No. _____

In the Supreme Court of the United States

STATE OF WEST VIRGINIA,

Petitioner,

v.

MICHAEL KEITH ALLMAN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

When police make an arrest, they need to know whether they need a warrant to look inside any bags the arrestee might be carrying. Yet right now, the answer is, "It depends."

Courts generally pick one of two tests. Some courts look to *Chimel* v. *California*, 395 U.S. 752, 762 (1969), which authorizes a warrantless search "of the arrestee's person," as well as the area within the arrestee's "immediate control," when justified by concerns for officer safety or evidence preservation. Others look to *United States* v. *Robinson*, 414 U.S. 218, 235 (1973), which adopts a categorical rule: a lawful custodial arrest authorizes a full search of the arrestee—including any bags the person might be carrying—without any further justification.

In this case, police searched a backpack Michael Keith Allman was carrying moments before his arrest. Applying *Chimel* (and expressly rejecting *Robinson*), the Supreme Court of Appeals of West Virginia held that the search violated the Fourth Amendment because the State had not shown that "the backpack was in an area from within which Mr. Allman might gain possession of a weapon or destructible evidence." App.30a (cleaned up).

Thus, the question presented is:

Whether the State must show that an arrestee could access a weapon or destructible evidence from a bag the arrestee was carrying immediately before arrest to justify a search of that bag incident to the arrest.

PARTIES TO THE PROCEEDING

Petitioner State of West Virginia was the plaintiff in the trial court and respondent-appellee in the Supreme Court of Appeals of West Virginia.

Respondent Michael Keith Allman was the defendant in the trial court and petitioner-appellant in the Supreme Court of Appeals of West Virginia.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

State of West Virginia v. *Michael Keith Allman*, Case No. CC-54-2022-F-271, Circuit Court of Wood County, West Virginia, opinion order denying defendant's motion to suppress evidence issued April 5, 2023.

State of West Virginia v. *Michael Keith Allman*, Case No. 23-421, Supreme Court of Appeals of West Virginia, opinion reversing and remanding with instructions became final on December 15, 2025, when the mandate issued. See W. VA. R. APP. P. 26(a).

There are no other directly related proceedings within the meaning of this Court's Rule 14.1(b)(iii).

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INTRODUCTION

About every three seconds, police arrest someone in America. And oftentimes, the arrestees are carrying bags. Each time, police must decide whether the Fourth Amendment permits them to look inside those bags without a warrant.

One would expect a rule governing millions of interactions a year to be uniform across jurisdictions. But that expectation, unfortunately, is wrong. At least eighteen federal circuits and state courts of last resort have reached widely varying conclusions about when and how police can search an arrestee's bag incident to arrest. "A Fourth Amendment issue as basic as this one … seems especially poorly suited to circuit-by-circuit and state-by-state resolution." *United States* v. *Perez*, 113 F.4th 137, 139 (1st Cir. 2024) (statement of Barron, C.J., respecting the denial of rehearing en banc). Yet here we are.

One also might expect that a rule governing millions of dynamic interactions would be easy to administer. But here again, that expectation would be wrong. Instead, many courts require police to decide case-by-case whether the arrestee will have access to some instrument of danger or evidence that could be lost unless the officer searches. This Court has already recognized that this rule is "difficult to apply in specific cases." *Thornton* v. *United States*, 541 U.S. 615, 620 (2004). Courts have marched ahead with it anyway.

The Supreme Court of Appeals of West Virginia has now thrown itself into the fray. Here, it held that a search incident to arrest was improper because the State had not shown that the arrestee could've accessed the bag he was carrying to obtain evidence or a weapon at the time of the search. In doing so, it expressly "decline[d]" to follow this

Court's holding in *United States* v. *Robinson*, 414 U.S. 218 (1973). App.27a. Instead, it applied its own preferred test, "derived from the rationale set forth in *Chimel* [v. *California*, 395 U.S. 752 (1969)]." App.28a. It did so even though this Court "reaffirmed *Robinson*'s categorical rule" not so long ago. *Birchfield* v. *North Dakota*, 579 U.S. 438, 460 (2016) (cleaned up).

The Supreme Court of Appeals's choice to put aside *Robinson* was mistaken, though perhaps understandable. West Virginia's highest court is not alone in doubting *Robinson*'s continued vitality and striking out on its own. But however understandable it might be, the ongoing lower court revolt—now firmly joined by West Virginia—provides strong reason for the Court to get involved. "[I]t is this Court's prerogative alone to overrule one of its precedents." *State Oil Co.* v. *Khan*, 522 U.S. 3, 20 (1997). And if lower courts are allowed to continue treating *Robinson* as dead letter, then every officer and arrestee alike will be left wondering which rule might apply when a given case prompts a suppression hearing.

Now is the time for the Court to get involved and fix this intractable problem. A clear and deep conflict exists, and the Court should resolve it. This case exemplifies how a lack of recent guidance from this Court has caused things to go awry. And the case presents a clean vehicle to reach the question, as the lower court's opinion makes plain that its choice of test made the difference in vacating four of Allman's felony convictions.

The Court should grant the petition.

OPINIONS BELOW

The circuit court's order (App.1a-6a) is unreported. The West Virginia Supreme Court of Appeal's opinion

(App.7a-28a) is reported at No. 23-421, ___ S.E.2d ___, 2025 WL 3158508 (W. Va. 2025).

JURISDICTION

The Supreme Court of Appeals of West Virginia entered its final judgment on December 15, 2025, reversing Allman's criminal conviction on four of six counts. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The U.S. Constitution's Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. CONST. amend. IV.

STATEMENT

1. The Fourth Amendment generally deems warrantless searches unreasonable, subject to a few exceptions.

One of those exceptions is a search incident to arrest. *Katz* v. *United States*, 389 U.S. 347, 357 (1967). In *Robinson*, the Court adopted a categorical rule that a lawful custodial arrest empowers the officer to conduct a full search of the arrestee and any containers on him. 414 U.S. at 235. *Chimel* permits a further search of the area within the arrestee's "immediate control," but only when that search is needed to ensure officer safety or prevent the destruction of evidence. 395 U.S. at 763. This case concerns how to draw the right line between *Robinson* and *Chimel* searches.

a. Start with *Chimel* itself, which focused on the scope of the area within the "immediate control" of the arrestee. 395 U.S. at 763. Grounded in the twin purposes of officer safety and evidence preservation, the Court defined this "area" of "immediate control" as "the area from within which [the arrestee] might gain possession of a weapon or destructible evidence," or the so-called grab area. *Id.* Under this standard, the Court struck down a warrantless search of *Chimel*'s three-bedroom home after his arrest at the door; the search extended beyond the grab area. *Id.* at 768.

The Court later applied *Chimel's* reachability-based framework to a search of a large, double-locked, two-hundred-pound footlocker; the search happened long after both the arrestees and the footlocker were secured in a location away from the arrest. See *United States* v. *Chadwick*, 433 U.S. 1, 3-5 (1977), abrogated on other grounds by *California* v. *Acevedo*, 500 U.S. 565 (1991). Although the Court acknowledged "potential dangers lurking in all custodial arrests," it nevertheless grounded its analysis on *Chimel*-style considerations: reachability, exigency, and the temporal and spatial distance between the arrestee and the searched object. *Chadwick*, 433 U.S. at 14-15. And because "the search was conducted more than an hour after federal agents had gained exclusive control of the footlocker and long after the respondents were securely in custody[,] the search [could not] be viewed as incidental to the arrest or as justified by any other exigency." *Id.* at 15.

More recently, the Court has applied a form of *Chimel* to vehicle searches. See *Arizona* v. *Gant*, 556 U.S. 332 (2009). In *Gant*, officers arrested, handcuffed, and secured the driver before searching his car and finding a jacket containing cocaine. *Id.* at 335. The Court held this

search violated the Fourth Amendment. *Id.* at 351. *Gant* permits a vehicle search incident to an occupant's arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment—that is, when officer-safety and evidence-preservation concerns justify it. *Id.* at 341-43. By rejecting a rule that would allow an officer to search a vehicle the arrestee could not access, the Court reinforced the exception's tether to *Chimel's* twin purposes. *Id.* at 339 (citing *Chimel*, 395 U.S. at 763).

b. *Robinson*, however, drew a sharp line between searches of the area within an arrestee's control (like a footlocker or vehicle) and searches of the arrestee's person. 414 U.S. at 235. *Robinson* upheld a warrantless search, incident to arrest, of a cigarette pack in the defendant's coat pocket, even though the officers had already removed the pack and blocked the defendant's access to it. *Id.* at 235. Unlike a *Chimel* search of the area, a search of the person under *Robinson* "does not depend on … the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person." *Id.*

Instead, *Robinson* adopted a bright-line, categorical rule that so long as the arrest is lawful, a search of the person "requires no additional justification" or "case-by-case adjudication." 414 U.S. at 235. "It is the fact of the lawful arrest which establishes the authority to search," the Court said, that makes the search reasonable under the Fourth Amendment. *Id.* Applying that rule, the Court distinguished *Chimel* and upheld the cigarette-pack search as a lawful under the search-incident-to-arrest exception. *Id.* at 224-26, 236; see also *Gustafson* v. *Florida*, 414 U.S. 260, 262, 264 (1973) (upholding another search of a cigarette pack found in the arrestee's coat pocket by applying the *Robinson* rationale).

The Court has since reaffirmed *Robinson*'s rule time and again. One year after *Robinson*, for example, the Court upheld a warrantless search of clothing the arrestee was wearing at the time of his arrest even though he had been jailed and had no access to it. *United States* v. *Edwards*, 415 U.S. 800, 808-09 (1974). A search "may legally be conducted later when the accused arrives at the place of detention," the Court explained, if it "could be made on the spot at the time of arrest." *Id.* at 803. In so holding, it confirmed that *Robinson* applies not only to items physically on the arrestee but also to personal effects immediately associated with the person.

A few years ago, the Court reaffirmed *Robinson*'s categorical rule on the way to distinguishing it. In *Riley* v. *California*, 573 U.S. 373, 386 (2014), the Court stressed that it had "not overlook[ed] *Robinson*'s admonition" that searches of the person incident to arrest are categorically reasonable. And the Court reiterated that *Robinson's* bright-line rule "strikes the appropriate balance" for physical objects. *Id.* But physical and electronic items are different. Inspecting items in an arrestee's pockets imposes no meaningful additional intrusion. In contrast, probing a phone (which poses no *Chimel*-type risks) exposes vast amounts of private information implicating far greater privacy interests. *Id.* at 374-75, 393. Thus, the Court held *Robinson* does not justify warrantless searches of digital data—*after* reaffirming its preference for categorical rules. *Id.* at 373, 386; see also *Birchfield*, 579 U.S. at 461-63 (permitting breath tests incident to arrest because "breath tests do not implicate significant privacy concerns" beyond those "inherent in any arrest" (cleaned up)).

Altogether, at least before this Court, *Robinson* remains the controlling framework for searches of the

person and their associated personal effects. *Chimel* remains the rule for protective sweeps.

2. West Virginia addressed the *Robinson-Chimel* distinction in a case that started as many criminal cases do—with guns and drugs.

While patrolling a high-crime area at night, Sergeant A.D. McGary of the Parkersburg Police Department looked through an open garage door at Proline Collision and spotted Allman, whom he knew to have an outstanding warrant. App.2a. Six to eight other people were also inside. App.4a. McGary stopped his vehicle and called out to Allman by name. App.11a. Allman, who toted a shoulder bag or backpack, turned to look at him. App.11a-12a. McGary then got out of his car and began walking toward Allman. App.12a.

Allman—perhaps anticipating that an arrest was coming—hustled between two vehicles inside the garage while still holding the backpack. App.12a. McGary saw Allman take an item from the front of his waistband and crouch down. McGary suspected that he was discarding a firearm. App.12a. So McGary again called out to Allman by name. App.12a. Allman then turned to face him and walked toward him, still carrying the backpack. App.12a. Before McGary reached him, Allman slipped behind another vehicle again, dropped the backpack, and met the officer "about half-way." App.12a.

McGary told Allman of the arrest warrant and ordered him to turn around and place his hands behind his back to be handcuffed. App.12a. But Allman didn't comply, and he repeatedly turned to face McGary. App.12a. McGary was thus forced to push Allman against a nearby vehicle to secure the cuffs. App.12a. During that struggle, one of

the other individuals in the garage suddenly stepped forward and tried to claim the backpack. App.12a.

Meanwhile, with multiple unsearched, unsecured individuals nearby, and McGary being the only officer on scene, he ordered everyone out of the garage. App.13a. He later explained that his attention was fixed on controlling Allman, so he could not confirm whether the others obeyed his command, aside from knowing they were not right next to him. App.13a.

Having placed Allman in cuffs, McGary then walked Allman to the backpack and retrieved it for safety. App.13a. He escorted Allman to his cruiser and placed the backpack on the hood. App.13a. Only at that point did another officer arrive. App.13a. McGary pointed the officer to the area where Allman appeared to have hidden something, App.13a, where the other officer recovered a firearm, App.13a-14a. McGary also discovered an empty holster on the front of Allman's pants, confirming his belief that Allman had been armed. App.13a.

Under those conditions, the officers searched the backpack. Inside, they found narcotics, digital scales, and ammunition. App.13a-14a. McGary explained that they searched the bag because, after recovering the firearm, they "didn't know what we had at the time" and needed to determine whether any other weapons were present. App.13a. He knew that individuals often carry more than one firearm and that an arrestee can sometimes slip handcuffs to the front, posing a safety risk if the person is able to access weapons or reach an officer. App.5a, 13a-14a.

Based on that evidence, a grand jury returned a six-count indictment charging Allman with four drug-related felony offenses and two firearms offenses. App.10a-11a.

3. Allman moved to suppress the evidence retrieved from his backpack, arguing it resulted from an unlawful warrantless search. App.11a. After an evidentiary hearing, the trial court denied the motion. At trial, a jury convicted Allman of all six counts. The court imposed the statutory sentences.

On appeal, Allman argued that the search of his backpack violated the Fourth Amendment and the West Virginia Constitution. Allman maintained that, at the time the officers searched his backpack, the exigencies of the arrest had ended, rendering the warrantless search improper. App.10a. Allman specifically "urge[d]" the court to "apply the reasoning of *Arizona v. Gant* outside the vehicular context." App.27a.

The Supreme Court of Appeals held that the search was unlawful and reversed the trial court's ruling. App.7a. To reach that decision, the court grounded its rationale in a prior state vehicle-search case. App.28a (discussing *State* v. *Moore*, 272 S.E.2d 804 (W. Va. 1980)). *Moore* offered only a brief discussion of *Chimel* before finding it inapplicable because the arrest in that case was unlawful. *Moore*, 272 S.E.2d at 813. Even so, the Court treated *Moore* and *Gant* as essentially one and the same because both "are derived from the rationale set forth in *Chimel*." App.28a.

The Supreme Court of Appeals also "decline[d] to follow" the State's suggestion that the Court "consider the search of the backpack as a search of Mr. Allman's person incident to arrest under *United States v. Robinson*." App.27a. Rejecting *Robinson*'s categorical approach, the Court held that "there [wa]s no factual basis for finding that this was a proper search incident to arrest." App.30a. It found Allman's search unlawful because "it was not objectively reasonable for officers to believe that the

backpack was in an area from within which Mr. Allman might gain possession of a weapon or destructible evidence." App.29a (cleaned up).

The Court thus vacated the four drug-related convictions.

REASONS FOR GRANTING THE PETITION

The law governing searches incident to arrest is a mess. There's "little uniformity to speak of in the manner in which our nation's courts have addressed this issue." *Commonwealth* v. *Bembury*, 677 S.W.3d 385, 397 (Ky. 2023). By applying "disparate approaches" to a warrantless search incident to arrest of an arrestee's bag, courts are in turn producing disparate results in nearly identical cases. *Perez*, 113 F.4th at 138 (statement of Barron, C.J., respecting the denial of rehearing en banc).

Just look at this case: the Supreme Court of Appeals of West Virginia incorrectly used a hindsight analysis to find no safety or evidence needs warranted the search. But "[t]he authority to search the person incident to a lawful custodial arrest … 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." *Robinson*, 414 U.S. at 235. The Court should thus grant this petition to address—and *re*dress—this serious issue.

I. Courts Are Intractably Split.

The "Fourth Amendment's meaning," should not "vary from place to place." *Virginia* v. *Moore*, 553 U.S. 164, 172 (2008). But on this issue, it does. The courts below are deeply split—and further percolation invites only further confusion.

A. Many courts hold that an arrestee's bag is always searchable incident to arrest.

Five federal circuits, as well as seven state high courts, hold that the search of a personal item in the arrestee's possession at or immediately before the time of arrest is *per se* lawful. Applying *Robinson*, these courts allow a search regardless of whether officer-safety or evidence-spoliation concerns are established after the fact.

The First Circuit, in a decision just after *Robinson*, upheld the warrantless search of a briefcase while the defendant was handcuffed and secured in the back of the patrol car. *United States* v. *Eatherton*, 519 F.2d 603, 609 (1st Cir. 1975). Much like Allman in this case, Eatherton had been holding his briefcase when the officers encountered him; he dropped it on the ground (at their instruction) just before his arrest. In the First Circuit's view, "gossamer distinctions" would be required to distinguish the search of the briefcase from the cigarette-pack searches in *Robinson* and *Gustafson*. *Id.* at 610; see also *United States* v. *Mitchell*, 64 F.3d 1105, 1110-11 (7th Cir. 1995) (upholding search of briefcase that fell to the floor when defendant was handcuffed).

The First Circuit recently declined an opportunity to overturn *Eatherton*. See *Perez*, 89 F.4th 247. In *Perez*, the defendant was wearing a backpack while attempting to flee from police; officers searched the bag after he was handcuffed and seated on the pavement. *Id.* at 249. The defendant acknowledged that the search of his backpack was indistinguishable from the search of the briefcase in *Eatherton*, but he argued that *Eatherton* had been fatally undermined by *Chadwick* and *Gant*. *Id.* at 260. The court rejected that argument. It read those cases as "sa[ying] nothing about whether the rule of *Robinson* … governs a container that an arrestee is carrying at the time of the

arrest." *Id.* at 256. But that view was not unanimous. Judge Montecalvo dissented, arguing that "*Chadwick* and … *Gant* have unquestionably altered our understanding of the search-incident-to-arrest doctrine." *Id.* at 265-67 (Montecalvo, J., dissenting).

At least four other federal circuits have also applied a categorical rule.

The Fifth Circuit upheld the warrantless search of a FedEx envelope containing a bank robbery note that the defendant "was carrying immediately prior to his lawful [ ] arrest." *United States* v. *McLaughlin*, 739 F. App'x 270, 271 (5th Cir. 2018). Relying on *Robinson*, the court held that the envelope was part of McLaughlin's person; it rejected the argument that handcuffing and inability to reach it undermined the search. *Id.* at 275-76. The court further emphasized that the search was prompt—occurring within five minutes of arrest—and close to the point of McLaughlin's arrest, consistent with the principles articulated in *Chadwick*. *Id.* at 275-76.

The Sixth Circuit likewise upheld a warrantless search of a duffel bag incident to arrest in *Northrop* v. *Trippett*, 265 F.3d 372, 379 (6th Cir. 2001). Northrop had been wearing the bag on his shoulder as officers approached, but he (like Allman here) removed it and set it on the ground on noticing them. *Id.* After an officer arrested him near the bag, the officers searched shortly thereafter. *Id.* Upholding the search, the court explained that "the right to search an item incident to arrest exists even if that item is no longer accessible to the defendant at the time of the search." *Id.* at 379. So long as the defendant had the item within his immediate control *near* the time of his arrest, the item remains subject to a search incident to arrest." *Id.* (emphasis added). The Sixth Circuit found it dispositive that Northrop had "the duffle bag on his

shoulder as [the officers] approached." *Id.* That is, it was on his person at the time of or immediately preceding his arrest. *Id.*

The Eleventh Circuit has also applied *Robinson* to uphold a search of a purse and notebook incident to arrest. That court reads *Robinson* to say that, "even absent probable cause or suspicion of danger, police can routinely search individuals and personal items the individuals have on them when they are arrested." *United States* v. *Ouedraogo*, 824 F. App'x 714, 720 (11th Cir. 2020). Thus, "in a variety of circumstances," the Eleventh Circuit has upheld searches of personal effects under *Robinson*. *Id.* at 720 (collecting cases). Although the defendant sought to invoke *Riley*, the court confirmed that "physical objects" are still subject to search. *Id.* at 721.

Lastly, in *United States* v. *Lee*, 501 F.2d 890, 892 (D.C. Cir. 1974), the D.C. Circuit treated a purse as categorically searchable. The question was so straightforward for the Court that it merely cited *Robinson* with no further discussion. *Id.*

At least seven different state high courts have agreed with these federal circuits.

For instance, the Supreme Court of Illinois has complied with *Robinson* and applied a categorical rule. In *People* v. *Hoskins*, 461 N.E.2d 941, 942 (Ill. 1984), the defendant dropped her purse and briefly fled after officers informed her that she was under arrest for prostitution. She was apprehended within yards, handcuffed, and her purse was searched, revealing drug paraphernalia. *Id.* Upholding the search, the court applied *Robinson* because Hoskins had been carrying the purse contemporaneously with her arrest. *Id.* at 945-46. The court emphasized that *Robinson* provides "a straight forward rule, easily

applied, and predictably enforced." *Id.* at 945; see also *People* v. *Cregan*, 10 N.E.3d 1196, 1205-07 (Ill. 2014) (affirming search of laundry bag and luggage bag where arrestee was handcuffed at time of search, and defining "immediately associated" as the arrestee's physical connection to the item contemporaneously to arrest).

The Colorado Supreme Court likewise holds that warrantless searches of bags carried by arrestees are categorically permitted. In *People* v. *Marshall*, 289 P.3d 27, 28 (Colo. 2012), officers arrested a defendant carrying a backpack. After handcuffing him and placing him in the back of a squad car, they searched the backpack and found marijuana, prescription drugs, and a digital scale—a story, again, that tracks Allman's. *Id.* The Colorado Supreme Court concluded that *Gant* applies only to vehicle searches, *id.* at 30, and held that the backpack search was lawful as a "search of a person, and articles on or near that person, after a lawful arrest," *id.* at 31 (citing *Robinson*, 414 U.S. at 235).

The Washington Supreme Court takes the same approach. In *State* v. *Byrd*, 310 P.3d 793, 795 (Wash. 2013), the court considered the search of a defendant's purse, which was on her lap at the time of arrest but searched after she was secured in the patrol car. Surveying in-state cases, the court observed that "Washington courts have long applied this [time-of-arrest] rule, holding that searches of purses, jackets, and bags in the arrestee's possession at the time of arrest are lawful." *Id.* at 798. The court "jealously guarded" this "time of arrest" rule, restricting warrantless searches to personal items the arrestee "actual[ly] and exclusive[ly] possess[ed] at or immediately preceding" arrest, not all items in their constructive possession. *Id.* at 799; see also *State* v. *MacDicken*, 319 P.3d 31, 33-34 (Wash. 2014)

(holding that searching a laptop bag and rolling duffel the defendant possessed at the time of arrest—even though they were a car-length away when searched—constituted a search "of the person" and was therefore per se lawful); *State* v. *Brock*, 355 P.3d 1118, 1123 (Wash. 2015) (holding that the backpack was part of "the defendant's person" at the time of arrest, even though officers had set his backpack to the side).

The story repeats again in North Dakota, Kentucky, and Texas.

In *State* v. *Mercier*, 883 N.W.2d 478, 491 (N.D. 2016), the court held that a backpack was "immediately associated" with him and thus part of his person. The court so held even though officers retrieved it from his house at his request, he was not wearing it when formally arrested, and he was already secured in the patrol car when it was searched. *Id.* at 487-94.

Much the same happened in *Bembury*. 677 S.W.3d at 397. There, the Kentucky Supreme Court of Appeals noted the lack of uniformity among courts. *Id.* And it explained its disagreement with less-than-categorical approaches. *Id.* at 404. It then ruled that containers (like backpacks) are searchable under *Robinson* when held at the time of arrest. *Id.* at 406.

And a plurality of Texas's highest criminal court likewise adopted the time-of-arrest rule. In *Price* v. *State*, 662 S.W.3d 428, 438 (Tex. Crim. App. 2020), the Texas Court of Appeals held that officers could search an arrestee's suitcases at the airport because those bags were in his possession at the time of arrest and would inevitably accompany him into custody. Echoing *Robinson*, the court ruled that the search-incident-to-arrest exception "does not turn on the specific nature or

character of the receptacle … but merely on" its location at the time of arrest. *Id.*

Most recently, the Iowa Supreme Court applied a categorical time-of-arrest rule for determining when a container is part of an arrestee's person. *State* v. *Scullark*, 23 N.W.3d 49, 58-59 (Iowa 2025). Drawing on *Robinson* and other authority, the court held that any item "attached to [the defendant's] person at the time of the arrest" is treated as part of the person under *Robinson*, not as part of the arrestee's immediate-control area under *Chimel* or *Gant*. *Id.* at 57-59. It characterized a fanny pack handed off by the arrestee as "an extension of his person, much like his pockets," and it held this search required no further justification. *Id.* at 60. In doing so, it acknowledged a circuit split and expressly aligned itself with the First Circuit rather than the Third, Fourth, or Tenth. *Id.* at 58.

Altogether, these jurisdictions embrace the doctrinal coherence and practical workability of applying *Robinson*'s categorical rule to bags and similar containers. They acknowledge that any container accompanying an arrestee is "part of the person" and may be searched without further justification—no matter its location or accessibility at the moment of the search.

B. Some courts hold that only officer safety or evidence preservation justify warrantless searches of bags incident to arrest.

In contrast to those courts that apply *Robinson*'s categorical test to bags, others demand a heightened, case-by-case assessment. The Third, Fourth, and Tenth Circuits, alongside the Supreme Courts of Missouri, New Mexico, and West Virginia, permit searches of bags

incident to arrest only when a threat to officer safety or risk of evidence destruction exists.

The Third Circuit was one of the first courts to apply this fact-intensive standard. In *United States* v. *Shakir*, 616 F.3d 315, 31 (3d Cir. 2010), the court upheld a post-arrest search of a gym bag Shakir had dropped on the floor. But rather than treating the arrest as creating authority to search containers in the defendant's possession, the Third Circuit preferred a circumstance-driven approach. The court reasoned that, even though Shakir was already handcuffed and flanked by officers, "there remain[ed] a reasonable possibility that [he] could access a weapon or destructible evidence in the container or area being searched." *Id.*

The Fourth Circuit, too, requires a fact-specific showing that tracks *Chimel*'s tests. In *United States* v. *Davis*, 997 F.3d 191, 194 (4th Cir. 2021), the court considered the search of a backpack that Davis had carried while fleeing. At the time of the search, the arrestee was "handcuffed and face-down" and "not within reaching distance of the backpack next to him." *Id.* at 198. Under those facts, neither *Chimel* justification could validate the search, so the court held it unlawful. *Id.* at 198-200.

The Tenth Circuit also applies a *Chimel*-style case-dependent assessment of the circumstances at the time of the search. In *United States* v. *Knapp*, 917 F.3d 1161, 1169 (10th Cir. 2019), the court held that the search of a purse was not a valid search incident to arrest. The defendant had her "hands cuffed behind her back," was standing next to one officer with two others nearby, and the purse (closed and several feet behind her) had been in the officers' exclusive control since she was handcuffed. *Id.* Those facts, the court found, foreclosed any plausible

claim that she could access the purse to seize a weapon or destroy evidence. *Id.* at 1169-70.

And three state courts have now applied *Chimel* case-by-case analysis to a carried-bag search.

The New Mexico Supreme Court did so in *State* v. *Ortiz*, 539 P.3d 262 (N.M. 2023). There, the court invalidated a search of carried purse that arrestee was carrying. *Id.* at 267. The court thought it important that, unlike "pockets," the purse "could be removed from Defendant and kept safely away from her." *Id.* (citing *Knapp*, 917 F.3d at 1166-67).

The Missouri Supreme Court takes an even more rigid view, sharply limiting searches to containers or personal effects that are physically inseparable from the arrestee. In *State* v. *Carrawell*, 481 S.W.3d 833, 836 (Mo. 2016), police arrested a defendant who was holding a plastic bag, handcuffed her, put her in the police car, and then looked inside the bag (finding heroin). The court rejected the idea that bags can be searched as part of the person, holding that the rule "applies only to items that are so intertwined with the arrestee's person that they cannot be separated from the person at the time of arrest." *Id.* at 838-40.

Finally, in the decision below, the West Virginia Supreme Court of Appeals aligned itself with jurisdictions that tether the analysis to *Chimel*. It focused solely on whether reaching-distance concerns existed at the moment of the search, relying heavily on *Davis* along the way. App.27a-28a.

Thus, in these courts, *Robinson* lives on only as the narrowest of exceptions. Police must evaluate whether an object is really an inseparable part of the arrestee's person, often in hurried or evolving circumstances. If it's

not, then they must identify specific safety and evidence concerns to justify the search. If a court can say in hindsight that such concerns weren't real, any evidence resulting from the search risks being wrongly suppressed.[1]

* * *

In short, "lower federal and state 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" when it comes to "portable container[s] capable of carrying items."." *Bembury*, 677 S.W.3d at 397. The Court should not let this "utter confusion" linger any longer. Jackie L. Starbuck, *Redefining Searches Incident to Arrest:* Gant*'s Effect on* Chimel, 116 PENN ST. L. REV. 1253, 1265 (2012).

II. This Issue Is Important—And This Case Is A Good Vehicle By Which To Resolve It.

1. This case raises a significant constitutional question about officers' authority to conduct warrantless searches of bags and other personal belongings at the time of arrest. It strikes at the heart of Fourth Amendment

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[1] Some courts have also applied *Chimel* safety and evidence considerations in evaluating the search of a bag incident to arrest without ever acknowledging *Robinson*'s categorical rule. See, *e.g.*, *United States* v. *Hill*, 818 F.3d 289, 295 (7th Cir. 2016); *United States* v. *Cook*, 808 F.3d 1195, 1199-1201 (9th Cir. 2015); *United States* v. *Perdoma*, 750-752 (8th Cir. 2010); *State* v. *Brown*, 736 S.E.2d 263, 269 (2012). And other courts have assumed for the sake of the argument that the factors apply. *Greenfield* v. *United States*, 333 A.3d 866, 876 (D.C. 2025) ("We ultimately do not pick a side in this debate because, in any event, Greenfield was neither secured nor removed from his backpack in any meaningful sense at the time of the second bag search.").

protections, a central liberty interest. That kind of issue deserves a clear answer. "When a person cannot know how a court will apply a settled principle to a recurring factual situation, that person cannot know the scope of his constitutional protection, nor can a policeman know the scope of his authority." *New York* v. *Belton*, 453 U.S. 454, 459-60 (1981). Officers cannot conduct their work appropriately if they're left to guess.

And this issue arises all the time. Arrests are common. According to an FBI estimate, more than 10 million arrests occurred in 2019 alone—a figure roughly equivalent to one arrest every three or four seconds. U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORT, CRIME IN THE UNITED STATES, 2019, at 2 (2020) https://tinyurl.com/mj39ps5w. That figure helps explain why it's "something of a misnomer" to refer to searches incident to arrest as an "exception": "[W]arrantless searches incident to arrest occur with far greater frequency than searches conducted pursuant to a warrant." *Riley*, 573 U.S. at 382 (citing 3 W. LAFAVE, SEARCH AND SEIZURE § 5.2(b) (5th ed. 2012)). And it's more than reasonable to presume that many of these arrests and searches implicate bags. See *Perez*, 113 F.4th at 139 (statement of Barron, C.J., respecting the denial of rehearing en banc) (characterizing this scenario as "mundane"). Again, officers should not be left to wonder what standard governs these interactions, which are a standard function of police work.

The happenstance of geography currently decides the question. Indeed, rules for searches can vary even within the same jurisdiction—as in Colorado, for example—depending on whether federal or state precedent controls. This setup "ha[s] a variety of important real-world [negative] consequences." Wayne A. Logan, *A House Divided: When State and Lower Federal Courts Disagree*

on Federal Constitutional Rights, 90 NOTRE DAME L. REV. 235, 258 (2014).

The barrage of recent petitions to the Court on this precise question shows how pervasive the issue really is. At least four petitions in just the last two years have sought clarity on the exact same question. See Petition for Writ of Certiorari, *Scullark* v. *Iowa*, 2025 WL 3620408 (U.S. Dec. 15, 2025) (No. 25-331); Petition for Writ of Certiorari, *Bembury* v. *Kentucky*, 144 S. Ct. 1459 (2024) (No. 23-802); Petition for Writ of Certiorari, *Perez* v. *United States*, 145 S. Ct. 1469 (2025) (No. 24-577); Petition for Writ of Certiorari, *Miffin* v. *United States*, 145 S. Ct. 1101 (2025) (No. 24-6024). Although those cases might have presented factual disputes or alternative rationales that justified denying the petitions, the issues remain important all the same.

The sheer number of cases comprising the split likewise confirms that the issue is appearing in courts time and again—and that's even truer if one accounts for the decisions arising in intermediate and trial courts, too. See, *e.g.*, *People* v. *Brown*, 828 N.Y.S.2d 550, 551 (N.Y. App. Div. 2007) (approving, without analysis, the search of a knapsack in the arrestee's possession at the time of arrest); *State* v. *Crager*, 113 N.E.3d 657, 664 (Ind. Ct. App. 2018) (holding that an arrestee's backpack is "immediately associated with" the person and thus categorically searchable incident to arrest); *State* v. *Brownlee*, 461 P.3d 1015, 1021-22 (Or. Ct. App. 2020) (taking a time-of-arrest approach and allowing search incident to items possessed at the time of arrest and items or area "immediately associated with the arrestee at that time").

And there's no sign that the problem will relent any time soon, even after the Court has reaffirmed *Robinson* more than once.

2. This case is an ideal vehicle to resolve the issue. The facts are largely undisputed. The arrest was concededly lawful—triggering *Robinson*'s per se rule. The backpack was on Allman immediately before the arrest. But the Supreme Court of Appeals firmly favored *Chimel* over *Robinson* anyway. App.26a-27a. The court then reversed the trial court's determination and found that the *Chimel* rationale did *not* justify the search—suppressing key evidence and overturning jury convictions on four felony drug counts. App.30a-32a.

The issues were presented straight up and square. In the face of West Virginia's binding *Chimel*-like precedent, the State chiefly argued that concerns were present that would justify the search even under *Chimel*. But it further the court "should not extend *Gant* but should, instead, consider the search of the backpack as a search of Mr. Allman's person incident to arrest under *United States* v. *Robinson*." App.27a; see W. Va. Notice of Add. Auths., *State* v. Allman, 2025 WL 3158508 (W. Va. Nov. 12, 2025) (No. 23-421) (discussing *Scullark*, *Perez*, and *Robinson*); cf. *Joseph* v. *United States*, 135 S. Ct. 705, 706-07 (2014) (Kagan, J., respecting the denial of certiorari) (collecting instances in which arguments were properly raised in a similar posture). The Supreme Court of Appeals then considered and rejected *both* the State's arguments. See App.31a.

This Court should now step in.

III. The Decision Below Is Egregiously Wrong.

Robinson, not *Chimel*, provides the clear, administrable standard that allows law enforcement officers to comply with the Fourth Amendment while performing their duties even in fast-moving situations. See *Moore*, 553 U.S. at 175 (noting how the Court has

"given great weight to the 'essential interest in readily administrable rules'" in the Fourth Amendment context). The Supreme Court of Appeals erred in casting *Robinson* aside anyway.

Robinson has a long lineage. The case authorizes the search of an arrestee's person incident to a lawful custodial arrest because of the inherent concerns about danger and spoliation arising from the arrest itself. 414 U.S. at 235-36. "The person" includes items carried at or immediately before arrest. *Id.* The Court did not distinguish between searching the arrestee's body and inspecting items on the arrestee's person. See *id.* *Edwards* then extended this principle to clothing worn at arrest—even after the arrestee was in custody—confirming that a nexus between object and person at the time of arrest is all that's required. 415 U.S. at 807-09. Sure enough, *Chadwick* confirms that *Robinson* applies to "personal property … immediately associated with the person of the arrestee," while excluding larger or detached containers not carried on the person. 433 U.S. at 15. And *Riley* reaffirmed this distinction, emphasizing that *Robinson* remains the governing precedent for physical items found on the person. 573 U.S. at 386. It even cited lower-court decisions upholding searches of wallets, purses, bags, and other personal effects, further confirming that items personally worn or carried are treated as part of "the person" for *Robinson* purposes. *Id.* at 392-93 (citations omitted).

Applying *Robinson* and its progeny should have made this case an easy one. Allman was lawfully arrested, and the bag was lawfully seized. App.28a. Allman's backpack was in his actual physical possession until just seconds before arrest. App.11a-12a; see also App.22a ("Mr. Allman was clearly in possession of the backpack, until he

set the bag down as he approached Sgt. McGary."). He made eye contact with the officer and then dumped the bag a few steps away. App.12a. The backpack was searched on-scene very shortly after arrest. App.13a-14a. It was not locked. See App.13a-14a. Under *Robinson*, the backpack was thus part of his person and categorically searchable as an incident to his lawful arrest.

The Supreme Court of Appeals instead chased irrelevancies. It should not have mattered, for instance, that Allman was secured near the police cruiser near other officers. See *Gustafson*, 414 U.S. at 262 n.2 (affirming search incident to arrest even though the arrestee was secured in the back of a police cruiser and in the presence of multiple officers); see also, *e.g.*, *United States* v. *Cobb*, No. 23-11876, 2024 WL 3874204, at *1 (11th Cir. Aug. 20, 2024) (similar). Nor should it have mattered that Allman was handcuffed—that fact is often not enough even for courts that apply a *Chimel*-style rationale. See, *e.g.*, *United States* v. *Ferebee*, 957 F.3d 406, 419 (4th Cir. 2020); *Shakir*, 616 F.3d at 319-21. It also should not have mattered that the bag was physically off Allman's body by the time the officer effectuated the arrest. The bag was "immediately associated with the person of the arrestee," *Chadwick*, 433 U.S. at 15; Allman dropped it seconds before the arrest while the officer was walking toward him, see App.12a (describing how Allman kept the bag with him until just before the officer reached him). And it was also beside the point that the search took place some distance away from Allman and a few minutes after; *Edwards* stands for at least that much.[2] 415 U.S. at 807.

[2] The backpack was large enough to conceal a weapon (and the officer had already seen Allman dispose of one weapon); the scene was unsecured while confederates were around; Allman was uncooperative; it was a public garage at nighttime; and another

Although the Supreme Court of Appeals said it was not yet adopting "*Gant* outside the vehicle context," App.28a, it substantively did so. Compare *Gant*, 556 U.S. at 343 (authorizing a search of a vehicle incident to arrest "only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search"), with App.30a (finding search improper because, at the time of the search, "Mr. Allman was secure, and the backpack was not under Mr. Allman's physical control"). That tacit extension was wrong. Most obviously, *Gant* was specifically limited to cars. *Riley*, 573 U.S. at 384 ("*Gant* … analyzed searches of an arrestee's vehicle."); see also, *e.g.*, *Feaster* v. *State*, 47 A.3d 1051, 1068 (Md. Ct. App. 2012) ("*Arizona v. Gant* … dealt exclusively with the narrow problem of how to apply the *Chimel* perimeter to the passenger compartment of an automobile … [and] never presumed to deal more broadly with anything else.").

The opinion below reads like a mistaken repudiation of *Robinson*'s categorical rule.

But *Robinson* provides important predictability in tense situations. An officer should not have to weigh a constellation of ambiguous factors before deciding whether an object on the person can be searched. "A highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions, may be the sort of heady stuff upon which the facile minds of lawyers and judges eagerly feed, but they may be literally impossible of application by the officer in the field." Wayne R. LaFave,

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person had tried to claim the backpack. App.11a-13a. These facts, too, were not necessary under *Robinson*, but they confirm that the search was reasonable and consistent with the Fourth Amendment. The Supreme Court of Appeals ignored them.

"Case-By-Case Adjudication Versus "Standardized Procedures": The Robinson Dilemma, 1974 SUP. CT. REV. 127, 141. Thus, "[t]here is nothing irrational about broader police authority to search for evidence when and where the perpetrator of a crime is lawfully arrested. The fact of prior lawful arrest distinguishes the arrestee from society at large, and distinguishes a search for evidence of his crime from general rummaging." *Thornton*, 541 U.S. at 630 (Scalia, J., concurring in the judgment) (cleaned up).

On the other hand, a *Chimel*-style analysis invites defendants to engage in dump-and-run tactics to hide their dangerous or unlawful items. Or worse still, the rule could "create a perverse incentive for an arresting officer to prolong the period during which the arrestee is kept in an area where he could pose a danger to the officer." *United States* v. *Abdul-Saboor*, 85 F.3d 664, 669 (D.C. Cir. 1996). Even the Fourth Circuit once recognized that "officers may separate the suspect from the item to be searched, thereby alleviating their safety concerns, before they conduct the search." *United States* v. *Currence*, 446 F.3d 554, 557 (4th Cir. 2006) (cleaned up). Yet the decision below takes that option off the table. And to what end? "[I]t is not apparent that the [non-categorical] rule will, as a practical matter, reduce the number of warrantless searches of such containers after arrest of the person in possession." WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 5.5(a) (6th ed. 2025 update). "The police can hardly leave [a bag] at the arrest scene and, once having seized it, will be entitled to inventory it at the station." *Id.*

For reasons like these, *Robinson* should live on. "Beyond workability, the relevant factors in deciding whether to adhere to the principle of stare decisis include

the antiquity of the precedent, the reliance interests at stake, and of course whether the decision was well reasoned." *Montejo* v. *Louisiana*, 556 U.S. 778, 792–93, (2009). Each of those factors favors the State here. *Robinson* was reaffirmed not so long ago. *Birchfield*, 579 U.S. at 460. It has become an essential part of how police operate. And the concerns that led the Court to adopt a categorical rule then remain the same today. See Orin S. Kerr, *Foreword: Accounting for Technological Change*, 36 HARV. J.L. & PUB. POL'Y 403, 406 (2013) ("When the police search physical evidence, the *Robinson* rule should still apply. The facts of physical searches remain the same as they have been.").

At bottom, if *Robinson* is to be overruled, it was not the lower court's role to do so. "[O]nly this Court may overrule one of its precedents. Until that occurs, [*Robinson*] is the law, and the decision below cannot be reconciled with it." *Thurston Motor Lines, Inc.* v. *Jordan K. Rand, Ltd.*, 460 U.S. 533, 535 (1983).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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