

No. 26-208

In the Supreme Court of the United States

GEORGE ANIBOWEI, *Petitioner*,

v.

TODD BLANCHE, ATTORNEY GENERAL, ET AL.

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

**BRIEF OF PROJECT FOR PRIVACY &
SURVEILLANCE ACCOUNTABILITY, INC.
AS *AMICUS CURIAE* SUPPORTING
PETITIONER**

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QUESTION PRESENTED

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

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INTRODUCTION AND INTERESTS OF *AMICUS CURIAE*¹

The purpose of a border search is to ask what people, goods or cargo are entering the country. A general search of a traveler’s phone asks a different question: What has the traveler done and said? The former reflects the border-search authority the Founders knew. The latter—the search at issue here—turns that authority into a general search for evidence unrelated to valid border concerns, particularly for U.S. citizens, who have a right to enter.

Here, Petitioner George Anibowei, a U.S. citizen and immigration attorney, suffered repeated searches of his phone at the border. Those searches were unrelated to his entry into the country or any supposed contraband or taxation issues. And they revealed “a digital record of nearly every aspect” of his life and his clients’ confidences. See *Riley v. California*, 573 U.S. 373, 393-395 (2014). Those confidences are especially sensitive, because Petitioner’s clients are often adverse to the agency conducting the search.

Below, the Fifth Circuit sustained that practice by asking the wrong question. It asked where the search occurred, not what it was for. Because the search happened at the border, the court treated the border-search exception as controlling. Pet.App.4a. But searching, copying, and retaining Petitioner’s data

¹ This brief was not authored in whole or in part by counsel for any party and no person or entity other than *amicus curiae* or its counsel or members has made a monetary contribution to the brief’s preparation or submission. Counsel of record for all parties received timely notice of intent to file this brief.

served neither the customs nor entry purposes that justify border searches. Those searches did not determine what Petitioner was bringing into the country. They only exposed his communications and records.

Those searches violated the Fourth Amendment. The interest that justifies a warrant exception also sets its bounds. A search under an exception “must be limited in scope to that which is justified by the particular purposes served by the exception.” *Florida v. Royer*, 460 U.S. 491, 500 (1983) (plurality op.). And when technology changes the search’s nature, courts must test that justification anew. *Riley* thus requires that a rule built for physical effects does not automatically extend to a phone’s digital contents. “[A]ny extension of that reasoning to digital data has to rest on its own bottom.” 573 U.S. at 393.

Border phone searches like the ones here are of special concern to *amicus* Project for Privacy & Surveillance Accountability, Inc. (“PPSA”), a nonprofit, nonpartisan organization dedicated to protecting privacy rights against unwarranted government surveillance. PPSA has a particular interest in preventing an exception for physical border inspections from becoming a general power to search Americans’ digital lives.

STATEMENT

Petitioner is a naturalized United States citizen and a practicing immigration attorney in Texas. Pet.App.6a. Many of his clients are in removal proceedings adverse to the Department of Homeland Security, and he communicates with them confidentially by cell phone. Pet.App.89a-90a.

Between 2016 and 2024, border agents searched Petitioner's phone without a warrant at least five times as he re-entered the country. Pet.App.112a-114a. During the first search, agents copied all data on the device—including confidential client communications. Pet.App.112a-113a. And the government continues to retain that data. Pet.App.113a-114a.

The searches were also prolonged. *Ibid.* Returning from Nigeria in February 2017, Petitioner was held for roughly three hours while an agent reviewed his text messages, WhatsApp communications, and emails. Pet.App.114a. Because carrying his work phone exposes privileged client material to the agency his clients oppose, he stopped traveling with it. Pet.App.113a-114a.

Those repeated searches led to this suit. Petitioner raises Administrative Procedure Act and Fourth Amendment challenges to the directives that authorize these searches. Pet.App.5a-6a. The Fifth Circuit affirmed dismissal on the merits. It held itself bound by *United States v. Castillo*, 70 F.4th 894 (5th Cir. 2023), and *Malik v. U.S. Dep't of Homeland Sec.*, 78 F.4th 191 (5th Cir. 2023). Pet.App.4a. It recognized that “the validity of the Directives *** turns squarely

and solely on the question whether the Fourth Amendment generally requires warrants to search cell phones at the border.” *Ibid.* (internal citation omitted). And it answered “no” categorically—without asking whether reading a phone’s contents advances any interest the exception serves. *Ibid.* Rehearing *en banc* was denied. See Pet.App.23a-24a.

ADDITIONAL REASONS TO GRANT REVIEW

The petition presents an entrenched conflict on an important and recurring question. The courts of appeals have split 7-2 over whether agents ever need a warrant to search a cell phone at the border. Only yesterday, the Second Circuit joined the courts requiring no warrant, holding that a manual search of a traveler’s cellphone is a routine border search demanding no individualized suspicion and rejecting the argument that *Riley* imposes a warrant requirement at the border. *United States v. Alisigwe*, -- F.4th --, 2026 WL 2751713, at *1-2, *10-11 (2d Cir. 2026). The circuits also disagree over the suspicion required for such searches. Pet.9. The circuits that have decided whether a more thorough “forensic” search requires individualized suspicion divide 2-1, and the Second Circuit expressly reserved that question. *Alisigwe*, 2026 WL 2751713, at *11 n.9. A returning traveler’s Fourth Amendment rights thus depend on where she lands. Pet.23. Application of that Amendment should not depend on the airport.

And this issue recurs often. Customs and Border Patrol (CBP) conducted more than 55,000 electronic-device searches in fiscal year 2025, including a

substantial and growing number involving U.S. citizens. Pet.22.

This case presents the question cleanly. Petitioner directly challenges the governing directives, so no exclusionary-rule, good-faith, or harmless-error issue stands between the Court and the merits. Pet.App.5a-6a; Pet.28. The Fifth Circuit itself recognized that the case “turns squarely *and solely*” on the warrant question. Pet.App.4a (internal citation omitted); Pet.8. And five searches of the same person over eight years show that the dispute is real and recurring. Pet.App.110a-114a; Pet.7.

Review would let the Court restore a basic limit that the decision below erased: Border agents may inspect what enters the country for contraband or taxable goods. But they may not use the border to search a U.S. citizen’s or lawful resident’s digital records for evidence of what he has done.

As explained below, two principles establish that limit. First, founding-era customs law tied even broad search powers to the purposes of customs enforcement. And *Royer*, *Riley*, and *Carpenter v. United States*, 585 U.S. 296 (2018), require that limit to survive technological change. Second, searching digital records for evidence does not determine what enters the country. Even if the border-search exception permits searches genuinely directed at digital contraband, that narrower rationale cannot support the Fifth Circuit’s categorical rule. A general evidentiary search of a phone requires a warrant.

I. Contrary to the Fifth Circuit’s Decision, the Border-Search Exception Permits Inspection of What Enters the Country, Not a General Search for Unrelated Evidence.

The border-search exception is broad, but its justification has always supplied its limit. Founding-era customs law authorized substantial searches of vessels and goods entering the country, but tied that authority to customs purposes rather than a general search for evidence. Modern doctrine preserves the same principle. The Fifth Circuit’s categorical rule ignores both limits.

A. Even broad Founding-era border searches remained tied to the purposes that justified them.

Founding-era law did not require the same suspicion for every search at the border. But even broad search authority remained tied to customs purposes. The historical materials show no power to read a traveler’s private papers for evidence, as the government claims here.

1. Writs of assistance. The Fourth Amendment was the founding generation’s answer to the writs of assistance—the standing, discretionary customs writs that let officers search at will. Even the notorious writ, however, specified what officers could seek. Thomas Hutchinson’s 1761 draft authorized entry of “any Ship *** and also into any Shop House Warehouse *** or other Place whatsoever,” and search of “any trunk chest pack case truss or any other parcell or package,” but only “for any goods wares or merchandizes prohibited to be imported or exported or whereof the

Customs or other Duties have not been duly paid.”² It was general as to places, but specific as to the objects of the search. And its object was customs goods, not papers, as the language of the Fourth Amendment emphasizes.

Arguing against the writs in 1761, James Otis rested on “[t]he Privilege of House” and distinguished the general writ from lawful search: An officer could search a house “by a Special Warrant *** sworn to be suspected, and good Grounds of suspicion appearing,” and Otis “grant[ed] a special Writ of assistance on special oath, for special Purpose.”³ Otis thus distinguished customs searches for defined goods from a general power to search.

Otis’s denunciation of these writs was electric. Years later, John Adams recalled that “[t]hen and there the child Independence was born.” *Riley v. California*, 573 U.S. 373, 403 (2014) (quoting 10 *The Works of John Adams* 247-248 (Charles Francis Adams ed., Boston, Little, Brown & Co. 1856)). Even during ratification, anti-Federalists warned that “the daring experiment of granting *writs of assistance* *** is not yet forgotten,” and objected to leaving Americans exposed to “any petty revenue officer to enter our

² Thomas Hutchinson, *Draft of a Writ of Assistance: December 1761*, Founders Online, <https://tinyurl.com/3cevjssm> (last visited Sep. 17, 2026).

³ *John Adams’ Minutes of the Argument: Suffolk Superior Court, Boston, 24 February 1761*, Founders Online, <https://tinyurl.com/mwutjfb2> (last visited Sep. 17, 2026).

houses, search, insult, and seize at pleasure.”⁴ Such objections led directly to the Fourth Amendment.

2. The First Congress preserved the same limit in the Nation’s first customs laws. The Congress that proposed the Fourth Amendment gave customs officers broad search authority but tied it to customs purposes, with different levels of suspicion in different settings. The Collection Act of 1789 authorized officers “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.” Act of July 31, 1789, ch. 5, § 24, 1 Stat. 29, 43. But to search a “dwelling-house, store, [or] building,” officers needed a warrant on oath. *Ibid.* The 1790 Act reenacted that provision verbatim. Act of August 4, 1790, ch. 35, § 48, 1 Stat. 145, 170.

Section 31 of the 1790 Act conferred even broader authority. It let officers board arriving vessels and have “free access to the cabin, and every other part of a ship or vessel” for purposes that included “examining and searching” the vessel—with no individualized suspicion. *Id.*, § 31, 1 Stat. at 164. So suspicion was not the constant in early customs law. Purpose was. Even this broader authority served the customs function of inspecting vessels and cargo and enforcing the revenue laws; it did not confer a general power to search private papers for evidence of wrongdoing. The First Congress thus authorized substantial warrantless

⁴ Mercy Otis Warren, *Observations on the New Constitution* 8 (¶14) (Boston, The Old South Ass’n 1788), available at <https://tinyurl.com/2naxdb4s>.

searches at the border, but tied that authority to the sovereign interests that justified it.

3. Correspondence. Early postal law reinforces that line. Even when the government carried Americans’ letters, founding-era law restricted officials from opening them. The Continental Congress’s 1782 Post Office Ordinance placed the mails in government hands but forbade opening “any letter” except “by the consent of the person *** or by an express warrant.”⁵ The Post Office Act of 1792 made it an offense to “unlawfully *** open[] any letter.” Act to Establish the Post-Office *** Within the United States, ch. 7, § 16, 1 Stat. 232, 236 (1792). Power to carry a letter did not include power to read it.

This Court later drew a similar distinction. In *Boyd v. United States*, it distinguished the “search for and seizure of *** goods liable to duties and concealed to avoid the payment thereof” from “a search for and seizure of a man’s private books and papers for the purpose of obtaining information therein contained, or of using them as evidence against him”; the two “differ *toto coelo* [lit. *by the whole extent of the heavens*].” 116 U.S. 616, 623 (1886), *overruled in part by Warden v. Hayden*, 387 U.S. 294, 301-302 (1967).⁶ And in *United States v. Ramsey*, the Court sustained the inspection

⁵ 23 *Journals of the Continental Congress 1774-1789*, at 671 (Wash., Libr. of Congress 1914) (1782).

⁶ PPSA does not rely on *Boyd*’s separate “mere evidence” rule, rejected in *Warden v. Hayden*, 387 U.S. 294, 301-302 (1967); it relies on *Boyd*’s distinction between a customs search for goods and a search of private papers for information or evidence, see 116 U.S. at 623.

of incoming mail for contraband while noting that the reading of the correspondence inside was forbidden absent a warrant, and reserving the constitutional question. 431 U.S. 606, 623-624 & n.18 (1977).

Thus, authority to inspect an object crossing the border is not authority to examine the private information accessible through it. A cell phone does not erase that distinction merely because it is a physical device.

B. *Royer* and *Riley* require that historical limitation to survive technological change.

Two settled principles carry that historical limit into this case. First, as *Royer* held, an exception must be bounded by its reason. *Florida v. Royer*, 460 U.S. 491, 500 (1983) (plurality op.). The question is not where officers search, but why the law lets them search without a warrant.

Second, courts must test that justification anew when technology changes the search's nature. *Riley* refused to extend the search-incident-to-arrest exception to a phone by analogy. It did so because extending the rule to phones would "untether the rule from the justifications underlying" the exception. 573 U.S. at 386, 393 (quoting *Arizona v. Gant*, 556 U.S. 332, 343 (2009)). A phone is not one more container, and equating the two is "like saying a ride on horseback is materially indistinguishable from a flight to the moon." *Ibid*. A search of a phone can "expose to the government far *more* than the most exhaustive search of a house," reaching "a broad array of private information never found in a home in any form." *Id.* at

396-397. A modern cell phone is not just another container.

Applied here, those principles show that extending the border-search exception to a general evidentiary search of a phone is no longer determining what enters the country. It instead examines records to learn what the traveler has done or said.

And this Court has confronted exactly that danger of technological drift and resolved it in favor of the historical baseline. As the government’s capacity to intrude has grown, the Court has “sought to ‘assure *** preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted,’” so that rights are not left “‘at the mercy of advancing technology.’” *Carpenter v. United States*, 585 U.S. 296, 305 (2018) (quoting *Kyllo v. United States*, 533 U.S. 27, 34-35 (2001)). And the founding-era customs power was tied to customs purposes, not a general authority to search private papers for evidence.

In short, the Fourth Amendment does not permit a traveler’s carrying his papers, correspondence, and records in a single device to convert the government’s border-search authority into a general power to search them.

II. The Fifth Circuit’s Categorical Rule, Which Conflicts With Other Circuits, Untethers Digital Searches from What Enters the Country.

But in conflict with other Circuits, the Fifth Circuit turned the border-search exception into the general search power the historical rule forbids. The

court treated the exception as authorizing a search of a traveler's digital records merely because the device containing them crossed the border. But searching records for evidence of wrongdoing is far different from determining what is entering the country. And even assuming that searches genuinely directed at digital contraband present a different case, that narrower rationale cannot justify a categorical power to search digital records for evidence.

A. Searching digital records for evidence does not help determine what is entering the country.

The government's searches of Petitioner's phone show the dangers of the power the Fifth Circuit's rule permits. Agents copied the entire contents of his phone, including his confidential communications with immigration clients, and then retained the data. Pet.App.112a-114a; Pet.2-3. But what did reading and copying those client communications have to do with determining what Petitioner was bringing into the country? Nothing. The search did not inspect the phone for something prohibited from entering. And nothing in those files was entering the country.

The same mismatch appears in how digital data moves. Much of what a phone displays is not carried across the border in the device at all. As this Court recognized in *Riley*, the data "may not in fact be stored on the device itself" but on "remote servers." 573 U.S. at 397. CBP's own policy recognizes the distinction: A border search may examine information "resident

upon the device,” but officers “may not use the device to access information that is solely stored remotely.”⁷

Thus, as other courts have put it, “[s]topping [a] cell phone from entering the country” does not “stop[] the data contained on it from entering the country.” *United States v. Smith*, 673 F. Supp. 3d 381, 394 (S.D.N.Y. 2023). See also *United States v. Kolsuz*, 890 F.3d 133, 145 (4th Cir. 2018). For remotely stored data, whether the handset crosses or not, the information remains accessible inside the United States. Searching the handset therefore does not prevent that data from entering the country.

Here the searches exposed Petitioner’s private records and kept the data. That is an evidentiary search. It defies every border-search decision of this Court. As the Ninth Circuit put it, those decisions “involved searches to locate items being smuggled rather than evidence.” *United States v. Cano*, 934 F.3d 1002, 1018 (9th Cir. 2019) (cleaned up).

The cases confirm this. *Ramsey* involved incoming mail inspected for contraband. 431 U.S. at 623-624. *United States v. Flores-Montano* involved inspection of a vehicle’s fuel tank. 541 U.S. 149, 151 (2004). Both involved inspections directed at identifying what was crossing the border. Neither approved a general search of private records for evidence of wrongdoing. And although *Flores-Montano* described the sovereign’s border interest as “at its zenith,” it expressly confined

⁷ *Border Search of Electronic Devices at Ports of Entry*, U.S. Customs & Border Prot. (Aug. 4, 2026), <https://tinyurl.com/4psc73dw> (scroll to “Privacy and Transparency” and select “Does CBP search information that is stored remotely (in the cloud)?”).

its holding to property and distinguished searches implicating greater “dignity and privacy interests.” *Id.* at 152-153. The Court has thus never approved the categorical, purpose-blind search power the decision below assumes. Those cases involved inspections of goods, not private records.

And here the directives themselves confirm that the Fifth Circuit sustained more than a power to inspect what crosses the border. The directives let agents gather evidence. As Petitioner describes them, they permit officers to review any traveler’s device without a warrant and without suspicion (a “basic” search) and to copy and analyze it “forensic[ally]” on reasonable suspicion or a “national security concern.” Pet.4-5. The directives further permit the government to retain information, including data constituting evidence of a crime, and to share it with other federal, state, local, tribal, and foreign agencies. Pet.5, 23. A power to collect and share evidence is not a power to control what enters the country.

Petitioner’s U.S. citizenship narrows the relevant border interests still further. Pet.App.6a. Because he is a returning citizen, the government cannot decide whether to let him in. Cf. *Almeida-Sanchez v. United States*, 413 U.S. 266, 272-273 (1973). The searches therefore cannot be justified by an immigration interest in deciding whether to admit Petitioner himself. Yet the Fifth Circuit never asked what remaining border interest justified searching his digital records. It asked only where the search occurred and improperly let geography supply the answer.

B. As other Circuits have held, the possibility of digital contraband cannot justify a categorical evidentiary-search power.

In reviewing the Fifth Circuit's decision, this Court need not decide whether the border-search exception reaches searches genuinely directed at digital contraband. Even if it does, that narrower rationale cannot justify the Fifth Circuit's categorical rule permitting searches of digital records for evidence of wrongdoing. Physical contraband enters the country through the physical object that carries it; stopping the object stops the contraband. Digital data need not enter that way. It may reside on remote servers and remain accessible inside the United States whether or not the handset crosses the border. *Riley*, 573 U.S. at 397; *Smith*, 673 F. Supp. 3d at 394. Searching the handset therefore does not necessarily prevent even prohibited digital material from entering the country.

1. Moreover, even accepting the Ninth Circuit's premise in *Cano* that the border exception may permit a search genuinely directed at digital contraband, its reasoning confirms the limit, unlike the Fifth Circuit. *Cano* authorized a warrantless phone search "*only* to determine whether the phone contains contraband." 934 F.3d at 1018 (emphasis added). "[A] broader search cannot be 'justified by the particular purposes served by the exception.'" *Ibid.* (quoting *Royer*, 460 U.S. at 500).

The Eleventh Circuit took the opposite approach in *United States v. Touset*, 890 F.3d 1227 (11th Cir. 2018). It required no suspicion because it treated the

border itself as sufficient justification. See *id.* at 1233. But that view simply reproduces the error below. It defines the power by the place of the search rather than its purpose. Whatever the proper rule for searches genuinely directed at digital contraband, that rationale cannot justify the Fifth Circuit’s broader rule permitting searches of a traveler’s digital records for evidence of wrongdoing merely because the device crossed the border.

The Second Circuit’s recent decision makes the disagreement over the border-search exception’s limiting principle explicit. The *Alisigwe* majority held that the exception extends beyond contraband and border-related offenses because “[s]earching for evidence of criminality among those entering the country” itself exercises the sovereign’s authority to control who and what enters. *Alisigwe*, 2026 WL 2751713, at *2.

But the Fourth and Ninth Circuits take a different view. The Ninth Circuit permits a warrantless phone search “only to determine whether the phone contains contraband,” *Cano*, 934 F.3d at 1018. The Fourth Circuit too requires “individualized suspicion of an offense that bears some nexus to the border-search exception’s purposes of protecting national security, collecting duties, blocking the entry of unwanted persons, or disrupting efforts to export or import contraband.” *United States v. Aigbekaen*, 943 F.3d 713, 721 (4th Cir. 2019) (citing *Kolsuz*, 890 F.3d at 143). And the disagreement exists within the Second Circuit itself. Judge Lee, concurring in the judgment, explained that the exception is grounded in “controlling immigration and the bringing of

contraband items into the country,” and that searching digital data for evidence of ordinary crime “has little connection to the underpinnings of the border-search rationale.” *Alisigwe*, 2026 WL 2751713, at *21, *23 (Lee, J., concurring in the judgment).

The lower courts thus disagree not merely over the warrant rule, but over the governmental interests that define the border-search exception’s scope.

2. Once a general evidentiary search falls outside the border-search exception, the ordinary warrant rule controls. Agents who search a traveler’s digital records for evidence of wrongdoing need a warrant based on probable cause, unless another established exception applies.

And *Riley* shows what agents can do: secure the phone and seek a warrant. If an emergency arises, exigent circumstances remain available. See *Riley*, 573 U.S. at 401-402. That conclusion does not depend on a claim that every founding-era border search required suspicion. It follows because history does not justify a general search for evidence, and *Riley* supplies the rule for searching a phone. The Court need only reject the categorical, purpose-blind rule the decision below adopted.

CONCLUSION

The border-search exception gives the government extraordinary power to inspect what enters the Nation. It does not let the government search every international traveler for evidence without a warrant. That limit mattered when border searches involved ships, cargo, and papers. It matters still more when a single phone exposes years of

communications, photographs, movements, and records. In conflict with other Circuits, the Fifth Circuit erased that limit based solely on where the searches occurred. This Court should grant review and restore it.

Respectfully submitted,

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