No. 25-709

**IN THE SUPREME COURT OF THE UNITED STATES**

STATE OF WEST VIRGINIA,

Petitioner,

v.

MICHAEL KEITH ALLMAN,

Respondent.

On Petition for Writ of Certiorari to the
Supreme Court of Appeals of West Virginia

# BRIEF IN OPPOSITION

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## QUESTION PRESENTED

If police arrest an individual with a container on their person, they may search it incident to arrest, per *U.S. v. Robinson*, 414 U.S. 218 (1973). If a container is not on the person but at the scene of arrest, then police may only search it without a warrant if it is within the defendant's reach or control, per *Chimel v. California*, 395 U.S. 752 (1969).

Here, a police officer saw Respondent in a service garage and sought to execute an outstanding warrant. Prior to the arrest, the officer saw him stow a backpack behind a car in the garage. The officer then arrested him. After backup arrived and secured the scene, and both Respondent and the backpack were in police custody and control, the officer opened the bag without a search warrant and discovered drugs.

The Supreme Court of Appeals of West Virginia applied *Chimel* and unanimously reversed Respondent's conviction because the backpack was not on Petitioner's person or close enough to pose a danger during the arrest.

The question presented is:

Did the state Supreme Court properly find, as a factual matter, that a container at least a car-length away was not on Respondent's person and therefore under state law could not be searched, and did the court correctly deem waived the issue Petitioner seeks to present in this Court?

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# RESPONDENT'S BRIEF IN OPPOSITION

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## OPINIONS BELOW

The opinion of the Supreme Court of Appeals of West Virginia ((Petitioner's Appendix) App.7a–32a) is reported at 923 S.E.2d 412. The Wood County, West Virginia Circuit Court's order denying suppression (App.1a–6a) is unreported.

## JURISDICTION

The Supreme Court of Appeals of West Virginia entered judgment on November 12, 2025. Petitioner invokes the Court's jurisdiction per 28 U.S.C. § 1257(a).

## CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides that:

> *The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated*, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. Amend. IV (*emphasis added*). This is made applicable to the states by the Fourteenth Amendment, which provides in pertinent part:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any State deprive any person of life, liberty, or property, without due process of law*; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. Amend. XIV, § 1 (*emphasis added*).

**STATEMENT**

This case is not about whether *Arizona v. Gant*, 556 U.S. 332 (2009), applies outside the vehicle context. See, e.g., *Scullark v. Iowa*, No. 25-331, 2025 WL 3620408, at *1 (U.S. Dec. 15, 2025). The Supreme Court of Appeals of West Virginia unanimously declined to address that question. App.27a. It is not even about whether police may search a bag physically on the arrestee's person. The bag was far from Respondent during both the search and arrest. App.28a. Rather, Petitioner argues that *Robinson*-type searches should constructively extend to containers that are physically remote during arrests if the arrestees possessed them previously. Pet. Br. I.

But this is a factual question clothed as a legal one. Courts apply *Robinson* to containers on an arrestee's person and *Chimel* to their surroundings based on location. The state court found that Petitioner stashed his backpack *before* the arrest and thus applied *Chimel.* App.28a. Had he instead dropped or surrendered it *during* the arrest, the outcome may have been different. See App.27a, n.15. This factual distinction—not a legal conflict—accounts for Petitioner's so-called split.

Petitioner first conceded that Respondent did not actually possess the bag and even argued he had abandoned it. App.20a–21a. The state court therefore refused to hear the argument Petitioner now presses to this Court and found the bag not to have been on Respondent's person. App.27a, n.15. Without second guessing the state court's fact-finding, there is no federal question worth reviewing.

**1.** After business hours on June 4, 2022, a Parkersburg, West Virginia police officer noticed an open service garage door and went to investigate. App.11a. Peering inside, he saw several individuals including Respondent, whom he recognized. *Id.* The officer knew Respondent had an outstanding arrest warrant and called to him by name. App.11a–12a.

Respondent looked up, and at this time had a backpack slung over his shoulder. App.12a. The officer exited his vehicle and approached the garage entrance. *Id.* Respondent also approached—but first, he walked between two vehicles in the service bay and stashed his backpack. *Id.* The officer called Respondent's name again, and now without the bag, Respondent joined the officer. *Id.*

Face to face at the front of the garage, the officer for the first time said anything other than Respondent's name. See App.11a–12a. He informed Respondent about the warrant and ordered him to turn around. App.12a. The officer pushed Respondent against a car and handcuffed him. *Id.*

The officer ordered the other individuals to leave. App.13a. He did not know where they went, but the officer was now alone with Respondent. *Id.* After the others departed and after placing Respondent in handcuffs, the officer walked Respondent back between the two cars and retrieved the bag. *Id.* He then escorted Respondent and the bag to his cruiser. *Id.*

About this time backup arrived. *Id.* The backup officer searched the garage and secured the scene. *Id.* Finally, the officers searched the backpack and located drugs. App.13a–14a.

**2.** West Virginia charged Respondent with, *inter alia*, drug possession. App.10a–11a. Pretrial, he moved to suppress the drugs arguing that the backpack search violated the state and federal constitutions. App.11a. He alleged the officers could not search the bag without a warrant because at the time of the search, Respondent was handcuffed and could not access the bag. *Id.*

The trial court denied the motion and Respondent appealed his subsequent conviction. App.14a–15a. Respondent argued that at the time of the search, multiple officers had secured him, the scene, and the bag, so there was no risk to officer safety or evidence. App.16a–17a; See also *Gant*, 556 U.S. at 343. At the briefing stage, Petitioner principally argued that by discarding his bag prior to arrest, Respondent had abandoned the property and no longer had a protectible privacy interest. App.18a; see also *Rakas v. Illinois*, 439 U.S. 128, 133–34 (1978).

On this framing, the Supreme Court of Appeals of West Virginia granted oral argument. App.27a, n.15. Respondent continued to press his *Gant* argument that he could not reasonably access the bag when both he and the bag were in police control. App.27a. But Petitioner switched tactics. Contrary to its briefing, it also argued before the court that the bag was constructively on Petitioner's person, and therefore under *Robinson* police could search it the same as if it were slung over his shoulder or held in his lap. *Id.*

The state court rejected these approaches. *Id.* It ruled that Petitioner failed to sufficiently raise its standing issue pretrial to provide a sufficient record. App.19a–20a. It also declined to entertain Petitioner's novel *Robinson* argument and did not rule whether to treat a backpack across the room the same as a cigarette pack in Respondent's pocket. App.27a, n.15; see also *Robinson*, 414 U.S. at 236.

And it also found it unnecessary to rule whether *Gant* applied outside the vehicle context. App.27a–28a. Rather, it reversed upon its factual finding that the backpack was not physically close enough to Respondent to pose any danger during the arrest. App.27a, n.15. "It is well established in our jurisprudence that '[a] warrantless search of the person and the immediate geographic area under his physical control is authorized as an incident to a valid arrest.'" App.28a (quoting Syl. Pt. 6, *State v. Moore*, 272 S.E.2d 804 (W. Va. 1980)).

It is from this ruling that Petitioner seeks certiorari.

## ARGUMENT

Petitioner argues that jurisdictions split on an important Fourth Amendment issue: whether police may search containers that the arrestee possessed prior to, but not during, an arrest. Pet. Br. 11. First, its supposed split in authority is fact-bound. Courts permit officers to search bags held or dropped physically near defendants during the arrest. E.g. *U.S. v. Eatherton*, 519 F.2d 603, 609 (1st Cir. 1975). They do not permit police to search containers outside the arrestee's reach or control. See *U.S. Nascimento*, 491 F.3d 25, 49–51 (1st Cir. 2007). The issue is spatial proximity during arrest, not temporal. *Chimel*, 395 U.S. at 768.

Second, even if a non-illusory split existed, Petitioner's specific issue is unimportant, and this case would be a poor vehicle to resolve it. The Supreme Court of Appeals of West Virginia expressly declined to address Petitioner's *Robinson* argument because Petitioner waived it. App.27a, n.15. Petitioner did not develop a factual record at trial or brief it on appeal, so the court did not hear it. Contrary to Petitioner's assertion, the Supreme Court of Appeals of West Virginia did not expressly decline to apply *Robinson*. Pet. Br. 1–2. It refused to hear the waived argument Petitioner now wants this Court to review. App.27a, n.15.

Instead, the court applied its rule from *Moore*, 272 S.E.2d at Syl. Pt. 6, found that Respondent's backpack was not within "the immediate geographic area under his physical control[,]" and thus the search was invalid. App.28a. This fact decided the case in Respondent's favor, not a mistake of federal law.

Finally, West Virginia's high court applied the law correctly. Petitioner's position completely untethers search incident to arrest from its justification and conflates spatial with temporal immediacy. Arrestees can reach a few feet away to access geographically near containers. They cannot reach back in time. Cf. *Riley v. California*, 573 U.S. 373, 387 (2014) (no risk of accessing physical objects from phone's memory). Respondent therefore asks the Court to deny the petition.

## I. Petitioner has not identified a split in authority, merely a split in fact patterns applying the same authority.

The law concerning search incident to arrest is largely settled, and any lingering disagreements do not arise in this case. In *Chimel v. California*, the Court clarified the scope of a lawful arrest search. 395 U.S. at 755. There, police arrested Chimel at home, and upon that basis searched his entire house. *Id.* at 753–54. The Court ruled this unreasonable. *Id*. at 768. Though officer safety and the need to preserve evidence justify full searches incident to arrest, *id.* at 762–63, such searches may only extend to the arrestee's person or immediate surroundings from which they may access weapons or evidence. *Id.* at 768.

Two later cases, *U.S. v. Robinson*, and *Arizona v. Gant*, explained how the search rationales—safety and evidence preservation—relate to the permissible scope of a given search. In *Robinson*, the Court ruled that courts need not inquire into whether searches *of the person* are justified in each case. 414 U.S. at 235. The dangers inherent to searching arrestees themselves justify a categorical rule. *Id.* *Gant*, however, reaffirmed the *Chimel* principle that searches of the surrounding area are different. *Gant*, 556 U.S. at 339. There must be an actual danger the arrestee could access weapons or evidence from their surroundings to justify searching beyond the person. *Id.*

The distinction is a vital limiting principle. To apply a *Robinson*-like categorical rule to an arrestee's surroundings would essentially overrule *Chimel*. *Id.* Chimel was associated with the contents of his home and had been in the house moments before his arrest. If not restricted to the actual reach and control of the arrestee, nothing would limit the geographic scope of arrest searches. Petitioner seeks, in practice, a full-scale crime scene exception to the warrant requirement. Pet. Br. 10; but see *Flippo v. West Virginia*, 528 U.S. 11, 14 (1999). Police could conduct suspicionless searches anywhere they choose, simply by deciding when and where to affect an arrest. See *Chimel*, 395 U.S. at 767.

Nonetheless, Petitioner asks the Court to rule it is enough that Respondent was near his bag prior to arrest, regardless of accessibility during the arrest. But its split is illusory. *Chimel* and *Robinson* do not conflict. Compare, E.g., *Eatherton*, 519 F.2d at 609 (*Robinson* search of held container) with *Nascimento*, 491 F.3d at 49–51 (same circuit applying *Chimel* to nearby container). Whether a container is on an arrestee's person is a factual question of physical location. See *Commonwealth v. Bembury*, 677 S.W.3d 385, 396–97 (Ky. 2023). Petitioner simply dislikes how West Virginia's high court answered that question here.

Petitioner's cases involve actual possession, not constructive possession of spatially remote containers. In *U.S. v. Eatherton*, officers arrested the defendant and ordered him to surrender a briefcase. 519 F.2d at 609–10. Because it was on his person, police could search it under *Robinson's* categorical rule. *Id.* at 610–11. See also *U.S. v. Perez*, 89 F.4th 247, 254–55 (1st Cir. 2023) (backpack removed from arrestee). Likewise in *U.S. v. Mitchell*, officers entered an apartment and ordered an arrestee to drop the briefcase he held. 64 F.3d 1105, 1107 (7th Cir. 1995); see also *U.S. v. Lee*, 501 F.2d 890, 891 (D.C. Cir. 1974) (purse seized from defendant); *People v. Hoskins*, 461 N.E.2d 941, 945 (Ill. 1984) (arrestee held purse then dropped it); *State v. Byrd*, 310 P.3d 793, 794–95 (Wash. 2013) (purse in arrestee's lap); *State v. MacDicken*, 319 P.3d 31, 33 (Wash. 2014) (wheeled luggage); *People v. Cregan*, 10 N.E.3d 1196, 1198 (Ill. 2014) (ditto) *Price v. State*, 662 S.W.3d 428, 435 (Tex. Crim. App. 2020) (ditto). In all these cases, the defendants actually held or surrendered containers. See also *Bembury*, 677 S.W.3d at 407 (defendant possessed backpack); *State v. Scullark*, 23 N.W.3d 49, 61 (Iowa 2025), cert. denied, No. 25-331, 2025 WL 3620408 (U.S. Dec. 15, 2025) (fanny pack worn at time of arrest); see also *U.S. v. Hill*, 818 F.3d 289, 295 (7th Cir. 2016).[1]

[1] Petitioner also cites unpublished and lower court cases where arrestee's had actual possession. *U.S. v. McLaughlin*, 739 F. App'x 270, 276 (5th Cir. 2018) (unpublished); *U.S. v. Ouedraogo*, 824 F. App'x 714, 720 (11th Cir. 2020) (unpublished); *People v. Brown*, 828

This can be a fact-intensive question. See *State v. Brock*, 355 P.3d 1118, 1123 (Wash. 2015) (officer removed bag for safety, then arrested); *State v. Mercier*, 883 N.W.2d 478, 487–88 (N.D. 2016) (ditto) *People v. Marshall*, 289 P.3d 27, 28 (Colo. 2012) (officer ordered arrestee to drop backpack); *Northrop v. Trippett*, 265 F.3d 372 (6th Cir. 2001) (applying *Chimel* where arrestee placed bag at his feet). But all the cases Petitioner cites in its favor turn on the answer to that factual question, not a choice of conflicting law.

Similarly, the cases Petitioner cites disfavorably did not apply *Chimel* because they preferred its rule over *Robinson's*—the cases represent two halves of the same rule. Rather, those courts simply found different facts leading to different outcomes. In *U.S. v. Shakir*, the Third Circuit applied *Chimel* because the unsecured defendant had dropped a bag at his feet. 616 F.3d 315, 321 (3rd Cir. 2010). Thus, police could only search the container if there was a reasonable chance the arrestee could access it. There was, so it upheld the search. *Id.*; see also *State v. Brown*, 736 S.E.2d 263, 269 (S.C. 2012); *U.S. v. Cook*, 808 F.3d 1195, 1197 (9th Cir. 2015); *U.S. v. Ferebee*, 957 F.3d 406, 419 (4th Cir. 2020).

The Fourth Circuit applied *Chimel* rather than *Robinson* in *U.S. v. Davis* because Davis had dropped his backpack before police effectuated the arrest. 997 F.3d 191, 193 (4th Cir. 2021). Prior to seizing—let alone searching—the nearby backpack, the defendant was face-down in the mud, handcuffed, and surrounded by officers. 997 F.3d at 194. It was no longer reasonable to believe he could access the container. *Id.* at 198. The arrest, in effect, was over, so police needed a different rationale to seize the bag and open it. See also *State v. Carrawell*, 481 S.W.3d 833 (Mo. 2016) (Applying *Chimel* where officers retrieved dropped bag from the scene after completing arrest).

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N.Y.S.2d 550, 551 (N.Y. App. Div. 2007); *State v. Crager*, 113 N.E.3d 657, 659 (Ind. Ct. App. 2018).

Likewise, the Tenth Circuit applied *Chimel* in *U.S. v. Knapp* due to its view of the facts. 917 F.3d. 1161 (10th Cir. 2019). When police told Knapp she was under arrest, her purse was not within reach but they let her retrieve it. 917 F.3d at 1163. During a prolonged arrest, she was sometimes near the bag, but at least one officer always accompanied her. *Id.* at 1163–64. Throughout, police exercised dominion over the purse. See *id.* Under these circumstances, the court found that the bag was not on her person, and thus it applied *Chimel*. *Id.* at 1166; see *id.* at 1168–69; see also *State v. Ortiz*, 539 P.3d 262, 267–68 (N.M. 2023).

Whether police may categorically search or whether the container must actually fall within the arrestee's reach depends on the answer to a straightforward question, immediately ascertainable to police in the field. Is the arrestee wearing or holding the container, or is it merely in the area? Here, Respondent shed his bag prior to arrest. App.12a. It was at least a car length away. See *id.* It would require a herculean effort by Respondent—or the officer's choice to escort him to it—to bring the bag within reach. App.13a. Only *Chimel* could justify the search, and this was not even a close case.

## II. This case is a poor vehicle for addressing an unimportant issue that the West Virginia state court correctly decided.

Petitioner presents a single issue—whether *Robinson* or *Chimel* applies to a container an arrestee possessed prior to arrest. The answer is a uniform, settled "yes." The cases do not conflict, and the outcome depends upon the facts. See *Riley*, 573 U.S. at 382–85 (reading *Chimel*, *Robinson*, and *Gant* in harmony). Certainly open questions remain, like whether exigencies must separately justify both the seizure and a later search. Compare *MacDicken*, 319 P.3d at 33–34 (focusing on possession at time of arrest) with *Davis*, 997 F.3d at 198 (per *Gant*, focusing on time of search). But this case does not present this or any other federal question unless the Court second-guesses West Virginia's factfinding.

This is not a suitable vehicle to address the specific issue Petitioner now raises. Petitioner asserts that the West Virginia court applied *Chimel* and "expressly 'decline[d]' to follow this Court's holding in *United States v. Robinson*[.]" Pet. Br. 1–2; see also *id.* at 22. This is imprecise. To be clear, the Supreme Court of Appeals of West Virginia did not examine *Chimel* and *Robinson* as conflicting rules. It found that Petitioner waived this argument by not raising it timely. App.27a, n.15. Petitioner did not establish a factual record with this issue in mind, and on appeal sprang the issue on the court days before argument. *Id.* The Supreme Court of Appeals of West Virginia never passed upon the question that Petitioner asks this Court to consider.

Nor is the case suitable for resolving any other federal questions. Petitioner cites a "barrage of recent petitions" to the Court. Pet. Br. 21 (citing petitions for writ of certiorari in *Scullark v. Iowa*, 2025 WL 3620408 (U.S. Dec. 15, 2025) (No. 25-331); *Bembury v. Kentucky*, 144 S.Ct. 1459 (2024) (No. 23-802); *Perez v. U.S.*, 145 S.Ct. 1469 (2025) (No. 24-577); *Miffin v. U.S.*, 145 S.Ct. 1101 (2025) (No. 24-6024). But these concern the very different question of whether a delayed search may still be justified by the exigencies of an earlier arrest. See *Gant*, 556 U.S. at 344; see also *Greenfield v. U.S.*, 333 A.3d 866, 876 (D.C. 2025). This was Respondent's argument below, but the state court declined to adopt that approach. App.27a–28a. Rather, the court applied *Chimel* and found the bag too spatially removed from Petitioner. *Id.* These other cases may have turned on whether the arrestee could access containers during the search, but here Respondent could not reach the bag during the arrest *or* the search. App.27a, n.15.

Finally, this is not an important issue, not least of all because the Supreme Court of Appeals of West Virginia applied the law correctly. Petitioner stresses the frequency of arrest searches and the need for a consistent rule that police can apply with certainty. That already exists, and Respondent's case confirms it.

As Respondent's case illustrates, container searches do not happen in an instant. The safer course is generally for officers to seize and separate arrestees from containers. Officers may then search at their leisure once everything and everyone is secure. They need not make a split-second decision at the time of arrest whether to search. See *U.S. v. Chadwick*, 433 U.S. 1, 13 (1977), abrogated on other grounds by *California v. Acevedo*, 500 U.S. 565 (1991).

This does not mean police may never search containers lawfully seized at the scene of an arrest. If the container itself raises safety concerns, that case-specific exigency would justify a search regardless of the arrest. See *Riley*, 573 U.S. at 388. Also, police may need to conduct an inventory. See *Illinois v. Lafayette*, 462 U.S. 640, 648 (1983). If officers are unsure of their authority, they may even request a warrant. Once they separate containers from arrestees, Police have as much time as they need.

Finally, the Supreme Court of Appeals of West Virginia correctly decided this issue and its ruling provides greater clarity and consistency than Petitioner's position. When the officer arrested Respondent, his bag was across a commercial garage behind a car. App.12a–13a. It was farther removed during the search by virtue of Respondent's incapacitation. App.28a–29a. Under *Robinson* and *Chimel*, it was nowhere near his person during the arrest. App.27a, n.15.

The absurdity that under Petitioner's new rule, a court could construe a bag halfway across a commercial garage bay as on the arrestee's person speaks for itself. Whereas *Robinson* provides a brightline of actual possession, Petitioner's rule provides no limit—geographic or otherwise—to what a reviewing court could consider "immediately" associated with an arrestee. Its new rule thus requires precisely the kind of after-the-fact analysis it claims to avoid. Officers can see whether an arrestee wears or holds a bag. They cannot know what a reviewing court will later decide to be constructively on an arrestee's person.

The Supreme Court of Appeals of West Virgina deemed this argument waived. But even if it had considered it, the court likely would have rejected it for the same reason Petitioner could find no federal circuit or state court of last resort that has accepted it.[2] Reading *Robinson* as applying to containers actually, physically possessed comports with this Court's law and the exception's justification, and is easy for police to apply in the field. Petitioner's argument for constructive possession of a physically remote container simply makes no sense.

## CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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[2] It appears the Intermediate Appellate Court of Oregon has accepted Petitioner's position. See *State v. Brownlee*, 461 P.3d 1015, 1021–22 (Or. Ct. App. 2020).