

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 A Writ Of Certiorari
To The United States Court Of Appeals
for the Fifth Circuit*

**BRIEF OF AMICUS CURIAE PROFESSOR
MORGAN CLOUD IN SUPPORT OF
PETITIONER**

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INTEREST OF AMICUS CURIAE¹

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SUMMARY OF ARGUMENT

The text, history, and early traditions of the Fourth Amendment all demonstrate that both manual and forensic cell phone searches are severe intrusions upon property rights—and the privacy rights that the founding generation understood to be protected by and encompassed *within property rights*—an understanding that directly influenced the ratification of the Fourth Amendment. Unless authorized by a warrant based on probable cause, searches of the contents of cell phones are best understood as warrantless searches of the twenty-first century digital equivalents of eighteenth-century “papers” protected in the Amendment’s text—and are therefore

¹ Pursuant to Supreme Court Rule 37.6, amici curiae state that no counsel for any party authored this brief in whole or in part and no entity or person, other than amici curiae, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Rule 37.2, counsel for Petitioner and Respondent received notice of amici’s intent to file this brief on September 8, 2026.

unlawful. Warrantless cell phone searches at the border conflict with this Court’s recent decisions, including *Riley v. California*, 573 U.S. 373 (2014).

ARGUMENT

I. Introduction

The Court should grant the Petition for Writ of Certiorari to eliminate the existing uncertainty caused by the current Circuit split regarding the application of the Fourth Amendment’s warrant requirement to searches of travelers’ cell phones at the border. Some circuits, including the Fifth Circuit below, have permitted warrantless government searches of cell phone contents in these circumstances. Such searches run afoul of this Court’s decision in *Riley v. California*, 573 U.S. 373 (2014). And these warrantless searches also conflict with the Fourth Amendment’s text, history, and traditions. First principles confirm that these intrusions on the contents of cell phones fall outside the bounds of a *routine* border search in any relevant respect and are unconstitutional searches of the modern equivalent of “papers.” U.S. Const. Amend. IV.

The text, history, and early traditions of the Fourth Amendment all demonstrate that both manual and forensic cell phone searches are severe intrusions upon property rights—and the privacy rights that the founding generation understood to be protected by and encompassed *within property rights*—secured by the Fourth Amendment. Unless authorized by a warrant based on probable cause, searches of the contents of cell phones are best understood as warrantless searches of the digital equivalents of

“papers”² protected in the Amendment’s text—and are therefore unlawful.

Indeed, this Court has recognized that searching cell phone data may be an even greater intrusion into the private affairs of someone’s life than traditional searches of houses and effects. Cell phone data can reveal unprecedented volumes of personal information. The Fourth Amendment commands that they must be authorized by a judicial warrant based on probable cause. *Riley, supra*; *Carpenter v. United States*, 585 U.S. 296 (2018); *Chatrie v. United States*, 146 S. Ct. 2193 (2026).

The extreme violations of constitutional rights produced by searches of cell phones’ contents are the same whether conducted in the interior or at the border. Cell phone searches can reveal to the government the most intimate details of peoples’ lives including personal medical information, privately held political views, religious affiliations, and social and romantic relationships.

Although the government’s power to seize and search property at the border has been found by this Court to be extensive, it is not unlimited—and the

² See, e.g., *United States v. Ackerman*, 831 F.3d 1292, 1304 (10th Cir. 2016) (Gorsuch, J.) (“No one in this appeal disputes that an email is a ‘paper’ or ‘effect’ for Fourth Amendment purposes, a form of communication capable of storing all sorts of private and personal details.”); *United States v. Cotterman*, 709 F.3d 952, 964 (9th Cir. 2013) (recognizing that digital information is equivalent to “personal ‘papers’”); *LeClair v. Hart*, 800 F.2d 692, 696 n.5 (7th Cir. 1986) (recognizing that information is a form of property). See also *Chatrie v. United States*, 146 S. Ct. 2193, 2220 (2026).

border search exception has generally been framed in terms of the ability of the government to detect contraband and to levy duties on imports. *See United States v. Montoya de Hernandez*, 473 U.S. 531, 537 (1985) (“Congress has granted the Executive plenary authority to conduct *routine* searches and seizures at the border, without probable cause or a warrant, *in order to regulate the collection of duties and to prevent the introduction of contraband* into this country.”) (emphasis added). *See also United States v. Flores-Montano*, 541 U.S. 149, 152 (2004). Neither justification for allowing warrantless “routine” border searches justifies promiscuous intrusions into a traveler’s text messages, photos, and emails.

Even at the border, a person’s right to be secure against unreasonable searches and seizures is “[b]alanced against the sovereign’s interests.” *Montoya de Hernandez*, 473 U.S. at 539. Although the balance “is qualitatively different . . . than in the interior” and is “struck much more favorably to the Government,” *id.* at 538, 540, the touchstone of the Fourth Amendment analysis is reasonableness. *Id.* at 538. Judged against the text, history, and traditions of the Fourth Amendment, both “manual” and “forensic” searches of the contents of cell phones are unreasonable without a warrant based on probable cause. The goals of the “border exception” to the Fourth Amendment, if triggered at all, are outweighed by the extreme incursions on property and privacy rights.

In *Riley* this Court held that the categorical rule permitting searches of “physical objects” incident to arrest did not justify warrantless searches of the “digital content on cell phones.” *Riley*, 573 U.S. at 386.

This distinction between physical objects and the contents of expressive property, like private papers and the contents of cell phones, is as old as the Fourth Amendment—and it applies equally in the border context.

This Court’s recent decisions requiring warrants for searches of cell phone data have largely relied upon the reasonable expectation of privacy standard first articulated in the late twentieth century. The property-based rules embedded in the Fourth Amendment’s text, history, and traditions produce the same result in this case. Government searches of the contents of expressive property like cell phone contents and private papers are unconstitutional, even if conducted at the border, unless authorized by a warrant based on probable cause.

II. Both Property and Privacy Rules Require a Warrant Based on Probable Cause for Searches of the Contents of Expressive Property

A. The Fourth Amendment Text and the Contents of Papers

The Fourth Amendment explicitly protects *persons* and three types of property: *houses*, *papers*, and *effects*. The separate designation of papers would be redundant if the founders only intended to protect papers as a form of physical, tangible, personal property, because the text also explicitly protects *effects*.³ The

³ See *Chatrpie*, 146 S. Ct. at 2220 (Gorsuch, J., concurring in the judgment) (The term effects “was understood at the time of the Fourth Amendment’s adoption to embrace most any kind of personal property.”)

Amendment's origins reveal that the distinction between papers and other effects rested on a fundamental English and American belief that a person's ideas, religious beliefs, and political theories, and the expression of them, particularly in his papers, were his most treasured property. For example, contemporaneously with the ratification of the Bill of Rights James Madison wrote that "a man has a property in his *opinions and the free communication of them*, [and] *has a property of peculiar value in his religious opinions, and in the profession and practice dictated by them.*"⁴

The Fourth Amendment text distinguishes "papers" from other effects precisely because papers are not merely physical property. The *contents* of papers are *expressive property* that can reveal the most intimate details of a person's life including one's political views, religious beliefs, and medical information. As a matter of common sense and current usage, a cell phone operates as, among other things, the modern-day equivalent of "papers" because this is today's technology for storing and communicating the personal details of our lives to others.

B. The Fourth Amendment Protects Both Property and Privacy Rights

The government can violate the Fourth Amendment in at least two ways: by transgressing

⁴ James Madison, *Property* (1792) (emphasis added). Ratification of the Bill of Rights was completed on December 15, 1791. Madison's essay *Property* was published in the *National Gazette* on March 29, 1792. The essay can be found in James Madison, *Property*, in 6 The Writings of James Madison 101 (Gaillard Hunt ed., 1906).

property rights, or by violating an individual's reasonable expectation of privacy. *See United States v. Jones*, 565 U.S. 400, 404–08 (2012); *Soldal v. Cook County*, 506 U.S. 56, 62–64 (1992); *see also Katz v. United States*, 389 U.S. 347, 351–53 (1967); *Chatrie*, 146 S. Ct. at 2204-2205. These two concepts of rights are not mutually exclusive. In some cases, “an alignment of the two approaches occurs,” *Chatrie*, 146 S. Ct. at 2205 n.5, most obviously where government agents search the contents of private papers or their contemporary equivalents, data stored in digital devices like cell phones.

By guaranteeing the right of the people “to be secure in their persons, houses, papers, and effects” U.S. Const. amend. IV, the text reveals the Fourth Amendment’s “close connection to property.” *Jones*, 565 U.S. at 404-405. Although the text does not use the word privacy, this omission did not signal that the Framers were unfamiliar with or unconcerned about protecting personal privacy from government searchers. Indeed, this Court has recognized that “[f]rom the founding onward . . . the Fourth Amendment has sought to secure the ‘privacies of life’ against the exercise of ‘arbitrary power,’” *Chatrie*, 146 S. Ct. at 2205 (quoting *Boyd v. United States*, 116 U.S. 616, 630 (1886)). “Whatever the form of an attempted incursion, the Fourth Amendment protects Americans’ long-held conviction that no government official should have free access to the most closely kept aspects of their lives.” *Chatrie*, 146 S. Ct. at 2205.⁵

⁵ *See also Terrence Byrd v. United States*, 584 U.S. 395, 403 (2018); *Florida v. Jardines*, 569 U. S. 1, 11 (2013); *Jones*, 565

This has been true since the Founding era. Eighteenth century Whig theory used property rights to protect what we now refer to as privacy rights. “[T]he colonial leaders drew heavily on the time-honored English Whig philosophy that regarded protection of private property as crucial to the preservation of freedom.” James W. Ely, Jr., *The Guardian of Every Other Right: A Constitutional History of Property Rights* 28 (1992).

The Fourth Amendment unsurprisingly employs an Eighteenth century vocabulary. “[P]rivacy,’ by contrast, ‘was not part of the political vocabulary of the [founding]. Instead, liberty and privacy rights were understood largely in terms of property rights.” *Carpenter*, 585 U.S. at 348 (Thomas, J., dissenting) (quoting Morgan Cloud, *Property Is Privacy: Locke and Brandeis in the Twenty-First Century*, 55 Am. Crim. L. Rev. 37, 42 (2018).) Although they employed different terminology in the text of the Fourth Amendment, “the founding generation understood that, by securing their property, the Fourth Amendment would often protect their privacy as well.” *Carpenter*, 585 U.S. at 350 (Thomas, J., dissenting).

C. The Meaning of Property at the Founding

1. John Locke’s Theory of Property

To be sure, eighteenth century political theory defined property to include tangible things that one can own, modify, control, and from which one can exclude others. For example, Blackstone wrote that property

U.S. at 406-407; *Kyllo v. United States*, 533 U.S. 27, 30-31 (2001); *Soldal*, 506 U. S. at 64-65.

was “that sole and despotic dominion which one . . . claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe.” 2 William Blackstone, *Commentaries* 2.

But the Whig theory of property that animated the Revolution and the Founding also relied upon an expansive theory of property that included far more than just tangible things. John Locke’s famous definition articulates this broad theory of property succinctly: a man’s property is “*his life, liberty and estate*.” John Locke, *The Second Treatise of Government* § 87 (emphasis added) (1690) (C.B. MacPherson ed., Hackett Publ’g Co. 1980).

Locke asserted that a person’s property was not limited to the *objects* he possessed. For example, a person’s *rights were his property*. Property rights served as a fundamental tool for protecting other rights, including the privacies of life, and this broad theory of property was a compelling force in the American revolutionary and founding eras. See Jack Rakove, *Revolutionaries: A New History of the Invention of America* 78 (2010) (noting that “*property* was one of the strongest words in the Anglo-American political vocabulary.”)⁶

To Locke, the ultimate reason people abandon the freedom of nature and accept the constraints inherent in living in society is “*for the mutual preservation of*

⁶ See also, Gordon S. Wood, *The Creation of the American Republic, 1776–1787*, 219 (1998) (“Eighteenth-century Whiggism had made no rigid distinction between people and property.”)

their lives, liberties and estates, which I call by the general name, property." Second Treatise § 123 (emphasis added). Major figures in the founding generation echoed Locke's focus on property rights. See, e.g., Samuel Adams, *The Rights of Colonists*, The Report of the Committee of Correspondence to the Boston Town Meeting, Nov. 20, 1772, Old South Leaflets no. 173 (Boston: Directors of the Old South Work, 1906) 7: 419 ("the grand end of civil government, from the very nature of its institution, is for the support, protection, and defence of those very rights; the principal of which, as is before observed, are Life, Liberty, and Property").

2. *James Madison's Broad Theory of Property*

Many founding era writers documented Locke's influence on the ideas, politics and rights that propelled the American Revolution and the creation of the Constitution. No document is more important for understanding the relationship between property and our constitutional rights than James Madison's essay *Property*, published only three months after the ratification of the Bill of Rights.⁷

In this essay, Madison spent little time discussing the narrow concept of property, which he defined as "external things of the world [like] land, or merchandize, or money." James Madison, *Property* (1792). Instead, Madison devoted the majority of his essay to explaining why material possessions are not the most important forms of property. "*In its larger and juster meaning*, it [property] embraces every thing to which

⁷ James Madison, *Property*, *supra* note 4.

a man may attach a value and have a right; and which leaves to every one else the like advantage.” *Id.* (emphasis added).

The most important property to which a man may attach value, Madison wrote, consists of his ideas, beliefs, faith, and the right to express them. *Id.* On the heels of ratification of the Bill of Rights, Madison warned that a government that “*directly* violates the property which individuals have in their opinions, their religion, their persons, and their faculties . . . is not a pattern for the United States.” *Id.*

Defining a person’s most treasured property as his ideas, beliefs, abilities, and the opportunity to express and exercise them captures the theoretical foundations of the Fourth Amendment’s special concern for the *contents of papers*. In this regard, the Fourth Amendment is tethered to the Fifth Amendment privilege against self-incrimination and the First Amendment guarantees of freedom of speech, thought, and religion. All of these have roots in the sixteenth and seventeenth century English religious conflicts that culminated with the Glorious Revolution and the British Bill of Rights. From at least 1580 until 1689, English rulers employed violent methods—forcefully searching homes for evidence of heresy and sedition, coercing confessions, often with torture, to expose disfavored religious or political beliefs, and executions—to repress religious and political opposition.⁸

⁸ See, e.g., William John Cuddihy, *The Fourth Amendment: Origins and Original Meaning, 602-1791*, pp. 103-118, 136-167, 193 (1990); William J. Stuntz, *The Substantive Origins of Criminal Procedure*, 105 *The Yale Law Journal* 393, 414-416, 419 (1995); Morgan Cloud, *Searching through History; Searching for*

As Madison’s essay demonstrates, protecting a person’s thoughts and beliefs contained in expressive property from abusive government acts was a core principle for the nation’s founders.

III. Protections for the Contents of Papers

A. British Paper Searches on the Eve of the Revolution

British searches and seizures triggered by anti-government publications provided direct historical sources for the Fourth Amendment’s explicit protections of a person’s “papers.” Indeed, no British judicial decision is more celebrated as a source of the Fourth Amendment than *Entick v. Carrington*, 95 Eng. Rep. 807 (C. P. 1765), which this Court continues to embrace as a “‘monument of English freedom’ ‘undoubtedly familiar’ to ‘every American statesman’ at the time the Constitution was adopted, and considered to be ‘the true and ultimate expression of constitutional law’ with regard to search and seizure.” *Jones*, 565 U.S. at 405 (citing *Brower v. County of Inyo*, 489 U.S. 593, 596 (1989) (quoting *Boyd v. United States*, 116 U.S. 616, 626, (1886))).

Entick, whose “propositions” this Court has “confidently” concluded “were in the minds of those who framed the fourth amendment to the constitution,” *Boyd*, 116 U.S. at 626-27, is a critical source for understanding why papers are a special type of property deserving the most stringent constitutional protections. In the early 1760s, British agents searched for

History, 63 The University of Chicago Law Review 1707, 1717-1718 (1996); Leonard W. Levy, *Origins of the Bill of Rights* 195 (1999).

papers to prove they contained seditious *content*. These searches and seizures for evidence related to publications criticizing the English government generated a number of lawsuits that directly influenced the creation of the Fourth Amendment.⁹

As happens during twenty-first century seizures and searches of cell phones, British agents committed physical trespasses on tangible personal property while searching for dissident papers. A second intrusion occurred when government agents read the papers' contents. Although reading may not have been a literal physical trespass, Lord Camden stressed that *both* types of intrusions violated the victims' rights and English law.

Lord Camden rejected government arguments that the power to conduct these searches "is essential to government, and the only means of quieting clamours and sedition." *Entick v. Carrington*, 19 How. St. Tr. 1029, 1064 (C. P. 1765). Searches for seditious papers inevitably led to the exposure of private papers. And like this Court's concerns about the expansive intrusions resulting from reading a cell phone's contents, *Riley*, 573 U.S. at 394-95, Lord Camden stressed that, as a practical matter, allowing

⁹ Entick challenged searches for evidence related to several issues of *The Monitor, or British Freeholder*. Most of the litigation resulted from publication of *North Briton No. 45*, including *Money v. Leach*, (1765) 97 Eng. Rep. 1075; 19 How. St. Tr. 1001; *Wilkes v. Halifax*, (1765) 95 Eng. Rep. 797; 19 How. St. Tr. 1406; *Beardmore v. Carrington*, (1764) 95 Eng. Rep. 790; 19 How. St. Tr. 1405; *Huckle v. Money*, (1763) 95 Eng. Rep. 768; 19 How. St. Tr. 1404; and *Wilkes v. Wood*, (1763) 98 Eng. Rep. 489; 19 How. St. Tr. 1153.

government to read private papers expanded the scope of the government intrusions. “[W]hen the messengers hesitated about taking all the manuscripts, and sent to the secretary of state for more express orders for that purpose, the answer was, ‘that all must be taken, manuscripts and all.’” *Entick*, 19 How. St. Tr. at 1065.

Echoing Locke and anticipating Madison, Lord Camden described the relationship between property and liberty:

The great end, for which men entered into society, was to secure their property. . . . By the laws of England, every invasion of private property, be it ever so minute, is a trespass. No man can set his foot upon my ground without my license, but he is liable to an action, though the damage be nothing *Id.* at 1066.

Lord Camden also emphasized that English rights protected with equal vigor intangible property, like the contents of papers:

There is no process against papers in civil causes In the criminal law such a proceeding was never heard of; and yet there are some crimes, such for instance as murder, rape, robbery, and house-breaking, to say nothing of forgery and perjury, that are more atrocious than libelling. But our law has provided no paper search in these cases to help forward the conviction. *Id.* at 1073.

Lord Camden’s condemnation of dragnet searches of private papers is mirrored by this Court’s recent decisions requiring warrants for searches of cell phone data. As this Court stated in *Riley*, “a cell phone search would typically expose to the government far *more* than the most exhaustive search of a house.” 573 U.S. at 396.

B. Early Supreme Court Decisions Protecting the Contents of Papers Under the Fourth Amendment

In two early decisions interpreting the Fourth Amendment, *Ex Parte Jackson* and *Boyd v. United States*, the Supreme Court acted to shield the expressive *contents* of private papers from government intrusions.

1. Ex Parte Jackson

The Supreme Court’s first important decision interpreting the Fourth Amendment confirmed that a warrant based on probable cause is required for government searches of the expressive contents of private letters. In *Ex Parte Jackson*, the Court affirmed that Congress can regulate what is sent through the U.S. mails, but also emphasized constitutional restrictions on government power to open private letters to examine their contents. *Ex Parte Jackson*, 96 U.S. 727 (1877).

Jackson was convicted of violating a federal statute prohibiting anyone from “knowingly” depositing or sending any “letter or circular concerning” lotteries “in the mail.” Jackson mailed “a circular” promoting a lottery in an envelope. He was “sentenced to pay a fine of \$100, with the costs of the prosecution, and to be

committed to the county jail until the fine and costs were paid.” *Id.* Jackson filed a petition for a writ of habeas corpus, arguing that his imprisonment was illegal because the statute under which he was convicted was unconstitutional and void. *Id.*

The Supreme Court denied the writ, concluding that the Constitution empowered Congress to regulate what could be sent in the mails. *Id.* at 732. But the Court also recognized that this authority did not confer unrestricted power to enforce those regulations by *reading* the letter’s *contents*. Rather, in the law’s

enforcement, a distinction is to be made between different kinds of mail matter, — between what is intended to be kept free from inspection, such as letters, and sealed packages subject to letter postage; and what is open to inspection, such as newspapers . . . and other printed matter, purposely left in a condition to be examined. *Id.* at 732-733.

The Fourth Amendment’s “great principle”, the Court observed, “extends to their papers, thus closed against inspection, wherever they may be,” and “[w]hilst in the mail, they can only be opened and examined under like warrant, issued upon similar oath or affirmation, particularly describing the thing to be seized, as is required when papers are subjected to search in one’s own household.” *Id.* at 733.

2. *Boyd v. United States*

Eight years after issuing its opinion in *Ex Parte Jackson*, this Court decided *Boyd v. United States*, 116 U.S. 616 (1886). *Boyd* relied directly on *Entick v.*

Carrington to define the limits the Fourth Amendment imposed on government searches and seizures of property. In *Boyd*, the United States filed a civil forfeiture action against E.A. Boyd & Sons (the Boyds), claiming that they had violated customs laws by importing cases of plate glass without paying the required duties. The government obtained a subpoena compelling the Boyds to produce business records in court, where government lawyers read their contents to secure a forfeiture verdict at trial. The Boyds argued that this was an unreasonable seizure and search of the documents. *See Boyd*, 116 U.S. at 630. This Court agreed, confirming that most government searches of private papers to obtain evidence for use in a criminal (or civil forfeiture) trials violated the Fourth Amendment, as well as the Fifth Amendment privilege against self-incrimination.

Thus, early English law which informed the principles adopted by the Founders, as well as early decisions of the Supreme Court, confirm that the Fourth Amendment demands that searches of the contents of a person's papers must be authorized by a warrant based on probable cause.

IV. Requiring a Warrant to Search Cell Phone Contents Is Consistent with Customs Laws Dating Back to the First Congress

That this case arises at the border does not diminish the Fourth Amendment's protections of the contents of a traveler's "papers"—including their modern analogs. Indeed, beginning with the first Congress, federal legislation has limited the categories of

property subject to searches by customs officers.¹⁰ As this Court has recognized, “Congress has granted the Executive plenary authority to conduct routine searches and seizures at the border, without probable cause or a warrant, *in order to regulate the collection of duties and to prevent the introduction of contraband into this country.*” *Montoya de Hernandez*, 473 U.S. at 537 (emphasis added).

But Customs searches must be for these specified legislative purposes in order to fall within the border search exception. Customs laws grant discretion to search for property *related to customs violations*, and this subject matter limitation imposes significant restrictions on searches of the contents of expressive property. Current federal statutes permit searches of packages, including “letter-class mail,” but only if “reasonable cause to suspect” that the envelope’s contents violate customs laws exists. *United States v. Ramsey*, 431 U.S. 606, 607 (1977) (emphasis added).

¹⁰ This early statute allowed customs enforcers “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.” *United States v. Ramsey*, 431 U.S. 606, 616, n. 12 (1977). *See also* 19 U.S.C. § 1467 (authorizing “inspection, examination, and search ... of the persons, baggage, and merchandise discharged or unladen [when] a vessel from a foreign port or place ... arrives at a port or place in the United States”); *Ramsey*, 431 U.S. at 611-613 (an 1866 statute permits authorized persons “to board or search vessels may ... search any trunk or envelope, wherever found, in which he may have a reasonable cause to suspect there is merchandise which was imported contrary to law....”) (citing 19 U.S.C. § 482)).

Limiting the scope of customs searches to contraband and dutiable property is a principle dating back to a statute enacted by the first Congress. As this Court observed in *Ramsey*, “[t]he historical importance of the enactment of this customs statute by the same Congress which proposed the Fourth Amendment is, we think, manifest.” *Id.* at 616-617 (quoting *Boyd*, 116 U.S. at 623). In *Boyd*, the Court emphasized that as the first customs statute “was passed by the same Congress which proposed for adoption the original amendments to the Constitution, it is clear that the members of that body did not regard searches and seizures” designed to effect “the seizure of stolen goods” or the “*seizure of goods forfeited for a breach of the revenue laws, or concealed to avoid the duties payable on them*” as “unreasonable” within the “prohibition of the [Fourth] amendment.” *Boyd*, 116 U.S. at 623 (emphasis added).¹¹

By contrast, most cell phone searches are unlikely to lead to the discovery or seizure of stolen goods carried by the traveler at the time of the search, goods forfeitable for nonpayment of duties, or goods concealed to avoid duties. This is because these devices are incapable of housing the tangible things that might themselves constitute a customs violation. This physical reality is critical because, although federal law authorizes customs agents to search packages for “*merchandise which was imported contrary*

¹¹ *Boyd* did not ban all papers searches. For example, it permitted searches for contraband and imported goods on which duties had not been paid consistent with constitutional and statutory requirements. *Boyd*, 116 U.S. at 623.

to law,” it specifically requires agents to obtain a warrant before *reading* mail. *Ramsey*, 431 U.S. at 611-612. Thus, even if cell phone searches could theoretically reveal evidence of independent customs violations, the phone itself would not contain contraband or dutiable imports the way that luggage or a shipment of goods might.

Indeed, the same federal statute granting Customs officers discretion to seize and search objects crossing the nation’s international borders also imposes a warrant requirement for *reading the contents of personal letters*. 19 U.S.C. § 1583 (emphasis added). The statute commands that no person authorized to search by the statute “(1) shall read, or authorize any other person to read, any correspondence contained in mail sealed against inspection unless prior to so reading—(A) a search *warrant has been issued*...; or (B) the sender or addressee has given written authorization for such reading.” 19 U.S.C. § 1583(c)(2)(A)(B).

Similarly, this Court has held that although an officer possessing “reasonable cause to believe” that customs laws are being violated can open an envelope, “postal regulations flatly prohibit, under all circumstances, the reading of correspondence absent a search warrant.” *Ramsey*, 431 U.S. at 623 (citing 19 CFR § 145.3 (1976)). In *Ramsey*, this Court emphasized that a customs agent’s search of “envelopes” did not violate the Fourth Amendment because the agent possessed facts supplying “reasonable cause to suspect” that there was *merchandise or contraband in the envelopes*. The statute authorized the warrantless search because agents limited the intrusion to an inspection of the envelope’s physical contents, and did

not read the contents of the private papers. *Ramsey*, 431 U.S. at 612-615.

Government agents at the border are authorized to search property to collect import duties or find contraband. To comply with the border exception to the Fourth Amendment, searches of cell phone contents must be reasonable in furtherance of the purposes underlying the exception. *See Riley*, 573 U.S. at 386 (analyzing cell phone searches against the backdrop of the policy concerns justifying the search incident to arrest exception and finding “no comparable risks when the search is of digital data”).

Warrantless searches at the border do not further any of the exception’s purposes. This is because searches of cell phone contents bear “little resemblance to the type of brief physical search[es]” permitted by the border search exception. *Cf., Riley*, 573 U.S. at 386. Searches of these expressive contents are constitutional only when authorized by a warrant based on probable cause.

CONCLUSION

For the reasons stated above, the Petition for Writ of Certiorari should be granted.

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