

No. 25-\_\_\_\_

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IN THE  
**Supreme Court of the United States**

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PATRICK WAYMAN SCULLARK, JR.,  
*Petitioner,*

v.

STATE OF IOWA,  
*Respondent.*

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**On Petition for a Writ of Certiorari  
to the Iowa Supreme Court**

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**PETITION FOR WRIT OF CERTIORARI**

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**QUESTION PRESENTED**

Whether the Fourth Amendment categorically permits warrantless searches of bags carried by arrestees at the time of arrest but inaccessible to them at the time of search.

**RELATED PROCEEDINGS**

*State v. Scullark*, No. 1071-FECR246668, Iowa District Court for Black Hawk County. Judgment entered July 20, 2023.

*State v. Scullark*, No. 23-1218, Iowa Court of Appeals. Judgment entered Aug. 21, 2024.

*State v. Scullark*, No. 23-1218, Iowa Supreme Court. Judgment entered June 20, 2025.

**TABLE OF CONTENTS**

	<b>Page</b>
QUESTION PRESENTED.....	i
RELATED PROCEEDINGS.....	ii
OPINIONS BELOW.....	1
JURISDICTION.....	1
RELEVANT CONSTITUTIONAL PROVISION.....	1
INTRODUCTION.....	2
STATEMENT OF THE CASE.....	3
A.    Legal Background.....	3
B.    Factual and Procedural Background....	7
REASONS FOR GRANTING THE PETITION.....	10
I.    THE DECISION BELOW DEEPENS AN INTRACTABLE SPLIT.....	10
A.    At Least Three Federal Courts of Appeals and Two State Supreme Courts Do Not Allow Warrantless Searches of Bags Incident to Arrest Absent Concerns About Officer Safety or Evidence Preservation.....	11
B.    At Least One Federal Court of Appeals and Five State Supreme Courts Hold That an Arrestee's Bag Is Always Searchable Incident to Arrest.....	15
II.   THE QUESTION PRESENTED IS IMPORTANT AND RECURS FREQUENTLY.....	20
III.  THE DECISION BELOW IS INCORRECT.....	24
IV.  THIS CASE IS AN IDEAL VEHICLE.....	31
CONCLUSION.....	33

APPENDIX A: OPINION OF THE IOWA SUPREME COURT (JUNE 20, 2025).....1a

APPENDIX B: OPINION OF THE IOWA COURT OF APPEALS (AUG. 21, 2024).....33a

APPENDIX C: JUDGMENT AND SENTENCE BY THE IOWA DISTRICT COURT FOR BLACK HAWK COUNTY (JULY 20, 2023).....67a

APPENDIX D: OPINION OF THE IOWA DISTRICT COURT FOR BLACK HAWK COUNTY DENYING MOTION TO SUPPRESS (APR. 20, 2023) .....74a

APPENDIX E: TRANSCRIPT OF MOTION TO SUPPRESS HEARING IN THE IOWA DISTRICT COURT FOR BLACK HAWK COUNTY (MAR. 24, 2023) .....82a

## TABLE OF AUTHORITIES

	<b>Page(s)</b>
<b>CASES</b>	
<i>Arizona v. Gant</i> , 556 U.S. 332 (2009).....	3-5, 12, 19, 28, 30
<i>Atwater v. City of Lago Vista</i> , 532 U.S. 318 (2001).....	30
<i>Bembury v. Kentucky</i> , 144 S. Ct. 1459 (2024).....	32
<i>Birchfield v. North Dakota</i> , 579 U.S. 438 (2016).....	29
<i>Brigham City v. Stuart</i> , 547 U.S. 398 (2006).....	24
<i>Carpenter v. United States</i> , 585 U.S. 296 (2018).....	25
<i>Chimel v. California</i> , 395 U.S. 752 (1969).....	4, 11, 19-21, 24
<i>Commonwealth v. Bembury</i> , 677 S.W.3d 385 (Ky. 2023).....	2, 10, 18-20, 29, 32, 33
<i>Commonwealth v. Soto</i> , 245 N.E.3d 241 (Mass. App. Ct. 2024).....	22
<i>Coolidge v. New Hampshire</i> , 403 U.S. 443 (1971).....	24

**TABLE OF AUTHORITIES**  
(continued)

	<b>Page(s)</b>
<i>Florida v. Riley</i> , 488 U.S. 445 (1989).....	33
<i>Greene v. State</i> , 585 S.W.3d 800 (Mo. 2019).....	14
<i>Gustafson v. Florida</i> , 414 U.S. 260 (1973).....	6, 16, 25
<i>Hagen v. Utah</i> , 510 U.S. 399 (1994).....	23
<i>Harris v. State</i> , 238 So.3d 396 (Fla. Dist. Ct. App. 2018).....	22
<i>Jean v. State</i> , 369 So.3d 1235 (Fla. Dist. Ct. App. 2023).....	22
<i>Johnson v. United States</i> , 333 U.S. 10 (1948).....	24
<i>Katz v. United States</i> , 389 U.S. 347 (1967).....	3, 21
<i>Kentucky v. King</i> , 563 U.S. 452 (2011).....	23
<i>Knowles v. Iowa</i> , 525 U.S. 113 (1998).....	25, 26

**TABLE OF AUTHORITIES**  
(continued)

	<b>Page(s)</b>
<i>Lange v. California</i> , 594 U.S. 295 (2021).....	30
<i>McDonald v. United States</i> , 335 U.S. 451 (1948).....	20, 24
<i>New York v. Belton</i> , 453 U.S. 454 (1981).....	28
<i>Nieves v. Bartlett</i> , 587 U.S. 391 (2019).....	31
<i>People v. Chiagles</i> , 142 N.E. 583 (N.Y. 1923).....	28
<i>People v. Cregan</i> , 10 N.E.3d 1196 (Ill. 2014).....	12, 18, 19, 27
<i>People v. Marshall</i> , 289 P.3d 27 (Colo. 2012).....	17, 23
<i>Perez v. United States</i> , 145 S. Ct. 1469 (2025).....	32, 33
<i>Riley v. California</i> , 573 U.S. 373 (2014).....	5, 6, 21, 22, 24-26, 29
<i>State v. Branson</i> , 639 S.W.3d 556 (Mo. Ct. App. 2022).....	14
<i>State v. Byrd</i> , 310 P.3d 793 (Wash. 2013).....	12, 17, 19

**TABLE OF AUTHORITIES**  
(continued)

	<b>Page(s)</b>
<i>State v. Carrawell</i> , 481 S.W.3d 833 (Mo. 2016) .....	13, 14, 23, 26
<i>State v. Crager</i> , 113 N.E.3d 657 (Ind. Ct. App. 2018) .....	19
<i>State v. MacDicken</i> , 319 P.3d 31 (Wash. 2014) .....	17
<i>State v. Ortiz</i> , 539 P.3d 262 (N.M. 2023) .....	15, 19, 26
<i>State v. Ritchey</i> , 432 P.3d 99 (Kan. App. 2018) .....	22
<i>Terry v. Ohio</i> , 392 U.S. 1 (1968) .....	20
<i>Thompson v. Louisiana</i> , 469 U.S. 17 (1984) (per curiam) .....	21
<i>Thornton v. United States</i> , 541 U.S. 615 (2004) .....	22
<i>United States v. Brito</i> , 771 F. Supp. 3d 157 (E.D.N.Y. 2025) .....	22
<i>United States v. Chadwick</i> , 433 U.S. 1 (1977) .....	4, 6, 16, 26-29
<i>United States v. Davis</i> , 997 F.3d 191 (4th Cir. 2021) .....	9, 12, 16

**TABLE OF AUTHORITIES**  
(continued)

	<b>Page(s)</b>
<i>United States v. Eatherton</i> , 519 F.2d 603 (1st Cir. 1975) .....	15, 16
<i>United States v. Edwards</i> , 415 U.S. 800 (1974).....	6, 25, 26, 27
<i>United States v. Jones</i> , 565 U.S. 400 (2012).....	30
<i>United States v. Knapp</i> , 917 F.3d 1161 (10th Cir. 2019).....	9-12, 15, 16, 19, 23, 25, 26
<i>United States v. Kowalczyk</i> , 2012 WL 3201975 (D. Or. Aug. 3, 2012) .....	22
<i>United States v. Matthews</i> , 532 F. App'x 211 (3d Cir. 2013).....	13, 16
<i>United States v. Perez</i> , 113 F.4th 137 (1st Cir. 2024) (en banc)....	2, 10, 16, 22, 33
<i>United States v. Perez</i> , 89 F.4th 247 (1st Cir. 2023).....	10, 16, 33
<i>United States v. Robinson</i> , 414 U.S. 218 (1973).....	3, 5, 17, 25, 28
<i>United States v. Shakir</i> , 616 F.3d 315 (3d Cir. 2010) .....	13, 16

**TABLE OF AUTHORITIES**  
(continued)

	<b>Page(s)</b>
<i>United States v. Stanek</i> , 536 F. Supp. 3d 725 (D. Haw. 2021).....	22
<i>United States v. Valdez</i> , 685 F. Supp. 3d 1110 (D.N.M. 2023) .....	22
<i>United States v. Vining</i> , 675 F. Supp. 3d 778 (E.D. Mich. 2023) .....	22
<i>United States v. Watson</i> , 423 U.S. 411 (1976).....	30
<i>United States v. Williams</i> , 2020 WL 4341722 (N.D. Ala. June 10, 2020) .....	22
<i>Vernonia School Dist. 47J v. Acton</i> , 515 U.S. 646 (1995).....	24
<i>Virginia v. Moore</i> , 553 U.S. 164 (2008).....	23
<i>Warner v. State</i> , 2024 WL 1793112 (Tex. App. Apr. 25, 2024).....	22
<i>Wyoming v. Houghton</i> , 526 U.S. 295 (1999).....	28
<b>CONSTITUTIONAL AND STATUTORY AUTHORITIES</b>	
U.S. Const., amend. IV.....	1-4, 8, 20, 21, 23, 24, 29-32

## TABLE OF AUTHORITIES

(continued)

	<b>Page(s)</b>
28 U.S.C. § 1257 .....	1
 <b>OTHER AUTHORITIES</b>	
T. Davies, <i>Recovering the Original Fourth Amendment</i> , 98 Mich. L. Rev. 547 (1999) .....	30, 31
2 M. Hale, <i>Pleas of the Crown</i> (1736) .....	30
Ind. R. App. Proc. 65 .....	19
3 W. LaFare, <i>Search and Seizure</i> (5th ed. 2012) .....	22
W. Logan, <i>An Exception Swallows a Rule: Police Authority to Search Incident to Arrest</i> , 19 Yale L. & Pol’y Rev. 381 (2001) .....	30
U.S. Dep’t of Justice, <i>Uniform Crime Report, Crime in the United States, 2019</i> .....	21

### **OPINIONS BELOW**

The opinion of the Iowa Supreme Court (Pet.App. 1a-32a) is reported at 23 N.W.3d 49. The opinion of the Iowa Court of Appeals (Pet.App. 33a-66a) is reported at 12 N.W.3d 370 (Table), and is available at 2024 WL 3886203. The judgment of the trial court imposing Petitioner's conviction and sentence (Pet.App. 67a-73a) is not reported. The order of the trial court denying Petitioner's motion to suppress (Pet.App. 74a-81a) is not reported.

### **JURISDICTION**

The Iowa Supreme Court entered final judgment on June 20, 2025, upholding Petitioner's criminal conviction and sentence. This Court has jurisdiction under 28 U.S.C. § 1257(a).

### **RELEVANT CONSTITUTIONAL PROVISION**

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

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.

## INTRODUCTION

Americans regularly tote bags of every stripe—from purses, backpacks, and briefcases to suitcases and fanny packs. When police make an arrest, they need to know whether the Fourth Amendment lets them look inside those bags without a warrant. That question arises all the time. But it has no settled answer, as at least 11 federal circuit and state high courts have reached conflicting results. Some, including the Iowa Supreme Court below, treat an arrestee’s bag as part “of the person”—and thus categorically searchable incident to arrest. Others permit warrantless bag searches only when necessary to protect officer safety or preserve evidence—concerns that are rarely present once an arrestee is secured and cannot access the bag.

The lower courts have repeatedly acknowledged this division of authority. *See, e.g., Commonwealth v. Bembury*, 677 S.W.3d 385, 397 (Ky. 2023) (“[T]here is little uniformity to speak of in the manner in which our nation’s courts have addressed this issue.”). Some have even asked for this Court’s guidance. As an opinion joined by every active member of the First Circuit recently put it: “A Fourth Amendment issue as basic as this one ... seems especially poorly suited to circuit-by-circuit and state-by-state resolution.” *United States v. Perez*, 113 F.4th 137, 139 (1st Cir. 2024) (statement of Barron, C.J., respecting the denial of rehearing en banc). The judges of the First Circuit thus “urge[d]” this Court to take up the issue and “bring about a measure of uniformity to an area of law that has long been lacking it.” *Id.* at 139-40.

This case is an ideal vehicle for the Court to do exactly that. Petitioner Patrick Scullark was

convicted of a felony based on evidence found in a fanny pack that he was carrying at the time of his arrest, but that he was indisputably unable to access at the time it was searched. There was thus no threat to officer safety or risk of evidence destruction that might have justified a warrantless search. So if bag searches are categorically lawful incident to arrest, Mr. Scullark’s conviction stands. But if a case-specific threat to officer safety or evidence preservation is required, his conviction falls—as there is no alternative ground for upholding the search. The Court should grant certiorari and provide much-needed guidance on this important and recurring question.

## STATEMENT OF THE CASE

### A. Legal Background

“[S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.” *Katz v. United States*, 389 U.S. 347, 357 (1967) (footnote omitted). “Among the exceptions to the warrant requirement is a search incident to a lawful arrest.” *Arizona v. Gant*, 556 U.S. 332, 338 (2009). The search-incident-to-arrest doctrine “has historically been formulated into two distinct propositions,” which “have been treated quite differently.” *United States v. Robinson*, 414 U.S. 218, 224 (1973). “The first is that a search may be made of *the person* of the arrestee by virtue of the lawful arrest. The second is that a search may be made of *the area within the control of the arrestee.*” *Id.* (emphases added).

1. Start with the latter proposition. This Court's seminal decision in *Chimel v. California*, 395 U.S. 752 (1969), holds that warrantless searches of the area within the control of the arrestee are lawful only when justified by the need to "remove any weapons that the [arrestee] might seek to use in order to resist arrest or effect his escape," or to "prevent [the] concealment or destruction" of evidence. *Id.* at 763. Because the search in that case exceeded "the area from within which [the defendant] might have obtained either a weapon or something that could have been used as evidence against him," the Court held that it had violated the Fourth Amendment. *Id.* at 768.

In *United States v. Chadwick*, 433 U.S. 1 (1977), abrogated on other grounds by *California v. Acevedo*, 500 U.S. 565 (1991), the Court applied *Chimel* to hold that the search-incident-to-arrest exception did not extend to a 200-pound footlocker that was in the defendants' possession at the time of their arrest. 433 U.S. at 3-5, 15-16. At the time the footlocker was searched, the Court reasoned, it was inside a federal building where "there was no risk that whatever was contained [inside] would be removed by the defendants or their associates." *Id.* at 4-5. Once "there is no longer any danger that the arrestee might gain access to the property to seize a weapon or destroy evidence," the Court held, "a search of that property is no longer an incident of the arrest." *Id.* at 15.

In *Arizona v. Gant*, 556 U.S. 332 (2009), the Court applied *Chimel* to vehicle searches. In doing so, the Court reaffirmed that the search-incident-to-arrest exception "derives from interests in officer safety and evidence preservation that are typically implicated in

arrest situations.” *Id.* at 338. And it held that those interests cannot be squared with a categorical rule adopted by some courts that “allow[ed] a vehicle search incident to the arrest of a recent occupant even if there [was] no possibility the arrestee could gain access to the vehicle at the time of the search.” *Id.* at 341-42. “[T]he *Chimel* rationale,” the Court concluded, “authorizes police to search a vehicle incident to a recent occupant’s arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search.” *Id.* at 343.

Most recently, in *Riley v. California*, 573 U.S. 373 (2014), the Court held that the search-incident-to-arrest exception does not justify the search of digital data on an arrestee’s cell phone. *Id.* at 401. Such a search does not clear *Chimel*’s bar, the Court reasoned, because it is not necessary to protect officer safety or preserve evidence. *Id.* at 387-91.

2. Searches of the person, by contrast, are governed by *Robinson*. In that case, officers searched a crumpled cigarette pack found in the breast pocket of the defendant’s coat. 414 U.S. at 222-23. The *Robinson* Court distinguished *Chimel* and held that the officers’ search of Robinson’s person had been lawful under the search-incident-to-arrest exception. *Id.* at 224-26, 236. Unlike a search of the surrounding area, *Robinson* held, a search of the person does not depend for its legality on “the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect.” *Id.* at 235. Under *Robinson*, so long as the arrest is lawful, a search of the person “requires no additional justification” or “case-by-case adjudication.” *Id.*

Although *Robinson* is more than 50 years old, the Court has applied its rule for searches “of the person” in only two other cases. In one, a companion case to *Robinson* decided the same day, the Court upheld another search of a cigarette pack found in an arrestee’s coat pocket. *Gustafson v. Florida*, 414 U.S. 260, 262, 264 (1973) (citing *Robinson*). A year later, the Court upheld a warrantless search of clothing that an arrestee was wearing at the time of his arrest. *United States v. Edwards*, 415 U.S. 800, 808-09 (1974). Although the defendant was jailed and could not have accessed the clothing at the time of the search, the Court reasoned that a search “may legally be conducted later when the accused arrives at the place of detention” if it “could be made on the spot at the time of arrest.” *Id.* at 803; *see also Chadwick*, 433 U.S. at 16 n.10 (characterizing *Robinson* and *Edwards* as involving “searches of the person”).

3. The Court has offered little guidance for distinguishing between *Chimel*-style searches of the area and *Robinson*-style searches of the person. *See Riley*, 573 U.S. at 392 (observing the dearth of cases involving “a search of the contents of an item found on an arrestee’s person”). In *Chadwick*, however, the Court made clear that the search of the defendants’ footlocker was not a “search[] of the person” governed by *Robinson*’s categorical rule. 433 U.S. at 16 n.10. Rather, *Chadwick* held, “luggage or other personal property not immediately associated with the person” may be searched only if *Chimel*’s concerns—a “danger that the arrestee might gain access to the property to seize a weapon or destroy evidence”—exist in a particular case. *Id.* at 15.

## **B. Factual and Procedural Background**

1. Petitioner Patrick Scullark was sitting on the tailgate of a truck outside his home when a police officer arrived to investigate a domestic-abuse call. Pet.App. 75a, 89a. Mr. Scullark had a fanny pack around his waist. *Id.* 76a. According to the officer, Mr. Scullark appeared “agitated” and retreated into the house. *Id.* 75a.

The officer followed Mr. Scullark inside, where he informed Mr. Scullark that he was under arrest. *Id.* 75a-76a. Mr. Scullark began to cry, and he handed both the fanny pack and his cell phone to Tammi Kisner. *Id.* 76a. As the officer was handcuffing Mr. Scullark, Ms. Kisner began to walk with the fanny pack and phone into another room. *Id.* When the officer told her to remain in the room with both items, Ms. Kisner complied and put the fanny pack down. *Id.* The officer picked up the fanny pack and took it with him as he escorted the handcuffed Mr. Scullark out of the house. *Id.* 76a-77a. The officer admitted at the suppression hearing that once Mr. Scullark was handcuffed, he could not have accessed the fanny pack. *Id.* 95a.

The officer then led Mr. Scullark to a police car, patted him down, and put him in the back of the car. *Id.* 77a. Meanwhile, another officer who had arrived on the scene searched the fanny pack and found cash and methamphetamine. *Id.*

2. Based on that evidence, the State charged Mr. Scullark with possession of methamphetamine with intent to deliver and failure to affix a drug tax stamp. *Id.* 4a. Mr. Scullark moved to suppress the evidence, arguing that the search of his fanny pack had violated

the Fourth Amendment, as well as the Iowa Constitution. *Id.* 77a. The trial court held a hearing and denied the motion, concluding that the search of the fanny pack had been lawful because “[i]t was within [Mr. Scullark’s] grab area when he was told he was under arrest” and the search occurred “within minutes” of when he was secured. *Id.* 79a. Mr. Scullark then entered a conditional guilty plea on both counts, preserving his right to appeal the denial of the motion to suppress. *Id.* 4a, 67a-68a. He was sentenced to concurrent 25-year and 5-year sentences, subject to applicable reductions. *Id.* 68a-69a.

3. On appeal, Mr. Scullark challenged “the warrantless search of his fanny pack under the federal and state constitutions.” *Id.* 40a. The Iowa Court of Appeals reversed the trial court’s denial of his suppression motion in a split decision. *Id.* 34a. The majority applied *Chimel* and held that, “[b]ecause Scullark had no realistic ability to access the fanny pack after he was handcuffed and escorted to the patrol car, the search did not meet the incident-to-arrest exception to the warrant requirement” of the U.S. Constitution. *Id.*; *see also id.* 43a-45a, 47a-51a (holding that caselaw interpreting the Iowa Constitution compelled the same result). Judge Buller dissented. In his view, *Robinson* was “the dispositive United States Supreme Court precedent.” *Id.* 53a. Although he recognized that “there is some authority that supports the majority’s position,” he identified an “equal or greater number of state and federal appellate courts that have expressly come out the other way.” *Id.* 56a; *see also id.* 56a-58a (collecting cases).

4. The Iowa Supreme Court vacated the court-of-appeals decision in another divided opinion, reinstating the trial court’s order denying the motion to suppress. *Id.* 2a. The majority framed the issue as “whether the search of the fanny pack at issue here was a *Robinson*-type search of Scullark’s person or a *Chimell/Gant*-type search of the area within his immediate control.” *Id.* 8a. “[B]ecause the fanny pack was attached to his person at the time of the arrest,” the court concluded, “this [was] a search of the person, governed by *Robinson*.” *Id.* 13a-14a; *see also id.* 19a (“The fanny pack was an extension of [Scullark’s] person, much like his pockets, the search of which requires no additional justification beyond lawful arrest.”). The court separately “reach[ed] the same conclusion under the Iowa Constitution.” *Id.* 16a.

Justice McDermott dissented. The fanny pack, he recognized, was not “part of [Scullark’s] ‘person’” at the time of the search and “was no longer within an area that Scullark could readily access.” *Id.* 26a. Accordingly, “neither of the rationales supporting the search-incident-to-arrest exception—officer safety and evidence preservation—could justify the search of the fanny pack.” *Id.* In ruling otherwise, he pointed out, the majority had split with the Fourth and Tenth Circuits. *Id.* 28a-30a (citing *United States v. Davis*, 997 F.3d 191 (4th Cir. 2021), and *United States v. Knapp*, 917 F.3d 1161 (10th Cir. 2019), and explaining that those cases would not “have come out the way that they did” under the majority’s reasoning).

## REASONS FOR GRANTING THE PETITION

### I. THE DECISION BELOW DEEPENS AN INTRACTABLE SPLIT.

As many courts have recognized, “lower courts have adopted disparate approaches” to warrantless searches of bags incident to arrest. *Perez*, 113 F.4th at 138-39 (statement of Barron, C.J., respecting the denial of rehearing en banc); *see also, e.g., United States v. Perez*, 89 F.4th 247, 261 (1st Cir. 2023) (noting that “several other circuits have chosen not to follow one of our prior rulings”); *Bembury*, 677 S.W.3d at 397 (“[T]here is little uniformity to speak of in the manner in which our nation’s courts have addressed this issue.”); *Knapp*, 917 F.3d at 1166 n.3 (expressly declining to follow the Illinois and Washington Supreme Courts’ rule); Pet.App. 30a (McDermott, J., dissenting) (“Had the cases discussed above relied on [the majority’s reasoning], none would have come out the way that they did.”); *id.* 15a (majority op.) (“Although other courts have extended *Gant* outside of the vehicle context, ... we find more persuasive those federal cases that have not ....” (citing cases)); *id.* 56a (Buller, J., dissenting) (“While there is some authority that supports the majority’s position, the majority opinion curiously omits from discussion the equal or greater number of state and federal appellate courts that have expressly come out the other way ....”).

**A. At Least Three Federal Courts of Appeals and Two State Supreme Courts Do Not Allow Warrantless Searches of Bags Incident to Arrest Absent Concerns About Officer Safety or Evidence Preservation.**

The Third, Fourth, and Tenth Circuits, as well as the Missouri and New Mexico Supreme Courts, hold that *Chimel* governs searches of bags in the arrestee's possession. In those jurisdictions, such bags may be searched incident to arrest only if there is a threat to officer safety or a risk of evidence destruction at the time of the search.

1. The Tenth Circuit, for example, holds that “visible containers” are “governed by *Chimel*”—and thus subject to warrantless search only when case-specific risks are present. *United States v. Knapp*, 917 F.3d 1161, 1167 (10th Cir. 2019) (Kelly, J.). In that case, officers searched a purse that the defendant had with her at the time of her arrest but that was out of her handcuffed reach when searched. *Id.* at 1164. In assessing the legality of that search, the Tenth Circuit first considered the “critical distinction” of “whether the search of her purse was one of her person for the purposes of *Robinson*,” or one of “the area from within which she might have gained possession of a weapon or destructible evidence” under *Chimel*. *Id.* at 1165-66 (brackets omitted). Acknowledging that “the Supreme Court has not clearly demarcated where the person ends and the ‘grab area’ begins,” the court concluded that a search of “a carried purse does *not* qualify as ‘of the person.’” *Id.* at 1166. Unlike pockets and clothing, the court explained, purses are “easily capable of

separation from [the arrested] person,” so “arresting officers ha[ve] no authority to search [their] contents pursuant to *Robinson*.” *Id.* at 1168. The Tenth Circuit thus “decline[d] to follow those courts construing the arrestee’s ‘person’ to include any containers in the arrestee’s ‘actual’ or ‘physical’ possession at the time of arrest.” *Id.* at 1166 n.3 (citing *People v. Cregan*, 10 N.E.3d 1196 (Ill. 2014), and *State v. Byrd*, 310 P.3d 793 (Wash. 2013)). And it ultimately held the search of the defendant’s purse unlawful under *Chimel* because “it was unreasonable to believe [she] could have gained possession of a weapon or destructible evidence within her purse at the time of the search.” *Id.* at 1168.

2. The Fourth Circuit likewise rejects a categorical rule allowing warrantless searches of bags that a defendant is carrying at the time of arrest. In *United States v. Davis*, 997 F.3d 191 (4th Cir. 2021) (Wynn, J.), officers chased a defendant carrying a backpack until he got stuck in a swamp. *Id.* at 194. When officers ordered him to come out, the defendant dropped his backpack, laid down on his stomach, and was handcuffed. *Id.* After he was restrained, officers unzipped the backpack and found cocaine inside. *Id.* The Fourth Circuit held that the search was unlawful. Applying *Chimel*’s rule, as reaffirmed in *Gant*, the court reasoned that “police officers can conduct warrantless searches of non-vehicular containers incident to a lawful arrest ‘only when the arrestee is unsecured and within reaching distance of the [container] at the time of the search.’” *Id.* at 197 (brackets in original) (quoting *Gant*, 556 U.S. at 343).

3. The Third Circuit also holds that a bag “search is permissible incident to a suspect’s arrest when, under all the circumstances, there remains a reasonable possibility that the arrestee could access a weapon or destructible evidence” inside. *United States v. Shakir*, 616 F.3d 315, 321 (3d Cir. 2010) (Hardiman, J.). This rule, the court explained in *Shakir*, follows from *Gant*, which requires courts to focus “on a suspect’s ability (or inability) to access weapons or destroy evidence at the time a search incident to arrest is conducted.” *Id.* at 318. The court ultimately concluded that the defendant’s gym bag was within his reach at the time of the search, so it upheld the warrantless search under *Gant*. *Id.* at 321.

Three years later, in *United States v. Matthews*, 532 F. App’x 211 (3d Cir. 2013), the Third Circuit applied the same rule and reached the opposite result. The arrestee in that case “was handcuffed in the back of a locked police car” at the time of the search, so the Third Circuit held that the warrantless search of the backpack could not be justified as incident to arrest. *Id.* at 218.<sup>1</sup>

4. The Missouri Supreme Court takes the same approach. In *State v. Carrawell*, 481 S.W.3d 833

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<sup>1</sup> *Matthews* ultimately upheld the search on a different ground. Because the arrest in that case was “made in a public place,” circumstances “require[d] that the arrested person be transported from the scene.” *Id.* at 224. The court thus held that officers could search luggage “which must accompany him to the police station, prior to transporting it.” *Id.* That rationale could not apply here, as Mr. Scullark was arrested at home and tried to leave the fanny pack there. See Pet.App. 26a (McDermott, J., dissenting).

(Mo. 2016), officers arrested a defendant who was holding a plastic bag. *Id.* at 836. “After securing [the defendant] in [a] police car,” an officer looked into the bag and found heroin. *Id.* Citing *Chimel*, the Missouri Supreme Court concluded that the state court of appeals had relied on a “misunderstanding of law” in holding that “an arrestee’s personal effects (e.g., a purse or backpack) may be searched even when they are not within the immediate control of the arrestee because such a search qualifies as a search of the person.” *Id.* at 838-39. Instead, the Missouri Supreme Court explained, the rule categorically permitting warrantless “search[es] of the person” “applies only to items that are so intertwined with the arrestee’s person that they cannot be separated from the person at the time of arrest.” *Id.* at 840. And “the plastic bag in this case,” like “purses and other similar personal effects,” “was easily separable from the arrestee’s person.” *Id.* at 840-41. Because the bag was not “within [the defendant’s] immediate control” when it was searched, the court held that “there was not a valid search incident to arrest.” *Id.* at 845.<sup>2</sup>

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<sup>2</sup> In a subsequent case, the Missouri Supreme Court upheld the search of a “cigarette pack discovered during a search of [the defendant’s] person,” noting that “[a]ny contrary statements in *Carrawell* should no longer ... be followed.” *Greene v. State*, 585 S.W.3d 800, 808 (Mo. 2019). But *Greene* does not alter *Carrawell*’s holding that searches of bags are not searches of the defendant’s person—and thus must be justified by a threat to officer safety or a risk of evidence destruction. See *State v. Branson*, 639 S.W.3d 556, 559 (Mo. Ct. App. 2022) (post-*Greene* application of *Carrawell* holding that a search of a backpack was

5. The New Mexico Supreme Court took the same tack in *State v. Ortiz*, 539 P.3d 262 (N.M. 2023). That case involved a defendant who was wearing a purse when she was arrested in an alley behind her house. *Id.* at 265. Explicitly adopting the Tenth Circuit’s analysis from *Knapp*, the court rejected the argument that the search of the purse was a search of the defendant’s person, explaining that unlike “pockets,” the purse “could be removed from Defendant and kept safely away from her.” *Id.* at 267 (citing *Knapp*, 917 F.3d at 1167). Because there was no “evidence that the purse was within the Defendant’s immediate control such that [she] presented a danger of gaining possession of a weapon or ... destroy[ing] evidence,” the search was unlawful. *Id.* at 268-69.

**B. At Least One Federal Court of Appeals and Five State Supreme Courts Hold That an Arrestee’s Bag Is Always Searchable Incident to Arrest.**

On the other side of the ledger, several courts hold that the search of a bag in the defendant’s possession at the time of arrest is *per se* lawful, regardless of whether officer-safety or evidence-spoliation concerns are implicated.

1. The First Circuit, in a decision issued shortly after *Robinson*, upheld the warrantless search of a briefcase while the defendant was handcuffed and secured in the back of the patrol car. *United States v. Eatherton*, 519 F.2d 603, 609 (1st Cir. 1975). In

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unlawful because the defendant lacked access to it at the time of the search).

the First Circuit's view, "gossamer distinctions" would be required to distinguish the search of the briefcase from the cigarette-pack searches in *Robinson* and *Gustafson*. *Id.* at 610.

The First Circuit recently declined an opportunity to overturn *Eatherton*. See *Perez*, 89 F.4th 247. In *Perez*, the defendant was carrying a backpack while attempting to flee from police; officers searched the bag after he was handcuffed and seated on the pavement. *Id.* at 249. The defendant acknowledged that the search of his backpack was indistinguishable from the search of the briefcase in *Eatherton*, but he argued that *Eatherton* had been fatally undermined by *Chadwick* and *Gant*. *Id.* at 260. The court rejected that argument, reading those cases as "sa[ying] nothing about whether the rule of *Robinson* ... governs a container that an arrestee is carrying at the time of the arrest." *Id.* at 256. Judge Montecalvo dissented, explaining that, "[a]s our sister circuits have concluded, *Chadwick* and ... *Gant* ... have unquestionably altered our understanding of the search-incident-to arrest doctrine." *Id.* at 265-67 (Montecalvo, J., dissenting) (citing *Shakir*, *Matthews*, *Davis*, and *Knapp*).

The First Circuit denied rehearing en banc. 113 F.4th at 137-38. But in doing so, the full court acknowledged that "lower courts have adopted disparate approaches" to warrantless bag searches and "urge[d] the Supreme Court ... to consider *Robinson's* applicability" in those contexts. *Id.* at 138-40 (statement of Barron, C.J., respecting the denial of rehearing en banc).

2. The Colorado Supreme Court likewise holds that warrantless searches of bags carried by

defendants at the time of arrest are categorically permitted. In *People v. Marshall*, 289 P.3d 27 (Colo. 2012), officers arrested a defendant carrying a backpack. *Id.* at 28. After handcuffing him and placing him in the back of a squad car, they searched the backpack and found marijuana, prescription drugs, and a digital scale. *Id.* The Colorado Supreme Court concluded that *Gant* applies only to vehicle searches, *id.* at 30, and held that the backpack search was lawful as a “search of a person, and articles on or near that person, after a lawful arrest,” *id.* at 31 (citing *Robinson*, 414 U.S. at 235).

3. The Washington Supreme Court takes the same approach. In *State v. Byrd*, 310 P.3d 793, the court considered the search of a defendant’s purse, which was on her lap at the time of arrest but searched after she was secured in the patrol car. *Id.* at 795. The court held that “an article is ‘immediately associated’ with the arrestee’s person and can be searched under *Robinson*, if the arrestee has actual possession of it at the time of a lawful custodial arrest.” *Id.* at 798.<sup>3</sup> One year later, the Washington Supreme Court applied *Byrd* to hold that the search of a laptop bag and rolling duffel bag possessed by the defendant at the time of arrest—but “a car’s length away” from the defendant at the time of search—was a search “of the person” and thus *per se* lawful. *State v. MacDicken*, 319 P.3d 31, 33-34 (Wash. 2014).

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<sup>3</sup> Although the defendant was arrested in a car, the court explained that the “distinction does not turn on whether a person is arrested in a car, on the street, or at home, but on the relationship of the article to the arrestee.” *Id.*

4. The Illinois Supreme Court has followed suit. In *People v. Cregan*, 10 N.E.3d 1196, officers arrested a defendant who was carrying a laundry bag over his shoulder and wheeling a luggage bag through a train station. *Id.* at 1198. Officers handcuffed him, searched his bags, and found cocaine hidden inside. *Id.* at 1199. A majority of the court concluded that “the search of defendant’s luggage was permissible incident to his arrest under *Robinson*.” *Id.* at 1209. “[I]f the arrestee is, at the time of his arrest, in actual physical possession of a bag,” the court held, “it is immediately associated with the arrestee and is searchable, whether it is a bag of groceries being carried or wheeled in a ‘grannie cart,’ a duffle bag slung over one shoulder, or a nylon bag being pulled behind him on wheels.” *Id.* at 1207.

5. The Kentucky Supreme Court also applies *Robinson* to warrantless bag searches. In *Commonwealth v. Bembury*, 677 S.W.3d 385, officers arrested a man holding a backpack after witnessing him conduct a drug transaction. *Id.* at 388. To resolve the lawfulness of the subsequent search of the defendant’s backpack, the court explained, it had to decide whether that “backpack was an item of ‘personal property ... immediately associated with [his] person,’ or whether it was [instead inside] ‘the area within his immediate control.’” *Id.* at 396 (internal citation omitted). After observing that there is “little uniformity” among lower courts on this issue, *id.* at 397, the court opted to follow the Washington and Illinois Supreme Courts (among others), *id.* at 397-402, and expressly rejected the Tenth Circuit’s approach, *id.* at 404. It held that “a

container capable of carrying items, such as a backpack, can be considered part of an arrestee’s ‘person’ for the purposes of a search incident to lawful arrest.” *Id.* at 406.

6. Finally, in the decision below, the Iowa Supreme Court held that the search of an item “attached to [the defendant’s] person at the time of the arrest ... is a search of the person governed by *Robinson*—rather than a search of the area within his immediate control, governed by *Chimel* [or] *Gant*.” Pet.App. 13a-14a. According to the majority, Mr. Scullark’s “fanny pack was an extension of his person, much like his pockets,” *id.* 19a—an analogy that courts on the other side of the split have expressly rejected, *see, e.g., Knapp*, 917 F.3d at 1166-67 (distinguishing between “clothing or pockets” and “[c]ontainers held in an arrestee’s hand and not concealed on her body or within her clothing”); *Ortiz*, 539 P.3d at 267 (distinguishing between “pockets and a purse”). So it could be searched even absent a threat to officer safety or a risk of evidence destruction. Pet.App. 19a-20a. In reaching this conclusion, the court expressly relied on *Byrd*, *Cregan*, and *Bembury*. Pet.App. 14a, 16a-17a. It also recognized a federal circuit split and sided with the First Circuit over the Third, Fourth, and Tenth. *See id.* 15a.<sup>4</sup>

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<sup>4</sup> The Indiana Court of Appeals has also held that an arrestee’s backpack is “immediately associated with” the person and therefore is categorically searchable incident to arrest. *State v. Crager*, 113 N.E.3d 657, 664 (Ind. Ct. App. 2018). That holding is binding on all trial courts in the state. Ind. R. App. Proc. 65(d)(1).

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The Kentucky Supreme Court has summed up the disarray well:

As the U.S. Supreme Court has not yet directly opined on this issue, lower federal and state courts have been left to our own devices in determining how to draw the line between what constitutes a “*Robinson* search” of an arrestee’s person and a “*Chimel* search” of the area within an arrestee’s immediate control when a portable container capable of carrying items—purses, backpacks, suitcases, briefcases, gym bags, computer bags, fanny packs, etc.—[is] concerned. Unsurprisingly, there is little uniformity to speak of in the manner in which our nation’s courts have addressed this issue.

*Bembury*, 677 S.W.3d at 397. That split is widely acknowledged. *See supra* at 9 (collecting cases noting the split). And it is deeply entrenched. Only this Court can restore uniformity.

## **II. THE QUESTION PRESENTED IS IMPORTANT AND RECURS FREQUENTLY.**

The question this petition presents about officers’ authority to conduct warrantless bag searches implicates core Fourth Amendment values. It also arises frequently. Disuniformity on such an important and recurring question should not stand.

1. The Fourth Amendment grants an “inestimable right of personal security,” *Terry v. Ohio*, 392 U.S. 1, 8-9 (1968), and “marks the right of privacy as one of the unique values of our civilization,” *McDonald v. United States*, 335 U.S. 451, 453 (1948). As *Chimel* explained, the Amendment “was in large part a

reaction to the general warrants and warrantless searches that had so alienated the colonists and had helped speed the movement for independence.” 395 U.S. at 761. “In the scheme of the Amendment, therefore, the requirement that ‘no Warrants shall issue, but upon probable cause,’ plays a crucial part.” *Id.*

Consistent with the centrality of the Fourth Amendment’s warrant requirement, “a long line” of this Court’s cases has “stressed” that “searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well delineated exceptions.” *Thompson v. Louisiana*, 469 U.S. 17, 19-20 (1984) (per curiam) (quoting *Katz*, 389 U.S. at 357). Limiting warrantless searches to those carefully defined contexts protects the privacy interests the Fourth Amendment was designed to secure. By contrast, the Iowa Supreme Court’s position reflects the kind of broad, privacy-threatening authority to search against which the Amendment’s warrant requirement was designed to guard.

2. The frequency with which this issue arises confirms its importance. Arrests, after all, are remarkably common. According to an FBI estimate, more than 10 million occurred in 2019 alone—a figure roughly equivalent to one arrest every three or four seconds. U.S. Dep’t of Justice, *Uniform Crime Report, Crime in the United States, 2019*, at 2, <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/persons-arrested.pdf>. That helps explain why this Court observed in *Riley* that it

is “something of a misnomer” to refer to searches incident to arrest as an “exception”: “[W]arrantless searches incident to arrest occur with far greater frequency than searches conducted pursuant to a warrant.” 573 U.S. at 382 (citing 3 W. LaFare, *Search and Seizure* § 5.2(b), p. 132 & n.15 (5th ed. 2012)).

It requires little imagination to appreciate that many arrestees carry “wallets, purses, briefcases, backpacks, or other commonly carried containers” at the time of their arrest, and that those containers are often inaccessible to arrestees at the time they are searched. *Perez*, 113 F.4th at 139 (statement of Barron, C.J., respecting the denial of rehearing en banc) (characterizing this scenario as “mundane”). The depth of the split described above proves the point—to say nothing of the numerous other lower-court decisions assessing the constitutionality of warrantless bag searches.<sup>5</sup>

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<sup>5</sup> See, e.g., *United States v. Brito*, 771 F. Supp. 3d 157, 175 (E.D.N.Y. 2025); *Commonwealth v. Soto*, 245 N.E.3d 241, 245-47 (Mass. App. Ct. 2024); *Warner v. State*, 2024 WL 1793112, at \*2 (Tex. App. Apr. 25, 2024); *United States v. Valdez*, 685 F. Supp. 3d 1110, 1213-14 (D.N.M. 2023); *United States v. Vining*, 675 F. Supp. 3d 778, 795-97 (E.D. Mich. 2023); *Jean v. State*, 369 So.3d 1235, 1240-41 (Fla. Dist. Ct. App. 2023); *United States v. Stanek*, 536 F. Supp. 3d 725, 737-40 (D. Haw. 2021); *United States v. Williams*, 2020 WL 4341722, at \*9-11 (N.D. Ala. June 10, 2020); *Harris v. State*, 238 So.3d 396, 400-02 (Fla. Dist. Ct. App. 2018) (Lagoa, J.); *State v. Ritchey*, 432 P.3d 99, 103-05 (Kan. App. 2018); *United States v. Kowalczyk*, 2012 WL 3201975, at \*17-18 (D. Or. Aug. 3, 2012); cf. also *Thornton v. United States*, 541 U.S. 615, 628 (2004) (Scalia, J., concurring in the judgment) (“Reported cases involving this precise factual scenario—a motorist handcuffed and secured in the back of a squad car when the search takes place—are legion.”).

3. The “Fourth Amendment’s meaning” should not “vary from place to place,” particularly on such an important and recurring question. *Virginia v. Moore*, 553 U.S. 164, 172 (2008) (citation omitted). But it does, and will, until this Court steps in. If Mr. Scullark, for example, had been prosecuted across the Iowa-Missouri state line, the evidence recovered from the search of his fanny pack would have been suppressed. See *Carrawell*, 481 S.W.3d at 840-41. And in Colorado, the constitutionality of a bag search incident to arrest will hinge on the court in which a defendant is prosecuted: A defendant like Mr. Scullark could suppress the evidence found in his bag if he were prosecuted in federal court, see *Knapp*, 917 F.3d at 1167, but not if he were prosecuted in state court, see *Marshall*, 289 P.3d at 28. That means that a federal prosecutor in Colorado facing the inevitable suppression of unconstitutionally obtained evidence could simply hand the case off to the DA’s office, and thereby snuff out the defendant’s Fourth Amendment protection. That state of affairs is intolerable. Cf. *Hagen v. Utah*, 510 U.S. 399, 409 (1994) (granting certiorari “to resolve the direct conflict between these decisions of the Tenth Circuit and the Utah Supreme Court”).

And not just for defendants. This Court has often recognized that law enforcement needs “clear guidance” about the scope of their authority, given that they “are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving.” *Kentucky v. King*, 563 U.S. 452, 466-67 (2011) (internal quotation marks omitted). Until the confusion about bag searches among lower courts is resolved, police will lack the

clarity they need to effectively and lawfully perform one of their most basic functions.

### III. THE DECISION BELOW IS INCORRECT.

The Iowa Supreme Court held that the search of Mr. Scullark’s fanny pack was a categorically lawful search of the person under *Robinson*—and thus deemed it constitutional even absent any threat to officer safety or evidence preservation. Pet.App. 21a. That reasoning is inconsistent with this Court’s precedents, the privacy concerns at the heart of the Fourth Amendment, and the Amendment’s historical understanding.

1. As its text makes clear, “the ultimate touchstone of the Fourth Amendment is ‘reasonableness,’” *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006), and “reasonableness generally requires the obtaining of a judicial warrant,” *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 653 (1995). The warrant requirement is “an important working part of our machinery of government,’ not merely ‘an inconvenience to be somehow weighed against the claims of police efficiency.” *Riley*, 573 U.S. at 401 (quoting *Coolidge v. New Hampshire*, 403 U.S. 443, 481 (1971)). It “ensures that the inferences to support a search are ‘drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.” *Id.* at 382 (quoting *Johnson v. United States*, 333 U.S. 10, 14 (1948)); see also *Chimel*, 395 U.S. at 761 (recognizing that the Framers “deemed” “[t]he right of privacy ... too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals” (quoting *McDonald*, 335 U.S. at 455-56)).

“Thus, in the absence of a warrant, a search is reasonable only if it falls within a specific exception to the warrant requirement.” *Carpenter v. United States*, 585 U.S. 296, 316-17 (2018) (internal quotation marks and brackets omitted).

The search-incident-to-arrest doctrine is a well-established exception to the warrant requirement. As this Court has recognized since *Chimel*, the doctrine is “based upon the need to disarm and to discover evidence.” *Riley*, 573 U.S. at 386 (quoting *Robinson*, 414 U.S. at 235). Consistent with that framework, *Robinson* articulated a “bright-line rule” for searches of the person “based on the concern for officer safety and destruction or loss of evidence” that is inherent in that context—and so does “not depend ... upon the existence of either concern” in any particular case. *Knowles v. Iowa*, 525 U.S. 113, 118 (1998).

2. This Court has rightly hesitated to expand the circumstances that bright-line rule covers, applying it only to searches of an arrestee’s clothing and physical containers found therein. *See Robinson*, 414 U.S. at 222-23 (search of cigarette pack found in breast pocket of defendant’s coat); *Gustafson*, 414 U.S. at 262, 266 (same); *Edwards*, 415 U.S. at 808-09 (search of defendant’s clothing). “Because of an arrestee’s ability to always access weapons concealed in her clothing or pockets, an officer must necessarily search those areas because it would be impractical (not to mention demeaning) to separate the arrestee from her clothing.” *Knapp*, 917 F.3d at 1166.

By contrast, where an arrestee can be “easily dispossessed” of an item, the inherent officer-safety and evidence-preservation concerns that animate the *Robinson* rule evaporate. *Id.* at 1167; *see also*

*Knowles*, 525 U.S. at 119 (“declin[ing]” to “extend [Robinson’s] ‘bright-line rule’ to a situation where the concern for officer safety is not present to the same extent and the concern for destruction or loss of evidence is not present at all”); *Riley*, 573 U.S. at 405-06 (Alito, J., concurring in the judgment) (once an arrestee’s possessions “are taken away,” “there is no risk that the arrestee will destroy them” or that “the arresting officers” will be “endanger[ed]”). Thus, in *Chadwick*, the Court held that “luggage or other personal property not immediately associated with the person of the arrestee” is not controlled by *Robinson*. *Chadwick*, 433 U.S. at 15-16 & n.10. Such luggage, the Court explained, can be “reduced ... to [law enforcement’s] exclusive control”—at which point “there is no longer any danger that the arrestee might gain access to the property to seize a weapon or destroy evidence.” *Id.* at 15.

The justification for a bright-line rule is similarly absent with respect to other bags possessed by an arrestee. Defendants can almost always be “easily dispossessed” of their bags, *see Knapp*, 917 F.3d at 1167, so there are no inherent officer-safety or evidence-preservation concerns that might justify a categorical entitlement to search, *Knowles*, 525 U.S. at 119; *see also Ortiz*, 539 P.3d at 267 (rejecting argument that “searching Defendant’s purse is the same thing as searching a person’s pockets, particularly where, as here, the purse could be and was removed from Defendant’s person” (internal quotation marks and brackets omitted)); *Carrawell*, 481 S.W.3d at 840 (“Unlike the clothing in *Edwards*, the plastic bag ... was easily separable from the arrestee’s person.”). In this case, for instance, Mr.

Scullark was not wearing the fanny pack at the time of the search. And the officer admitted that Mr. Scullark could not have accessed it. *See* Pet.App. 95a.

If handheld bags—*i.e.*, fanny packs, purses, and backpacks—are covered by *Robinson*'s bright-line rule (as the decision below held) but “luggage” is not (per *Chadwick*), then the dividing line will be hopelessly arbitrary. *Cf. Cregan*, 10 N.E.3d at 1206 (observing that many tests “would leave law enforcement officers, prosecutors, and judges wondering whether it is the size, shape, materials, function, or some other attribute of an object, its proximity to the defendant, or some combination of these factors that determines whether it is ‘immediately associated’ with the defendant’s person”). How, for instance, would an officer determine whether a particular suitcase is more like a handheld bag or the footlocker in *Chadwick*? By weight (can it be carried)? By size (does it fit in a carry-on compartment)? By portability (does it have wheels or straps)? *Cf. Chadwick*, 433 U.S. at 20-21 (Blackmun, J., dissenting) (noting the line-drawing problems in distinguishing “the footlocker in the present case” from “such items as purses or briefcases”). Even if courts were to conclude that suitcases are categorically more like footlockers, would the same be true of duffel bags? Or backpacks? It is bad enough to ask courts to engage in those line-drawing exercises. It is untenable to ask officers, who must make quick judgments in the field, to do the same. The only workable line is the one this Court has already drawn in *Robinson* and *Edwards*: Clothing is categorically searchable incident to arrest; bags, however, can be warrantlessly searched only if

there is a threat to officer safety or evidence integrity, or if some other exception applies.

*Gant* confirms all this. There, the Court rejected a broad reading of *New York v. Belton*, 453 U.S. 454 (1981), that “authorize[d] police officers to search not just the passenger compartment [in a vehicle] but every purse, briefcase, or other container within that space.” *Gant*, 556 U.S. at 345 (emphasis added). That reading of *Belton*, the Court recognized, was “untether[ed] ... from the justifications underlying the *Chimel* exception,” which “authorize[] police to search a vehicle incident to a recent occupant’s arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search.” *Id.* at 343-44. If a reaching-distance requirement applies to bag searches in the vehicle context—where there is a reduced expectation of privacy and heightened law enforcement needs, *Wyoming v. Houghton*, 526 U.S. 295, 303-04 (1999)—it surely applies *a fortiori* in a defendant’s own home. See *Gant*, 556 U.S. at 345 (“[W]e have recognized that a motorist’s privacy interest in his vehicle is less substantial than in his home.”).

3. *Robinson*’s categorical rule for searches of the person is also justified by “reduced expectations of privacy caused by the arrest.” *Chadwick*, 433 U.S. at 16 n.10. The very act of arrest requires that “the law ... subject[] the body of the accused to its physical dominion,” which is a substantial invasion of the arrestee’s privacy. *Robinson*, 414 U.S. at 232 (quoting *People v. Chiagles*, 142 N.E. 583, 584 (N.Y. 1923) (Cardozo, J.)). Thus, “a patdown of *Robinson*’s clothing and an inspection of the cigarette pack found in his pocket constituted only minor additional

intrusions compared to the substantial government authority exercised in taking Robinson into custody.” *Riley*, 573 U.S. at 392; *see also Birchfield v. North Dakota*, 579 U.S. 438, 461, 463 (2016) (permitting breath tests, but not blood tests, incident to arrest because, unlike blood tests, “breath tests do not implicate significant privacy concerns” beyond those “inherent in any arrest” (internal quotation marks and brackets omitted)).

The search of a bag, however, is not just a “minor additional intrusion[].” *Riley*, 573 U.S. at 392; *see Chadwick*, 433 U.S. at 16 n.10 (explaining that the defendants’ “privacy interest in the contents of the footlocker was not eliminated simply because they were under arrest”). To the contrary:

People carry all kinds of personal items in their [bags] of which they do not intend the public to have knowledge and to which they do not intend the public to have access. These items could include things as personal as journals containing a person’s innermost convictions, medications indicating one’s physical health history or even mental health diagnoses, hygiene products, or checkbooks and other financial records evincing one’s political, religious, and other personal affiliations.

*Bembury*, 677 S.W.3d at 411-12 (Keller, J., dissenting).

The Iowa Supreme Court’s rule gives officers *carte blanche* to search these private spaces and uncover this kind of intimate, personal information without a warrant—even absent any safety or evidentiary risks. That is precisely the kind of privacy intrusion against which the Fourth Amendment was designed to guard.

See *Gant*, 556 U.S. at 345 (recognizing that the Fourth Amendment’s “central concern” is to guard against officers having “unbridled discretion to rummage at will among a person’s private effects”).

4. The decision below is also inconsistent with the Fourth Amendment’s historical context. As this Court has explained, the Fourth Amendment “must provide *at a minimum* the degree of protection it afforded when it was adopted.” *Lange v. California*, 594 U.S. 295, 309 (2021) (quoting *United States v. Jones*, 565 U.S. 400, 411 (2012)). And the decision below greenlights a search power that is significantly more expansive than anything the Founders would have recognized.

While warrantless searches incident to arrest existed at common law, that power was limited in practice because warrantless arrests were cabined to narrow circumstances. See W. Logan, *An Exception Swallows a Rule: Police Authority to Search Incident to Arrest*, 19 Yale L. & Pol’y Rev. 381, 386 (2001) (explaining that, at the Founding, “authorities had relatively little occasion to arrest persons in the absence of a warrant, and as a result had only limited recourse to conduct searches incident to arrest”); T. Davies, *Recovering the Original Fourth Amendment*, 98 Mich. L. Rev. 547, 628-31 (1999) (describing the limited circumstances in which warrantless arrests were permitted); 2 M. Hale, *Pleas of the Crown* 90-92 (1736) (same). Today, officers’ authority to arrest without warrants is much broader. Probable cause is all that is required—even for the most trivial of offenses. See Davies, *supra*, at 632-33; *United States v. Watson*, 423 U.S. 411, 418-21 (1976); *Atwater v. City of Lago Vista*, 532 U.S. 318, 323 (2001) (“misdemeanor

seatbelt violation[s] punishable only by a fine”); *Nieves v. Bartlett*, 587 U.S. 391, 412 (2019) (Gorsuch, J., concurring in part and dissenting in part) (“[C]riminal laws have grown so exuberantly and come to cover so much previously innocent conduct that almost anyone can be arrested for something.”).

Because the arrest power has ballooned so dramatically, so too have “opportunities for officers to make warrantless searches incident to arrest, making that power far more significant than it had been at the framing.” Davies, *supra*, at 638. The Iowa Supreme Court’s blanket permission slip for officers to search any bag in an arrestee’s possession pushes the envelope even further, to a point that the Framing generation would not have recognized.

#### **IV. THIS CASE IS AN IDEAL VEHICLE.**

This case presents an unusually good opportunity for this Court to finally resolve the constitutionality of warrantless bag searches incident to arrest. The Question Presented was preserved and passed on at all stages; the relevant facts are undisputed; and, unlike in prior petitions presenting this question, the answer is dispositive of Mr. Scullark’s case.

1. Mr. Scullark has challenged the search of his fanny pack at every turn, and three different courts have ruled on that challenge. He first raised his Fourth Amendment argument in a suppression motion. Pet.App. 74a. When the trial court rejected that argument, Mr. Scullark entered a conditional guilty plea reserving his right to challenge the suppression ruling. *Id.* 4a, 67a-68a. He then challenged that ruling before the Iowa Court of Appeals and Iowa Supreme Court. Both courts

expressly passed on his Fourth Amendment argument. *Id.* 2a, 34a.

2. The undisputed facts of this case also tee up the Question Presented perfectly. There is no dispute that Mr. Scullark was wearing the fanny pack at the time he was arrested. Pet.App. 2a (majority op.); *id.* 35a (McDermott, J., dissenting); *id.* 90a (officer testimony). And there is no dispute that he could not have accessed the bag at the time of the search. *Id.* 95a (“Q. Okay. So he couldn’t have gotten [the fanny pack] if he wanted to? A. Correct.”). As a result, the search was valid *only* if it was a *Robinson*-type search of Mr. Scullark’s person, rather than a *Chimel*-type search of the area within his immediate control.

3. The absence of any alternative grounds for affirmance readily distinguishes petitions that have pressed this question in the past. The Iowa Supreme Court’s resolution of Mr. Scullark’s constitutional argument was dispositive of its decision to uphold the trial court’s suppression order. *Id.* 21a-22a. And the court neither accepted nor reserved any alternative ground for admitting the evidence in question. Accordingly, reversal of the decision below would result in its suppression, *id.* 32a (McDermott, J., dissenting), which, in turn, would require vacatur of Mr. Scullark’s conditional guilty plea.

By contrast, other recent petitions raising this issue have arisen from cases with clear alternative grounds for evidentiary admission. *See, e.g., Bembury v. Kentucky*, 144 S. Ct. 1459 (2024) (No. 23-802); *Perez v. United States*, 145 S. Ct. 1469 (2025) (No. 24-577). In *Bembury*, for instance, the defendant “was pulling illegal items out of his backpack in a public place and in the plain view of the officers” before the backpack

was searched. 677 S.W.3d at 406. Thus, the search may have been independently justified under the plain-view doctrine, as a concurring justice would have held. *Id.* at 407-08 (Nickell, J., concurring) (citing *Florida v. Riley*, 488 U.S. 445, 449 (1989) (plurality op.)). And in *Perez*, the government argued that the good-faith exception applied because the search had been conducted in “reliance on” circuit precedent. 89 F.4th at 249. That may explain why the full First Circuit noted that rehearing was not warranted “at least in the context of this specific case.” 113 F.4th at 138 (statement of Barron, C.J., respecting the denial of rehearing en banc). Here, unlike in those cases, the State has never argued for application of the plain-view doctrine or the good-faith exception, nor did the decisions below address those issues.

In opposing certiorari in *Perez*, the United States suggested that this Court should “await a case in which a decision in the defendant’s favor could realistically affect his conviction.” Brief in Opposition at 17, *Perez*, 145 S. Ct. 1469 (No. 24-577). This is that case.

### CONCLUSION

The petition for a writ of certiorari should be granted.

September 18, 2025

Respectfully submitted,

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