "the duty of the magistrate … to judge of the ground of suspicion."[74] In England, general warrants "received [their] death-blow from the boldness of [John] Wilkes and the wisdom of Lord Camden."[75] In America, the architects of the Constitution cemented this death-blow with the Fourth Amendment.

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68 *See Entick v. Carrington* (C.P. 1765), *as reported in:* 19 COMPLETE COLLECTION OF STATE TRIALS 1029, 1029–76 (T. B. Howell ed., 1816), https://tinyurl.com/3but93m5.

69 *Id.* at 1034.

70 *See id.* at 1030–36.

71 *Id.* at 1064.

72 *Id.* at 1072–73.

73 *See* 4 W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 287–88 (1769), https://tinyurl.com/3upxsz8f.

74 *Id.* at 288.

75 MAY, *supra* note 41, at 246.

II. Post-revolution America banned general warrants through the Fourth Amendment, state constitution analogues, and many state court decisions.

James Otis's challenge to the writs of assistance in Boston and the *Wilkes* and *Entick* cases in London were "fresh in the memories" of those who fought and won the American Revolution. *Boyd v. United States*, 116 U.S. 616, 625 (1886). So when the Framers sent the original draft of the Constitution in 1787 to the 13 states for ratification, several states conditioned their approval on the banning of general warrants. For example, New York ratified the Constitution "[u]nder the[] impression" that the Constitution was "consistent with" certain key "rights," including that: "all general warrants, (or such in which the place or person suspected are not particularly designated), are dangerous, and ought not to be granted."[76] Rhode Island ratified the Constitution on like terms.[77]

Maryland's ratifying convention took things a step further. Deeming "general warrants" a "great engine by which power may destroy [individuals]," the convention proposed a constitutional amendment for adoption following ratification that would dictate: "all general warrants to search suspected places, or to apprehend any person suspected, without naming or describing the place or person in special, are dangerous, and ought not be granted."[78] Virginia's

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[76] 1 DEBATES IN THE SEVERAL STATE CONVENTIONS 360, 362–63 (J. Elliot, ed. 1836), https://tinyurl.com/j5eprhxh.

[77] *See id.* at 369–72 (art. XIV).

[78] 2 DEBATES IN THE SEVERAL STATE CONVENTIONS 549, 551–52 (J. Elliot, ed. 1836), https://tinyurl.com/2whpn8tx.

ratifying convention took the same approach,[79] as did North Carolina's ratifying convention,[80] each urging post-ratification amendments that would ban general warrants as part of a broader 'bill of rights.'

These state efforts reinforced pre-existing bans on general warrants in several state constitutions. Maryland's constitution stated "all general warrants … are illegal."[81] So did Delaware's constitution.[82] North Carolina's constitution pronounced "general warrants … dangerous to liberty" and named ways that this danger might transpire—e.g., "an officer or messenger may be commanded to search suspected places, without evidence of the fact committed."[83] Virginia's declaration of rights pronounced "general warrants … grievous and oppressive" with similar examples of ways this danger might transpire—e.g. "[an] officer or messenger may be commanded … to seize any person or persons not named."[84]

State court decisions at the time of ratification provided another bulwark against general warrants. Take *Frisbie v. Butler*, 1 Kirby 213 (Conn. Super. Ct.

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79 *See* 3 DEBATES IN THE SEVERAL STATE CONVENTIONS 657–58, 661 (J. Elliot, ed. 1836), https://tinyurl.com/wwedhjs4 (14th provision of proposed bill-of-rights: "general warrants").

80 *See* 4 DEBATES IN THE SEVERAL STATE CONVENTIONS 242–244, 251 (J. Elliot, ed. 1836), https://tinyurl.com/y3n6b23e (14th provision of proposed declaration-of-rights: "all warrants").

81 A COLLECTION OF THE CONSTITUTIONS OF THE THIRTEEN UNITED STATES 131, 135 (J. Bryce ed., 1783) (Md. Const. Decl. of Rights §23 (1776)), https://tinyurl.com/yhp8jauk.

82 *Id.* at 117, 119 (DEL. CONST. DECL. OF RIGHTS §17 (1776)).

83 *Id.* at 166–67 (N.C. CONST. DECL. OF RIGHTS §11 (1776)).

84 VIRGINIA DECL. OF RIGHTS §10 (1776), as reproduced by Yale's Avalon Project, https://perma.cc/S8KV-XJ2Q.

1787). Josiah Butler applied for a warrant, attesting under oath to a theft of "twenty pounds of good pork" and that he "suspect[ed]" Benjamin Frisbie to be the thief. *See id.* at 213. A justice of the peace granted Butler's application, issuing a warrant "to search all suspected places and persons that … [Butler] thinks proper, to find his lost pork" and to make arrests on the same terms. *Id.* at 213–14. On review of Butler's conviction, the Superior Court of Connecticut found the warrant was "clearly illegal" given its "general" mandate to "search all places, and arrest all persons" that Butler happened to "suspect." *Id.* at 215.

Amid this rich body of historical resistance to general warrants, the Fourth Amendment emerged. Indeed, as originally proposed by James Madison, the Fourth Amendment consisted of just "one clause" imposing direct limits "on the issuance of warrants." *Payton*, 445 U.S. at 583–84. This structure presumed personal security against "all unreasonable searches and seizures" exclusively concerned warrants issued "without probable cause" or "[without] particularly describing the places to be searched, or the persons or things to be seized." *See* 1 ANNALS OF CONG. 452 (1789). Citing the prohibition of "general warrants" under state constitutions, Madison argued: "[i]f there was reason for restraining the state governments from exercising this power, there is like reason for restraining the federal government." *Id.* at 456. The protectiveness of the Fourth Amendment's text only grew from here, resulting in "two separate clauses"—the first "protecting the basic right to be free from unreasonable searches and seizures"; and the second "requiring that warrants be particular and supported by probable cause." *Payton*, 445 U.S. at 584.

Following adoption of the Fourth Amendment, state courts vigorously enforced common-law and constitutional prohibitions against general warrants. In 1814, Connecticut's Supreme Court of Errors enforced these prohibitions against a justice-of-the peace and constable who executed a general warrant. *See Grumon v. Raymond*, 1 Conn. 40 (1814). The case arose from an alleged theft and concealment of bags at the home of Aaron Hyatt. *Id.* at 40–41. The justice (Raymond) issued a warrant authorizing a search of Hyatt's home and "other suspected places, houses, stores or barns in … Wilton" and "such persons as are suspected." *Id.* The constable then "arrested five suspected persons, [one] of whom was Grumon." *Id.* Grumon sued the justice and constable for unlawful arrest and imprisonment and prevailed. *Id.*

The justice and constable appealed, arguing the warrant was valid and thus shielded them from all liability. *Id.* at 42. Nonsense, replied the state high court, invoking Lord Camden and the common law: "this warrant was such as no justice ought to have issued." *See id.* at 43, 45–47. A direction to "[s]earch every house, store or barn within the town of Wilton … and all persons who are suspected" was "a general search-warrant, which has always been … illegal." *Id.* The warrant's mention of Hyatt's home made no difference; saying "Hyatt's or somewhere else" was "equivalent" to just saying "somewhere." *Id.* at 46. A warrant like this "could not [then] be issued by any magistrate … without making that magistrate liable." *Id.* at 47–48. Ditto for the constable, who was "bound to know the law." *Id.* With these holdings, the court made clear that general warrants were "an idea not to be endured for a moment." *Id.* at 44.

The Massachusetts Supreme Court expressed a similar need for vigilance against general warrants in *Sandford v. Nichols,* 13 Mass. 286 (1816). At issue was a warrant authorizing a "search" for smuggled "goods, wares, and merchandise" in "the houses or stores of Messrs. Thomas Sandford & Company [i.e., a business]." *Id.* at 286–87. Tax collectors used the warrant to search Thomas Sandford's private home. *Id.* Sandford sued the collectors for trespass and lost at trial. *Id.* On appeal, Sandford argued the search warrant furnished no defense to liability. *Id.*

The state high court determined that Sandford was "entitled to a new trial" as the warrant should "not have been admitted in evidence." *Id.* at 289. The court explained "the precept under which the officer acts in … seizing [goods] … should be lawful on [its] face." *Id.* at 288–89. The warrant at issue failed this test for its "deficient … description" of "the houses … to be entered" and "the goods" that were "the object of search." *Id.* at 289. "The house actually searched was the house of Thomas Sandford"—not "Thomas Sandford and Company." *Id.* And the words "goods, wares, and merchandise" carried no "specification of … character, quality, number, or weight, or any other circumstance" that would "distinguish them" from lawful property. *Id.* These "general and wholly uncertain" terms did not afford "such a particular description as the Constitution requires." *Id.* On this point, the court stressed that in smuggling cases, "it would not be difficult to mention the kind of goods to be searched for." *Id.* With such particulars in hand, an officer executing a search "might not conceive himself at liberty to rifle the house, and disturb the arrangements of the family occupying it." *Id.*

State courts reinforced norms against general warrants through decisions upholding warrants that passed muster. Consider *Bell v. Clapp*, 10 Johns. 263 (N.Y. Sup. Ct. 1813). Upon sworn testimony that stolen "barrels of flour" were "concealed … in a cellar of Gideon Jaques," a justice of the peace issued a warrant "to enter into the cellar of … Gideon … and … search for the … [stolen] flour." *Id.* at 263, 265. The warrant also authorized Gideon's arrest "or the person in whose custody" Gideon might be found. *Id.* Gideon's cellar was located in Bell's house. *Id.* Two officers executed the warrant over Bell's objection, forcibly entering Bell's house and seizing many flour barrels from Gideon's cellar. *Id.* at 263–64. Bell sued the officers for trespass, and the officers asserted the warrant as a complete justification. *Id.* at 264.

The New York Supreme Court of Judicature entered judgment for the officers. *See id.* at 266. The court determined the warrant authorizing the search was "a valid warrant duly executed by these officers." *Id.* at 265. Why? Because "[t]he warrant had all the essential qualities of a legal warrant": the warrant "was founded on oath, and was specific as to place and object, and the stolen goods were taken … in as peaceable a manner as … the case admitted." *Id.* "It was impossible for any warrant to be more explicit, and particular," given the warrant's identification of Gideon, his cellar, and the flour barrels. *Id.* Other information—like "in whom the property of the flour resided"—was "[not] essential to [the warrant's] validity." *Id.* In all this analysis, the court remained mindful of "[a]ll the checks which the English law, and … even the [C]onstitution of the United States, have imposed upon … warrants." *Id.* at 266.

And state courts refused to soften these checks. A good example is *Conner v. Commonwealth*, 3 Binn. 38 (Pa. 1810)—a state court decision vindicating an officer's refusal to enforce an illegal warrant. A local judge issued an arrest warrant for persons suspected of forging bank notes. *See id.* at 43. The judge did so "without any previous oath or affirmation" showing probable cause to arrest. *Id.* The judge settled for a "common report" (rumor) that "strong reason" existed to "suspect" that the persons-at-issue had committed forgery and intended to flee the jurisdiction. *See id.* Local constable Joseph Conner declined to make the arrest given the lack of any oath or affirmation. *See id.* Conner was subsequently indicted and convicted for "refusing to execute a warrant." *See id.*

The Pennsylvania Supreme Court reversed the conviction. *Id.* at 44. Observing 'refusal to execute a warrant' was not a crime in the first place, the court held that constables "had a right to judge" the facial validity of warrants. *Id.* at 43. After all, if a warrant "was illegal," the constable "was not bound to execute it." *Id.* And in this case, no doubt existed that "the [arrest] warrant was illegal on the face of it." *Id.* at 44. The reason was simple: the "[state] constitution" declared "a warrant shall not be issued without oath, which is more than common report," and the court could make no "exception to the constitution." *Id.* The court admitted that "by insisting on an oath, felons [might] sometimes escape." *Id.* But the court equally recognized "this must have been very well known to the framers" of the Pennsylvania constitution. *Id.* The framers "thought it better that the guilty should sometimes escape, than that every individual should be subject to vexation and oppression," *Id.*

State court watchfulness for general warrants extended all the way to warrant-authorizing laws. In 1854, the Massachusetts Supreme Court struck down a state liquor law to the extent it enacted general warrants. *See Fisher v. McGirr*, 67 Mass. 1, 21–22, 28 (1854). The liquor law required judicial issuance of a warrant if "three persons" under oath pointed to a "store, shop, warehouse, or … vessel" and claimed "reason to believe" unlicensed liquor was being "kept" in the identified place. *Id.* at 22–23. The liquor law further required sheriffs to execute these warrants and "search the premises described." *Id.* at 23. Taken together, these requirements dictated that all liquors "found in … [a suspected] place" had to be "taken into the custody of the law," leaving the question of whether all the liquor seized was in fact unlicensed "to be decided afterwards." *See id.* at 23–24.

The state high court ruled that these provisions violated the Massachusetts constitution's guarantees "respecting general warrants and unreasonable searches." *Id.* at 28–29. These guarantees included an express mandate that any "warrant" to "make search in suspected places" had to be accompanied by "a special designation of the persons or objects of search, arrest, or seizure." *Id.* at 29. The liquor law violated this mandate in multiple respects:

First, the liquor law allowed warrants to issue without any specially-named suspect. *See id.* The warrant rested "[on] the place only, and the belief of the complainants that [unlicensed] liquors are kept in such place." *Id.* "In this respect the warrant [was] general, not affecting any person, even by way of belief or suspicion, of [an] unlawful act …." *Id.*

Second, the liquor-control law did not limit the execution of liquor search-warrants to "the articles described" in the warrant (i.e., "by quantity, quality, or marks"). *Id.* The law did "[not] even restrict the officer's power of seizure to [unlicensed] liquors." *Id.* And to the extent this restriction could be presumed, a new constitutional problem emerged: the law left it to "the [officer's] mere discretion … to judge" which liquors in a searched place were legal property and which liquors were not. *Id.* at 30. The officer would be free "to decide what to take and what to leave"—a decision that would be "conclusive." *Id.*

Third, the liquor-control law enabled warrants to effect blanket seizures. With a warrant in hand, an officer might "seize and remove the whole [liquor] stock of [a] warehouse"—including all legally-owned liquor—even if the warrant's suspicion was limited to "a few kegs, demijohns, or bottles." *Id.* The authority to seize "carried greatly beyond [prohibited] articles," regardless of how "clearly" it appeared to an officer that he was seizing legal property. *Id.* at 30–31.

The state high court deemed these violations fatal to the liquor law's warrant provisions. *Id.* at 31. The court rejected any excuses for these violations, including the notion that the warrants authorized by the law afforded as much "certainty" as "the nature of the case" would allow. *Id.* It was "obvious" to the court that if the liquor law's "modes" for achieving "a laudable purpose" could not be pursued "without a violation of the constitution," then the modes at issue had to be abandoned. *Id.* It was the legislature's job to devise "other means … not open to … objection"—especially as a matter of general warrants. *Id.*

State courts maintained this ardent resistance to general warrants (and otherwise blanket searches) throughout the 1800s. *See, e.g., Larthet v. Forgay*, 2 La. Ann. 524, 525 (1847) ("[T]he breaking into and search of the plaintiff's shop and dwelling were not authorized by the warrant. The search should have been confined to the cabaret …. Such warrants must be construed strictly."); *People v. Holcomb*, 3 Park. 656,[85] 666–67 (N.Y. Sup. Ct. 1858) ("[T]he warrant is void …. The constable is directed 'to search the place where the said property is suspected to be concealed.' This direction … would authorize search in any … place where the officer … might suspect the property to be concealed. It is a general warrant …."); *Ashley v. Peterson*, 25 Wis. 621, 624 (1870) ("[T]he warrant … was void for not particularly describing the place to be searched …. [The warrant says] 'the premises of John Doe, alias, in the town of Baraboo, or in the neighborhood thereof ….' …. [U]nder such a warrant, [one] might search the premises of anybody in the town of Baraboo or in the neighborhood of it.").

In sum: general warrants found no home in post-revolution America or the century that followed. To the contrary, the nation hardened its opposition to general warrants through the Fourth Amendment, state constitution analogues, and state court rulings. The Framers and their successors remained on guard for "insidious disguises" of the "old grievance" that they "so deeply abhorred"—a grievance now at the nation's doorstep once again in the "stealthy" form of geofence warrants. *Boyd*, 116 U.S. at 630.

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[85] *See* 3 A. PARKER, REPORTS OF DECISIONS IN CRIMINAL CASES IN THE COURTS OF OYER & TERMINER OF THE STATE OF NEW YORK 656 (1858), https://tinyurl.com/4h3djyhn.

III. Geofence warrants—as exemplified by the facts of *Chatrie*—entail general warrants banned by the Fourth Amendment.

Geofence warrants are something new and old. Smartphones automatically generate a "chronicle of the user's past movements." *Carpenter*, 585 U.S. at 300. Users entrust this location data to companies like Google and Apple, which collect, store, and use the data in providing various services. *See United States v. Smith*, 110 F.4th 817, 821–22 (5th Cir. 2024). Geofence warrants allow law enforcement to exploit this location data when "[a] crime location is known" but "the identities of suspects [are] not." *Id.* The police "simply specif[y] a location and period of time, and, after judicial approval, companies conduct sweeping searches of their location databases and provide a list of cell phones and affiliated users found at or near a specific area during a given timeframe, both defined by law enforcement [agents]." *Id.* at 822.

The police thus do what the royal messengers of yesteryear did when seeking the anonymous author of an allegedly seditious journal: search everyone's papers as they alone deem fit. Geofence warrants are today's version of general warrants—a reality made plain by the facts of *Chatrie*. To uncover the identity of a bank robber seen on camera using a cell phone, law enforcement used a Google-designed three-step geofence warrant to exploit location data entrusted to Google. *See Chatrie*, 590 F. Supp. 3d at 905, 917–22. At each step, from the warrant's initial operation through its final execution, the police replicated the core qualities of a general warrant, from its blanket nature to its utter lack of judicial supervision.

Step 0—even before its three-step framing, the geofence warrant in *Chatrie* exemplifies a general warrant for its lack of any particularized reason to search Google. While the warrant application attests to surveillance footage showing the robber "had a cell phone," the affidavit offers no facts showing probable cause to believe this phone was a Google-affiliated device. *See* J.A.-132, 133. The affidavit merely offers general assertions about cell-phone usage and Google usage, like the fact that "91% of American adults own a cellular phone." *Id.* If such facts are sufficient to search Google, then why not Apple or Samsung or any nationwide cellular carrier? General warrants exist when it is left to "the discretion of a common officer to … search what … he thinks fit."[86] The geofence warrant in *Chatrie* does just this, allowing the police to search Google because they deem this fit—not because of any facts that would allow a judge to connect the suspect's cell-phone to Google.

Step 1—when the police "submit[] a geofence warrant to Google," Google must "search[] through the entirety of … 592 million individual accounts" to identify which accounts have location data falling in the geofence. *See Smith*, 110 F.4th at 837. Judicial authorization of such blanket examination stands on no better ground than "grant[ing] a blank warrant" and "leaving it to the party to fill it up."[87] And that is the essence of a general warrant, which carries "the effect of a hundred blank warrants."[88] Like the writs of assistance in colonial times, a geofence warrant allows law enforcement to fill-in-the-blanks.

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86 2 HAWKINS, *supra* note 15, at 82.

87 *Id.*

88 *Id.*

Steps 2 & 3—at this stage, no further judicial supervision exists, as law enforcement and Google work out with each other how responsive location data within a geofence should be narrowed (Step 2) and what user-identifying data should be disclosed (Step 3). *Chatrie*, 590 F. Supp. 3d at 920–22. But as *Entick* teaches, when law enforcement may review private papers without "particulars … explained and proved" to a judge, "innocent[s]" will be "confounded with the guilty."[89] "In fact, there are already documented accounts of innocent bystanders being swept into geofence warrants based solely on their proximity to a crime." *Smith*, 110 F.4th at 825 & n.4.

In sum: geofence warrants resemble general warrants in every material respect. Over 250 years ago, royal messengers searching for the identity of an anonymous author (John Wilkes) used a general warrant from Lord Halifax to raid the private papers of 49 innocent persons. Here, to learn the identity of a bank robber, the police used a geofence warrant from a state court to raid the private location data of over 592 million persons. To be sure, the latter group did not feel the same physical sting that the victims of Lord Halifax's general warrant did. But as history teaches, when it comes to general warrants, "[i]t is not the breaking of … doors" or "the rummaging of … drawers" that constitutes "the essence of the offence." *Boyd,* 116 U.S. at 630. Rather, it is the "invasion" of a person's "indefeasible right of personal security, personal liberty, and private property." *Id.* Geofence warrants invade rights older than the Constitution itself—"privacies of life" worth preserving. *Id.*

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89 *Entick* (C.P. 1765), *supra* note 68, at 1072–73.

CONCLUSION

The long, difficult common law struggle against general warrants teaches that "the protection of the Fourth Amendment against search and seizure … is not an outworn bit of eighteenth century romantic rationalism." *Harris v. United States*, 331 U.S. 145, 161–62 (1947) (Frankfurter, J., dissenting). Geofence warrants abridge this essential protection, subjecting private location data (entrusted to tech companies) to blanket exploratory searches for criminal suspects in the same way that general warrants once subjected private papers (entrusted to publishers) to blanket exploratory searches for politically-libelous authors. The Court's evaluation of the geofence warrant in *Chatrie* should account for this reality, thus ensuring that the "unbridled authority of a general warrant" so "[v]ivid in the memory of the newly independent Americans" finds no safe harbor in our nation today. *Stanford v. Texas*, 379 U.S. 476, 481 (1965).

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