No. 20-5133

IN THE SUPREME COURT OF THE UNITED STATES

STEVEN BAXTER, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

JEFFREY B. WALL
Acting Solicitor General
Counsel of Record

BRIAN C. RABBITT
Acting Assistant Attorney General

JOHN M. PELLETTIERI
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether the court of appeals correctly determined that the warrantless search by federal customs officers of packages crossing the customs border between the United States customs territory and the United States Virgin Islands did not violate the Fourth Amendment.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (D.V.I.):

United States v. Baxter, No. 17-cr-24 (Nov. 26, 2018)
(order granting motion to suppress)

United States Court of Appeals (3d Cir.):

United States v. Baxter, No. 18-3613 (Feb. 21, 2020)

IN THE SUPREME COURT OF THE UNITED STATES

No. 20-5133

STEVEN BAXTER, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 3a-25a) is reported at 951 F.3d 128. The opinion of the district court (Pet. App. 28a-69a) is not published in the Federal Supplement but is available at 2018 WL 6173880.

JURISDICTION

The judgment of the court of appeals (Pet. App. 1a-2a) was entered on February 21, 2020. A petition for rehearing was denied on April 29, 2020 (Pet. App. 26a-27a). The petition for a writ of certiorari was filed on July 14, 2020. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

A federal grand jury in the District of the Virgin Islands returned a superseding indictment charging petitioner with two counts of unlawfully transporting a firearm, in violation of 18 U.S.C. 922(a)(5), 924(a)(1)(D), and 2 . Superseding Indictment 1-2. The district court granted petitioner's motion to suppress certain evidence uncovered in a search of packages the government traced to petitioner. Pet. App. 28a-69a. The court of appeals vacated and remanded for further proceedings. Id. at 3a-25a.

1. On March 31, 2017, a U.S. Customs and Border Protection (CBP) officer at the airport in St. Thomas, U.S. Virgin Islands (Virgin Islands), brought a certified drug-detection dog onto a cargo plane to inspect mail arriving in the Virgin Islands. Pet. App. 6a; Gov't C.A. Br. 2. The dog alerted to the odor of drugs in a package that had been sent from South Carolina by U.S. priority mail. Pet. App. 6a. The sender listed on the package was "Jason Price" at an address in South Carolina, and the package was addressed to a person named "Mekelya Meade" in St. Thomas. Ibid. Another CBP officer opened the package and found ammunition and a disassembled firearm wrapped in a sweater that smelled strongly of marijuana. Ibid.

Three days later, a postal inspector contacted CBP about another package that had arrived in the Virgin Islands from South Carolina, that bore the same names and addresses as the package inspected on March 31, and that was similar in weight, shape, and

size. Pet. App. 6a-7a; see Gov't C.A. Br. 2. An x-ray examination revealed what appeared to be a firearm and ammunition inside the package. Pet. App. 7a; Gov't C.A. Br. 3. A CBP officer then opened the package and found that it contained a firearm and ammunition. Pet. App. 7a. Federal officers arranged a controlled delivery of the two packages and ultimately determined that petitioner had sent them. Ibid.

2. A grand jury in the District of the Virgin Islands returned a superseding indictment charging petitioner with two counts of unlawfully transporting a firearm, in violation of 18 U.S.C. 922(a)(5), 924(a)(1)(D), and 2. Superseding Indictment 1-2; see Pet. App. 7a.

Petitioner filed a motion to suppress both of the firearms, contending that the CBP officers' warrantless searches of the two mailed packages in which the firearms were found violated the Fourth Amendment. Pet. App. 7a-8a. The district court granted the motion. Id. at 28a-69a. The court recognized that the Fourth Amendment permits customs officers to search mail at the border without a warrant. Id. at 42a-44a (citing, inter alia, United States v. Ramsey, 431 U.S. 606 (1977)). The court took the view, however, that the border-search doctrine applies only to searches conducted at the international border between the United States and foreign territory, not to searches of items that "originate in, and stay within, the territory of the United States." Id. at 64a; see id. at 45a-50a.

The district court additionally acknowledged that "some type of border -- or an approximation of one -- exists between the United States Virgin Islands and the rest of the United States" for certain customs purposes, Pet. App. 59a, and that the Third Circuit had "held 'that routine customs search[es] of persons and their belongings without probable cause as they leave the Virgin Islands for the continental United States are not unreasonable under the Fourth Amendment,'" id. at 43a n.3 (quoting United States v. Hyde, 37 F.3d 116, 117 (3d Cir. 1994)). But the district court viewed the searches here to be unconstitutional because -- unlike the passengers in Hyde, who had traveled from the Virgin Islands to the mainland -- the packages at issue here had traveled from the mainland United States to the Virgin Islands, and in the court's view, the rationale for the border-search doctrine does not apply in that context. Id. at 59a-65a.

3. The court of appeals vacated and remanded. Pet. App. 3a-25a.

The court of appeals explained that this Court's decisions have long recognized that "'border searches [a]re not subject to the warrant provisions of the Fourth Amendment and [a]re "reasonable" within the meaning of that Amendment.'" Pet. App. 15a (quoting Ramsey, 431 U.S. at 617). The court of appeals observed that "individuals have 'limited justifiable expectations of privacy' when presenting themselves or their mailed parcels" at a border and that "the balance between an individual's lesser

expectation of privacy at a border tilts more favorably to the Government, which has a heightened interest in regulating the collection of duties and preventing the entry of contraband." Ibid. (quoting Ramsey, 431 U.S. at 623 n.17, and citing United States v. Montoya de Hernandez, 473 U.S. 531, 537, 539-540 (1985)).

The court of appeals additionally observed that, in United States v. Hyde, supra, it had determined that "the rationale of [this] Court's international border-search cases applies with equal force at the customs border that Congress established between the mainland United States and the Virgin Islands." Pet. App. 16a. The court noted that, in Hyde, it had explained that, "[l]ike searches at an international border, routine warrantless searches at the Virgin Islands customs border would serve the United States' interest in regulating its customs system" and "would appear to be as essential to the accomplishment of the objects of that customs border as similar traditional searches have universally been recognized to be to the objectives of traditional customs systems at international borders." Id. at 17a (citation omitted). And the court noted Hyde's further determination that, "on 'the other side of the balance,' * * * individuals at the customs border, like at an international border, have a lesser privacy expectation than they would within the mainland United States." Ibid. (citation omitted). The court accordingly explained that its decision in Hyde had "established that the border-search exception to the Fourth Amendment permits routine warrantless customs

searches at the customs border between the mainland United States and the Virgin Islands" and that "Hyde's vitality is undiminished." Id. at 18a.

The court of appeals reasoned that "[t]he routine customs searches of [petitioner's] packages were reasonable" under its decision in Hyde unless, as the district court had found, "it ma[de] a difference that the packages were leaving the mainland United States rather than entering into it." Pet. App. 19a. The court determined that "this directional distinction * * * made no material difference." Id. at 20a. The court noted that, like "every [c]ourt of [a]ppeals to have considered the issue," it had previously recognized that "[t]he border-search exception applies regardless of the direction of a border crossing." Ibid. (citing United States v. Ezeiruaku, 936 F.2d 136 (3d Cir. 1991)); see id. at 20a-22a & n.15 (collecting cases). The court observed that the justifications for the border-search doctrine apply to searches of "persons and items that exit the country as well as those that enter it," including the government's "interest in regulating commerce to enforce its customs border with the Virgin Islands," as well as its "interest in monitoring the outflow of unreported cash that may be supporting the illegal narcotics trade" that in turn contributes to an "influx of illicit items into the United States." Id. at 22a.

ARGUMENT

Petitioner renews his contention (Pet. 4-13) that the search by CBP officers of the packages arriving in the Virgin Islands violated the Fourth Amendment. The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of this Court or any other court of appeals. Further review is not warranted.

1. As the court of appeals recognized, "searches at a border are, and always have been, a fundamentally different category of search." Pet. App. 14a. "Since the founding of our Republic, Congress has granted the Executive plenary authority to conduct routine searches and seizures at the border, without probable cause or a warrant, in order to regulate the collection of duties and to prevent the introduction of contraband into this country." United States v. Montoya de Hernandez, 473 U.S. 531, 537 (1985); see also United States v. 12 200-Foot Reels of Super 8mm. Film, 413 U.S. 123, 125 (1973) (characterizing border searches as "necessary to prevent smuggling and to prevent prohibited articles from entry"). "Th[e] longstanding recognition that searches at our borders without probable cause and without a warrant are nonetheless 'reasonable' has a history as old as the Fourth Amendment itself." United States v. Ramsey, 431 U.S. 606, 619 (1977). This Court has reaffirmed this understanding "[t]ime and again." United States v. Flores-Montano, 541 U.S. 149, 152 (2004).

This Court's border-search decisions to date have concerned searches at an international border "or its functional equivalent." Pet. App. 15a (citation omitted). As the court of appeals correctly recognized, however, the border-search doctrine is likewise applicable to routine customs searches conducted at a customs border that separates an unincorporated U.S. territory from the mainland United States and other areas that are included within the U.S. customs territory -- which encompasses the fifty States, the District of Columbia, Puerto Rico, and other incorporated territories. Pet. App. 15a-18a & n.11 (discussing United States v. Hyde, 37 F.3d 116 (3d Cir. 1994)); see 19 U.S.C. 1401(h). A central basis for the border-search doctrine is the well-understood right of the sovereign to enforce the customs laws, both by promoting revenue collection and by facilitating the interdiction and seizure or exclusion of illegal goods -- a right that applies with full force to that customs border.

As early as Boyd v. United States, 116 U.S. 616 (1886), this Court explained that customs searches to enforce the revenue laws and collect customs duties were not regarded as unreasonable at the time of the adoption of the Bill of Rights and therefore were not prohibited by the Fourth Amendment. Id. at 622-623. The Court distinguished searches for "goods liable to duties and concealed to avoid the payment thereof" from other types of searches. Id. at 623. The Court additionally explained that customs searches had been authorized under English law for hundreds of years and

similarly "have been authorized by our own revenue acts from the commencement of the government" -- in particular, the "first statute passed by Congress to regulate the collection of duties, the act of July 31, 1789." Ibid. Because "this act was passed by the same Congress which proposed for adoption the original amendments to the Constitution," the Court explained, "it is clear that the members of that body did not regard searches and seizures of this kind as 'unreasonable,' and they are not embraced within the prohibition of the amendment." Ibid.

Searches of persons or articles traveling between the U.S. customs territory and the Virgin Island implicate the same considerations. This Court has long recognized Congress's authority to create a customs border separating unincorporated United States territory from the rest of United States. In Downes v. Bidwell, 182 U.S. 244 (1901), the Court concluded that Congress had not incorporated Puerto Rico and therefore could validly impose a duty on goods imported from Puerto Rico into the mainland without violating Sections 8 or 9 of Article I of the Constitution, which mandate uniform duties, imports, and excises throughout the United States and prohibit duties on goods shipped between the States. See Hyde, 37 F.3d at 120 (discussing Downes). The Court later upheld a similar duty on goods from the Canal Zone in David Kaufman & Sons Co. v. Smith, 216 U.S. 610 (1910) (per curiam); see id. at 611.

Congress has exercised that authority to create a customs border between the Virgin Islands (and other unincorporated territories) and the U.S. customs territory. Since the purchase of the Virgin Islands from Denmark in 1917 until the present, Congress has "impose[d] a border between the Virgin Islands and the rest of the United States for customs purposes." Hyde, 37 F.3d at 121. Congress has enacted a customs duty on "all articles coming into the United States or its possessions from the Virgin Islands" as if the articles were "imported from foreign countries," 48 U.S.C. 1394, and it has directed the revenue to be "used and expended for the government and benefit of the Virgin Islands," 48 U.S.C. 1396; see Hyde, 37 F.3d at 121. Congress has also delegated authority to the local Virgin Islands legislature to impose a customs duty "on the importation of any article into the Virgin Islands for consumption therein," capped at "6 per centum ad valorem" or its equivalent, 48 U.S.C. 1574(f)(1) and (1)(A), and has directed that these duties are similarly to be expended to benefit and govern the Virgin Islands, see 48 U.S.C. 1396, 1642, 1642a.

In addition, Congress has directed federal customs officials to make "rules and regulations" and appoint "officers and employees" to administer those customs laws. 48 U.S.C. 1406i. And, consistent with those customs laws, "the Tariff Act of 1930 specifies that the United States customs territory excludes the Virgin Islands." Hyde, 37 F.3d at 121. For purposes of that

statute, "[t]he term 'United States' includes all Territories and possessions of the United States except the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and the island of Guam." 19 U.S.C. 1401(h); see 19 C.F.R. 7.2(a), 101.1. Accordingly, the "current legal relationship between the Virgin Islands and the United States is not materially different from that of Puerto Rico and the Panama Canal Zone at the time Downes and David Kaufman were decided," and therefore "it is clear that Congress has the authority to create a border for customs purposes between the Virgin Islands and the rest of the country." Hyde, 37 F.3d at 121. Federal regulations further specify that, with limited exceptions, "all mail arriving from outside the U.S. Virgin Islands which is to be delivered within the U.S. Virgin Islands[] is subject to Customs examination." 19 C.F.R. 145.2(b); see also 19 C.F.R. 145.3(a).

2. Petitioner does not challenge the border-search doctrine generally. And he does not appear to dispute in this Court the court of appeals' determination that the border-search doctrine applies to searches of goods that cross the internal customs border traveling from the Virgin Islands to the U.S. customs territory that includes the mainland. See Pet. 9 (acknowledging that "it might be constitutionally permissible to treat entry into the continental United States from the [Virgin Islands] similar to entry from a foreign country (due to the internal/domestic customs border)" (emphasis omitted)). He instead contends (Pet. 9-10)

that, even if the border-search doctrine applies in that circumstance, it nevertheless does not apply to searches of persons or goods crossing that same border "in the other direction," i.e., from the U.S. customs territory to the Virgin Islands. Like every circuit to have considered the question, the court of appeals correctly rejected the contention that the applicability of the border-search doctrine depends on the direction of travel of the persons or goods crossing the border. Pet. App. 19a-22a.

As the court of appeals explained, "[t]he United States has an interest in monitoring persons and items that exit the country as well as those that enter it." Pet. App. 21a-22a. Petitioner does not appear to dispute the government's "interest in regulating commerce to enforce its customs border with the Virgin Islands," which "applies to goods and currency both entering and leaving the mainland by crossing that customs border." Id. at 22a. And that interest in interdicting "the influx of illicit items into the United States, such as drugs or similar contraband, gives rise to a parallel interest in monitoring the outflow of unreported cash that may be supporting the illegal narcotics trade." Ibid. Furthermore, the government "has an additional interest in protecting its territories from the entry of illicit items like drugs and guns." Id. at 22a & n.16. No sound reason exists for excluding searches of persons or articles crossing an internal customs border based solely on the direction the persons or articles are traveling.

Petitioner errs in contending (Pet. 12-13) that Torres v. Puerto Rico, 442 U.S. 465 (1979), compels a contrary conclusion. In Torres, the Court held invalid a law enacted by the Commonwealth of Puerto Rico permitting police officers to search the luggage of any person arriving in Puerto Rico from the United States. Id. at 468-474. The Court rejected the Commonwealth's effort to justify the law by analogizing to "customs searches at a functional equivalent of the international border of the United States." Id. at 472. The Court explained that "[t]he authority of the United States to search the baggage of arriving international travelers is based on its inherent sovereign authority to protect its territorial integrity" and that, unlike the federal government, "Puerto Rico has no sovereign authority to prohibit entry into its territory; as with all international ports of entry, border and customs control for Puerto Rico is conducted by federal officers." Id. at 472-473.

Torres does not support petitioner's contention that the border-search doctrine is inapplicable to travel from the U.S. customs territory to the Virgin Islands. Unlike the United States, which has authority to create a customs border excluding the Virgin Islands, the territorial government of Puerto Rico had no authority to enact a law erecting a border between Puerto Rico and the rest of the United States, or authorizing its officers to police such a border. Moreover, by the time Torres was decided, Puerto Rico was within the U.S. customs territory, 19 U.S.C. 1401(h) (1976),

and no customs duties applied to its commerce with the mainland United States, 48 U.S.C. 738 (1976). In contrast, Congress has excluded the Virgin Islands from U.S. customs territory, and does both impose and allow customs duties on commerce between that territory and the Virgin Islands. See pp. 10-11, supra. The customs-focused rationale the court of appeals identified as supporting the search here thus was not implicated in Torres.

3. Petitioner does not contend that the decision below conflicts with a decision of any other court of appeals. As the court of appeals observed, its conclusion that the direction of travel is irrelevant to the border-search doctrine's application accords with the decisions of every other court of appeals to have considered the issue. Pet. App. 20a-21a & n.15. Further review is not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

JEFFREY B. WALL
Acting Solicitor General

BRIAN C. RABBITT
Acting Assistant Attorney General

JOHN M. PELLETTIERI
Attorney

DECEMBER 2020