

No. \_\_\_\_\_

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In The  
**Supreme Court of the United States**

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JOHNATHAN SAMUEL BORDEN,  
*Petitioner,*  
v.

UNITED STATES OF AMERICA,  
*Respondent.*

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On Petition for Writ of Certiorari  
To The United States Court of Appeals  
For The Fifth Circuit

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**PETITION FOR WRIT OF CERTIORARI**

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## **QUESTION PRESENTED**

Whether Borden's suppression motion should have been granted?



## **PARTIES TO THE PROCEEDING**

The parties to the proceeding are named in the caption of the case before this Court.



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## **PRAYER**

Petitioner Johnathan Borden respectfully prays that a writ of certiorari be granted to review the judgment of the United States Court of Appeals for the Fifth Circuit issued on June 18, 2024.



## **OPINIONS BELOW**

On June 18, 2024, the United States Court of Appeals for the Fifth Circuit entered its judgment and opinion affirming the judgment of conviction and sentence. The Westlaw version of the Fifth Circuit's opinion is reproduced in the appendix to this petition.



## **JURISDICTION**

As noted, the Fifth Circuit entered its judgment on June 18, 2024. Appendix at 1. This petition is filed within 90 days after that date and thus is timely. See Sup. Ct. R. 13.1. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).



## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- I. The Fourth Amendment guarantees against unreasonable searches or seizures, "Walder v. United States, 347 U.S. 62 (1954)".

The Fourth Amendment to the United States 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.

U.S. Const. amend. IV.



## STATEMENT OF THE CASE

Johnathan Samuel Borden ("Borden") pled guilty, pursuant to a conditional plea agreement, to possession of a firearm by a felon. Prior to trial, Borden sought to suppress a firearm found during a warrantless search of his backpack, which was denied on April 17, 2023.

### The Appeal

On August 17, 2023, Mr. Borden filed a timely notice of appeal to the United States Court of Appeals for the Fifth Circuit. Borden raised the following error in his brief:

The District Court erred by denying his motion to suppress evidence, a firearm, discovered during the police officers' warrantless search of his closed backpack not within reach in a non-vehicular setting.

On June 18, 2024, the Fifth Circuit affirmed the judgment of conviction and sentence.

See United States v. JOHNATHAN SAMUEL BORDEN, United States Court of Appeals, Fifth Circuit Opinion, 2024 WL 3043383 (5<sup>th</sup> Cir. 2024) (Appendix).

The 5<sup>th</sup> Circuit affirmed the denial of Borden's suppression motion holding the officers' subjective beliefs as to whether or not a medical emergency existed was irrelevant, and given the totality of the circumstances, a reasonable view of the evidence supports the district court's conclusion exigent circumstances- a medical emergency or overdose- existed.

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## **BASIS OF FEDERAL JURISDICTION IN THE UNITED STATES DISTRICT COURT**

The district court has jurisdiction pursuant to 18 U.S.C. § 3231.

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## **REASONS FOR GRANTING THE PETITION**

As to the question presented, this Court should grant certiorari to address whether Borden's suppression motion should have been sustained.

Borden's Fourth Amendment rights were violated when the Government searched his backpack with an unconstitutional warrantless search lacking probable cause.

On the evening of September 23, 2021, Corpus Christi Police Department officers were dispatched in reference to a pedestrian running in and out of the street erratically. Officers saw a male matching the description, Mr. Borden, walking in the middle of a roadway headed towards a road with traffic and then seated on the ledge of the sidewalk, and he appeared to be under the influence of an unknown substance or suffering from a medical condition. Officers asked Borden what he took and he said his regular medication and did not smoke anything and had a drink. Officers removed the backpack Borden was wearing and placed it several feet away out of reach, and again asked Borden what he had taken. Borden responded

he had a shot of tequila. He was patted down and his wallet and unknown pills were found in a container in his pocket. Borden struggled to give his name. Officers seated Borden on the sidewalk ledge. Officers asked what Borden normally took and he said Wellbutrin, and had just one. At that point, an officer advised Borden, “I’m going to call a medic just to be safe. Are you diabetic?” Borden responded that the homeless guys kept trying to dig in his medication. The Officers asked, “what kind of medication did you take, Man. Did they give you more medication?” Meanwhile, one officer continued looking through the items he had removed from Borden’s pockets. Another officer stepped aside and asked Dispatch to send a Medic 2 to their location. Borden was asked what were the pills found in his pocket and another officer speculated that it might be Tylenol and commented, “He’s going to be super out of it and I can’t tell what he’s on.” One of the officers asked for consent to search Borden’s backpack, which was several feet out of Borden’s reach and he replied incoherently. Borden was placed in handcuffs and was told, “I don’t want anything to happen to you, so just hold tight, alright.” Borden was asked to cross his ankles as he remained seated on the sidewalk ledge. The officer began to search his backpack. Another officer searched his wallet and found his ID. The officer rummaging through his backpack asked if this was all his medical stuff, and said, “We’re going to go at minimum PI... but if it’s medical, then we’ll go with that.” Borden laid down, Officers asked if he was okay and he sat up. When asked what he uses, Borden said marijuana and not meth or cocaine. The searching Officer advised Borden, “Hey, we’ve got the medics coming for you, okay Bud.” Officers said they would let the medics check him out, “make sure you’re alright, Jonathan.” Borden advised officers he was on federal parole. Borden did not know if it was protein powder in his backpack. The officer continued to search his backpack and eventually found a firearm. Immediately upon finding the loaded firearm, officers lifted Borden, who had been seated on the sidewalk ledge, and took him to the police vehicle. He was searched again and placed inside the police vehicle. After he was

seated in the police vehicle, officers shut the door. The officer who found the firearm continued to search his backpack. One officer called in his name and date of birth and ran the gun.

Officers claimed at the suppression hearing that Borden was already under arrest for public intoxication when his backpack was searched and even though it was not within reach, they still had the right to search. Officers also claimed they searched his backpack to determine what he had ingested pursuant to a medical emergency. Finally, officers claimed even if they had not arrested him and had taken him to the hospital, they would have searched his backpack anyway.

The Fourth Amendment guarantees the right to be free from *unreasonable* searches and seizures, *Bailey v. United States*, 568 U.S. 186, 189 (2013). A search of private property without proper consent is “unreasonable” unless it was authorized by a valid search warrant, *Camara v. Municipal Court*, 387 U.S. 523, 528—529 (1967). Under the exclusionary rule, evidence obtained by an unreasonable search or seizure generally may not be used as evidence of guilt at trial, *United States v. Alvarez*, 40 F.4<sup>th</sup> 339, 345 (5<sup>th</sup> Cir. 2022). Generally, warrantless searches are *per se* unreasonable under the Fourth Amendment, although there are a few specifically established exceptions, *Minnesota v. Dickerson*, 508 U.S. 366 (1993). The Government argued multiple exceptions to the warrant requirement were applicable to the facts presented here. Among those, the government asserted officers had a right to search the backpack under an exigent circumstances exception.

There was no evidence presented that Borden presented at the time of the *Terry* stop as an armed and dangerous individual. Officers early on removed his backpack and placed it on the sidewalk out of his reach. ROA.157. See Exh. 1 & 2. Borden did not have a threatening demeanor. ROA.212. See Exh. 1 & 2. No one had reported a firearm or threats of a firearm or other weapon. Officers had Borden sit down on the sidewalk away from the backpack and

away from the pocket contents, each of which was on opposite sides of Borden not within his reach. See Exh. 1 & 2.

In the context of the Fourth Amendment, a person is considered seized “only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave,” *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). The crucial inquiry is whether the officer, “by means of physical force or a show of authority,” has restrained a citizen’s freedom of movement, *Id* at 553. Here, because Mr. Borden was handcuffed, he was clearly seized. If someone has been seized, the issue then becomes was that seizure reasonable, as an exception to the warrant requirement.

Fairly quickly after officers began their encounter with Borden, they began asking him what he had taken and how much. See Exh. 1 & 2. Soon after, officers handcuffed Mr. Borden. See Exh. 1 & 2. They asked him for consent to search his backpack and his response was unintelligible. See Exh. 1 & 2. After further interaction, Officers began searching his backpack. See Exh. 1 & 2. Officers did not Mirandize Borden. See Exh. 1 & 2. Officers continued to question him about his name and what he had ingested. See Exh. 1 & 2. At one point, after he was asked if he used marihuana or cocaine or meth, Borden made incriminating statements that he was on federal parole. See Exh. 1 & 2. Officers had not run his criminal history, and had not yet discovered the gun in his backpack. See Exh. 1 & 2.

This Court has recognized a limited emergency-aid exception to the Fourth Amendment’s prohibition of warrantless searches when a law enforcement officer is aiding a person who is seriously injured or imminently threatened with serious injury and the manner and scope of any ensuing search is reasonable, *Mincey v. Arizona*, 437 U.S. 385 (1978). The 6<sup>th</sup> Circuit has upheld, for example, a search when a driver was foaming at the mouth and unable to talk and the officer was seeking information explaining the nature of the defendant’s condition and the best means of treating it, *United States v. Dunavan*, 485 F.2d

201 (6<sup>th</sup> Cir. 1973).

The exigent circumstances exception applies when the needs of law enforcement are so compelling that a warrantless search is objectively reasonable under the Fourth Amendment, *Kentucky v. King*, 563 U.S. 452, 460 (2011). This Court's opinion in *Schmerber v. California*, 384 U.S. 757 (1966) describes exigent circumstances which permitted a warrantless blood draw while Schmerber was receiving medical treatment at a hospital for injuries sustained in a car accident from two hours earlier because at the scene of the accident and at the hospital, the officer noticed signs of intoxication supporting probable cause for DWI and the officer might reasonably have believed there was an emergency threatening the destruction of evidence- the diminishment of the percentage of alcohol in the blood shortly after drinking stops.

The Fifth Circuit in *Linicomm v. Hill*, 902 F.3d 529, 536 (5<sup>th</sup> Cir. 2018) found a warrantless search was not justified under the exigent circumstances exception when officers and paramedics forcibly entered a home after being told by a mentally ill mother that the children inside the home were being presently abused, and one was lethargic and sick. In Borden's case, officers had eyes on Borden and knew he was not in a serious life-threatening circumstances. The officers' casual calling of a medic and other actions is instructive. See Exh. 1 & 2. Further, officers had no reports, for example, that Borden's backpack contained an incendiary device or flammable liquid or that it in any way posed a genuine danger to people in the vicinity.

Here, Officer Buckelew testified she searched through Borden's backpack to look for any substance- prescription or otherwise- Borden may have taken to help the paramedics render proper medical treatment; however, there was not a real exigency. ROA.186. Borden was not unconscious, was not bleeding, was not foaming at the mouth, he was able to hold up his head, and he did respond to officers, although he struggled to answer questions and to

maintain his balance. See Exh. 1 & 2. Although Officers may have been concerned that Borden had potentially overdosed or suffered a diabetic reaction, it did not appear officers believed he needed immediate medical attention or that his life or safety was in immediate danger, as he was not rushed to the hospital, but rather a medic was asked to come to the scene only after officers had already interacted with Borden. ROA.210-211. See Exh. 1 & 2.

Further showing there was no exigent circumstances, Officer Buckelew took the time to ask Borden for consent to search his backpack in order to see if he reacted in a manner indicative of someone who had illegal narcotics. ROA.203. Why would she do so if she believed he was in imminent medical danger? Indeed, after she did not receive consent, she did not look through his backpack right away. See Exh. 1 & 2. After a time, she went back to his backpack and began looking. See Exh. 1 & 2. Borden's demeanor had not changed, but remained the same as when she initially interacted with him. See Exh. 1 & 2. When she did go back to search his backpack, it was not a rushed search indicative of a medical emergency. Instead, it was slow and methodical. See Exh. 1 & 2. Most telling, as soon as the firearm was found in the backpack, Borden was moved from the sidewalk where he had been monitored to the patrol vehicle, and the patrol car door was closed. See Exh. 1 & 2. Again, his demeanor had not changed. See Exh. 1 & 2. Surely, if officers believed there was a medical emergency, it would not have dissipated when they found the firearm, and officers would not have moved Borden, who had already been patted down and secured in handcuffs, but would have continued to monitor him until medics arrived. The Court noted that Borden did not appear to be a threat. ROA.212. Not surprisingly, the medics cleared Borden when they eventually arrived. ROA.210-211. Borden was then transported directly to the Jail. ROA.210-211.

The search of Borden's backpack under the emergency-aid exception was not justified because there was not a real exigency justifying the warrantless intrusion.

## CONCLUSION

For the foregoing reason, the petition for writ of certiorari should be granted

Date: September 15, 2024

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APPENDIX A- United States Court of Appeals, Fifth Circuit Opinion  
(June 18, 2024) 2024 WL 3043383 (5<sup>th</sup> Cir. 2024)