No. 24-577

In the Supreme Court of the United States

GILBERT PEREZ, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

SARAH M. HARRIS
Acting Solicitor General
Counsel of Record
ANTOINETTE T. BACON
DAVID M. LIEBERMAN
Attorneys
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether police, after chasing petitioner on foot, handcuffing him, and placing the backpack that he was carrying outside his reach, permissibly searched that backpack five to ten seconds later incident to his arrest.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-49a) is reported at 89 F.4th 247. The decision and order of the district court (Pet. App. 50a-61a) is not published in the Federal Supplement but is available at 2021 WL 2953671.

JURISDICTION

The judgment of the court of appeals was entered on December 28, 2023. A petition for rehearing was denied on August 23, 2024 (Pet. App. 62a). The petition for a writ of certiorari was filed on November 21, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the District of Maine, petitioner was convicted

on one count of conspiring to distribute and to possess with intent to distribute fentanyl and cocaine, in violation of 21 U.S.C. 841(a)(1), 841(b)(1)(B), and 846. Judgment 1. He was sentenced to 60 months of imprisonment, to be followed by four years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 1a-49a.

1. On August 30, 2019, a state trooper in Lawrence, Massachusetts, observed petitioner park a truck with out-of-state license plates in a McDonald's parking lot. Pet. App. 2a. A woman rode in the truck's passenger seat. *Id.* at 51a. Petitioner exited the truck, donned a backpack, and walked toward a nearby residential area. *Id.* at 2a. Minutes later, another officer saw petitioner exit a taxi and walk back toward the McDonald's. *Id.* at 3a. Suspecting a drug deal, the officer stopped the taxi and found large quantities of cash at the feet of the taxi's passenger. *Ibid.*

When petitioner returned to the McDonald's parking lot, the first officer pulled his car into the lot, exited the car, and shouted "state police." Pet. App. 3a. Petitioner began to run from the parking lot, and the officer gave chase. *Ibid.* About 20 yards from the parking lot, petitioner tripped and fell, enabling the officer to pin him to the ground. *Ibid.* The officer removed petitioner's backpack while a different officer handcuffed him. *Ibid.* The female passenger, who was still present on the scene, then "turned around" and "went into the McDonald's." D. Ct. Doc. 122, at 125 (June 24, 2021); see Pet. App. 54a.

The officer placed petitioner's backpack on a patrol car, outside petitioner's reach, and searched the backpack. Pet. App. 3a. The search occurred "within * * * five, ten seconds" of petitioner's handcuffing. D. Ct.

Doc. 122, at 126. The search uncovered fentanyl and cocaine. Pet. App. 3a.

2. A federal grand jury in the District of Maine returned an indictment charging petitioner with one count of conspiring to distribute and to possess with intent to distribute fentanyl and cocaine, in violation of 21 U.S.C. 841(a)(1), 841(b)(1)(B), and 846. Indictment 1-2. Petitioner moved to suppress the drugs found in his backpack. Pet. App. 3a-4a.

The district court denied petitioner's motion to suppress the drug evidence found in his backpack. Pet. App. 50a-61a. The court determined "that the warrantless search of [petitioner's] backpack * * * was appropriate and its contents should not be suppressed." *Id.* at 59a. In so doing, the court relied on the First Circuit's decision in *United States* v. *Eatherton*, 519 F.2d 603, cert. denied, 423 U.S. 987 (1975), which had rejected a defendant's Fourth Amendment challenge to the search of a briefcase that he was carrying while arrested. See Pet. App. 56a-57a.

Petitioner subsequently entered a conditional guilty plea, in which he preserved his right to appeal his conviction based on the district court's denial of his motion to suppress. Pet. App. 5a.

3. The court of appeals affirmed. Pet. App. 1a-49a.

a. The court of appeals observed that petitioner did not dispute that the search of his backpack was lawful "if *Eatherton* remains good law." Pet. App. 5a. Instead, the court observed, petitioner "contends only that *Eatherton*" lacks vitality "because of either *United States* v. *Chadwick*, 433 U.S. 1 (1977), or *Arizona* v. *Gant*, 556 U.S. 332 (2009), or both together." *Ibid.* The court rejected those contentions. See *id.* at 6a.

The court of appeals observed that *Eatherton* rested "on the considered judgment" that "a search of a container," like a briefcase or backpack, "in the hands of an arrestee at the time of the arrest was no different from a search of a container in the pocket of an arrestee at that time," Pet. App. 13a—which this Court upheld in *United States* v. *Robinson*, 414 U.S. 218 (1973), and *Gustafson* v. *Florida*, 414 U.S. 260 (1973). And the court of appeals explained that neither *United States* v. *Chadwick*, 433 U.S. 1 (1977), nor *Arizona* v. *Gant*, 556 U.S. 332 (2009), "undermine[d]" that judgment. Pet. App. 14a.

The court of appeals observed that *Chadwick* had held "that the warrantless search of an arrestee's 'double-locked, 200-pound footlocker' violated the Fourth Amendment when the search of that container was conducted beyond 'the area from within which [the arrestees] might gain possession of a weapon or destructible.'" Pet. App. 15a-16a (quoting *Chadwick*, 433 U.S. at 5) (brackets in original). And the court explained that "nothing in *Chadwick* disturbs" *Robinson* and *Gustafson*, which together allow "a search of personal property on the person of the arrestee at the time of the arrest"—which the 200-pound footlocker in *Chadwick* was not—"even after that property [i]s no longer in the arrestee's area of immediate control." *Id.* at 16a; see *Chadwick*, 433 U.S. at 4.

The court of appeals then noted that *Gant*, in turn, had rejected a rule under which "all personal property in an automobile was categorically searchable incident to an occupant's arrest." Pet. App. 18a. The court observed, however, that *Gant* "said nothing about whether the rule of *Robinson* * * * governs a container that an arrestee is carrying at the time of the arrest" because "*Gant* did not address carried personal property at all."

Id. at 18a-19a. And the court emphasized that neither *Chadwick* nor *Gant* "even addresses a search of personal property carried by an arrestee at the time of the arrest, let alone whether and how to distinguish between types of such personal property." *Id.* at 27a-28a.

b. Judge Montecalvo dissented. Pet. App. 30a-49a. She acknowledged that "should *Eatherton* remain good law, it is controlling here," but declined to follow *Eatherton* on the theory "that the *Eatherton* panel would have come to a different conclusion" were the case presented now. *Id.* at 31a. And although she recognized the absence of "a Supreme Court opinion that is directly on point contradicting our precedent in *Eatherton*," *id.* at 40a (citation and internal quotation marks omitted), she nonetheless would have declined to apply the good-faith exception to the exclusionary rule to the *Eatherton*-permissible search at issue here, see *id.* at 46a-49a.

4. The court of appeals denied a petition for rehearing en banc. Pet. App. 62a. In a statement accompanying the denial, Chief Judge Barron, joined by five other judges, reasoned that "binding Supreme Court precedent * * * categorically allows * * * the warrantless search of the contents of certain physical containers that are 'of the person' of the arrestee." *Id.* at 63a (quoting *Robinson*, 414 U.S. at 235). But Chief Judge Barron perceived "great uncertainty * * * about the kinds of containers that are subject to that categorical rule" and "urge[d]" this Court to address that topic. *Id.* at 63a, 66a-67a.

ARGUMENT

Petitioner renews his contention (Pet. 21-27) that the warrantless search of his backpack incident to his arrest violated the Fourth Amendment. The court of appeals correctly rejected that contention as inconsistent

with this Court's precedents, and its decision does not meaningfully conflict with any decision of another court of appeals or a state high court. Furthermore, even if the question presented otherwise warranted this Court's review, this case would be an unsuitable vehicle in which to resolve it because the good-faith exception to the exclusionary rule would preclude suppression, and petitioner's conviction would accordingly stand. This Court recently denied review of a petition for a writ of certiorari presenting a similar question, see *Bembury* v. *Kentucky*, 144 S. Ct. 1459 (2024) (No. 23-802), and it should follow the same course here.

1. a. This Court has 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." *United States* v. *Robinson*, 414 U.S. 218, 235 (1973). An officer's authority to conduct a search incident to an arrest, "while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect." *Ibid.* Instead, because an arrest "based on probable cause is a reasonable intrusion under the Fourth Amendment," "a search incident to the arrest requires no additional justification." *Ibid.*

Applying those principles, the Court in *Robinson* found no Fourth Amendment violation where an officer "pat[ted] * * * down" an arrestee, "reached into [his] pocket and pulled out" a "cigarette pack," and "then opened the cigarette pack" and found heroin inside. 414 U.S. at 223; see *id.* at 236. The Court reached that conclusion even though the arresting officer had neither

"any subjective fear of the [arrestee]" nor any "susp[icion] that [the arrestee] was armed." *Id.* at 236. Likewise, in *Gustafson* v. *Florida*, 414 U.S. 260 (1973), decided the same day as *Robinson*, the Court found no Fourth Amendment violation where an officer searched a cigarette pack incident to an arrest after the arrestee had already been placed "in the back seat of the squad car." *Id.* at 262 n.2.

This Court has recently reiterated that "*Robinson*'s categorical rule strikes the appropriate balance in the context of physical objects." *Riley* v. *California*, 573 U.S. 373, 386 (2014). The Court acknowledged that "[o]nce an officer gained control of the [cigarette] pack" in *Robinson*, "it was unlikely that [the arrestee] could have accessed the pack's contents." *Id.* at 387. But the Court emphasized that "unknown physical objects may always pose risks, no matter how slight, during the tense atmosphere of a custodial arrest." *Ibid.* And, in addition, an arrestee has "reduced privacy interests" in his objects "upon being taken into police custody" because the search of such objects "constitute[s] only [a] minor additional intrusion[] compared to the substantial government authority exercised" in the arrest itself. *Id.* at 391-392.

b. The Court's precedents make clear that police conducted a lawful search incident to petitioner's arrest when they searched the backpack that petitioner was carrying when he was arrested. Officers "removed [petitioner's] backpack * * * as [they were] handcuffing [him]," Pet. App. 3a, just as the officer in *Robinson* removed the cigarette pack during his arrest of Robinson. And officers then "placed the backpack" beyond petitioner's "reaching distance" and searched it, *ibid.*, just as the officer in *Gustafson* searched the cigarette pack

after Gustafson had already been detained in the patrol car, 414 U.S. at 262 n.2.

As with any "unknown physical object[]," the backpack here "pose[d] risks" to the officers. *Riley*, 573 U.S. at 387. That is particularly true given "the tense atmosphere," *ibid.*, of petitioner's flight on foot and custodial arrest, as well as the presence of an additional potential accomplice (the passenger in the truck) in the vicinity. And "any privacy interests retained by [petitioner] after [his] arrest" were "significantly diminished by the fact of the arrest itself." *Id.* at 386. Thus, "*Robinson*'s categorical rule" establishes the reasonableness of the search in this case. *Ibid.*

2. Petitioner's contrary arguments (Pet. 21-27) lack merit. Petitioner primarily relies on this Court's decisions in *United States* v. *Chadwick*, 433 U.S. 1 (1977), and *Arizona* v. *Gant*, 556 U.S. 332 (2009). But as the court of appeals explained, neither decision "even addresses a search of personal property carried by an arrestee at the time of the arrest, let alone whether and how to distinguish between types of such personal property." Pet. App. 27a-28a.

a. In *Chadwick*, officers arrested two individuals who had taken a "200-pound footlocker" onto a train. 433 U.S. at 4. The officers then brought the arrestees and the footlocker to a federal building and, without obtaining a warrant, "opened the footlocker" approximately "an hour and a half after the arrests." *Ibid.* The footlocker contained "[l]arge amounts of" drugs. *Id.* at 5. This Court found a Fourth Amendment violation, explaining that "[o]nce law enforcement officers have reduced luggage or other personal property not immediately associated with the person of the arrestee to their

exclusive control," a "search of that property is no longer an incident of the arrest." *Id.* at 15.

Unlike *Chadwick*, this case involves personal property —a backpack—"immediately associated with the person of the arrestee." 433 U.S. at 15; see *Riley*, 573 U.S. at 384 (observing that *Chadwick* "clarified" that the search-incident-to-arrest exception is "limited to 'personal property . . . immediately associated with the person of the arrestee'") (citation omitted). The backpack here was "carried or worn by [petitioner] at the time of the arrest." Pet. App. 17a. And it is much closer in size to the "cigarette package in *Robinson*" than to the massive "trunk of the sort held to require a search warrant in *Chadwick*." *Riley*, 573 U.S. at 394; see Pet. App. 26a (observing that, unlike the footlocker in *Chadwick*, "most people can carry a [backpack] and often have reason to do so").

b. *Gant* is even further afield. There, the Court held that the search-incident-to-arrest exception "does not authorize a vehicle search incident to a recent occupant's arrest after the arrestee has been secured and cannot access the interior of the vehicle." *Gant*, 556 U.S. at 335. At the same time, the Court "conclude[d] that circumstances unique to the vehicle context justify a search incident to a lawful arrest when it is 'reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.'" *Id.* at 343 (citation omitted).

As the court of appeals recognized, *Gant* "concerned only whether a car may be searched incident to a lawful arrest of an occupant of the car" and did not "address carried personal property at all." Pet. App. 18a-19a. *Gant* therefore has "nothing to say about where the line should be drawn in searches incident to arrest when it

comes to things an arrestee carries at the time of the arrest." *Id.* at 19a. If anything, *Gant* suggests that the search here complied with the Fourth Amendment because it was surely "reasonable to believe evidence relevant to the crime of arrest might be found" in petitioner's backpack. 556 U.S. at 335 (citation omitted).

c. Petitioner's proposed rule is thus untethered from this Court's precedents. According to petitioner (Pet. 26), "[o]nce a container has been secured and the defendant can no longer reach it, the time for a warrantless search incident to arrest has ended." But as previously explained, that approach cannot be squared with *Robinson* —where "it was unlikely that [the arrestee] could have accessed the [cigarette] pack's contents." *Riley*, 573 U.S. at 387; see *Robinson*, 414 U.S. at 235 (applying categorical, rather than case-specific, approach). Much less can it be squared with *Gustafson*, which upheld a warrantless search incident to an arrest where the defendant had already been placed "in the back seat of [a] squad car" at the time of the search, 414 U.S. at 262 n.2.

Indeed, as *Chadwick* itself makes clear, an officer's authority to search objects found on an arrestee's person does not depend on whether the objects remain within the arrestee's reach—or what a court might later decide was the arrestee's reach. *Chadwick* specifically identifies not only the search in *Robinson*, but also the search in *United States* v. *Edwards*, 415 U.S. 800 (1974), as permissible searches "of the person." *Chadwick*, 433 U.S. at 16 n.10. And *Edwards* upheld the warrantless search of an arrestee's clothing hours after he had already been jailed. See 415 U.S. at 801, 808-809. What matters is whether a particular item was on the arrestee's person at the time of his arrest—not whether

the officer is (prudently) out of range of the arrestee at the time of the search.

d. Finally, it is this Court's longstanding categorical rule—not petitioner's rule—that is "straightforward and workable." Pet. 26. Under the former, a warrantless search incident to an arrest is authorized as to "personal property . . . immediately associated with the person of the arrestee." *Riley*, 573 U.S. at 384 (quoting *Chadwick*, 433 U.S. at 15). That bright-line distinction "provid[es] clear guidance to law enforcement." *Id.* at 398. And such categorical rules are critical in this context because "the Fourth Amendment has to be applied [by officers] on the spur (and in the heat) of the moment." *Atwater* v. *City of Lago Vista*, 532 U.S. 318, 347 (2001); see *Robinson*, 414 U.S. at 235.

Petitioner's position, in contrast, would subject officers to armchair second-guessing about how possible it was for an arrestee (or an accomplice) to reach the container that the officer searched—an approach the Court prudently avoided in *Robinson*. See 414 U.S. at 235; see also *Riley*, 573 U.S. at 384. It would also require officers to distinguish between searches of various objects—from cigarette packs (permissible), to backpacks (impermissible), to everything in between. Petitioner offers no principled basis on which to draw such distinctions. As the First Circuit has explained, "[w]hile a briefcase may be a different order of container from a cigarette box, it is not easy to rest a principled articulation of the reach of the Fourth Amendment upon the distinction." *United States* v. *Eatherton*, 519 F.2d 603, 610, cert. denied, 423 U.S. 987 (1975).

3. Petitioner notes (Pet. 8-16) that different courts analyze the type of fact pattern here through different

analytical frameworks. For instance, some courts maintain that *Gant* applies beyond the context of vehicle searches and requires consideration of "a suspect's ability (or inability) to access weapons or destroy evidence at the time a search incident to arrest is conducted," *United States* v. *Shakir*, 616 F.3d 315, 318 (3d Cir. 2010), cert. denied, 562 U.S. 1116 (2010), whereas the court of appeals here found *Gant* inapposite, Pet. App. 18a. But petitioner has not established that such analytical differences routinely produce different outcomes —nor has he shown that any other court would have reached a different result on the facts of this case. See *Shakir*, 616 F.3d at 321 (emphasizing that its standard remains "lenient"). Accordingly, there is no meaningful conflict warranting this Court's review.

Four of the federal decisions upon which petitioner relies *upheld* searches incident to arrests on facts analogous to those here, and thus do not reach results in conflict with the result below. In *Shakir*, the Third Circuit found that a search of an arrestee's bag was reasonable where the arrestee "was handcuffed and guarded by two policem[e]n," "one suspected confederate" was nearby, and the officer "did not leave the scene before searching the bag." 616 F.3d at 319, 321. In *United States* v. *Cook*, 808 F.3d 1195 (2015), the Ninth Circuit found that a search of an arrestee's backpack was reasonable where the arrestee was "face down on the ground with his hands cuffed behind his back," and the officer stopped the search after "determin[ing] that the backpack contained no weapons." *Id.* at 1199-1200. In *United States* v. *Perdoma*, 621 F.3d 745 (2010), cert. denied, 563 U.S. 992 (2011), the Eighth Circuit found that a search of an arrestee's bag was reasonable where "the bag was 'beyond his reach' because he was restrained

and a police officer had taken control of the bag." *Id.* at 750. And in *United States* v. *Hill*, 818 F.3d 289 (2016), the Seventh Circuit found that a search of an arrestee's bag was reasonable where he had been detained and taken to "an interview room." *Id.* at 293; see *id.* at 295.[*]

The Fourth and Tenth Circuit decisions on which petitioner relies (Pet. 9-10) held searches unreasonable, but involved factual circumstances distinct from those at issue here. In *United States* v. *Davis*, 997 F.3d 191 (2021), the Fourth Circuit deemed the search of an arrestee's backpack unreasonable where the arrestee "was face down on the ground," "handcuffed with his hands behind his back," "outnumbered" by officers "three to one," and where the arrest "took place in a residential area" with "no one else around to distract the officers." *Id.* at 198. At the same time, the court distinguished the Fourth Circuit's prior decision in *United States* v. *Ferebee*, 957 F.3d 406 (2020), which found a search of an arrestee's backpack reasonable where the arrestee was "handcuffed" but *not* "face-down" and thus could have

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[*] Petitioner also cites (Pet. 10) the Eleventh Circuit's unpublished disposition in *United States* v. *Brown*, No. 20-14750, 2021 WL 4955823 (Oct. 26, 2021) (per curiam), in which the court deemed a search of a bag unreasonable. But "[u]npublished opinions are not binding precedent" in the Eleventh Circuit, *United States* v. *Izurieta*, 710 F.3d 1176, 1179 (2013), so panels are free to disagree with *Brown*. Indeed, in a more recent unpublished decision, the Eleventh Circuit upheld a search of an arrestee's backpack even though the arrestee "was handcuffed and surrounded by several officers." *United States* v. *Cobb*, No. 23-11876, 2024 WL 3874204, at *1 (Aug. 20, 2024) (per curiam); see *id.* at *2. Any variance in nonprecedential decisions issued by panels within the same circuit does not warrant this Court's review. See *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam) ("It is primarily the task of a Court of Appeals to reconcile its internal difficulties.").

potentially still "access[ed] his bag." *Davis*, 997 F.3d at 199. This case more closely resembles *Ferebee* than *Davis*: petitioner was seated when handcuffed (not face down); the arrest occurred in a McDonald's parking lot with other people present; and the passenger in petitioner's car had not been secured when officers conducted the search. See Pet. App. 3a, 51a, 54a. Thus, the Fourth Circuit's decision in *Davis* would not be controlling on the facts here.

And in *United States* v. *Knapp*, 917 F.3d 1161 (2019), the Tenth Circuit deemed the search of an arrestee's purse unreasonable where the arrestee's "hands [were] cuffed behind her back," one officer "was next to her" and "two other officers were nearby," and the "purse was closed" and in the officers' "exclusive possession." *Id.* at 1169. In so doing, however, the court applied a multifactor test focused in part on "the relative number of arrestees and officers present," as well as "the relative positions of the arrestees, officers, and the place to be searched." *Id.* at 1168-1169. And the court distinguished a prior Tenth Circuit decision on the ground that it involved "two arrestees" rather than one. *Id.* at 1169 (discussing *United States* v. *Parra*, 2 F.3d 1058 (10th Cir.), cert. denied, 510 U.S. 1026 (1993)). Here, only two officers were present for the arrest, and the passenger from petitioner's vehicle was unsecured and remained in the vicinity of the parking lot. See Pet. App. 51a, 54a. The Tenth Circuit's test would give significant weight to those facts—and thus may have produced the same result as the decision below.

Petitioner's survey (Pet. 11-12) of state supreme court decisions likewise fails to establish a conflict worthy of this Court's review. Contrary to petitioner's assertion (Pet. 11), Missouri precedent aligns with the

First Circuit's approach here. In *Greene* v. *State*, 585 S.W.3d 800 (2019), the Supreme Court of Missouri explained that "the holdings in *Robinson*[and] *Gustafson* * * * establish the fact of a lawful arrest is sufficient to justify a reasonably delayed search of items found on a defendant's person at the time of the arrest." *Id.* at 808. And applying that rule, the court upheld the search of a cigarette pack found in an arrestee's pocket even though the search did not occur "until 30 minutes" after the officers had "secured[]" the arrestee and "placed the pack in a separate room." *Id.* at 805. While petitioner relies (Pet. 11) on the Supreme Court of Missouri's prior decision in *State* v. *Carrawell*, 481 S.W.3d 833, cert. denied, 580 U.S. 847, and 580 U.S. 916 (2016), the court in *Greene* disavowed *Carawell*'s analysis of *Robinson* and *Gustafson*, making clear that any contrary statements in *Carawell* "should no longer be followed." *Greene*, 585 S.W.3d at 808.

In *State* v. *Ortiz*, 539 P.3d 262 (2023), the Supreme Court of New Mexico "adopt[ed]" "the rationale of [the Tenth Circuit in] *Knapp*" to conclude that the search of an arrestee's purse violated the Fourth Amendment. *Id.* at 267. As already explained, however, any analytical tension between *Knapp* and the decision below does not warrant this Court's review because it is not clear that the search of petitioner's backpack would be impermissible under *Knapp*'s multifactor approach. See p. 14, *supra*. Moreover, in *Ortiz*, there was "limited evidence in the record as to the location of the purse at the time of arrest, whether it was secured, [and] its distance from [the] Defendant." 539 P.3d at 268. Here, in contrast, the record is clear that petitioner was carrying the backpack when he was arrested and that officers "removed the backpack from [petitioner] as [they were]

handcuffing [petitioner's] hands behind his back." Pet. App. 3a.

Finally, the Supreme Court of South Carolina's decision in *State* v. *Brown*, 736 S.E.2d 263 (2012), cert. denied, 569 U.S. 1023 (2013), does not implicate the question presented. There, a police officer conducted a traffic stop and arrested a passenger for an open-container violation. *Id.* at 264. After the arrestee had been handcuffed and placed in the back of the patrol car, the officer searched a bag found in the car and discovered cocaine. *Id.* at 264-265. The Supreme Court of South Carolina reasoned that, "under *Gant,* the search of [the arrestee's] duffel bag was unlawful because [the arrestee] was handcuffed and placed in the patrol car prior to the search and, thus, he did not have access to the vehicle at the time of the search." *Id.* at 269. Because *Brown* involved "an automobile stop," *id.* at 264—not "a search of the contents of an item found on an arrestee's person," *Riley*, 573 U.S. at 392—it was squarely governed by *Gant*, as opposed to *Robinson* and *Gustafson*. *Brown* therefore does not speak to the question presented here.

4. Even if the question presented otherwise warranted this Court's review, this case would be an unsuitable vehicle for considering it because a decision in petitioner's favor would have no practical effect on his conviction. See *Supervisors* v. *Stanley*, 105 U.S. 305, 311 (1882) (explaining that this Court does not grant a writ of certiorari to "decide abstract questions of law * * * which, if decided either way, affect no right" of the parties).

"Searches conducted in objectively reasonable reliance on binding appellate precedent are not subject to the exclusionary rule." *Davis* v. *United States*, 564 U.S.

229, 232 (2011). Although the majority below had no need to reach the issue, that standard is easily satisfied here.

At the time of petitioner's arrest, binding circuit precedent authorized law enforcement to search his backpack. In *Eatherton*, the First Circuit held that FBI agents had validly searched a suspect's briefcase incident to his arrest even though the suspect had been handcuffed and placed in the back of the agents' vehicle. 519 F.2d at 609-611. The government below cited *Eatherton* and argued that, "[b]ased on the precedent in th[e] Circuit, this was an objectively reasonable search." Gov't C.A. Br. 55. And "[petitioner] ma[de] no argument that *Eatherton* c[ould] be distinguished on the facts." Pet. App. 28a.

Because the officer who searched petitioner's backpack "act[ed] with an objectively 'reasonable good-faith belief' that [his] conduct [wa]s lawful" under *Eatherton*, *Davis*, 564 U.S. at 238 (citation omitted), the suppression remedy is unavailable to petitioner. He therefore has no viable basis on which to challenge his conviction. To the extent the Court wishes to consider the question presented, it should await a case in which a decision in the defendant's favor could realistically affect his conviction.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

SARAH M. HARRIS
Acting Solicitor General
ANTOINETTE T. BACON
DAVID M. LIEBERMAN
Attorneys

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