No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

TAMARAN EDWARD BONTEMPS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

_____

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Police seized Mr. Bontemps, a young Black man, when he was walking on a sidewalk with three other young Black men. The police had received no background reports of any criminal activity. The officer stopped Mr. Bontemps midafternoon and in a general mixed commercial-residential area.

The reasonable suspicion standard of *Terry v. Ohio*, 392 U.S. 1, 16 (1968), requires the police to have had an objective and particularized basis to believe that Bontemps had committed or was about to commit a crime.

Does a sweatshirt bulge alone give an objectively reasonable and particularized suspicion to stop Bontemps?

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MISCELLANEOUS

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PETITION FOR CERTIORARI

TAMARAN EDWARD BONTEMPS petitions for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit in his case.

OPINIONS BELOW

The Ninth Circuit's panel opinion affirming the district court's denial of a motion to suppress published as *United States v. Bontemps*, 977 F.3d 909 (9th Cir. 2020). It is included in the Appendix at App.-1 to App-19. Its unpublished order denying a timely filed petition for rehearing *en banc* was filed December 24, 2020. It is included in the Appendix at App.-20. The district court's decision denying the motion to suppress was unpublished. It is included in the Appendix at App.-21 to

App.-26. The transcript of the district court's hearing on the suppression motion was held on October 23, 2018. It is reproduced in the Appendix at App.-27 to App.-90.

JURISDICTION

The Ninth Circuit's opinion was filed on October 13, 2020. App.-1. Mr. Bontemps's timely petition for rehearing *en banc* was denied on December 24, 2020. App.-27. This petition is being timely filed within 150 days of that date. *See* 589 U.S. __ (order dated March 19, 2020). This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The provisions of law whose application is disputed in this case include the Fourth Amendment to the United States Constitution which reads:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Constitution, Amend. IV.

/ / /

STATEMENT OF THE CASE

1. This case is about a stop and search based on a clothing bulge. Not a gun shaped bulge. Just a bulge. A bulge that might be caused by any number of things such as a shoulder bag hidden to deter purse snatching, a newly purchased first baseman's mitt tucked away from a rainy drizzle, a gift purchased on the sly for a friend one is walking with, a shoulder holster bag for carrying a wallet, cell phone and any number of other perfectly lawful things.[1/]

[1]First image is of Belle Leather Clutch by Marcellamoda, New York (available at: https://www.marcellamodanyc.com/products/leather-clutch-1089); second two are "Leather Holster bag/ Leather harness bag/ shoulder holster bag/Festival bag/Unisex Steampunk bag by PankotaiLeather, available at: https://www.etsy.com/listing/812762958/leather-holster-bag-leather-harness-bag?ga_order=most_relevant&ga_search_type=all&ga_view_type=gallery&ga_search_query=shoulder+holster+bag&ref=sr_gallery-1-4 (last accessed November 27, 2020).

The Ninth Circuit holds that a clothing bulge provides reasonable suspicion that a person is engaged in criminal activity and permits the police to seize that individual. The Circuit relies on no other facts to support the seizure. This holding is exceptionally broad. To uphold the stop and search, the majority recast this case from a legal question based on the district court's limited factual finding into a clear error review case. It did so by making factual findings the district court judge specifically declined to make.

2. On April 18, 2018, Mr. Bontemps and three other young Black men were walking on a sidewalk in Vallejo, California. There were no reports of a crime or that any of the men matched the description of someone lawfully subject to arrest. They were simply Black men walking. A little before 4:00 p.m., two police officers stopped the men at gun point.

The only facts known to the two officers at the time of the Bontemps's stop were these: Bontemps and the men with him appeared to be young African American men walking on a sidewalk and something was under his sweater shirt. His sweathshirt has an obvious bulge above the waist.

3. The men complied with the officers orders to stop. As directed, each man sat down on the sidewalk and raised their hands. Mr. Bontemps verbally protested his detention, arguing the officers lacked the legal right to stop them. Detective Tonn

repeatedly ordered Mr. Bontemps to shut up and then tased him. Mr. Bontemps fell backward, striking his head on the ground; his body seized from the electric shocks. He nonetheless complied with Detective Tonn's order to roll over onto his stomach and put his hands behind his back. Bontemps was handcuffed and then searched. Officers found a firearm.

4. The government charged Mr. Bontemps with being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g). Mr. Bontemps moved to suppress all evidence obtained as a result of an unlawful seizure and subsequent search. The district court held an evidentiary hearing, heard testimony from both officers, and denied the motion. App.-21 to App.-90. Mr. Bontemps pleaded guilty to being a felon in possession of a firearm in a plea agreement that preserved his right to appeal the denial of his motion to suppress evidence and statements. The district court sentenced Mr. Bontemps to prison, where he remains, serving a 57-month prison term.

5. During district court's evidentiary hearing, the court heard testimony from the two officers. The judge expressed concern that Detective Tonn's report did not state whether he saw a bulge in Bontemps's clothing before or after the stop. (App.-40, App.-43.) After hearing testimony, the district court judge again expressed concerns about the officers' recollections, calling the testimony conflicting and not credible. (App.-81 to App.-82.) Nonetheless, the district court listened to the government's

argument trying to reconcile the testimony – asserting the two officers' testimony was based on their noticing the men at different moments. (App.-82 to App.-85.) The district court did not resolve numerous inconsistencies in the officers' reports and testimony. The trial judge found Mr. Bontemps was walking with Mr. Mills with two other young African American men following behind them on the sidewalk. (App.-21 to App.-22.) Detective Barreto testified he drove past the young men twice before pulling his SUV up behind the men and ordering them to stop. (App.-67 to App.-70) (describing first driving eastbound in the same direction as the men walking, turning around twice). Detective Tonn testified they drove past once before turning around and stopping the men. (App.-46 to App.-47) (describing first driving westbound in the opposite direction as the men). The district court found:

> Detective Barreto's crime report indicates that he was driving westbound on Robles Way when he observed a bulge in the front pocket of the young man walking in the front of the group, Quinton Mills. Both detectives' reports indicate that the object inside Mr. Mills' pocket appeared to be very heavy, causing the pocket to sag. The reports noted the detectives' beliefs that the object in Mills' pocket was a firearm. Tonn also reported that he saw a bulge on Bontemps's left waist/side area.

(App-22.) Detective Tonn testified that the bulge in Bontemps's clothing was "very large and obvious." (App.-50.) The district court did not adopt this factual detail; it merely found "Tonn . . .reported that he saw a bulge on Bontemps's left waist/side area." (App.-22.) Nor did the district judge factually find that this bulge was gun

shaped. The judge credited only that the bulge was "visible above the waist" and visible from inside the patrol car. (App.-25.) The judge specifically relied on the body cam video to corroborate and so credit these two findings. *Id*. He did not rely on Detective Tonn's testimony alone.

Even though Bontemps sweatshirt was not zippered all-the-way closed, it was closed enough that while he was simply walking his sweatshirt's fabric completely covered the object underneath. A still from an officer's bodycam shows the bulge is visible, on Bontemps's torso on the left side above the waist, but neither a gunshape nor a gun is visible. The bodycam footage does not show Bontemps's position when Detective Tonn made his observations. Thus, the only information Detective Tonn had to spark his belief that Bontemps had a gun was "a bulge" in his sweatshirt. The other facts available to Tonn – Bontemps being young, male, and African American walking down a sidewalk with other young men does not give reasonable suspicion that "crime is afoot." *See Terry v. Ohio,* 392 U.S. 1, 20, 17, 88 S. Ct. 868, 20 L. Ed. 2d 889 (1968) (requiring reasonable suspicion supported by articulable facts that criminal activity "may be afoot" before constitutionally supporting a stop).

As Judge Gwin succinctly explained in his dissent in the Ninth Circuit opinion, there is a marked difference between testifying that the bulge was obvious and testifying it was obviously a gun:

> Contrastingly, Tonn never describes Bontemps's bulge as firearm shaped.
>
> The majority emphasizes Tonn described Bontemps's bulge as obvious. But Detective Tonn never described the bulge as obviously a firearm. The majority also relies on the detectives' bodycam footage. The majority states "[the] footage plainly supports Tonn's testimony because it shows an obvious bulge on Bontemps's sweatshirt that *distinctly resembles the shape of a firearm*."
>
> But the bodycam footage is not what Detective Tonn saw before the stop. Every day we see individuals walking down sidewalks. Almost never do we see people strolling down sidewalks with their arms raised in a surrender position.
>
> As the majority acknowledges, "[t]he bodycam footage for the most part depicts events after the seizure had already occurred," and after the point at which the *Fourth Amendment* requires reasonable suspicion for a stop. Moreover, the bodycam footage does not show Bontemps's position when Tonn made his observations. Rather, it shows Bontemps walking towards the detectives, within one car lane width and within 12 feet, and with his hands out at his side.
>
> Further, the bodycam footage was not taken from the passenger seat of the patrol car, through the front window, past Officer Barreto, and across the road. Instead, it shows the perspective from a standing and nearby officer.
>
> Contrary to the majority's insistence, this is a case where an individual was stopped for a non-descript bulge with officers lucking upon a gun.

Bontemps, 977 F.3d at 922 (internal footnotes omitted); App.-18.

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REASON FOR GRANTING THE WRIT

Review Should Be Granted to Correct the Ninth Circuit's Open Ended Holding that Permits Warrantless Stops Based Only on a "Sweatshirt Bulge" as it Conflict with this Court's Precedents

Before an police officer can stop and seize a person, the officer must suspect the particular person of criminal activity. While reasonable suspicion is an "abstract" concept that cannot be reduced to "a neat set of legal rules," *United States v. Arvizu,* 534 U.S. 266, 273, 122 S. Ct. 744, 751, 151 L. Ed. 2d 740 (2002), the standard is not open ended. "'An investigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity.'" *Id*., 534 U.S. at 273 (quoting *United States v. Cortez,* 449 U.S. 411, 417, 66 L. Ed. 2d 621, 101 S.Ct. 690 (1981).) The officer ordinarily must offer some explanation of why he or she regarded the conduct as suspicious; otherwise, there is no ability to review the officer's action. The courts have an obligation to review "each case to see whether the detaining officer has a "particularized and objective basis" for suspecting legal wrongdoing." *Arvizu*, 534 U.S. at 273. The stop must be based on "specific and articulable facts" particularized to the individual, *Terry*, 392 U.S. at 21.

It is not the reviewing Court's role to fill in factual details that the district court did not find or the officer did not articulate when he explained why he made the stop. Here, the district court conducted a contested evidentiary hearing, found the two

officers's testimony to be conflicting and, in the end, upheld the stop based solely on its finding that Detective Tonn had seen a bulge in Mr. Bontemps clothing from across more than a lane of traffic. As this observation was made before the stop, the district court denied the motion to suppress. The district court did not find that Tonn saw a gun-shaped bulge before Tonn ordered Bontemps and his walking companions to stop. The district court found a visible bulge justified the stop, nothing more:

> The district court found a reasonable suspicion for the stop based on only one detective's testimony that he saw a nondescript sweatshirt bulge as Bontemps walked on the opposite side of the street. The detective said that he believed the bulge suggested a concealed firearm.
>
> The detective said he could see the bulge from a vehicle passenger seat traveling in the opposite direction. The detective testified that he did not see any exposed weapon barrel or other firearm part. Instead, he testified that he only saw a non-descript sweatshirt bulge.
>
> The detective stopped Bontemps even though the officers had received no background reports of any criminal activity. The detective stopped Bontemps midafternoon and in a general mixed commercial-residential area.

Bontemps, 977 F.3d at 919 (Gwin, J., dissenting); App.-14. Only Detective Tonn testified to noticing anything suspicious about Bontemps. *Bontemps*, 977 F.3d at 920; App.-15. Detective Tonn describe Bontemps's bulge as "very obvious" and gave its location – "just above the waist area, kind of halfway maybe between his waist and his left armpit." *Bontemps*, 977 F.3d at 912: App.-6. The majority reaches its holding by

accepting all that was needed was that "Tonn believed Bontemps was carrying a concealed gun." *Id*. The majority morphs Tonn's belief into a more detailed factual finding that it was "a bulge *that appears to be a concealed firearm*" which then "can form the basis for a *Terry* stop in a jurisdiction where carrying a concealed weapon is presumptively unlawful." *Bontemps,* 977 F.3d at 915; App-9. The majority later called the bulge "distinctive." *Bontemps,* 977 F.3d at 919; App.-14. But as Mr. Bontemps pointed out, and as Judge Gwin explained in his dissenting opinion, there were no facts offered from Detective Tonn or found by the district court that the bulge Tonn saw appeared to have any specific shape. Tonn gave no more detailed physical description other than it was "obvious" and its relative location - above the waist and on the left side of Bontemps's body. *Bontemps*, 977 F.3d at 921; App.-17.

A. The Constitutional Right to be Free of Unreasonable Seizures and Searches Is Undermined by the Ninth Circuit's Opinion

Terry analyzed warrantless investigative detentions by police officers. It held that a law enforcement officer can only stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion, supported by articulable facts, that criminal activity "may be afoot." *Terry,* 392 U.S. at 20, 17. Without such protections, the individual's right to go about their business and maintain both their personal autonomy and privacy in relation to the state is eviscerated. The

relationship generally deteriorates between a community and the police when its citizens are treated to unreasonable stops and searches. Nancy G. La Vigne, Pamela Lachman, Shebani Rao, Andrea Matthews, *Stop and Frisk: Balancing Crime Control with Community Relations*, pp. 18-19, 38 (2015).[2/]

This Court recognizes that the reasonable suspicion test is a probabilistic one. In *Cortez,* this Court stated:

> The process does not deal with hard certainties, but with probabilities. Long before the law of probabilities was articulated as such, practical people formulated certain common sense conclusions about human behavior; jurors as factfinders are permitted to do the same-and so are law enforcement officers .... [T]he evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement.

Id. at 418. Nonetheless, the officer's opinion or training is not determinative. The court – the impartial fact-finding tribunal – must decide whether the articulated facts the officer offers, if believed, actually support a reasonable suspicion of criminal activity. *Terry*, 392 U.S. at 27-28 (court must determine if the officer's "search and seizure was reasonable, both at their inception and as conducted").

Without the judicial role properly checking the state, the rights of the individual against such intrusions evaporate. Communities of color have complained for years

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[2]Available at: https://www.urban.org/research/publication/stop-and-frisk-balancing-crime-control-community-relations/view/full_report (last accessed November 27, 2020).

about race-based stops and searches. The trauma from such racist policies to the community is profound. *See e.g.,* Ta-Nehisi Coates, *Between the World and Me* (2015). It flows not just from the racist officer, but from the officer whose judgment about the actions and dangerousness of the person before them is affected by implicit biases. "The vagueness of the factors that may justify stops and frisks increases the risk that police will act on biases in deciding whether there is sufficient suspicion for forcible intervention. Thus, if police associate racial minorities with criminal conduct where the same actions by whites are not regarded as suspicious, or if they consider race or ethnicity as surrogates for criminal conduct, even on a subconscious level, bias may become a causative factor." D. Rudovsky & D. Harris, *Terry Stops-and-Frisks: The Troubling Use of Common Sense in a World of Empirical Data*, 79 Ohio State Law J. 502, 510 (2018).

The danger of permitting the police to stop and search people based on a clothing bulge alone invites selective, state-sanctioned application against those the state or officer does not favor. Problems with disproportionate policing and the police use of force are already well know. In Vallejo between 2017 and 2019, the police arrested Black men at 2.35 times the expected rate when compared to their proportion of the Black population. In 2018, Vallejo Police used force more frequently in arrests of Black men than any other racial group. Of 123 incidents of the use of force on male

subjects, 45% involved Black men; while white men were subjected to force in 28% of the incidents, Hispanic men in 26%, and Asian men in 5% and unknown in 1%.[3/] This opinion enables racist policing whether the racism is a product of overt or implicit bias.

The danger to the community extends beyond the racially biased officer. Anyone whose viewpoint is not favored by the government or an individual officer will also suffer under the Circuit's overly broad approval of warrantless seizures. Anyone with a bulge in their clothing is subject to stop and search. In practice, state actors can now restrict the exercise of minority viewpoints that had been protected by the First Amendment's free expression clause. The right to peacefully assemble and present grievances to the government is impaired if any clothing bulge justifies police seizure and search. For example, in *McCullen v. Coakley*, 573 U.S. 464, 134 S. Ct. 2518, 189 L. Ed. 2d 502 (2014), this Court struck down a Massachusetts law that imposed a ban on knowingly standing on a public way or sidewalk within 35 feet of an abortion clinic as violative of the First Amendment. 573 U.S. at 497. Under the Ninth Circuit's standard in *Bontemps*, a state that disfavors such pro-life inspired conduct can interfere

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[3] Available at: https://www.cityofvallejo.net/city_hall/departments___divisions/police/crime_stats/use_of_force_analysis (last accessed May 21, 2021) (these percentages were found for years 2018 and selecting only male gender).

with it by simply stopping and searching those protestors on whom a clothing bulge is observed. As Justice Scalia's concurrence observed, *McCullen* majority approved of the state making it a crime "to follow and harass another person within 15 feet of the premises of a reproductive health care facility. . . . Is it harassment, one wonders, for Eleanor McCullen to ask a woman, quietly and politely, two times, whether she will take literature or whether she has any questions? Three times? Four times?" *McCullen*, 573 U.S. at 2543 (Scalia, J., concurring) (internal quotes omitted). If a Ms. McCullen has a large and obvious bulge (say from a drink or lunch tucked in her jacket pocket), do the police have the constitutional power to stop and search her? The Ninth Circuit says yes because the police may "reasonably" suspect she possesses a concealed firearm without a permit.

B. Review is Needed Because the Circuit Applied a Clear Error Standard of Review to a Legal Question, Whether the Suspicion was Reasonable

Review is also needed because the Ninth Circuit misapplies a clearly erroneous standard of review to the legal question presented in this case.

The majority morphs the district court's legal conclusion that a bulge is enough into a factually different starting point: "*a bulge that appears to be a concealed firearm* can form the basis for a *Terry* stop in jurisdiction where carrying a concealed weapon is presumptively unlawful." *Bontemps,* 977 F.3d at 915; App.-9 (emphasis

added). It goes on to assert that "[a]n ironclad rule precluding *Terry* stops in those circumstances absent further indicia of wrongdoing would improperly hamstring officers in their investigation of patently unlawful activity." *Bontemps,* 977 F.3d at 915; App.-10.

This application of *Terry* ignores the facts in *Terry* and the limits *Terry* imposed on police conduct. The officer in *Terry* did not stop and search his suspects when he first noticed them loitering about a store. Instead, the officer watched what the two men did for some time. He saw one man peer into a store window and then return to the street corner and confer with the other man. This went on a dozen times with the men alternating roles. A third man joined the first two. After the third man left, the "measured pacing, peering, and conferring" resumed. *Terry*, 392 U.S. at 6. After 10-12 minutes of this, the officer "suspected the two men of 'casing a job, a stick-up,'" and stopped the men. The officer frisked each and found two guns. *Id*.

In contrast, Detective Tonn's observation of a bulge in Mr. Bontemps's clothing was a one-off observation. Detective Barreto, who was closer according to his testimony, noticed nothing about Bontemps. The officer did not observe Bontemps do anything with the object that caused the bulge. Nor did the officer observe Bontemps interact with anyone other than his walking companions or approach a business or home. Bontemps was seen simply walking on the sidewalk with three other young

Black men. There was no "exposed weapon barrel or other firearm part." *Bontemps,* 977 F.3d at 919; App.-14 (Gwin, J., dissenting). "Instead, he testified that [Tonn] only saw a non-descript sweatshirt bulge." *Id*. "The detective stopped Bontemps even though the officers had received no background reports of any criminal activity. The detective stopped Bontemps mid-afternoon and in a general mixed commercial-residential area." *Id*. To make this leap to reasonable suspicion, the Ninth Circuit adds a fact – a gun shape to the bulge – even though the district court made no such finding. With no suspicious activity observed by the officers or reported to them, a clothing bulge cannot create a reasonable suspicion of criminal activity.

Here, the district court ruled that a visible bulge in Bontemps clothing together with Tonn's opinion that this bulge was created by a firearm was enough. Given that California generally prohibits carrying concealed weapons in public, Cal. Penal Code § 25850, the district court concluded Tonn had "reasonable suspicion to believe that criminal activity may be afoot." App.-25 to App.-26.

Bontemps argued that there was no sufficient reasonable suspicion created because he was carrying something under his zippered goodie. He pointed to extensive studies that demonstrate police, with their training and experience, are poor predictors of when a bulge in clothing is actually a firearm. The Ninth Circuit majority toss the studies aside, asserting that there was no study offered that "involved bulges as

distinctive as the one here." *Bontemps,* 977 F.3d at 919; App.-14.

Appellate court do not make factual findings. The Ninth Circuit disregards its proper function here. It ignores studies that demonstrate that a clothing bulge alone is rarely evidence of a firearm. In Rudovsky & Harris study, the actual data "show that certain factors regularly reported by police, such as observation of a 'bulge,' . . . are poor predictors of whether one is armed and dangerous, yet the courts have regularly credited these explanations in sustaining police frisks. In almost all cases, 'bulges' turn out to be cell phones or wallets,' . . . . Thus, in audits conducted in 2014-2016, of 220 frisks based on a 'bulge,' only one weapon was seized, a hit rate of less than 0.5%." 79 Ohio State L.J. at 541–42 (internal footnotes omitted); *Floyd v. New York City*, 959 F. Supp. 2d 540, 558 (S.D.N.Y. 2013). Such statistical analysis goes to the *legal insufficiency* of the police view that bulges are a reasonable basis for suspecting that the person is carrying a concealed weapon. In tossing aside these statistical studies and case law, the Ninth Circuit relies on a factual finding that the district court did not make and misapplies a clear error standard of review. The existence of reasonable suspicion sufficient to support Bontemps stop is a legal question, not a factual one.

The majority decision also overlooks that the burden to justify a warrantless stop and search rests on the government. *See Mincey v. Arizona*, 437 U.S. 385, 390-91, 57 L. Ed. 2d 290, 98 S. Ct. 2408 (1978); *United States v. Jeffers*, 342 U.S. 48, 51, 96 L.

Ed. 59, 72 S. Ct. 93 (1951). The government offered nothing more than a tautology: the officer's suspicion was reasonable because the officer was trained and experienced to suspect that clothing bulges are evidence of a concealed weapon. The government offered no testimony or other evidence substantiating this assumption. The actual studies offered in Mr. Bontemps briefing demonstrated the assumption's fallacy.

Many innocent people carry objects in their clothing – under hoodies or in jackets, in holsters, in pouch pockets and in pants pockets. Any of these objects will create a bulge. And given fashion choices, some of these bulges will be obvious and some may even be large. By ruling that a clothing bulge is per se sufficient reasonable suspicion to permit the police to stop and frisk people otherwise simply walking on the sidewalk, the Ninth Circuit goes too far. The Circuit's opinion in this case permits nearly unlimited police authority to stop and search people. This conflicts with this Court's holdings. *See e.g., Thompson v. Louisiana,* 469 U.S. 17, 19-20 (1984) (warrantless stops "are *per se* unreasonable under the Fourth Amendment – subject only to a few specifically established and well delineated exceptions.") The opinion offers no limiting principal. With the pervasive possession of cell phones – and now during a pandemic with people carrying and using masks and hand sanitizer – nearly everyone walking down the sidewalk in the United States is likely to have some bulge in their clothing. Permitting a stop and search under these broad standards is simply

too much. *United States v. Eustaquio*, 198 F.3d 1068, 1071 (8th Cir. 1999) ("Too many people fit this description for it to justify a reasonable suspicion of criminal activity.").

This Court has already ruled that bulges in clothing provide insufficient reasonable suspicion to permit the stop and search for drugs. *United States v. Job*, 871 F.3d 852, 861 (9th Cir. 2017). The majority asserts that guns are different because "guns are made of rigid materials (such as metal or hard plastics) and possess a relatively distinctive shape, drugs or packages of drugs come in different shapes and sizes, some quite small, soft, and nondescript." *Bontemps*, 977 F.3d at 916. But there is nothing in Detective Tonn's testimony that described a "distinctive shape" of the item Bontemps carried. The district court made no such finding.

As Judge Gwin wrote in his dissenting opinion, "It is imprudent to sanction a rule that allows a mere bulge to supply reasonable suspicion. Especially when the bulge does not accompany other suspicious factors. In deciding this case, the majority misses an appropriate *de novo* reasonable suspicion review." 977 F.3d at 923 (Gwin, J., dissenting). We agree.

/ / /

CONCLUSION

For all the above reasons, Mr. Bontemps asks this Court to grant his writ.

Dated: May 23, 2021

Respectfully submitted,

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