

No. 26-208

IN THE
Supreme Court of the United States

GEORGE ANIBOWEI,
Petitioner,
v.

TODD BLANCHE, U.S. ATTORNEY GENERAL, *et al.*,
Respondents.

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Fifth Circuit**

**BRIEF OF *AMICUS CURIAE*
MAX BLUMENTHAL
IN SUPPORT OF PETITIONER**

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QUESTION PRESENTED

Whether, under the Fourth Amendment, the government may search the contents of travelers' cell phones without a warrant.

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INTEREST OF *AMICUS CURIAE*¹

Max Blumenthal is an award-winning independent journalist who has gained international notoriety for original reporting that calls into question various aspects of United States foreign policy. His content is often perceived as highly critical of the U.S. government and many of our allies.

In July of 2026, Mr. Blumenthal returned from a trip he had taken to Iran to report on the funeral of the Ayatollah Ali Khamenei, along with many other American journalists. At Dulles International Airport in Virginia, Customs and Border Protection (CBP) officers seized his smartphones and confiscated them to conduct a forensic search. Officers did not allege at that time or thereafter they had any individualized, reasonable suspicion that Mr. Blumenthal had violated the law.

Mr. Blumenthal relies upon confidential sources for his reporting. He must maintain the trust of those sources to perform his professional duties—and that includes protecting their identities. The search to which Mr. Blumenthal was subjected, and CBP's operative Directive that permits officers to search contents of electronic devices belonging to any individual entering the country, for any or no reason, has discouraged him from traveling outside the United States for either work or personal reasons.

¹ Pursuant to Rule 37.2, counsel of record for all parties received timely notice of amicus curiae's intention to file this brief. In accordance with Rule 37.6, counsel for amicus curiae certifies that no counsel for any party authored this brief in whole or in part and that no person or entity other than amicus curiae or its counsel made a monetary contribution intended to fund the brief's preparation or submission.

As the court in the Eastern District of Virginia observed when addressing Mr. Blumenthal's Fed. R. Crim. P. 41(g) Motion for the return of his phones and data extracted from them, the search and seizure contravened Fourth Circuit precedent. The court also noted that the unlawful seizure appeared to have implicated Mr. Blumenthal's First Amendment rights, because circumstantial evidence suggested it was conducted in retaliation for his reporting.

But the problem goes beyond a single unlawful search and seizure. It stems from the lack of a determination from the Court on the Fourth Amendment protections for travelers' smartphones and other electronic devices. Several circuits have developed disparate interpretations of the Fourth Amendment in the context of smartphone searches at border crossings. Further, CBP apparently sometimes adheres to its own Directive rather than the law of the applicable circuit—as exemplified by Mr. Blumenthal's case—creating a chaotic and unpredictable situation for travelers.

Following the unlawful search to which he was subjected, Mr. Blumenthal filed a Complaint for declaratory and injunctive relief in the Eastern District of Virginia. *See Blumenthal v. Mullin*, No. 1:26-cv-02629 (E.D. Va. filed Aug. 17, 2026). There, he raises claims under the First and Fourth Amendments, as well as the Privacy Protection Act (PPA) and Administrative Procedure Act (APA). (This lawsuit succeeded the motion filed under Fed. R. Crim. P. 41(g) for return of his smartphones and data extracted from them). *Id.*

As a journalist, as a litigant, and as an American, Mr. Blumenthal has a vested personal and professional interest in a ruling from the nation's highest court resolving the Circuit split. Accordingly, he urges

the Court to grant certiorari in this case. *See Stewart v. Martinez-Villareal*, 523 U.S. 637 (1998) (“We granted certiorari to resolve an apparent conflict between [two circuits] on this important question of federal law.”). *See also Ruhlin v. New York Life Ins. Co.*, 304 U.S. 202, 206 (1938) (explaining that a basis for granting certiorari is the fact that “a circuit court of appeals has rendered a decision in conflict with the decision of another circuit court of appeals on the same matter.”).

SUMMARY OF ARGUMENT

This Court should grant certiorari to resolve an irreconcilable division among several of the circuits over the application of the Fourth Amendment to searches of electronic devices at the border. Not only are the circuits’ approaches to the analysis at odds; the matter affects countless Americans who travel internationally and return to the U.S. at different border crossings, rendering this petition unusually worthy of review.

In the dozen years since the Court held in *Riley v. California*, 573 U.S. 373 (2014) that searches of modern smartphones could not be conducted incident to arrest without a warrant, several of the circuits have reached different conclusions about the Fourth Amendment protections that apply to searches of smartphones at border crossings. While the Fourth and the Ninth circuits require individualized suspicion for forensic searches, the other circuits that have addressed the matter permit limitless searches of travelers’ smartphones and other electronic devices when they enter the country under the border search exception. And even the Fourth and the Ninth permit manual searches (those not utilizing external equipment) for any or no reason.

The disparate rules create confusion for travelers and law enforcement alike, both of whom may not recognize that the rules to which an individual traveler is subject can differ depending on the geographic location of the airport in which he or she lands. Moreover, none of the circuits has properly balanced the privacy and liberty interests Americans have in modern smartphones against the government's interest in invading that privacy without reasonable suspicion.

The lack of guidance from this Court implicates other rights as well. As Mr. Blumenthal's case illustrates, CBP's arbitrary and discriminatory enforcement, a direct result of the lack of guidance from this Court, creates a strong chilling effect. As a journalist, Mr. Blumenthal is extremely sensitive to maintaining the confidentiality of his sources, and the prospect of a warrantless border search of his phone has made him reluctant to travel internationally for work or pleasure. That he may have been targeted by the current Administration due to the nature of his journalism exacerbates the deterrent effect created by the jurisprudential gap. In short, the absence of adequate Fourth Amendment guardrails invites First Amendment violations by law enforcement.

And while Mr. Blumenthal's case elucidates the nature of the problem, all Americans—including non-journalists—have privacy interests in the contents of their smartphones. Few would not balk at a law enforcement officer sifting through his or her text messages, emails, photos, AI search queries, location data, and more. Americans have a right not only to clarity on the extent to which their electronic devices are subject to border searches, but also to have a determination from this Court that reflects the Fourth

Amendment’s promise that we be “secure in [our] persons, houses, papers, and effects[]” from unlawful government intrusion. *See* U.S. Const. amend. IV.

REASONS FOR GRANTING THE PETITION

I. The Circuits are Intractably Divided Over the Circumstances in which Searches of Electronic Devices at Border Crossings are Permissible Under the Fourth Amendment

Over a decade ago, this Court decided *Riley v. California*, 573 U.S. 373 (2014), in which it held that law enforcement generally must obtain search warrants to access the contents of modern smartphones. The holding was predicated primarily on the massive amounts of personal data such devices contain, drastically heightening the privacy interests implicated in such searches compared to virtually any other subject of a search. *See id.* at 394-95 (“One of the most notable distinguishing features of modern cell phones is their immense storage capacity” as well as the types of data, which are “qualitatively different” from physical records).

Riley’s reasoning suggests that the government’s near total discretion to search travelers’ luggage at border crossings does not apply to smartphones, laptops, and other electronic devices. *See id.* at 403 (“Modern cell phones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans ‘the privacies of life,’ ... The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought.”) (quoting *Boyd v. United States*, 116 U.S. 616, 630 (1886)). *See also United States v. Cano*, 934 F.3d 1002,

1020 (9th Cir. 2019) (“Were we to give the government unfettered access to cell phones, we would enable the government to evade the protections laid out in *Riley* ‘on the mere basis that [the searches] occurred at the border.’” (quoting *United States v. Soto-Soto*, 598 F.2d 545, 549 (9th Cir. 1979))).

Yet in the twelve years since the Supreme Court decided *Riley*, and despite the millions of travelers who carry smartphones, laptops, tablets, and other electronic devices with them in and out of the country and who are thereby affected, this Court has yet to answer the question of how Fourth Amendment protections apply to searches of electronics at border crossings.

That has left the circuit courts to grapple with the question, interpreting *Riley* alongside cases in which this Court addressed the limitations of the border exception in contexts other than searches of smartphones, for example *United States v. Montoya de Hernandez*, 473 U.S. 531, 539 (1985) (“Balanced against the sovereign’s interests at the border are the Fourth Amendment rights of respondent.”). Those lower courts have reached profoundly different conclusions about what is “reasonable” under the Fourth Amendment as applied to searches of travelers’ electronic devices. *See Riley*, 573 U.S. at 381-82 (“the ultimate touchstone of the Fourth Amendment is ‘reasonableness.’”) (quoting *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006)).

The Fourth Circuit, in which Dulles International Airport is located and accordingly Mr. Blumenthal’s case was filed, draws a distinction between forensic and manual searches, holding that the former requires either a warrant or 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). *See United States v. Cardozo*, 181 F.4th 461, 467 (4th Cir. 2026) (explaining that forensic searches of travelers’ smartphones require individualized suspicion, which typically means officers must “have a ‘particularized and objective basis for suspecting the particular person’ of committing an offense”) (quoting *United States v. Montoya de Hernandez*, 473 U.S. 531, 541-42 (1985)) (determining that routine searches and seizures at the border are exempt from standard Fourth Amendment requirements in order to prevent introduction of contraband or unwanted individuals into the country).

By contrast, manual searches—those conducted by an officer without use of external equipment—are “routine” and require neither individualized suspicion nor a warrant. *Cardozo*, 181 F.4th at 470. *Cf. United States v. Kolsuz*, 890 F.3d 133, 146 (4th Cir. 2018) (“particularly in light of the Supreme Court’s decision in *Riley*, a forensic border search of a phone must be treated as nonroutine, permissible only on a showing of individualized suspicion.”).

The Ninth Circuit’s rule is similar, permitting manual searches of smartphones without any showing of particularized suspicion, but requiring reasonable suspicion for forensic examinations of electronic devices. *See Cano*, 934 F.3d at 1018, 1020; *United States v. Cotterman*, 709 F.3d 952, 967 (9th Cir. 2013). The Ninth Circuit adds an additional layer of protection compared to the Fourth Circuit by requiring that a forensic search be predicated upon reasonable suspicion that the device itself contains contraband, not merely evidence of past or future crimes. *See Cano*, 934 F.3d at 1018 (“We agree with much of the Fourth Circuit’s discussion of foundational principles, but we

respectfully disagree with the final step” as the only permissible such search must be grounded in a reasonable suspicion a phone contains evidence of contraband).

Petitioner’s case was adjudicated in the Fifth Circuit which—along with the First, Seventh, Eighth, Tenth, and Eleventh circuits—holds that CBP may search travelers’ electronic devices for any or no reason. The Eleventh Circuit explicitly rejects the Fourth Circuit’s rule requiring individualized suspicion at the border, permitting even advanced forensic searches without individualized suspicion. *See United States v. Touset*, 890 F.3d 1227, 1233 (11th Cir. 2018).

There is significant variation among several circuits’ approaches, resulting in vastly different rules applying at different ports of entry throughout the country. Adding to the confusion is CBP’s directive, issued January 1, 2026.²

That Directive distinguishes basic from advanced searches of electronic devices, the latter of which involves connecting the subject of the search to external equipment to obtain access to its contents.³ The Directive allows basic searches of the phone of any traveler entering the country but requires either individualized suspicion or a national security concern for an advanced search. It is not clear from the

² U.S. Customs & Border Prot., CBP Directive No. 3340-049B (Jan. 1, 2026), https://www.cbp.gov/sites/default/files/2026-01/cbp_directive_3340-049b_jan_2026_508.pdf (hereinafter “CBP Directive”).

³ It appears that the Directive’s basic/advanced distinction is similar, if not identical, to the Fourth and Ninth Circuit’s manual/forensic distinction. *See* CBP Directive, 3.3-3.4; *Cardozo*, 181 F.4th at 1470.

Directive alone what constitutes a valid national security justification, but it appears to allow unfettered searches of travelers' electronic devices, since it is untethered to any individualized suspicion requirement. In fact, the seizure of Mr. Blumenthal's smartphones indicates at least some officers consider the national security exception to belie any particularized suspicion requirement whatsoever.

II. The Division Between the Circuits Creates Practical Problems for Travelers

As a journalist who frequently travels internationally for work, Mr. Blumenthal is entitled to clarity regarding the circumstances in which the government may search his electronic devices at border crossings. That rule should be derived solely from the Fourth Amendment, and implemented consistently across the country. *See Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972) ("Living under a rule of law entails various suppositions, one of which is that '[all persons] are entitled to be informed as to what the State commands or forbids.'" (quoting *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939))).

One reason Mr. Blumenthal needs transparency regarding his Fourth Amendment rights at border crossings, specifically with respect to electronic devices, is that he relies upon confidential sources to perform his professional activities. *See Branzburg v. Hayes*, 408 U.S. 665, 693 (1972) ("The available data indicate that some newsmen rely a great deal on confidential sources and that some informants are particularly sensitive to the threat of exposure[.]").

Those sources must have reasonable assurances that Mr. Blumenthal will safeguard their privacy and protect their identities from discovery—if they did not

fear retaliation, they would not be confidential in the first place. See Michelle C. Gabriel, *Plugging Leaks: The Necessity of Distinguishing Whistleblowers and Wrongdoers in the Freedom of Information Act*, 40 Loy. U. Chi. L.J. 531, 536 (2009) (“From the *Federalist Papers* to the Pentagon Papers, some of the greatest pieces of journalism have been the product of anonymous sources and authors.”).

Yet the circuit divide has led to a curious state of affairs, wherein a passenger who flies into San Francisco International Airport from abroad should not have her smartphone subjected to a forensic search absent reasonable suspicion to believe that it holds contraband. At the same time, a traveler landing at George Bush Intercontinental Airport in Houston may have his contacts, browsing history, AI queries, location data, text messages, emails, photos, applications, deleted messages and other erased data, and more subjected to government scrutiny without any reason whatsoever to believe he has committed an offense—all consistent with the law of the respective circuits. And simultaneously, the discordant circuit approaches encourage CBP to fall back on its own Directive when it so chooses, regardless of the location of the search. This means people have virtually no ability to predict whether and to what extent officers will perceive themselves entitled to search travelers’ electronic devices.

Moreover, none of the circuits has correctly interpreted the Fourth Amendment in the context of border searches of electronic devices. For one, even the Fourth and Ninth Circuits permit limitless manual searches of smartphones. The manual-forensic search distinction those circuits crafted cannot be reconciled with *Riley*, which recognized that *any* search of a

smartphone exposes highly personal data. Thus, *Riley* drew no such artificial distinction. *See Riley*, 573 U.S. at 386 (“Cell phones ... place vast quantities of personal information literally in the hands of individuals. A search of the information on a cell phone bears little resemblance to the type of brief physical search considered in [*United States v. Robinson*, 414 U.S. 218 (1973)]”).

Second, *Riley*’s examination of the search-incident-to-arrest exception compels the conclusion that law enforcement should be required to obtain a warrant for searches of electronics at the border. *Id.* at 386 (explaining that applying the search-incident-to-arrest exception to smartphones would “untether the rule from the justifications underlying” that very exemption.).

The border exception to the Fourth Amendment is premised on the sovereign’s interest in preventing the importation of contraband or unwanted persons. *See Montoya de Hernandez*, 473 U.S. at 537–38. But the type of contraband that may be found on a smartphone is different in kind from the contraband that led this Court to carve out the border-search exception. *See Riley*, 573 U.S. at 393-97 (explaining that cell phones differ “in both a quantitative and qualitative sense” from physical objects in large part because they contain an unparalleled quantity of personal information). In contrast to contraband concealed in luggage or on a traveler’s person, electronic data is not brought into the country in any meaningful sense. The same information may exist simultaneously on remote servers, may already be accessible from within the United States, or may be transmitted across national borders without the physical movement of any device. Further, phones are unlikely to pose an immediate,

serious threat the way that explosives, firearms, criminals, or large quantities of illicit drugs can, which is another primary rationale for this warrant exception.

Indeed, if anything, the logic leading the Court to its conclusion in *Riley* renders the application of the border exception to smartphones even *less* constitutionally coherent than the search-incident-to-arrest there. Riley had been arrested on weapons charges, yet the Court *still* held that was inadequate to justify a warrantless search of his phone. Here, the government asserts the authority to search the phone of every American for any or no reason other than that he or she has chosen to travel outside the country for business, pleasure, family, or another reason.

For these reasons, both the circuit divide *and* the improper interpretations of the Fourth Amendment that all circuits have promulgated create significant practical problems for Mr. Blumenthal and other journalists, whistleblowers and confidential sources, as well as all Americans who value their privacy.

III. The Circuits' Irreconcilable Approaches Invite Viewpoint-Discriminatory Enforcement

Mr. Blumenthal's case illustrates another problem resulting from the circuit split, because it appears he may have been targeted for an unlawful, intrusive search due to the nature of his reporting. That raises First Amendment viewpoint-discrimination concerns. See *Nieves v. Bartlett*, 587 U.S. 391, 398 (2019) (“[T]he First Amendment prohibits government officials from subjecting an individual to retaliatory actions for engaging in protected speech.” (quoting *Hartman v. Moore*, 547 U.S. 250, 256 (2006))).

During his trip to Iran, prominent associates of President Donald J. Trump who are known to influence his decision-making, including Laura Loomer and Elon Musk,⁴ posted or amplified social media content demanding the arrest, investigation and imprisonment of Mr. Blumenthal and in a couple of instances, claiming credit for the confiscation of his phones. *See Blumenthal v. Mullin*, No. 1:26-cv-02629 (E.D. Va. filed August 17, 2026).

This campaign apparently led three congresspeople to demand that the State Department investigate Mr. Blumenthal following his return from Iran, citing only his First Amendment protected activity as a basis for that investigation. *See* Laura Loomer (@LauraLoomer),

⁴ Josh Meyer, *Conspiracy theorist Laura Loomer hints at more Trump firings on her claims of ‘disloyalty’*, USA TODAY (Apr. 4, 2025), <https://shorturl.at/gJPjU> (last visited Sept. 2, 2026) (President Trump openly admits to taking advice from Laura Loomer); Maggie Haberman, Jonathan Swan, and Ken Besinger, *Trump Fires 6 N.S.C. Officials After Oval Office Meeting with Laura Loomer*, THE NEW YORK TIMES (Apr. 3, 2025), <https://shorturl.at/t1bcf> (last visited Sept. 2, 2026) (President Trump fires six National Security Council officials after a meeting in the Oval Office with Laura Loomer); Robert Mackey, *US state department stops issuing visas for Gaza’s children to get medical care after far-right campaign*, THE GUARDIAN (Aug. 16, 2026), <https://shorturl.at/4Bvfw> (last visited Sept. 2, 2026) (Gaza’s children in need of medical care denied visas following complaints from Laura Loomer); Scott Waldman, Ben Johansen, and Sophia Cai, *He just chose not to listen*, POLITICO (Mar. 27, 2026), <https://shorturl.at/K8ZXQ> (last visited Sept. 2, 2026) (Representative and top Iran expert on President Trump’s Iran negotiating team fired following Ms. Loomer critical tweets about him).

X (August 29, 2026, at 8:56 AM), <https://tinyurl.com/mryjwn4x> (last visited Sept. 3, 2026).⁵

The continued pursuit of Mr. Blumenthal for engaging in constitutionally protected journalism by government actors validates his fear that searches of his electronic devices will be weaponized to punish him and others on a viewpoint discriminatory basis.

Mr. Blumenthal's concerns about targeting going beyond him are not speculative or fanciful: CBP has recently subjected others whose journalism, advocacy, and activism challenge the Administration's political agenda to the same types of unlawful searches.⁶

These cases demonstrate that CBP is exploiting the confusion created by the irreconcilable circuit

⁵ In that letter, the congressmen accused Mr. Blumenthal of being a "radical leftist" who relays "propaganda and misinformation" and is "known for his support of the Iranian regime, even making excuses for Iran's oppression of its people." *Id.* The congressmen then noted that Mr. Blumenthal had traveled to Iran the previous year to make a documentary about Iran's Jewish community, which they dubbed a "propaganda piece." *Id.* They closed by accusing Mr. Blumenthal of "mak[ing] a media spectacle out of his devices being confiscated," "supporting enemy propaganda," and "sympathiz[ing] with America's enemies." *Id.*

⁶ See, e.g., *Palestinian American Journalist Questioned, Phone Searched at NJ Airport*, U.S. Press Freedom Tracker (Mar. 24, 2025), <https://tinyurl.com/mrtf9ppp> (last visited Sept. 2, 2026); Johana Bhuiyan, *Pro-Palestinian Protester's Lawyer Stopped and Searched at U.S. Border: "They Were Going to Take My Device,"* THE GUARDIAN (Apr. 12, 2025), <https://tinyurl.com/5p8xxhjy> (last visited Sept. 2, 2026); Kristi Miller, *St. Paul Suing DHS Over Unlawful Search*, TWIN CITIES PIONEER PRESS (June 1, 2026), <https://tinyurl.com/mt5chzju> (last visited Sept. 2, 2026).

precedents to scrutinize and intimidate Americans—and not just journalists—whose work threatens the current Administration’s political agenda. In fact, the Court has previously recognized the danger of failing to provide “guideposts” that constrain official discretion and allow courts to determine whether an official is “discriminating against disfavored speech.” *City of Lakewood v. Plain Dealer Publ’g Co.*, 486 U.S. 750, 758 (1988). Without such standards, “post hoc rationalizations” and “shifting or illegitimate criteria” can make it difficult to determine whether government action was legitimate or instead reflected the suppression of unfavorable expression. *Id.* at 758–59. That concern is particularly salient where government officials know a journalist’s or activist’s views may have been the motivation for the search—as appears to be the case for Mr. Blumenthal. *Id.* at 759–60.

In short, the paucity of a uniform interpretation of the Fourth Amendment throughout the country regarding searches of electronic devices at the border incentivizes law enforcement to subject disfavored speakers to intrusive searches based on their reporting, advocacy, or other protected expression. *Cf. id.* at 759, 774 (recognizing First Amendment concerns where governmental authority gives officials “substantial power to discriminate based on the content or viewpoint of speech” by targeting “disfavored speech or disliked speakers”).

Finally, this developing and apparently escalating trend poses a threat not only to these individual journalists’ and activists’ constitutional rights, but to every American, and our freedom of speech, protest, expression, association and the press, all of which are foundational to our democracy. *See Branzburg*, 408 U.S. at 681 (“We do not question the significance of free

speech, press, or assembly to the country's welfare[]"; "without some protection for seeking out the news, freedom of the press could be eviscerated."); *Associated Press v. United States*, 326 U.S. 1, 20 (1945) ("[The First] Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public, that a free press is a condition of a free society.").

After all, freedom of the press is not only for members of the institutional press. The Founders of this country used the term "press" loosely, recognizing that all Americans possess the right to disseminate and to receive information. See *Lovell v. City of Griffin*, 303 U.S. 444, 452 (1938) ("Liberty of circulating is as essential to [press freedom] as liberty of publishing"; "the press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion.") (quoting *Ex parte Jackson*, 96 U.S. 727, 733 (1878))). Congress, too, has recognized that the First Amendment's freedom of press guarantee is not limited to professional journalists. See 42 U.S.C. § 2000aa (prohibiting government officers and employees from searching or seizing "work product" or "documentary materials" possessed in connection with a purpose to disseminate information to the public through a newspaper, book, broadcast, or other similar form of public communication.). Accordingly, all Americans' First Amendment rights are implicated when professional journalists and others are afraid to engage in official or unofficial reporting abroad. See *Citizens United v. Federal Election Comm'n*, 558 U.S. 310, 339 (2010) (explaining that the First Amendment protects "the right of citizens to inquire, to hear, to speak, and to use information[.]").

CONCLUSION

For the reasons stated above, the petition for a writ of certiorari should be granted.

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