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 NATIONAL ASSOCIATION FOR PUBLIC DEFENSE AS *AMICUS CURIAE* SUPPORTING PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

Comprised of over 25,000 lawyers, social workers, case managers, investigators, sentencing advocates, academics, and legislative advocates, the National Association for Public Defense (NAPD) is an organization dedicated to the effective legal representation of accused persons who cannot afford to retain private counsel. NAPD's professionals, who reflect the wide range of expertise necessary for providing robust public defense, advocate for the interests of America's most marginalized communities.

As part of its mission, NAPD seeks to promote the fair administration of justice by appearing as *amicus curiae* in litigation relating to criminal law issues, particularly as those issues affect indigent defendants in federal court. NAPD appears as *amicus curiae* in this case because an overbroad extension of the search incident to arrest exception would open the door to undue infringements on the privacy interests and constitutional rights of those whom NAPD serves. NAPD respectfully asks the Court to resolve the circuit split on the question presented, which not only creates confusion for public servants across the criminal justice system, but also threatens the Fourth Amendment rights of the nation's most vulnerable populations.

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[1] No counsel for any party authored this brief in whole or in part, and no person or entity other than *amicus* or its counsel made any monetary contribution to the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.2, counsel of record for both parties received notice of *amicus*'s intention to file this brief at least ten days prior to the due date.

SUMMARY OF THE ARGUMENT

This Court should grant the petition for certiorari to resolve the recurring, unsettled, and urgent constitutional question of whether the search incident to arrest exception extends to an arrestee's bags that are inaccessible to the arrestee at the time of the search. This is the third time in two years that NAPD adds its voice to a petitioner's to seek clarity from this Court on this question, and this case presents the best vehicle yet to resolve it. Left unanswered, the question will continue to undermine the efficiency and fairness of the criminal justice system, confusing law enforcement, public defenders, litigants, and judges alike and necessitating repetitive litigation, which has already resulted in unequal protection of defendants' Fourth Amendment rights across different jurisdictions.

NAPD echoes the points made in Petitioner's brief and calls attention to four additional concerns that favor granting certiorari:

First, the lower courts' inconsistent interpretation of the search incident to arrest exception has created a disparity in how constitutional privacy rights are protected across U.S. jurisdictions. Americans' Fourth Amendment protections should not vary unpredictably across state lines in this way. Likewise, the constitutional rights of indigent defendants should not depend on where they are arrested.

Second, the significant uncertainty in this corner of Fourth Amendment jurisprudence burdens public servants at every level of the criminal justice system and ties up legal resources that could otherwise be dedicated to underserved populations. Public

defenders, prosecutors, judges, and police should not need to expend their limited time and resources litigating this issue in countless cases each year. Absent clear guidance from this Court, the question presented will continue to generate uncertainty about what degree of protection against warrantless searches the Fourth Amendment guarantees. At least three petitions in the last two years have stressed the urgency and importance of this question. *See* Petition for Writ of Certiorari, *Bembury v. Kentucky*, 144 S. Ct. 1459 (2024) (No. 23-802); Petition for Writ of Certiorari, *Perez v. United States*, 145 S. Ct. 1469 (2025) (No. 24-577); Petition for Writ of Certiorari, *Miffin v. United States*, 145 S. Ct. 1101 (2025) (No. 24-6024). Petitioner's case is an ideal vehicle to resolve the question, because the State here has never argued that the search of Scullark's fanny pack was independently justified by the plain-view doctrine or good-faith exception. *See* Cert. Pet. 31-33. This Court's reversal of the decision below would thus actually change the outcome, resulting in the suppression of evidence found in Scullark's fanny pack. Until this Court provides guidance, the question will continue to divert advocates' time from other individuals who need representation, especially indigent defendants.

Third, as Justice McDermott argued in his dissent below, the Iowa Supreme Court's decision is at odds with the two rationales this Court has long relied on to justify the narrow search incident to arrest exception: officer safety and the preservation of destructible evidence. Allowing law enforcement to search fanny packs and similar containers beyond the arrestee's reach is unnecessary to serve the goals of

safety and evidence preservation. The categorical "time of arrest" rule instead unduly curtails the Fourth Amendment rights of millions of Americans.

Finally, the Iowa Supreme Court's holding below undervalues arrestees' privacy interests in their personal effects. This Court has recognized the heightened privacy interests that people have in their luggage. *See United States v. Chadwick*, 433 U.S. 1, 11-16 (1977) (holding that the warrantless search of the arrestees' footlocker violated the Fourth Amendment), *abrogated on other grounds by California v. Acevedo*, 500 U.S. 565 (1991). And for good reason: people carry their most intimate possessions in their bags, such as medications, diaries, and religious items. The stakes are even higher for the unhoused, who must carry *all* of their personal belongings in bags and similar containers. For many indigent defendants, warrantless searches of bags thus constitute significant intrusions on privacy, above and beyond those inherent in arrest.

NAPD respectfully entreats the Court to grant certiorari and to resolve, once and for all, this persistent question about the contours of arrestees' Fourth Amendment rights.

ARGUMENT

I. The Lower Courts' Split Over The Search Incident To Arrest Exception Makes Defendants' Constitutional Privacy Rights Contingent On Location.

By granting certiorari, this Court could resolve an entrenched split in the lower courts over how to interpret this Court's precedent on the search incident to arrest exception to the Fourth Amendment's

warrant requirement. Following this Court's decisions in *United States v. Robinson*, 414 U.S. 218 (1973), *United States v. Chadwick,* 433 U.S. 1 (1977), and *Arizona v. Gant*, 556 U.S. 332 (2009), the courts of appeals and state high courts have divided over whether police may, without a warrant, search an arrestee's fanny pack, backpack, or other external bag or container in the arrestee's possession even when there is no reasonable possibility that the arrestee could access it at the time of the search.

The Iowa Supreme Court below sided with the First Circuit and the state supreme courts of Kentucky, North Dakota, Illinois, Colorado, and Washington by holding that an external bag in an arrestee's possession at the time of arrest is subject to a warrantless search, regardless of whether the arrestee could have reached it to retrieve a weapon or destroy evidence at the time of the search. *See United States v. Perez*, 89 F.4th 247, 257 n.4, 261 (1st Cir. 2023), *cert. denied*, 145 S. Ct. 1469 (2025); *Commonwealth v. Bembury*, 677 S.W.3d 385, 388, 407 (Ky. 2023); *State v. Mercier*, 883 N.W.2d 478, 491 (N.D. 2016); *People v. Cregan*, 10 N.E.3d 1196, 1207 (Ill. 2014);[2] *People v. Marshall*, 289 P.3d 27, 28-29 (Colo. 2012) (en banc); *State v. Brock*, 355 P.3d 1118, 1122-23 (Wash. 2015). But the Iowa Court of Appeals' vacated decision, which held that the search "did not meet the incident-to-arrest exception" because "Scullark had no realistic

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[2] *See generally* Brian Scott, *Don't Get Caught Holding the Bag in Illinois: Analyzing the Court's Decision in People v. Cregan, 2024 IL 113600*, 40 S. Ill. U. L.J. 561, 576-77 (2016) (contrasting the *Cregan* court's reasoning with the competing "reasonable possibility" standard adopted in other jurisdictions).

ability to access the fanny pack after he was handcuffed and escorted to the patrol car," Pet.App. 34a, better aligned with precedent from the Third, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits,[3] and the state supreme courts of New Mexico, Missouri, and South Carolina, which dictates that police cannot search an arrestee's bag without a warrant if there is no reasonable possibility that the arrestee could access the bag at the time of the search. *See United States v. Shakir*, 616 F.3d 315, 321 (3d Cir. 2010); *United States v. Davis*, 997 F.3d 191, 200 (4th Cir. 2021); *United States v. Perdoma*, 621 F.3d 745, 752-53 (8th Cir. 2010); *United States v. Cook*, 808 F.3d 1195, 1200 (9th Cir. 2015); *United States v. Knapp*, 917 F.3d 1161, 1170 (10th Cir. 2019); *United States v. Brown,* 2021 WL 4955823, at *2 (11th Cir. Oct. 26, 2021); *State v. Ortiz*, 539 P.3d 262, 268-69 (N.M. 2023); *State v. Carrawell*, 481 S.W.3d 833, 845 (Mo. 2016) (en banc); *State v. Brown*, 736 S.E.2d 263, 269 (S.C. 2012). Elsewhere, the application of the search incident to arrest exception when a "suspect is secured away from

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[3] Though "the Second Circuit has not reached the question of whether . . . *Gant* proscribes non-vehicular container searches incident to a lawful arrest unless the arrestee is unsecured and within reaching distance of the container," a recent E.D.N.Y. decision sided with the majority of federal circuit courts by holding that a warrantless search of a backpack was not valid where the arrestee "lacked control over his backpack . . . because three arresting officers removed the backpack—which was closed [and] zipped . . . from his body, restrained his hands behind his back with handcuffs, and surrounded him during the initial search." *United States v. Brito,* 771 F. Supp. 3d 157, 173 n.13, 175 (E.D.N.Y. 2025).

a container prior to a search" "remains an open question," which this Court's guidance would prove crucial to answering correctly. *Greenfield v. United States*, 333 A.3d 866, 876 (D.C. 2025).

The lack of uniformity in this area of Fourth Amendment jurisprudence has troubling consequences. Most importantly, the current, divided state of the law means a defendant's protections under the Fourth Amendment vary depending on the jurisdiction where the defendant is arrested. As this Court has recognized, the "Fourth Amendment's meaning," should not "vary from place to place." *Virginia v. Moore*, 553 U.S. 164, 172 (2008) (citation omitted). But right now, it does: Nearly identical searches violate the Fourth Amendment under the law in some jurisdictions but not others.

For instance, the First Circuit upheld a warrantless search of an arrestee's backpack under the search incident to arrest exception where the arrestee was on the ground, handcuffed behind his back, and "not in reaching distance of the backpack when the search of the backpack took place" on the hood of a state trooper's car. *Perez*, 89 F.4th at 249; *see also United States v. Perez*, 2021 WL 2953671, at *2 (D. Me. July 14, 2021), *aff'd*, 89 F.4th 247 (1st Cir. 2023). But the Fourth Circuit held that a warrantless search of an arrestee's backpack violated the Fourth Amendment because the arrestee was on the ground, handcuffed, and "not within reaching distance of his backpack when [the police] unzipped and searched it." *Davis*, 997 F.3d at 198. And a district court applying *Davis*'s logic found that a warrantless search of a bag was unjustified where the defendant, like the arrestee

in *Perez*, was sitting up and had "his hands cuffed behind his back." *United States v. Allen*, 2024 WL 4652823, at *2 (E.D.N.C. Nov. 1, 2024). That court rejected the government's argument that the defendant "could have slipped free of his handcuffs and lunged for the bags," because "such gymnastics are extraordinarily unlikely," making the "search of the bags incident to [his] arrest . . . impermissible." *Id.* These decisions are irreconcilable.

Cases with facts even more closely resembling *Scullark*'s—and specifically involving fanny packs—further highlight the inconsistency of the law across jurisdictions. Scullark was wearing a fanny pack around his waist when a police officer arrived to investigate a domestic violence complaint, and after the officer told him he was under arrest, Scullark "handed the fanny pack to his friend . . . who was standing nearby," which the officer "did not protest." Pet.App. 35a. The officer handcuffed Scullark, such that "Scullark could not have reached the fanny pack . . . because his hands were cuffed behind his back," and by the time of the search, "at least two other officers had arrived at the scene." Pet.App. 35a-36a. When the search began, Scullark was not only handcuffed but also in the process of being patted down by an officer while a separate officer searched the fanny pack nearby, and the search continued after Scullark was "in the back of [a] patrol car," well out of reach of the fanny pack. Pet.App. 4a. The Iowa Supreme Court determined that this search was valid incident to arrest as a "search of the person, governed by *Robinson*—rather than a search of the area within his immediate control, governed by *Chimel*, *Gant*, or

Gaskins," because Scullark had been wearing the fanny pack at the time of his arrest. Pet.App. 14a.

By contrast, faced with substantially similar facts, a federal district court in Vermont found that a fanny pack search was *not* valid, even where "[p]rior to his arrest, Defendant was wearing the fanny pack across his chest" and so it was "arguably an extension of Defendant's person," because "Defendant could not have gained access to his fanny pack when law enforcement searched it." *United States v. Moffitt*, 2023 WL 4197110, at *6 (D. Vt. June 27, 2023). At the time of the search, Moffitt "was handcuffed, in the process of being ankle cuffed, and was surrounded by law enforcement officers" while an officer "retained sole and exclusive control of the fanny pack." *Id.* The court concluded that the "government ha[d] not established that law enforcement's brief inspection of the fanny pack was a search incident to arrest." *Id.* at *7. Similarly, the court in *United States v. Giles* determined that the "justifications for the search-incident-to-arrest exception [we]re absent" when "police officers opened [defendant's] fanny pack in the field across the street from where [the arrestee] sat in handcuffs . . . surrounded by several police officers and paramedics," as "'it [was] inconceivable that [he] could have gained access to' the fanny pack." 496 F. Supp. 3d 21, 27 (D.D.C. 2020) (first alteration in original) (citation omitted). These results cannot be squared, and the fact that defendants in substantially the same circumstances as Scullark enjoyed greater Fourth Amendment protection in D.C. and Vermont than Scullark did in Iowa raises serious concern.

NAPD has an interest in ensuring that the indigent defendants it serves have equal rights, regardless of where they live. To ensure greater uniformity in Fourth Amendment protection around the country, NAPD urges the Court to grant certiorari and clarify the application of the search incident to arrest exception to external bags out of arrestees' reach at the time of search.

II. The Uncertainty Surrounding Searches Incident To Arrest Burdens Public Servants And Harms Indigent Defendants.

The muddled state of search incident to arrest law burdens public servants at every level of the criminal justice system. First, police may face needless conflict with arrestees due to the uncertainty about what items the police may search incident to arrest. As this Court has said: "When a person cannot know how a court will apply a settled principle to a recurring factual situation, that person cannot know the scope of his constitutional protection, nor can a policeman know the scope of his authority." *New York v. Belton*, 453 U.S. 454, 459-60 (1981). Second, following arrests where searches of bags take place—an exceedingly common occurrence—prosecutors and public defenders must dedicate their limited time and resources to litigating the legality of the searches at suppression hearings. Public defenders, whose mission NAPD shares, are already burdened with heavy workloads and staffing shortages.[4] The need to

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[4] *See generally* Justice Policy Institute, *System Overload: The Costs of Under-Resourcing Public Defense*, at 10 (July 27, 2011) (reporting that only 27% of county-based public defense offices had enough attorneys to meet caseload guidelines); *see also*

continuously relitigate this issue compounds that burden, tying up time and resources defenders could otherwise spend assisting new and existing clients. While this constitutional question remains unresolved, America's most vulnerable populations will suffer the downstream consequence of less available legal aid.

Finally, judges at every level of the judiciary must devote time to hearings and the appeals they inevitably generate. As former Second Circuit Judge Roger Miner explained, "allowing circuit conflicts to continue generates litigation, because the law remains unsettled," and consequently, "the lower courts become clogged with cases that would not be brought if the law was clearly stated."[5] This concern is particularly acute in criminal cases, where court systems are already "systematically overworked and underfunded," heightening the risk to indigent defendants.[6]

American Bar Association Standing Committee on Legal Aid and Indigent Defense & Moss Adams LLP, *The Oregon Project: An Analysis of the Oregon Public Defense System and Attorney Workload Standards*, at 5 (Jan. 2022) (explaining that in 2022, Oregon's contract public defense attorneys would need to work an impossible 26.6 hours per work day to provide adequate representation to clients).

[5] Roger J. Miner, *Federal Court Reform Should Start at the Top*, 77 Judicature 104, 106-07 (1993).

[6] Eve Brensike Primus, *Federal Review of State Criminal Convictions: A Structural Approach to Adequacy Doctrine*, 116 Mich. L. Rev. 75, 91-92 (2017).

Only a clarifying decision from this Court can fix the law's current fragmentation, as judges on both sides of the divide have reiterated. The Kentucky Supreme Court has explained that until this Court "opine[s] on this issue, lower federal and state courts" will be "left to [their] 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," in cases involving "purses, backpacks, suitcases, briefcases, gym bags, computer bags, fanny packs," and similar containers. *Bembury*, 677 S.W.3d at 397. First Circuit judges have asked this Court for guidance, explaining:

> A Fourth Amendment issue as basic as this one . . . seems especially poorly suited to circuit-by-circuit and state-by-state resolution. . . . We thus urge the Supreme Court, having held many decades ago that the container at issue in *Robinson* was subject to the categorical rule, to consider *Robinson*'s applicability . . . . A ruling by the Supreme Court that addressed the search incident to arrest exception and *Robinson* in the more mundane context of wallets, purses, briefcases, backpacks, or other commonly carried containers would do much to help bring about a measure of uniformity to an area of law that has long been lacking it.

United States v. Perez, 113 F.4th 137, 139-40 (1st Cir. 2024) (denying petition for rehearing en banc). Until this Court "clearly demarcate[s] where the person

ends and the 'grab area' begins," confusion will persist. *Knapp*, 917 F.3d at 1166.

The Court should grant certiorari to resolve confusion among the lower courts and reduce the burden felt throughout the criminal justice system.

III. The Iowa Supreme Court's Decision Divorces The Search Incident To Arrest Exception From Its Two Policy Justifications.

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. Warrantless searches are presumptively unconstitutional and "reasonable only if" they fall "within a specific exception to the warrant requirement." *Riley v. California*, 573 U.S. 373, 382 (2014) (citing *Kentucky v. King*, 563 U.S. 452, 459-60 (2011)). Exceptions are few, and the search incident to a lawful arrest exception is one.

Chimel v. California, 395 U.S. 752 (1969), "laid the groundwork for most of the existing search incident to arrest doctrine." *Riley*, 573 U.S. at 382-83 (discussing the origins of and rationales behind the exception). In *Chimel*, this Court set parameters for reasonable searches incident to arrest:

> When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the *officer's safety* might well be endangered, and the arrest itself frustrated. In addition, it is

> entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person *in order to prevent its concealment or destruction*. . . . There is ample justification, therefore, for a search of the arrestee's person and the area "within his immediate control"—construing that phrase to mean *the area from within which he might gain possession of a weapon or destructible evidence*.

395 U.S. at 762-63 (emphasis added). Under this standard, the Court held that the "extensive warrantless search of Chimel's home did not fit within this exception, *because* it was not needed to protect officer safety or to preserve evidence." *Riley*, 573 U.S. at 383 (emphasis added) (citing *Chimel*, 395 U.S. at 763, 768). Thus, this Court's foundational precedent on the exception emphasizes that it is premised on the need to protect officer safety and preserve evidence.

In subsequent cases, this Court has carefully cabined the exception, centering these two justifications. *See, e.g.*, *Robinson*, 414 U.S. at 235 ("The authority to search the person incident to a lawful custodial arrest [is] based upon the need to disarm and to discover evidence."); *Gant*, 556 U.S. at 338, 343 ("The exception derives from interests in officer safety and evidence preservation that are typically implicated in arrest situations."); *Thornton v. United States*, 541 U.S. 615, 625 (2004) (Scalia, J., concurring) (noting that in *Chimel*, the Court "limited such searches to the area within the suspect's 'immediate control'—*i.e.*, 'the area into which an arrestee might reach in order to grab a weapon or

evidentiary ite[m].'" (alteration in original) (citation omitted)).

Particularly instructive for Petitioner's case is *United States v. Chadwick*. There, the Court considered whether federal agents violated the Fourth Amendment by searching, without a warrant, a footlocker they had lawfully seized at the time of its owners' arrest. *See* 433 U.S. at 3. After arresting the owners, the agents had taken possession of the footlocker and safely transferred it to the Boston Federal Building before conducting the warrantless search. *See id.* at 4. The search violated the Fourth Amendment because by the time the search took place, "there was no risk that whatever was contained in the footlocker trunk would be removed by the defendants or their associates," nor was there "reason to believe that the footlocker contained explosives or other inherently dangerous items, or that it contained evidence which would lose its value unless the footlocker were opened at once." *Id.* The Court reasoned that "warrantless searches of luggage or other property seized at the time of an arrest cannot be justified as incident to that arrest either if the 'search is remote in time or place from the arrest,' or no exigency exists." *Id.* at 15 (quoting *Preston v. United States*, 376 U.S. 364, 367 (1964)). The Court concluded:

> Once law enforcement officers have reduced luggage or other personal property not immediately associated with the person of the arrestee to their exclusive control, and there is no longer any danger that the arrestee might gain access to the property to seize a

> weapon or destroy evidence, a search of that property is no longer an incident of the arrest.

Id. Here, again, the Court centered its analysis of whether a search was lawful on the question of whether officer safety or evidence preservation required it. Because they did not, the search was unconstitutional. *See id.* at 15-16.

The same principles should have governed the decision below and require rejecting the categorical "time of arrest" rule adopted by the Iowa Supreme Court and numerous other courts. In dissent below, Justice McDermott aptly observed that the court's approach divorced the exception from its key rationales:

> [I]n real life, time does not freeze . . . and our analysis of risks similarly does not remain static as events change. Grounding the search-incident-to-arrest exception on such an artificial notion—reducing interactions between suspects and police to what can be thought of as a series of Polaroid pictures and justifying a later search by holding up an outdated snapshot—untethers the exception from its rationale. . . .
>
> The search-incident-to-arrest exception is based on an *existing* exigency—a present threat to officer safety or a present threat of losing evidence—not a historical one. . . .
>
> . . . The search-incident-to-arrest exception is based on the justification that officers *need* to search items that presently *are* on or near the arrestee, not that officers *get* to search items that previously *were* on or near the arrestee.

Pet.App. 30a-31a (McDermott, J., dissenting).

As most of the federal circuits that have considered the issue have concluded, the "time of arrest" rule is at odds with this Court's precedent, which "stand[s] for the proposition that police cannot search a location or item when there is no reasonable possibility that the suspect might access it." *Shakir*, 616 F.3d at 320; *see also Davis*, 997 F.3d at 197 ("[P]olice 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.'" (second alteration in original) (quoting *Gant*, 556 U.S. at 343)); *United States v. Salazar*, 69 F.4th 474, 478 (7th Cir. 2023) ("*Gant* stands for the principle that a search incident to arrest is reasonable if it is possible that an arrestee can access a weapon or destroy evidence in the area to be searched."). In D.C., where the exact contours of the search incident to arrest exception "remain[] an open question," the D.C. Court of Appeals has distinguished between situations like Scullark's, where a bag is out of an arrestee's reach, from a search incident to arrest wherein the arrestee was "neither secured nor removed from his backpack in any meaningful sense at the time of the . . . bag search" and so "remained potentially able to grab a weapon or destroy evidence that was inside of the bag." *Greenfield*, 333 A.3d at 876-77.

The Iowa Supreme Court held that "because Scullark was wearing the fanny pack around his waist at the time of arrest, the fanny pack was immediately associated with his person for purposes of the SITA exception, and the categorical rule from *Robinson* . . .

applies," so the search "was reasonable." Pet.App. 21a. But this reasoning is flawed. *Robinson* lends no support to a broad "time of arrest" rule related to bags. In *Robinson*, the Court held that a search of an arrestee's *person* incident to arrest need not be justified by case-by-case adjudication of whether there was a particular need to discover evidence or disarm the arrestee. *See* 414 U.S. at 235-36. Accordingly, the Court upheld the warrantless search of a cigarette box the police found in the arrestee's jacket pocket. *See id.* But as the Tenth Circuit has persuasively explained, the search in *Robinson* did not stretch beyond the arrestee's immediate person, worn clothing, or containers *concealed within worn clothing*. *See Knapp*, 917 F.3d at 1166-67. Because an arrestee's potential ability to access weapons concealed in clothing or pockets poses a risk to officer safety, "an officer must necessarily search those areas because it would be impractical (not to mention demeaning) to separate the arrestee from her clothing." *Id.* at 1166. By contrast, once a fanny pack or other container is separated from the arrestee's person, as it was separated from Scullark, "there is no longer any danger that the arrestee might gain access to the property to seize a weapon or destroy evidence." *Chadwick*, 433 U.S. at 15. Thus, "the animating reasons supporting arresting officers' 'unqualified authority' to search an arrestee's person are less salient in the context of visible, handheld containers such as purses" or fanny packs. *Knapp*, 917 F.3d at 1166 (quoting *Robinson*, 414 U.S. at 225). And in *Robinson*, this Court recognized that searches of the arrestee's person and searches of the areas within the arrestee's immediate control are "two distinct

propositions" that "have been treated quite differently." *Robinson*, 414 U.S. at 224.

The rule that the Iowa Supreme Court adopted collapses that distinction and "risks expanding *Robinson*'s limited exception." *Knapp*, 917 F.3d at 1167. "Taken to its logical end, the majority's theory would . . . permit[]" law enforcement to not only search a fanny pack "five minutes after [an arrestee is] handcuffed (as happened here)," but also "to hold onto the fanny pack and conduct a warrantless search a month or even a year later, in a location miles away" from the arrestee. Pet.App. 30a-31a (McDermott, J., dissenting). Such a result is at odds with the Fourth Amendment. As this Court has long recognized, the warrant requirement is "an important working part of our machinery of government, operating as a matter of course to check the 'well-intentioned but mistakenly over-zealous executive officers' who are a part of any system of law enforcement." *Coolidge v. New Hampshire*, 403 U.S. 443, 481 (1971) (quoting *Gouled v. United State*s, 255 U.S. 298, 304 (1921)). Whereas a warrant "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,'" the rule the Iowa Supreme Court adopts does the opposite. *Riley*, 573 U.S. at 382 (quoting *Johnson v. United States*, 333 U.S. 10, 14 (1948)).

As Justice Scalia counseled, "conducting a *Chimel* search is not the Government's right; it is an exception—justified by necessity—to a rule that would otherwise render the search unlawful." *Thornton*, 541

U.S. at 627 (Scalia, J., concurring). But the rule that the Iowa Supreme Court espoused below is *not* justified by necessity. When a fanny pack is not on an arrestee's person or "in the area within his immediate control" at the time of its search, "the two purposes for the exception—protecting officers and safeguarding evidence from concealment or destruction—are inapplicable . . . and the searches of the [fanny] []pack cannot be justified as searches incident to arrest." *United States v. Williams*, 669 F. Supp. 3d 8, 20 (D.D.C. 2023). The law should not "needlessly divorce[] the exception from its justifications and limits." *State v. Byrd*, 310 P.3d 793, 804 (Wash. 2013) (Fairhurst, J., dissenting).

Scullark's case presents an ideal vehicle for this Court to recenter search incident to arrest jurisprudence on its two established rationales, thus ensuring that Americans receive the full protection of the Fourth Amendment.[7] The undisputed facts establish that Scullark could not have accessed his fanny pack at the time of the warrantless search. The State has not argued that the search was independently justified, such as by the plain-view exception, *see* Cert. Pet. 31-33, and as Justice McDermott argued in his dissent below, because "the fanny pack . . . was no longer within an area that Scullark could readily access . . . neither of the

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[7] *See generally* Laura Zanzig-Wong, *The "Time of Arrest" Rule: How the Washington State Supreme Court Untethered Its Search Incident to Arrest Jurisprudence from the Exception's Underlying Rationales*, 93 Wash. L. Rev. Online 27, 48 (2018) (discussing how search incident to arrest law, both federally and in Washington state, has become disconnected from the goals of officer safety and evidence preservation).

rationales supporting the search-incident-to-arrest exception—officer safety and evidence preservation—could justify the search of the fanny pack." Pet.App. 26a (McDermott, J., dissenting). The Court should reverse.

IV. The Iowa Supreme Court's Decision Disproportionately Encroaches On Indigent Persons' Privacy Interests In Their Personal Effects.

The Iowa Supreme Court's time-of-arrest rule, which allows warrantless searches untethered from officer safety or evidence preservation rationales, undervalues the real-world privacy interests of the vulnerable populations NAPD serves. The court below reasoned that the "limited search" of the fanny pack Scullark wore "constitute[d] only minor additional intrusions" relative to the exercise of government authority inherent in taking Scullark into custody. Pet.App. 18a. The Supreme Court of Kentucky reached a similar conclusion in *Bembury*, speculating that this Court would not consider "an arrestee's privacy interests in . . . containers [like backpacks] to be significant enough that a search would constitute more than a minor additional intrusion in relation to the arrest itself." *Bembury*, 677 S.W.3d at 404. NAPD urges this Court to instead bear in mind the reality that many indigent persons without homes carry all their personal and private belongings in bags.

As this Court has recognized, "the central concern underlying the Fourth Amendment [is] the concern about giving police officers unbridled discretion to rummage at will among a person's private effects." *Gant*, 556 U.S. at 345. This makes sense because

people carry some of their most intimate "private effects" in their bags. As Justice Keller wrote in dissent in *Bembury*:

> People carry all kinds of personal items in their backpacks 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.

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

Indigent people who do not have homes or access to other safe storage spaces have even greater privacy interests in their bags. Hundreds of thousands of unhoused Americans are "dependent upon suitcases, backpacks, grocery carts and even garbage bags" to carry all of "'the privacies of life' which for another citizen might be stored in a house." *Id.* at 414-15 (Thompson, J., dissenting) (quoting *Riley*, 573 U.S. at 403). Yet these individuals are also more likely to be exposed to the warrantless searches the decision below would permit. They often face arrest for low-level offenses like loitering or sleeping in parks, triggering the exception at issue.

This Court's precedent has recognized that searches of containers represent a significant privacy intrusion beyond what is required by arrest. In *Chadwick*, this Court held that the search of the

arrestees' footlocker was unreasonable, in part because of the arrestees' heightened privacy interests in their luggage. *See* 433 U.S. at 11. "Unlike searches of the *person*," the Court reasoned, "searches of *possessions* within an arrestee's immediate control cannot be justified by any reduced expectations of privacy caused by the arrest." *Id*. at 16 n.10 (emphasis added). Arrestees' "privacy interest in the contents" of their bags is "not eliminated simply because they [are] under arrest." *Id.* Rather, arrestees have significant, heightened privacy interests in their bags because their "contents are not open to public view" or "subject to regular inspections and official scrutiny on a continuing basis," and their primary purpose is to be "a repository of personal effects." *Id.* at 13. The Court in *Chadwick* concluded that arrestees were "entitled to the protection of the Warrant Clause with the evaluation of a neutral magistrate, before their privacy interests in the contents of the footlocker were invaded." *Id.* at 15-16. So too here. The Court's reasoning in *Chadwick* applies with equal force to Scullark's case and would apply with even greater force to a case involving the search of an unhoused person's belongings.

This Court has long recognized "the right of privacy as one of the unique values of our civilization." *McDonald v. United States*, 335 U.S. 451, 453 (1948). NAPD urges the Court to reject the rule adopted below, which disproportionately infringes on indigent persons' privacy interests.

CONCLUSION

The Court should grant certiorari and reject the categorical "time of arrest" rule adopted by the Iowa Supreme Court below with respect to bags and containers beyond an arrestee's reach at the time of the search.

Respectfully submitted,

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