No. ____

IN THE
SUPREME COURT OF THE UNITED STATES

CLARENCE TRAMIEL BEARD,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

MARJORIE A. MEYERS
Federal Public Defender
Southern District of Texas

EVAN G. HOWZE
Assistant Federal Public Defender
Counsel of Record
440 Louisiana Street, Suite 1350
Houston, Texas 77002
(713) 718-4600
evan_howze@fd.org

QUESTIONS PRESENTED

1. Whether the investigatory detention, and subsequent transportation to a new location, of an item seized from the mail intrudes on a possessory interest protected by the Fourth Amendment, and so must inform the judicial assessment of whether the detention was "minimally intrusive" in scope and duration "so as to be justifiable on reasonable suspicion." *United States v. Place*, 462 U.S. 696, 702 (1983).

2. Whether the detention of a package seized from the mail became unreasonably intrusive under the circumstances of this case, where the detaining officials transported the package hundreds of miles from its intended destination, and thereby extended the detention well beyond the expected delivery date, before taking any investigative steps designed to confirm or dispel their suspicion.

RELATED PROCEEDINGS

The following proceedings are directly related to this case:

- *United States v. Beard*, No. 4:18-cr-601-1, United States District Court for the Southern District of Texas. Judgment entered March 10, 2020.

- *United States v. Beard*, No. 20-20116, United States Court of Appeals for the Fifth Circuit. Judgment entered October 22, 2021.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Clarence Tramiel Beard respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The Fifth Circuit's opinion (App. 1a-11a) is published at 16 F.4th 1115. The district court's opinion and order (App. 12a-36a) is available at 2019 WL 2161038.

JURISDICTION

The court of appeals entered judgment on October 22, 2021. App. 1a. This petition is filed within 90 days of that date. *See* Sup. Ct. R. 13.1 & 13.3. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL PROVISION

The Fourth Amendment to the United States Constitution provides in relevant part:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]

STATEMENT OF THE CASE

I. Legal background

The Fourth Amendment protects "effects" as well as "persons" from "unreasonable searches and seizures." U.S. Const. amend IV. Warrantless seizures are "per se unreasonable," subject "only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967). One such exception permits officers to stop and briefly detain an individual if they reasonably suspect, based on specific and articulable facts, that the person has committed or is about to commit a crime. *Terry v. Ohio*, 392 U.S. 1, 21 (1968). Like people, "effects" may be temporarily detained so long as reasonable suspicion exists to think them linked to criminal activity. *See United States v. Place*, 462 U.S. 696, 702 (1983).

The defining feature of a *Terry*-type investigative detention is that "the nature and extent of the detention" must be "minimally intrusive." *Place*, 462 U.S. at 703. Accordingly, "a seizure lawful at its inception can nevertheless violate the Fourth Amendment because its manner of execution unreasonably infringes possessory interests protected by the Fourth Amendment's prohibition on 'unreasonable seizures.'" *United States v. Jacobsen*, 466 U.S. 109, 124 (1984). Although "[t]he scope of the intrusion permitted will vary to some extent with the particular facts and circumstances of each case," at bottom, the detention "must be temporary and last no longer than is necessary to effectuate" its purpose. *Florida v. Royer*, 460 U.S. 491, 500 (1983) (plurality opinion). The relevant question in assessing whether a suspicion-based detention extends beyond a reasonable duration is

"whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly." *United States v. Sharpe*, 470 U.S. 675, 686 (1985). But length is not the only metric: as with people, *see Dunaway v. New York*, 442 U.S. 200, 211-13 (1979), the movement of detained property "to another location" may "substantial[ly] intrude[]" on "possessory interests" as well. *Place*, 462 U.S. at 709 n.9.

The present case concerns the investigative detention of mail. "Letters and other sealed packages" placed in the mail "are in the general class of effects" the Fourth Amendment protects from unreasonable government intrusion, and so "warrantless searches of [them] are presumptively unreasonable." *Jacobson*, 466 U.S. at 114. As with other effects, however, an item deposited in the mail may justifiably be intercepted and detained, "while an investigation [is] made," provided that reasonable suspicion exists to believe the mailed item contains contraband or evidence of a crime. *United States v. Van Leeuwen*, 397 U.S. 249, 252-53 (1970).

II. Factual background

On Monday, January 8, 2018, petitioner Clarence Tramiel Beard deposited a sealed, priority-mail package into the mail at a local post office in Houston, Texas. C.A. ROA.214-15, 257-58. The package identified the sender as "Nick Johnson," an alias petitioner had used in the past, and was directed to the attention of a Mr. Kelly McAllister at an address in Hammond, Louisiana. App. 2a-3a. Its expected delivery date was January 11, 2018. C.A. ROA.354.

Unbeknownst to petitioner, a United States Postal Inspector stationed in Houston, Jeffery Gordon, had placed an alert on mail directed to the same Hammond address several months earlier. App.12a. At the time, Inspector Gordon knew petitioner was the subject of an ongoing investigation, and that the investigating agents: suspected that petitioner had mailed several packages containing opioids under the "Nick Johnson" alias; had observed numerous wire transfers in $1,000 increments between Mr. McAllister and petitioner; and knew that Mr. McAllister resided at the Hammond address. App. 12a. On January 8, petitioner's package triggered the alert, and Inspector Gordon was notified and received a top-down picture of the package and its label. App. 2a; *see* C.A. ROA.354. Because several of the package's features hinted that petitioner was the sender, Gordon contacted postal officials in Hammond and instructed them to intercept the package once it was marked for delivery and then mail it back to him in Houston. App. 2a, 14a.

When he decided on this course, Inspector Gordon knew that the package was expected to arrive in Hammond in three days' time, on January 11, C.A. ROA.354, and that the package's return trip to Houston would take a day or two—there was "no way [for him] to request that the package be overnighted or otherwise expedited." App. 14a, 19a. Gordon also knew the method he intended to use to investigate his suspicion: a sniff test from a drug-detection dog. C.A. ROA.272-75. And he knew that this method was available in Hammond and could have been arranged, in advance, to take place there. C.A. ROA.283. But, as he later testified, Gordon preferred to wait to employ the dog-sniff in Houston because—on the assumption that the dog would alert and generate probable cause to search

the package—that would make the process of securing a warrant, conducting the search, and testing any drugs more convenient for him. Gordon's agency had an "established relationship with the customs and border protection lab [in Houston]," he revealed, which would give them "priority" in getting the drugs he suspected he would find in petitioner's package tested. App. 14a n.2. Plus, assuming a positive alert in Houston, Gordon was confident he could "get the warrant within a day." App. 3a. Had he arranged for the sniff test in Hammond, in contrast, a local postal inspector and federal prosecutor would "probably" have to participate in the warrant-preparation process before the package could be mailed back to him, and that would have "delayed" his ability to "get the drugs tested in Houston." C.A. ROA.274-75.

Petitioner's package arrived in Hammond in the early morning on Thursday, January 11, 2018. C.A. ROA.263, 352-53; App. 3a. Without performing any investigation, postal workers in Hammond pulled the package after it was marked for delivery, placed it in a new container, and dispatched it back to Houston the next day, Friday, January 12. App. 14a. For unknown reasons, Inspector Gordon did not receive the package until the afternoon of Wednesday, January 17. App. 4a, 14a. The next morning, January 18, Gordon arranged for a canine unit to conduct a sniff test. App. 15a. The dog alerted, after which Inspector Gordon set about preparing an application for a search warrant. App. 4a. A magistrate judge blessed the application the morning after, on January 19, and Gordon and another agent executed a search that day. App. 4a, 15a. They discovered two socks, inside which they found two Ziploc bags filled with several hundred alprazolam (Xanax) and

fentanyl pills. App. 15a. Petitioner was subsequently charged with one count of possessing and intending to distribute an aggravated amount of fentanyl. App. 15a-16a; *see* 21 U.S.C. § 841(a)(1), (b)(1)(B).

III. Procedural history

Petitioner moved to suppress, arguing, in relevant part, that even if the investigatory detention of his package was lawful to start, the nature and extent of the detention became unreasonably intrusive as a result of Inspector Gordon's decision to reroute the package to Houston prior to any attempt to confirm or dispel his suspicion. App. 16a. After briefing and a hearing, the district court denied the motion in a written order. *See* App. 12a-36a.

As pertinent here, the court concluded that reasonable suspicion existed to order the package detained, that the detention commenced when Hammond officials pulled the package from the stream of mail on January 11, and that probable cause to search the package arose only after the January 18 canine inspection. App. 4a, 19a, 27a. The court further held that the detention was not unreasonably intrusive, taking the view that Inspector Gordon's choice to transport the package to Houston before conducting any investigation was reasonable, and that any resulting extension of the detention was attributable to the postal system, not the inspector. App. 18a-22a. Petitioner later conditionally pleaded guilty, and the district court sentenced him to 36 months' imprisonment. App. 5a.

Petitioner renewed his challenge to the detention in the court of appeals, *see* Pet. C.A. Br. 13-18; Pet. C.A. Reply Br. 7-10, contending that the decision to postpone the investigation of his package until it was shipped over 400 miles back to Houston rendered

the detention unreasonable on both dimensions—duration and scope—of this Court's test for determining whether a seizure is "so minimally intrusive as to be justifiable on reasonable suspicion." *Place*, 462 U.S. at 703. The inspector unreasonably prolonged the length of the detention, petitioner argued, because although his preferred method for testing his suspicions—the dog sniff—was (a) readily available at the site of detention, (b) could have been arranged in advance, and (c) "likely to confirm or dispel [his] suspicions quickly," *Sharpe*, 470 U.S. at 686, he instead pursued a course of action that he knew would extend the detention for at least several days before any attempt would be made to effectuate the seizure's purpose. And that same course of action unreasonably intensified the scope of the intrusion, petitioner continued, through the physical "removal of his [package] to another location." *Place*, 462 U.S. at 709 n.9. On this latter point, petitioner urged the court of appeals to adopt the reasoning of the Illinois Supreme Court, which had concluded, on similar facts, that officers unreasonably intensify the extent of the intrusion on possessory interests protected by the Fourth Amendment when, without "reasonable justification," they transport validly detained mail "far afield from either [the site of detention] or the package's intended destination" before attempting to attain probable cause. *People v. Shapiro*, 687 N.E.2d 65, 70, 71 (Ill. 1997).[1]

The Fifth Circuit affirmed in a published opinion. App. 1a-11a. The court of appeals held that Inspector Gordon's "decision to reroute the package was [not] unreasonable" and

[1] *Shapiro* evaluated the challenged detention solely under the Fourth Amendment to the United States Constitution, not the analogous state constitutional provision. *See Shapiro*, 687 N.E.2d at 69 n.3.

did not "show[] any lack of diligence" in light of his expectation that the package would return in one or two days, not five, and his testimony, described above (Pet. 3), that arranging for a dog to sniff in Louisiana would have inconvenienced the ultimate goal of obtaining a warrant and testing the assumed contents of petitioner's package. App. 9a. The court of appeals also rejected the Supreme Court of Illinois' reasoning in *Shapiro* as irrelevant given that petitioner's package had "extensive connections" to Houston. App. 10a-11a. The court of appeals' assessment of the detention's reasonableness accordingly gave no weight to the fact that, by ordering petitioner's package rerouted to Houston, Inspector Gordon caused the package to be moved over "400 miles from its intended destination." App. 10a.

REASONS FOR GRANTING THE PETITION

I. The Fifth Circuit's decision conflicts with the decisions of this Court and with the decisions of state courts of last resort.

The court of appeals held that the Fourth Amendment permits officers, acting on suspicion alone, to intercept a person's mail and then transport it to a distant location, over the course of several days, before employing a pre-planned method of investigation that was readily available at the site of detention and could have been arranged in advance. That holding is at odds with this Court's decision in *United States v. Place*, 462 U.S. 696 (1983), and it directly conflicts with the decisions of two state courts of last resort. The Court should grant the petition to clarify that the detention of mail intrudes upon possessory as well as privacy interests, and that officers are accordingly obliged to investigate the basis of their reasonable suspicions with the same diligence, and in the same minimally intrusive manner, that the Fourth Amendment requires with respect to all other "effects."

In deeming Inspector Gordon's decision to reroute petitioner's package to Houston reasonable, the court of appeals was unmoved by the inspector's uncontroverted testimony that he could have arranged for a dog sniff in Hammond the same day he ordered the detention—three days in advance of the package's expected arrival. The court of appeals was similarly untroubled by the inspector's candid admission that, while a sniff in Hammond would confirm or dispel his suspicion on the spot, he decided against that course because he feared it would delay his ability to perform the search he anticipated a positive alert would authorize. And the court of appeals deemed the physical removal of petitioner's

package irrelevant to the reasonableness determination. That analysis cannot be squared with this Court's decision in *Place*.

In *Place*, this Court held that agents failed to exercise reasonable diligence in detaining luggage for 90 minutes and then moving the luggage to another location for a dog sniff. *See* 462 U.S. at 708-10. In reaching that conclusion, *Place* stressed that the agents "knew the time of [the defendant]'s scheduled arrival at [the airport], had ample time to arrange for their additional investigation [i.e., the dog sniff] at that location, and thereby could have minimized the intrusion on [the defendant]'s Fourth Amendment interests." *Id.* at 709. The Court further noted that, as well as shortening the detention, "[t]his course of conduct"—arranging for the dog sniff at the time and place of the seizure—"also would have avoided the further substantial intrusion on [the defendant]'s possessory interests caused by the removal of his luggage to another location." *Id.* at 709 n.9 (citing *Royer*, 460 U.S. at 506).

In short, *Place* makes clear that where officers (1) know in advance that they will detain property on suspicion alone, and (2) have the means to pre-arrange and conduct their investigation at the place of detention, it is unreasonable for the officers to delay their investigation until the seized property is moved to a different location. The court of appeals reached the opposite conclusion, and it did so without mentioning, much less distinguishing, *Place*.

Nor is there any apparent reason to ignore *Place*'s diligence requirement because the seized "effect" at issue was a sealed package placed in the mail. In *United States v. Van*

Leeuwen, 397 U.S. 249, 252 (1970), in holding that mail may be subjected to the type of brief, investigatory detention approved of in *Terry*, this Court noted that "first-class mail such as letters and sealed packages" had long been considered "free from inspection by postal authorities, except in the manner provided by the Fourth Amendment." *Id.* at 251. Later cases, particularly *Place*, make clear that, for the manner of a *Terry*-type detention to comport with the Fourth Amendment, the detaining officials must act "diligently" in investigating their suspicions and do so in a way that minimizes the duration and intensity of the intrusion in light of the particular circumstances. *Place*, 462 U.S. at 709; *accord United States v. Sharpe*, 470 U.S. 675, 686-87 (1985). And, in *United States v. Jacobsen*, 466 U.S. 109 (1984), this Court applied *Place* in assessing a defendant's claim that the detention of his FedEx package, though lawful when turned over to police custody, became unlawful "because its manner of execution unreasonably infringe[d] possessory interests protected by the Fourth Amendment's prohibition on 'unreasonable seizures.'" *Id.* at 124. There is no reason to think that *Place* should apply to the *nature* of the intrusion accompanying the detention of mail, but not to the *duration* of that intrusion.

The court of appeals' conclusion that the physical removal of petitioner's package back to Houston had no impact on the reasonableness determination is not only contrary to *Place*. It also directly conflicts with the Supreme Court of Illinois' decision in *People v. Shapiro*, 687 N.E.2d 65 (Ill. 1997), which the court of appeals expressly declined to follow, *see* App. 10a-11a, and a decision of the North Dakota Supreme Court.

In *Shapiro*, postal service officials at Chicago's O'Hare International Airport, acting on reasonable suspicion, seized a package destined for Champaign, Illinois, and rerouted the package to a postal inspector in St. Louis, Missouri, where a drug dog alerted to it the next day. *See* 687 N.E.2d at 67-68, 70. Despite the relatively short period between the seizure and the emergence of probable cause, the Illinois Supreme Court deemed the "nature and duration of the detention and investigation" unreasonable. *Id.* at 71. The court emphasized that "there appear[ed] no constitutionally reasonable justification for shipping" the package to St. Louis—"far afield from either O'Hare or the package's intended destination"—so that the postal inspector could take investigatory steps that were available in Chicago and would have "significantly shorte[ned]" the detention if taken there instead. *Id.* at 70-71. Relying on *Place*, the state high court accordingly concluded that the postal service officials failed to exercise the "investigatory diligence that is mandated by" that decision, *id.* at 71 (citing *Place*, 462 U.S. at 703), and also that the degree of "intrusion upon the instant defendants' possessory interest in their package was not minimal and thus did not comply with the Fourth Amendment." *Id.*

The North Dakota Supreme Court has similarly recognized that officers unreasonably intrude on protected possessory interests when they transport seized mail to another location without first validating their suspicion. In *State v. Ressler*, 701 N.W.2d 915 (N.D. 2005), the North Dakota high court recognized "the minimal, yet ever-present, possessory rights an individual maintains" in mailed items, and then confronted the question whether an officer, "armed with reasonable suspicion, could transport a seized package from [the

site of detention] to [a] law enforcement center for canine testing." *Id.* at 920. The court held that "reasonable suspicion does not afford police this option," *id.*, reasoning that, "[b]y transporting the [defendant's] package" to another location, the detaining officer had "executed the seizure in a manner" that exceeded the permissible scope of a *Terry*-type detention, which "affords government officials less command, dominion, or control over the [seized] package than they would possess if executing a full-fledged seizure based on probable cause or a warrant." *Id.* at 921-22. Indeed, the court noted, "[p]olice could not [have] seize[d] [the defendant]'s package to a greater extent than by placing it in their exclusive control, removing it from the location where it was submitted for shipping, and transporting it to a law enforcement center." *Id.* at 922; *see also State v. Gardner*, 927 N.W.2d 84, 89-90 (N.D. 2019) (accepting State's concession that, consistent with *Ressler*, an officer's decision to seize a package at a UPS facility, and then move the package to another location for a dog sniff, violated the Fourth Amendment).

II. The question presented is important and warrants review in this case.

Petitioner's case squarely presents the question whether the detention and subsequent transportation to another location of mail seized on reasonable suspicion alone intrudes on a possessory interest protected by the Fourth Amendment, and therefore must factor into the judicial assessment of the reasonableness of the scope and duration of the detention. As the North Dakota Supreme Court noted in *Ressler*, that question is the subject of sharp division among the federal and state courts. *See Ressler*, 701 N.W.2d at 919-21 (collecting cases). And the Fifth Circuit's answer—that the physical removal of mail is not

relevant to the reasonableness determination—directly conflicts with *Ressler* and the Illinois Supreme Court's decision in *Shapiro*. Only this Court can resolve the conflict.

It is also important that the Court do so. As this Court has emphasized, "[f]ew protections are as essential to individual liberty as the right to be free from unreasonable searches and seizures." *Byrd v. United States*, 138 S. Ct. 1518, 1526 (2018). And the consequences of the Fifth Circuit's decision to deem Inspector Gordon's actions reasonable in petitioner's case are fairly breathtaking. Under the court of appeals' reasoning, *any* package reasonably suspected to contain contraband may be plucked from the stream of mail, and sent hundreds of miles away from the intended destination, before officials need undertake *any* investigation aimed at validating the initial intrusion. Worse, by justifying the decision to delay the threshold investigatory steps necessary to enhance suspicion or generate probable cause based on the officer's desire to expedite the search he ultimately hoped to perform, the court of appeals' decision incentivizes detaining officials to extend the detention of mail and exacerbate the degree of intrusion for the sake of administrative convenience.

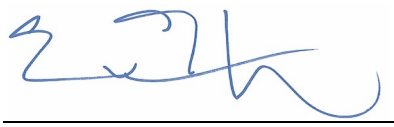
Petitioner's case is also an excellent vehicle for deciding this important question. The constitutionality of the warrantless detention was pressed at every stage of the proceedings and passed upon by both the district court and the court of appeals. Moreover, the reasonableness of the duration and intensity of the intrusion on petitioner's Fourth Amendment interests is outcome determinative. The relevant facts are undisputed and cleanly present the issue. And the court of appeals identified no alternative justification for affirming the denial of petitioner's motion to suppress.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

MARJORIE A. MEYERS
Federal Public Defender
Southern District of Texas



EVAN G. HOWZE
Assistant Federal Public Defender
Counsel of Record
440 Louisiana Street, Suite 1350
Houston, Texas 77002
(713) 718-4600
evan_howze@fd.org

January 20, 2022