UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE: SEARCH OF ONE DEVICE AND **TWO INDIVIDUALS UNDER RULE 41**	**No. [redacted] (ZMF)**

ORDER

The government seeks a search warrant to obtain buccal swabs of [redacted] and [redacted], and search [redacted] smartphone. The Court DENIES these requests for the reasons below.

I. BACKGROUND

On [redacted], the undersigned authorized a criminal complaint against [redacted] for a violation of 18 U.S.C. § 922(g). *See* [redacted]. The complaint alleged that a gun dropped out of [redacted] pocket while [redacted] was being detained and that [redacted] was a previously convicted felon. *See* [redacted].

On [redacted], the undersigned held a detention hearing. The government moved for defendant [redacted] detention pre-trial. One of the four factors the Court had to consider under the Bail Reform Act was the strength of the government's evidence. *See* 18 U.S.C. § 3142(g). To the government's credit,[1] it proffered additional evidence at the hearings, including videos of the arrest. The videos showed the defendant and [redacted] on top of each other, falling down the stairs while being tackled by police officers. While they all were tumbling down, a gun

[1] The Court reiterates its comments from the hearings commending in particular the lead AUSA on this matter.

fell from their area. Defendant's [redacted] exclaimed right away that the gun was [redacted]. The gun was in fact registered to [redacted] and [redacted] had a license to carry it. *See* Statement of Offense at 7. On [redacted], the undersigned ordered the defendant's release to home incarceration. The government appealed the release order.

On [redacted], the government emailed a courtesy copy of an application for a search warrant to take a buccal swab to collect DNA samples from [redacted] and [redacted] and search [redacted] smartphone.[2] That day, the Court had a telephone conference with the AUSA regarding concerns about the proposed warrant. On [redacted], the government followed up with the Court regarding the status of the search warrant. The Court responded that the warrant was still under review. Separately on [redacted], the government filed a request styled as an appeal to the presiding district judge. On [redacted], the government emailed the Court to ask for an update on the original emailed request.

On [redacted], the grand jury returned an indictment in this case. The case was assigned to District Judge Amir Ali. On [redacted], Judge Ali denied the government's appeal and ordered the defendant released. The government did not raise the issue of the warrant or "appeal" at this hearing.

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[2] The government did not note at the time of its email submission that the warrant application was an urgent request. In fact, the government never filed via ECF the warrant application. The Court hereby orders the Clerk's Office to docket that application to preserve the record on appeal.

The government subsequently asked about the timeline for review and expressed concerns about speedy trial. First, the Court notes that speedy trial computation was paused during the appeal of the detention decision. Second, the defendant's and public's speedy trial rights do not trump the Fourth Amendment's mandate for a detailed review of a search warrant. The government's unilateral decision to charge the case triggered the speedy trial clock. Balancing making time to investigate a case and preparing for trial is the government's burden to bear.

On [redacted], the Court informed the government that it would make a decision on the warrant by [redacted]. On [redacted], the Court informed the government that it had not found probable cause for any of the three requested searches. This opinion memorializes the reasoning for denying the government's requests.

II. DISCUSSION

A. The Probable Cause Inquiry

There are two steps to the search warrant probable cause inquiry. *Cf. United States v. Griffith*, 867 F.3d 1265, 1271 (D.C. Cir. 2017). First, there must be probable cause to believe that a crime has occurred. *See id.* Second, "[r]egardless of whether an individual is validly suspected of committing a crime, an application for a search warrant concerning his property or possessions must demonstrate [probable] cause to believe that 'evidence is likely to be found at the place to be searched.'" *Id.* (quoting *Groh v. Ramirez*, 540 U.S. 551, 568 (2004)). That is, "[t]here must, of course, be a nexus . . . between the item to be seized and criminal behavior." *Warden, Md. Penitentiary v. Hayden*, 387 U.S. 294, 307 (1967).

Probable cause means a "fair probability." *Illinois v. Gates,* 462 U.S. 213, 238 (1983) (quoting *Jones v. United States*, 362 U.S. 257, 271 (1960)). Making a probable cause determination requires a "practical, commonsense decision," and requires consideration of "the veracity and basis of knowledge of persons supplying hearsay information." *Id.* (internal quotations omitted). When assessing whether a search warrant was supported by probable cause, reviewing courts ask whether there was "a 'substantial basis' for concluding that 'a search would uncover evidence of wrongdoing.'" *Griffith*, 867 F.3d at 1271 (quoting *Gates*, 462 U.S. at 236). "[A] warrant application cannot rely merely on 'conclusory statement[s].'" *Id.* (quoting *Gates*, 462 U.S. at 239).

"[A Magistrate Judge must] perform his 'neutral and detached' function and not serve merely as a rubber stamp for the police." *United States v. Leon*, 468 U.S. 897, 914 (1984) (quoting *Aguilar v. Texas*, 378 U.S. 108, 111 (1964)). "A magistrate [judge] failing to 'manifest that neutrality and detachment demanded of a judicial officer when presented with a warrant application' and who acts instead as 'an adjunct law enforcement officer' cannot provide valid authorization for an otherwise unconstitutional search." *Id.* (quoting *Lo–Ji Sales, Inc. v. New York*, 442 U.S. 319, 326–327 (1979)). Ultimately, the decision of the magistrate judge "should be paid great deference" on review. *United States v. Harvey,* 2 F.3d 1318, 1322 (3d Cir. 1993). This, however, "does not mean that reviewing courts should simply rubber stamp a magistrate[] [judge's] conclusions." *United States v. Tehfe,* 722 F.2d 1114, 1117 (3d Cir.1983).

B. Grand Jury Finding Is Not Dispositive

"[A]n indictment does not constitute probable cause to issue a search warrant. The problem with relying upon an indictment to supply probable cause for a search warrant is that it asks the magistrate [judge] to subordinate his or her own independent judgment to that of the grand jury." *United States v. Acosta*, 110 F. Supp. 2d 918, 928 (E.D. Wis. 2000) (citing *United States v. Rubio*, 727 F.2d 786, 795 (9th Cir. 1983)). "[Asking] the magistrate [judge] merely to ratify the bare conclusions of [the grand jurors], rather than to form an independent judgement, [violates] *Gates*." *Id.* (citing *Gates*, 462 U.S. at 239); *see also United States v. Ellsworth*, 647 F.2d 957, 964 (9th Cir. 1981) ("We find no authority for holding, and do not so hold here, that an indictment alone constitutes sufficient probable cause to issue a search warrant."). Thus, the mere fact that the grand jury returned an indictment against [redacted] does not mandate any conclusion as to probable cause a crime occurred. *See Acosta*, 110 F. Supp. 2d at 928; *see also United States v. Defalco*, 509 F. Supp. 127, 139 (S.D. Fla. 1981) ("Since the grand jury 'was not the neutral and detached

magistrate [judge] required by the constitution, the search stands on no better footing than if there had been no warrant at all.'") (quoting *Coolidge v. New Hampshire*, 403 U.S. 443, 453 (1971)); *cf. Griffith*, 867 F.3d at 1271 ("In light of the distinctness of the inquiries, probable cause to arrest a person will not itself justify a warrant to search his property.").

C. No Probable Cause To Seize [redacted] DNA

The request to search and seize [redacted] DNA fails at step one. Based on the evidence now before the Court, there is not probable cause of a § 922(g) violation. Prior to the government presenting the body worn camera footage at the detention hearing, the undersigned found probable cause and signed the arrest warrant. But the video footage precludes such finding. The video shows a gun falling out of the mass of multiple humans tumbling down the stairs. The defendant's [redacted] proclaimed the gun was [redacted]. And there is no dispute that it is [redacted]. *See* Statement of Offense at 7. The question remains: could it possibly have been held by [redacted]? Maybe? After all, we live in the world of the multiverse, where there are infinite possibilities. But it is not the Court's job to play such guessing games. The *government* has the burden of establishing probable cause. And here they have not. The videos and statements afterwards establish confusion at best and actual innocence at worst. That spectrum does not have probable cause within it. *Cf. United States v. Weaver*, 99 F.3d 1372 (6th Cir. 1996) (suppressing evidence where search warrant failed to establish probable cause for § 922(g) violation). Thus, the Court rejects the application to take a buccal swab for DNA collection from [redacted].

D. No Probable Cause To Search [redacted] Phone

The request to search [redacted] phone is doubly infirm. First, there is not probable cause of a criminal violation. Second, there is no nexus between this alleged possessory crime and [redacted] phone.

The affidavit here does not "demonstrate that [redacted] was engaged in [illegally possessing a firearm] *and* keeping [evidence of that] in his [phone]." *United States v. Zimmerman*, 277 F.3d 426, 434 (3rd Cir. 2002). "Here, there is no evidence that [redacted]" took pictures on his phone of any firearms, let alone the one for which he is charged of a crime. *Id.* Indeed, there was no pre-arrest investigation at all. The universe of information to support the government's charges and this search is limited to what happened in the few seconds when law enforcement tackled [redacted] and [redacted] in the stairwell of [redacted] home. Lacking facts and evidence specific to [redacted], the government falls back on "boilerplate language" that "provide[s] few, if any, particularized facts of an incriminating nature [specific to the defendant's phone] and little more than conclusory statements of affiant's belief that probable cause existed regarding [evidence on every defendant's phone]." *Weaver*, 99 F.3d at 1379. Specifically, the government states:

> 30. Your affiant knows that cellphones, like the TARGET DEVICE, are relevant to firearms offenses like the TARGET OFFENSE. Specifically, people who possess firearms usually like to take pictures of themselves with firearms to prove ownership or possession of a particular firearm to their friends. They will use, for example, a cellphone camera to take photos of firearms or themselves holding a firearm, as well as photographing other criminal activity that they may be involved in. Moreover, cellphones often contain communications relating to the acquisition of firearms by those who cannot possess firearms legally, including the transmission of photographs of firearms available for purchase with accompanying price information. Indeed, in this case, [redacted] was barred from legally purchasing a firearm due to [redacted] prior felony conviction. It is therefore likely that [redacted] communicated with [redacted] regarding [redacted] acquisition of the firearm. Such communications are typically done by chat or text.
>
> 31. Further, your affiant knows that individuals who possess firearm often will use their phone to take photos showing off the firearm that they later post to social media. Although the photos are later posted on social media, the original photo remains on the cellphone. Given how ubiquitous social media is, including with those who possess firearms, it is likely that the DEVICE contains

> evidence of the TARGET OFFENSE in the form of photos of the firearm.
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> 32. Your affiant knows that cellphones contain valuable information and evidence relating to the TARGET OFFENSE. Such information consists of, but is not limited to: call logs, phone books, photographs, voice mail messages, text messages, images and video, Global Positioning System data, and any other stored electronic data. This information can: (i) reflect the commission of the TARGET OFFENSE; (ii) reflect the ownership and use of the cellphone by persons involved in the commission of the TARGET OFFENSE; and (iii) document or contain evidence of the obtaining, secreting, transfer, expenditure and/or the concealment of the firearm relating to the TARGET OFFENSE.

Aff. Supp. Appl. Rule 41 Search Warrant ¶¶ 30–32. There is no need to take this to a logical extreme to see the *limitless* power these three paragraphs create for police. With these three paragraphs, the government seeks to fiat *automatic* probable cause which would justify the search of *every* phone in *every* § 922(g) investigation. But why stop there? Surely, law enforcement's experience is that many criminals—like most everyone—capture everything they do on their phone. By this sleight of hand, every criminal violation justifies a search of a phone for videos, photos, notes, etc. This unbound police power is disturbing. And it ignores that "a central aim of the Framers was 'to place obstacles in the way of a too permeating police surveillance.'" *Carpenter v. United States*, 585 U.S. 296, 305 (2018) (quoting *United States v. Di Re,* 332 U.S. 581, 595 (1948)).

Moreover, the government's request is a bad remix to an already rejected song. In *Griffith*, Judge Srinivasan stated:

> In view of the limited likelihood that any cell phone discovered in the apartment would contain incriminating evidence of Griffith's suspected crime, the government's argument in favor of probable cause essentially falls back on our accepting the following proposition: because nearly everyone now carries a cell phone, and because a phone frequently contains all sorts of information about the owner's daily activities, a person's suspected involvement in a

> crime ordinarily justifies searching her home for any cell phones, regardless of whether there is any indication that she in fact owns one. Finding the existence of probable cause in this case, therefore, would verge on authorizing a search of a person's home almost anytime there is probable cause to suspect her of a crime. We cannot accept that proposition.

Griffith, 867 F.3d at 1275. A similar proposition is before the Court. "Finding the existence of probable cause in this case, therefore, would verge on authorizing a search of a person's [phone] almost anytime there is probable cause to suspect her of a [§ 922(g)] crime." *Id.* The Court in *Griffith* rejected this proposition in part because the home is "'first among equals' when it comes to the Fourth Amendment." *Id.* (quoting *Florida v. Jardines*, 569 U.S. 1 (2013)). The Supreme Court has since placed little daylight between cellphones and the home. *See Carpenter*, 585 U.S. at 311(cell phone location information "provides an intimate window into a person's life, revealing not only his particular movements, but through them his 'familial, political, professional, religious, and sexual associations.'"). Indeed, what made the home sacred—that it contained personal and professional effects and correspondences, photographs and videos of family and loved ones, sensitive financial information, etc.—is truer now for phones than the home. *See Riley v. California*, 573 U.S. 373, 394–95 (2014).[3]

[3] The *Riley* Court stated, "[t]he storage capacity of cell phones has several interrelated consequences for privacy. First, a cell phone collects in one place many distinct types of information—an address, a note, a prescription, a bank statement, a video—that reveal much more in combination than any isolated record. Second, a cell phone's capacity allows even just one type of information to convey far more than previously possible. The sum of an individual's private life can be reconstructed through a thousand photographs labeled with dates, locations, and descriptions; the same cannot be said of a photograph or two of loved ones tucked into a wallet. Third, the data on a phone can date back to the purchase of the phone, or even earlier. A person might carry in his pocket a slip of paper reminding him to call Mr. Jones; he would not carry a record of all his communications with Mr. Jones for the past several months, as would routinely be kept on a phone."

The government falls back on "training and experience" to cash their blank check for automatic phone searches. "While the D.C. Circuit two decades ago sanctioned training-and-experience warrants for the search of suspected drug dealers' homes on the ground that there was probable cause to believe that contraband or evidence may be found there, *see United States v. Thomas*, 989 F.2d 1252, 1255 (D.C. Cir.1993), that does not end the analysis." *Davis v. D.C.*, 156 F. Supp. 3d 194, 201 (D.D.C. 2016). An affiant's or another agent's "experience and training [may be] to the contrary." *Id.* "While the Court agrees that there is no fixed percentage of likelihood of discovering contraband, below which a judge must deem probable cause to be lacking, it does not concur that the success rate of this type of training-and-experience warrant is wholly irrelevant to a probable-cause determination. In fact, because those success rates may undermine the key inference on which the warrant here rests, they could be critical in this case." *Id.*

But the extent of this affiant's training and experience could not be more opaque. The affiant merely states:

> 4. I am a Special Agent with the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") and have served in that capacity since August 2022. I am currently assigned to the ATF's Washington Field Division's Group III. In that capacity, I am tasked with investigating violations of federal firearms, explosives, and arson laws, as well as other offenses enumerated in Title 18, Title 21, and Title 26 of the United States Code. My training includes successful completion of the Criminal Investigator Training Program, instructed by the Federal Law Enforcement Training Center ("FLETC"), and Special Agent Basic Training, instructed by the ATF National Academy, both located at FLETC in Glynco, Georgia.
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> 5. Additionally, I was previously a sworn federal police officer with the United States Capitol Police ("USCP") in Washington, D.C., from September 2018 until August 2022, and a sworn police officer with Bowie City Police Department, Prince George's County, MD from April 2016 until September 2018. I successfully completed the Uniformed Police Training Academy located at FLETC in Glynco, Georgia, in 2018; the USCP Police Academy

> located at FLETC in Cheltenham, Maryland, in 2019; and the Prince George's County Police Department Academy located in Upper Marlboro, Maryland, in 2016.
>
> 6. I have received specialized training in the investigation of local, state, and federal crimes involving the trafficking of firearms and controlled substances. This includes training on the exploitation of data stored on electronic devices and information stored on cloud-based services for the purpose of criminal investigations.

Aff. Supp. Appl. Rule 41 Search Warrant ¶¶ 4–6. So many questions:

- What was the nature of these trainings?
- Who taught the trainings? Were they certified? By whom? What was done to ensure there was not a bias in favor of law enforcement training law enforcement that evidence is always in a phone, thereby manufacturing a basis to always search phones?
- What was the science underpinning the training materials? Was anything peer-reviewed?
- Have there been changes in the training in the past several years since receiving them?
- How much of the training was specific to felon in possession cases? If none, why is that training relevant?
- What did the training say about the connection between arrest-generated possessory gun cases and cell phone usage?

The list goes on. And on.

Worse yet, there is nothing detailing what the affiant's *actual experience* is. And it is "*actual experience* [that] is properly considered as part of the 'totality of circumstances' that inform the probable cause determination. That experience, moreover, must bear a logical connection to the circumstances facing the officers in any given case." *Lane v. D.C.*, 211 F. Supp. 3d 150, 176 (D.D.C. 2016) (emphasis added). To put a finer point on it: the Court has no information on approximately how many felon-in-possession cases the affiant has investigated.

And of those, how many times there were or were not photos of the firearm in question on a phone. These "alleged success rates [] would [be] material to the issuing judge's probable cause analysis." *S.H. v. D.C.*, 270 F. Supp. 3d 260, 277 (D.D.C. 2017). Moreover, the value of the affiant's stated experience here is low, as it is largely based on common experiences held by all: that people use cell phones to take lots of pictures. The opposite is true when an affiant's specialized experience puts "potentially ambiguous or seemingly innocent conduct into context." *United States v. Savoy*, 889 F. Supp. 2d 78, 87 (D.D.C. 2012). "In *United States v. Laws*, for example, the court noted that an officer's more than ten years of experience in investigating narcotics distribution 'enabled him to fit the informants' descriptions of the suspects' behavior into a pattern familiar to drug-law enforcers' and to recognize facts as part of a modus operandi typical of drug trafficking." *Id.* (quoting 808 F.2d 92, 103 (1986)).

The Court also has no details about what is baked into this affiant's training. That is jarring in today's modern world of information. No one buys anything without reading the reviews and then checking the reviewers to see if they are bots or paid advertisers. But the government affords the Court with no such information here. Ultimately, the government simply asks the Court to take an affiant at their word that their experience somehow supports their request.[4] This ignores that "[a] sworn statement of an affiant that he has cause to suspect and does believe that [contraband or evidence] is located on certain premises will not do. . . . Sufficient information must be presented to the magistrate [judge] to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others." *Gates*, 462 U.S. at 239 (internal quotation marks and citation omitted).

[4] It bears noting that experience is not static. Yet the Court's experience is that the same affiant on separate applications just recycles the same bare-bone narrative about their experiences.

Ultimately, six paragraphs totaling 1.5 pages on training and experience is insufficient. *See United States v. Popa*, 369 F. Supp. 3d 833, 839 (N.D. Ohio 2019) (affiant's "thorough affidavit [] explained the mathematical formula that he had employed to identify Defendant as the anonymous internet user who requested a file containing child pornography," and noted that this "complex formula [] was published in an openly-available, peer-reviewed academic paper."). This is particularly true in the context of a possessory offense with no co-conspirators and where the search is of a phone. *See* discussion *infra* p. 12. Contrast that with the drug trafficking context, which typically is where "training and experience" language has justified "searches of suspected drug traffickers' homes." *Pitts v. D.C.*, 177 F. Supp. 3d 347, 365 (D.D.C. 2016) (collecting cases). But even there, the bar is higher than what the government has alleged here. For example, Judge Lamberth approved an affidavit that provided "eight pages of information detailing [the affiant's] experience, training, and involvement in the [] investigation as well as patterns he has observed in other drug trafficking investigations." *Savoy*, 889 F. Supp. at 92. Those training and experience conclusions were specific to drug traffickers and the search of their homes. *See id.* at 88 ("citing cases from the Eighth and Ninth Circuits finding probable cause to search residences of those suspected of drug-related activities"). But possessory gun cases, with no co-conspirators, for which the government seeks to search a phone are not analogous.

Judge Lamberth best explained the gun vs. drug distinction:

> This case is distinctly different from the drug trafficking cases where magistrate [judges] routinely infer that well-established dealers likely have drugs and related accessories in their homes. Unlike the drug culture, *the incidence of gun possession is not so highly identified with a particular pattern of behavior*. While drug dealers usually require a place to store their inventory, gun owners can (and often do) carry their entire artillery—often a single pistol—with them at any one time. People who have a gun rarely need to make repeated purchases of a gun, and rarely run a gun distribution network out of their home. Of course, this could be true in any one

> case, but the affidavit in the instant case is devoid of any reconnaissance information that would lead one to think such circumstances were afoot. The affidavit might have, for example, explained that men who carry guns of the type Hopkins carried are usually connected with gun distribution rings and that such rings often have part of their inventory stored in the ring-members' residences; or that owners who possess guns like Hopkins' gun usually possess a collection of attachments and paraphernalia, and that these attachments are usually kept at that owners' residences. But the affidavit did none of this; and it is unreasonable for a magistrate [judge] to infer these or other similar circumstances from two gun arrests over a fifteen month period.

United States v. Hopkins, 128 F. Supp. 2d 1, 7–8 (D.D.C. 2000) (emphasis added). Judge Moss further highlighted this difference: "[i]t strikes this Court as common sense that people do not tend to keep paperwork concerning their stolen firearms, like the gun seized in this case. Nor is it self-evident that those who illegally possess guns on the street keep additional ammunition in their homes." *Lane*, 211 F. Supp. 3d at 176. Thus, "one's status as *a gun possessor*" is unique and requires unique analysis. *Pitts*, 177 F. Supp. 3d at 366. The single boilerplate sentence in paragraph 30 fails to address that unique requirement.

The separate, additional problem for the government is that searching a cell phone is different than a home. The Sixth Circuit recently noted that it "has not decided whether the requisite probable cause nexus for a warrant to search a cell phone is only a fair probability that the phone's data will aid in a particular investigation and disclose evidence of criminal activity or if, instead, the affidavit must make factual allegations that the phone itself is being used in connection with criminal activity." *United States v. Rolling*, No. 23-1045, 2024 WL 4512532, at *3 (6th Cir. Oct. 17, 2024) (cleaned up). That court, like most reviewing courts, ultimately punted on this question by falling back on the good faith exception. Fortunately, this Court does not have

that escape hatch.[5] "Possessing a cell phone during one's arrest for [being a felon in possession] is insufficient by itself to establish a nexus between the cell phone and any [illegal firearm possession] activity." *United States v. Ramirez*, 180 F. Supp. 3d 491, 495–96 (W.D. Ky. 2016) (making such finding for a drug-related conspiracy). Although an affiant's "'training and experience' may be considered in determining probable cause, 'it cannot substitute for the lack of evidentiary nexus in this case, prior to the search,' between the cell phone and any criminal activity." *Id.* (quoting *United States v. Schultz*, 14 F.3d 1093, 1097 (6th Cir. 1994)). The affiant's statement here "generalizes that an individual may have information on his [] phone that connects him [] to a crime . . . rather than specifically connecting [redacted], the crime with which he was charged, or any known information about communications [or photos] made using this particular phone." *Ramirez*, 180 F. Supp. 3d at 495. Proper affidavits rely on "fact[s to show how the affiant] knew [the target] used cell phones as a tool of his own [illegal activity] rather than the suggested empty assertions about [illegal activity] generally." *Id.* (citing *United States v. Gorny*, 2014 WL 2860637, at *6 (W.D. Pa. June 23, 2014)). "Here, unlike in *Gorny*, there is nothing in the affidavit asserting that [the affiant] knew [redacted] used the phone as a tool of [being a felon in possession]. Unlike the affidavit in *Gorny* which provided details of the investigation," there was no investigation here—just a tackle and arrest. *Ramirez*, 180 F. Supp. 3d at 495

[5] Courts consistently use the back-end good faith exception to avoid deciding the legality of a search. *See, e.g.*, *United States v. Chatrie*, No. 22-4489, 2025 WL 1242063 (4th Cir. Apr. 30, 2025) (en banc court refuses to wade into geofence question and instead relies on good faith). Indeed, "[an empirical study of the good faith exception] finds that the exception, originally confined to narrow circumstances, is turning into a protection for nearly any investigatory activity with an arguable connection to an existing precedent or statute . . . [and] reveals that it incentivizes police and prosecutors to push the boundaries of constitutionality by aggressively employing invasive tactics with flimsy legal support." Matthew Tokson & Michael Gentithes, *The Reality of the Good Faith Exception*, 113 Geo. L. J. 551 (2025). Given that good faith has become a sword, the shield for a defendant's Fourth Amendment rights falls mainly to the front-end warrant review process.

Thus, there is no nexus here. And "[t]he absence of a nexus is the absence of probable cause." *Lane*, 211 F. Supp. 3d at 176.

E. No Probable Cause To Seize [redacted] DNA

[redacted] has lived, worked, and survived in challenging circumstances. [redacted] testified at the detention hearing why [redacted] obtained the firearm in question: to protect [redacted] and [redacted] home. In so doing, [redacted] dutifully followed the Supreme Court's direction that the Second Amendment "elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *D.C. v. Heller*, 554 U.S. 570, 635 (2008).

But despite [redacted] doing things the right way—legally purchasing and licensing [redacted] firearm—the government seeks court authorization to violate [redacted] bodily autonomy for DNA evidence. But evidence of what? A crime? There is *no* cause to believe [redacted] has committed or participated in a crime. The only purpose of the search is to disprove [redacted] possession of the firearm [redacted] is authorized to carry. In an email to the Court, the government called this an "exclusionary search." But that is not a thing. "The government cannot, for example, search every unit in an apartment building because it has probable cause to believe that some unknown part of the building holds evidence of a crime." *Chatrie*, 2025 WL 1242063, at *45 (Berner, J., concurring) (citing Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment § 4.5(b) (6th ed. 2024)). "At bottom, the search warrant [would] authorize[] the search of [redacted] based on nothing more than [redacted] proximity to a place where criminal activity may or may not have occurred. And, as the Supreme Court has explained, 'a person's mere propinquity' to suspected criminal activity 'does not, without more, give rise to probable cause to search that person.'" *Owens ex rel. Owens v. Lott*, 372 F.3d 267, 276–77 (4th Cir. 2004) (quoting *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979)). Thus, the Court rejects the government's request.

III. CONCLUSION

In over four years of being a Magistrate Judge, I have made over 1,000 probable cause findings in search warrants. Not once have I rejected a warrant. Until now.

The court's credibility is based on a belief in its neutrality. But how can a court that never says "no" be neutral?

Date: May 6, 2025

ZIA M. FARUQUI
UNITED STATES MAGISTRATE JUDGE