

No. 26-208

IN THE
Supreme Court of the United States

GEORGE ANIBOWEI,
Petitioner,

v.

TODD BLANCHE, ATTORNEY GENERAL,
ET AL.,
Respondents.

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

**BRIEF OF FOURTH AMENDMENT SCHOLARS
AS *AMICI CURIAE* IN SUPPORT
OF PETITIONER**

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TABLE OF CONTENTS

	Page
INTEREST OF <i>AMICI CURIAE</i>	1
INTRODUCTION AND SUMMARY OF ARGUMENT.....	1
ARGUMENT	3
I. THIS COURT HAS REPEATEDLY RECOGNIZED THAT FOURTH AMENDMENT PRINCIPLES DEVELOPED FOR THE PHYSICAL WORLD CANNOT BE MECHANICALLY APPLIED TO DIGITAL SEARCHES.	3
II. THE BORDER EXCEPTION CANNOT AND SHOULD NOT APPLY TO CELL PHONE SEARCHES.	10
A. The Logic Of The Border Exception Is Fundamentally Rooted In The Physical World.	10
B. The Logic Of The Border Exception Does Not Translate To The Digital World.	11
C. Comparing The Diminished Government Interest In A Warrantless Search To The Immense Intrusion On Privacy, The Border Exception As Applied To Digital Devices Searches Is Unreasonable.	13
III. THE COURT SHOULD RESOLVE THE QUESTION PRESENTED NOW.	20
CONCLUSION.....	24

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Alasaad v. Mayorkas</i> , 988 F.3d 8 (1st Cir. 2021).....	23
<i>Anibowei v. Bondi</i> , 2025 WL 3231720 (5th Cir. Nov. 19, 2025) ...	21, 23
<i>Boyd v. United States</i> , 116 U.S. 616 (1886)	13, 20
<i>Carpenter v. United States</i> , 585 U.S. 296 (2018)	4-8, 10, 19-20
<i>Chatrie v. United States</i> , 146 S. Ct. 2193 (2026)	2, 8-10, 15-17, 20, 23
<i>Johnson v. United States</i> , 333 U.S. 10 (1948)	17
<i>Katz v. United States</i> , 389 U.S. 347 (1967)	4
<i>Kyllo v. United States</i> , 533 U.S. 27 (2001)	1, 4, 10
<i>Riley v. California</i> , 573 U.S. 373 (2014)	2, 4-5, 13-15, 17, 20
<i>Silverman v. United States</i> , 365 U.S. 505 (1961)	4
<i>United States v. Alisigwe</i> , No. 24-960, slip op. (2d Cir. Sept. 17, 2026)	23
<i>United States v. Cano</i> , 934 F.3d 1002 (9th Cir. 2019)	23
<i>United States v. Cotterman</i> , 709 F.3d 952 (9th Cir. 2013)	21

TABLE OF AUTHORITIES
(continued)

	Page(s)
<i>United States v. Flores-Montano</i> , 541 U.S. 149 (2004)	11, 13
<i>United States v. Jones</i> , 565 U.S. 400 (2012)	4, 16, 18, 19
<i>United States v. Kolsuz</i> , 890 F.3d 133 (4th Cir. 2018)	20
<i>United States v. Montoya de Hernandez</i> , 473 U.S. 531 (1985)	11, 13
<i>United States v. Ramsey</i> , 431 U.S. 606 (1977)	11, 13, 18
<i>United States v. Robinson</i> , 414 U.S. 218 (1973)	4
<i>United States v. Touset</i> , 890 F.3d 1227 (11th Cir. 2018)	20
 Constitutional Provisions	
U.S. Const. amend. IV	2
 Other Authorities	
Andrew Guthrie Ferguson, <i>Digital</i> <i>Policing After Chatrìe</i> (July 24, 2026)	8, 9
Andrew Guthrie Ferguson, <i>Digital</i> <i>Rummaging</i> , 101 Wash. U. L. Rev. 1473 (2024)	18, 19, 22
Andrew Guthrie Ferguson, <i>Future-</i> <i>Proofing the Fourth Amendment</i> , Harv. L. Rev. Blog (June 25, 2018), https://perma.cc/4583-3KFR	7

TABLE OF AUTHORITIES
(continued)

	Page(s)
Andrew Guthrie Ferguson, <i>Why Digital Policing Is Different</i> , 83 Ohio St. L.J. 817 (2022)	4, 14
Bryan Sykes, <i>Border Search Rationales Ripe for Abuse, with Journalists Particularly at Risk</i> , 45 Hastings Comm. & Ent. L.J. 165 (2023)	18
Elizabeth E. Joh, <i>Artificial Intelligence and Policing: Hints in the Carpenter Decision</i> , 16 Ohio St. J. Crim. L. 281 (2018)	7, 17, 19
Elizabeth E. Joh, <i>Privacy Protests: Surveillance Evasion and Fourth Amendment Suspicion</i> , 55 Ariz. L. Rev. 997 (2013)	21, 22
Erin Murphy, <i>Databases, Doctrine, and Constitutional Criminal Procedure</i> , 37 Fordham Urb. L.J. 803 (2010)	7
Erin Murphy, <i>The Politics of Privacy in the Criminal Justice System: Information Disclosure, the Fourth Amendment, and Statutory Law Enforcement Exemptions</i> , 111 Mich. L. Rev. 485 (2013)	14
Gaya Gupta & Angie Orellana Hernandez, <i>Border Agents Ask Lawyer With Pro-Palestinian Client to Give Up Phone</i> , Wash. Post (Apr. 8, 2025), https://www.washingtonpost.com/2025/04/08/michigan-lawyer-border-phone/	21

TABLE OF AUTHORITIES
(continued)

	Page(s)
Orin Kerr, <i>The Digital Fourth Amendment: Privacy and Policing in Our Online World</i> 123 (2025)	11
U.S. Customs & Border Prot. CBP Directive No. 3340-049B, <i>Border Search of Electronic Devices</i> (Jan. 1, 2026)	19
U.S. Customs & Border Prot., <i>Border Search of Electronic Devices at Ports of Entry</i> (updated Aug. 4, 2026), https://www.cbp.gov/travel/dbp-search-authority/border-search-electronic-devices	23
U.S. Customs & Border Prot., <i>CBP Home Mobile App</i> , https://www.cbp.gov/about/mobile-apps-directory/cbphone	16
U.S. Customs & Border Prot., <i>CBP Releases Statistics on Electronic Device Searches</i> (Apr. 11, 2017), https://www.cbp.gov/newsroom/national-media-release/cbp-releases-statistics-electronic-device-searches-0	23
U.S. Customs & Border Prot., <i>Mobile Passport Control (MPC)</i> , https://www.cbp.gov/travel/us-citizens/mobile-passport-control	16

INTEREST OF *AMICI CURIAE*¹

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Amici have an interest in ensuring that courts apply longstanding Fourth Amendment principles in a manner that accounts for the profound privacy changes caused by new technologies.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Fourth Amendment’s protections remain constant, but their application must account for continual changes in technology. This Court has recognized that principle across decades. It refused to leave privacy of the home “at the mercy of advancing technology” in thermal imaging. *Kyllo v. United States*, 533 U.S. 27, 35 (2001). It acknowledged that

¹ Pursuant to Rule 37.6, counsel for *amici curiae* states that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae* or their counsel made a monetary contribution to the preparation or submission of the brief. Pursuant to Rule 37.2, counsel of record for all parties received notice of *amici*’s intent to file this brief at least 10 days prior to due date.

cell-phone searches are not akin to searches of physical objects because cell phones “differ in both a quantitative and a qualitative sense.” *Riley v. California*, 573 U.S. 373, 393 (2014). And just this past Term, the Court recognized that the Fourth Amendment protected a person’s cell-phone location data, ensuring that technological “innovations” do not unconstitutionally expand “the Government’s capacity to encroach upon areas normally guarded from inquisitive eyes.” *Chatrie v. United States*, 146 S. Ct. 2193, 2205–06 (2026) (quotation omitted). “Where the Fourth Amendment applies, it applies,” whether the search involves paper and ink or ones and zeros. *Id.* at 2210.

The border-search exception requires the same review in the face of new digital technologies. The exception developed around the Government’s authority to control the physical entry of people and goods into the country. Digital devices do not fit neatly within that framework. Unlike a backpack, which contains what a traveler physically brings across the border, a cell phone provides access to vast amounts of digital information unrelated to the journey and that need not cross the border at all. Applying the border-search rule to digital information gives the Government access far beyond anything contemplated by the cases that shaped the exception. The Fourth Amendment protects against “unreasonable searches and seizures.” U.S. Const. amend. IV. The logic underlying the reasonableness of searching the limited contents of a suitcase does not carry over to searching a device containing years of personal data.

Until the border-search exception is clarified, lower courts will continue to struggle with how to apply the old rule to this new setting—already resulting in different privacy protections at different ports of entry. Fourth Amendment rights should not be dependent on where one enters the United States. This Court should grant *certiorari* to resolve that disagreement and explain how Fourth Amendment protections apply when an exception built for physical entry is used to justify access to digital information.

ARGUMENT

I. THIS COURT HAS REPEATEDLY RECOGNIZED THAT FOURTH AMENDMENT PRINCIPLES DEVELOPED FOR THE PHYSICAL WORLD CANNOT BE MECHANICALLY APPLIED TO DIGITAL SEARCHES.

The question presented in the Petition—whether the border exception to the Fourth Amendment justifies access to a traveler’s entire digital life—requires this Court to once more grapple with how precedent developed for searches of physical objects and limited records interacts with the digital world. When the Court developed the border exception, allowing the government to search persons and goods entering the country, it was not contemplating a search that exposed a traveler’s entire digital life. As this Court has made clear in several cases, digital searches are simply different than physical ones. Determining how the Fourth Amendment applies to such searches will require the Court to yet again eschew applying old precedent mechanically to “novel

circumstances,” *Carpenter v. United States*, 585 U.S. 296, 309 (2018), and to reject “simplistic analogies to non-digital precedent” that “no longer ma[ke] sense in a digital age.” Andrew Guthrie Ferguson, *Why Digital Policing Is Different*, 83 Ohio St. L.J. 817, 833 (2022).

Indeed, this Court has repeatedly confronted similar problems of the interaction of old Fourth Amendment precedent and new technology to facilitate government searches. *See, e.g., United States v. Jones*, 565 U.S. 400, 404–05 (2012) (GPS tracking); *Kyllo*, 533 U.S. at 34–35 (thermal imaging); *Katz v. United States*, 389 U.S. 347, 352–53 (1967) (electronic eavesdropping); *Silverman v. United States*, 365 U.S. 505, 509–12 (1961) (electronic listening device). Cell phones have brought the distinction between a physical search and a digital one into sharp focus. The Court’s prior approach should guide the Court’s consideration of the question presented here.

1. For instance, the search-incident-to-arrest exception historically permitted officers to search an arrestee’s person and any physical items found there, both to protect themselves from concealed weapons and to prevent the destruction of evidence within the arrestee’s reach. *See United States v. Robinson*, 414 U.S. 218 (1973). But in *Riley v. California*, 573 U.S. 373 (2014), this Court considered whether police could search the digital contents of a phone simply because they had lawfully arrested the person carrying it. Finding the exception inapplicable, the Court reasoned that the underlying rationale of the search-incident-to-arrest exception did not carry over to digital data. Unlike a physical object that might conceal a threat, “[d]igital data stored on

a cell phone cannot itself be used as a weapon,” and once the phone is secured, “data on the phone can endanger no one.” *Riley*, 573 U.S. at 387. Officers could inspect the phone to determine whether “a razor blade [was] hidden between the phone and its case.” *Id.* But the risk mitigation and evidential destruction that justified the physical search of the phone could not be repurposed to search what it stores.

The privacy interests were different too. Cell phones “differ in both a quantitative and a qualitative sense from other objects” because of the volume and character of the information they contain. *Id.* at 393. That a phone “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.” *Id.* at 403. A search of the phone’s data presented the same privacy intrusions that trigger Fourth Amendment protections. Any exception authorizing a search of its data instead had to “rest on its own bottom.” *Id.* at 393. Absent such a justification, the answer was “accordingly simple—get a warrant.” *Id.* at 403.

2. Only a few years later, the Court again confronted how established Fourth Amendment principles should apply to a new form of digital search. *Carpenter* examined whether the government could obtain historical cell-site location records from a wireless carrier without a warrant. The government invoked the third-party doctrine, which generally treats information voluntarily conveyed to another as outside Fourth Amendment protection. *See Carpenter*, 585 U.S. at 308.

Rejecting a mechanistic application of the third-party doctrine, the Court noted that the search in question was different in kind from the typical information sought from third-parties. That precedent concerned bank records and telephone numbers dialed by a user—which revealed limited categories of information. *Id.* at 308–09.

In contrast, modern cell-site data is unlike a bank statement. The “seismic shifts in digital technology” made it possible to track “not only Carpenter’s location but also everyone else’s, not for a short period but for years and years.” *Id.* at 313. Even in dissent, the point drew agreement: the new investigative tools “may have the potential to upset traditional privacy expectations.” *Id.* at 338 (Kennedy, J., dissenting). Extending the third-party doctrine to those records would give the government an account of a person’s movements that earlier cases had never contemplated. There is “a world of difference” between the limited information addressed in those cases and the “exhaustive chronicle of location information casually collected by wireless carriers today.” *Id.* at 314 (majority op.).

The Court thus again recognized that constitutional protections must be considered in light of the power and scope of modern technology. Earlier cases arose in an era where “few could have imagined a society in which a phone goes wherever its owner goes,” continually generating “a detailed and comprehensive record of the person’s movements.” *Id.* at 309. The relevant question was not whether old doctrine had ceased to matter, but whether its premises still fit.

The ability to assemble cell-site data records changed what the government could learn from them. It would be “wrong to assume that contemporary databases are simply the younger siblings” of their analog predecessors; older systems could not “automatically sift through huge volumes of standardized material.” Erin Murphy, *Databases, Doctrine, and Constitutional Criminal Procedure*, 37 Fordham Urb. L.J. 803, 807 (2010). Cell-site data, by comparison, could be mined, organized, and reproduced to reconstruct a person’s movements. Applying precedent required attention to that capability, not just to who held the records. The inquiry must account for “not only the qualitatively distinct features of the information, but also the type of policing involved in obtaining it.” Elizabeth E. Joh, *Artificial Intelligence and Policing: Hints in the Carpenter Decision*, 16 Ohio St. J. Crim. L. 281, 290 (2018). That “recognition of digital transformation” served “to ensure that the Fourth Amendment protects the digital lives of citizens.”²

Modern technology also undermined the premise that a person who conveys information to another has chosen to expose it. Carrying a cell phone is “indispensable to participation in modern society,” and the device generates location information “without any affirmative act on the part of the user beyond powering up.” *Carpenter*, 585 U.S. at 315. A person does not meaningfully choose to disclose a comprehensive record of their movements simply by using a

² Andrew Guthrie Ferguson, *Future-Proofing the Fourth Amendment*, Harv. L. Rev. Blog (June 25, 2018), <https://perma.cc/4583-3KFR>.

phone. *Id.* at 315–16. And the implications extend well beyond location records: “Today we use the Internet to do most everything,” including storing materials “we would have locked safely in a desk drawer or destroyed” in an earlier era. *Id.* at 387 (Gorsuch, J., dissenting). If doctrine treated that shift as a surrender of privacy, “our Fourth Amendment rights [would be] reduced to nearly nothing.” *Id.* Fourth Amendment protection remains constant; its application must account for the world in which people now live.

3. This past Term, the Court in *Chatrie* again rejected the mechanical application of analog Fourth Amendment rules to digital rummaging. Police used a geofence warrant to obtain Location History data identifying phones near the scene of a bank robbery. *Chatrie*, 146 S. Ct. at 2199–2202. The Government argued the Fourth Amendment was not implicated because, unlike *Carpenter*, the records covered a short period, and the Location History was generated after a user affirmatively enabled the service.

But in *Chatrie*, as in *Riley* and *Carpenter*, the Court rejected this myopic view. Instead, the Court focused on what the technology exposed and how the Fourth Amendment protected it. *Carpenter*’s guideposts help “to establish the purpose of the Fourth Amendment, what it protects, how it protects, and how it evolves.” Andrew Guthrie Ferguson, *Digital Policing After Chatrie* 5 (July 24, 2026) (forthcoming). As “innovations” expand “the Government’s capacity to encroach upon areas normally guarded from inquisitive eyes,” courts must account for that increased power. *Chatrie*, 146 S. Ct. at 2205–06 (quotation omitted). Location History is more pre-

cise and revealing than the data at issue in *Carpenter*, capable of allowing “tireless and absolute surveillance” of people and places with little effort. *Id.* at 2207–09 (quotation omitted). The Government’s reading “narrowed *Carpenter* to [cell-site] technology and opened the door to numerous other warrantless tracking surveillance systems.” Ferguson, *Digital Policing After Chatrrie*, *supra*, at 2. Everything *Carpenter* relied on “applies as well or better” to Location History. *Chatrrie*, 146 S. Ct. at 2207–08. But the Court did not alter the Fourth Amendment to meet new technology. Instead, it applied the existing protection to reflect the greater intrusion technology made possible.

The Court also recognized the holistic nature of digital life. Fourth Amendment protections for smartphone use cannot be divided—an “app-by-app, feature-by-feature method of granting Fourth Amendment protection misapprehends the very nature of modern cell-phone use.” *Id.* at 2214. Unlike a briefcase, whose contents reflect what a person chooses to carry on a particular day, a smartphone brings together information accumulated across a person’s life, whether a particular record is accessed daily, rarely, or not at all. Fourth Amendment protection cannot turn on which app or service produced the information, or whether a user opted-in, clicked through a terms of service agreement, or toggled on or off a particular feature. *Id.* Nor does it wait until an intrusion “goes too far.” *Id.* at 2210 (quotation omitted).

* * *

These decisions demonstrate the basic principle applicable to the Court’s approach to the Fourth Amendment and new technology: Courts must examine how enduring principles underlying the Fourth Amendment apply to the reality of the digital search at issue.³ The nature of the information, scale of the intrusion, and role of technology in daily life bear on that inquiry. Because ultimately, “[w]here the Fourth Amendment applies, it applies,” whatever “the quality or quantity of information” it obtains. *Chatrie*, 146 S. Ct. at 2210 (quoting *Kyllo*, 533 U.S. at 37). The technology may be new, but the constitutional principle is not.

II. THE BORDER EXCEPTION CANNOT AND SHOULD NOT APPLY TO CELL PHONE SEARCHES.

A. The Logic Of The Border Exception Is Fundamentally Rooted In The Physical World.

The border exception permits searches to control the physical entry of people and goods. It is “grounded in the recognized right of the sovereign to control, subject to substantive limitations imposed by the Constitution, who and what may enter the

³ The cases address different stages of the Fourth Amendment analysis. *Riley* examined whether the warrant requirement gave way to an exception, while *Carpenter* and *Chatrie* addressed whether the conduct triggered a reasonable expectation of privacy at all. But the same reasoning runs through each case: the Court considers the realities of the technology in applying enduring Fourth Amendment protections to ensure that “the rule the Court adopts . . . take[s] account of more sophisticated systems that are already in use or in development.” *Carpenter*, 585 U.S. at 313 (quotation omitted).

country.” *United States v. Ramsey*, 431 U.S. 606, 620 (1977). That authority serves concrete purposes: enforcing customs and importation laws, administering immigration laws, and stopping contraband at the border. *See, e.g.*, Orin Kerr, *The Digital Fourth Amendment: Privacy and Policing in Our Online World* 123 (2025). Those purposes are tied to the unique character of a border entry, which brings a person or item within the government’s power to determine whether entry is lawful. For that reason, “from before the adoption of the Fourth Amendment,” border searches “have been considered ‘reasonable’ by the single fact that the person or item in question had entered into our country from outside.” *Ramsey*, 431 U.S. at 619. But this physical logic does not extend to border searches in the digital world.

B. The Logic Of The Border Exception Does Not Translate To The Digital World.

Unlike the contents of one’s pockets or backpack, digital data need not pass through a physical checkpoint to enter the country. In border-exception cases, the border serves as a choke point for the movement of tangible objects—a moment where authorities can intercept prohibited goods before they enter and disappear into the country. *See, e.g.*, *United States v. Flores-Montano*, 541 U.S. 149, 152 (2004) (drugs secreted in fuel tanks); *United States v. Montoya de Hernandez*, 473 U.S. 531, 537 (1985) (contraband). Cell phones and the digital data they carry defy this logic entirely. A physical checkpoint cannot prevent the same data from arriving by other means. The contrast is clear: The gas tank in *Flo-*

res-Montano could conceal physical contraband; the traveler in *Montoya de Hernandez* could carry drugs inside her body. In each case, the checkpoint gave the government a unique opportunity to intercept a tangible object before it entered the country. But stopping a device at the border will not stop the information available through it from reaching the United States.

The location of the search has correspondingly little connection to the government's interest in the data. Unlike drugs, weapons, or prohibited agricultural products, data does not "enter" the United States in any meaningful sense simply because a device storing one copy of it crosses the border. The same data may already be accessible inside the country, or it may be transmitted there without the traveler or the traveler's phone. Searching that phone may uncover evidence, but the crossing does not give the government the distinctive opportunity to prevent physical entry that justified the searches in the border cases. An interest in obtaining the information does not itself explain why the government must obtain it without a warrant at that particular place.

That mismatch limits the weight of the government's asserted border interest. The exception addresses the entry of people and physical goods; digital searches are a poor fit for catching and preventing the physical kinds of national security harms that the border exception was designed to address. The Fourth Amendment requires justification for dispensing with its ordinary protections, and the physical border alone does not supply one for every digital search. Extending the border exception re-

quires courts to explain how its purposes justify the intrusion into the data itself.⁴

C. Comparing The Diminished Government Interest In A Warrantless Search To The Immense Intrusion On Privacy, The Border Exception As Applied To Digital Devices Searches Is Unreasonable.

Against the government’s diminished border interest stands a far greater intrusion into a traveler’s private life. Digital devices hold “the privacies of life,” distinct from a simple collection of objects in a traveler’s luggage. *Riley*, 573 U.S. at 403 (quoting *Boyd v. United States*, 116 U.S. 616, 630 (1886)). The constitutional balance must account for that difference, just as it did when the rationales for a search incident to arrest failed to justify access to phone data. *Id.* at 385–86. Where the privacy intrusion is minimal—as with a cursory inspection of luggage or physical-object searches previously discussed—the government’s sovereign interest in protecting its borders may suffice to justify a search

⁴ In this way digital data also upends the balancing test that undergirds the border exception. See *Montoya de Hernandez*, 473 U.S. at 539-40 (weighing government interest against individual privacy). The border exception traditionally passes this test because the government’s interest is at its “zenith” when protecting the border. *Flores-Montano*, 541 U.S. at 152 (citing *Ramsey*, 431 U.S. at 616). But the sovereign interest that justifies dispensing with a warrant requirement for a physical search cannot transition to digital devices. Because a device search is ineffective at stopping data from crossing the border, and poses a severe privacy intrusion, the balancing test fails.

without individualized suspicion. But where the intrusion reaches into the most intimate and expansive corners of a massive repository of a person's life, that balance shifts dramatically. Digital data is fundamentally different, so a digital search at the border implicates privacy interests of an entirely different magnitude. Several features of that search show why the balance cannot simply be carried over from physical objects.

1. First, a phone exposes an archive no traveler could carry in a suitcase. Even in 2014, cell phones had “immense storage capacity” sufficient to hold “millions of pages of text, thousands of pictures, or hundreds of videos.” *Riley*, 573 U.S. at 393–94. A border agent searching a suitcase might find a couple of letters, a photo album, or a personal diary. The same agent searching a digital device can rummage through decades of correspondence, a lifetime of personal photographs, comprehensive financial records, and detailed medical information. After all, what was once committed to paper is now “less and less likely to be found in physical forms” and lives instead in “the bits and bytes of an iPhone, Flickr account, or Gmail calendar server.” Erin Murphy, *The Politics of Privacy in the Criminal Justice System: Information Disclosure, the Fourth Amendment, and Statutory Law Enforcement Exemptions*, 111 Mich. L. Rev. 485, 488 (2013). The volume of this material is “exponentially more revealing than anything that might have been carried on a person before.” Ferguson, *Why Digital Policing Is Different*, *supra*, at 833. The intrusion also grows when different records are read together: they “reveal much more in combination than any isolated record.” *Ri-*

ley, 573 U.S. at 394. A location record, a message, and a payment may together reveal a relationship or activity that none discloses alone.

Nor does carrying a phone reflect a real decision by the traveler to bring each of those records across the border. A traveler selects which financial documents to put in a briefcase or which medical records to pack in a purse. Leaving the rest at home or in an office keeps them outside the purview of a luggage search. Digital devices work differently: their usefulness depends on access to information accumulated over time, much of it unrelated to the journey. Travelers do not selectively pack data as they pack their bags. They expect it to remain shielded from the government's "inquisitive eyes" while using the device that makes it available. *See Chatrie*, 146 S. Ct. at 2209 (quotation omitted). Possession of a device cannot reasonably be treated as a choice to expose everything it can retrieve.

Even if it were feasible to carry hard copies of information this voluminous and this sensitive, no reasonable traveler would take that risk: A briefcase full of financial documents, a purse full of medical records, or a bag full of every client's complete file feels far more exposed—and far more unreasonable to travel with—than a cell phone in one's pocket. Nor is a phone that allows "offloading" of data practical. "The point of carrying smartphones is to use what is on them." *Chatrie*, 146 S. Ct. at 2214. The apps and "services they provide" are what have become a "pervasive and insistent"—even "indispensable"—"part of daily life." *Id.* (quotation omitted). Travelers use the same device to get to the airport, check in for a flight, pay for a meal, speak with fami-

ly, join a client call, pull up a confidential work memo, store personal honeymoon photos, and present a boarding pass. On arrival, they may use it to navigate customs and immigration procedures, arrange transportation, and check into the hotel.⁵ The apps that perform those tasks connect the traveler to records and communications having nothing to do with crossing the border, yet all may be exposed to a border officer simply because the device was in the traveler’s pocket. The convenience of carrying those functions in one device does not diminish the privacy of the information they make accessible.

2. Second, devices reveal categories of information that a traditional luggage search could not assemble. Minute-by-minute location history can reconstruct every “indisputably private” place its owner has traveled, including trips “to the psychiatrist, the plastic surgeon, the abortion clinic, the AIDS treatment center, the strip club, the criminal defense attorney, or the by-the-hour motel.” *Chatrie*, 146 S. Ct. at 2210 (citing *Jones*, 565 U.S. at 415 (Sotomayor, J., concurring)). App data may store travelers’ biometrics, sleeping and eating patterns, romantic interests, and financial circumstances. None of these categories could be discovered by rifling

⁵ See U.S. Customs & Border Prot., *Mobile Passport Control (MPC)*, <https://www.cbp.gov/travel/us-citizens/mobile-passport-control> (travelers can use CBP’s app rather than completing paper Customs Declaration forms); see also U.S. Customs & Border Prot., *CBP Home Mobile App* (allows aliens to notify the U.S. Government of their intent to depart the United States), <https://www.cbp.gov/about/mobile-apps-directory/cbphome>.

through the papers and objects in a suitcase at the border, yet all may be exposed by a digital search. Border agents inspecting luggage have never had access to this breadth of information. And while law enforcement officers at the border—engaged, as they are, “in the often competitive enterprise of ferreting out crime,” *Johnson v. United States*, 333 U.S. 10, 14 (1948)—may surely desire it, data’s potential investigative value does not establish that the border exception authorizes warrantless and suspicionless access to it.

3. Third, a device gives access to information that never accompanied the traveler at all. “Cloud computing’ refers to the capacity of Internet-connected devices to display data stored on remote servers rather than on the device itself,” and users “often may not know whether particular information is stored on the device or in the cloud.” *Chatrie*, 146 S. Ct. at 2201 (citing *Riley*, 573 U.S. at 397). Cloud access can “shift our perceptions of what a single source of data collection, storage, and analysis is.” Joh, *Artificial Intelligence and Policing*, *supra*, at 289. A search through the phone may reach years of records on those servers, expanding the quantity of information available and the places from which it is retrieved. The government’s search extends beyond the traveler’s person and effects at the crossing, able to capture a lifetime of digital existence. An exception grounded in physical entry cannot explain that reach merely by pointing to the phone’s location.

4. Fourth, the search exposes people who never crossed the border. Modern communication is inherently networked, and searching one traveler’s phone can “expose embarrassing details on the target and

all of their contacts.” Andrew Guthrie Ferguson, *Digital Rummaging*, 101 Wash. U. L. Rev. 1473, 1524–25 (2024). Those contacts may include people who have never left the United States and have no connection to the trip. A single device provides confidential information about business entities that employ the traveler, or identities of the customers and clients who have hired them. Their information is exposed because someone else possesses it, not because they are “enter[ing] into our country from outside.” *See Ramsey*, 431 U.S. at 619. And as to that larger universe of people whose privacy interests are invaded despite being physically absent, the government’s asserted national-security interest in limiting physical contraband entering the country crumbles.

Digital records can reveal a person’s “familial, political, professional, religious, and sexual associations.” *Jones*, 565 U.S. at 415 (Sotomayor, J., concurring). Professional relationships can be particularly vulnerable. Anibowei’s phone held privileged and confidential client communications, including communications concerning people adverse to the Department of Homeland Security. A journalist’s phone may identify confidential sources. *See, e.g., Bryan Sykes, Border Search Rationales Ripe for Abuse, with Journalists Particularly at Risk*, 45 Hastings Comm. & Ent. L.J. 165 (2023). A law clerk’s phone might contain confidential materials related to matters pending before a court. In each case, searching one device compromises the web of confidences entrusted to its owner by many people with no notice of the search.

5. Fifth, returning the phone does not end the

intrusion. Unlike the physical inspection of luggage—a discrete and localized event—copying a phone’s contents, as happened to Anibowei, permits continued examination after the device and its owner have gone. The government’s directives authorize retention of certain extracted data for weeks without probable cause. U.S. Customs & Border Prot. CBP Directive No. 3340-049B, *Border Search of Electronic Devices* 11 (Jan. 1, 2026). Once ingested into that system, the traveler’s digital life is divorced from the border entirely. The data can be shared with local, state, and federal enforcement agencies. *Id.* The search at the border is merely the collection phase of a continuing intrusion. Stored data gives the government “the ability to search historically for suspicious activities not yet discovered.” Ferguson, *Digital Rummaging*, *supra*, at 1506.⁶ And it can reach beyond the traveler, generating investigative targets by revealing related data “from as yet unknown persons that indicate suspicious behavior”—all without ever crossing the border themselves. Joh, *Artificial Intelligence and Policing*, *supra*, at 285.

These features change both sides of the constitutional balance. The search can reach a lifetime of records, draw information from remote locations, ex-

⁶ The technology needed for this kind of collection, storage, and passive analysis is “remarkably easy, cheap, and efficient compared to traditional investigative tools”, and requires “little additional effort” from the police. See Joh, *Artificial Intelligence and Policing*, *supra*, at 288 (citing *Carpenter*, 585 U.S. at 311). Practical constraints matter to the Fourth Amendment analysis; for example traditional long-term monitoring was less invasive in part because it was “difficult and costly and therefore rarely undertaken.” *Jones*, 565 U.S. at 429 (Alito, J., concurring in the judgment).

pose the confidences of others, and permit examination long after the traveler returns home. Yet the government’s justification remains an exception directed at controlling the physical entry of people and goods. The Fourth Amendment requires courts to test that rationale against the search the government actually seeks to conduct, and the consequences of that search on its subject. *See Riley*, 573 U.S. at 385–86. A phone’s passage across the border does not resolve that mismatch or explain why the “privacies of life” lose their protection there. *Chatrue*, 146 S. Ct. at 2205 (citing *Boyd*, 116 U.S. at 630; *Carpenter*, 585 U.S. at 305). A rule designed to inspect persons and physical goods cannot justify access to a traveler’s entire digital life merely because the phone crosses the border.

III. THE COURT SHOULD RESOLVE THE QUESTION PRESENTED NOW.

Even beyond the circuit conflict described in the Petition, certiorari is further warranted because the decision below imposes substantial burdens on thousands of travelers who cross our borders every day. As a practical matter, there is no way for a traveler to avoid the consequences of the court of appeals’ decision. Courts have noted that travelers “are free to leave any property they do not want searched . . . at home.” *United States v. Touset*, 890 F.3d 1227, 1235 (11th Cir. 2018). But that is no answer in the wake of the digital shift recognized in *Riley* and *Carpenter*. A traveler can decide to leave a diary or a set of documents behind, but “the same is not true, at least practically speaking, when it comes to smartphones and digital devices.” *United States v. Kolsuz*, 890 F.3d 133, 145 (4th Cir. 2018).

Nor can travelers reliably protect sensitive information on the phone itself. Fourth Amendment doctrine offers “little basis to distinguish between behavior that legitimately invites police suspicion and that which should be left alone because it might protest the surveillance itself.” Elizabeth E. Joh, *Privacy Protests: Surveillance Evasion and Fourth Amendment Suspicion*, 55 Ariz. L. Rev. 997, 1017 (2013). So measures intended to shield private files may instead invite further scrutiny. At the border, mere password protection itself has been treated as a factor supporting a warrantless search. *See id.* at 1027 n.185 (noting *United States v. Cotterman*, 709 F.3d 952, 969 (9th Cir. 2013), “permit[ed the] use of password-protected file as part of [the] reasonable basis analysis”). A choice between leaving private information exposed and taking precautions that may justify a deeper search is no choice at all. It also renders the millions of people who cross borders for personal and professional reasons vulnerable to having their entire digital life exposed based on the arbitrary whim of a border agent.⁷

Anibowei’s experience crystallizes that dilemma. CBP copied the contents of his work phone in 2016, and border agents have searched his phone at least four more times since. *Anibowei v. Bondi*, 2025 WL 3231720, at *1 (5th Cir. Nov. 19, 2025). As an immi-

⁷ *See, e.g.*, Gaya Gupta & Angie Orellana Hernandez, *Border Agents Ask Lawyer With Pro-Palestinian Client to Give Up Phone*, Wash. Post (Apr. 8, 2025), <https://www.washingtonpost.com/2025/04/08/michigan-lawyer-border-phone/> (border agents demanded access to a lawyer’s phone despite objection that it contained privileged client information).

gration lawyer, he relies on communications, contacts, and files concerning clients whose interests may be adverse to the very agency conducting the search. Leaving the phone behind impairs that work and his duty to those clients; bringing it exposes the information entrusted to him and imperils his duty of confidentiality. He faces that untenable choice each time he travels.⁸

And his clients have no choice at all. They cannot control what their lawyer carries abroad, any more than patients, sources, parents, or colleagues can control what a doctor, journalist, child, or employee takes on a trip. The same is true of anyone whose messages, photographs, or shared files appear on another person's device. A search can expose "innocent people who simply communicated with" the device's owner. Ferguson, *Digital Rummaging, supra*, at 1525. For those people, leaving a device at home accomplishes nothing.

Chatrie makes review especially timely. It confirms that courts must assess whether the rationales for established doctrine fit the digital intrusion before them. Here, that legal question determines the validity of nationwide federal directives governing an ever-growing number of searches. CBP reported

⁸ A burner or "clean" phone offers no solution. Burner phones may "protect privacy," but they are "cumbersome to use" compared with phones connected to the services their owners rely on. Joh, *Privacy Protests, supra*, at 1012. A lawyer who removes access to client files cannot work from the road. A business traveler who removes corporate applications and authentication tools may not be able to work at all. A stripped-down phone protects privacy only by sacrificing the reason for carrying it.

searching the electronic devices of 8,503 arriving international travelers in fiscal year 2015 and 55,318 in fiscal year 2025.⁹ More than nine in ten Americans now carry a smartphone. *Chatrie*, 146 S. Ct. at 2200. Each day this question remains unresolved brings further searches of devices on which ordinary travelers depend.

This case presents the question directly. The Fifth Circuit agreed that the validity of the challenged directives “turns squarely and solely” on whether the Fourth Amendment generally requires warrants to search cell phones at the border. *Ani-bowei*, 2025 WL 3231720, at *2 (emphasis and quotation omitted). Nationwide, the courts of appeals disagree over the permissible scope of cell-phone searches at the border. *See, e.g., United States v. Alisigwe*, No. 24-960, slip op. at 5 (2d Cir. Sept. 17, 2026) (no warrant or suspicion required, treating cellphones like physical property); *United States v. Cano*, 934 F.3d 1002, 1018 (9th Cir. 2019) (depends on “whether the phone contains contraband”); *Alasaad v. Mayorkas*, 988 F.3d 8, 21 (1st Cir. 2021) (requiring “evidence of activity in violation of the laws enforced or administered by CBP or ICE”). The upshot is that travelers’ Fourth Amendment’s protections vary based on whether they fly into LAX, JFK, or Logan. This Court should grant certiorari to

⁹ U.S. Customs & Border Prot., *CBP Releases Statistics on Electronic Device Searches* (Apr. 11, 2017), <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-statistics-electronic-device-searches-0>; U.S. Customs & Border Prot., *Border Search of Electronic Devices at Ports of Entry* (updated Aug. 4, 2026), <https://www.cbp.gov/travel/dbp-search-authority/border-search-electronic-devices>.

provide the single, nationwide answer that travelers and border agents all need and the Fourth Amendment demands.

CONCLUSION

The Court should grant certiorari to uphold the Fourth Amendment's protections.

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