

No.

In the Supreme Court of the United States

ADAM BLOCKER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This Court’s decision last Term in *Chatrrie v. United States*, 146 S. Ct. 2193 (2026), reaffirmed that a user does not forfeit his or her Fourth Amendment rights merely by conveying information to a third-party technology company in the ordinary course of using its services: “A cell-phone user is not to be viewed as sharing private information with third parties—which then can be freely passed on to the government—just by doing the ordinary things cell-phone users do.” *Id.* at 2214-2215.

The question presented is:

Whether—in light of *Chatrrie*—a user’s agreement to terms of service reserving the service-provider’s right to review a user’s files and disclose them to third parties authorizes a warrantless governmental search of those files.

PARTIES TO THE PROCEEDING

The parties to the proceeding in the court below were petitioner Adam Blocker, appellant below; and respondent the United States of America, appellee below.

RELATED PROCEEDINGS

United States v. Blocker, No. 25-1536 (7th Cir. May 5, 2026).

United States v. Blocker, No. 20-cr-00704 (N.D. Ill. Mar. 28, 2025).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Adam Blocker respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-9a) is reported at 174 F.4th 587. The district court's order denying petitioner's motion to suppress is unreported; it is reproduced in the appendix at 10a-22a.

JURISDICTION

The court of appeals entered its judgment on May 5, 2026. On July 27, 2026, Justice Barrett extended the time to file this petition to October 2, 2026. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

INTRODUCTION

This past Term, the Court in *Chatrrie v. United States*, 146 S. Ct. 2193 (2026), definitively rejected the notion that a user of a private technology company's services "los[es] his legitimate expectation of privacy" in electronic data stored on the company's servers by

“authoriz[ing] [that company] to collect, retain, and use” his data. *Id.* at 2212. Instead, the Court held, “[a] cell-phone user is not to be viewed as sharing private information with third parties—which can then be freely passed on to the government—just by doing the ordinary things cell-phone users do.” *Id.* at 2214-2215.

In the decision below—issued while *Chatrle* was pending at this Court—a panel of the Seventh Circuit held that a user *did* give up his Fourth Amendment rights in files stored with a service provider by agreeing to terms of service materially identical to the ones at issue in *Chatrle*. And setting aside the panel opinion’s incompatibility with the reasoning and result of *Chatrle*, the panel below expressly acknowledged that its decision contributed to “[a] conflict among the circuits” on the question presented. App., *infra*, 8a. The panel observed that “the Supreme Court may eventually need to address the conflict.” *Id.* at 9a.

The Court should grant certiorari to do just that: The circuits are plainly split over the effect of third-party terms of service on users’ Fourth Amendment rights; this is a critically important issue affecting the constitutional rights of a huge swath of Americans; and the decision below is wrong, particularly given this Court’s later decision in *Chatrle*. And if it does not issue a plenary grant, the Court should, at minimum, grant, vacate, and remand for reconsideration in light of *Chatrle*, which is incompatible with the decision below. See, e.g., *United States v. Braun*, __ F.4th __, 2026 WL 2444109, at *9 n.2 (7th Cir. Aug. 20, 2026) (separate opinion of Brennan, C.J.) (observing that “[a] future panel of this court may have to reconcile *Chatrle*” with the decision below here).

STATEMENT

A. Legal background

1. The Fourth Amendment establishes “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend IV. Doctrinally, a search may occur in one of two ways. See generally *Carpenter v. United States*, 585 U.S. 296, 303-304 (2018). First, under the “property-based approach,” the government conducts a search when, “for the purpose of obtaining information,” it commits a “trespass upon the areas (‘persons, houses, papers, and effects’)” the Amendment “enumerates.” *United States v. Jones*, 565 U.S. 400, 404-406 (2012). Second, under *Katz v. United States*, a search also occurs when government officers invade a person’s “reasonable expectation of privacy.” 389 U.S. 347, 360 (1967) (Harlan, J., concurring); accord *id.* at 351-353 (majority opinion).

For a period, the third-party doctrine sharply limited this privacy inquiry with respect to information exposed to non-governmental entities. In *United States v. Miller*, the Court held that a depositor had no reasonable expectation of privacy in records held by his bank because they were “voluntarily conveyed” to it in the ordinary course of business. 425 U.S. 435, 442 (1976); see also *Smith v. Maryland*, 442 U.S. 735, 742 (1979) (same, for “the numbers [a person] dialed on his [landline] phone”).

Digital data, however, often “does not fit neatly under existing precedents.” *Carpenter*, 585 U.S. at 306. Thus, in *Carpenter*, the Court “decline[d] to extend *Smith* and *Miller*”—i.e., the third-party doctrine—“to cover” cell-site location information (CSLI), that is, “records revealing the location of [the

petitioner’s] cell phone whenever it made or received calls.” *Id.* at 306, 309. As the Court explained, “seismic shifts in digital technology” have put significantly more “revealing” personal information in the hands of third-party service providers today versus the 1970s. *Id.* at 313-314. As a result, neither of the rationales for the third-party doctrine applied to the CSLI in *Carpenter*: The detailed and personally revealing information at issue “implicates privacy concerns far beyond those considered in *Smith* and *Miller*”; and given that carrying a cell phone “is indispensable to participation in modern society,” “in no meaningful sense does the user voluntarily assume the risk of turning over a comprehensive dossier of his physical movements.” *Id.* at 314-315 (quotation marks omitted; alteration incorporated).

Just this past Term, the Court built upon its *Carpenter* holding in *Chatrpie v. United States*, 146 S. Ct. 2193 (2026), holding that a different type of historical location information—Google’s Location History feature—was similarly protected under the Fourth Amendment. That was so even though the feature was an “optional add-on” not literally indispensable to cell phone usage, “which [the] user must enable by an ‘affirmative act’ beyond ‘powering up’ a phone.” *Id.* at 2213.

As the Court explained, giving the examples of “sending an email on Gmail, uploading a photo to Google Photos, or adding a calendar entry to Google Calendar,” any purported distinctions from *Carpenter* were without a difference:

The point of carrying smartphones is to use what is on them—as *Carpenter* said, to use the apps and “services they provide.” *That* is what

has become a “pervasive and insistent”—even “indispensable”—“part of daily life.” And so *that* is what *Carpenter* insulated from the third-party doctrine. A cell-phone user is not to be viewed as sharing private information with third parties—which then can be freely passed on to the government—just by doing the ordinary things that cell-phone users do.

Chatrie, 146 S. Ct. at 2214-2215 (citations omitted). Importantly, Chatrie’s agreement to Google’s terms of service did not affect his reasonable expectation of privacy in his information. See *id.* at 2212 (rejecting notion that in “authorizing Google to collect, retain, and use’ his location information, Chatrie lost his legitimate expectation of privacy”) (alteration incorporated).

2. Once a court concludes that a search has occurred, the next step is to evaluate its reasonableness; if “unreasonable,” the search is constitutionally prohibited. U.S. Const. amend IV. The “basic rule” is that “warrantless search[es]” like the one here “are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.” *Arizona v. Gant*, 556 U.S. 332, 338 (2009) (quoting *Katz*, 389 U.S. at 357).

“[O]ne of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent.” *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973). When it offers a consent justification, the government “has the burden of proving that the consent was, in fact, freely and voluntarily given.” *Id.* at 222. And “[t]he standard for measuring the scope of a suspect’s consent under the Fourth Amendment is that of

‘objective’ reasonableness—what would the typical reasonable person have understood by the exchange between the officer and the suspect?” *Florida v. Jimeno*, 500 U.S. 248, 251 (1991).

B. Factual background

1. Users of the cloud storage service Dropbox must agree to Dropbox’s terms of service before storing files on Dropbox’s servers. App, *infra*, 2a. At the time petitioner signed up for Dropbox services, one term stated that “Your Stuff” (the user’s uploaded data) “is yours. These Terms don’t give us any rights to Your Stuff except for the limited rights that enable us to offer the Services.” *Id.* at 11a.

Another term stated that “[w]e may review your conduct and content for compliance with these Terms and our Acceptable Use Policy. With that said, we have no obligation to do so.” App., *infra*, 12a. Finally, a term in Dropbox’s privacy policy, incorporated by reference into the terms of service, stated:

We may disclose your information to third parties if we determine that such disclosure is reasonably necessary to: (a) comply with any applicable law, regulation, legal process, or appropriate government request; (b) protect any person from death or serious bodily injury; (c) prevent fraud or abuse of Dropbox or our users; (d) protect Dropbox’s rights, property, safety, or interest; or (e) perform a task carried out in the public interest.

Id. at 13a. In the immediately following paragraph, the policy stated that “[w]e believe that your data should receive the same legal protections regardless of whether it’s stored on our Services or on your home computer’s hard drive.” *Id.* at 14a.

2. Dropbox also had a contractual relationship with the National Center for Missing & Exploited Children (NCMEC), an organization that “holds a charter from the United States, receives public money, and has been designated as the national clearinghouse for reports of child pornography.” App., *infra*, 3a (citing 18 U.S.C. § 2258A). In 2014, NCMEC sublicensed hash-matching software called PhotoDNA to Dropbox “solely for [Dropbox] to assist NCMEC with the NCMEC mission.” C.A. Appellant App. A-026; see also *id.* at A-027 (Dropbox “may not * * * use” the software “other than for NCMEC’s Mission.”).¹

In 2015, the two parties executed a further agreement providing, among other things, that “Dropbox * * * *will* use the NCMEC PhotoDNA Signatures, in conjunction with the PhotoDNA, in an attempt to identify Apparent Child Pornography on its servers.” C.A. Appellant App. A-035, ¶ 4 (emphasis added); see also *id.* ¶ 5(a) (similar).

3. In 2018, Dropbox used the sub-licensed hash-matching software to inspect files petitioner had uploaded to his Dropbox account. App., *infra*, 15a. When the software “detected suspected child pornography in several of [petitioner’s] image files, a Dropbox employee manually reviewed those files”; Dropbox then “reported its findings” to NCMEC, which itself “viewed each file, added to the investigation with some of its own research, and sent the report to the

¹ Hash-matching algorithms “create[] a unique digital signature (known as a ‘hash’) of an image which is then compared against signatures (hashes) of other photos to find copies of the same image.” PhotoDNA, Microsoft (2026), <https://perma.cc/H83G-S2CM>.

FBI.” *Id.* at 15a-16a. “The FBI, in turn, viewed each photograph and video” before obtaining a search warrant for petitioner’s residence and the entirety of his Dropbox files. *Id.* at 16a. The resulting searches uncovered child pornography. *Id.* at 2a.

C. Proceedings below

Petitioner moved to suppress, contending that Dropbox had been acting as an agent of the government when it warrantlessly searched his files for child pornography pursuant to its agreement with NCMEC, violating his Fourth Amendment rights. See App., *infra*, 17a-19a.² The district court denied the motion, holding that even if Dropbox was acting as the government, petitioner had consented to the search “by agreeing to Dropbox’s terms of service.” *Id.* at 19a. Petitioner then pleaded guilty, preserving his right to appeal the suppression issue. *Id.* at 2a.

On appeal, the Seventh Circuit affirmed. The panel assumed that NCMEC is part of the government (App., *infra*, 3a; see *United States v. Ackerman*, 831 F.3d 1292, 1295 (10th Cir. 2016) (Gorsuch, J.) (holding same)), but held that even if Dropbox’s contracts with NCMEC made Dropbox a government agent, petitioner had consented to its searches by agreeing to the terms of service (App., *infra*, 3a-5a). See also *id.* at 5a (“Voluntary consent eliminates any

² “Although the Fourth Amendment does not apply to a search or seizure, even an arbitrary one, effected by a private party on his own initiative, the Amendment protects against such intrusions if the private party acted as an instrument or agent of the Government.” *Skinner v. Railway Lab. Execs. Ass’n*, 489 U.S. 602, 614 (1989).

need for probable cause or a warrant, even when police do the searching.”).

The panel observed that “three courts of appeals” have taken a contrary “approach,” under which materially similar terms of service were held insufficient to undermine a user’s Fourth Amendment rights. App., *infra*, 5a (citing *United States v. Lowers*, 170 F.4th 134 (4th Cir. 2026), *United States v. Maher*, 120 F.4th 297 (2d Cir. 2024), and *United States v. Warshak*, 631 F.3d 266 (6th Cir. 2010)). But it adhered to prior circuit precedent in *United States v. Adkinson*, 916 F.3d 605 (7th Cir. 2019), which had held that agreement to similar terms-of-service language regarding T-Mobile’s disclosure of cell-site location information constituted consent for Fourth Amendment purposes. *Id.* at 7a-8a.

Indeed, the panel flatly observed that “*Adkinson* is incompatible with the approach taken in *Lowers*, *Maher*, and *Warshak*,” resulting in “[a] conflict among the circuits.” App., *infra*, 8a; see also *id.* at 7a, 9a (counting *United States v. Young*, 350 F.3d 1302 (11th Cir. 2003), on the *Adkinson* side of the split). But it declared itself “not inclined” to “reconsider *Adkinson*.” *Id.* at 8a.

Finally, the panel addressed *Chatrie*, which at that time was pending before this Court. Observing that *Chatrie* “grew out of a consent permitting Google to disclose location data,” the court of appeals noted that “consent may influence the [Supreme] Court’s decision.” *Id.* at 8a-9a. But, the panel concluded, “[i]f *Chatrie* does not address the validity of consents that permit but do not compel disclosures to public officials, the Supreme Court may eventually need to address the conflict between decisions such as *Adkinson*

and *Young* on one side, and *Lowers*, *Maher*, and *Warshak* on the other.” App., *infra*, 9a.

REASONS FOR GRANTING THE PETITION

The Court should grant certiorari to resolve whether common terms of service used by technology service providers extinguish the Fourth Amendment rights of users of those services. Three courts of appeals hold that, at least as to contractual terms like the ones at issue here, the user maintains a reasonable expectation of privacy in his cloud-hosted files, precluding warrantless searches. Two other circuits, including the Seventh Circuit below, disagree. In the Seventh Circuit’s view, reasonable expectation of privacy is beside the point, because private-party terms like those here actually constitute consent to governmental searches of a user’s files.

That analysis is incorrect. It is also flatly incompatible with this Court’s decision in *Chatrpie*, which issued after the decision below. And given the near-ubiquity of cloud-storage services in modern life—some 88% of Americans use them—the question presented is hugely important. The Court should grant certiorari to resolve the conflict over this critical issue of Fourth Amendment law. If it does not, it should at minimum grant, vacate, and remand so that the Seventh Circuit may reconsider its decision with the benefit of this Court’s opinion in *Chatrpie*.

A. The lower courts are divided over the question presented.

As Judge Easterbrook explained for the panel below, there is “[a] conflict among the circuits” over the question presented (App, *infra*, 8a): Three courts of appeals hold that private terms of service like those at

issue here do not allow a warrantless governmental search of a user’s digital files, while two circuits hold that they do. See also *ibid.* (acknowledging that Seventh Circuit precedent “is incompatible with the approach taken in in *Lowers, Maher, and Warshak*”).³

1. At least three courts of appeals have held that a provider’s terms of service reserving the right to review a user’s files and disclose them to third parties does not permit the government to conduct a warrantless search of those files.

The **Sixth Circuit** holds that “the mere *ability* of a third-party intermediary to access the contents of a communication” under agreed terms of service “cannot be sufficient to extinguish a reasonable expectation of privacy.” *United States v. Warshak*, 631 F.3d 266, 286-287 (6th Cir. 2010). Thus, in *Warshak*, the Sixth Circuit held that the defendant had a reasonable expectation of privacy in the contents of his emails notwithstanding his provider’s subscriber agreement, which stipulated that it “*may* access and use individual Subscriber information in the operation of the Service and as necessary to protect the Service.” *Id.* at 287. The court concluded that the government violated the Fourth Amendment by compelling the

³ Accord, e.g., John Ross, *Short Circuit: An inexhaustive weekly compendium of rulings from the federal courts of appeal*, The Volokh Conspiracy (May 8, 2026) (decision below “entrenches a circuit split by holding that the fine print in all the online terms of service you never read means you’ve consented to gov’t searches of your electronic files.”) <https://perma.cc/5MK4-4SMF>; Orin Kerr (@orinkerr), X (May 5, 2026 at 1:14pm) (observing “a 3-1 split” and explaining that the decision below is “wrong in construing this as a contract issue”), <https://perma.cc/Q897-EAB6>.

provider to disclose those emails without a warrant. *Id.* at 288.

The **Second Circuit** has adopted the same rule, expressly relying on *Warshak*'s reasoning. In *United States v. Maher*, 120 F.4th 297, 302 (2d Cir. 2024), the Second Circuit held that Google's Terms of Service, which advised users that Google "may" review their content and "will share" information with law enforcement to comply with the law, did not authorize warrantless governmental examination of the files. *Id.* at 301-302, 307. Expressly following *Warshak*, the court explained that Google's terms of service, which "repeatedly qualif[y] the content review that the company 'may' conduct, do not effect such a complete extinguishment" of the defendant's reasonable expectation of privacy. *Id.* at 309.

The **Fourth Circuit** has also reached the same conclusion. See *United States v. Lowers*, 170 F.4th 134, 147 (4th Cir. 2026). Examining Google's privacy policy, which stated that it "may 'analyze your content to help us detect abuse such as spam, malware, and illegal content,'" the Court acknowledged that the warning "reduced [Lowers's] expectation of privacy to some degree," but clarified that a "diminished privacy interest[]' does not mean that the Fourth Amendment 'falls out of the picture' entirely." *Id.* at 145 (quoting *Riley v. California*, 573 U.S. 373, 392 (2014)). It concluded that the government had conducted "an unreasonable search in violation of the Fourth Amendment" by "opening Appellant's files." *Id.* at 140. In so holding, the court expressly sided with the Second and Sixth Circuits, and "f[ou]nd" the Eleventh Circuit's contrary "analysis unpersuasive." *Id.* at 147.

2. The Seventh and Eleventh Circuits disagree, holding that a user’s assent to a private service provider’s terms of service like those here waives the user’s Fourth Amendment protection against warrantless governmental searches.

The **Seventh Circuit** below reasoned that by agreeing to the terms of service, “Blocker allowed Dropbox * * * to inspect his files, and to disclose appropriately in response. Action within the scope of such a consent does not require probable cause or a warrant.” App., *infra*, 8a. The court held that the validity of that consent as to Dropbox does not “turn[] on whether a unit of government has a view about what should happen.” *Id.* at 5a-6a. And it criticized the Second, Fourth and Sixth Circuits for analyzing “whether a given consent ‘extinguishes all expectation of privacy’ or something similar,” stating that “that is not how consent works in the law of search and seizure.” *Id.* at 8a; see also *Adkinson*, 916 F.3d at 610 (holding that T-Mobile user consented in advance to T-Mobile’s “shar[ing] information with law enforcement” through terms of service).

The panel below also invoked the **Eleventh Circuit’s** decision in *United States v. Young*, which it described as “enforcing a consent to search in a FedEx bill of lading.” App., *infra*, 7a (citing *Young*, 350 F.3d at 1308-1309). In *Young*, IRS agents x-rayed packages obtained in-transit from FedEx, finding contraband cash. The Eleventh Circuit held that while this would ordinarily constitute “a warrantless government search,” a notice on the FedEx airbill stating that “[w]e may, at our option, open and inspect your packages” had “eliminate[d] any expectation of privacy” the defendant may have had. 350 F.3d at 1307-1308.

As an “alternative basis,” the court also concluded that FedEx, as bailee of the packages, “possessed authority to consent to a search” of the packages it held. *Id.* at 1308.

* * *

As the court below observed, “[a] conflict” exists “among the circuits” (App., *infra*, 8a) both over the answer to the question presented—whether agreement to common terms of service permits warrantless searches of information stored with third-party service providers—and even as to the proper mode of analysis: reasonable expectation of privacy or consent. Just as the panel suggested, the Court should grant certiorari to “address the conflict.” *Id.* at 9a.

B. This is a suitable vehicle for addressing a critically important issue.

Whether a provider’s terms-of-service agreement allows the government to conduct a warrantless search of cloud-based personal property is a deeply important question of federal constitutional law. Leaving it unresolved would carry significant practical consequences well beyond this case: Hundreds of millions of Americans keep their private “papers” (U.S. Const. amend IV) with third-party cloud-storage providers, and the decision below hinges the Fourth Amendment protections those papers receive on a terms-of-service contract to which the government was not a party, that the user likely did not read, and that the provider may revise at will.

1. In recent years, the amount of personal data Americans store with third-party cloud-based services has increased dramatically. A recent survey found that 88% of Americans rely on cloud storage for

personal files.⁴ In 2008, by contrast, only 5% of online Americans used an online service to store files or back up a hard drive.⁵ The practice of keeping digital property on CDs, flash drives, and other physical devices is largely obsolete, as individuals increasingly prefer storage that is durable, digital, and reachable from any device.

As a result, Americans now store their most personal and revealing documents with third-party cloud providers, so much so that a person’s entire life and livelihood are often contained in scattered files and folders of electronic property. Where CSLI supplied “a detailed chronicle of a person’s physical presence” (*Carpenter*, 585 U.S. at 315), this substantive data supplies the contents of a person’s mind. It “provides an intimate window into a person’s life,” revealing “familial, political, professional, religious, and sexual associations.” *Id.* at 311 (quoting *Jones*, 565 U.S. at 415 (Sotomayor, J., concurring)).

Many Americans store digital copies of passports, birth certificates, wills, financial statements, and medical records in the cloud.⁶ Others fill these

⁴ Kate Quinlan & Josh Koeber, *The Cost of Running Out of Space: More Than Half Pay for Cloud Storage on Their Phone*, All About Cookies (May 7, 2026) (survey of 1000 adults), <https://perma.cc/A3FE-QNGN>.

⁵ John B. Horrigan, *Use of Cloud Computing Applications and Services*, Pew Rsch. Ctr. (Sept. 12, 2008), <https://perma.cc/2N5E-7KVD>.

⁶ See Office of the National Coordinator for Health Information Technology, *National Trends in Hospital and Physician Adoption of Electronic Health Records*, Dep’t of Health & Hum. Servs. (June 2026), <https://perma.cc/9KMW-UPQK> (reporting that, as of 2024, more than 99% of non-federal acute care hospitals and

accounts with notes or diaries—ideas, plans, and secrets that they have told no one. Such files are “little more than an extension of [the user’s] person,” and they “reveal no less than he could reveal upon being questioned directly.” *Fisher v. United States*, 425 U.S. 391, 420 (1976) (Brennan, J., concurring). In other words, the cloud is where a modern person drafts the letter she has not sent, keeps the journal detailing her inner thoughts, works out whether to leave a marriage or report a supervisor, and writes down the name of a doctor she has not yet called. On the cloud, people carry with them “every piece of mail they have received for the past several months, every picture they have taken, [and] every book or article they have read.” *Riley*, 573 U.S. at 393-394.

Perhaps even more revealingly, the cloud encompasses email servers. A person’s inbox holds years of correspondence with doctors, lawyers, employers, friends, and family, kept on the provider’s servers long after the user has read it. Safeguarding such “private correspondence” was one of the key purposes of the

91% of office-based physicians had adopted a certified electronic health record, up from 28% and 34%, respectively, in 2011); Chelsea Richwine, *Individuals’ Access and Use of Patient Portals and Smartphone Health Apps*, 2024, Office of the Assistant Secretary for Technology Policy (June 2025), <https://perma.cc/CPV8-5WJS> (finding that more than three in four individuals nationwide reported being offered online access to their medical records by their healthcare provider or insurer); Am. Bankers Ass’n, *National Survey: Bank Customers Continue to Use Mobile Apps More Than Any Other Channel to Manage Their Accounts* (Nov. 18, 2025), <https://perma.cc/H6W7-M47Z> (54% of Americans use mobile banking as their primary method of account access, an almost ninefold increase over the preceding decade).

framers “when they adopted the Fourth Amendment.” *Ackerman*, 831 F.3d at 1307-1308.

Indeed, two features of cloud storage make warrantless searches of it a greater intrusion than searches of the physical papers it has largely replaced. First, cloud storage has an “immense storage capacity,” which means that any potential “intrusion on privacy” is “not physically limited” in any way. *Riley*, 573 U.S. at 393-394. And second, the information contained on the cloud “can date back” to before the purchase of any particular device. *Id.* at 394. Document services retain version histories, autosaved revisions, and deleted files, frequently without the user’s knowledge. A search of a cloud account therefore recovers both what a person chose to keep in their effects *and* what they affirmatively chose to discard.

The materials at stake here are frequently expressive as well. Americans store such items as unpublished manuscripts, political movement membership rolls, organizational donor records, congregational directories, and campaign strategy memoranda on these third-party servers and exchange them by email. Though each of these items may be “stored on [a provider’s] servers,” and the provider *may* have access to it, a user reasonably views these materials to be their own, and thus to be “shielded from the ‘inquisitive eyes’ of the government.” *Chatrie*, 146 S. Ct. at 2209.

And law enforcement has already demonstrated its appetite for this material. More than 2,000 agencies across all fifty States and the District of Columbia have purchased mobile forensic tools, and agencies have performed hundreds of thousands of device

extractions since 2015.⁷ The practice is not confined to crimes committed online: a review of agency records found these tools used in investigations of graffiti, shoplifting, drug possession, petty theft, and public intoxication, at departments operating with little or no written policy governing them.⁸

In sum, if—as the court below held—a user is deemed to consent to governmental searches of her cloud-hosted private papers simply by using the services necessary to function in the modern world, then the Fourth Amendment would have little remaining purchase in our increasingly digital society. The Court should intervene to rectify this serious affront to the constitutional rights of the hundreds of millions of Americans who use cloud-based services today.

2. This case is a suitable vehicle to resolve the effect of private-party terms of service on the constitutionality of warrantless governmental searches of cloud-based data.

First, the Seventh Circuit clearly identified the conflict between the circuits on this issue and suggested that the Court resolve it. The panel observed that Seventh Circuit precedent “is incompatible with the approach taken” by the Second, Fourth, and Sixth Circuits, and acknowledged that “[a] conflict among the circuits would persist no matter what we did.” App., *infra*, 8a. It added that if *Chatrle* did not address “the validity of consents that permit” disclosure to

⁷ Logan Koepke, et al., *Mass Extraction: The Widespread Power of U.S. Law Enforcement to Search Mobile Phones*, Upturn 41 (Oct. 2020), <https://perma.cc/M95S-KDQ7>.

⁸ *Id.* at 9.

public officials, this Court “may * * * need to address the conflict.” *Id.* at 9a.

Second, the question presented is the sole ground for the judgment below. Petitioner argued that Dropbox’s conduct was fairly attributable to the government and that the search occurred when Dropbox examined his files without a warrant or probable cause. The Seventh Circuit assumed that attribution and rested its holding entirely on the terms of service. App., *infra*, 3a-8a. The answer to that question is therefore dispositive of the judgment: After the district court denied his motion to suppress, Petitioner entered a conditional guilty plea reserving the right to appeal that ruling. *Id.* at 2a. The Court should take this opportunity to address the broadly applicable and important question presented here.

C. The decision below is wrong.

This Court’s review is also warranted because the decision below is wrong. Indeed, it is irreconcilable with this Court’s later-issued decision in *Chatrle*.

1. There is no dispute that a user’s electronic files are generally subject to Fourth Amendment protection, whether under the *Katz* reasonable expectation of privacy test or a property-based approach.

In *Riley v. California*, 573 U.S. 373 (2014), the Court drew on the “pervasiveness” of modern cell phones—and both their “immense storage capacity” and the “detailed information about all aspects of a person’s life” contained therein—to hold that the search-incident-to-arrest exception to the warrant requirement is inapplicable to “digital information on a cell phone.” *Id.* at 378, 393-397; see also *id.* at 396-397 (“[A] cell phone search would typically expose to the

government far *more* than the most exhaustive search of a house: A phone not only contains in digital form many sensitive records previously found in the home; it also contains a broad array of private information never found in a home in any form.”).

As a result, the Court held, “a warrant is generally required before” the government may search “the information on a cell phone.” *Riley*, 573 U.S. at 401. And that is the case whether the files are stored locally in the phone’s memory or instead “stored in the cloud.” *Id.* at 397-398; see also *ibid.* (“Cell phone users often may not know whether particular information is stored on the device or in the cloud, and it generally makes little difference.”).

Thus, in *Chatrie*, the court cited “emails, documents, photographs, or calendars” as “private materials” that “a user reasonably views as his own,” “even if stored on Google’s servers.” 146 S. Ct. at 2209. “And as a result,” these are files “that he reasonably expects to be shielded from the ‘inquisitive eyes’ of the government” (*ibid.*)—that is, these materials are subject to a reasonable expectation of privacy, absent some intervening doctrine.

The same result obtains under the property-based approach. See, e.g., *Ackerman*, 831 F.3d at 1304, 1307-1308 (“[E]mail is a ‘paper’ or ‘effect’ for Fourth Amendment purposes,” and “the warrantless opening and examination of (presumptively) private correspondence,” whether “physical” or “virtual,” “seems pretty clearly to qualify as exactly the type of trespass to chattels that the framers sought to prevent when they adopted the Fourth Amendment.”); *Chatrie*, 146 S. Ct. at 2222 (Gorsuch, J., concurring in the judgment) (under property approach, “[t]he government conducted a

In *Chatrie*, the Court definitively rejected the argument that a user “los[es] his legitimate expectation of privacy” in his Google Location History—a detailed log of the user’s movements—by “authoriz[ing] Google to collect, retain, and use’ his location information” through agreeing to Google’s terms of service. 146 S. Ct. at 2212. Indeed, the government affirmatively argued that Google’s applicable privacy policy in *Chatrie* “inform[ed] users that Google would share personal data outside of Google (such as with the government) if Google believed in good faith that disclosure was ‘reasonably necessary’ to comply with ‘legal process’ or to ‘[p]rotect’ public ‘safety.’” U.S. Br. 26, *Chatrie v. United States*, No. 25-112 (quoting *Chatrie* J.A. 69-70)); see also *id.* at 26-27 (“Thus, * * * petitioner had notice that he had signed onto a service that would create records disclosable to law enforcement.”). Those terms are remarkably similar to the Dropbox terms here—but that argument plainly did not carry the day.

Instead, the Court focused on the “two axes” identified in *Carpenter* as distinguishing digital data from the subjects of the third-party doctrine. *Chatrie*, 146 S. Ct. at 2212. First, the information involved was “qualitatively different” from “telephone numbers and bank records” in that it was “incomparably revealing,” and was “information that a user reasonably understands as his own, even though stored on Google’s servers.” *Id.* at 2212-2213 (quotation marks omitted).

And second, “the information is ‘not truly shared’”; rather, “it is the automatic price of conventional cell-phone usage—which, just as *Carpenter* noted, is a ‘pervasive and insistent part of daily life.’” *Id.* at 2213 (quoting *Carpenter*, 585 U.S. at 315).

If anything, both of those axes militate even more strongly in favor of privacy here than they did in *Chatrie*. Location information reveals a “precise record” of *one* aspect of a user’s life: his “movements.” *Chatrie*, 146 S. Ct. at 2213. But substantive files—emails, word documents and notes, personal photographs, data from countless smartphone apps—“hold for many Americans” *all* “the privacies of life.” *Riley*, 573 U.S. at 403 (quoting *Boyd v. United States*, 116 U.S. 616, 630 (1886)); see pages 14-19, *supra*. Indeed, the Court in *Chatrie* concluded that location information is protected notwithstanding terms of service precisely through reasoning by analogy to substantive electronic files—“emails, documents, photographs, or calendars—that even if stored on Google’s servers, a user reasonably views as his own.” *Chatrie*, 146 S. Ct. at 2209; see also *id.* at 2213; App., *infra*, 11a (Dropbox terms of service: “Your Stuff is yours.”).

And just as with location data, exposing substantive files to cloud storage companies or other third-party service providers “is merely what happens when a user avails himself” of a “pervasive and insistent part of daily life” in the modern world. *Chatrie*, 146 S. Ct. at 2213. As noted, some 88% of Americans rely on cloud storage (see page 14 & n.4, *supra*)—essentially equivalent to the “90% of American adults” who owned a cell phone (of any type) at the time of *Riley*. See *Riley*, 573 U.S. at 395. As a result, information hosted on third-party servers “is ‘not truly shared,’ in

the normal sense of wanting a third party to see or use it.” *Chatrie*, 146 S. Ct. at 2213 (quoting *Carpenter*, 585 U.S. at 315).

All of that was true in *Chatrie*—and is true here— notwithstanding that users agree to terms that facially permit inspection and disclosure to the government. See *Chatrie*, 146 S. Ct. at 2212; *Chatrie* U.S. Br., *supra*, at 26. As the Court held, even though those essential necessities of modern life “require[] some kind of opt-in,” “[a] cell-phone user is not to be viewed as sharing private information with third parties— which can then be freely passed on to the government—just by doing the ordinary things cell-phone users do.” *Chatrie*, 146 S. Ct. at 2214-2215; see also *id.* at 2215 (“Nor does it matter that the materials obtained were handed over by a third-party tech company.”).

3. For essentially the same reasons, the consent exception is also inapplicable.

As an initial matter, the very fact that *Chatrie* analyzed whether a user “los[es] his legitimate expectation of privacy” by “authoriz[ing] Google to collect, retain, and use’ his location information” (146 S. Ct. at 2212) disproves the central premise of the decision below: that “ask[ing] whether a given consent ‘extinguishes all expectation of privacy’ or something similar * * * is not how consent works in the law of search and seizure.” App, *infra*, 8a. If *Chatrie*’s consent to Google’s ability to hypothetically review and share his files with law enforcement (see *Chatrie*, 146 S. Ct. at 2212; *Chatrie* U.S. Br., *supra*, at 26) constituted blanket consent to a governmental search of those files, as the decision below would suggest, the Court would not have held that “a cell-phone user is not to be viewed”

as forfeiting Fourth Amendment protections “just by doing the ordinary things cell-phone users do.” 146 S. Ct. at 2214-2215.

In any event, switching from a reasonable expectation of privacy framing to a consent one does not meaningfully change the analysis, because the relevant tests are analogous. Just like the *Katz* test, consent doctrine focuses on reasonableness (along with voluntariness, see *Schneckloth*, 412 U.S. at 219): “The standard for measuring the scope of a suspect’s consent under the Fourth Amendment is that of ‘objective’ reasonableness—what would the typical reasonable person have understood by the exchange between the officer and the suspect?” *Jimeno*, 500 U.S. at 251.

That framing is immediately fatal to the Seventh Circuit’s analysis below, because when a user agrees to third-party terms of service, there *has been no* “exchange between [an] officer and the suspect” (*Jimeno*, 500 U.S. at 251): “True, there is a possibility that the government might someday be involved, and that, if it is involved, the provider might act as the government’s agent. But consent is permission; the mere act of proceeding after receiving such an abstract future conditional warning is insufficient to generate consent.” Orin S. Kerr, *Terms of Service and Fourth Amendment Rights*, 172 U. Pa. L. Rev. 287, 324-324 (2024); see also *id.* at 291 (“Private contracts have little effect in Fourth Amendment law because the nature of those rights is against the government rather than private parties.”).

In other words, no “typical reasonable person” (*Jimeno*, 500 U.S. at 251) would understand that by consenting to a hypothetical possibility that a private service provider might inspect his files in the course

of its business, he was actually consenting to that company actively searching those files for contraband *as an agent of the government*. See, e.g., *United States v. Shelton*, 997 F.3d 749, 766-767 (7th Cir. 2021) (where co-worker “entered [defendant’s] office not as a business invitee for an expected or authorized purpose” but “rather for the purpose of gathering evidence as an agent of the government,” “he far exceeded the scope of the invitation,” violating the Fourth Amendment); Kerr, *supra*, at 316-317 (explaining that contrary cases, including the Seventh Circuit’s *Ackerman* decision, wrongly borrow doctrine from cases in which the defendant did deal directly with the government).

That conclusion is only strengthened by the equivocal language in Dropbox’s (and many other service providers’) terms of service. Dropbox disclosed that “[w]e *may* review your * * * content” but “we have no obligation to do so” (App, *infra*, 12a (emphasis added)), and that “[w]e *may* disclose your information to third parties” (*id.* at 13a (emphasis added)), but affirmed that “[w]e believe that your data should receive the same legal protections regardless of whether it’s stored on our Services or on your home computer’s hard drive” (*id.* at 14a)—which presumably would foreclose any warrantless governmental intrusions.

That language certainly would not put a reasonable person on notice that Dropbox had entered into an agreement with the government to actively search users’ files for contraband. See *Lowers*, 170 F.4th at 146 (“Every Google Drive user knows that Google may scan their files to see if those files contain anything illegal. But a user’s knowledge that Google might occasionally sift through their files does not mean that

he expects the Government to have equally unfettered access to those same files.”); *Maher*, 120 F.4th at 308 (“Google’s particular Terms of Service—which advise that Google ‘may’ review users’ content—did not extinguish Maher’s reasonable expectation of privacy in that content as against the government.”); *Warshak*, 631 F.3d at 286-287 (similar); cf. *Chatrie*, 146 S. Ct. at 2213 (observing, in voluntary disclosure analysis, that Google’s Location History prompt “does not tell [the user] quite what he is signing up for”).⁹

Finally, even if, counterfactually, a reasonable person *would* understand that agreeing to Google’s or Dropbox’s terms of service meant waiving objection to governmental searches of his or her digital files, that still would not end the inquiry. As the Court has held, while the scope of Fourth Amendment consent is generally turns on what “the typical reasonable person” would “understand” he or she is agreeing to (*Jimeno*, 500 U.S. at 251), some supposed consents are so normatively unreasonable—even if fully understood—that the Fourth Amendment cannot tolerate them.

That was the case in *Birchfield v. North Dakota*, 579 U.S. 438, 476-477 (2016), in which the Court took no issue generally with state implied consent laws, which “require motorists, as a condition of operating

⁹ In addition, “the consent theory is particularly problematic because Terms of Service are rarely read.” Kerr, *supra*, at 325 (discussing empirical study showing that only 7% of users substantively read terms of service before agreeing to them). Regardless of whether such unread clickwrap agreements are enforceable between private parties as a matter of contract law (cf. App., *infra*, 5a), they cannot prove that, as a constitutional matter, the user “freely and voluntarily” consented to search by government agents. *Schneekloth*, 412 U.S. at 222.

a motor vehicle within the State, to consent to BAC testing.” *Id.* at 448. But, as the Court explained, “[i]t is another matter * * * for a State not only to insist upon an intrusive blood test,” as opposed to a less-intrusive breath test, “but also to impose criminal penalties on the refusal to submit to such a test. *There must be a limit to the consequences to which motorists may be deemed to have consented by virtue of a decision to drive on public roads.*” *Id.* at 477 (emphasis added); see *ibid.* (“[R]easonableness is always the touchstone of Fourth Amendment analysis. And applying this standard, we conclude that motorists cannot be deemed to have consented to submit to a blood test on pain of committing a criminal offense.”) (citation omitted).

In other words, the Fourth Amendment’s reasonableness standard served as a substantive backstop to a purported consent that, if all that mattered were constructive notice of the terms and acceptance via performance, should have been effective. But the Court was not willing to hold that such consent was constitutionally reasonable, given the severity of the consequence (intrusive testing on pain of prosecution) and the ubiquity of the conduct triggering it (driving on public roads). Just so here: As noted, using third-party cloud service providers is “a pervasive and insistent—even indispensable—part of daily life.” *Chatrie*, 146 S. Ct. at 2214 (quotation marks omitted). As in *Birchfield*, then, it would be normatively unreasonable (in addition to being contrary to users’ expectations, see pages 23-26, *supra*) to deem a user to have waived any Fourth Amendment rights in his cloud-hosted files—which contain “far more” private information than would be exposed by “the most

exhaustive search of a house,” the paradigmatic Fourth Amendment invasion (*Riley*, 573 U.S. at 396)—just by agreeing to common third-party terms for ubiquitous services. Accord *Chatrie*, 146 S. Ct. at 2214-2215 (“[A] cell-phone user is not to be viewed” as forfeiting Fourth Amendment protections “just by doing the ordinary things cell-phone users do.”)

Perhaps unsurprisingly, given that the Seventh Circuit did not have the benefit of *Chatrie*, the decision below is flatly incompatible with it. The Court should grant certiorari and reverse.

D. At a minimum, the Court should grant, vacate, and remand in light of *Chatrie*.

As discussed above, the Court should grant certiorari to resolve the acknowledged “conflict among the circuits” (App., *infra*, 8a), and bring the Seventh Circuit’s law in line with *Chatrie*. But if it does not, it should at the very least grant, vacate, and remand in light of that case.

Indeed, the decision below expressly observed that its outcome could well be affected by the Court’s then-pending decision in *Chatrie*. App., *infra*, 8a-9a. And after *Chatrie*, the Seventh Circuit’s Chief Judge has written separately to observe that, as to the question “whether [a defendant] lost an expectation of privacy by agreeing to Google’s and Microsoft’s terms of service,” “[a] future panel of this court may have to reconcile *Chatrie* * * * and *United States v. Blocker*”—the decision below in this case. *Braun*, __ F.4th ___, 2026 WL 2444109, at *9 n.2 (separate opinion of Brennan, C.J.). We agree: The decision below is plainly contrary to the analysis and outcome in *Chatrie*. See pages 20-23, *supra*.

If the Court does not issue a plenary grant, it should therefore grant, vacate, and remand for the Seventh Circuit panel to reconsider its analysis with the benefit of this Court's decision in *Chatrie*. Cf. *Wells v. Texas*, No. 25-484, 609 U.S. ____ (June 30, 2026) (GVR in light of *Chatrie*); *Davis v. United States*, No. 25-5189, 609 U.S. ____ (June 30, 2026) (same).

CONCLUSION

The Court should grant the petition.

Respectfully submitted.

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