No. 24-_____

IN THE

Supreme Court of the United States

GILBERT PEREZ,

Petitioner,

v.

UNITED STATES,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the First Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the Fourth Amendment prohibit the warrantless search of a backpack, piece of luggage, or other bag carried by an individual at the time of his arrest once police have secured the bag and eliminated any possibility of reaching a weapon or evidence inside it?

RELATED PROCEEDINGS

United States v. Perez, Crim. No. 2:20-CR-39-DBH-01 (D. Me. July 14, 2021)

United States v. Perez, No. 22-1121 (1st Cir. Dec. 28, 2023 and Aug. 23, 2024)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Gilbert Perez respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit.

OPINIONS BELOW

The opinion of the First Circuit (Pet. App. 1a-49a) is reported at 89 F.4th 247. The order of the First Circuit denying en banc review (Pet. App. 62a-67a) is reported at 113 F.4th 137. The relevant order of the district court (Pet. App. 50a-61a) is unpublished but available at 2021 WL 2953671.

JURISDICTION

The judgment of the court of appeals was entered on December 28, 2023. Pet. App. 1a. A timely petition for rehearing was denied on August 23, 2024. Pet. App. 62a. This Court has jurisdiction under 28 U.S.C § 1254(1).

RELEVANT CONSTITUTIONAL PROVISION

The Fourth Amendment to the Constitution states in relevant part:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause . . . .

INTRODUCTION

This Court long ago explained that there are "two distinct" sorts of searches that police conduct at the scene of an arrest. *United States v. Robinson*, 414 U.S. 218, 224 (1973). One involves searching "the area within the [arrestee's] control"; the other involves searching "the person of the arrestee." *Id.* Post-arrest area searches are reasonable only when they serve either an interest in protecting officer safety or in preserving destructible evidence. *Chimel v. California*, 395 U.S. 752, 764 (1969); *United States v. Chadwick*, 433 U.S. 1, 14-15 (1977); *Arizona v. Gant*, 556 U.S. 332, 335 (2009). By contrast, post-arrest searches of the person are categorically reasonable. *Robinson*, 414 U.S. at 235-36.

In this case, petitioner was arrested while carrying a backpack. The district court found that he was then handcuffed and kept beyond "reaching distance" of the backpack, and that "destruction of evidence or access to weapons was not at stake." Pet. App. 58a. Nevertheless, the First Circuit upheld the search. *Id.* 2a. It did so based on the anatomical fiction that a backpack carried by an individual constitutes a part of his "person." This is true, under First Circuit precedent, even once the backpack is no longer anywhere within his reach or control by the time the warrantless search begins. *Id.* 4a.

At the same time, every active member of the First Circuit "urge[d]" this Court to take up the question of "when the things that people commonly carry may be warrantlessly searched incident to an arrest," Pet. App. 66a. As the First Circuit recognized, there is "no consensus yet emerging" on this "basic" and frequently recurring Fourth Amendment issue. *Id.* Indeed,

seventeen courts are split 10-7 on the question. This case is an ideal vehicle to "bring about a measure of uniformity to an area of law that has long been lacking it," *id.* 67a. The Court should grant the petition here.

STATEMENT OF THE CASE

A. Legal background

The Fourth Amendment prohibits "unreasonable" searches. U.S. Const. amend. IV. Warrantless searches are per se unreasonable, unless an "established and well-delineated" exception applies. *Katz v. United States*, 389 U.S. 347, 357 (1967). One such exception concerns searches incident to a lawful arrest. *See Weeks v. United States*, 232 U.S. 383, 392 (1914).

There are "two distinct" categories of warrantless searches incident to an arrest: searches of the area within an arrestee's control and searches of his "person." *United States v. Robinson*, 414 U.S. 218, 224 (1973).

1. Warrantless searches of things in the "area" around an arrestee are reasonable in only two circumstances. First, an officer can conduct a warrantless search to ensure that the arrested individual cannot reach a weapon or otherwise endanger the officer. *Chimel v. California*, 395 U.S. 752, 762-63 (1969). Second, he can do so to prevent the arrested person from concealing or destroying evidence. *Id.* Absent those possibilities, there is "no constitutional justification" for a warrantless search. *Id.* at 768.

This Court has repeatedly applied these two principles to hold that a particular warrantless search

violated the Fourth Amendment. In *Chimel*, the Court invalidated the warrantless search of a house following the defendant's arrest when the search intruded into areas from which he could no longer obtain either a weapon or evidence. 395 U.S. at 768.

In *United States v. Chadwick*, 433 U.S. 1 (1977), the Court held that police violated the Fourth Amendment when they searched a defendant's footlocker after the defendant was "securely in custody" and neither officer safety nor loss of evidence was at risk. *Id.* at 15.

Similarly, in *Arizona v. Gant*, 556 U.S. 332 (2009), the Court held that police violated the Fourth Amendment when they conducted a warrantless search of the defendant's automobile after he had been handcuffed and placed in the back of a patrol car. *See id.* at 336. The Court expressly rejected the view that automobile searches could somehow be "untether[ed]" from the "purposes of protecting arresting officers and safeguarding any evidence." *Id.* at 343, 339.

Most recently in *Riley v. California*, 573 U.S. 373 (2014), the Court held that the warrantless post-arrest search of a defendant's cellphone violated the Fourth Amendment. *Id.* at 403. Emphasizing the profound privacy interests at stake, this Court reaffirmed that searches incident to arrest are permissible only to protect officers or safeguard evidence. *Id.* at 385-86. Neither criterion was met there. *See id.* at 387-91.

2. By contrast, searches of the "person" are "treated quite differently" under the Fourth Amendment. *Robinson*, 414 U.S. at 224. *Robinson* approved the search of a cigarette package taken from the pocket of a jacket an unsecured arrestee was

wearing while he was being searched. The Court explained that "[t]he authority to search the person incident to a lawful custodial arrest" is "based upon the need to disarm and to discover evidence." *Id.* at 235. But for reasons of administrability, it rejected the proposition that "there must be litigated in each case the issue of whether or not there was present one of [those] reasons." *Id.* Instead, it held that "a full search of the person" is "a 'reasonable' search under [the Fourth] Amendment." *Id.*

B. Factual and procedural background

1. In 2019, the police observed petitioner Gilbert Perez in a restaurant parking lot and suspected that he had participated in a drug deal. Pet. App. 2a-3a. Officers chased him down, seized him, and took his backpack away from him. *Id.* 3a. They then handcuffed Mr. Perez and pinned him to the ground. *Id.* While one officer kept Mr. Perez handcuffed and seated on the ground, a different officer took the backpack over to the squad car, placed it on the hood, and searched it. *Id.* He found a substance inside the backpack that was subsequently revealed to be drugs. *Id.*

2. The Government charged Mr. Perez with federal drug offenses. Pet. App. 3a. He moved to suppress the evidence found in the backpack, arguing that the officers had violated the Fourth Amendment when they searched his backpack without a warrant. *Id.* 3a-4a. The Government responded that the evidence was admissible because it was the product of a lawful search incident to arrest. *Id.*

The district court found, based on the officers' testimony, that at the time of the search "Perez was secured in handcuffs on the ground under [Officer]

Dolan's supervision." Pet. App. 58a. A different officer then searched the backpack, which was located "on the hood or roof of Dolan's vehicle, not within reaching distance of Perez." *Id.* Thus, at the time of the search, "destruction of evidence or access to weapons was not at stake." *Id.*

The district court stated that these facts might have led it "to follow the Third, Fourth, Seventh, Ninth, and Tenth Circuits and the District of New Hampshire in their interpretation of *Gant* as now requiring a warrant under the circumstances here." Pet. App. 59a. Nonetheless, the district court denied Mr. Perez's motion to suppress. *Id.* It felt bound to follow First Circuit precedent which had upheld the warrantless post-arrest search of a briefcase while the suspect was handcuffed in the back of a squad car. *Id.* 58a-59a (citing *United States v. Eatherton*, 519 F.2d 603, 610-11 (1st Cir. 1975)).

Mr. Perez entered a conditional guilty plea that preserved his right to appeal the district court's denial of his motion to suppress. Pet. App. 5a.

3. A divided panel of the First Circuit affirmed the district court's order. Pet. App. 29a. In doing so, the First Circuit reaffirmed the categorical rule it had announced in *Eatherton*: Warrantless post-arrest searches of briefcases (and therefore of backpacks) are always permissible. *Id.* 28a. According to the court, the *Eatherton* rule flowed from this Court's decision in *Robinson*. *Id.* 13a. The First Circuit treated the search of Mr. Perez's backpack as equivalent to a search of his person. *Id. Gant* added "literally nothing" because it applied only to automobile searches. *Id.* 19a. Similarly, *Chimel* and *Chadwick* were inapposite

because they involved the search of property, rather than of persons. *See id.* 14a-19a.

Judge Montecalvo dissented. Pet. App. 30a. She reasoned that *Chimel*, *Chadwick*, and *Gant* governed. *See id.* 41a-44a. She explained that this trio of decisions supplied the correct standard for evaluating searches of possessions that had been "within [individuals'] immediate control at the time of arrest" but that were no longer within their reach at the time of search. *Id.* 42a. Applying those cases, Judge Montecalvo concluded that the police violated Mr. Perez's Fourth Amendment rights because neither officer safety nor destruction of evidence was at risk. *See id.* 45a-46a. Finally, Judge Montecalvo concluded that the unlawfulness of the officers' search demanded exclusion of the evidence at issue. *Id.* 46a-49a.

4. The First Circuit denied Mr. Perez's request for rehearing en banc. Pet. App. 62a. But in an accompanying statement, joined by every active judge, Chief Judge Barron stressed that this denial should not be understood as an endorsement of the panel's Fourth Amendment holding or a suggestion that further review would be unwarranted. To the contrary, these judges emphasized that "courts have adopted disparate approaches" to whether the Fourth Amendment categorically permits the warrantless post-arrest search of backpacks, luggage, or other bags. *Id.* 64a. Indeed, they recognized that "identical items [are] being deemed subject to" *Robinson* "by some courts but not subject to it by others" that follow *Chimel*, *Chadwick*, and *Gant* instead. *Id.* 65a. Therefore, they "urge[d]" this Court to grant review and "bring about a measure of uniformity to an area of law that has long been lacking it." *Id.* 66a-67a.

REASONS FOR GRANTING THE WRIT

There is an entrenched conflict (now 10-7) among federal courts of appeals and state courts of last resort about when police can conduct warrantless post-arrest searches of backpacks, luggage, or other bags. Petitioner's case offers an ideal vehicle for resolving this important and frequently recurring issue. And this Court should reject the proposition that such searches are somehow the equivalent of searching the defendant's person incident to arrest and therefore permissible even when there is no risk to officer safety and no risk that evidence will be destroyed.

I. There is an intractable and acknowledged split on the question presented.

Federal courts of appeals and state courts of last resort disagree on "when the things that people commonly carry may be warrantlessly searched incident to an arrest." Pet. App. 66a. This conflict on a question of routine police procedure merits this Court's immediate review.

1. Seven federal courts of appeals and the South Carolina, New Mexico, and Missouri Supreme Courts limit searches incident to arrest of backpacks, luggage, or other bags solely to situations where there is a risk that the arrested person can gain access to a weapon or destroy evidence contained in the bag. In each of these jurisdictions, courts would have suppressed the evidence found in Mr. Perez's backpack because, as the district court found, there was no such risk here at the time of the search, Pet. App. 58a.

The Third Circuit holds that the Fourth Amendment "require[d] something more than the

mere theoretical possibility that a suspect might access a weapon or evidence" to justify a warrantless search of a bag the suspect was carrying at the time of arrest. *United States v. Shakir*, 616 F.3d 315, 321 (3d Cir. 2010). And applying that rule, the Third Circuit held that a "search could not be justified under the search incident to arrest exception" when police conducted it after the defendant was handcuffed in a locked squad car and could not reach the backpack. *United States v. Matthews*, 532 Fed. Appx. 211, 218 (3d Cir. 2013). Because the defendant was "neither an acrobat nor Houdini," he presented no risk to officer safety or the preservation of evidence. *Id.* (citation omitted).

Similarly, the Fourth Circuit holds that the Fourth Amendment permits a warrantless post-arrest backpack search "only when the arrestee is unsecured and within reaching distance" of the backpack at the time of the search. *United States v. Davis,* 997 F.3d 191, 197 (4th Cir. 2021) (quoting *Arizona v. Gant*, 556 U.S. 332, 343 (2009)). Otherwise, there's no risk that the suspect will endanger an officer or destroy evidence. It therefore held that the search of the defendant's backpack violated the Fourth Amendment because he could not access it at the time of the search. *Id.* at 200 (citing *Arizona v. Gant*, 556 U.S. 332 (2009), and *Chimel v. California*, 395 U.S. 752 (1969)); *accord United States v. Horsley*, 105 F.4th 193, 207-08 (4th Cir. 2024).

The Tenth Circuit has aligned itself with the Third Circuit's decision in *Shakir*. *See United States v. Knapp*, 917 F.3d 1161, 1168 (10th Cir. 2019). In that case, the court held that the search of Knapp's purse following her arrest was not a search "of her person."

Id. at 1166. Thus, the relevant law was provided by *Gant* and the "twin rationales of *Chimel*." *Id.* at 1168. Because it was "unreasonable to believe Ms. Knapp could have gained possession of a weapon or destructible evidence within her purse at the time of the search," the search violated the Fourth Amendment, and the evidence was inadmissible. *Id.* at 1168-70.

And the Eleventh Circuit relied on *Gant* to hold that when "there is no possibility that the arrestee could reach into the area that law enforcement officers seek to search, the search-incident-to-arrest exception does not apply." *United States v. Brown*, 2021 WL 4955823, at *2 (11th Cir. Oct. 26, 2021). Thus, the Eleventh Circuit held that a district court erred in denying a motion to suppress evidence taken from a paper bag when "there was no possibility of Brown accessing the bag while he was handcuffed and sitting in a chair away from the bag" because neither rationale for a search incident to arrest applied. *Id.*

Three other circuits—the Seventh, Eighth, and Ninth—also treat the warrantless post-arrest search of a backpack, piece of luggage, or other bag as an area search whose permissibility under the Fourth Amendment depends on whether the arrested person might otherwise gain possession of a weapon or destructible evidence. *See United States v. Hill*, 818 F.3d 289, 295 (7th Cir. 2016) (relying on *Gant* to determine the permissibility of searching the defendant's bag); *United States v. Perdoma*, 621 F.3d 745, 750-51 (8th Cir. 2010) (looking to *Chimel* and *Gant* to determine the permissibility of searching the defendant's carry-on bag); *United States v. Cook*, 808 F.3d 1195, 1199-1200 (9th Cir. 2015) (relying on *Gant*

and aligning itself with the Third Circuit's framework in *Shakir* in determining the permissibility of searching the defendant's backpack). Accordingly, several district courts in those circuits have held that warrantless post-arrest searches like the one to which Mr. Perez was subjected violate the Fourth Amendment. *See, e.g.*, *White v. Boardman*, 2022 WL 2834347, at *3-4 (W.D. Wis. July 20, 2022); *United States v. Stanek*, 536 F. Supp. 3d 725, 740 (D. Haw. 2021).

Turning to state high courts, the Missouri Supreme Court in *State v. Carrawell*, 481 S.W.3d 833 (Mo. 2016), held that the warrantless search of a plastic bag the defendant was carrying at the time of his arrest violated the Fourth Amendment. *Id.* at 845. The court emphasized that the first search of the bag "occurred outside the police car, after Carrawell had already been handcuffed and placed into the back of the police car." *Id.* at 838. Therefore, neither of the *Chimel* justifications applied. *Id.* The court squarely rejected the proposition "that an arrestee's personal effects (e.g., a purse or backpack) may be searched even when they are not within the immediate control of the arrestee because such a search qualifies as a search of the person." *Id.* at 838-39. To the contrary, that reasoning "is based under a misunderstanding of law and should no longer be followed." *Id.* at 839.

The New Mexico Supreme Court has declared itself "persuaded by the rationale of [the Tenth Circuit in] *Knapp*." *State v. Ortiz*, 539 P.3d 262, 267-69 (N.M. 2023). It therefore rejected the state's contention that the search of a defendant's purse was "effectively a search of her person." *Id.* at 267. Instead, it emphasized that *Gant* limited permissible rationales

for warrantless post-arrest searches of hand-carried items like a purse to officer safety and evidence preservation. *Id.* at 268. Thus, the search in that case violated the Fourth Amendment because there was insufficient evidence that the defendant "presented a danger of gaining possession of a weapon or was in a position to destroy evidence." *Id.*

Finally, the South Carolina Supreme Court has held that the post-arrest search of a defendant's duffel bag "violated his Fourth Amendment rights because neither alternative of *Gant*'s two-part test was met so as to justify a warrantless search." *State v. Brown*, 736 S.E.2d 263, 269 (S.C. 2012). The defendant had been "handcuffed and placed in the patrol car prior to the search, thus, he did not have access" to the bag at the relevant time. *Id.* at 269.

2. By contrast, six state high courts treat warrantless post-arrest searches of backpacks, luggage, or other bags as the legal equivalent of searching the defendant's person. These courts therefore permit such searches even when there is no possibility that the defendant could gain access to a weapon or evidence inside the bag. The First Circuit agrees, and is the only federal court of appeals to take this position.

The Colorado Supreme Court has upheld the warrantless search of a defendant's backpack after he had been handcuffed and secured in a police car. *People v. Marshall*, 289 P.3d 27, 28-29 (Colo. 2012). Citing *United States v. Robinson*, 414 U.S. 218, 235 (1973), the court explained that the validity of the search did not require proof of the "police protection and evidence preservation" rationales, *Marshall*, 289 P.3d at 31 (citation omitted). Instead, "the search of a

person, and articles on or near that person" needs no "independent justification" beyond the simple fact of "full custodial arrest." *Id.* (citation omitted). The court insisted that "factual distinction[s] between searches of cars and persons" justified adherence to this "well-established Colorado rule" even in the face of this Court's decision in *Gant*. *Id.* at 29-30.

The Washington Supreme Court has similarly upheld the warrantless search of a defendant's purse even though the search occurred after she had been secured in a patrol car. *State v. Byrd*, 310 P.3d 793, 794-95 (Wash. 2013). The court insisted that a "search of the arrestee's 'person'" includes "more" than his or her "literal person" and extends to "all personal articles in the arrestee's actual and exclusive possession" at the time of arrest. *Id.* at 798-99. Because Ms. Byrd had been carrying the purse "at the time of arrest," the court treated it as "a projection of [her] person." *Id.* (citation omitted); *accord State v. MacDicken*, 319 P.3d 31, 32, 34 (Wash. 2014).

The Illinois Supreme Court reached the same result in *People v. Cregan*, 10 N.E.3d 1196 (Ill. 2014). There, the court upheld the search of a laundry bag and rolling luggage conducted when the defendant was handcuffed, and surrounded by multiple officers, and his bags had been taken to the side of the station. *Id.* at 1208-09. Because Cregan had been "wheeling the luggage bag" and had slung the laundry bag "around his shoulder" at the time of arrest, the bags were "associated with his person." *Id.* at 1207, 1209. Accordingly, the search was "per se" permissible even though there was no possibility that Cregan could

access a weapon or evidence inside the bags. *Id.* at 1209.

The North Dakota Supreme Court, in *State v. Mercier,* 883 N.W.2d 478 (N.D. 2016), announced that it "agree[s] with th[e] reasoning" offered by the Washington Supreme Court in *Byrd*. *Id.* at 491. In *Mercier*, the court upheld the warrantless search of an individual's backpack conducted after he had been handcuffed and secured "in the back of a squad car." *Id.* at 492. It treated Mercier's backpack as "a part of [his] person," *id.* at 491 (citation omitted), because it had been "in his actual possession immediately preceding his arrest," *id.* at 493. Accordingly, the court rejected any "requirement that the arrestee be within reaching distance" of the backpack; "no additional justification beyond the lawful arrest [was] necessary." *Id.* at 490-91.

The Texas Court of Criminal Appeals (the state's court of last resort for criminal cases) has similarly upheld the warrantless post-arrest search of a defendant's suitcases while he was handcuffed and surrounded by multiple officers in an office. *Price v. State*, 662 S.W.3d 428, 438 (Tex. Crim. App. 2020) (plurality opinion). Citing the Washington, Illinois, and North Dakota high court decisions with approval, the court held that the search of the suitcases "requir[ed] no greater justification than the arrest itself." *Id.* at 435-36 (citing *Cregan*, *MacDicken* and *Mercier*). Because Price had been rolling his suitcases when he was arrested, the court upheld the search as a search of his person. *Id.* at 437. Accordingly, the absence of any threat to officer safety or evidence was irrelevant. *Id.* at 438.

Finally, the Kentucky Supreme Court has upheld the warrantless search of a backpack that the defendant was carrying at the time of arrest, even though he was handcuffed and in the presence of two officers at the time of search. *Commonwealth v. Bembury*, 677 S.W.3d 385, 388, 407 (Ky. 2023), *cert. denied*, 144 S. Ct. 1459 (2024). Recognizing the disagreement among state supreme courts, *id.* at 397, it sided with the Washington, Illinois, North Dakota, and Texas high courts. *Id.* at 397-402 (citing *Byrd*, *Cregan*, *Mercier*, and *Price*). The court held that because Bembury had been carrying the backpack when he was arrested, the "backpack was part of his person" for "the purposes of a search incident to lawful arrest." *Id.* at 406. Accordingly, officers could search it without a warrant and did not need to show that the search "was necessary to ensure the officer's safety or to prevent the destruction of evidence." *Id.* at 394.

In the decision below, the First Circuit aligned itself with these six state courts of last resort. It recognized that in the wake of *Chadwick* and *Gant*, other federal courts of appeals had reached a different result. Pet. App. 21a. Yet it declined to take the issue en banc, believing that guidance from this Court was necessary to settle the issue among the lower courts. *Id.* 66a-67a. Instead, it adhered to its pre-*Chadwick* and -*Gant* rule: Searches of backpacks, luggage, and other bags are per se reasonable, even when those containers are outside the defendant's reach. *Id.* 28a. It does not matter that there is neither a threat to officer safety nor any risk that evidence will be destroyed.

3. The First Circuit is not the only court to have recognized the deep and entrenched split over the question presented. The Supreme Court of Kentucky also recently explained that lower "courts have been left to [their] own devices in determining how to draw the line between what constitutes a '*Robinson* search' of an arrestee's person and a '*Chimel* search' of the area within an arrestee's immediate control" for backpacks, luggage, and other bags. *Bembury*, 677 S.W.3d at 397. Without guidance from this Court, it is no surprise that lower courts "have adopted disparate approaches," Pet. App. 64a, with "identical items being deemed subject to *Robinson*'s categorical rule by some courts but not subject to it by others," *id.* 65a.

II. This case presents a frequently recurring issue of national importance.

This Court has routinely granted certiorari to resolve disagreements over whether warrants are required for particular kinds of police searches. *See, e.g.*, Pet. 8, *Lange v. California*, 141 S. Ct. 2011 (2020) (No. 20-18); Pet. 21, *Carpenter v. United States*, 138 S. Ct. 2206 (2018) (No. 16-402); Pet. 11-12, *Riley v. California*, 573 U.S. 373 (2014) (No. 13-132). For three reasons, it should do so again here.

1. As the First Circuit recognized, "numerous" cases turn on whether the police can permissibly search a backpack, luggage, or other bag carried by an arrested individual without a warrant. Pet. App. 63a; *see also supra* pp. 8-15. And reported cases are only the tip of the iceberg. Police arrest millions of people every year. *See* U.S. Dep't of Just., *Uniform Crime Report: Crime in the United States, 2019*, at 2 (Fall 2020), https://perma.cc/VD9S-LZ4S. Many of them are

carrying backpacks, luggage, or other bags that might be subject to search under the minority rule. It is intolerable for officers and individuals alike to be left wondering how the Fourth Amendment applies to such searches. "Rudimentary justice requires that those subject to the law must have the means of knowing what it prescribes." Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. Chi. L. Rev. 1175, 1179 (1989).

2. The current split of authority in the lower courts creates significant variation in individuals' constitutional rights. As this Court has long recognized, the "Fourth Amendment's meaning" should not "vary from place to place." *Virginia v. Moore*, 553 U.S. 164, 172 (2008) (citation omitted).

Moreover, state and federal courts in the *same jurisdiction* disagree about how the Fourth Amendment applies to warrantless searches of backpacks, luggage, or other bags. This Court frequently grants certiorari in Fourth Amendment cases that present these sorts of jurisdictional conflicts. *See, e.g.*, Pet. 27-28, *Torres v. Madrid*, 592 U.S. 306 (2021) (No. 19-292); Pet. 11-12, *Kansas v. Glover*, 589 U.S. 376 (2020) (No. 18-556).

In Colorado, Illinois, and Washington, federal courts find Fourth Amendment violations where police conduct warrantless post-arrest searches when there is no longer any risk that the defendant can obtain a weapon or destroy evidence contained within a backpack. By contrast, state courts see no Fourth Amendment violation. *Compare United States v. Hill*, 818 F.3d 289, 295 (7th Cir. 2016) (invalidating search of bag), *with People v. Cregan*, 10 N.E.3d 1196, 1208-09 (Ill. 2014) (upholding search of luggage); *compare*

United States v. Cook, 808 F.3d 1195, 1199-1200 (9th Cir. 2015) (applying *Gant* to backpack search), *with State v. Byrd*, 310 P.3d 793, 799-800 (Wash. 2013) (applying *Robinson* to search of purse); *compare United States v. Knapp*, 917 F.3d 1161, 1168-70 (10th Cir. 2019) (invalidating purse search), *with People v. Marshall*, 289 P.3d 27, 31 (Colo. 2012) (upholding backpack search).

The scope of defendants' constitutional rights in Chicago, Denver, or Seattle should not depend on whether they are prosecuted in state or federal court. Nor should an officer's civil liability. The Tenth Circuit, for example, had held that the law is "clearly established" for purposes of Section 1983 liability when a "Tenth Circuit decision is on point." *Roska ex rel. Roska v. Peterson*, 328 F.3d 1230, 1248 (10th Cir. 2003). That means an officer in Denver could be sued under Section 1983 for a search that is on all fours with the search in *Knapp*, 917 F.3d at 1168, even though that search would be permissible under *Marshall*, 289 P.3d at 31.

3. The police can come up with some basis on which to arrest "almost anyone." *Nieves v. Bartlett*, 139 S. Ct. 1715, 1730 (2019) (Gorsuch, J., concurring); *see also Whren v. United States*, 517 U.S. 806, 813 (1996); *Atwater v. City of Lago Vista*, 532 U.S. 318, 323 (2001). And searches incident to such arrests of an individual's backpack, luggage, or other bag involve important privacy interests. The reasonableness of a search requires balancing the nature and quality of the law enforcement intrusion against an individual's privacy interests. *See United States v. Place*, 462 U.S. 696, 703 (1983). When the justifications this Court identified in *Chimel, Chadwick,* and *Gant* are absent,

there's nothing on the law enforcement side of the equation. All that's left is an intrusion on privacy.

And the privacy interests may be quite significant even—and perhaps especially—where contents of the bag have nothing to do with prosecuting the arrestee.

People carry all kinds of personal items in their backpacks that they wish to keep private—ranging from prescription medications, to prayer beads, to political literature. *See Riley v. California*, 573 U.S. 373, 396 (2014) (describing analogous cellphone apps). Exposing those items can be especially invasive if the search is conducted in a public place—for example, a hotel lobby.

If the police have probable cause to believe that a backpack carried at the time of a suspect's arrest contains evidence, then they may seize the backpack and ask for a warrant. But there are categories of crimes which would not provide officers probable cause to obtain a warrant because there is no possibility that the bag has any connection to the crime of arrest. *Cf. Arizona v. Gant*, 556 U.S. 332, 343 (2009). For example, consider a businessman the police wish to investigate, but for whom they lack probable cause to get a search warrant. All they need do under the minority rule is follow him until he commits a minor offense—say, jaywalking. They can then arrest him, take his briefcase away from him, and incident to that arrest, search his briefcase, even though there is no risk to officer safety. Under the minority rule, in such situations, the authority to search exceeds what could be authorized by a warrant.

In short, Fourth Amendment liberties play a pivotal role in shielding everyone from police

intrusions. This Court should grant certiorari to clarify the scope of such protections in this frequently recurring and sometimes intimate context.

III. This case is an excellent vehicle for resolving the question presented.

The procedural posture and factual setting of this case make it perfect for resolving the question presented.

1. The question presented was pressed and passed upon by both the district court and the court of appeals. Mr. Perez challenged the search of his backpack during the suppression hearing and the district court rejected that challenge. Pet. App. 59a. He then entered a conditional guilty plea that preserved his right to appeal. *Id.* 5a. The First Circuit affirmed on the merits. *Id.* 2a. Finally, he raised the issue in his petition for rehearing en banc, and every active judge on the court urged this Court's review. *Id.* 66a-67a.

2. The question presented is also dispositive of Mr. Perez's Fourth Amendment claim. The only basis the Government has ever offered to justify this warrantless search is the search-incident-to-arrest exception. Pet. App. 4a. And the judge who dissented from the panel's resolution of petitioner's Fourth Amendment claim made clear she would have reversed the district court's judgment. *Id.* 49a.[1]

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[1] The possibility the courts below might apply the good-faith exception to the exclusionary rule on remand poses no bar to review here. This Court regularly grants certiorari to resolve Fourth Amendment issues in cases that require remand for

The factual record below is also unusually clear. There was no dispute in the lower courts that both *Chimel* rationales were entirely absent. Pet. App. 58a. Indeed, the district court expressly found that at the time of the search, Mr. Perez was "secured in handcuffs on the ground" and neither "destruction of evidence" nor "access to weapons" was "at stake." *Id.*[2]

IV. The warrantless search of Mr. Perez's backpack violated the Fourth Amendment.

The First Circuit applied a categorical rule here that allows police to conduct warrantless searches of backpacks, luggage, and other bags an individual was carrying at the time of his arrest, even after officers remove them and place them securely out of anyone's reach. That rule incorrectly treats the search of the backpack as the legal equivalent to the search of the person. It also creates a series of practical difficulties and untenable consequences.

1. This Court has repeatedly held that the Fourth Amendment forbids warrantless post-arrest searches of the area within an arrestee's immediate control

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consideration under the good-faith exception. *See, e.g.*, *Carpenter v. United States*, 138 S. Ct. 2206 (2018); *Collins v. Virginia*, 584 U.S. 586 (2018); *Rodriguez v. United States*, 575 U.S. 348 (2015).

[2] The clarity of the factual record here distinguishes this case from *Commonwealth v. Bembury*, 677 S.W.3d 385 (Ky. 2023), *cert. denied*, 144 S. Ct. 1459 (2024), in which this Court recently denied review. There, the police had at one point seen the evidence in "plain view." *Id.* at 407-08 (Nickell, J., concurring). It therefore appeared that, even if searches like the one here are not of the "person," the Fourth Amendment was not violated. *See Florida v. Riley*, 488 U.S. 445, 449-50 (1989) (plurality opinion).

where "there is no possibility that [the] arrestee could reach into the area that law enforcement officers seek to search." *Arizona v. Gant*, 556 U.S. 332, 339 (2009). That is because the Fourth Amendment permits only two bases for such area searches: first, the possibility that the arrested individual might reach instruments that threaten officer safety and, second, the risk that the arrested person might destroy relevant evidence. *See Chimel v. California*, 395 U.S. 752, 763 (1969); *United States v. Chadwick*, 433 U.S. 1, 14-15 (1977); *Gant*, 556 U.S. at 339. It therefore follows that the search-incident-to-arrest exception permits officers to conduct a warrantless search of a bag a person is carrying only if the person being arrested is "unsecured and within reaching distance" at the "time of the search." *Gant*, 556 U.S. at 343.

In this case, neither officer safety, nor evidence preservation can justify the warrantless search of Mr. Perez's backpack. As the district court found, Mr. Perez "was secured in handcuffs on the ground" by one officer when a different officer searched his backpack which was located atop the patrol car. Pet. App. 58a. The court further found that Mr. Perez was "not within reaching distance" of the backpack when it was searched, and that "destruction of evidence or access to weapons was not at stake." *Id.* Because neither rationale for warrantless searches incident to arrest existed, the search violated the Fourth Amendment.

2. Instead of treating the search of Mr. Perez's backpack as a search of the area near an arrestee—and applying the well-settled principles laid out in *Chimel* and reaffirmed in *Chadwick*, *Gant*, and *Riley v. California*, 573 U.S. 373 (2014)—the First Circuit erroneously construed the search of the backpack as a

search of Mr. Perez's person. Pet. App. 13a-14a. The First Circuit thus believed that this Court's decision in *United States v. Robinson*, 414 U.S. 218 (1973), controlled. Pet. App. 13a-14a. That belief is mistaken.

The First Circuit erred in relying on *Robinson*. The evidence at issue there was the product of a "full search" of an arrested individual's "person." *Robinson*, 414 U.S. at 235. During the course of that search, the officer felt a hard object in the chest pocket of Robinson's coat, and he couldn't tell what it was. *Id.* at 223. So he removed the item and discovered that it was a cigarette package. *Id.* But he could feel that the contents were not cigarettes. *Id.* Still face-to-face with Robinson, and in the middle of an ongoing search, he opened the box and secured its contents. *Id.* Then, he "continued his search of [Robinson] to completion, feeling around his waist and trouser legs, and examining the remaining pockets." *Id.*

This Court upheld the search. *Robinson*, 414 U.S. at 236. The "authority" for such searches, it explained, is "based upon the need to disarm and to discover evidence" that might otherwise be destroyed. *Id.* at 235. But for reasons of administrability and tradition, there did not need to be "a case-by-case adjudication" of "whether or not there was present one of the reasons supporting [that] authority." *Id.* at 235. Instead, the Court held that "in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment." *Id.*

Where the First Circuit went wrong was in thinking that simply because Perez was carrying his backpack at the time of arrest, the backpack was a

part of his "person." Pet. App. 13a-14a. The court thus concluded the search was "per se" reasonable under *Robinson*. *Id.* 9a, 13a-14a, 19a n.4.

This Court's decisions in *Chadwick* and *Gant* foreclose the First Circuit's anatomical fiction. First, in *Chadwick*, the Court invalidated the warrantless search of a footlocker, even though it was in the defendant's possession at the time of his arrest. *Chadwick*, 433 U.S. at 15. The Court did not apply *Robinson*. *Id.* Instead, it concluded that under *Chimel*, there was "no longer any danger that the arrestee might gain access to the [footlocker] to seize a weapon or destroy evidence" at the time of the search. *Id.*

And lest there be any doubt that a piece of luggage is not part of a "person," this Court later explained that the warrantless search of Chadwick's footlocker would have been impermissible even if he had been "drag[ging it] behind" him when arrested. *See Riley v. California*, 573 U.S. 373, 393-94 (2014); Pet. App. 42a-43a n.7. Mr. Perez's backpack more closely resembles a dragged footlocker than a part of his body and thus triggers *Chimel*'s case-specific inquiry—not *Robinson*'s categorical rule.

Second, in *Gant*, this Court reaffirmed a general principle that it has applied to searches of houses (*Chimel*, 395 U.S. at 763), footlockers (*Chadwick*, 433 U.S. at 14-15), and cellphones (*Riley*, 573 U.S. at 386-91). The First Circuit believed that *Gant* has "literally nothing" to say about the search of Perez's backpack because it "addresse[d] only searches of automobiles." Pet. App. 19a, 21a. It is true that there is a passage in *Gant* that focuses on "circumstances unique to the vehicle context." *Gant*, 556 U.S. at 343. But as several circuits have recognized, *Gant*'s core holding contains

no such proviso. *See, e.g.*, *United States v. Knapp*, 917 F.3d 1161, 1168 (10th Cir. 2019); *United States v. Davis*, 997 F.3d 191, 197 (4th Cir. 2021).

3. Even beyond its misapplication of this Court's precedents, the First Circuit's rule leads to untenable consequences.

To begin, the First Circuit's rule eliminates any limitation on when police can conduct a warrantless search of an arrested person's luggage, ignoring that the search-incident-to-arrest exception "derives from interests in officer safety and evidence preservation that are typically implicated in arrest situations." *Gant*, 556 U.S. at 338 (citing *Robinson*, 414 U.S. at 230-34). Under the First Circuit's logic, luggage separated from the arrestee nevertheless always remains a part of her person. This ignores both reality and *Gant*'s central holding that the search-incident-to-arrest exception turns on whether "the arrestee is unsecured and within reaching distance" of an item to be searched "*at the time of the search*." 556 U.S. at 343 (emphasis added); *see also id.* at 351. The First Circuit's exclusive focus on the time of arrest cannot be squared with this directive.

Moreover, the First Circuit's rule requires "unworkable determinations about what the arrestee was holding at the exact time of her arrest." *Knapp*, 917 F.3d at 1167. After all, even courts applying that rule would presumably say that a backpack sitting across the room from its owner at the moment of the arrest is not part of the owner's "person." And yet, the Washington Supreme Court, for instance, has upheld the search of a backpack, despite its having been separated from the defendant for several minutes

before any arrest occurred. *State v. Brock*, 355 P.3d 1118, 1119-20, 1123 (Wash. 2015).

Finally, the First Circuit's rule has the unacceptable consequence of drastically expanding police officers' ability to conduct warrantless searches, even when it is manifestly clear that they would never be able to obtain a warrant to search the particular luggage. As petitioner has already explained, the police can find a basis to arrest almost anyone. *See supra* p. 18. Under the First Circuit's rule, officers can therefore search almost anyone's bags simply because the person is out in public. And they can do so even when it is clear that there is no danger that the bag contains a weapon or evidence and no likelihood that the government will pursue a prosecution for the crime for which officers had probable cause to arrest. *See supra* pp. 18-19.

By contrast, when the focus is on the area within the control of the arrestee, this Court's decisions in *Chimel, Chadwick, Gant*, and *Riley* provide a straightforward and workable limit: Once a container has been secured and the defendant can no longer reach it, the time for a warrantless search incident to arrest has ended. *See Chimel*, 395 U.S. at 763; *Chadwick*, 433 U.S. at 14-15; *Gant*, 556 U.S. at 339; *Riley*, 573 U.S. at 385-86. This limit properly balances law enforcement and individual interests. Fourth Amendment doctrine permits police to "detain briefly luggage reasonably suspected to contain" contraband while they seek a warrant to conduct an actual search. *United States v. Place*, 462 U.S. 696, 710 (1983). But once they have done so, a neutral magistrate should decide whether there is sufficient probable cause to justify the further intrusion on an individual's privacy.

Cf. Bailey v. United States, 568 U.S. 186, 202 (2013) (once the "special law enforcement interests at stake" expire, only the "intrusion on personal liberty" remains). That is the system the Framers required, and it is no less vital today. *See Riley*, 573 U.S. at 385.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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