No. 25-331

In the Supreme Court of the United States

PATRICK WAYMAN SCULLARK, JR.,
Petitioner,

v.

STATE OF IOWA,
Respondent.

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

BRIEF OF THE CATO INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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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.

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INTEREST OF *AMICUS CURIAE*[1]

The Cato Institute is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Project on Criminal Justice was founded in 1999 and focuses in particular on the scope of substantive criminal liability, the proper and effective role of police in their communities, the protection of constitutional and statutory safeguards for criminal suspects and defendants, citizen participation in the criminal justice system, and accountability for law enforcement officers.

Cato's interest in this case arises from its mission to support the rights that the Constitution guarantees to all citizens. *Amicus* has a particular interest in this case as it concerns the continuing vitality of the Fourth Amendment and its ability to act as a meaningful restraint on the exercise of government power.

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[1] Rule 37 statement: All parties were timely notified before the filing of this brief. No part of this brief was authored by any party's counsel, and no person or entity other than *amicus* funded its preparation or submission.

SUMMARY OF ARGUMENT

When the Supreme Court created an exception to the Fourth Amendment's warrant requirement in *Chimel v. California*, 395 U.S. 752 (1969), it made sure to carefully limit its scope. *Chimel* held that the Fourth Amendment permits limited, warrantless searches of the arrestee's person and the area within his immediate control, which the Court defined as "the area from within which he might gain possession of a weapon or destructible evidence." *Id.* at 763. The Court went on to explain that such searches are reasonable to disarm the arrestee and prevent the destruction or concealment of evidence. *Id.*

In its decision below, the Iowa Supreme Court disregarded the justifications underlying the search incident to arrest exception by holding that it extends to personal items outside the area accessible to the arrestee. In doing so, the court further widened an acknowledged split of authority and opened the door for police to search virtually any purse, backpack, briefcase, or other physical item found with an arrestee, regardless of how sensitive the contents of that accessory may be and even when there is no reason to suspect that it contains relevant evidence or weapons that might put officers or others at risk.

As Petitioner Patrick Scullark Jr. explains, the Iowa Supreme Court's decision was no isolated legal error, but was instead part of a troubling pattern of both state and federal courts disregarding the search incident to arrest exception's limited application. Pet. at 15–20. The decision below illustrates how decades of excessive deference to the priorities of law enforcement have steadily weakened the Fourth Amendment. The warrant requirement, which presumptively

applies to all searches and seizures, is at risk of becoming the exception, rather than the norm.

The Court should grant certiorari to resolve the split of authority among lower courts by clarifying that the search incident to arrest exception is to be narrowly applied in a manner consistent with its animating rationale. That correction is especially urgent considering how the decision below will disproportionately affect people who lack the security of a home to protect their belongings.

ARGUMENT

I. THE DECISION BELOW WOULD ALLOW ABUSES ANALAGOUS TO THOSE THAT MOTIVATED THE FOURTH AMENDMENT.

The Fourth Amendment's protections against unreasonable searches and seizures "grew in large measure out of the colonists' experience with the writs of assistance and their memories of the general warrants formerly in use in England." *United States v. Chadwick*, 433 U.S. 1, 7–8 (1977), *abrogated on other grounds by California v. Acevedo*, 500 U.S. 565 (1991). These writs conferred broad authority upon "customs officials and other agents of the King to search at large for smuggled goods." *Id.* at 8. The Fourth Amendment stands as "a reaction to the general warrants and warrantless searches that had so alienated the colonists and had helped speed the movement for independence." *Chimel*, 395 U.S. at 761.

The "writ of assistance" was arguably the most hated form of general warrant. Writs of assistance were a tool used to aid the British in suppressing colonial resistance to increased taxation. They gave British officers broad power to search a person or place at

whim, including "the power to enter private homes [to] search for smuggled or untaxed goods." RADLEY BALKO, RISE OF THE WARRIOR COP: THE MILITARIZATION OF AMERICA'S POLICE FORCES 8 (2013). Abuses stemming from the use of these writs were "[v]ivid in the memory" of the Framers when the Fourth Amendment was drafted. *Stanford v. Texas*, 379 U.S. 476, 481 (1965).

The Framers "were united in seeking objective criteria to measure the propriety of government actions." Thomas K. Clancy, *The Framers' Intent: John Adams, His Era, and the Fourth Amendment*, 86 IND. L.J. 979, 980 (2011). The language they settled upon for the Fourth Amendment was "precise and clear" and "reflect[ed] the determination" that Americans should be secure "from intrusion and seizure by officers acting under the unbridled authority of a general warrant." *Stanford*, 379 U.S. at 481. Accordingly, a "warrant must generally be secured" for a search to be "reasonable." *Kentucky v. King*, 563 U.S. 452, 459 (2011). In principle, "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." *Katz v. United States*, 389 U.S. 347, 357 (1967).

Regrettably, these "exceptions" have become so expansive in practice that "warrants are the exception rather than the rule." William J. Stuntz, *Warrants and Fourth Amendment Remedies*, 77 VA. L. REV. 881, 882 (1991); *see also* Wayne A. Logan, *An Exception Swallows a Rule: Police Authority to Search Incident to Arrest*, 19 YALE L. & POL'Y REV. 381, 383 (2001). From pretextual stops, to the "good-faith" exception to the

exclusionary rule, to exceedingly permissive interpretations of *Terry v. Ohio*, exceptions have swallowed much of the warrant requirement.

The Swiss cheese-esque lattice of warrant exceptions "enables a host of aggressive and intrusive police tactics." *United States v. Johnson*, 874 F.3d 571, 577 (7th Cir. 2017) (en banc) (Hamilton, J., dissenting).

> [A]rrested persons can be strip-searched, *Florence v. Board of Chosen Freeholders*, 566 U.S. 318, 339 (2012), fingerprinted, photographed, and perhaps even subjected to a DNA test, *see Maryland v. King*, 569 U.S. 435, 481 (2013) (Scalia, J., dissenting). Moreover, a *Terry* stop can even be justified by an officer's *mistake* of either law or fact. *Heien v. North Carolina*, 574 U.S. 54, 61 (2014).

Id. at 578 (internal parallel citations omitted). Doctrinal looseness is already infecting searches incident to arrest particularly. *See* Logan, *supra*, at 403 (noting that courts have condoned invasive searches incident to arrest for crimes including littering, civil contempt, riding a bike on a sidewalk, juvenile curfew violation, truancy, speeding, driving with a suspended license, seatbelt violations, underage possession of alcohol, urinating in public, and riding a bike with a suspended driver's license).

Fortunately, this Court's recent decisions confirm that exceptions to the warrant requirement must remain bounded. In *City of Los Angeles v. Patel*, 576 U.S. 409 (2015), the Court rejected an effort to expand the administrative search exception to legitimize an ordinance requiring hotels to turn over guest records for

police inspection. *Patel* explained that the exception is limited to businesses within a "closely regulated industry," and "[t]o classify hotels as pervasively regulated would permit what has always been a narrow exception to swallow the rule." *Id.* at 424–25 (citation omitted). This Court expressed similar concerns about doctrinal sprawl in *Caniglia v. Strom*, 593 U.S. 194 (2021), holding that no community caretaking exception permits warrantless entries into a home. While officers may perform certain non-investigative tasks in aid of motorists on the highways, they do not hold "an open-ended license to perform them anywhere." *Id.* at 199. Arguing otherwise "goes beyond anything this Court has recognized." *Id.* at 198.

Much like the doctrinal concoctions this Court rejected in *Patel* and *Caniglia*, the decision below stretches the search incident to arrest exception from a narrow loophole into a gaping passageway for unconstitutional abuses. In upholding the police's warrantless search of Mr. Scullark's fanny pack, the Iowa Supreme Court expanded the definition of "the arrestee's person" past what the Constitution, and common sense, can sustain. It disregarded the justifications underlying the search incident to arrest exception and instead held that "once an officer begins an arrest attempt, [this] exception makes anything on or near the person *at that moment* fair game to search, regardless of what happens after." *State v. Scullark*, 23 N.W.3d 49, 64 (Iowa 2025) (McDermott, J., dissenting).

Such broad search authority is especially concerning in light of recent calls for more aggressive policing. Consider President Trump's recent directive authorizing federal law enforcement agencies to assist local authorities in Washington, D.C. These efforts have led to

more arrests, with the vast majority of cases resulting from officer-initiated contact. Nicholas Bogel-Burroughs, et al., *2 Weeks, 1,000 Arrests: How a Surge of Feds Changed D.C. Policing*, N.Y. TIMES (Aug. 29, 2025) (explaining that in most situations, federal officers were not "responding to a call or instructions from dispatchers," but initiating "traffic stops for minor infractions like having darkly tinted windows or double parking, as well as cases where a cup or container that might hold alcohol could be seen inside a vehicle").[2] Particularly in this context of aggressive criminalization, individuals need to be secure in their knowledge that the Fourth Amendment will protect them from generalized, warrantless searches of their personal property in the event they are arrested. Unfortunately, the rule adopted by the Iowa Supreme Court has the opposite effect. It gives police virtually unlimited authority to search physical items found with the arrestee, regardless of whether there is particularized concern about officer safety or destructible evidence. When combined with the many other exceptions to the warrant requirement established by this Court, the decision below contributes to the reincarnation of the sort of general-warrant regime the Fourth Amendment was designed to prevent.

The decision below is not an isolated misapplication of this Court's search incident to arrest doctrine. *See* Pet. Br. at 15–20 (listing other jurisdictions that have upheld warrantless bag searches incident to arrest). Rather, it is yet another troubling illustration of how easily Fourth Amendment "exceptions" can

[2] Available at http://bit.ly/4qechkS.

expand until they eclipse the baseline rules they were originally meant merely to tweak.

II. THE DECISION BELOW DISPROPORTIONATELY HARMS HOMELESS INDIVIDUALS.

The impact of the Iowa Supreme Court's decision will not be felt by all equally. The court's expansion of the search incident to arrest exception will disproportionately impact homeless individuals who "do not have the luxury of fences, doors, and locks found in traditional residences wherein they can secure their possessions." *Commonwealth v. Bembury*, 677 S.W.3d 385, 414 (Ky. 2023) (Thompson, J. dissenting). Instead, they "are dependent upon suitcases, backpacks, grocery carts and even garbage bags to secure their personalty." *Id.* at 414–15. When a homeless person is arrested, then—even for a minor and homelessness-centered violation like loitering or sleeping in public—the decision below means searching *every last item he owns* will often become fair game.

But searches incident to arrest are supposed to be only narrow intrusions upon people's privacy. In *Riley v. California*, 573 U.S. 373 (2014), this Court described searches incident to arrest as less concerning than other kinds of intrusions because of their inherently limited scope: "Most people cannot lug around every piece of mail they have received for the past several months, every picture they have taken, or every book or article they have read . . . . [I]t is 'a totally different thing to search a man's pockets and use against him what they contain, from ransacking his house for everything which may incriminate him.'" *Id.* at 396 (quoting *United States v. Kirschenblatt*, 16 F.2d 202, 203 (2d Cir. 1926) (Hand, J.)). That holds true only when a person has a house in which to store his papers and

effects. When they are all stashed inside of bags stacked atop a shopping cart, a search incident to arrest can swiftly become a thorough probe of everything a person owns. *Cf. Lavan v. City of Los Angeles*, 693 F.3d 1022, 1025 (9th Cir. 2012) ("Like many of Skid Row's homeless residents, Appellees stored their personal possessions—including personal identification documents, birth certificates, medications, family memorabilia, toiletries, cell phones, sleeping bags and blankets—in mobile containers . . . .").

This expansion of exposure to police intrusion is particularly troubling given that homelessness in America is at an all-time high. In 2024, a record high of 771,480 Americans experienced homelessness, an increase of 18% from the previous year. Daniel Soucy et al., *State of Homelessness: 2025 Edition*, NAT'L ALL. TO END HOMELESSNESS (Sept. 4, 2025).[3] And of those people experiencing chronic homelessness, 61% were unsheltered, meaning their primary nighttime residence was a place not designed for regular sleeping. *Id.*; *see also* U.S. DEP'T HOUS. & URB. DEV., THE 2024 ANNUAL HOMELESSNESS ASSESSMENT REPORT (AHAR) TO CONGRESS, at *x* (Dec. 2024) (hereinafter "HUD REPORT").[4]

Life for those facing housing insecurity is difficult enough, but those struggles are compounded by the fact that homeless individuals "are more likely . . . to interact with law enforcement and be targeted by criminalization efforts." Nicole DuBois, et al., *Criminalizing Homelessness Worsens the Crisis, Research*

[3] Available at https://bit.ly/492kLlr.

[4] Available at http://bit.ly/4q64jKh.

Shows, NAT'L ALL. TO END HOMELESSNESS 3 (2025).[5] According to the ACLU, "people who are homeless are 11 times *more likely to be arrested*, nationwide, than those who are housed." *Fact Sheet: State of Homelessness in the U.S.*, ACLU 1 (Aug. 8, 2025).[6] Similarly, a study of homelessness in 15 states found that "[u]nsheltered individuals report ten times as many police contacts [as compared to sheltered people] on average (21 compared to 2) in the [preceding] six months, and were approximately nine times as likely to report that they had spent at least one night in jail in the last six months (81% vs. 9%)." Janey Rountree, et al., *Health Conditions Among Unsheltered Adults in the U.S.*, CALIF. POL'Y LAB 7 (Oct. 2019).[7]

Exacerbating these disparities, there has been a recent trend among state and local governments to adopt laws and policies aimed at vanishing the homeless population from public view using police force. These laws frequently target behaviors that are unavoidable for those living unsheltered, including begging, camping, sleeping in public, sitting or lying down in public, or living in vehicles. *See* Jordy Coutin, *Policing Homelessness: A review of the literature on policing policies that target homelessness and best practices for improving outcomes*, HOMELESSNESS POL'Y RSCH. INST. 2 (Oct. 21, 2021).[8] Moreover, since this Court's decision in *Grants Pass v. Johnson*, 604 U.S. 520 (2024), states and cities have felt "empowered to employ more aggressive measures around the challenge of

[5] Available at http://bit.ly/3W2CDs7.

[6] Available at http://bit.ly/4o779gu.

[7] Available at http://bit.ly/3KI0D1f.

[8] Available at http://bit.ly/4n3fpNs.

homelessness." Patrick Sisson, *California Cities Rethink Homelessness Tactics After Supreme Court Ruling*, BLOOMBERG (July 22, 2024, 9:30 AM).[9] Criminalizing such unavoidable conduct gives police broad authority to arrest the homeless "for minor 'public nuisance' crimes," with the ultimate goal of removing visibly homeless people from public spaces. Emily Peiffer, *Five Charts That Explain the Homelessness-Jail Cycle—and How to Break It*, URBAN INST. (Sept. 16, 2020).[10]

Since June 2024, local governments "have introduced over 320 bills criminalizing unhoused people," at least 220 of which have passed. *One Year Since Grants Pass: Tracking the Criminalization of Homelessness*, ACLU (June 23, 2025).[11] The President has also called for stricter enforcement of laws targeting homeless individuals and encampments. *See* Ending Crime and Disorder on America's Streets, Exec. Order No. 14321, 90 Fed. Reg. 35817 (July 24, 2025); *Fact Sheet: President Donald J. Trump Takes Action to End Crime and Disorder on America's Streets*, THE WHITE HOUSE (July 24, 2025).[12] Against this backdrop, the Iowa Supreme Court's decision strikes hardest at our nation's homeless, who now face a dual threat: arrest for existing publicly triggering warrantless intrusion into everything they own.

The growing trend of criminalizing homelessness is all the more concerning given the prevalence of racial

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[9] Available at http://bit.ly/3IWZAKv.

[10] Available at https://bit.ly/3Odpt86.

[11] Available at http://bit.ly/4nRw8Vs.

[12] Available at http://bit.ly/4mWRLlF.

profiling in policing. Nearly two-thirds of America's homeless population is comprised of Black and Hispanic people. HUD REPORT, *supra*, at 6 (finding that Hispanic people account for 31% and Black people 32% of all homeless individuals). Doctrinal loopholes, created by this Court's precedent, have given police broad power to stop and engage individuals, even when the motivations for doing so are at best dubious. *See Terry v. Ohio*, 392 U.S. 1, 27 (1968) (permitting investigatory stop-and-frisks based on reasonable suspicion alone); *Whren v. United States*, 517 U.S. 806, 813 (1996) (authorizing pretextual stops by police under the Fourth Amendment, even those motivated by "selective enforcement of the law based on considerations such as race"). *Terry* and *Whren* have led to law enforcement targeting people based on their demographics. *See A Closer Look at Stop-and-Frisk in NYC*, NYCLU (May 27, 2025) (finding that Black people are stopped and frisked at disproportionately higher rates in New York City);[13] Stephen Rushin & Griffin Edwards, *An Empirical Assessment of Pretextual Stops and Racial Profiling*, 73 STAN. L. REV. 637, 644 (2021) (finding that pretextual traffic stops led to a statistically significant increase in stops of drivers of color relative to white drivers).

Laws criminalizing homelessness, and doctrines acquiescing in pretextual and discriminatory policing, will make it impossible for certain individuals to exist in public without facing the possibility of arrest—followed as a matter of course, if the decision below is allowed to stand, by highly intrusive searches. Homeless people have no choice but to carry the bulk of their possessions with them at all times. They do not have the

[13] Available at http://bit.ly/43bJVh5.

luxury of guarding the most intimate details of their lives behind a closed door, and by allowing officers to conduct overly expansive searches of personal items like bags, backpacks, and suitcases that play a similar role for homeless people as a nightstand or a closet might for a homeowner, the decision below strips a vital constitutional protection from a uniquely vulnerable population.

No cure-all exists for the systemic problems plaguing the American criminal justice system—deep structural issues exceed what any single case or doctrinal adjustment can fix. But by reversing the decision below and ensuring that the search incident to arrest doctrine is not expanded beyond its original scope, this Court can take a small but significant step toward ensuring that all citizens enjoy the full protection of the Fourth Amendment.

CONCLUSION

For these reasons, and those described by Mr. Scullark, this Court should grant the petition.

Respectfully submitted,

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