No. 22-____

In the Supreme Court of the United States

ANDRE VERDUN AND IAN ANOUSH GOLKAR, ON BEHALF OF THEMSELVES AND A CLASS OF ALL OTHERS SIMILARLY SITUATED, PETITIONERS

v.

CITY OF SAN DIEGO AND SAN DIEGO POLICE DEPARTMENT

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." Without a warrant or individualized suspicion, a search is unconstitutional unless it falls within one of "a few specifically established and well-delineated exceptions" to the warrant requirement. *City of Los Angeles v. Patel*, 576 U.S. 409, 419 (2015) (citation omitted). The Court has repeatedly cautioned against expanding those "jealously and carefully drawn" exceptions, *Jones v. United States*, 357 U.S. 493, 499 (1958), beyond what the "Court has recognized," *Caniglia v. Strom*, 141 S. Ct. 1596, 1599 (2021).

One of those exceptions is the "administrative search" exception. Administrative searches have as their "primary purpose" something other than general crime control, and unless the search affords an opportunity for precompliance review, it must be closely tied to a serious, clear, and specific public safety or health risk. *Patel*, 576 U.S. at 420; *see id.* at 424. Those vital interests are things like stopping cross-border smuggling and preventing drunk-driving.

The City of San Diego uses tire-chalking—where parking officers draw a chalk mark on the tire of every car in a particular location, for purposes of tracking the car's movement—to serve generalized interests, like compliance with parking restrictions and minimizing traffic congestion, without affording an opportunity for precompliance review.

The question presented is whether tire-chalking falls outside the administrative-search exception to the warrant requirement and thus violates the Fourth Amendment.

RELATED PROCEEDINGS

United States Court of Appeals (9th Cir.):

Verdun v. City of San Diego, No. 21-55046 (Oct. 26, 2022)

United States District Court (S.D. Cal.):

Verdun v. City of San Diego, No. 3:19-cv-000839-AJB-WVG (Jan. 4, 2021)

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INTRODUCTION

This case presents an important question about the improper expansion of one of the "jealously and carefully drawn" exceptions to the Fourth Amendment's warrant requirement, *Jones v. United States*, 357 U.S. 493, 499 (1958), the so-called administrative-search exception. The question is whether that exception can justify widespread warrantless searches in the name of administrative efficiency and commonplace, generalized government interests like traffic flow and the overall "functioning of a municipality."

Over a dissent by Judge Bumatay, the Ninth Circuit held that tire-chalking—where a parking officer draws a chalk mark on the tire of every car in a particular location, for purposes of tracking the car's movement—is constitutional under the administrative-search exception. In doing so, the court disagreed with the Sixth Circuit, which holds that the administrative-search exception cannot justify tire-chalking (and, for that matter, neither can the community-caretaking or automobile exceptions). The disagreement tees up an important question for this Court. The Ninth Circuit expanded the narrow administrative-search exception "beyond anything [the] Court has recognized." *Caniglia v. Strom*, 141 S. Ct. 1596, 1599 (2021). Without this Court's intervention, the Ninth Circuit's decision risks further "stealthy encroachments," as Judge Bumatay put it, App. 31a (Bumatay, J., dissenting), on fundamental Fourth Amendment protections.

1. The question presented concerns the scope of the administrative-search exception and whether tire-chalking falls outside that exception, or any other exception to the warrant requirement, and thus

presumptively violates the Fourth Amendment. A warrantless, suspicionless search is presumptively unreasonable and violates the Fourth Amendment unless it falls into one of a few limited exceptions to the warrant requirement. *Arizona v. Gant*, 556 U.S. 332, 338 (2009). The administrative-search exception applies to searches that have as their "primary purpose" something other than general crime control and that serve "special needs" making the warrant or individualized suspicion requirements impractical. *City of Los Angeles v. Patel*, 576 U.S. 409, 420 (2015) (citations omitted). Unless an administrative-search scheme affords the subject of the search an opportunity for precompliance review, the search must be tied to a grave, clear, and specific public safety or health risk. *Id.*; *see id.* at 424.

2. The Ninth Circuit split from the Sixth over whether tire-chalking is a constitutionally permissible administrative search. The Sixth Circuit says no. *Taylor v. City of Saginaw*, 11 F.4th 483, 489 (6th Cir. 2021) (*Taylor II*). As the Sixth Circuit explained, tire-chalking isn't justified because it doesn't afford an opportunity for precompliance review and it doesn't serve any exceptional law enforcement need. *Id.* What's more, the Sixth Circuit has also rejected the community-caretaking and automobile exceptions as defenses to tire-chalking. *Taylor v. City of Saginaw*, 922 F.3d 328, 334-35 (6th Cir. 2019) (*Taylor I*). On remand, the district court declared tire-chalking unconstitutional. *Taylor v. City of Saginaw*, No. 1:17-CV-11067, 2022 WL 3160734, at *3, 8 (E.D. Mich. Aug. 8, 2022).

The Ninth Circuit disagrees. Over a dissent by Judge Bumatay, who would have sided with the Sixth Circuit, the Ninth Circuit held that a nearly identical

tire-chalking scheme was constitutional under the administrative-search exception. The Ninth Circuit concluded that the interests tire-chalking purportedly serves—like reducing traffic congestion and encouraging compliance with parking restrictions—outweigh the minimal intrusion it imposes. App. 23a. The court thought it didn't matter that tire-chalking didn't fit into existing categories of permissible warrantless administrative searches, because, in the court's view, the exception isn't limited to particular "contexts or factual scenarios." App. 13a.

3. The Ninth Circuit's decision is wrong. Tire-chalking is a warrantless, suspicionless search that violates the Fourth Amendment. It's not justified by the administrative-search exception because it fails to afford vehicle owners an opportunity for precompliance review, and it doesn't address any serious, clear, and specific public health or safety risk. No other exceptions to the warrant requirement can salvage San Diego's tire-chalking scheme, either. The Ninth Circuit's decision blows open a "jealously and carefully drawn" exception and leaves an anything-goes reasonableness standard in its wake. *Jones*, 357 U.S. at 499. Worse yet, it allows generic and ever-present government interests in things like traffic flow and compliance with parking restrictions to override core Fourth Amendment concerns with suspicionless searches.

4. This case is an ideal vehicle for resolving this important question. Courts play a critical role in pumping the brakes on government practices that, though they may at first seem minimally intrusive, threaten to open the gates to more obviously "illegitimate and unconstitutional" ones. *Stern v. Marshall*, 564 U.S. 462, 503 (2011) (citation omitted). Tolerating

the City's tire-chalking scheme means abdicating that role. And it treads on fundamental Fourth Amendment protections in the name of administrative convenience.

The Court's reinvigoration of the Founding-era principle that a trespass onto private property to gather information is a search has contributed to the disagreement about the scope of the administrative-search exception. *See United States v. Jones*, 565 U.S. 400, 404-07 & n.3 (2012); *Florida v. Jardines*, 569 U.S. 1, 5 (2013). The split highlights the need for the Court to provide guidance to governments, citizens, and lower courts alike about the circumstances under which a warrantless, suspicionless administrative search can pass constitutional muster.

This case is an ideal vehicle. Both the district court and court of appeals squarely decided the question presented. Both courts relied only on the administrative-search exception to justify the City's tire-chalking scheme, and the courts' holdings that the exception applied were dispositive.

Only this Court can resolve the clear circuit split on this important question. The Court should grant review.

OPINIONS BELOW

The court of appeals' opinion (App. 1a-53a) is reported at 51 F.4th 1033. The district court's opinion (App. 54a-72a) is reported at 549 F. Supp. 3d 1192.

JURISDICTION

The court of appeals affirmed the district court's judgment on October 26, 2022. App. 1a. On January 10, 2023, Justice Kagan extended the time to file this petition by 60 days, until March 25, 2023. *See* 28

U.S.C. § 2101(c). This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the U.S. Constitution provides:

> 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.

STATEMENT

A. Legal background

1. The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The Amendment was enacted in response to the Framers' disdain for general warrants and writs of assistance, which allowed officers to "rummage" "unrestrained" through peoples' belongings "for evidence of criminal activity." *Riley v. California*, 573 U.S. 373, 403 (2014). "Opposition to such searches was in fact one of the driving forces behind the Revolution itself." *Id.*

The Court has made clear that "a vehicle is an 'effect'" under the Fourth Amendment. *Jones*, 565 U.S. at 404 (citation omitted). And under the original meaning of the Amendment, the government's physical trespass onto "private property"—like a vehicle—"for the purpose of obtaining information," is a search. *Id.* at 404-07 & n.3; *Jardines*, 569 U.S. at 5. In deciding whether a search complies with the Fourth

Amendment, "the ultimate touchstone" "is reasonableness. *Riley*, 573 U.S. at 381 (citation omitted).

2. A search conducted without a judicial warrant or individualized suspicion of criminal conduct is unreasonable unless "it falls within a specific exception to the warrant requirement." *Id.* at 382; *City of Indianapolis v. Edmond*, 531 U.S. 32, 37 (2000). Those exceptions are "jealously and carefully drawn," *Jones*, 357 U.S. at 499, and apply only "in certain carefully defined classes of cases," *Camara v. Municipal Court of City & County of San Francisco*, 387 U.S. 523, 528-29 (1967). The Court has cautioned against expanding those limited exceptions "beyond anything [it] has recognized," particularly when the rationale behind a given exception doesn't justify the search. *Caniglia*, 141 S. Ct. at 1599. The government bears the burden of showing that a warrantless search falls within a recognized exception. *Coolidge v. New Hampshire*, 403 U.S. 443, 454-55 (1971).

The question presented here concerns the so-called "administrative-search" exception. An administrative search must have as its "primary purpose" something other than general crime control. *Patel*, 576 U.S. at 420 (citation omitted). And under the administrative-search exception, warrantless, suspicionless administrative searches are unreasonable unless there is an opportunity for "precompliance review before a neutral decisionmaker," there are "special needs" that render the warrant or individualized suspicion requirements impractical, and the search addresses a substantial government interest. *Id.* In some limited circumstances, warrantless administrative searches are allowed even without an opportunity for precompliance review, but only if the government's approach is tied to a serious, clear, and specific public

safety or health risk, or if another exception applies. *Id.*; *see id.* at 424.

B. Factual and procedural background

1. The San Diego Municipal Code imposes restrictions on how long a car can remain in a City parking space, and the City can issue civil fines to drivers who violate those restrictions. App. 3a-4a. One way the City enforces the time limits on parking spaces is by "tire-chalking." App. 3a. Tire-chalking is when a City parking officer draws a chalk mark on the tire of every vehicle in a given area that is parked in a space subject to City time restrictions. *Id.* The officer draws chalk on the tire of every vehicle, even if those vehicles are parked legally. *Id.* When the parking limit has expired, the officer checks the tires; if the chalk mark is undisturbed, the officer concludes that the vehicle has exceeded the maximum parking time and thus that she can issue a fine. *Id.*

2. In May 2019, Petitioners Andre Verdun and Ian Anoush Golkar filed a class action complaint under 42 U.S.C. § 1983, alleging that the City violated their Fourth Amendment rights by chalking their car tires and then issuing them parking citations and fines. App. 6a.

The district court granted summary judgment for the City. *Id.* The court concluded that the City's practice of tire-chalking was a search under the Fourth Amendment. App. 61a-62a. It also held that although the search was conducted without a warrant, it fell within the administrative-search exception to the warrant requirement. App. 71a. The court thus dismissed Mr. Verdun and Mr. Golkar's complaint for failing to establish that the City's tire-chalking program violated the Fourth Amendment. *Id.*

3. The court of appeals affirmed over a dissent by Judge Bumatay.

a. The panel majority assumed that tire-chalking is a search, and held that the practice is constitutional under the administrative-search exception. App. 2a.

In the panel's view, the public interests that tire-chalking supposedly serves outweigh tire-chalking's minimal "intrusion on personal liberty." App. 3a. As the court explained, the City uses tire-chalking as part of "its overall management of vehicular traffic and the use of city parking spots"; as part of "a broader program of traffic control"; and as a means of "encouraging compliance with City parking regulations." App 3a, 17a. The court thought that the "scope and manner of execution" of the City's tire-chalking scheme were reasonably tailored to those ends. App. 3a.

In reaching its conclusion, the court reasoned that a warrantless administrative search doesn't have to address "a special need premised on an imminent threat to public health or safety, or circumstances otherwise demanding immediate action in the face of dangerous conditions." App. 14a. In the majority's view, the administrative searches this Court has greenlighted involved no such threats or imminent need. *See* App. 14a-15a. The court pointed to "periodic searches of regulated businesses" like automobile junkyards and liquor stores, or suspicionless highway checkpoints set up to detect intoxicated drivers. App. 15a (citing *New York v. Burger*, 482 U.S. 691, 703 (1987) (junkyards); *Colonnade Catering Corp. v. United States*, 397 U.S. 72, 76-77 (1970) (liquor stores)); App. 18a-19a (citing *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444, 455 (1990) (intoxicated

drivers)). It didn't matter that tire-chalking doesn't fit into existing categories of permissible warrantless administrative searches, the court reasoned, because this Court hasn't limited the administrative-search exception to particular "contexts or factual scenarios." App. 13a.

The court acknowledged that the concerns tire-chalking is meant to address are "less acute dangers than drunk driving" and other hazards that highway checkpoints are meant to serve. App. 14a. But the court determined that the public interests outweighed the resulting minimal intrusion. App. 23a. The court also thought the intrusion was particularly negligible because there is "a reduced expectation of privacy for vehicles," especially vehicles parked on public streets. *Id.* The court thus concluded that tire-chalking is "appropriately tailored" to the public interests it serves, that it would be impractical to require the City to obtain warrants to monitor parking spaces, and that it was irrelevant that the City might be able to use alternative methods to achieve its goals. App. 22a (citation omitted).

The Ninth Circuit recognized that it was "part[ing] ways with the Sixth Circuit's" holding in *Taylor II* that a nearly identical tire-chalking scheme didn't fall within the administrative-search exception. App. 25a. In the Ninth Circuit's view, however, the Sixth Circuit should have asked "whether tire chalking fits within the administrative search exception under the governing principles and precedents," and shouldn't have focused on whether there were other available methods that wouldn't be Fourth Amendment searches. App. 26a. The Ninth Circuit also characterized the Sixth Circuit's decision as improperly focusing on whether the city there could enforce

its parking regulations by means other than tire-chalking. App. 25a-26a.

b. Judge Bumatay dissented, explaining that "[t]he City … violates the constitutional rights of its citizens" when it engages in tire-chalking. App. 30a. Under the tire-chalking scheme, he observed, the City "marks with chalk every parked vehicle on certain city streets on the chance that a car might overstay its allotted time." *Id.* That practice is unconstitutional because it is a physical trespass onto private property "with no warrant, no suspicion of an ordinance violation, and no pressing and exceptional governmental interest." *Id.* Judge Bumatay reasoned that the majority was abdicating the judiciary's duty to "safeguard against even 'stealthy encroachments'" on constitutional protections." App. 31a (citation omitted). In his view, neither "the original understanding of the Fourth Amendment nor Supreme Court precedent" permits the City's "policy of indiscriminate searches" for the generalized goal of "improving traffic congestion." *Id.*

First, Judge Bumatay explained that tire-chalking is a Fourth Amendment search because it trespasses on private property to obtain information: the chalk mark physically intrudes on a private effect, a car, for the purpose of determining how long the car has remained in a particular location. App. 32a-36a (Bumatay, J., dissenting) (citing *Jones*, 565 U.S. 400; *Jardines*, 569 U.S. 1).

Second, Judge Bumatay reasoned that tire-chalking is presumptively unreasonable because it "indiscriminately targets lawfully parked vehicles"—precisely the type of "suspicionless search[]" the

Fourth Amendment originally was understood to forbid. App. 36a, 45a (Bumatay, J., dissenting).

Third, Judge Bumatay reasoned that the City's tire-chalking scheme "fails to fit any Fourth Amendment exception." App. 45a (Bumatay, J., dissenting). He explained that tire-chalking doesn't fit within the administrative-search exception to the warrant requirement, because administrative searches "must be limited to specific, imminent, and vital interests—rather than the routine, ordinary challenges often faced by governments." App. 50a. The City's tire-chalking practice doesn't satisfy that test. It "isn't designed to address a pressing and exceptional governmental interest," like the need to stop cross-border smuggling operations, prevent drunk-driving accidents, or help apprehend the perpetrator of a fatal hit-and-run accident that permissible highway checkpoints are intended to address. App. 46a-49a (citing *Sitz*, 496 U.S. 444; *Illinois v. Lidster*, 540 U.S. 419 (2004); *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976); *Griffin v. Wisconsin*, 483 U.S. 868 (1987)). Instead, tire-chalking purports to serve the City's generalized interests in mitigating traffic congestion, enhancing commercial activity, and "preserving 'the quality of urban life.'" App. 51a. Those may be "commendable goals," but they do not justify an exception to the Fourth Amendment's warrant requirement. *Id.*

REASONS FOR GRANTING THE PETITION

The courts of appeals have split on an important Fourth Amendment question, and the Ninth Circuit below got it wrong. The Ninth Circuit split from the Sixth Circuit by holding that tire-chalking is constitutional under the administrative-search exception to the warrant requirement. The Sixth Circuit, in

contrast, holds that a warrantless, suspicionless tire-chalking scheme cannot be justified as an administrative-search or under the community-caretaking or automobile exceptions to the warrant requirement. The circuit division warrants this Court's review.

The Ninth Circuit's decision is wrong. Warrantless, suspicionless tire-chalking violates the Fourth Amendment's prohibition on unreasonable searches. It's not justified by the administrative-search exception because it doesn't address any serious, clear, and specific public health or safety risk. Nor does it satisfy any other exception to the warrant requirement. The Ninth Circuit's conclusion that the administrative-search exception justifies tire-chalking transforms an otherwise narrow exception into an amorphous reasonableness standard. It also improperly permits generic government interests in everyday challenges like traffic control and parking enforcement to override fundamental Fourth Amendment protections.

The question presented is important. Seemingly benign practices often serve as the "first footing" for more blatantly "illegitimate and unconstitutional" ones. *Stern*, 564 U.S. at 503 (citation omitted). And courts play an essential role in protecting against such "stealthy encroachments." App. 31 (Bumatay, J., dissenting). Condoning tire-chalking as a constitutional search also undermines the Fourth Amendment's core concern with suspicionless searches. The split also highlights disagreement among the courts about the scope of the administrative-search exception. And when *Jones* and *Jardines* reinvigorated the property-based approach to the Fourth Amendment search doctrine, they also raised the stakes for that disagreement. Courts need guidance for assessing government searches, governments need guidance on

how to implement their administrative programs, and members of the public need clarity on their Fourth Amendment rights.

This case is the ideal vehicle to clarify the administrative-search exception. The question was squarely decided by and fully briefed before both the district court and court of appeals; both courts relied only on the administrative-search exception to justify the city's tire-chalking scheme; and the courts' holdings that the exception applied were dispositive.

The Court should grant review.

I. The Ninth Circuit split from the Sixth Circuit by holding tire-chalking constitutional under the administrative-search exception.

In the Sixth Circuit, tire-chalking isn't justified by the administrative-search, community-caretaking, or automobile exceptions to the warrant requirement, and thus is presumptively unconstitutional. The Ninth Circuit disagrees. Over a dissent siding with the Sixth Circuit, the Ninth Circuit here held that tire-chalking is a reasonable administrative search.

A. In the Sixth Circuit, the administrative-search exception cannot justify tire-chalking, and neither can the community-caretaking or automobile exceptions.

In the Sixth Circuit, tire-chalking is a search that cannot be justified by the administrative-search exception and therefore is presumptively unconstitutional. *Taylor II*, 11 F.4th at 489. Indeed, the Sixth Circuit has also rejected the community-caretaking and automobile exceptions as defenses for

tire-chalking, *Taylor I*, 922 F.3d at 334-35, leading to a declaration that the practice is unconstitutional, *Taylor*, 2022 WL 3160734, at *8 .

1. In *Taylor II*, the Sixth Circuit first concluded that tire-chalking constitutes a Fourth Amendment search under *Jones*'s property-based approach. 11 F.4th at 487 (citing *Jones*, 565 U.S. at 406 n.3, 408 n.5). That's because placing a chalk mark on the tire of a privately-owned vehicle is "a physical trespass to a constitutionally protected area with the intent to obtain information." *Id.*; *see Taylor I*, 922 F.3d at 332-33.

2. The court then concluded that the government failed to meet its burden of establishing that tire-chalking is reasonable under the Fourth Amendment. The court explained that because tire-chalking is a warrantless search, it's presumptively unreasonable. *Taylor II*, 11 F.4th at 487. As a result, the government had to show that the policy fits within one of the "few specifically established and well-delineated exceptions" to the warrant requirement. *Id.* (quoting *Patel*, 576 U.S. at 419).

The Sixth Circuit held that the City failed to make that showing. The court explained that the administrative-search exception has several requirements. Searches must be "conducted for an administrative purpose and pursuant to a regulatory scheme—such as inspecting a home for compliance with a municipal housing code"—and must meet "reasonable legislative or administrative standards." *Id.* at 488 (citation omitted). That means that the court must "balanc[e] the need to search against the invasion which the search entails." *Id.* (citation omitted). And the subject of the search must have "an opportunity to obtain

precompliance review before a neutral decisionmaker." *Id.* (citation omitted).

If there's no opportunity for precompliance review, however, a search can qualify as a permissible administrative search only if (1) there is a substantial government interest (2) making the warrantless inspections necessary and (3) the inspection scheme, "in terms of the certainty and regularity of its application, … provide[s] a constitutionally adequate substitute for a warrant." *Id.* (quoting *Burger*, 482 U.S. at 702-03). That's the test that authorizes warrantless administrative searches of certain "closely regulated industries," like "liquor sales, firearm dealing, mining, or automobile junkyards." *Id.* The exception also permits suspicionless searches that are part of a broader program "designed to serve special needs, beyond the normal need for law enforcement," like "highway checkpoints near borders to curb illegal immigration," "sobriety checkpoints aimed at removing drunk drivers from the road," and drug and alcohol tests "for student-athletes, federal employees seeking promotions, and railway employees involved in accidents." *Id.* at 488-89 (citing *Martinez-Fuerte*, 428 U.S. at 556-58; *Sitz*, 496 U.S. at 451-53; and *Edmond*, 531 U.S. at 37).

The Sixth Circuit concluded that tire-chalking doesn't fit into any of those well-established categories. "[U]nlike the closely regulated industries of liquor sales, firearm dealing, mining, or automobile junkyards," the court reasoned, "municipal parking plainly does not 'pose[] a clear and significant risk to the public welfare.'" *Id.* at 488 (second alteration in original; citation omitted). Tire-chalking doesn't serve a "special need" either, the court explained, because it isn't necessary to enforce the City's parking

regulations. *Id.* at 489. Thus, in the Sixth Circuit's view, "tire chalking is not necessary to meet the ordinary needs of law enforcement, let alone the extraordinary." *Id.*

3. a. In an earlier appeal, the Sixth Circuit also rejected the City's argument that tire-chalking is justified under the automobile or community-caretaking exceptions to the Fourth Amendment's warrant requirement. *Taylor I*, 922 F.3d at 334-35. The court acknowledged that there's a reduced expectation of privacy when it comes to vehicles, but held that because there is no probable cause to believe the vehicles being marked with chalk contain evidence of a crime, the automobile exception doesn't apply. *Id.* And the community-caretaking exception applies only "in narrow instances when public safety is at risk." *Id.* at 335 (citing *South Dakota v. Opperman*, 428 U.S. 364, 369 (1976)). The court rejected that exception, too, explaining, among other things, that the City had not shown "that the location or length of time [the] vehicle was parked" created a public safety hazard, or "that delaying [the] search would result in 'injury or ongoing harm to the community.'" *Id.* (citation omitted).

b. Given the Sixth Circuit's rejection of not just the administrative-search exception but also the community-caretaking and automobile exceptions to the Fourth Amendment warrant requirement, tire-chalking is presumptively unconstitutional in the Sixth Circuit. Indeed, on remand from *Taylor II*, the district court held exactly that on summary judgment. *Taylor*, 2022 WL 3160734, at *8.

B. The Ninth Circuit holds that tire-chalking is constitutional under the administrative-search exception.

In stark contrast to the Sixth Circuit, the Ninth Circuit holds that tire-chalking is constitutional. Here, over a dissent by Judge Bumatay, the Ninth Circuit disagreed with the Sixth Circuit and concluded that the City of San Diego's tire-chalking program, which was nearly identical to the program the Sixth Circuit considered, is constitutional under the administrative-search exception.

1. a. In the Ninth Circuit's view, warrantless tire-chalking is constitutional because the City's interests in traffic control and enforcing parking restrictions are important to "the basic functioning of a municipality and the quality of life of its residents, businesses, and visitors," App. 20a, and outweigh the intrusions.

The Ninth Circuit first assumed without deciding that tire-chalking is a Fourth Amendment search under *Jones*. App. 8a. The court then held that tire-chalking is a reasonable warrantless search under the "administrative search" or "special needs" exception because the "primary purpose" of the search is regulatory and "special needs" make it impractical to obtain a warrant. App. 8a-9a. In the court's view, the administrative-search exception isn't limited "to particular contexts or factual scenarios." App. 13a. All that's required, the majority continued, is that the search is sufficiently tethered to the purported governmental interest and is "reasonable in … scope and manner of execution," and that the public interest outweighs any countervailing privacy interests. App. 13a-14a (citation omitted). The majority rejected the requirement

that the search must be connected to any "special need premised on an imminent threat to public health or safety," or must address circumstances that "otherwise [would] demand[] immediate action in the face of dangerous conditions." App. 14a.

The majority rested its decision on a review of administrative searches in three contexts: highway checkpoints or roadblocks, App. 9a-10a (citing *Martinez-Fuerte*, 428 U.S. 543; *Sitz*, 496 U.S. 444; and *Lidster*, 540 U.S. 419); searches of closely regulated businesses, App. 11a (citing *Donovan v. Dewey*, 452 U.S. 594 (1981); *Colonnade Catering*, 397 U.S. 72; *United States v. Biswell*, 406 U.S. 311 (1972); and *Burger*, 482 U.S. 691); and searches of certain groups of people with a "reduced expectation[] of privacy," App. 12a (citing *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602, 634 (1989); *National Treasury Employees Union v. Von Raab*, 489 U.S. 656 (1989); *O'Connor v. Ortega*, 480 U.S. 709 (1987) (plurality op.); *Vernonia School District 47J v. Acton*, 515 U.S. 646 (1995); and *Board of Education of Independent School District No. 92 v. Earls*, 536 U.S. 822 (2002)). The majority recognized that tire-chalking didn't fall neatly into any of these recognized categories. *See* App. 14a. But it thought the practice analogous to suspicionless highway checkpoints, or "motorist dragnet[s]." App. 15a. The court acknowledged that the concerns tire-chalking is meant to address are "less acute dangers than drunk driving" and other hazards that highway checkpoints are meant to serve, App. 14a—a "broader program of traffic control" and "compliance with City parking regulations," App. 2a-3a, 17a. The court nonetheless thought those interests outweighed any individual intrusion, particularly

because there is "a reduced expectation of privacy for vehicles" parked on public streets. App. 23a.

b. The Ninth Circuit recognized that it was "part[ing] ways with the Sixth Circuit's" holding in *Taylor II* that the City of Saginaw's nearly identical tire-chalking scheme didn't fall within the administrative-search exception. App. 25a. In the Ninth Circuit's view, however, the Sixth Circuit's formulation of the administrative-search exception was too narrow, and it should have conducted a broader inquiry to determine whether tire-chalking could be justified under the exception. App. 25-26a.

2. Judge Bumatay dissented. In his view, the City's warrantless tire-chalking scheme violates the Fourth Amendment because it doesn't require individualized suspicion or target a "pressing and exceptional governmental interest." App. 30a (Bumatay, J., dissenting). Judge Bumatay cautioned that the majority's holding threatens to expand the administrative-search exception so much that it swallows the general rule that warrantless, suspicionless searches are unreasonable. *Id.*

a. Judge Bumatay first explained that "[u]nder both the original understanding of the Fourth Amendment and modern precedent," courts "apply a 'property-based approach' to determine whether government action is a 'search.'" App. 32a (Bumatay, J., dissenting) (quoting *Jones*, 565 U.S. 400; citing *Jardines*, 569 U.S. 1). At common law, "any government intrusion on property [was a] trespass" no matter whether the trespasser damaged the property. App. 33a (citing *Jones*, 565 U.S. at 405; *Entick v. Carrington*, 95 Eng. Rep. 807, 817 (C.P. 1765)). And "modern jurisprudence" confirms that property-based

approach. *Id.* Tire-chalking thus is a Fourth Amendment search, Judge Bumatay concluded, because the chalk mark trespasses on private property to obtain information about how long the car has remained in a particular location. App. 35a-36a.

b. Judge Bumatay then concluded that tire-chalking is presumptively unreasonable because it "indiscriminately targets lawfully parked vehicles"—precisely the type of "suspicionless search[]" the Fourth Amendment originally was understood to forbid. App. 36a, 45a (Bumatay, J., dissenting). And because it doesn't fit into "any Fourth Amendment exception," he concluded, tire-chalking is unconstitutional. App. 45a.

Specifically rejecting the majority's reliance on the administrative-search exception, Judge Bumatay explained that permissible administrative searches are designed "to address certain narrow concerns." App. 46a (Bumatay, J., dissenting). Those concerns include "public-safety code compliance," "closely regulated businesses," "dragnets or checkpoints for imminent dangers," and "special needs populations." App. 45a-46a (citing *Camara*, 387 U.S. 523; *Donovan*, 452 U.S. 594; *Martinez-Fuerte*, 428 U.S. 543; *Griffin*, 483 U.S. 868). And tire-chalking doesn't fit into any of those categories. App. 47a-51a.

In Judge Bumatay's view, the panel majority's reliance on motorist checkpoint cases was misplaced. Those cases limit warrantless, suspicionless administrative searches "to specific, imminent, and vital interests—rather than the routine, ordinary challenges often faced by governments." App. 50a (Bumatay, J., dissenting). Such "exceptional circumstances" might include highway immigration

checkpoints to address "the 'formidable law enforcement problems' posed by border enforcement," like covert "'smuggling operations' and the fact that illegal immigration could not 'be controlled effectively at the border.'" App. 47a-48a (quoting *Martinez-Fuerte*, 428 U.S. at 552, 556-57). Other "pressing and exceptional governmental interest[s]" might include preventing drunk-driving accidents, or helping apprehend the perpetrator of a fatal hit-and-run accident. App. 46a-49a (citing *Sitz*, 496 U.S. 444; *Lidster*, 540 U.S. 419).

But the City's tire-chalking scheme isn't designed to address any such "pressing and exceptional" interest. Rather, tire-chalking is intended to advance the generalized interests in mitigating traffic congestion, enhancing commercial activity, and "preserving 'the quality of urban life.'" App. 50a-51a (Bumatay, J., dissenting). Those may be "commendable goals," Judge Bumatay explained, but they "are too generalized and commonplace" to justify an exception to the warrant requirement. *Id.*

In reaching that conclusion, Judge Bumatay stressed that the exceptions to the warrant requirement are narrow, and for good reason. Surveying history leading up to the adoption of the Fourth Amendment and through its incorporation against the States, Judge Bumatay explained that the Amendment was intended to protect against suspicionless searches, given "our Founding generation's aversion to Crown officials' abuse of investigative tools to search and seize at will and without explanation." App. 30a-31a, 36a-45a, 51a-52a (Bumatay, J., dissenting). Those very concerns, he explained, prohibit "a policy of indiscriminate searches" for the "ordinary government enterprise" of "improving traffic congestion." App. 31a.

Judge Bumatay recognized that "chalking tires may not constitute the greatest affront to personal liberty." *Id.* (Bumatay, J., dissenting). But he warned that accepting it as a reasonable search risks "'stealthy encroachments' on the Fourth Amendment." *Id.* (quoting *Boyd v. United States*, 116 U.S. 616, 635 (1886)). "No matter how well meaning, modest, or longstanding the intrusion into personal effects," Judge Bumatay cautioned, "the Fourth Amendment commands that all government searches, with some narrow exceptions, be supported by a warrant and individualized suspicion of wrongdoing." App. 30a. After all, "the administrative search exception is still the exception." App. 53a. To be sure, "law enforcement, traffic enforcement, and almost any other government function would be more efficient and more convenient if officers could skirt the Fourth Amendment." *Id.* But the City doesn't get a ticket to violate the Fourth Amendment for efficiency's sake. *Id.*

C. San Diego's tire-chalking scheme would be unconstitutional in the Sixth Circuit.

The circuit split matters. In the Sixth Circuit, this case would have come out the other way, for the reasons Judge Bumatay and the Sixth Circuit explained. San Diego's tire-chalking scheme would be an unconstitutional search under the Fourth Amendment. As discussed, the Sixth Circuit rejected a nearly identical tire-chalking scheme not only under the administrative-search exception, but also under the automobile and community-caretaking exceptions. *Supra* pp. 13-16. Unsurprisingly, the district court on remand declared the practice unconstitutional. *Supra* p. 16.

II. The Ninth Circuit's decision is wrong.

The Ninth Circuit's decision is wrong. Tire-chalking is a warrantless, suspicionless search that violates the Fourth Amendment. It falls outside the administrative-search exception because it neither affords vehicle owners an opportunity for precompliance review before a neutral decisionmaker nor is tethered to any serious, clear, and specific public health or safety risk. No other exceptions can save San Diego's tire-chalking scheme, either.

The Ninth Circuit's contrary conclusion—that the administrative-search exception justifies tire-chalking—lacks merit. The Ninth Circuit improperly mixed and matched from the discrete categories of cases in which the Court has allowed warrantless administrative searches to create a permissive reasonableness inquiry allowing commonplace and generalized government interests to justify a warrantless administrative search. As this Court's decisions make clear, only serious, clear, and specific interests can justify dispensing with the warrant requirement under the administrative-search exception.

A. Tire-chalking violates the Fourth Amendment and cannot be justified under the administrative-search exception to the warrant requirement.

1. Warrantless, suspicionless searches are unconstitutional unless they fall within one of a limited number of narrow exceptions to the warrant requirement.

Warrantless, suspicionless searches are unconstitutional unless they satisfy one of "a few specifically established and well-delineated exceptions" to the

warrant requirement. *Patel*, 576 U.S. at 419 (quoting *Gant*, 556 U.S. at 338). The Court narrowly construes the exceptions to ensure that they don't become unmoored "from the justifications underlying [them]" or "undervalue" fundamental Fourth Amendment concerns. *Collins v. Virginia*, 138 S. Ct. 1663, 1671-72 (2018) (citation omitted). Indeed, one of the Framers' core concerns when the Fourth Amendment was adopted was that general warrants and writs of assistance afforded officers the power to "rummage" "unrestrained" and without individualized suspicion through peoples' belongings "for evidence of criminal activity." *Riley*, 573 U.S. at 403; App. 37a-45a (Bumatay, J., dissenting).

2. Unless there is an opportunity for precompliance review, a warrantless administrative search is reasonable only if it is necessary to address a serious, clear, and specific public health or safety risk.

One limited exception to the warrant requirement involves administrative searches, which have as their "primary purpose" something other than general crime control. *Patel*, 576 U.S. at 420 (citation omitted). Under the administrative-search exception, suspicionless searches are unreasonable unless the subject of the search has an opportunity for "precompliance review before a neutral decisionmaker"; "special needs" make the warrant or individualized suspicion requirements impractical; and the search addresses a substantial government interest. *Id.* In some limited circumstances, warrantless administrative searches may satisfy constitutional scrutiny even without an opportunity for precompliance review, but only if the search is tied to a serious, clear, and specific public

safety or health risk. *Id.*; *see id.* at 424. The narrow set of circumstances in which warrantless, suspicionless administrative searches may be reasonable without an opportunity for precompliance review involve (a) certain closely regulated businesses, (b) drug-testing of certain populations with a lesser expectation of privacy, and (c) brief highway checkpoint seizures in light of pressing roadway dangers.

a. In the last half-century, the Court has upheld warrantless administrative searches of only four types of closely regulated businesses. The Court has allowed those searches because the industries at issue have such an extensive "history of government oversight" that a manager of that business could have "no reasonable expectation of privacy … over the stock of such an enterprise.'" *Id.* at 424 (citation omitted); *Edmond*, 531 U.S. at 37. Those four businesses are ones that sell liquor, deal firearms, are engaged in mining, or operate automobile junkyards. *Patel*, 576 U.S. at 424 (citing *Colonnade Catering*, 397 U.S. 72 (liquor); *Biswell*, 406 U.S. 311 (firearms); *Donovan*, 452 U.S. 594 (mining); and *Burger*, 482 U.S. 691 (automobile junkyard)). The Court has explained that those types of businesses themselves "pose[] a clear and significant risk to the public welfare." *Id.*

b. The Court also has allowed warrantless, suspicionless drug-testing of student athletes in public schools, of federal customs employees seeking certain transfer or promotion opportunities, and of "railway employees involved in train accidents or found to be in violation of particular safety regulations." *Edmond*, 531 U.S. at 37 (citing *Vernonia*, 515 U.S. 646 (student-athletes); *Von Raab*, 489 U.S. 656 (federal customs employees); and *Skinner*, 489 U.S. 602 (railway employees)). Critically, the specific administrative goals

also involved immediate and significant public health and safety risks involving drug abuse, border security, and railway safety. *Vernonia*, 515 U.S. at 660-62; *Von Raab*, 489 U.S. at 674, 677; *Skinner*, 489 U.S. at 633-34. And given the school or work environments, the individuals subject to the administrative searches had a reduced expectation of privacy. *Vernonia*, 515 U.S. at 657; *Von Raab*, 489 U.S. at 672; *Skinner*, 489 U.S. at 634.

c. In a distinct category of cases, the Court has upheld brief, suspicionless highway checkpoints that address serious, clear, and specific dangers to highway safety. For example, the Court has permitted "brief, suspicionless seizures of motorists at a fixed Border Patrol checkpoint designed to intercept illegal aliens," "at a sobriety checkpoint aimed at removing drunk drivers from the road," *Edmond*, 531 U.S. at 37 (citing *Martinez-Fuerte*, 428 U.S. 543; and *Sitz*, 496 U.S. 444), and at a highway checkpoint aimed at gathering information from the public about a recent fatal hit-and-run accident, *Lidster*, 540 U.S. at 421.

Those cases involved the "serious public danger" of drunk driving, *Sitz*, 496 U.S. at 453-55, the pressing interest in intercepting illegal aliens near the border, *Martinez-Fuerte*, 428 U.S. at 556-59, and the "grave" "public concern" in "investigating a crime that had resulted in a human death," *Lidster*, 540 U.S. at 427. In each case, the Court concluded that those interests outweighed the intrusions that the brief stops of every motorist passing through the checkpoint would experience. *Sitz*, 496 U.S. at 453-55; *Martinez-Fuerte*, 428 U.S. at 556-59; *Lidster*, 540 U.S. at 427-28.

d. To be sure, the Court has found that in "limited circumstances," warrantless administrative

searches can be reasonable under the Fourth Amendment. *Edmond*, 531 U.S. at 37. But the Court has also repeatedly refused to expand the exception to accommodate additional types of warrantless administrative searches, and has cautioned against permitting "narrow exception[s] to swallow the rule." *Patel*, 576 U.S. at 424-25.

Start with "closely regulated" businesses. The Court has held that hotels don't qualify because "nothing inherent in the operation of hotels poses a clear and significant risk to the public welfare." *Id.* at 424. The Court also warned that suspicionless drug-tests of certain populations wouldn't necessarily "pass constitutional muster in other contexts." *Vernonia*, 515 U.S. at 665. Indeed, in striking down a state law requiring candidates for state office to pass a "relatively noninvasive" drug test, the Court declined to expand the administrative-search exception because there was no "indication of a concrete danger demanding departure from the Fourth Amendment's main rule." *Chandler v. Miller*, 520 U.S. 305, 318-19 (1997). In the context of highway checkpoints, too, the Court has made clear that "cases dealing with police stops of motorists on public highways" are unique to that particular context. *Sitz*, 496 U.S. at 450; *see Martinez-Fuerte*, 428 U.S. at 567.

3. Tire-chalking doesn't qualify for the administrative-search exception because it doesn't address a serious, clear, and specific public safety or health risk.

Tire-chalking falls outside the administrative-search exception to the warrant requirement because it fails both to provide an opportunity for

precompliance review and to address a serious, clear, and specific public safety or health risk.

a. As an initial matter, tire-chalking is a Fourth Amendment search. In *United States v. Jones*, the Court explained that under the original meaning of the Amendment, a government trespass on "private property for the purpose of obtaining information" is a search, regardless whether the trespass causes any damage. 565 U.S. at 404-07 & n.3 (citing *Entick*, 95 Eng. Rep. at 817). That "simple baseline" has long "formed the exclusive basis for [Fourth Amendment] protections." *Jardines*, 569 U.S. at 5. Thus, as the dissent and the Sixth Circuit recognized (and as the Ninth Circuit assumed) tire-chalking is a search because the chalk mark physically intrudes on a private effect, a car, for the purpose of determining how long the car has remained in a particular location. San Diego's use of tire-chalking "[s]ince at least the 1970s" doesn't alter that conclusion. App. 3a. When officers physically intrude on private property to obtain information, "the antiquity of the tools that they bring along is irrelevant." *Jardines*, 569 U.S. at 11.

b. San Diego's warrantless, suspicionless tire-chalking falls outside the administrative-search exception. Because there is no opportunity for vehicle owners to obtain precompliance review, *see Patel*, 576 U.S. at 420-23, the practice can be justified only if tire-chalking is necessary to address a serious, clear, and specific public health or safety risk. But tire-chalking addresses no such risk. Instead, tire-chalking is meant to help maintain traffic flow, help manage use of city parking spaces, encourage drivers to comply with parking regulations, increase safety on and near the roads, and promote "the basic functioning of [the] municipality and the quality of life of its residents,

businesses, and visitors." App. 20a. Although those goals may be "commendable," they can't justify a warrantless administrative search because they're generalized, "ever-present," and "pedestrian[]" concerns, untethered to any grave, clear, and specific threat to public safety or health. App. 50a-51a (Bumatay, J., dissenting).

Compare the search here to administrative searches of historically closely regulated businesses. Not only does tire-chalking have nothing to do with searching a business, much less a closely regulated one, it doesn't address any "clear and significant risk to the public welfare." *Patel*, 576 U.S. at 424. There's nothing at issue resembling the immediate hazards that businesses selling liquor, dealing in firearms, or operating mining or automobile junkyards pose to the public. *See supra* pp. 25, 27.

The same is true about the limited class of cases permitting warrantless drug-testing of particular groups of people. Even if tire-chalking is a "relatively noninvasive" search, there's no immediate, "concrete danger demanding departure from the Fourth Amendment's main rule," *Chandler*, 520 U.S. at 318-19, like there is with safety risks involving drug abuse, border security, and railways. *See supra* pp. 25-27.

Cases involving brief seizures at highway checkpoints don't support tire-chalking, either. The wide-ranging concerns that tire-chalking is supposed to address—like traffic congestion, general road safety, and "the basic functioning of [the] municipality and the quality of life"—are entirely different in kind from the grave and immediate dangers arising from drunk-driving, the smuggling of illegal aliens near the

border, and an at-large perpetrator of a fatal hit-and-run. *Supra* p. 26.

c. What's more, tire-chalking doesn't fall within any other exceptions to the warrant requirement.

The automobile exception doesn't fit, because it requires probable cause. *Collins*, 138 S. Ct. at 1670. But officers in San Diego mark tires indiscriminately, so the search isn't based on probable cause.

Community-caretaking doesn't work, because tire-chalking is wholly unlike a "search of an impounded vehicle" to locate "an unsecured firearm" or to inventory the vehicle's contents. *Caniglia*, 141 S. Ct. at 1598; *see Cady v. Dombrowski*, 413 U.S. 433, 446-47 (1973); *Opperman*, 428 U.S. at 373-76. Those inventory searches have been found reasonable given the "noncriminal 'community caretaking functions'" that police officers patrolling "public highways" often perform to ensure public safety. *Caniglia*, 141 S. Ct. at 1598 (quoting *Cady*, 413 U.S. at 441). Here, the vehicles subject to tire-chalking haven't been impounded, so the rationale behind the community-caretaking exception doesn't apply, and neither does the narrow exception itself. *See id.* at 1599-1600.

Nor can consent do the trick. To overcome the warrant requirement, consent must be "freely and voluntarily given." *Schneckloth v. Bustamonte*, 412 U.S. 218, 222 (1973) (citation omitted). Here, San Diego hasn't established that it has informed vehicle-owners that it will draw chalk marks on their tires, and that the owners voluntarily consented to that intrusion.

B. The Ninth Circuit erred in holding that tire-chalking qualifies as a permissible administrative search.

The Ninth Circuit erred in concluding that tire-chalking falls within the administrative-search exception. In reaching that conclusion, the Ninth Circuit took two critical wrong turns: (1) it invented a hybrid, free-wheeling reasonableness test to justify the practice rather than adhering to the limited class of cases in which warrantless administrative searches are permitted, and (2) it allowed commonplace, generalized concerns to justify the search when only serious, clear, and specific concerns suffice.

1. The Ninth Circuit found highway checkpoints, or "dragnet" searches, most "analogous" to tire-chalking. App. 15a. It did so despite the Court's observation that highway checkpoint cases are themselves unique. *Supra* p. 27. And the court went even farther afield by "draw[ing] on administrative search cases outside that context" to justify tire-chalking App. 15a. In doing so, the Ninth Circuit patched together narrow categories of permissible warrantless administrative searches—those relating to closely regulated businesses and drug-testing of certain populations. *Supra* pp. 17-18; App. 22a-25a. The result was a broad reasonableness exception that swallows the baseline rule that warrantless searches are unreasonable. *Supra* pp. 17-19.

The Ninth Circuit's observation that there "is already a reduced expectation of privacy for vehicles" is no defense. App. 23a. As this Court has recognized, "the word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears." *Coolidge*, 403 U.S. at 461-62.

2. The Ninth Circuit also opened the door for any generalized, commonplace government interest to serve as the basis for a warrantless administrative search. That approach undermines the Fourth Amendment's core concern with suspicionless, warrantless searches and "unmoor[s]" the exception from its rationale. *Collins*, 138 S. Ct. at 1671-72.

The Ninth Circuit recognized that the concerns that tire-chalking supposedly addresses are "less acute" than the serious dangers that highway checkpoints are essential to curb. App. 14a. But it found those concerns sufficient all the same. That was error. The government's interest in maintaining traffic flow, promoting general road safety, and encouraging compliance with parking restrictions cannot be equated with the serious and specific dangers that drunk driving, the smuggling of illegal aliens, and an at-large perpetrator of a fatal hit-and-run pose. *Supra* pp. 29-30. And even if those supposed concerns *were* sufficient, it's parking enforcement generally, and not tire-chalking specifically, that serves them.

The Ninth Circuit's observation that "courts have recognized the strong governmental interest in managing traffic and parking" in "different legal contexts"—like in First Amendment challenges—doesn't help, either. App. 21a (citing *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753 (1994)). This Court has warned against mixing and matching concepts within its Fourth Amendment jurisprudence to expand exceptions to the warrant requirement "beyond anything [the] Court has recognized." *Caniglia*, 141 S. Ct. at 1599; *see Collins*, 138 S. Ct. at 1671-72. Mixing and matching beyond the Fourth Amendment context doesn't work, either.

III. This case is the ideal vehicle to address this important question.

A. The question presented is important. In the Ninth Circuit's view, tire-chalking is no big deal, so "why the fuss?" *Stern*, 564 U.S. at 502. But the Court has long recognized that "illegitimate and unconstitutional practices get their first footing," in many cases, from practices that "may seem innocuous at first blush." *Id.* at 503 (quoting *Boyd*, 116 U.S. at 635). And as Judge Bumatay recognized in dissent, expanding the administrative-search exception to sweep in warrantless, suspicionless searches that purport to promote generalized, commonplace government interests invites "stealthy encroachments" on Fourth Amendment protections. App. 31a (Bumatay, J., dissenting) (citation omitted).

What's more, expanding the administrative-search doctrine strikes at the core of the Fourth Amendment's concern with suspicionless searches. Indeed, the Founders' disdain for such searches in large part motivated the adoption of the Fourth Amendment. *Riley*, 573 U.S. at 403. Broadening the "closely guarded category of constitutionally permissible suspicionless" administrative searches to situations involving generalized government goals not tied to grave, clear, and specific public dangers would enable abuse of those searches and undermine the Founders' intent. *Chandler*, 520 U.S. at 309.

The clear split also exacerbates general disagreement and confusion about the bounds of constitutional administrative searches and calls for this Court's guidance. The parameters of the administrative-search exception already were "notoriously unclear" *before* the Ninth Circuit parted ways with the Sixth.

E. Brensike Primus, *Disentangling Administrative Searches*, 111 Colum. L. Rev. 254, 257 (2011). *Jones*'s trespass-based approach to deciding whether a physical intrusion is a Fourth Amendment search, *see* 565 U.S. at 404-08, makes the need for guidance even more acute. Lower courts and Fourth Amendment scholars alike consider *Jones* to be "a sea change." *United States v. Richmond*, 915 F.3d 352, 357 (5th Cir. 2019); *see United States v. Ackerman*, 831 F.3d 1292, 1307 (10th Cir. 2016) (Gorsuch, J.). Indeed, courts now assess questions like whether a search has occurred "when an officer leans on the door of a car while questioning its driver" or taps a car tire to determine whether it's filled with "more than just air," *Richmond*, 915 F.3d at 354-57, or when a drug-sniffing dogs puts its paws on the exterior of a car while sniffing, *State v. Dorff*, No. 48119, 2023 WL 2563783, at *3-9 (Idaho Mar. 20, 2023).

By blurring the lines around the administrative-search exception, particularly in light of *Jones*'s property-based search analysis, the split leaves governments without guidance about how to comply with the Fourth Amendment. And in the Ninth Circuit, the rule leaves the government with little accountability if it can just articulate some interests that it thinks a search might advance. The split thus also leaves the public without confidence that sweeping administrative programs will respect their constitutional rights.

B. This case is the ideal vehicle to clarify the administrative-search exception and keep it in its lane. The question was squarely decided by and fully briefed before both the district court and court of appeals. Both courts relied only on the administrative-search exception to justify the City's tire-chalking

program. App. 2a-3a, 63a-71a. And the courts' holdings that the exception applied were dispositive.

* * *

The Ninth Circuit has split from the Sixth over an important question about the scope of the administrative-search exception to the Fourth Amendment's warrant requirement. Only this Court can resolve the acknowledged disagreement over whether the practice of warrantless, suspicionless tire-chalking is an unconstitutional search under the Fourth Amendment. Only this Court can provide the guidance that courts, governments, and citizens need about the scope of the administrative-search exception after *Jones* and *Jardines*. The Court should grant review.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted.

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