

# APPLICATION FOR DISTRICT COURT JUDGESHIP

## A. PERSONAL INFORMATION

1. Full name: **Colin Michael Rubich.**
2. Birthdate: [REDACTED].
3. Current home address: [REDACTED]
4. Email address: [REDACTED]
5. Preferred phone number: [REDACTED]
6. Judicial position you are applying for: **13th Judicial District, Departments 9 and 10**
7. Date you became a U.S. citizen, if different than birthdate: **Same as date of birth.**
8. Date you become a Montana resident: [REDACTED]

## B. EDUCATIONAL BACKGROUND

9. List the names and location (city, state) of schools attended beginning with high school, and the date and type of degree you received.

School	Location	Dates Attended	Degree
Skyview High School	Billings, MT	1998-2002	High School Diploma
Concordia College	Moorhead, MN	2002-2006	Bachelor of Arts, Majors: Political Science, History, and English Writing
University Of Montana School of Law	Missoula, MT	2006-2009	Juris Doctor

10. List any significant academic and extracurricular activities, scholarships, awards, or other recognition you received from each college and law school you attended.

**Magna Cum Laude, Concordia College (2006)**

**Voluntary Income Tax Assistance (VITA), Missoula, MT (2006-2009)**

### C. LEGAL AND PROFESSIONAL EXPERIENCE

11. In chronological order (beginning with most recent), state each position you have held since your graduation from law school. Include the dates, names and addresses of law firms, businesses, or governmental agencies with which you have been affiliated, and your position. Include the dates of any periods of self-employment and the name and address of your office.

<b>Position</b>	<b>Dates</b>	<b>Location</b>
Assistant United States Attorney	2014-Present	United States Attorney's Office, District of Montana, Billings Division, 2601 2nd Ave N. Suite 3200 Billings, MT 59101
U.S. Army Reserve Judge Advocate Duty: Trial Defense Service	2014-Present	22d Legal Operations Detachment, 1920 Harry Wurzbach Highway, Joint Base San Antonio, TX 78209
U.S. Army Judge Advocate Duty: Trial Defense Service	2013-2014	2027D Pendleton Avenue, Joint Base Lewis-McChord, WA 42223
U.S. Army Judge Advocate Duty: Trial Counsel and Special Assistant United States Attorney	2011-2013	BLDG 5700 2218 6th Ave., Room 320 Fort Rucker, AL 36362
Assistant Montana State Public Defender	2010	207 N Broadway # 201, Billings, MT 59101

12. In chronological order (beginning with most recent), list your admissions to state and federal courts, state bar associations, and administrative bodies having special admission requirements and the date of admission. If any of your admissions have terminated, indicate the date and reason for termination.

<b>Admission</b>	<b>Date</b>
9 <sup>th</sup> Circuit Court of Appeals	2015-Present
District of Montana	2014-Present
State Bar of Montana	2009-Present

13. Describe your typical legal areas of concentration during the past ten years and the approximate percentage each constitutes of your total practice (i.e., real estate, water rights, civil litigation, criminal litigation, family law, trusts and estates, contract drafting, corporate law, employment law, alternative dispute resolution, etc).

**In the past ten years, I have held two legal positions simultaneously. In my primary position I serve as an Assistant United States Attorney, and, at the same time, I have continued my service in the United States Army as a Judge Advocate in a Reserve status. These positions have provided me with the opportunity to experience an extremely wide area of legal practice and concentration.**

**As an AUSA, I serve as a general crimes prosecutor. This means I am responsible for investigating, indicting, and pursuing resolution on practically every kind of criminal conduct prosecutable under the federal code. During my tenure, I have prosecuted complex drug trafficking cases, complex white-collar crime, child pornography, gun crime, tax crime, environmental crime, carjacking, commercial robbery, bank robbery, identity theft, and crimes occurring in or impacting Indian Country. My particular focus is rooted on those crimes that most negatively effect the Billings Community: drug trafficking, violent crime, and white-collar crime. An estimate of my areas of practice are as follows:**

**Drug Trafficking Criminal Litigation-25%  
White-Collar Criminal Litigation-25%  
Violent Crime Criminal Litigation-25%  
Other Criminal Litigation-25%**

**As a Judge Advocate, my area of legal practice is significantly different. Though my official duty position is as a Trial Defense Attorney, every judge advocate is expected to be prepared to advise on every aspect of military law. This requires I be generally versed in almost every area of law applicable to the military, including administrative law, fiscal law, criminal law, employment law and contract law.**

**Serving in a reserve unit of the Trial Defense Service is quite different from its active-duty equivalent. Active-duty TDS functions similarly to a military public defender's office, and the primary duties consist of representing soldiers before courts martial. In the reserves, however, criminal matters committed by reservists are almost exclusively dealt with in civilian courts. As such, the role of reserve TDS is vastly different and functions primarily in the area of administrative and military employment law. A reserve TDS attorney represents service members who are under administrative investigation, often for a violation of military regulation, or who are being involuntarily separated from service. This is a long and complicated legal process that requires a thorough understanding of military regulation and legal practice. I currently serve as a Senior Defense Counsel and am responsible for the oversight and leadership of a team of four to six Captain level Judge Advocates while also maintaining my own roster of service member clients. This means, in practice, I am responsible for the reviewing and overseeing the judge advocates under me to ensure their legal work is proficient and that they are maintaining all military conduct standards expected of any U.S. Army Officer while also representing my own military clients.**

**Administrative Law- 50%  
Military Criminal Law- 25%  
Other Military Law-25%**

14. Describe any unique aspects of your law practice, such as teaching, lobbying, serving as a mediator or arbitrator, etc. (exclude bar activities or public office).

**I spend a significant portion of my time investigating and prosecuting complex white-collar crime. This area of criminal practice is unique because it requires significant insight into legal areas more traditionally associated with civil practice. To effectively pursue these cases, I am required to understand diverse areas of state and federal contract law, fiscal law, and tax law. I investigate complex business structures and am extremely familiar and adept with corporate governance and accounting. This practice provides me with an ability to bridge the traditional gap between criminal and civil practice that I believe will make me a more effective jurist.**

**I am also the U.S. Attorney's Office's liaison to the Eastern Montana Drug Trafficking Area Task Force (EMHIDTA). In practice, this means I am responsible for identifying, prosecuting, and dismantling interstate and international drug trafficking organizations that are operating in the District of Montana. This ultimately leads to prosecuting an extremely high volume of cases while also managing complex, long-term investigations involving financial tracing and electronic surveillance. It also requires that I coordinate and collaborate with a diverse set of state and federal agencies including FBI, DEA, ATF, MTDCI, IRS, and HSI. This enables me to develop deep ties to all levels of law enforcement throughout the state.**

15. Describe the extent that your legal practice during the past ten years has included participation and appearances in state and federal court proceedings, administrative proceedings, and arbitration proceedings.

**As an AUSA, I appear in the United States District Court daily. I prosecute jury trials in Federal District Court several times each year. I write appellate briefs and present oral argument on matters before the Ninth Circuit Court of Appeals. These are primarily matters that I served on as trial counsel. In the military, I regularly represent clients before Administrative Separation Boards, these boards are adversarial administrative panels where a panel of officers determines if a service member should be involuntarily separated from service.**

16. If you have appeared before the Montana Supreme Court within the last ten years (including submission of amicus briefs), state the citation for a reported case and the case number and caption for any unreported cases.

**As I practice primarily in Federal court, I have not appeared before the Montana Supreme Court.**

17. Describe three of the most important, challenging, or complex legal issues you have dealt with or legal proceedings in which you have participated during your practice.

**1. I was the lead prosecutor in the complex fraud and corruption investigation surrounding Signal Peak Energy (SPE) and its management beginning in 2018. The investigation began as a wire fraud investigation involving a Vice President of SPE and several private investors. It quickly morphed into a sprawling case of intricate financial fraud involving the entirety of SPE's management. The investigation resulted in the prosecution of over 10 individuals for acts of fraud, drug trafficking, mine safety violations, and gun crimes. In the end, even SPE itself was forced to plead guilty to criminal conduct and pay a \$1 million dollar fine.**

**2. Beginning in 2020, I partnered with the Billings Police Department to create an initiative targeting identity theft in Yellowstone County. After years working with EMHIDTA to prosecuting federal drug crimes while also working white-collar cases, I noticed a strange overlap in these defendants, particularly for acts of identity theft. I also noticed that many of these federal drug defendants had histories of burglary and other property crime and quickly came to realize that the huge surge in burglary and property crime occurring in Billings was being fueled by perpetrators, most of whom were involved in drugs, who were committing these crimes to steal checks and credit cards. These property offenses were difficult to investigate, rarely prosecuted, and lightly punished. With significant assistance from a detective with the BPD, I set out to change this dynamic. Instead of focusing on the acts of property crime, I began combating the problem by targeting the perpetrators when they used the stolen credit cards and checks at businesses and banks. I charged these individuals with federal aggravated identity theft, a crime carrying a mandatory minimum of two years in federal prison. In doing so, I was able to ensure a category of criminals who, prior to this, had been operating with significant impunity, began facing serious punishment. In the four years since beginning this initiative, I have successfully prosecuted dozens of these offenders resulting in prison sentences ranging from two to five years of incarceration.**

**3. While acting as a trial counsel at Fort Rucker, I was the lead prosecutor in an extremely difficult child sex trafficking case. The case centered on an Army Sergeant who had systematically sexually abused his daughter and niece over a series of years. During the same period, he had also been engaged in the distribution and collection of large amounts of child pornography. The Sergeant demanded a court martial, and the trial was one of the most difficult of my career. The two principal witnesses against the defendant were approximately 10 years old and preparing them for trial was emotionally and psychologically taxing for everyone involved. Beyond that, the Sergeant was tech savvy and had successfully destroyed much of the evidence regarding his online activities related to child pornography. This required multiple hours of collaborative work with a digital forensic analyst to reconstruct this evidence in a form that could be presented at trial. Ultimately the Sergeant was found guilty, and I successfully argued for a sentence of life in prison. I was eventually awarded an Army Achievement Medal (AAM) for my work on the case.**

18. If you have authored and published any legal books or articles, provide the name of the article or book, and a citation or publication information.

**Nothing Applicable.**

19. If you have taught on legal issues at postsecondary educational institutions or continuing legal education seminars during the past ten years, provide the title of the presentation, date, and group to which you spoke.

**“White Collar and Bankruptcy Crimes: Legal Boundaries and Enforcement Trends.”  
August 1, 2025, Montana State Bar Bankruptcy Section CLE**

**“Federal Legal Training,” October 25, 2022, F.B.I. Command College**

20. Describe your pro bono services and the number of pro bono hours of service you have reported to the Montana Bar Association for each of the past five years.

**What limited professional time I have outside of the United States Attorney’s Office is necessarily devoted to my duties as a Judge Advocate. Additionally, potential conflicts of interest created as the result of my work as an AUSA make it very difficult to take pro bono cases. As such, providing pro bono services is not currently compatible with my practice.**

21. Describe dates and titles of any offices, committee membership, or other positions of responsibility you have had in the Montana State Bar, other state bars, or other legal professional societies of which you have been a member and the dates of your involvement. These activities are limited to matters related to the legal profession.

**2021-2024. District Delegate, National Association of Assistant United States Attorneys.**

22. Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, and type of discharge received.

**As stated above, I am currently a Judge Advocate in the U.S. Army. I was commissioned in service on October 24, 2010, and was on active duty for approximately 4 years. In December 2014, I transitioned from active duty to reserve duty as a Captain. I have continued as a reserve officer since that time. I currently hold the rank of Major.**

**While on active duty I held two primary jobs. From 2011-2013, I was a Trial Counsel and a Special Assistant United States Attorney at Fort Rucker, AL. In this role, I prosecuted serious felonies of all kinds at General Courts Martial. From 2013-2014 I was a Trial Defense Attorney in Joint Base Lewis-McCord, WA. In this capacity I defended soldiers accused of felony crimes at General Courts Martial.**

23. If you have had prior judicial or quasi-judicial experience, describe the position, dates, and approximate number and nature of cases you have handled.

**Nothing applicable.**

24. Describe any additional business, agricultural, occupational, or professional experience (other than legal) that could assist you in serving as a judge.

**Nothing applicable.**

#### **D. COMMUNITY AND PUBLIC SERVICE**

25. List any civic, charitable, or professional organizations, other than bar associations and legal professional societies, of which you have been a member, officer, or director during the last ten years. State the title and date of any office that you have held in each organization and briefly describe your activities in the organization and include any honors, awards or recognition you have received.

**Council Member, Atonement Lutheran Church, Billings, MT 2017-2019.**

**Sunday School Teacher, King of Glory Lutheran Church, Billings, MT 2021-present.**

26. List chronologically (beginning with the most recent) any public offices you have held, including the terms of service and whether such positions were elected or appointed. Also state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

**I have never held elected office or campaigned for such an office. I have never sought an appointment to an office.**

#### **E. PROFESSIONAL CONDUCT AND ETHICS**

27. Have you ever been publicly disciplined for a breach of ethics or unprofessional conduct (including Rule 11 violations) by any court, administrative agency, bar association, or other professional group? If so, provide the details.

**No.**

28. Have you ever been found guilty of contempt of court or sanctioned by any court for any reason? If so, provide the details.

**No.**

29. Have you ever been arrested or convicted of a violation of any federal law, state law, or county or municipal law, regulation or ordinance? If so, provide the details. Do not include traffic violations unless they also included a jail sentence.

**No.**

30. Have you ever been found liable in any civil proceedings for damages or other legal or equitable relief, other than marriage dissolution proceedings? If so, provide the citation of a reported case or court and case number for any unreported case and the year the proceeding was initiated (if not included in the case number).

**No.**

31. Is there any circumstance or event in your personal or professional life that, if brought to the attention of the Governor or Montana Supreme Court, would affect adversely your qualifications to serve on the court for which you have applied? If so, provide the details.

**No.**

#### **F. BUSINESS AND FINANCIAL INFORMATION**

32. Are you currently an owner, officer, director, or otherwise engaged in the management of any business other than a law practice? If so, please provide the name and locations of the business and the nature of your affiliation, and state whether you intend to continue the affiliation if you are appointed as a judge.

**No.**

33. Have you timely filed appropriate tax returns and paid taxes reported thereon as required by federal, state, local and other government authorities? If not, please explain.

**Yes.**

34. Have you, your spouse, or any corporation or business entity of which you owned more than 25% ever filed under title 11 of the U.S. Bankruptcy Code? If so, give details.

**No.**

#### **G. JUDICIAL PHILOSOPHY**

35. State the reasons why you are seeking office as a district court judge.

**I have spent most of my life in Yellowstone County and am intent on spending the duration of my career in public service to this community. It is my home and a place I love deeply. Throughout my life, I have been able to watch it change and grow. This growth has been positive in so many ways, but it has also brought significant challenges. These challenges were particularly noteworthy upon my return from the active-duty service in the Army in 2014. At that time, I saw a community which had been profoundly impacted by crime and violence in a way that fundamentally affected the quality of life for the citizens of this**



county. Much of this crime was rooted in substance use and abuse. This revelation had a profound effect on me and has been heartbreaking to see in a place so important to me.

As a result, since starting my role as an AUSA, I have centered all my efforts on pursuing cases that could push back on this sad reality. I have focused on large drug trafficking organizations, violent crime, and white-collar crime because I have come to believe these are the kinds of crimes that have most acutely damaged this community. Through hard work across state and federal agencies, it has been gratifying to see the efforts of law enforcement and other community partners, of which I am merely a very small part, beginning to pay off.

Since becoming an AUSA, there really has not been other work that enticed me. Nothing I saw gave me the same ability to tangibly help make things better in the community and across the country. This is the first time I have encountered an opportunity that changed that outlook. As a District Court Judge I believe I will be able to take my considerable experience and apply it in a manner that would benefit Yellowstone County in an even greater fashion than I have been able to as an AUSA.

I believe that, through my years of experience, I have accumulated enough legal skill and knowledge to become a highly effective judge, and I intend to use these skills and this position to continue making Yellowstone County a wonderful place to live. This means, in practice, that I would run my docket with extreme consistency and efficiency to reduce backlog, combat crime, address substance use/abuse, and achieve justice in every civil and criminal matter that came before me. For instance, in criminal matters, it will mean presiding equitably over cases, making sure each side receives a fair trial, and ensuring defendants are afforded proper due process of law. In family law matters, it will mean working towards equitable resolutions rooted in fairness for all parties, with protection of children and the best interest of children as the important focal point.

More broadly, my entire career has been dedicated to public service. I have served in a wide variety of roles dedicated to making the country better from working at the public defender's office, to serving in the Army, and working as an AUSA. Becoming a District Court Judge would enable me to continue that dedication in a new and expanded way. I believe the United States is country founded upon public service, and I will embody that ethos as a Judge.

36. What three qualities do you believe to be most important in a good district court judge?

Every Jurist should be consistent, knowledgeable, and efficient. The great goals of justice, from the rule of law to equality before the law, all depend upon having judges who will be consistent in their rulings and temperament. Consistency means treating every petitioner, regardless of their background or history, concordantly with every other petitioner. It means treating every law, regardless of politics, by a consistent standard. Consistency rejects a focus on outcome. Outcome is a product of coherent application fairly applied, and will result in every jurist, regardless of their private ideology, sometimes ruling in a

**way which might be inconsistent with their private belief but consistent with the law honestly applied.**

**To be consistently correct, however, one must also be deeply knowledgeable of the law. This is a knowledge that does not abide shortcuts. It is the tedious work of long hours reading and researching through caselaw and statute. It requires an intellectual curiosity which drives one to examine every detail of a law through legal precedent and legislative history. Such a knowledge strives to know these things so that every decision is founded not upon person bias, but an understanding of what law means and how it is practically applied.**

**At the same time, however, a judge who is consistent and knowledgeable but inefficient is not a very good judge. Too often, people focus on the loftier ideals of the judiciary while ignoring the more practical realities like case management and deadlines. Most courts, particularly in Yellowstone County, are extremely busy. A judge who cannot aptly navigate this reality will not succeed. A strong and effective judge must be able to efficiently manage and resolve a huge docket of diverse cases. This means responding to motions quickly and keeping every case moving at a pace that ensures injustices are not created from sheer delay. Such practicalities may seem unimportant compared to the more philosophical considerations of the law, but if a judge cannot master their docket in an efficient manner, they are destined to fail.**

37. What is your philosophy regarding the interpretation and application of statutes and the Constitution?

**My judicial philosophy hinges upon two interlocking principles I believe are essential to good jurisprudence: minimalist interpretative outcome and fidelity to the original meaning of the laws as they were passed. The reason for this approach is founded on a belief in our country as a legislative democracy. The rule of law is a societal compact expressed through common citizen agreement as expressed through the state and federal constitutions and the laws their representatives pass at the state and federal legislative bodies. A right or rule enshrined in a constitution or passed as a law gives that right or rule the force of the common consent of our society, and, consequently, legitimacy.**

**The role the judiciary plays in this process is important, but also necessarily limited. Judges must have the humility to respect this fact. In the fervor of partisan politics, partisans of every stripe have attempted to use the judiciary to short circuit the often-lengthier legislative process. Where common consent through legislation is lacking, these varied partisans see a back door through the judiciary. I reject this notion.**

**Practicing deliberate minimalism in interpretation is the first key to preventing this deleterious practice. By this, I mean that a judge must always confine himself or herself to the case or controversy before them, and his or her ruling confined to resolving that case. Any ruling that goes beyond that bare necessity should be left to the legislative branch. When interpreting two laws which seem in conflict, a minimalist interpretation resolves these conflicts in as narrow a way as possible, and, whenever possible, in a way that**

preserves as much of both laws or precedents as is possible while still resolving the inconsistency. In this way, jurisprudential change is exceedingly slow and exceedingly miniscule. This is by design and resolves cases in a way that address unavoidable legal inconsistencies while still maximizing the ability for the legislative branch to act as the democratic driver of change to the law.

Similarly, my interpretation of any law is founded upon a careful study of the original meaning of a law as understood by the individuals who passed the law. In doing so, I carefully subordinate my personal beliefs, which every citizen is entitled to, to the statutory meaning even when that might differ from my privately held beliefs. This is a role I am accustomed to. Every officer in the U.S. Army is expected to follow every lawful order, even when they conflict with a privately held belief. As a federal prosecutor, we must fairly apply the laws as enacted by the United States Congress regardless of any contrary beliefs. Here the dynamic is the same. As a jurist, I am bound to the laws as passed by the legislative branch, and some of those laws will necessarily be ones I might not always deem wise. Nevertheless, I am bound by them as they were written and understood, not as I might privately wish them to be. In this way a good jurist separates themselves from their private self with all the attendant political passions and becomes an honest interpreter of legislative intent and a fair judge to every person that comes before them.

#### **H. MISCELLANEOUS**

38. Attach a writing sample authored entirely by you, **not to exceed 20 pages**. Acceptable samples include briefs, legal memoranda, legal opinions, and journal articles addressing legal topics.
39. Please provide the names and contact information for three attorneys and/or judges (or a combination thereof) who are in a position to comment upon your abilities.
  1. **Kurt Alme**  
**United States Attorney**  
**2601 2nd Ave N., Suite 3200**  
**Billings, MT 59101**  
**(406) 657-6101**
  2. **The Honorable Susan Watters**  
**United States District Court Judge**  
**2601 2nd Ave N.**  
**Billings, MT 59101**  
**(406) 247-2351**
  3. **Eli Patten**  
**Partner**  
**Crowley Fleck PLLP**  
**490 N 31st St #500,**  
**Billings, MT 59101**  
**(406) 252-3441**


## CERTIFICATE OF APPLICANT

I hereby state that to the best of my knowledge the answers to all questions contained in my application are true. By submitting this application I am consenting to investigation and verification of any information listed in my application and I authorize a state bar association or any of its committees, any professional disciplinary office or committee, educational institutions I have attended, any references furnished by me, employers, business and professional associates, law enforcement agencies, all governmental agencies and instrumentalities and all other public or private agencies or persons maintaining records pertaining to my citizenship, residency, age, credit, taxes, education, employment, civil litigation, criminal litigation, law enforcement investigation, admission to the practice of law, service in the U. S. Armed Forces, or disciplinary history to release to the Office of the Governor of Montana or its agent(s) any information, files, records, or reports requested in connection with any consideration of me as a possible nominee for appointment to judicial office.

I further understand that the submission of this application expresses my willingness to accept appointment as District Court Judge if tendered by the Governor, and my willingness to abide by the Montana Code of Judicial Conduct and other applicable Montana laws (including the financial disclosure requirements of MCA § 2-2-106).

August 18, 2025

\_\_\_\_\_  
(Date)

  
\_\_\_\_\_  
(Signature of Applicant)

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A signed original **and** an electronic copy of your application and writing sample must be submitted by  
***5:00 p.m. on Tuesday, August 26, 2025.***

**Mail the signed original to:**

Hannah Slusser  
Governor's Office  
P.O. Box 200801  
Helena, MT 59620-0801

**Send the electronic copy to:** hannah.slusser@mt.gov

## WRITING SAMPLE

Colin M. Rubich

The following sample is an excerpt from a Ninth Circuit Court of Appeals Brief I submitted in *United States v. Maurice Fregia*, CR 18-58-BLG-SPW. Fregia was a significant drug trafficker who brought large quantities of methamphetamine and other drugs from California to Billings. Fregia ultimately went to trial and was sentenced to almost 26 years in prison. During the investigation, agents with the Eastern Montana High Intensity Drug Trafficking Area Task Force (EMHIDTA) obtained a state search warrant for Cell Site Location Information (CSLI) to track the movements of Fregia's cell phone. This data was some of the information that was relied on to ultimately serve a search warrant on Fregia's residence.

On appeal, Fregia argued the CSLI collected via the state warrant was invalid because it failed to specify "geographical limits" pursuant to Mont. Code Ann. 46-4-401(3)(2)(c). He then argued, in turn, that the warrant to search Fregia's residence was invalid without the CSLI data. My response to this issue is below. To comply with the page limitation of this application, several sections of the original brief have been excised and only the facts section and argument related to this issue remain. The complete brief is available on Westlaw at 2021 WL 1673345. The Ninth Circuit Affirmed Fregia's conviction. The memorandum affirming the case is available on Westlaw at 2021 WL 5071501.

## STATEMENT OF FACTS

**I. Law Enforcement began investigating Fregia and his partner Chad Beres in early 2018 after connecting them to several local drug traffickers.**

On January 31, 2018, members of the Eastern Montana High Intensity Drug Trafficking Area task force conducted an investigation into two individuals, Molly Fogle and Daniel Pappas, distributing methamphetamine out of a Billings, Montana motel room. 2-SER 319. Pursuant to a warrant, the officers obtained methamphetamine, heroin, and marijuana. A search of one of the individual's cell phones, pursuant to a search warrant, revealed several text messages detailing drug sales, including several messages with Pappas's apparent supplier. *Id.*

The supplier was identified as Chad Beres. A district court search warrant for the cellular telephone records of Beres phone revealed further evidence of drug trafficking, and implicated an individual identified as "Frosty" as an associate of Beres in drug distribution. 2-SER 320.

Around the same time, the Billings police department made contact with another local trafficker named Christopher Hurst. *Id.* After a search of his hotel room, a significant quantity of methamphetamine was discovered. Hurst then provided a statement to law enforcement that Beres and "Frosty" were transporting large amounts of methamphetamine from California to Billings, and that Hurst himself was receiving a quarter pound to half a pound of methamphetamine on an

everyday basis for several months from them. Hurst said that he usually obtained drugs from “Frosty.” *Id.*

From Hurst, the officers obtained numbers associated with Beres and “Frosty.” He confirmed that both men changed phones regularly and that he had communicated with both men on cell phones to set up drug transactions. Law enforcement was able to verify that Hurst’s cell phone number was one of the ones that had communicated with Beres on his old cell phone. The number in Hurst’s phone associated with “Frosty” was a number ending in 3981. 2-SER 321.

Officers then sought court orders to obtain pen register and trap and trace information for the 3981 number associated with “Frosty.” 2-SER 258. The request asked that “the Court enter an Order authorizing the installation and use of pen-trap devices to record, decode, and/or capture the dialing, routing, addressing, and signaling information described above for each communication to or from [the 3981 number], to include the date, time, and duration of the communication, without geographic limit.” 2-SER 269. The application also stated that the applicant believed “there is probable cause to believe that “FROSTY” is using [ the 3981 number] to engage in criminal activity, and the use of a pen register and trap and trace – in conjunction with prospective cell-site data and precision location information – will identify the phone numbers communicating with [the 3981 number].” 2-SER 271. And concluded that the applicant “believes such

information will lead to assisting investigators determine the location of the cell phone using [the 3981 number], without geographical limit, which is relevant to this criminal investigation.” *Id.*

The order, signed by a Montana District Court judge, stated that probable cause existed to believe that “Frosty” was a suspect engaged in the distribution of dangerous drugs, that there was probable cause to believe that the 3981 number is used by “Frosty” in furtherance of criminal activity, that identifying telephone numbers communicating with the 3981 number would lead to identifying other co-conspirators, and that prospective cell-site data would assist law enforcement in determining the source of “Frosty’s” supply. 2-SER 274. The order authorized the installation and use of a trap and trace device “without respect to geographic limitations.” 2-SER 275.

Officers obtained a search warrant for Hurst’s phone and Beres’ phone to obtain text message conversations stored in the Verizon Wireless system. 2- SER 321. Subsequent investigation led to the conclusion that “Frosty” had switched to a phone number ending in 7480. 2-SER 322. Investigators were also able to identify Maurice Fregia as “Frosty.” *Id.* Officers obtained a district court search warrant for the cellular telephone records of the 7480 number. 2-SER 310. The next day, officers initiated a pen register and trap and trace with prospective cell-



site location data for the 7480 number authorized by Montana State District Court Judge. 2-SER 294.

Analysis of Fregia's text messages confirmed that he used the phone for drug-related purposes. The texts detail that he was attempting to collect drug debts and told people to drop off money, indicating he was at his Broadwater Ave residence. 2-SER 324-325. Officers conducted physical surveillance on the Broadwater and observed Fregia at the residence. 2-SER 328-329. Officers also obtained Fregia's criminal history. 2-SER 327.

Based on the above information, officers sought and were granted a search warrant of Fregia's Broadwater Ave residence. The warrant was executed on April 11, 2018, and the search revealed approximately 700 grams of methamphetamine, a large amount of U.S. currency, and numerous firearms. 2-SER 335-336.

### **SUMMARY OF ARGUMENT**

The state warrants seeking Fregia's CSLI were not defective. Fregia provides no case law from the state of Montana to support his interpretation. Rather he asks this federal court to interpret an issue of Montana state law without any guidance from the state. This request should be rejected.

Ultimately, any state law is irrelevant here. As the district court found, this warrant meets the requirements of the Fourth Amendment of the Constitution, and is therefore valid, regardless of any theoretical interpretations of state law

presented by Fregia. Moreover, even if the warrant were defective, the CSLI still would not be suppressed as the agents were truthful in their affidavit and relied on an order from the court they believed was valid in good faith. Finally, even if the CSLI warrant itself was suppressed, the warrant for Fregia's residence (where all the evidence of his guilt was found) would still be valid as it still contained probable cause even without the information gained from the CSLI warrant.

The district court did not err by vacating the hearing when Fregia's second attorney contacted the court and stated that Fregia no longer wished to have a new attorney assigned. The court should be able to reasonably rely on the statements of an attorney, who is a sworn officer of the court. Indeed, the defense misinterprets this issue. Based on Fregia's letter, it is clear that this matter should appropriately be analyzed as a claim of ineffective assistance of counsel. Under such a review, the record does not contain any clear acts of ineffective assistance of counsel, and Fregia's attorney competently represented him at trial to the best of his ability. Any claim to the contrary is unsupported by the current record and, as such, any claim regarding ineffective assistance of counsel would require additional investigation. Consequently, Fregia cannot establish either prong of the test for ineffectiveness announced in *Strickland v. Washington*, 466 U.S. 668, (1984), and thus, this case does not present the kind of extraordinary circumstances that warrant direct review of a claim for ineffective assistance of counsel.

## ARGUMENT

### **I. The warrants issued by the district court were not defective and comply with the requirements of the Fourth Amendment.**

**Standard of review:** This Court reviews a district court's denial of a motion to suppress de novo and any underlying factual findings for clear error. *United States v. Moore*, 770 F.3d 809, 812 (9th Cir. 2014). This Court may affirm the denial of the motion to suppress on any basis supported by the record. See *United States v. Henderson*, 241 F.3d 638, 649 n. 1 (9th Cir.2000).

**Argument:** As the district court correctly observed, “[i]t takes some unpacking of Montana law to understand Fregia’s argument.” ER 26. That remains the case with respect to Fregia’s argument on appeal. While this brief wades into those issues and why they are without merit, it is important to note at the outset, as discussed more thoroughly in section D below, neither before the district court nor in his opening brief on appeal has Fregia adequately addressed how any infirmity with the respect to the CSLI warrants would invalidate the warrant authorizing the search of Fregia’s residence which was supported by abundant independent probable cause and resulted in the discovery of the methamphetamine that resulted in his conviction.

Returning to Fregia’s argument, however, he asserts that the state warrant that authorized the collection of CSLI was defective because the warrant failed to set the “the geographic limits of the court order” pursuant to MCA 46-4-403(2)(c).

Fregia argues that this would also invalidate the warrant federally, as state warrants authorizing the collection of SCLI pursuant to the Stored Communications Act must be obtained using “State warrant procedures.” In making this argument he assumes the geographical limits that he reads into 46-4-403(2)(c) are bounded by a jurisdictional element that should be constitute part of state warrant procedure.

Fregia is factually and legally wrong. The warrants comply with the requirements of the Fourth Amendment and the Stored Communications Act and are therefore valid. As such, state law requirements are irrelevant. Nevertheless, he asserts a theory of Montana State law for which there is no basis in case law, even if it were relevant. Additionally, even if the warrant were defective, the agents in this case relied upon it in good faith. Finally, the warrant to search Fregia’s residence still had probable cause without the information gather pursuant to the cell site warrant.

**A. Both Warrants Complied with the Requirements of the Fourth Amendment and are, therefore, valid.**

Wading into state statutory interpretation without any guidance from state jurisprudence is unnecessary in this case. The only question this Court needs to answer is whether the warrants in Fregia’s case complied with the Fourth Amendment. If the search and seizure complied with federal constitutional standards, the evidence is admissible. *See United States v. Chavez-Vernaza*, 844 F.2d 1368 (9th Cir. 1987); *Virginia v. Moore*, 553 U.S. 164, 172 (2008)

(concluding “whether state law authorized the search was irrelevant. While individual States may surely construe their own constitutions as imposing more stringent constraints on police conduct than does the Federal Constitution, state law did not alter the content of the Fourth Amendment” (alterations in original omitted)).

Both warrants clearly meet this standard, as the district court correctly concluded in its original order:

Here the task force did not violate the Constitution when it obtained Fregia’s CSLI. Under the Fourth Amendment, the task force was required to get a warrant supported by probable cause before it could obtain Fregia’s CSLI...Fregia does not contest the state court’s orders authorizing the pen register and trap and trace devices meth these requirements. The task force’s search of his cellphone location information was therefore constitutional under the Fourth Amendment because it conducted pursuant to a valid warrant. ER 27-28.

The district court also points out a critical issue: Fregia does not contest that these warrants complied with normal federal constitutional requirements. Both at the district court and before this court, Fregia has tacitly admitted that the warrants are valid if federal constitutional standards are applied without regard to the state law requirement he asserts is created via MCA 46-4-403(2)(c).

Fregia’s argument, instead, is that the federal Stored Communications Act requires warrants that collect CSLI to follow “State warrant procedures” when they are issued by state court. 18 U.S.C. § 2703(a). Fregia asserts MCA 46-4-403(2)(c) is a “State warrant procedure,” and that what he believes to be an implied

jurisdictional limit must be considered as part of the validity of the warrants.

While it is true that “State warrant procedures” must be observed, Fregia is incorrect in asserting that this impacts the warrants in this case.

Some context on the authority for a warrant for CSLI from electronic communication services is helpful to clarify the problem with Fregia’s argument. The Stored Communication Act provides that a governmental entity may require the provider of an electronic communication service to disclose the contents of a wire or electronic communication “pursuant to a warrant” issued either “using procedures described in the Federal rules of Criminal Procedure” or “in the case of a State court, using “State warrant procedures” by “a court of competent jurisdiction.” 18 U.S.C. § 2703(a). The statute defines such a court to include “a court of general criminal jurisdiction of a State authorized by the law of that State to issue search warrants.” 18 U.S.C. § 2711(3). There can be no question that a district court of the State of Montana was authorized under federal law to issue such warrant. § 46-5-220, Mont. Code Ann. The only remaining question is whether Congress intended “state warrant procedures” to include geographical jurisdictional restrictions, even if state law could be construed as implying them. It did not.

Neither the text nor purpose of the Stored Communications Act supports reading the requirement that warrants issued under “state warrant procedures”

include geographic jurisdictional restrictions. *See United States v. Purcell*, 2018 WL 4378453, at \*5-\*6 (S.D.N.Y. Sept. 13, 2018). In *Purcell*, the court correctly noted that the question of whether evidence is admissible in federal court is governed by federal law, not state law, and the question of whether a warrant is authorized by the SCA is independent of whether there was any violation of state law. *Purcell*, 2018 WL 4378453 at \*6; *see also United States v. Beaudion*, 2019 WL 1199853, at \*2 (W.D. La. March 13, 2019) (“[E]ven if the warrant issued by the state judge was in violation of [provision governing state court jurisdiction], this violation did not reach the level of a Fourth Amendment violation, and thus the evidence obtained as a result of the search should not be suppressed.”). The court noted that the SCA made no distinction between the territorial reach of warrants issued by federal and state courts pursuant to its terms. *Purcell*, 2018 WL 4378453 at \*6; *see also United States v. Orisakwe*, 2013 WL 4836084, at \*2 (E.D. Tex. Sept. 9, 2013) (“If the judicial officer signing the search warrant has authority to issue the warrant under state law, then the provisions of the Stored Communications Act have been complied with. Such warrants are not limited to territorial jurisdiction of the issuing authority.” (citation omitted)); *Beaudion*, 2019 WL 1199853, at \*2. *Purcell* also noted “it would make little sense for the statute to require of state courts that which it does not require of federal courts -- namely, that the ESI provider be within the ordinary territorial jurisdiction of the court

issuing the warrant. Such a reading would defeat the entire purpose of the statute.”

*Purcell*, 2018 WL 4378453 at \*6.

The legislative history of the SCA makes clear that the purpose of the statute is specifically to address the cross-jurisdictional nature of the Internet. The House Report accompanying the bill that enacted § 2703(a) states that the provision:

attempts to address the investigative delays caused by the cross-jurisdictional nature of the Internet. Currently, Federal Rules of Criminal Procedure 41 requires that the ‘warrant’ be obtained ‘within the district’ where the property is located. An investigator, for example, located in Boston who is investigating a suspected terrorist in that city, might have to seek a suspect’s electronic e-mail from an Internet service provider (ISP) account located in California. The investigator would then need to coordinate with agents, prosecutors and judges in the district in California where the ISP is located to obtain a warrant to search. These time delays could be devastating to an investigation, especially where additional criminal or terrorist acts are planned. Section 108 amends § 2703 to authorize the court with jurisdiction over the investigation to issue the warrant directly, without requiring the intervention of its counterpart in the district where the ISP is located.

As noted in *Purcell*, “[t]he SCA offers no indication that state courts are more restricted in their territorial reach than federal courts when issuing warrants for ESI under § 2703(a).” *Purcell*, 2018 WL 4378453 at \*6. The only logical conclusion is that,”[i]f the territorial restrictions in the Federal Rules of Criminal Procedure do not restrict the authorizations given by Congress in the SCA, then surely neither do parallel restrictions in state court rules and procedures.” *Purcell*, 2018 WL 4378453 at \*6.



Another federal court recently came to a similar conclusion. In *United States v. Cater*, 2012 WL 150018, at \*4 (W.D. Kentucky Jan. 15, 2021), the Western District of Kentucky issued an order addressing a search warrant for cell site location information (CSLI) and upheld the warrant. That court ruled the Kentucky state court was “a court of competent jurisdiction” to issue a warrant for defendant’s CSLI pursuant to Title 18 U.S.C. § 2703(c)(1)(A). *Cater*, 2021 WL 150018, at \*4. The court determined a district judge in Kentucky state court was “authorized by the law” to issue warrants and thus fell within the definition of “court of competent jurisdiction” under 18 U.S.C.A. § 2711. *Id.*

As such, reading geographic limitation into “state warrant procedures” is clearly erroneous and MCA 46-4-403(2)(c) is irrelevant here even if it contained a jurisdictional limitation. Without the application MCA 46-4-403(2)(c), Fregia does not assert that these warrants violated federal constitutional requirements. As such, these requirements are clearly met, and the warrants are valid without ever needing to wade into state law jurisprudence. That is all that is required, and the legality of the warrants should be affirmed on that basis.

**B. Fregia’s claim is not based upon Montana jurisprudence.**

Though any jurisdictional limitation in MCA 46-4-403(2)(c) is irrelevant, no state court in Montana has adopted the interpretation of MCA 46-4-403(2)(c) Fregia proposes to the court. By its terms, the statute only requires that any

geographical limitations be listed. And, in fact, as is evident from the warrant in question, Montana State District Court judges comply with that requirement by issuing warrants for trap devices “without respect to geographic limitations.” Montana State Courts have thus taken a significantly different understanding of MCA 46-4-401(3)(2)(c) than that proposed by Fregia.

Mont. Code Ann. §46-4-401(3) states:

If the court is satisfied that the applicant has shown probable cause for the order, the court shall issue the order. The order must state:

- (a) the name, if known, of each person to whom the telephone line is leased or in whose name the telephone line to which a pen register or trap and trace device is to be attached is listed;
- (b) the name, if known, of each person who is the subject of the criminal investigation;
- (c) the number and, if known, the physical location of each telephone line to which a pen register or trap and trace device is to be attached and, *for a trap and trace device, the geographic limits of the court order*; and
- (d) the offense or offenses to which the information that might be obtained relates.

Fregia asserts that Mont. Code Ann. 46-4-401(3)(2)(c), in stating that a court order must state “...the geographic limits of the order,” requires a court to impose a limit to specific geographical limits. This, in Fregia’s opinion, would preclude the court from issuing an order that allows the collection of data “without respect to geographic limitations.” In so doing, Fregia construes this provision as creating

specified geographical limits, even though the statute's plain language does not support such a reading.

Simply put, the plain purpose of this statute is to specify the sort of information a warrant needs to list. It does not seek to limit the scope of that information. The court is left to decide how narrow or broad it wishes to allow data collection. Nothing in Mont. Code Ann. 46-4-403(2)(c) suggests specific required geographical limitations so long as whatever limitations the court chooses are listed.

Mont. Code Ann. 46-4-403 certainly does not—as the Fregia concludes—contain any jurisdictional limitation that prohibit the issuance of warrants that collect data from beyond Montana's borders where otherwise authorized by law. At some level, Fregia seems to realize this because his next argument is that a Montana District Court judges are more broadly jurisdictionally limited to issue warrants only with the bounds of Montana state. In making the argument, Fregia points out that there is no Montana statute that specifically empowers a court order under Mont. Code Ann. 46-4-403 to order the installation of trap and trace device that might gather data outside the state of Montana.

Fregia's argument is erroneous, however, as it ignores the affirmative authority to collect such data that comes from federal law. The Stored Communications Act (18 U.S.C. § 2701 et. seq) provides that a warrant may be

issued by a court of competent jurisdiction, which includes “a court of general criminal jurisdiction of a State authorized by the law of that State to issue search warrants.” 18 U.S.C. § 2703(a). And the Montana constitution specifically provides Montana District Courts shall have “additional jurisdiction as may be *delegated by the laws of the United States* or the state of Montana. Mont. Const. art. VII, § 4 (emphasis added). Moreover, Montana law itself expressly provides for the collection of data from non-resident service providers provided they are doing business in Montana.<sup>1</sup> Mont. Code Ann. 46-5-605(3).

This is the point at which the defendant’s position becomes a circular argument. The defendant asserts that Mont. Code Ann. 46-4-403(2)(c) not only requires that geographical limitation be listed in Montana state warrants seeking perspective cell site data, but also limits the geographic reach in some way. Fregia then asserts that, via the Montana state constitution, the limit of the jurisdiction is confined to within the borders of Montana. When confronted with the authority granted state courts by the Stored Communications Act, Fregia argues that Montana State Courts cannot avail themselves of that authority because 18 U.S.C. § 2703(a) states that valid warrant under the Stored Communications act must

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<sup>1</sup> While the precise jurisdictional parameters of the warrants are not critical here since jurisdiction is also granted under federal law, it is worth noting that Fregia was residing in Montana and doing business with the service provider from which the information was obtained. 2-SER 258-298.

using “State warrant procedures.” Fregia circles back to Mont. Code Ann. 46-4-403 which he says places geographical limits and the Montana Constitution which sets those limits to the borders of Montana state.

In other words, Fregia suggests an interpretation of the Stored Communications Act and Mont. Code Ann. 46-4-403 which destroys the clear intent of those laws. These acts were created to ensure a state court could adequately obtain data pursuant to a search warrant in an electronic world that does not confine itself neatly to state territorial boundaries. Instead, Fregia suggests the laws do the opposite and creates an interpretation that would make it entirely impossible to obtain electronic data if it were outside the state of Montana even if the users of that data were committing crimes in the State of Montana. This interpretation is unsound and should be rejected.

**C. Even if the warrants had been invalid the good faith exception would apply**

Though these warrants were entirely valid, in a hypothetical world where they weren’t, the officers seeking the warrants in this case operated in good faith and the exclusionary rule does not apply. As such suppression would not be an appropriate remedy.

The exclusionary rule “is a prudential doctrine created by [the Supreme Court] to compel respect for the constitutional guaranty.” *Davis v. United States*, 564 U.S. 229, 236 (2011) (internal citations and quotation marks omitted).

“Exclusion is not a personal constitutional right, nor is it designed to redress the injury occasioned by an unconstitutional search.” *Id.* Instead, the “sole purpose” of the exclusionary rule is to deter future Fourth Amendment violations. *Id.* This deterrence, however, can come at a heavy cost on both the judicial system and society at large. As a result, “[f]or exclusion to be appropriate, the deterrence benefits of suppression must outweigh its heavy costs.” *Id.* at 237.

Under the “good faith” exception to the exclusionary rule, where officers act in objectively reasonable reliance on a subsequently invalidated search warrant, the “substantial costs of exclusion” outweigh the “marginal or nonexistent benefits” of suppression. *United States v. Schesso*, 730 F.3d 1040, 1050 (9th Cir. 2013) (quoting *United States v. Leon*, 468 U.S. 897, 922 (1984)).

Here, the officers acted entirely in good faith and in compliance with their reasonable interpretation of the law. See *United States v. Henderson*, 906 F.3d 1109 (9th Cir. 2018). They gathered probable cause and presented that evidence to a magistrate they reasonably believed was empowered to issue a warrant for the information they sought. They did not lie, omit, or misrepresent the evidence they presented to the magistrate. The magistrate, acting within what he believed was his lawful authority, granted these warrants to search.

Now, based on an interpretation of Montana state law that has not been adopted by any state court, Fregia asks the court to suppress the evidence these

officers obtained honestly and in good faith. Even if, at some future date, Fregia's radical reinterpretation of the law were adopted, it would be unreasonable to expect the officers to have known or understood that interpretation when they sought the warrant. As such, they acted in good faith and the evidence should not be suppressed.

**D. Even without the CSLI data the warrant to search Fregia's residence still contained probable cause.**

Even if the court were to agree with Fregia's argument and suppress the CSLI data, the warrant to search Fregia's residence (which yielded all of the physical evidence presented at trial) still contained probable cause. "When an affidavit in support of a search warrant contains information which is in part unlawfully obtained, the validity of a warrant and search depends on whether the untainted information, considered by itself, establishes probable cause for the warrant to issue." *Alexander v. United States*, 761 F.2d 1294, 1300 (9th Cir. 1985).

The search warrant for Fregia's residence was the product of a long and detailed investigation. As noted in the above, officers had a detailed statement from Christopher Hurst, Fregia's coconspirator, about Fregia's distribution activities at Fregia's residence. 2-SER 320. Law enforcement had also collected incriminating text messages from Fregia and Beres's (the other occupant of the

resident) phones. 2-SER 320-326. These messages described a large drug distribution ring and clearly implicated Fregia and Beres's residence. *Id.* Physical surveillance was conducted and established Fregia and Beres did reside there. 2-SER 326-327. Fregia's criminal history was obtained and detailed a long criminal record, including convicts related to controlled substances. 2-SER 327. This evidence provided more than enough material for probable cause, even without the CSLI data. As such the evidence collected from Fregia's residence would not be suppressed and any suppression of CSLI information entirely harmless to the fairness of Fregia's trial.