

No.

In the Supreme Court of the United States

GEORGE ANIBOWEI,

Petitioner,

v.

TODD BLANCHE, ACTING U.S. ATTORNEY GENERAL,
ET AL.,

Respondents.

*On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit*

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Fourth Amendment permits border agents to search the digital contents of a traveler's cell phone without a warrant.

**PARTIES TO THE PROCEEDING AND
RULE 29.6 STATEMENT**

Petitioner George Anibowei was the plaintiff-appellant below. The respondents, defendants-appellees below, are Todd Blanche, Acting Attorney General of the United States; the United States Department of Homeland Security; the United States Customs and Border Protection; the United States Immigration and Customs Enforcement; Markwayne Mullin, Secretary of Homeland Security; Rodney S. Scott, Commissioner of U.S. Customs and Border Protection; and David Venturella, Acting Director of U.S. Immigration and Customs Enforcement.

No party is a nongovernmental corporation, and therefore no corporate disclosure statement is required under this Court's Rule 29.6.

STATEMENT OF RELATED CASES

These proceedings are directly related to the above-captioned case under Rule 14.1(b)(iii):

Anibowei v. Bondi, No. 24-11042, U.S. Court of Appeals for the Fifth Circuit. Judgment entered November 19, 2025; rehearing en banc denied March 20, 2026.

Anibowei v. Mayorkas, No. 3:16-cv-3495-D, U.S. District Court for the Northern District of Texas. Judgment entered November 22, 2024.

Anibowei v. Morgan, No. 20-10059, U.S. Court of Appeals for the Fifth Circuit. Judgment entered June 19, 2023.

Anibowei v. Mayorkas, No. 23-199, Supreme Court of the United States. Certiorari denied January 8, 2024.

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit (Pet. App. 1a–4a) is unpublished but available at 2025 WL 3231720. The memorandum opinion and order of the United States District Court for the Northern District of Texas (Pet. App. 5a–22a) is unreported but is available at 2024 WL 4887525. The order of the court of appeals denying rehearing en banc (Pet. App. 23a–24a) is unreported.

JURISDICTION

The court of appeals entered its judgment on November 19, 2025, and denied a timely petition for rehearing en banc on March 20, 2026. Pet. App. 23a. The time within which to file a petition for a writ of certiorari was extended to and including August 17, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

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.

STATEMENT OF THE CASE

This case challenges directives issued by U.S. Customs and Border Protection (“CBP”) and U.S. Immigration and Customs Enforcement (“ICE”) that authorize border agents to search travelers’ electronic devices without a warrant—and, for so-called “basic” or “manual” searches, without any individualized suspicion. The Directives permit agents to examine the digital contents of a traveler’s cell phone, including messages, photographs, emails, and other private information. Neither directive requires agents to obtain a warrant.

As the court of appeals recognized, “the validity of the Directives at issue in this case turns squarely *and solely* on the question whether the Fourth Amendment generally requires warrants to search cell phones at the border.” Pet. App. 4a. That question has generated a square and intractable conflict among the courts of appeals. Six circuits hold that a warrant is never required to search a cell phone at the border. The Fourth and Ninth Circuits, by contrast, require a warrant, unless the search is for digital contraband (Ninth) or digital evidence of a “border-nexus” crime (Fourth). The circuits also disagree over whether forensic searches must be supported by reasonable suspicion. Those conflicts affect the Fourth Amendment rights of the hundreds of millions of travelers who enter the United States each year.

Petitioner is an immigration attorney and naturalized U.S. citizen. Border agents have searched his cell phone without a warrant at least five times as he reentered the United States. During the first search, government agents copied all the information on his cell phone, including confidential communications

with his clients. The government continues to retain that data. The prospect of further warrantless searches has forced Petitioner to leave his work phone behind when he travels, depriving him of the principal means by which his clients can contact him and by which he provides them legal assistance.

The Fifth Circuit nevertheless rejected Petitioner’s challenge. It concluded that two circuit precedents—*United States v. Castillo*, 70 F.4th 894 (5th Cir. 2023), and *Malik v. U.S. Department of Homeland Security*, 78 F.4th 191 (5th Cir. 2023)—foreclosed his claim. *Castillo* held that agents may conduct warrantless “basic” or “manual” searches of cell phones at the border (searches by a government agent scrolling through messages, photos, and other data on the phone by hand). 70 F.4th at 897–98. *Malik* held that an “advanced” or “forensic” search (one conducted using external equipment to copy or analyze a device’s contents) at most requires only reasonable suspicion, not a warrant. 78 F.4th at 200–01. The decision below deepens entrenched circuit splits that are widely recognized by courts and commentators.¹ There is no

¹ Bingzi Hu, *Border Search in the Digital Era: Refashioning the Routine vs. Nonroutine Distinction for Electronic Device Searches*, 49 Am. J. Crim. L. 177, 181–83 (2022); Ashley Veronica Hart, *Electronic Searches at the Border: Reasonable Suspicion or None at All? The Circuit Split and Potential Impact on Higher Education*, 54 Suffolk U. L. Rev. 371, 373 (2021); Rebecca Hill, *Data at the Border: Resolving the Circuit Split and Proposing New Procedural Standards for Warrantless Border Searches of Cell Phones*, 49 Cap. U. L. Rev. 179, 194–95 (2021); Chloe Meade, *The Border Search Exception in the Modern Era: An Exploration of Tensions Between Congress, the Supreme Court, and the Circuits*, 26 B.U. J. Sci. & Tech. L. 189, 193 (2020); Sean O’Grady, *All Watched Over by Machines of Loving Grace: Border Searches*

reasonable prospect of that conflict being resolved without this Court’s intervention. The Court should grant the petition to resolve this intractable circuit split on an issue of profound practical and constitutional importance.

I. ICE’s directive authorizes officers at the border to “examine electronic devices” and “review and analyze the information encountered” “with or without individualized suspicion.” Pet. App. 97a. It also authorizes ICE to retain devices and information obtained from them under specified circumstances. *Ibid.* ICE has not superseded that directive.

CBP revised its electronic-device search policy in 2018. *See* Pet. App. 98a. That policy distinguished between “basic” and “advanced” searches. Under a “basic” search, customs officers require travelers to unlock their mobile phones and the officer is free to manually review all content and communications on the device, without a warrant or individualized suspicion. *See* Pet. App. 99a.

of Electronic Devices in the Digital Age, 87 Fordham L. Rev. 2255, 2273 (2019); Caroline V. McCaffrey, *Fairly Exposed: A Proposal to Improve the Reasonableness Standard for Digital Forensic Searches at the Border*, 80 La. L. Rev. 201, 214 (2019); Kathryn Neubauer, *Unlock Your Phone and Let Me Read All Your Personal Content, Please: The First and Fifth Amendments and Border Searches of Electronic Devices*, 92 S. Cal. L. Rev. 1273, 1290 (2019); Gina R. Bohannon, *Cell Phones and the Border Search Exception: Circuits Split over the Line Between Sovereignty and Privacy*, 78 Md. L. Rev. 563, 578 (2019); Maddalena DeSimone, *Can We Curate It: Why Luggage and Smartphones Merit Different Treatment at the United States Border*, 2019 Colum. Bus. L. Rev. 696, 713–14 (2019).

The directive also permits “advanced” or “forensic” searches based on “reasonable suspicion” or “a national security concern.” Pet. App. 99a. These go further than a basic search: The “Officer connects external equipment . . . to an electronic device not merely to gain access to the device, but to review, copy, and/or analyze its contents.” Pet. App. 99a. Information gathered during these searches is subject to an elaborate data-retention policy that uses the passage of time and the information’s contents to determine whether the government may keep the data and whether it may share it. Pet. App. 100a–102a.²

II.A. Petitioner is a naturalized U.S. citizen and an attorney in Texas. Pet. App. 89a. Many of his clients are immigrants in removal proceedings adverse to the Department of Homeland Security. Petitioner regularly uses his smartphone to engage in confidential communications with his clients. Pet. App. 90a.

Petitioner often travels internationally. Pet. App. 108a. He typically travels to Nigeria several times each year to visit family and friends. Pet. App. 108a. Petitioner is a frequent tourist in Europe and the Caribbean. Pet. App. 108a. As an immigration attorney, he also regularly travels internationally for work. Pet. App. 89a.

² In January 2026, CBP supplanted its 2018 directive by issuing substantially similar CBP Directive No. 3340-049B. U.S. Customs & Border Prot., CBP Directive No. 3340-049B (Jan. 1, 2026), <https://tinyurl.com/322nuk5h>. The current directive retains the same basic framework. It permits a “basic search” without any individualized suspicion. *Id.* at 5. And it requires “reasonable suspicion” or “a national security concern” for an “advanced search.” *Id.* at 6.

On October 10, 2016, Petitioner returned from a weekend visit to Toronto through Dallas Fort Worth International Airport (“DFW”). Pet. App. 112a. Border agents seized his cell phone and, without a warrant, copied the data stored on it. Pet. App. 113a. The government continues to retain that data. Pet. App. 114a.

Border agents subsequently searched Petitioner’s phone without a warrant four more times. Pet. App. 113a. For example, in February 2017, when Petitioner was returning from visiting relatives in Nigeria, DFW border agents placed him in secondary inspection for three hours. Pet. App. 114a. There, the agents thoroughly examined all of Petitioner’s luggage and demanded to see his cell phone. *Ibid.* An agent then thoroughly searched Petitioner’s phone in front of him, apparently reviewing Petitioner’s text messages, WhatsApp communications, and e-mails. *Ibid.*

All told, federal officers’ five searches of Petitioner’s cell phone have taken between two and five hours. Pet. App. 110a. One search delayed his entire flight by two hours; another caused Petitioner to miss his flight altogether. *Ibid.* During several inspections, Petitioner observed the agents viewing his text messages and other communications. Pet. App. 90a.

Petitioner’s work as an immigration attorney requires him to remain available to his clients and keep abreast of developments in their cases while traveling. But the prospect that border agents will again search his phone and expose his clients’ confidences has forced him to stop carrying his work phone abroad. Pet. App. 113a. He is being forced to choose between protecting privileged and confidential information

from warrantless (and even suspicionless) searches and remaining accessible to clients who may urgently need his assistance.

B. Petitioner filed the operative Second Amended Complaint in March 2019. Pet. App. 84a. The following month, Petitioner moved for partial summary judgment or, in the alternative, a preliminary injunction. The district court denied the motion. Petitioner appealed, and the district court stayed the case over Petitioner’s objection during the pendency of the appeal.

The Fifth Circuit affirmed the denial of preliminary relief on the grounds that Petitioner had failed to establish irreparable harm. *Anibowei v. Morgan*, 70 F.4th 898 (5th Cir. 2023). The court of appeals did not reach the merits of Petitioner’s Fourth Amendment claim or review the denial of his request for partial summary judgment. This Court then denied certiorari. *Anibowei v. Mayorkas*, 144 S. Ct. 551 (Jan. 8, 2024).

On remand, Petitioner voluntarily dismissed all of his remaining claims except his Administrative Procedure Act (“APA”) claims, seeking vacatur of the ICE and CBP Directives as “contrary to constitutional right,” 5 U.S.C. § 706(2)(B). Pet. App. 6a. The government then moved to dismiss. Pet. App. 5a. The district court granted the motion. Pet. App. 6a. First, the district court held it lacked jurisdiction over Petitioner’s APA claim based on 5 U.S.C. § 704’s limitation of judicial review to those final agency actions where “there is no other adequate remedy in a court,” as Petitioner had sought an injunction directly under the Fourth Amendment. Pet. App. 18a. Second, the dis-

trict court found itself bound by the Fifth Circuit’s decisions in *Castillo*, 70 F.4th 894, and *Malik*, 78 F.4th 191, which foreclose Petitioner’s claim that the Fourth Amendment requires a warrant for cell phone searches at the border. Pet. App. 20a.

C. The Fifth Circuit affirmed the district court’s dismissal of Petitioner’s claim on the merits. Pet. App. 4a.

Contrary to the district court’s holding that it lacked jurisdiction, the Fifth Circuit recognized that 5 U.S.C. § 704’s adequate-remedy bar applies only if “there is clear and convincing evidence of legislative intent to create a special, alternative remedy and thereby bar APA review.” Pet. App. 3a (quoting *Fort Bend Cnty. v. U.S. Army Corps of Eng’rs*, 59 F.4th 180, 192 (5th Cir. 2023)). Because “[n]either the district court nor the parties point[ed] to such ‘clear and convincing evidence,’” the court “decline[d] to affirm the district court’s dismissal of [Petitioner]’s claim on this ground.” Pet. App. 3a–4a.

The Fifth Circuit instead held that circuit precedent foreclosed Petitioner’s constitutional claim. It recognized that “the validity of the [CBP and ICE] Directives at issue in this case turns squarely *and solely* on the question whether the Fourth Amendment generally requires warrants to search cell phones at the border.” Pet. App. 4a. But because “*Castillo* and *Malik* answer this question in the negative,” those cases “foreclose[d] [Petitioner]’s argument.” Pet. App. 4a.

The Fifth Circuit denied rehearing en banc. Pet. App. 23a.

REASONS FOR GRANTING THE PETITION

I. The Courts of Appeals Are Intractably Divided over the Fourth Amendment Rules Governing Border Searches of Cell Phones

The United States has explained that the Fourth Amendment rules governing border searches of cell phones present an “entrenched circuit conflict on an important and recurring Fourth Amendment issue” of “considerable practical importance for border officials’ inspection of the hundreds of millions of travelers at U.S. ports of entry each year.” Pet. at 13, 22, *United States v. Cano*, No. 20-1043 (U.S. Jan. 29, 2021) (“*Cano* Pet.”). Eight circuits have addressed how the border-search exception applies to cellphones. They have cataloged the division, rejected one another’s rules, and denied rehearing *en banc* rather than reconsider their positions. The result is an entrenched 6-2 split over whether a warrant is ever required to search a cell phone at the border, and a further 2-1 division over the suspicion needed for a forensic search.

Six circuits hold that a warrant is never required to search a cell phone at the United States border. The Fifth Circuit so ruled below, “bound by [its] rule of orderliness to follow” *Castillo*, 70 F.4th 894, and *Malik*, 78 F.4th 191. Pet. App. 4a. The First, Seventh, Eighth, Tenth, and Eleventh Circuits apply the same rule—no warrant, ever. See *Alasaad v. Mayorkas*, 988 F.3d 8, 13, 17 (1st Cir. 2021); *United States v. Mendez*, 103 F.4th 1303, 1308–10 (7th Cir. 2024); *United States v. Xiang*, 67 F.4th 895, 900 (8th Cir. 2023); *United States v. Williams*, 942 F.3d 1187, 1190 (10th Cir. 2019); *United States v. Touset*, 890 F.3d 1227, 1233 (11th Cir. 2018).

Two circuits hold that warrants are required for some searches of cell phones at the border. In the Fourth Circuit, border agents must have a warrant to perform a forensic search unless they have “individualized suspicion of an offense that bears some nexus to the border search exception’s purposes.” *United States v. Aigbekaen*, 943 F.3d 713, 721 (4th Cir. 2019). In the Ninth Circuit, agents must get a warrant unless the search is for contraband: “the border search exception authorizes warrantless searches of a cell phone only to determine whether the phone contains contraband.” *United States v. Cano*, 934 F.3d 1002, 1018, 1020 (9th Cir. 2019). *Cano*, too, acknowledged the split. *Id.* at 1015–17 & n.8.³

The circuits are further divided 2-1 over whether individualized suspicion is required to undertake a forensic cell phone search at the border. *See Mendez*, 103 F.4th at 1310. The Eleventh Circuit holds that the Fourth Amendment “does not require any suspicion for forensic searches of electronic devices at the

³ Some district courts have taken a different approach from “any circuit court to consider the question”—further widening the fracture across the lower federal courts. *See, e.g., United States v. Smith*, 673 F. Supp. 3d 381, 398 (S.D.N.Y. 2023), *appeal pending*, No. 24-1680 (2d Cir.); *United States v. Sultanov*, 742 F. Supp. 3d 258 (E.D.N.Y. 2024); *United States v. Robinson*, No. 23-cr-0192, 2025 WL 1359352 (E.D.N.Y. May 9, 2025), *appeal pending*, No. 25-1428 (2d Cir.). Judge Rakoff’s opinion in *Smith* is illustrative. After considering every circuit’s existing approach to warrantless border searches, Judge Rakoff concluded that the correct rule is that “phone searches at the border generally require warrants outside exigent circumstances.” 673 F. Supp. 3d at 398. In contrast, the Fourth Circuit recently “join[ed] all our sister circuits . . . in holding that manual searches of cell phones at the border are routine and thus do not require individualized suspicion.” *United States v. Belmonte Cardozo*, 181 F.4th 461, 464 (4th Cir. 2026).

border,” no matter how intrusive. *Touset*, 890 F.3d at 1231. The Fourth and Ninth Circuits take the opposite view. The Ninth Circuit requires reasonable suspicion for a forensic examination. *United States v. Cotterman*, 709 F.3d 952, 968 (9th Cir. 2013) (en banc). The Fourth Circuit holds that forensic searches are nonroutine and require “some measure of individualized suspicion,” *United States v. Kolsuz*, 890 F.3d 133, 137, 144–47 (4th Cir. 2018), although it has left open whether reasonable suspicion or some higher standard applies. The Fourth Circuit recently reaffirmed that rule while holding that manual searches, by contrast, are routine and require no individualized suspicion. *Belmonte Cardozo*, 181 F.4th at 464, 467–72. The Eleventh Circuit squarely acknowledged the conflict with the Fourth and Ninth Circuits, but declared itself “unpersuaded.” *Touset*, 890 F.3d at 1234.

These divisions are entrenched and will not resolve on their own. The Ninth Circuit denied rehearing en banc over the dissent of six judges. *United States v. Cano*, 973 F.3d 966 (9th Cir. 2020) (Bennett, J., dissenting from denial of rehearing en banc). The Fifth Circuit likewise denied en banc review here, even though the question was cleanly presented and the panel ruled as it did only because it was bound by precedent. Pet. App. 23a. With every faction firmly set on its rule, further percolation is futile.

* * * * *

The conflicts are square, acknowledged, and entrenched. The circuits have grappled with those divisions but refused to revisit them en banc; and the United States itself has asked this Court to resolve it. Under the decision below, a traveler’s Fourth Amendment rights turn on which part of the Nation’s border

she happens to cross. Only this Court can establish a uniform rule for the Nation’s borders.

II. The Decision Below Fails to Apply This Court’s Rationale in *Riley*

The ordinary Fourth Amendment rule is that government searches of one’s person, home, papers, or effects require a warrant. *Riley v. California*, 573 U.S. 373, 382 (2014). “In the absence of a warrant, a search is reasonable only if it falls within a specific exception to the warrant requirement.” *Ibid.* *Riley* considered one such exception—the longstanding exception for searches incident to arrest. Rather than assume that the exception automatically extended to the digital contents of a cell phone, this Court asked whether doing so would “untether the rule from the justifications underlying the . . . exception.” *Id.* at 386 (citation omitted). Because searching digital data profoundly intrudes on privacy while doing little to advance officer safety or prevent the destruction of evidence, the Court held that a warrant is generally required. *Id.* at 386–401.

This case presents the corresponding question for a different warrant exception: whether the rationales underlying the border-search exception justify warrantless access to the digital contents of a traveler’s cellphone. *Riley* supplies the governing method. An exception developed for searches of physical objects does not extend automatically to digital data; “any extension of that reasoning to digital data has to rest on its own bottom.” *Id.* at 393.

The court below never undertook that analysis. The panel simply stated that it was “bound by [its] rule of orderliness to follow” *Castillo* and *Malik*, prior

cases that “foreclose Anibowei’s argument” that a warrant is required. Pet. App. 4a (*Anibowei v. Bondi*, No. 24-11042, 2025 WL 3231720, at *2 (5th Cir. Nov. 19, 2025)). As the panel recognized, “this case turns squarely *and solely* on the question whether the Fourth Amendment generally requires warrants to search cell phones at the border,” and “*Castillo* and *Malik* answer this question in the negative.” *Ibid.*

Neither decision applied *Riley*’s framework. *Cas-tillo* held that “the government can conduct manual cell phone searches at the border without individualized suspicion,” but it reached that result by “adopt[ing] the consensus view of [its] sister circuits”—“all [it] need[ed] to do to decide th[e appeal].” 70 F.4th at 895, 898. The court acknowledged that cell phones “differ in both a quantitative and a qualitative sense from other objects,” *id.* at 895 (quoting *Riley*, 573 U.S. at 393), but failed to independently engage *Riley*’s logic. *Malik* did the same. It refused to extend *Riley* because “our sister circuits have uniformly held that *Riley* does not require either a warrant or reasonable suspicion,” and the court was “not aware of any circuit court that has extended *Riley*’s warrant requirement to the border.” 78 F.4th at 201. Having faulted that litigant for not “analyz[ing] *Riley* at any length,” *ibid.*, the *Malik* court performed no such analysis itself, resting instead on the premise that the Fourth Amendment’s protections are weakened at the border, *id.* at 200.

The Fifth Circuit’s precedents therefore substitute lower-court consensus for the analysis this Court required in *Riley*. But the existence of a traditional warrant exception cannot itself answer whether the exception reaches digital data. The question must be re-

solved by examining the exception’s purposes, the governmental interests actually advanced by searching a phone’s contents, and the unprecedented privacy intrusion such a search entails. This Court should grant review to undertake the analysis that the decision below did not.

A. *Riley’s* Reasoning Compels a Warrant Requirement for Cell Phone Searches at the Border

Riley’s method for deciding whether an established warrant exception extends to cell phones is to ask whether the exception’s rationales justify reaching the contents of a phone, because “any extension of that reasoning to digital data has to rest on its own bottom.” 573 U.S. at 393.

Absent more precise guidance from the founding era, we generally determine whether to exempt a given type of search from the warrant requirement “by assessing, on the one hand, the degree to which it intrudes upon an individual’s privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests.”

Id. at 385 (quoting *Wyoming v. Houghton*, 526 U.S. 295, 300 (1999)).

Applying that method, the Court “decline[d] to extend” the search-incident-to-arrest exception to cell phones, *id.* at 386, because such a search is extraordinarily intrusive while scarcely advancing the interests the exception serves. The Court rejected the government’s premise that a phone is just another container. *Id.* at 393. *Carpenter v. United States* used the same

approach to “decline to extend” the third-party doctrine to records exposing “a detailed chronicle of a person’s physical presence.” 585 U.S. 296, 309, 315 (2018).

The decision below inverts that method. Rather than ask whether the border-search exception’s rationales justify reaching a phone’s digital contents, the Fifth Circuit extended the exception simply because most circuits had done so. But an apparent consensus is no substitute for analysis—as this Court’s own cases prove. When *Riley* was decided, nearly all courts of appeals had held that no warrant was required to search a phone incident to arrest. See *United States v. Wurie*, 728 F.3d 1, 14 (1st Cir. 2013) (Howard, J., dissenting) (noting that the other circuits had “unanimously” rejected a warrant requirement), *aff’d sub nom. Riley v. California*, 573 U.S. 373 (2014). When *Carpenter* was decided, all but one had rejected a warrant requirement for location records.⁴ This Court examined the governing doctrines’ rationales rather than counting circuits and rejected the “consensus” view both times.

Other judges who have applied *Riley*’s rationale to the context of border searches have reached a conclusion opposite the Fifth Circuit’s. Dissenting in *United States v. Vergara*, Judge Jill Pryor of the Eleventh Circuit would have held that, following *Riley*, “a forensic

⁴ Compare *In re Application of U.S. for an Order Directing a Provider of Elec. Commc’n Serv. to Disclose Recs. to Gov’t*, 620 F.3d 304, 317–19 (3d Cir. 2010), with *United States v. Carpenter*, 819 F.3d 880, 884 (6th Cir. 2016). See *United States v. Graham*, 824 F.3d 421, 424–25 (4th Cir. 2016) (en banc); *United States v. Davis*, 785 F.3d 498, 511–13 (11th Cir. 2015) (en banc); *In re Application of U.S. for Hist. Cell Site Data*, 724 F.3d 600 (5th Cir. 2013).

search of a cell phone at the border requires a warrant supported by probable cause.” 884 F.3d 1309, 1313 (11th Cir. 2018) (Pryor, J., dissenting). And in *United States v. Sultanov*, Judge Nina Morrison held that even “a manual search of a cell phone at the border is a nonroutine search to which a categorical border search exception does not apply,” because any search of a cell phone’s contents “involves such a vast intrusion on a traveler’s privacy that, under the Fourth Amendment, both [types] must generally be supported by a warrant.” 742 F. Supp. 3d at 288; *see also Smith*, 673 F. Supp. 3d at 394 (Rakoff, J.) (applying *Riley*’s rationale and concluding “the Government may not copy and search an American citizen’s cell phone at the border without a warrant absent exigent circumstances”).

1. Travelers retain extraordinary privacy interests in their devices, even at the border

The government’s position depends on the premise that privacy expectations are “severely diminished” at the border, *Malik*, 78 F.4th at 200—a premise used to analyze searches of luggage, vehicles, and the body. But this case is not about contraband glimpsed in a bag. It is about the digital contents of a device that “holds . . . ‘the privacies of life.’” *Riley*, 573 U.S. at 403 (quoting *Boyd v. United States*, 116 U.S. 616, 630 (1886)).

A phone search “typically expose[s] to the government far more than the most exhaustive search of a house,” reaching “a broad array of private information never found in a home in any form—unless the phone is.” *Id.* at 396–97. It exposes location data revealing,

for example, trips a person would regard as “indisputably private” trips to “the psychiatrist, the plastic surgeon, the abortion clinic,” *Chatrie v. United States*, 146 S. Ct. 2193, 2210 (2026) (quoting *United States v. Jones*, 565 U.S. 400, 415 (2012) (Sotomayor, J., concurring)). This Court has twice held that such may not be obtained without a warrant. *Carpenter*, 585 U.S. at 311–15; *Chatrie*, 146 S. Ct. at 2206. A phone search also exposes the contents of private emails, which are likewise protected. *See United States v. Warshak*, 631 F.3d 266, 288 (6th Cir. 2010).

The privacy interest here is, if anything, stronger than in *Carpenter* and *Chatrie*. In those cases, the data had been conveyed to a third-party carrier and stored on that company’s servers; here much of it sits only on the traveler’s own device, disclosed to no one. And carrying that device is not optional. A cell phone is “indispensable to participation in modern society,” *Carpenter*, 585 U.S. at 315, so that “it is neither ‘realistic nor reasonable to expect the average traveler to leave his digital devices at home when traveling,’” *United States v. Kolsuz*, 890 F.3d 133, 145 (4th Cir. 2018) (quoting *United States v. Saboonchi*, 990 F. Supp. 2d 536, 556 (D. Md. 2014)). The diminished-privacy-expectation premise cannot justify extending the border search exception to cell phones.

2. The border-search exception has little force as applied to digital data

Digital data is a different kind of “effect” from the goods, vessels, and persons the border-search exception was built to police, and the exception’s rationales do not reach it. The border-search exception protects the sovereign interest in collecting duties, excluding

unwanted persons, and interdicting physical contraband. None of those purposes is served by viewing or analyzing the contents of a phone. Duties attach to tangible goods, not data. Nor do phone searches facilitate immigration screening; as one scholar put it, “[t]he CBP will not find a person smuggled inside a computer hard drive.” Orin Kerr, *The Digital Fourth Amendment: Privacy and Policing in Our Online World* 122 (2025). And “[u]nlike physical contraband, electronic contraband is borderless and can be accessed and viewed in the United States without ever having crossed a physical border.” *Vergara*, 884 F.3d at 1317 (Pryor, J., dissenting). Anyone intent on importing illicit data can store it in the cloud, carry a clean phone, and download it after crossing the border—so suspicionless device searches burden millions of innocent travelers while doing little to stop the smuggler. The logic, moreover, has no stopping point: if the need to intercept “digital contraband” justified searching every phone, it would equally justify intercepting every communication that crosses the border, by any means.

Riley supplies a workable alternative. Agents may secure a phone to prevent access to or destruction of its contents while seeking a warrant supported by probable cause. 573 U.S. at 388, 401. And where genuine exigent circumstances make obtaining a warrant impracticable, the exigent-circumstances exception remains available. *Id.* at 402. What the Fourth Amendment does not permit is treating every international traveler’s cell phone as an open repository merely because the traveler has crossed the border.

B. History and Tradition Confirm the Exception Does Not Reach Digital Contents

The Fourth Amendment “assures preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted.” *Kyllo v. United States*, 533 U.S. 27, 34 (2001). Yet history and tradition run against these searches too. This Court has never held that border agents may read private papers without a warrant. In *United States v. Ramsey*, the Court upheld the inspection of incoming international mail for contraband but expressly reserved whether customs officers who open mail may go further and read the correspondence inside without a warrant. 431 U.S. 606, 623–24 & n.18 (1977). The reservation matters, because the founding-era customs statutes on which the exception rests authorized officers to search vessels and cargo for concealed dutiable goods—physical items—and said nothing of reading a traveler’s papers. See Collection Act of 1789, ch. 5, §§ 23–24, 1 Stat. 29, 43; *Boyd*, 116 U.S. at 622–24. The Founders had rebelled against customs officers who ransacked homes and papers under writs of assistance, and in response, they drafted the Fourth Amendment to secure “persons, houses, papers, and effects.” U.S. Const. amend. IV.

Against that backdrop, the historical record reflects an exceptionally strong expectation of privacy in private correspondence—the closest founding-era analog to communications on a phone. “The colonists expected complete privacy for their communications except under extraordinary circumstances.” David H. Flaherty, *Privacy in Colonial New England* 127 (1972). The Post Office Act of 1710 fined anyone who

“open[ed] the letters of another.” As the new Nation’s first Postmaster General, Benjamin Franklin required postal employees to swear they would not open mail “except . . . by an express Warrant in Writing.” *Id.* at 120–21. The Continental Congress in 1782 likewise forbade opening mail without a warrant. Anuj C. Desai, *Wiretapping Before the Wires: The Post Office and the Birth of Communications Privacy*, 60 *Stan. L. Rev.* 553, 565–66 (2007). A modern phone, which gathers years of correspondence and far more intimate information than any letter, is entitled to at least the protection the founding generation gave a sealed envelope.

C. The Court’s Physical Contraband Border Cases Do Not Control

The border-search decisions on which *Castillo* and *Malik* relied do not address whether agents may inspect the digital contents of a traveler’s cell phone without a warrant. *Ramsey* concerned the inspection of mail for the presence of physical contraband, not the reading of the mail’s contents. 431 U.S. at 623–24. Indeed, this Court emphasized that the governing regulations prohibited customs officers from reading correspondence without a warrant. *Id.* at 623–24 & n.18. *United States v. Montoya de Hernandez* concerned “the detention of a traveler at the border” based on reasonable suspicion she was smuggling drugs, expressing “no view on what level of suspicion . . . is required for nonroutine border searches.” 473 U.S. 531, 541 & n.4 (1985). And *United States v. Flores-Montano* concerned the disassembly of a vehicle’s fuel tank, with the Court careful to explain that the “dignity and privacy interests” that might require suspicion before a search is conducted “simply do not

carry over to vehicles.” 541 U.S. 149, 152 (2004). Each case involved the government’s authority to detect physical contraband (drugs) by inspecting a tangible object, whether in an envelope, a body, or a gas tank. None addressed the viewing of “papers and effects,” digital or otherwise.

A cellphone is not a “container” in the sense those cases use the term. Its physical exterior may be examined to determine whether it conceals a weapon or contraband. But the data it contains cannot itself endanger an officer, and searching that data reveals something categorically different from opening luggage or dismantling a fuel tank. As one court explained in suppressing a warrantless border search of a laptop, an electronic device “cannot fairly be compared to an ordinary container when evaluating the privacy concerns involved.” *United States v. Kim*, 103 F. Supp. 3d 32, 55 (D.D.C. 2015). To treat a phone as merely a higher capacity piece of luggage is to insist that “a ride on horseback is materially indistinguishable from a flight to the moon.” *Riley*, 573 U.S. at 393. *Riley* rejected precisely that sort of mechanical analogy and held that the immense quantity and sensitive character of digital data require a distinct constitutional analysis.

The physical contraband cases set the rule for searches for physical contents of envelopes, bodies, and vehicles. They do not decide whether the government may view or analyze, without a warrant, the vast stores of data that reflect “[t]he sum of [a traveler’s] private life.” *Id.* at 394.

III. The Question Is Important and Recurring

The question presented is of exceptional legal and practical importance. The circuit conflict has now

reached eight circuits, with courts resolutely disagreeing over the proper rule. As the government informed the Court in *Cano*, the question presented has “considerable practical importance for border officials’ inspection of the hundreds of millions of travelers at U.S. ports of entry each year.” *Cano* Pet. 22.

A. The Question Governs a Vast and Growing Number of Searches

The challenged Directives affect hundreds of millions of travelers each year. Virtually every American adult (98%) owns some kind of cell phone; 91% own a smartphone. *Mobile Fact Sheet*, Pew Rsch. Ctr. (Nov. 20, 2025), <https://tinyurl.com/5n8mmbc7>. And even in 2014, the average smartphone could store “millions of pages of text, thousands of pictures, or hundreds of videos,” *Riley*, 573 U.S. at 394. Today’s devices can hold still more.

As more and more travelers enter the country with increasingly advanced smartphones, the urgency of resolving the question presented has only increased. In fiscal year 2025, CBP conducted 55,318 total device searches—50,922 basic searches and 4,396 advanced searches. That was a nearly elevenfold increase from the 5,085 device searches conducted in fiscal year 2012. *Compare* U.S. Customs & Border Prot., CBP Publ’n No. 5202-1025, *Border Searches of Electronics at Ports of Entry, FY2025 Statistics* (Nov. 13, 2025) (“*CBP FY25 Statistics*”) with Pet. for a Writ of Certiorari at 208a, *Merchant v. Mayorkas*, No. 20-1505 (U.S. Apr. 23, 2021) (“*Merchant* Pet.”). Forensic searches have nearly doubled since 2012, increasing from 2,285 to 4,396. *Merchant* Pet. at 209a; *CBP FY25 Statistics*. And nearly a quarter of 2025 searches targeted U.S. citizens, an increase from 20.7% in fiscal year 2023.

Compare CBP FY25 Statistics, with U.S. Customs & Border Prot., CBP Publ'n No. 3769-0724, Border Searches of Electronics at Ports of Entry, FY2023 Statistics (May 7, 2024).

The surge in CBP's searches of electronic devices makes resolving the question presented crucial. Today, a traveler entering the country through Miami or Houston receives less Fourth Amendment protection than someone returning through Los Angeles, San Francisco, or Baltimore. And even the Fourth (Dulles) and Ninth (Los Angeles) Circuits differ on when border agents must acquire a warrant.

The increasing number of cell phone searches also risks swallowing the warrant requirement for any person who crosses the United States border with any regularity. CBP can currently retain data with probable cause of "digital contraband or evidence of a [crime]" or *without* probable cause if the data relates to "immigration, customs, and other enforcement matters." CBP Directive No. 3340-049B at 5.6.1–5.6.2. And CBP can share retained data with *any law-enforcement agency*, whether "federal, state, local, tribal, territorial, [or] foreign." *Id.* at 5.8.1. Border searches of electronic devices thus enable border agents, and by extension their local counterparts, to access huge swaths of information that they could never otherwise access, including by sending searched information to agencies that could not lawfully acquire it. Indeed, to this day, Petitioner does not know why his cell phone's data was retained or if it was shared with other law-enforcement agencies.

B. The Privacy and Property Interests at Stake Are Profound

Modern digital devices can reveal “nearly every aspect of” a person’s life—“from the mundane to the intimate.” *Riley*, 573 U.S. at 395. Accessing a person’s device “provides an intimate window into [the] person’s life,” including the person’s “familial, political, professional, religious, and sexual associations.” *Carpenter*, 585 U.S. at 311 (citation omitted); *see also Chattrie*, 146 S. Ct. at 2213 (reaffirming cell phone use as “a ‘pervasive and insistent’—even ‘indispensable’—‘part of daily life’” (quoting *Carpenter*, 585 U.S. at 315; *Riley*, 573 U.S. at 385)).

This case exemplifies the dangers *Riley* and *Carpenter* warned of. Petitioner is an immigration attorney frequently adverse to DHS. Pet. App. 91a. Even a basic (manual) search of his cell phone is likely to reveal his clients’ intimate personal details, divulge aspects of Petitioner’s legal strategy, or disclose confidential communications between Petitioner and his clients. Pet. App. 90a. Those confidences lie at the core of the attorney-client privilege and the attorney work-product doctrine—and because Petitioner’s clients are frequently adverse to DHS, a warrantless search hands their litigation adversary a window into privileged communications and legal strategy. Warrantless border searches of cell phones thus raise special privacy concerns beyond those facing the ordinary traveler, and the search of an attorney’s device is one example of such a concern. According to the Directives, DHS employees may access all of this information without a warrant. Recognizing this reality, Petitioner no longer travels with his work phone.

Petitioner is not alone; government policies authorizing warrantless cell phone searches subject all travelers to the possibility of exposure of vast arrays of sensitive and frequently confidential information. For example, border agents' search of an engineer's cell phone could reveal confidential trade secrets.⁵ A physician or nurse returning from a conference or medical mission abroad may carry patient health information that federal law protects under HIPAA. Or a school administrator returning from a trip to visit family abroad could have a cell phone with sensitive student records that state or federal law makes confidential.⁶ And a border agent's search of a journalist's cell phone risks exposing sources and reporting material they hold in confidence.⁷ Much of this information is not even the traveler's own: it belongs to patients, clients, sources, and students who never crossed the border and never consented to its exposure, yet a warrantless search lays it bare—the very sort of confidences the law guards through the attorney-client privilege, HIPAA, and other rules of confidentiality.

Border agents' searches of cell phones also affect everyday citizens. The phone may contain pictures of a Muslim woman without her headscarf. *Alasaad v. Nielsen*, No. 17-cv-11730-DJC, 2018 WL 2170323, at *20 (D. Mass. May 9, 2018). Or it may contain a recording of a person's deepest thoughts conveyed to a

⁵ Olivia Solon, *US border agents are doing 'digital strip searches'. Here's how to protect yourself*, The Guardian (Mar. 31, 2017, at 06:00 ET), <https://tinyurl.com/tdx9by73>.

⁶ Compl. at 2–3, ¶¶ 4–6, *Chavarria v. U.S. Dep't of Homeland Sec.*, No. 1:25-cv-04289 (D.D.C. Dec. 10, 2025), Dkt. No. 1.

⁷ Comm. to Protect Journalists, *Nothing to Declare: CPJ's advice for journalists crossing a U.S. border*, <https://tinyurl.com/52fet5a5>.

therapist, “invading not only the subject’s house but his or her thoughts as well.” Craig M. Bradley, *Constitutional Protection for Private Papers*, 16 Harv. C.R.-C.L. L. Rev. 461, 483 (1981).

The invasiveness of cell phone searches also imperils travelers’ First Amendment rights. Subjecting travelers’ personal, political, religious, or other communications and associations to warrantless inspection “inevitabl[y]” deters “the exercise of First Amendment rights.” *First Choice Women’s Res. Ctrs., Inc. v. Davenport*, 146 S. Ct. 1114, 1123 (2026).

C. The Directives Chill the Right to Travel and Force Americans to Leave Their Devices Behind

The existing regime burdens U.S. citizens’ freedom of travel. This Court has long recognized a privilege among citizens to travel for purposes of “engaging in lawful commerce, trade, or business without molestation.” *Ward v. Maryland*, 79 U.S. (12 Wall.) 418, 430 (1870); *Zobel v. Williams*, 457 U.S. 55, 74 (1982). This Court has recognized that the freedom to travel abroad is “an important aspect of the citizen’s ‘liberty’” protected by the Fifth Amendment. *Aptheker v. Sec’y of State*, 378 U.S. 500, 505 (1964). But because of the challenged Directives, many travelers are advised to leave their cell phones at home, burdening their ability to travel with, and use, tools essential to modern life.

Petitioner faces that choice whenever he travels. His work requires him to remain available to clients and abreast of developments in their cases. But because carrying his work phone exposes his clients’ confidences to warrantless inspection by the agency opposing them, he leaves the phone behind.

Pet. App. 113a. He must therefore sacrifice either his clients' confidentiality or his ability to remain accessible while abroad.

Institutions across the country have responded to the same danger by adopting defensive measures, encouraging their constituencies to leave their devices at home when traveling abroad. Numerous universities have adopted loaner-device programs, cloud and virtual-desktop practices, clean-device guidance, and data-removal rules because international travel exposes employees' devices to searches of digital data, with many explicitly referencing border officials' authority to search and retain data.⁸ Legal organizations have similarly encouraged lawyers to leave devices at home.⁹ The same is true of journalists.¹⁰ By

⁸ See, e.g., Univ. of Cal., Systemwide Info. Sec., *Returning to the U.S.*, <https://tinyurl.com/4jvsm22d>; MIT, Off. of the Vice President for Rsch., *International Travel*, <https://tinyurl.com/2whssu79>; Appalachian State Univ., Off. of Rsch. & Innovation, *International Travel Guidance for PHI data*, <https://tinyurl.com/kmyewfwn>.

⁹ See, e.g., Nat'l Assoc. of Crim. Def. Laws., *Border Searches & Digital Devices* (Apr. 25, 2019), <https://tinyurl.com/59f3a75f>; Noel Courage, *Risk of Electronic Device Search for Patent Attorneys & Inventors Crossing the US-Canada Border with Confidential Information*, Am. Intell. Prop. L. Ass'n., <https://tinyurl.com/2vncrybc>; Sabine Paul, *Cell Phone Inspections at US Border and Beyond: What to Expect*, KPMG L. (May 27, 2025), <https://tinyurl.com/msvrfd9t>.

¹⁰ See, e.g., Emily Vespa, *In the legal battle over warrantless cellphone searches at the border, press freedom is at stake*, Reps. Comm. for Freedom of the Press (Oct. 8, 2024), <https://tinyurl.com/ye2xt27h>; Comm. to Protect Journalists, *supra*; Trevor Tim, *Attention all journalists: US border patrol agents can search your phones*, Colum. Journalism Rev. (Nov. 30, 2016), <https://tinyurl.com/38xhdx2>.

authorizing warrantless, and frequently suspicionless, searches of travelers' devices, the challenged Directives chill Americans' ability to travel with the devices modern life requires.

IV. This Case Is an Ideal Vehicle

This case is an ideal vehicle to decide the question presented. The dispute turns on a pure question of law: whether the Fourth Amendment permits the government to maintain Directives authorizing warrantless—and in some cases suspicionless—border searches of cell phones. That question was squarely raised at every level below, exhaustively litigated by the parties, and conclusively resolved by the Fifth Circuit, which recognized that issue as dispositive. As the court of appeals recognized, “the validity of the Directives at issue in this case turns squarely *and solely* on the question whether the Fourth Amendment generally requires warrants to search cell phones at the border.” Pet. App. 4a. There are no factual disputes, preservation problems, or predicate legal issues that would prevent this Court from resolving that question.

Nor are there any remedial complications. Unlike the ordinary border-search case, this is not a criminal prosecution involving suppression of evidence obtained from a single search. There is accordingly no good-faith, harmless-error, independent-source, inevitable-discovery, exclusionary-rule, or other remedial issue that could prevent the Court from reaching the Fourth Amendment merits. And because Petitioner challenges the Directives themselves—Directives that authorize both basic and advanced searches—this case presents the government's full policy framework, not a factbound dispute over one officer's execution of

one search. This clean presentation is the ideal setting for a definitive resolution of the question presented.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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