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

REPLY TO BRIEF IN OPPOSITION

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INTRODUCTION

The State does not dispute the existence of a split over whether the Fourth Amendment categorically permits the search of an arrestee's bag under *United States v. Robinson*, 414 U.S. 218 (1973), or whether a bag search must be justified by risks to officer safety or evidence preservation under *Chimel v. California*, 395 U.S. 752 (1969). Nor does the State deny the issue's importance. The State nonetheless offers two reasons—which it repeats throughout each section of its brief—for this Court to deny review. Neither is persuasive.

First, the State insists that the search could have been justified under *Chimel* by officer-safety concerns. But the only facts the State cites—over and over again—relate to the circumstances surrounding the *seizure* of the bag, which Mr. Scullark does not challenge. The record makes plain that there were no such concerns at the time of the *search*—which is what *Chimel* requires. In any event, the Iowa Supreme Court did not rely on officer safety or otherwise find the *Chimel* standard satisfied.

Second, the State makes the curious claim that fanny packs are not "bags" and therefore not covered by the split. But the State identifies no authority supporting that distinction. For good reason: Fanny packs, purses, and backpacks are all bags worn on the body, and they can all be carried by hand. There is no constitutional daylight among them.

The State's attempts at distraction aside, the case for certiorari here is clear. At least 11 federal appellate and state supreme courts disagree over whether *Robinson* or *Chimel* governs bag searches

incident to arrest. The answer to that question carries profound consequences for the thousands of arrests that occur every day. And this case presents a perfect opportunity to provide an answer, as the search of Mr. Scullark's fanny pack can be sustained only if *Robinson* controls. The Court should grant the petition.

ARGUMENT

I. THIS CASE IMPLICATES AN INTRACTABLE SPLIT.

The State does not deny the existence of a conflict over the Fourth Amendment's application to "handheld bags carried by an arrestee." Opp.9. Neither of its two arguments for why this case does not implicate that conflict holds water.

1. The State primarily attempts to distinguish this case from decisions by the Third, Fourth, and Tenth Circuits, as well as the Missouri and New Mexico Supreme Courts, by arguing that, here, there *was* a threat to officer safety or evidence preservation that justified the search. *See* Opp.10-13, 16-18. According to the State, "[t]he lone officer arresting Scullark was outnumbered by Scullark and the two women who were standing by him," so "the arresting officer may have reasonably believed that Scullark was not secured, and that either he or his associates could have reached the fanny pack to dispose of (or use) its contents." Opp.10-11. Thus, the State asserts, this search would pass muster "even under a *Chimel*-based rule." Opp.18.

This *post hoc* reconstruction of the case fails on multiple grounds. To start, the decision below nowhere suggested that officer-safety or evidence-preservation risks justified the search. To the

contrary, the Iowa Supreme Court held that, because *Robinson* governs, "[t]he search of the fanny pack was reasonable as a search of Scullark's person, and *no additional justification* for the search was required beyond Scullark's lawful custodial arrest." Pet.App.21a (emphasis added). The decision below thus adopts a legal rule that squarely implicates the split: that bag searches are *per se* valid incident to arrest.

Moreover, the State's officer-safety argument conflates the time of *seizure* with the time of *search*. Although the fanny pack was *seized* when the officer was alone with Mr. Scullark and his companions, the pack was *searched* when "[o]ther officers" were on the scene and Mr. Scullark was handcuffed and secured in the squad car. Pet.App.3a, 76a-77a. So at the time of search, there was indisputably no threat to officer safety or evidence preservation. Pet.App.95a (officer admitting that Mr. Scullark could not have accessed fanny pack once handcuffed). And because *Chimel*'s rule requires assessing officer-safety and evidence-preservation risks "at the time of the search," *Arizona v. Gant*, 556 U.S. 332, 344 (2009), this case would come out in Mr. Scullark's favor in any of the jurisdictions that apply *Chimel* to bag searches.

For instance, in *United States v. Davis*, the Fourth Circuit held the search of the defendant's backpack unlawful because he "was secured and not within reaching distance of his backpack *when* [*the officer*] *unzipped and searched it*." 997 F.3d 191, 198 (4th Cir. 2021) (emphasis added). By contrast, in *United States v. Ferebee*, the same court deemed a backpack search lawful because the defendant "was only a few steps away" when it was searched—and thus might have

been able to access it. 957 F.3d 406, 419 (4th Cir. 2020). Mr. Scullark's case is like *Davis*, not *Ferebee*. So in the Fourth Circuit, unlike in Iowa, the search of his bag would have been unlawful. *Contra* Opp.10-11.[1]

Similarly, in *United States v. Shakir*, the Third Circuit held that a bag search is lawful only when "there remains a reasonable possibility that the arrestee could access a weapon or destructible evidence in the container or area *being searched*." 616 F.3d 315, 321 (3d Cir. 2010) (emphasis added). Thus, as that court later held, a "search could not be justified under the search incident to arrest exception" where "there was no reasonable possibility that [the defendant] could have accessed the backpack *at the time* [*the officer*] *executed the search*, as he was handcuffed in the back of a locked police car." *United States v. Matthews*, 532 F. App'x 211, 218 (3d Cir. 2013) (emphasis added).

The Tenth Circuit follows the same rule, looking to whether a bag "was within the area the arresting officers could 'reasonably have believed ... [the arrestee] could have accessed ... *at the time of the*

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[1] The State also contends that "reliance on *Davis* is misplaced because the defendant there had discarded his backpack before he was put under arrest." Opp.10. Not so. The *Davis* defendant was arrested when he complied with an officer's order at gunpoint to come out of a swamp—and he was wearing his backpack at that time, although he subsequently discarded it before being handcuffed. 997 F.3d at 198; *see Torres v. Madrid*, 592 U.S. 306, 311 (2021) (an arrest occurs upon "submission to the assertion of authority"). Likewise here, Mr. Scullark was wearing his fanny pack at the time of his arrest but discarded it before being handcuffed. Pet.App.21a, 76a.

search.'" *United States v. Knapp*, 917 F.3d 1161, 1168 (10th Cir. 2019) (emphasis in original) (quoting *Gant*, 556 U.S. at 344). So does the New Mexico Supreme Court. *State v. Ortiz*, 539 P.3d 262, 268 (N.M. 2023) (search unlawful because the officer "searched the purse only *after Defendant had been arrested and was in handcuffs*" (emphasis added)). The Missouri Supreme Court, too. *State v. Carrawell*, 481 S.W.3d 833, 845 (Mo. 2016) (search unlawful because the defendant "was handcuffed and locked in the back of a police car *at the time Officer Burgdorf searched the plastic bag*" (emphasis added)).

In short, regardless of any officer-safety concerns that may have existed when the officer arrested Mr. Scullark and seized his fanny pack, the dispositive (and undisputed) point is that there was no such threat when the pack was searched. In the Third, Fourth, and Tenth Circuits, as well as the Missouri and New Mexico Supreme Courts, the warrantless search of Mr. Scullark's bag would thus be unlawful. The Iowa Supreme Court split with these courts in holding otherwise. And that court is no outlier. As the State acknowledges, "five state supreme courts and the First Circuit" share the Iowa Supreme Court's approach. Opp.18. So the split is substantial.

2. Next, the State argues that this case does not implicate "a circuit split on whether the Fourth Amendment permits officers to search handheld bags carried by an arrestee" because it "concerns a fanny pack Scullark was wearing around his waist," not "a bag carried by an arrestee." Opp.9. The State's theory that fanny packs are not bags has no basis in law or logic.

On law, "[c]ase authorities have tended *not* to focus on whether a bag that is worn by an arrestee"—like "fanny packs buckled around arrestees' waists"—"should be treated the same way as a handheld bag" for Fourth Amendment purposes. *United States v. Stanek*, 536 F. Supp. 3d 725, 738 (D. Haw. 2021) (emphasis added). The Kentucky Supreme Court, for instance, described the conflict as pertaining to "portable container[s] capable of carrying items—purses, backpacks, suitcases, briefcases, gym bags, computer bags, *fanny packs*, etc." *Commonwealth v. Bembury*, 677 S.W.3d 385, 397 (Ky. 2023) (emphasis added). The State cites no case—and Mr. Scullark is aware of none—that has distinguished fanny packs from other bags in this context. And the Iowa Supreme Court certainly did not rely on any such distinction.

On logic, there is no rational basis for distinguishing between fanny packs on the one hand, and purses (*Knapp* and *Ortiz*) or backpacks (*Davis* and *Matthews*) on the other. All of these containers are bags that can be worn on the body. Fanny packs are often carried around the waist, but they can also be carried over the shoulder, just like purses and backpacks. *See United States v. Cherry*, No. 18-cr-503, 2020 WL 1026712, at *3 (N.D. Ga. Mar. 3, 2020) (upholding search where "Defendant was wearing a fanny pack across one shoulder"). And these bags can all be carried by hand. There is no constitutionally significant difference among them.

Notably, the State attempts to distinguish only one case using its bags-versus-fanny-packs dichotomy: *Knapp*. Opp.14. There, the Tenth Circuit held that *Robinson* does not apply to objects "easily capable of

separation from [the arrestee's] person"—in that case, a purse. 917 F.3d at 1168. But that reasoning applies fully here: fanny packs, like purses, are easily separable from a person, as evidenced by the fact that Mr. Scullark removed his fanny pack and handed it to Ms. Kisner after his arrest. Pet.App.76a. As a result, the Tenth Circuit would not apply *Robinson* to a fanny-pack search any more than to a purse search. On the flip side, the Iowa Supreme Court twice observed that "purses" are "included within the concept of one's person" and thus within *Robinson*'s ambit. Pet.App.17a (internal quotation marks omitted); *see also* Pet.App.19a ("a purse is considered an extension of the person much like the person's clothing or pockets"). So *Knapp* would come out differently in Iowa.

3. Finally, the State contends that the Missouri Supreme Court's *Carrawell* decision was "abrogated" by *Greene v. State*, 585 S.W.3d 800 (Mo. 2019). Opp.12. That is incorrect. *Greene* said there was "dicta" in *Carrawell* that "question[s] the viability of the holdings of *Robinson* and *Edwards*," 585 S.W.3d at 806, and that such "statements … should no longer … be followed," *id.* at 808. But *Greene* also recognized that *Carrawell* did not "involve[] a search of the person of the arrestee or of an item immediately associated with the arrestee's person." *Id.* at 806. Far from "abrogat[ing]" *Carrawell*, *Greene* thus leaves untouched its holding that *Chimel* applies to bags and other similar items, as post-*Greene* Missouri authority makes clear.[2]

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[2] *See State v. Ledbetter*, 599 S.W.3d 540, 547 (Mo. Ct. App. 2020) (post-*Greene* case holding that a "search of [a] first aid kit

II. THE STATE DOES NOT DISPUTE IMPORTANCE.

The State does not deny that the question presented is an important and recurring one. Nor could it reasonably do so, given the sheer number of arrests that occur daily, the frequency with which this issue arises, and the fundamental importance of the Fourth Amendment's warrant requirement to individual privacy and liberty. *See generally* Pet.20-24. For these reasons, too, the Court should take up this case.

III. THE DECISION BELOW IS WRONG.

In the decision below, the Iowa Supreme Court held that "the search of Scullark's fanny pack was a search of his person governed by *Robinson*." Opp.21. The State agrees that "*Robinson*'s rule [is] limited to 'personal property … immediately associated with the person of the arrestee.'" Opp.23 (quoting *United States v. Chadwick*, 433 U.S. 1, 15 (1977)). But it asserts (without citation) that "neither party disputes that Scullark's fanny pack was immediately associated with his person at the time he was arrested." Opp.24. That, however, is exactly the issue Mr. Scullark disputes—and the fundamental question for this Court to decide.

In the State's view, an object "affixed to [the defendant's] person at the time of his arrest" is immediately associated with his person and thus categorically searchable under *Robinson*. Opp.22. Yet

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was not a valid warrantless search incident to arrest" because, "like the arrestee in *Carrawell*, Ledbetter was handcuffed, locked in the back of a police car, and was not within reaching distance of the first aid kit at the time it was searched by Officer Bowman"); *State v. Branson*, 639 S.W.3d 556, 559 (Mo. Ct. App. 2022) (similar).

on that logic, a sweeping range of items carried by arrestees—from messenger bags to hiking backpacks—is categorically searchable. If *Robinson*'s "bright-line rule" is to be confined within reasonable limits, *see Knowles v. Iowa*, 525 U.S. 113, 119 (1998), it ought not extend to containers of which an arrestee can be "easily dispossessed," *Knapp*, 917 F.3d at 1167. Since that is true of fanny packs, ordinary *Chimel* limitations apply.

The State also argues that the search was justified at the time of *arrest*, and "the fact that a few minutes elapsed between arrest and *search*" does not "defeat[] the validity of the search." Opp.25 (emphasis added). That argument just begs the question whether the case is controlled by *Robinson* or *Chimel*. If an item is "of the person," like clothing, it is categorically searchable both at the time of arrest and after a brief delay. *See United States v. Edwards*, 415 U.S. 800, 803 (1974). *Chimel*, however, requires officer-safety and evidence-preservation risks "at the time of the search." *Gant*, 556 U.S. at 344. If, as here, the search occurs after those risks have dissipated, it is unlawful. *Davis*, 997 F.3d at 198.

Finally, the State argues that "Scullark's rule risks harming officers effectuating arrests," as officers "'would have to weigh escalating the use of force against potentially forfeiting a search of the container.'" Opp.26. Justice Scalia thoroughly debunked this argument:

> The weakness of this argument is that it assumes that, one way or another, the search must take place. But 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. If "sensible police procedures" require that suspects be handcuffed and put in squad cars, then police should handcuff suspects, put them in squad cars, and not conduct the search.

Thornton v. United States, 541 U.S. 615, 627 (2004) (Scalia, J., concurring in the judgment). If officer safety is truly at risk, *Chimel* permits a search. Otherwise, in the absence of any other applicable exception, officers must "get a warrant." *Riley v. California*, 573 U.S. 373, 403 (2014).

IV. THIS CASE IS AN IDEAL VEHICLE.

For reasons largely tracking its split and merits arguments, the State also insists that this case is a poor vehicle. According to the State, to rule for Mr. Scullark, "this Court would have to reverse the district court's factual findings about the threat to the arresting officer's safety." Opp.27. In particular, it quotes the trial court's "finding" that "'if the fanny pack would have contained a weapon, Ms. Kisner would have had access and officer security would be at risk.'" Opp.27-28 (quoting Pet.App.80a). "[T]he Iowa Supreme Court's opinion," the State contends, "did not question that finding of fact." Opp.28.

The Iowa Supreme Court did not address this "finding" because it was irrelevant. Again, the trial court's opinion at most suggests a threat to officer safety when the fanny pack was *seized*; it nowhere finds that a threat existed when the bag was *searched* with multiple officers present. *See supra* at 3. In fact, the officer admitted at the suppression hearing that Mr. Scullark could not have accessed the fanny pack once handcuffed, Pet.App.95a, and the Iowa Court of

Appeals expressly found no officer-safety or evidence-preservation threat at the time of the search, Pet.App.47a ("Scullark was separated from his fanny pack when police searched it. His fanny pack was no longer in an area 'into which an arrestee might reach in order to grab a weapon or evidentiary items.'").

Regardless, nothing in the decision below turned on any supposed risk to officer safety. The Iowa Supreme Court simply held that the search "require[d] no additional justification beyond lawful arrest" because "the fanny pack was immediately associated with Scullark." Pet.App.19a. This Court should reverse that holding. And if the State wants to argue that the search could somehow be justified under *Chimel*, the Iowa courts could consider those arguments on remand, subject to ordinary forfeiture principles. *See United States v. Miller*, 604 U.S. 518, 538-39 (2025) ("leav[ing] it to the courts below to decide whether respondent may pursue [an alternative] argument").

Finally, the State recycles its argument that Mr. Scullark "was wearing a fanny pack on his waist," not "carrying a bag." Opp.29. Again, the State identifies no caselaw suggesting that fanny packs are somehow distinguishable from other bags. *See supra* at 5-7. That is because they are not. The Question Presented, like the split, implicates all bags—"purses, backpacks, suitcases, briefcases, gym bags, computer bags, *fanny packs*, etc." *Bembury*, 677 S.W.3d at 397 (emphasis added). The Court should grant certiorari and "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, 140 (1st Cir. 2024) (statement of Barron, C.J., respecting the denial of rehearing en banc).

CONCLUSION

The petition for a writ of certiorari should be granted.

November 18, 2025

Respectfully submitted,

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