

IN THE
Supreme Court of the United States

GEORGE ANIBOWEI,
Petitioner,
v.

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

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

**AMICUS CURIAE BRIEF OF THE TEXAS
CRIMINAL DEFENSE LAWYERS ASSOCIATION
IN SUPPORT OF THE PETITIONER**

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INTEREST OF THE AMICUS CURIAE¹

The Texas Criminal Defense Lawyers Association (“TCDLA”) is a non-profit, voluntary membership organization dedicated to protecting individuals’ rights guaranteed by the state and federal constitutions and to the continuous improvement of the administration of criminal justice in the State of Texas.

Founded in 1971, the TCDLA currently has a membership of over 3,800 and offers a statewide forum for criminal defense counsel, provides a voice in the state legislative process in support of procedural fairness in criminal defense and forfeiture cases, and assists the courts by acting as Amicus Curiae.

Neither the TCDLA nor any of the attorneys representing TCDLA have received any fee or other compensation for preparing this brief, which complies with all applicable provisions of the Supreme Court Rules, and copies have been served on all parties.

¹ Counsel of record for TCDLA authored this brief in part. No counsel for a party to this matter participated in drafting. Rule 37.6. No counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. *Id.* The TCDLA timely notified counsel of record of its intent to file an amicus curiae brief at least ten days prior to its due date pursuant to Rule 37.2(a) of the Rules of the Supreme Court of the United States.

SUMMARY OF THE ARGUMENT

In 2014, this Court decided that digital data stored in cell phones, at least in the context of a warrantless search incident to arrest, was protected by the Fourth Amendment. *Riley v. California*, 573 U.S. 373 (2014). Four years later, this Court expanded its reasoning in *Riley* to include historical cell site location information (“CSLI”) – which is arguably less private than stored data – and held that it, too, was protected by the Fourth Amendment and not subject to the third-party doctrine. *Carpenter v. United States*, 585 U.S. 296 (2018).

This Court continued its adherence to well-settled Fourth Amendment principles during the 2025 term, citing *Riley* and *Carpenter*, in *Chatrue v. United States*, 146 S. Ct. 2193 (2026). *Chatrue* was a step beyond *Carpenter*, holding that a Fourth Amendment search occurs when police obtain CSLI data from a third-party provider for a so-called geofence warrant. *Id.* at *4. In doing so, this Court held that individual privacy interests in phone location data constitute a constitutionally significant intrusion, even if that data is collected for a limited time. *Id.*

From *Riley* to *Carpenter* to now *Chatrue*, this Court has continually recognized the indispensability of cellular devices among millions. They have become “such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy.” *Id.* (quoting *Riley v. California*, 573 U.S. 373, 385 (2014)). That indispensability is born of convenience and necessity. Cell phone owners now carry a massive trove of information in these pocket-sized computers.

To that point, *Riley* emphasized the quantitative implications of devices with only 16 to 64 gigabytes of memory, observing that 16 gigabytes translated, in practical terms, to “millions of pages of text, thousands of pictures, or hundreds of videos.” *Riley*, 573 U.S. at 394. The quantitative implications of *Riley* have grown exponentially in the dozen years since it was decided. Cellular devices now offer storage ranging from 256 gigabytes to 2 terabytes. <https://www.apple.com/iphone/> (last visited July 2, 2026). To put that into perspective, 2 terabytes, which the iPhone 17 Max and Samsung Galaxy S24 Ultra can hold, amounts to roughly 200,000 photos, 500,000 songs, hundreds of hours of 4K video, or millions of pages of documents—more than enough for typical users. <https://internxt.com> (last visited July 7, 2026); <https://lexarenterprise.com/> (last visited July 7, 2026).

Cellular digital data privacy concerns exist because of the “immense storage capacity” of these now ubiquitous devices and the “element of pervasiveness that characterizes cell phones but not physical records.” *Riley*, 573 U.S. at 375. This Court has observed that the information in cell phones, like browsing history, past location data, mapping, calendars, or installed software, is “qualitatively different” from physical evidence because it implicates “detailed information about all aspects of a person’s life.” *Id.*

These considerations apply as strongly to digital, individual folders and files as they do to the separate cell phone functions for communications, photo storage, and calendars. Thus, *Riley* rejected analogy to physical containers, deciding instead that “modern cell phones, as a category, implicate privacy concerns far beyond those implicated by the search of a cigarette pack, a wallet, or a purse.” *Riley*, 573 U.S. at 393.

Saying physical and digital searches are materially indistinguishable is “like saying a ride on horseback is materially indistinguishable from a flight to the moon.” *Id.*

Consequently, there is a need to finally address the now-universal use of cellular devices and warrantless authority for border searches. Amici is an organization of criminal defense lawyers in the United States’ second-largest state by area, with the longest international border and 32 ports of entry—more than any other single state.



U.S. Customs and Border Prot., *Texas' Ports of Entry* (2024), <https://gov.texas.gov/business> (last visited July 7, 2026).

Millions travel through Texas ports each year, whether by land, air, or sea. <https://cbp.gov/newsroom/stats/southwest-land-border-encounters> (last visited August 31, 2026). The existing circuit split requires reconciling this technology with the border search exception to the Fourth Amendment. In the 5th Circuit, these millions include Petitioner, a United States citizen and licensed Texas attorney who travels internationally in the course of his business. All individuals, just by virtue of being at a border entry point, are subject to a warrantless search of their cellular devices, at least if their international gateway is within the 5th Circuit Court of Appeals. These digital device searches, both manual and the significantly more intrusive forensic searches, are conducted by the Department of Homeland Security (“DHS”) and its law enforcement agencies, the United States Customs and Border Protection (“CBP”) and the United States Immigration and Customs Enforcement (“ICE”) (“border agents”).

Yet in California, Washington, Virginia, and Maryland, or any other state or territory in the 4th and 9th Circuits, an identical person or citizen would be afforded Fourth Amendment protection from border agents. This circuit split, embedded in CBP’s policy directives, exists between the 9th and 4th Circuit Courts of Appeals and the 1st, 5th, 8th, 10th, and 11th Circuit Courts of Appeals, and cannot remain unaddressed. The reasons for the border search exception to the warrants clause of the Fourth Amendment, as argued in Section IA, and this Court’s recognition of the changing nature of cellular devices favor the approaches taken by the 9th and 4th Circuits.

ARGUMENT

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.’

Riley v. California, 573 U.S. 373, 403 (2014) (quoting *Boyd v. United States*, 116 U.S. 616, 625 (1886)).

The Dallas-Fort Worth International Airport (“DFW”) is the eighth-busiest international gateway in the United States. *World’s Busiest Airports Show Surge in International Travel. Here are the Rankings* (CNBC, originally aired April 15, 2024). Petitioner is one of many Texas-licensed attorneys who use not just DFW, but also George Bush Intercontinental Airport in Houston for international travel. American business travelers like Petitioner are also not the sole users of these Texas gateways. Non-business travel along the 833-mile stretch from El Paso to Brownsville includes international gateways in Del Rio, Eagle Pass, and Laredo.

A recent University of Chicago Legal Forum Comment cited 2024 statistics that CBP “still annually processes 40,000 travelers, along with their electronic devices, with limited suspicion and few judicial limits on use of the harvested data.” Daniel Vincente Alayo-Matos, *Extraction, Retention, and Use: Applying the Use-Restrictions to Fourth Amendment Forensic Electronic Device Search Doctrine at the Border*, 2024 U. Chi. Legal F. 337, 339 n. 10 (2025).

The 2024 statistics haven’t improved much. The CBP’s most recent iteration of its Directive, published in January 2026, purports to require some level of suspicion for more intrusive forensic inspections and seems consistent with this Court’s past recognition of

self-imposed agency restrictions for determining reasonableness under the Fourth Amendment. *See United States v. Flores-Montano*, 541 U.S. 149, 156 (2004) (Breyer, J. concurring); *see also* CBP Directive §§ 5.1.3 and 5.1.4. However, confusion remains when attempting to reconcile these directives and the different circuit requirements, or lack thereof.

The 11th Circuit has held that no threshold level is required to seize and search cellular devices. *United States v. Touset*, 890 F.3d 1227, 1232-33 (11th Cir. 2018). *Touset* held that a reasonable suspicion was unnecessary even for a forensic search of a cellular device. *Touset* followed the 11th Circuit’s holding in *United States v. Vergara* that the Fourth Amendment’s Warrant Clause was inapplicable to such device searches. *See United States v. Vergara*, 884 F.3d. 1309, 1311 (11th Cir. 2018).

At the other end of the spectrum is the 9th Circuit Court of Appeals, which has the narrowest view of the border search exception. *United States v. Cano*, 934 F.3d 1002 (9th Cir. 2019). In *Cano*, the Court held that border agents may use the exception only to stop contraband from entering the United States. *Id.* at 1013. According to the 9th Circuit, the “detection of [contraband] is the strongest historic rationale for the border-search exception,” and the search of devices such as cellular phones does not fit that rationale except for child pornography. *Id.* at 1021 n.13.

The 4th Circuit Court of Appeals’ view of the border exception and cellular devices is slightly broader: a forensic search of a cellular device in that Circuit is nonroutine under the border search exception and requires individualized suspicion. *See United States v. Kolsuz*, 890 F.3d 133, 144 (4th Cir. 2018). A year later, in *United States v. Aigbekaen*, the 4th Circuit went a

step further in its own precedent and moved closer to the 9th Circuit’s, holding that a nexus must exist between an intrusive forensic search of a cellular device and the purpose undergirding the border exception. *See United States v. Aigbekaen*, 943 F.3d 713 (4th Cir. 2019).

For those millions of international travelers who use cellular devices, the combined logic of the 9th Circuit’s *Cano* and 4th Circuit’s *Aigbekaen*; coupled with this Court’s holdings in *Riley* and *Carpenter*, hits closer to the mark of how electronic devices should be treated at the border than the 11th Circuit’s in *Vergara* and *Touset*.

I. Digital devices should be subject to 4th Amendment protection at international gateways

A. The reasons for the border search exception do not extend to cellular digital devices

When crossing any international border to or from the United States, an individual implicitly agrees to an inspection—history and tradition acknowledged from the late 18th century to the present day. *See* Act of July 31, 1789, ch. 5, 1 Stat. 29, *repealed by* Act of Aug. 4, 1790, ch. 35, §73, 2 Stat. 177 (“The 1789 customs statute”); *Boyd v. United States*, 116 U.S. 616, 623 (1886). The border search exception to the Fourth Amendment’s warrant requirement is often tied to the government’s legitimate interest in protecting the integrity of the nation’s borders. *United States v. Ramsey*, 431 U.S. 606, 616 (1977); *but see United States v. Montoya de Hernandez*, 473 U.S. 531, 544 (1985) (communicating the reason as the government’s high interest in preventing anything harmful from

entering, such as “communicable diseases, narcotics, or explosives”).

Ramsey highlights that port-of-entry inspection was not without limitation, even at the founding. *Ramsey* used the 1789 customs statute to support the history and tradition of such limitation. Section 24 of that statute provided, in pertinent part:

[E]very collector, naval officer and surveyor, or other person specially appointed by either of them for that purpose, shall have full power and authority, to enter any ship or vessel, in which they shall have reason to suspect any goods, wares or merchandise subject to duty shall be concealed; and therein to search for, seize, and secure any such goods, wares or merchandise; *and if they shall have cause to suspect a concealment thereof, in any particular dwelling-house, store, building, or other place, they or either of them shall, upon application on oath or affirmation to any justice of the peace, be entitled to a warrant to enter such house, store, or other place (in the day time only) and there to search for such goods, and if any shall be found, to seize and secure the same for trial. . . .*

Ramsey, 431 U.S. at 616 n.12 (1977) (emphasis added).

Ramsey recognized that seizure was tethered to a search limitation: “Here envelopes are opened at the border only when customs officers have reason to believe they contain something other than correspondence. Reading the correspondence inside the envelopes was forbidden.” *Id.* at 624. The Court also recognized that, under some circumstances, a border search might be unreasonable: “We do not decide

whether, and under what circumstances, a border search might be deemed ‘unreasonable’ because of the particularly offensive manner in which it is carried out.” *Id.* at n.13. (citations omitted). Analysis has tied heightened scrutiny to general rummaging, as in the forbidden letter-reading from *Ramsey*. No leap is required from letter to smartphone. The invasion cascades into reading, downloading, and collating terabytes of personal, protected, and professional data stored on these devices.

A “routine” search of an individual is “not subject to any requirement of reasonable suspicion, probable cause, or warrant.” *United States v. Flores-Montano*, 541 U.S. 149, 153 (2004) (citing *Montoya de Hernandez*, 473 U.S. at 538); see CBP Directive 5.1.2. These *nonroutine* searches of persons are subject to a higher individualized “reasonable suspicion” standard. *Id.*; see also *Touset*, 890 F.3d at 1234; see also CBP Directive 5.1.3. In other words, a border agent may conduct an intrusive, nonroutine search of a person only if the agent has reasonable suspicion that the individual is engaging in an activity the exception is intended to prevent.

A search becomes nonroutine when it goes “beyond the scope of a routine customs search and inspection” *Montoya de Hernandez* at 541. For example, “strip, body cavity, or involuntary x-ray searches.” *Id.* at n.4. The Supreme Court in *Riley* held that forensic searches of cell phone data are also highly intrusive, nonroutine searches because the “sum of an individual’s private life can be reconstructed” with the device’s stored data. *Riley*, 573 U.S. at 394.

With these decisions from this Court, the reasons for the Fourth Amendment exception “define the boundaries of the exception.” See *Arizona v. Gant*, 556 U.S.

332, 339 (2009). This means, in the context of the Question Presented by Petitioner, this Court uses the Fourth Amendment’s long-standing test of balancing the Government’s interest against the individual’s personal expectation of privacy.

Gant illustrates this point. In *Gant*, the search-incident-to-arrest exception was narrowed after *New York v. Belton*, 453 U.S. 454 (1981), which many law enforcement agencies had implemented.² *Gant* held that the search incident to arrest exception did not justify the search there challenged because (1) the police could not reasonably have believed that the arrestee could have accessed the car at the time of the search; and (2) police could not have reasonably believed that the evidence of the offense for which the arrestee was arrested might have been found in the car since the arrest was for driving with a suspended license. 556 U.S. at 344.

Gant recognized that the purpose of the search incident to arrest exception was different, and officer safety concerns were diminished because the defendant was secured during the search and the arrest was unconnected to a search of personal items inside the vehicle. *Id.* at 344-46. In sum, *Gant* declined to extend the search-incident-to-arrest exception because the situation was too attenuated from the exception’s

² The Supreme Court wrote, “Countless individuals guilty of nothing more serious than a traffic violation have had their constitutional right to the security of their private effects violated as a [result of law enforcement’s reading of *Belton*]. The fact that the law enforcement community may view the State’s version of the *Belton* rule as an entitlement does not establish the sort of reliance interest that could outweigh the countervailing interest that all individuals share in having their constitutional rights fully protected.” *Gant*, 556 U.S. at 349.

purpose. *Riley* then extended the *Gant* reasoning to cell phones by not extending the search incident to arrest exception to cell phones.

This Court has already lifted cell phones out of the ambit of the search incident to arrest exception; the leap to the border search exception is not a long one. Indeed, the Government interests of prohibiting contraband or unwanted individuals from entering this country are served when border agents search luggage or a person's pockets at a border crossing, and the border search exception has substantial justification when screening entrants bringing harm or harmful products into the country, be it communicable diseases, narcotics, or explosives.

But when weighed against the millions and millions of travelers with digital devices – especially those like Petitioner – the governmental interests the border search exception was designed to protect are dwarfed, and any warrantless search, whether manual or forensic, is incredibly invasive.³

B. This case is the next logical question after *Chatrue v. United States*, the most recent in a line of cases confirming a cell phone's cultural ubiquity and private 4th Amendment status

Technological advancement demands greater, not less, 4th Amendment protection. In *Carpenter*, the Court traced how technological advancement increases an individual's privacy rights and simultaneously

³ Amanda Robert, *Privacy rights of lawyers and their clients should be protected during border searches*, ABA House urges, A.B.A. J. (Jan. 2019) (addressing concerns over breaches of attorney client privilege during border searches).

decreases the Government’s ability to permeate them. *Carpenter*, 585 U.S. at 304-09.

The Court explained the correlation in its discussion of two lines of cases intersected by *Carpenter*. The first line included the Government’s monitoring of private citizens in 1983 versus 2012 in *Knotts* and *Jones*. In *Knotts*, the Court determined that the Government’s placement of a tracking beeper during one “discrete automotive journey” of a co-conspirator was rudimentary in nature and did not violate his 4th Amendment rights. *Id.* at 306 (quoting *United States v. Knotts*, 460 U.S. 276, 284-85 (1983)). The Court reserved the question of whether “different constitutional principles may be applicable” if “twenty-four-hour surveillance of any citizen of this country [were] possible.” *Id.* at 306-07 (quoting *Knotts* 460 U.S. at 283-84). So, in 1983, the Court considered that technological advancement allowing 24-hour surveillance of a citizen would change the 4th Amendment calculus. And it did.

Following 30 years of advancing technology, FBI agents in *Jones* placed a GPS tracking device on Jones’s vehicle. They remotely monitored it for 28 days—a far cry from following a beeper in a box of chloroform for the duration of a drive. *See Knotts*, 460 U.S. 276, 278. While the Court’s 2012 decision in *Jones* was not grounded in the 4th Amendment, it discussed the predicted technological advancement of 24-hour monitoring. *Carpenter* at 307. The concurring Justices noted that GPS monitoring would infringe on one’s expectation of privacy because it monitors “every movement” a person makes. *Id.* (citing *United States v. Jones*, 565 U.S. 400, 430 (2012) (Alito, J. concurring)).

Cell phone location data, similar to, but technologically beyond, the GPS monitoring in *Jones*, records “every movement” a person makes. A cell phone travels with its human, and since *Carpenter*, cell phone applications have grown increasingly granular as to the information they record and store. Whether through Life 360, Snapchat, a favorite running app, or any variety of other location-tracking apps, the search of one’s cell phone won’t just reveal where the car drove or where the bus stopped. Contemporary cell phone applications reveal minutiae of movement—tracking whether the individual in possession of the device is on the 1st or 5th floor of a building, or even how high their heart rate rose when climbing the stairs to reach the 5th floor. Every movement.

Chatrrie arguably went further than *Carpenter* in recognizing that Fourth Amendment exceptions and the constitutional baseline of “reasonableness” must now be considered in light of smartphone device technology. The majority opinion, citing *Carpenter*, rejected compartmentalization of these devices for Fourth Amendment protections:

Consider sending an email on Gmail, uploading a photo to Google Photos, or adding a calendar entry to Google Calendar. None happens solely by dint of the phone’s operation; each requires, as Location History does, an “optional add-on.” Brief for United States 13. And each activity, like using Location History, results in sharing information with a third-party tech company—turning over private materials to live on that company’s servers. The Government wishes to disconnect all those uses from the mere act of carrying a turned-on cell phone (the thing

that generates CSLI), with only the latter receiving assured Fourth Amendment protection. But that is to imagine that all of us are living in dumb flip-phone days. The point of carrying smartphones is to use what is on them—as *Carpenter* said, to use the apps and “services they provide.” *That* is what has become a “pervasive and insistent”—even “indispensable”—“part of daily life.” And so *that* is what *Carpenter* insulated from the third-party doctrine. A cell-phone user is not to be viewed as sharing private information with third parties—which then can be freely passed on to the government—just by doing the ordinary things cell-phone users do.

Chatrue, 146 S. Ct. at 2214 (citations omitted) (emphasis in the original).

From *Riley* to *Carpenter* to now *Chatrue*, this Court has for a dozen years recognized that certain warrantless searches of digital data stored on a cellular device, smartphone, or by a third party are unreasonable under the Fourth Amendment. This case presents a question with practical and legal urgency for the millions who travel internationally each year with their digital devices—should a 4th Amendment violation be excused by mere virtue of where it occurs? The answer must be no. The privacy implications of technology’s exponential advancement will only increase as time wears on. And this question will be posed again and again. Now is the perfect time to answer it in favor of the 4th and 9th Circuits and the Fourth Amendment protection afforded to all Americans. When considering new innovations in airplanes and radios, *Carpenter* quoted Justice Felix Frankfurter, “the Court must tread carefully in such cases, to

ensure that [it does] not ‘embarrass the future.’ ” *Carpenter* at 316 (quoting *Northwest Airlines, Inc. v. Minnesota*, 322 U.S. 292, 300 (1944)).

II. CBP and ICE policies violate the 4th Amendment, but the requested shift in border exception jurisprudence would directly impact those policies and ultimately remedy the violation

As described above, the border-search exception to the Fourth Amendment’s warrant requirement has been around for a long time. But the original impetus for Congress’ grant of such authority to the Executive has been stretched over the past century to include permissions to law enforcement not originally intended. In the late 19th and early 20th centuries, only two justifications existed for broad border search authorities: (1) “to regulate the collection of duties and to prevent the introduction of contraband into this county;” and (2) to determine who should be admitted to the United States. Laura K. Donohue, *Customs, Immigration, and Rights: Constitutional Limits on Electronic Border Searches*, 128 Yale L.J.F.961, 962-63 (2019). While DHS agencies, CBP and ICE, exist to effectuate those purposes, both now operate in ways that exceed their original grant of authority to the point of violating the 4th Amendment.

Both agencies publish directives specific to electronic device searches at the border. CBP’s latest directive, No. 3340-049B (“CBP Directive”) was updated and became effective on January 1, 2026. U.S. Customs & Border Prot., U.S. Dep’t of Homeland Sec., CBP Directive No. 3340-049B, *Border Search of Electronic Devices* (January 1, 2026). In it, CBP outlines what kind of searches its officers can perform on electronic devices; how individuals’ rights are

consequently affected; and details specifics concerning what CBP can retain from a searched device and for how long. ICE’s parallel document has not been updated since 2009 but is referenced in CBP’s Directive. *Id.* at 2, §2.8 (citing U.S. Immigration & Customs Enforcement, Directive No. 7-6.1, *Border Searches of Electronic Devices* (August 18, 2009)).

The CBP Directive states that it “conducts border searches in accordance with applicable statutes, regulations, and judicial authorities.” CBP Directive § 2.9. Relevant to Petitioner’s position here, the same section explains that “[a]dditional or different requirements may apply in certain jurisdictions to ensure compliance with binding circuit precedent—that [t]he location where the border search is initiated determines which policy guidance applies.” *Id.* The CBP acknowledges the Circuit split that exists on this issue and already adjusts its approach based on where a particular search is taking place. Even so, the adjusted approach spurred by the Circuit split has not yielded a search slowdown.

The last decade has instead seen a steady increase in the number of electronic device border searches performed by CBP and ICE. In 2015, CBP examined 8,503 devices, and that number exploded to more than 30,000 in 2017. Donohue, *supra* at 962-963. In 2024, that number grew to 46,958. U.S. Customs & Border Protection, *Border Search of Electronic Devices at Ports of Entry*, <https://www.cbp.gov/travel/cbp-search-authority/border-search-electronic-devices> (last visited July 7, 2026). In 2025, it increased to 55,424. *Id.* So far, 2026 promises to surpass 2025 as the first two quarters yielded 32,349 searches of electronic devices. *Id.*

As for ICE, in 2015, it searched almost 5,000 electronic devices. In 2016, that number more than quadrupled to 23,000 electronic device searches. Donohue, *supra* at 962. No additional statistics pertaining solely to ICE are available online. ICE does not publish electronic device search statistics on its website like the CBP, but it stands to reason that in the last 10 years since ICE's quadrupled 23,000 searches in 2016, its number of searches has grown along with CBP's.

The CBP Directive notes that the “courts have rejected a categorical exception to the border search doctrine for electronic devices.” While that statement is true, it requires qualification. Thus far, this Court has rejected a categorical exception to the border search doctrine for electronic devices, but the 4th and 9th Circuits have not. The courts are divided on this issue.

Should the Court's analysis and conclusion square with the 4th and 9th Circuits to implement a categorical exception for electronic device searches at the border, at least the CBP's Directive suggests that it would recognize and nimbly acquiesce to such judicial authority. *See* CBP Directive §§ 2.9 and 4.5.

As it stands, CBP's Directive purports that its electronic device search policy “imposes certain requirements, above and beyond prevailing constitutional and legal requirements to ensure that the authority for border search of electronic devices is exercised judiciously, responsibly, and consistent with the public trust.” *Id.* at § 4.5.

And that sounds good. But Petitioner's present case suggests that, in practice, CBP's Directive is not as “above and beyond prevailing constitutional and legal

requirements” as advertised. Over the course of several years, and four times while Petitioner’s lawsuit was pending, his cell phone was confiscated and searched at the border as he passed through Texas airports. It became such a problem that Petitioner stopped taking his cell phone with him when he traveled.

The Court pointed out in *Riley* that “the Founders did not fight a revolution to gain the right to government agency protocols.” *Riley*, 573 U.S. at 398. That point is well taken here. The *Riley* Court further underscored its “general preference to provide clear guidance to law enforcement through categorical rules, quoting its *Summers* decision: “[I]f police are to have workable rules, the balancing of the competing interests... ‘must in large part be done on a categorical basis—not in an ad hoc, case-by-case fashion by individual police officers.’ *Id.* (quoting *Michigan v. Summers*, 452 U.S. 692, 705 n. 19 (1981) quoting *Dunaway v. New York*, 442 U.S. 200, 219-20 (1979) (White, J. concurring)). The balancing of competing interests here—safety and privacy—should not be decided on a case by case or Circuit by Circuit basis. A categorical exception to border searches for cell phones would create certainty for federal agencies and citizens and have an immediate and practical impact on millions of lives.

In 2025, CBP alone processed 419 million travelers at United States’ ports of entry, and as mentioned above, performed 55,318 electronic device searches in 2025. On its website, CBP appears to minimize the action, stating “CBP *only* searched the electronic devices of 55,318 international travelers.” Certainly, 55,318 represents .01% of all international travelers arriving in 2025. U.S. Customs & Border Protection, *Border Search of Electronic Devices at Ports of Entry*,

<https://www.cbp.gov/travel/cbp-search-authority/border-search-electronic-devices> (last visited July 7, 2026). But that brand of relativity has no bearing on Petitioner's case. He may be but one of the millions traveling through ports of entry and but one of the thousands whose electronic devices were searched. But his is not the only phone to be searched without a warrant, without probable cause, or without reasonable suspicion. Rather, Petitioner's case is a clarion call for the Court to solve the split in favor of the 4th and 9th Circuits and extend its electronic device-related jurisprudence to categorically remove those devices from the border search exception.

CONCLUSION

The question presented is ripe for decision. The growing recognition of the need for privacy in smartphones and cellular technology must be reconciled with governmental interests at border crossings. This is most acute in a situation occasioned by Petitioner, an individual with not just a privacy interest in his digital device but with a professional responsibility for confidentiality. Fourth Amendment protections are reasonable in the context of this technology, regardless of whether it is a search incident to arrest, as in *Riley*, or a search at an international gateway.

PRAYER

For the foregoing reasons, Amicus supports the Petitioner's request that the judgment of the 5th Circuit Court of Appeals be vacated, and the case remanded for further proceedings.

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