No. ___

IN THE

# Supreme Court of the United States

DANIEL SAMUEL ETA,

*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

In *Riley v. California*, this Court held that even though no warrant is generally required for searches incident to arrest, police nevertheless must "get a warrant" before searching the cell phone of a person they arrest. 573 U.S. 373, 403 (2014). The Court explained that a warrant exception cannot be stretched beyond the reasons it exists, and that allowing the search of an arrested person's phone would "untether" the exception "from the justifications underlying" it. *Id.* at 386-92.

This case concerns the warrantless search of a cell phone under the "border-search exception." That exception rests on specific historical purposes: enforcing customs laws, intercepting contraband, and regulating border entry. This Court has never decided whether, or when, the exception allows searching a phone without a warrant. The courts of appeals are deeply divided. One circuit allows such searches only to look for contraband. Two require at least a border-related justification. Six require no justification at all, allowing any phone to be searched at the border for any reason or for no reason. Below, the Seventh Circuit confirmed its place in the last group. It upheld a warrantless border search of a phone even though the government conceded it had no justification tied to customs, contraband, or admissibility.

The question presented is:

Whether the Fourth Amendment allows a traveler's phone to be searched at the border without a warrant or any justification tied to the historical purposes of detecting contraband, enforcing customs laws, or determining admissibility.

## PARTIES TO THE PROCEEDING

Petitioner, Daniel Eta, was the defendant in the Northern District of Illinois and the appellant in the Seventh Circuit.

Respondent, United States of America, was the plaintiff in the Northern District of Illinois and the appellee in the Seventh Circuit.

## STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *United States v. Eta*, No. 25-1891 (7th Cir. July 6, 2026) (affirming district court's judgment).
- *United States v. Eta*, No. 18-cr-818-1 (N.D. Ill. May 5, 2025) (entering final judgment of conviction and sentence).

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of Rule 14.1(b)(iii).

## TABLE OF CONTENTS

**Page**

QUESTION PRESENTED ..... i
PARTIES TO THE PROCEEDING ..... III
STATEMENT OF RELATED PROCEEDINGS ..... iii
INTRODUCTION ..... 1
OPINIONS BELOW ..... 4
JURISDICTION ..... 4
PROVISIONS INVOLVED ..... 4
STATEMENT OF THE CASE ..... 5
REASONS FOR GRANTING THE WRIT ..... 9
I. THE CIRCUITS ARE OPENLY AND INTRACTABLY DIVIDED OVER WHAT, IF ANYTHING, MUST JUSTIFY A WARRANTLESS BORDER SEARCH OF AN ELECTRONIC DEVICE. ..... 9
II. THE DECISION BELOW IS WRONG. ..... 15
III. THIS QUESTION IS EXCEPTIONALLY IMPORTANT. ..... 26
IV. THIS CASE PRESENTS AN IDEAL VEHICLE. ..... 30
CONCLUSION ..... 35

## TABLE OF AUTHORITIES

**Page(s)**

**CASES**

*Alasaad v. Mayorkas*,
988 F.3d 8 (1st Cir. 2021) ..... 11–14

*Anibowei v. Bondi*,
2025 WL 3231720
(5th Cir. Nov. 19, 2025) ..... 31

*Boyd v. United States*,
116 U.S. 616 (1886) ..... 17–18

*Byrd v. United States*,
584 U.S. 395 (2018) ..... 19

*Carpenter v. United States*,
585 U.S. 296 (2018) ..... 29

*Carroll v. United States*,
267 U.S. 132 (1925) ..... 16–17

*Chatrie v. United States*,
146 S. Ct. 2193 (2026) ..... 3, 19–20, 27, 32

*Collins v. Virginia*,
584 U.S. 586 (2018) ..... 22

*Entick v. Carrington*,
19 How. St. Tr. 1029 (K.B. 1765) ..... 18

**TABLE OF AUTHORITIES**
(continued)

**Page(s)**

*Ex parte Jackson*,
96 U.S. 727 (1878) ..... 17–18

*Katz v. United States*,
389 U.S. 347 (1967) ..... 16

*Kwong Hai Chew v. Colding*,
344 U.S. 590 (1953) ..... 6

*Lo-Ji Sales, Inc. v. New York*,
442 U.S. 319 (1979) ..... 29

*Matta v. United States*,
753 F. Supp. 3d 194 (E.D.N.Y. 2024) ..... 28

*Missouri v. McNeely*,
569 U.S. 141 (2013) ..... 25

*Riley v. California*,
573 U.S. 373 (2014) ..... 2, 16, 19–20, 22–27, 34

*Sinclair v. United States*,
279 U.S. 263 (1929) ..... 24

*Stanford v. Texas*,
379 U.S. 476 (1965) ..... 18

*United States v. Aigbekaen*,
943 F.3d 713 (4th Cir. 2019) ..... 11–12, 31, 33

**TABLE OF AUTHORITIES**
(continued)

**Page(s)**

*United States v. Alisigwe*,
No. 24-960, 2026 WL 2751713
(2d Cir. Sept. 17, 2026)..... 13, 21

*United States v. Belmonte Cardozo*,
181 F.4th 461 (4th Cir. 2026)..... 11, 33

*United States v. Bongiovanni*,
2022 WL 17481884
(W.D.N.Y. Aug. 5, 2022)..... 29

*United States v. Cano*,
934 F.3d 1002 (9th Cir. 2019)..... 10–11, 14

*United States v. Cano*,
973 F.3d 966
(9th Cir. 2020)..... 14, 31

*United States v. Carpenter*,
926 F.3d 313 (6th Cir. 2019)..... 32

*United States v. Castillo*,
70 F.4th 894 (5th Cir. 2023)..... 13–14

*United States v. Flores-Montano*,
541 U.S. 149 (2004)..... 18, 21, 26

*United States v. Gurr*,
471 F.3d 144 (D.C. Cir. 2006)..... 28

**TABLE OF AUTHORITIES**
(continued)

**Page(s)**

*United States v. Kolsuz*,
890 F.3d 133 (4th Cir. 2018) ..... 12, 31, 33

*United States v. Leon*,
468 U.S. 897 (1984) ..... 32

*United States v. Levy*,
803 F.3d 120 (2d Cir. 2015)..... 28

*United States v. Mendez*,
103 F.4th 1303 (7th Cir. 2024)..... 7, 13–14, 30–31

*United States v. Molina-Isidoro*,
884 F.3d 287 (5th Cir. 2018) ..... 18, 20, 24–25, 33

*United States v. Montoya de Hernandez*,
473 U.S. 531 (1985) ..... 17–18, 22, 26, 30

*United States v. Nkongho*,
107 F.4th 373 (4th Cir. 2024)..... 31

*United States v. Pelletier*,
700 F.3d 1109 (7th Cir. 2012) ..... 34

*United States v. Pulido*,
133 F.4th 1256 (11th Cir. 2025)..... 14, 31

*United States v. Qin*,
57 F.4th 343 (1st Cir. 2023) ..... 13, 31

**TABLE OF AUTHORITIES**
(continued)

**Page(s)**

*United States v. Ramsey*,
431 U.S. 606 (1977) ..... 2, 8, 16, 18–19, 29

*United States v. Skaggs*,
25 F.4th 494 (7th Cir. 2022) ..... 31–32

*United States v. Smith*,
673 F. Supp. 3d 381 (S.D.N.Y. 2023) ..... 21

*United States v. Sultanov*,
742 F. Supp. 3d 258 (E.D.N.Y. 2024) ..... 29

*United States v. Touset*,
890 F.3d 1227 (11th Cir. 2018) ..... 30

*United States v. Vallerius*,
2018 WL 2325729 (S.D. Fla. May 1, 2018) ..... 29

*United States v. Wanjiku*,
919 F.3d 472 (7th Cir. 2019) ..... 32–33

*United States v. Williams*,
942 F.3d 1187 (10th Cir. 2019) ..... 14

*United States v. Xiang*,
67 F.4th 895 (8th Cir. 2023) ..... 13–14

*West Virginia v. B.P.J.*,
146 S. Ct. 2356 (2026) ..... 34

## TABLE OF AUTHORITIES
(continued)

**Page(s)**

*Zurcher v. Stanford Daily*,
436 U.S. 547 (1978) ..... 29

**CONSTITUTIONAL AND STATUTORY AUTHORITIES**

Ch. 5, § 24, 1 Stat. 29, 43..... 17, 19, 22

18 U.S.C. § 1030(b) ..... 7

18 U.S.C. § 1343..... 7

18 U.S.C. § 1543..... 7

18 U.S.C. § 3231..... 7

19 U.S.C. § 482(a) ..... 19, 22

19 U.S.C. § 1583..... 19

19 U.S.C. § 1595(a)(1)..... 19

28 U.S.C. § 1254(1) ..... 4

U.S. Const. amend. IV ..... 27

**REGULATIONS**

19 C.F.R. § 145.3..... 19

## TABLE OF AUTHORITIES
(continued)

**Page(s)**

**OTHER AUTHORITIES**

Daniel Vicente Alayo-Matos, *Extraction, Retention, and Use: Applying Use-Restrictions to Fourth Amendment Forensic Electronic Device Search Doctrine at the Border*, 2024 U. Chi. Legal F. 337 ..... 15

Samuel A. Alito, Jr., *Documents and the Privilege Against Self-Incrimination*, 48 U. Pitt. L. Rev. 27 (1986)..... 20

Apple Inc., *Apple Debuts iPhone 17* (Sept. 9, 2025)..... 27

Gina R. Bohannon, Comment, *Cell Phones and the Border Search Exception: Circuits Split over the Line Between Sovereignty and Privacy*, 78 Md. L. Rev. 563 (2019)..... 15

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**TABLE OF AUTHORITIES**
(continued)

**Page(s)**

Laura K. Donohue, *Customs, Immigration, and Rights: Constitutional Limits on Electronic Border Searches*, 128 Yale L.J. Forum 961 (2019) ..... 20

Seth Harp, *I'm a Journalist But I Didn't Fully Realize the Terrible Power of U.S. Border Officials Until They Violated My Rights and Privacy*, The Intercept (June 22, 2019) ..... 29

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Orin S. Kerr, *Second Circuit Rejects Limits on Border Searches of Cell Phones*, Volokh Conspiracy (Sept. 18, 2026) ..... 1, 31

**TABLE OF AUTHORITIES**
(continued)

**Page(s)**

Pet. for a Writ of Certiorari,
*Merchant v. Mayorkas*,
No. 20-1505 (U.S. Apr. 23, 2021) ..... 28

5 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 10.5(a) (6th ed. 2020) ..... 22

Jessica G. Martz, *The Border-Search Exception: What Level of Suspicion Is Reasonable in the Digital Era?*,
3 J.L. & Tech. Tex. 97 (2019) ..... 15

Note, *The Border Search Muddle*,
132 Harv. L. Rev. 2278 (2019) ..... 19

Sean O'Grady, Note, *All Watched Over by Machines of Loving Grace: Border Searches of Electronic Devices in the Digital Age*,
87 Fordham L. Rev. 2255 (2019) ..... 15

William E. Ringel, *Searches and Seizures, Arrests and Confessions* § 15:2 (2d ed. July 2026 update) ..... 15

U.S. Customs & Border Prot., Directive No. 3340-049B, § 5.6 (2026) ..... 27

**TABLE OF AUTHORITIES**
(continued)

**Page(s)**

Victoria Wilson, *Laptops and the Border Search Exception to the Fourth Amendment: Protecting the United States Borders from Bombs, Drugs, and the Pictures from Your Vacation*, 65 U. Miami L. Rev. 999 (2011) ..... 20

## INTRODUCTION

Imagine a traveler returning home from a weekend in Toronto or Cancún—a federal judge, a senator, a businessman, or a schoolteacher. At the airport, federal agents take his phone and announce that they may read all of its contents: every text message, photograph, email, and bank record. They need no warrant, no probable cause, and no suspicion. They need no reason at all. That is the border-search exception as the government and several courts of appeals now understand it—including the Seventh Circuit in the decision below. That expansive view reaches every one of the millions of travelers who cross the border each year, and it raises a question this Court has never answered: what does the Fourth Amendment require for the government to search a traveler's phone at the border?

The courts of appeals cannot agree on the answer. Nine circuits have adopted at least three incompatible rules, so the same search of the same phone may be lawful in Chicago and unlawful in San Francisco. The Solicitor General has called the question "an entrenched circuit conflict on an important and recurring Fourth Amendment issue." Pet. for Writ of Certiorari at 13, *United States v. Cano*, No. 20-1043 (2021), *cert. denied*, 141 S. Ct. 2877 (2021). And as a leading Fourth Amendment scholar recently put it, "[a]t this point, whatever the right answer is, it should come from the Supreme Court." Orin S. Kerr, *Second Circuit Rejects Limits on Border Searches of Cell Phones*, Volokh Conspiracy (Sept. 18, 2026).

The stakes could hardly be higher. This Court has already recognized that a cell phone holds "the

privacies of life" and that searching one exposes "far *more* than the most exhaustive search of a house." *Riley v. California*, 573 U.S. 373, 396, 403 (2014). Yet whether the government may conduct a phone search at the border without any reason at all—not even a border-related justification—now depends on nothing more than where the traveler happens to land.

The prevailing rule allowing suspicionless searches of phones at the border is profoundly wrong. Since the Founding, the border-search exception has allowed officers to inspect goods in order to collect duties, stop contraband, and regulate entry. Indeed, every border search this Court has upheld involved contraband or smuggled goods. But this Court has never allowed random searches to read travelers' private papers. And today, travelers carry their papers not in a trunk but on their cell phones. The historical protection for private papers thus squarely applies to phones.

The court below, and the other courts that allow suspicionless phone searches, have not confronted that history. They have instead seized on a single line from this Court—that border searches are "reasonable simply by virtue of the fact that they occur at the border," *United States v. Ramsey*, 431 U.S. 606, 616 (1977)—and stretched it to authorize a search of any traveler's phone for any reason. That sweeping logic cannot be reconciled with this Court's precedents or with the historical understanding of the Fourth Amendment. Indeed, the prevailing rule permits exactly what the Fourth Amendment was written to prevent: a general search of a person's private papers, without any warrant or any historically grounded justification to excuse the warrant requirement.

This case shows how far that rule now reaches. Federal agents in Chicago spent nearly two years investigating Petitioner Daniel Eta for fraud, but they never developed the probable cause needed to search his phones. So instead of seeking a warrant they could not get, they used the border as a back door. They waited for Mr. Eta to travel abroad, arranged for U.S. Customs and Border Protection (CBP) to pull him aside when his return flight landed in Atlanta, and then searched his phones for evidence of fraud. In the courts below, the government conceded that the search had nothing to do with detecting contraband or ascertaining Mr. Eta's immigration status; the purpose of the search was "to assist the FBI" in its investigation of his general suspected wrongdoing. Pet.App.43a. The Seventh Circuit upheld the search anyway, holding that searches of electronic devices at the border are categorically permissible, "without qualification." Pet.App.13a.

That sweeping holding makes this case an ideal vehicle for deciding what the Fourth Amendment requires at the border. Because the government has conceded that the search had nothing to do with contraband or immigration status, the case squarely presents both whether a phone search at the border generally requires a warrant and, if not, whether a warrantless search must at least rest on a traditional border-related justification. Petitioner pressed his arguments at every stage, and the record is fully developed. Nor would further percolation help: nine circuits have already spoken, two after denying rehearing en banc. And the panel's alternative good-faith holding poses no obstacle, just as it did not in *Chatrie v. United States*, 146 S. Ct. 2193 (2026).

Every circuit to address the question has dug in, and the conflict will not resolve itself. Until this Court steps in, the privacy of every American who crosses the border will depend on where he or she happens to enter the country. The Court should grant the petition and make clear that the border is not a back door around the warrant requirement—and that the government may not search a traveler's phone without a warrant or a historically grounded border-related justification.

## OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit in this case is reported at 180 F.4th 936 and reproduced at Pet.App.3a. The order of the United States District Court for the Northern District of Illinois reviewed by the Seventh Circuit is reported at 2024 WL 3398331 and reproduced at Pet.App.21a.

## JURISDICTION

The Seventh Circuit issued its opinion and entered judgment on July 6, 2026. Pet.App.1a, 3a. On September 23, 2026, Justice Barrett granted Petitioner's application to extend the time to file this petition until November 4, 2026. *See* No. 26A383. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## PROVISIONS 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.

## STATEMENT OF THE CASE

### A. Factual Background.

For nearly two years, federal agents in Chicago investigated Petitioner Daniel Eta for fraud without establishing probable cause or seeking a warrant. The investigation began in May 2016, when Samson Alimi, who had just been arrested, told an FBI agent that he had been involved in fraud schemes with a man named "Eta." Pet.App.4a. The FBI viewed messages on Alimi's devices concerning fraud proceeds and bank accounts, but those messages were later deleted. Pet.App.5a, 24a. Over the following year, a confidential source likewise alleged that Mr. Eta was coordinating such schemes and wiring the proceeds to Nigeria. Pet.App.5a.

Agents obtained pen-register data showing a large volume of calls and messages—an unremarkable fact in the modern world—and observed that Mr. Eta had contact with another suspected participant in the fraud schemes. Pet.App.5a-6a. But they never obtained the content of his communications or any other direct evidence tying him to criminal conduct, and they never sought a warrant for his phones or his home. *See* Pet.App.5a, 25a. By early 2018, nearly two years into the investigation, the government still had not come close to establishing probable cause that Mr. Eta was committing a crime.

Unable to establish probable cause through ordinary investigative means, the FBI turned to the

border instead. In December 2017, the FBI learned that Mr. Eta—a Nigerian-born lawful permanent resident of the United States—would be returning from an overseas trip on February 12, 2018, landing in Atlanta before connecting to Chicago.[1] Pet.App.6a, 22a-23a, 25a. Rather than seek a warrant, the FBI arranged for CBP to detain Mr. Eta for a "secondary inspection" upon arrival, with FBI agents on hand to examine and image Mr. Eta's devices without his knowledge. Pet.App.25a. The plan, in short, was to use the border crossing to conduct the very search the agents could not justify in Chicago.

The plan proceeded exactly as designed. When Mr. Eta landed in Atlanta, CBP officers detained him and seized his cell phones for the staged "secondary inspection." Pet.App.25a. No one suspected him of carrying digital contraband, *see* Pet.App.38a-39a, 43a, but CBP nonetheless took his phones to a back room, where a CBP officer scrolled through them while the FBI documented evidence for the fraud investigation. Pet.App.6a. All told, the agents spent "several hours" searching the devices and attempting to image them. Pet.App.7a.

Mr. Eta saw none of this. Pet.App.12a. And the government later conceded that the search had nothing to do with contraband—physical or digital—or with Mr. Eta's immigration status; it was conducted

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[1] There has been no dispute in the lower courts that the Fourth Amendment applies to Mr. Eta as a lawful permanent resident. Eta CA7 Opening Br. at 19 n.5, Dkt. No. 15 (citing *Kwong Hai Chew v. Colding*, 344 U.S. 590, 596, 601-02 (1953)); Gov't CA7 Br. at 25-49, Dkt. No. 28 (analyzing Eta's Fourth Amendment protections).

solely to "assist the FBI" in its fraud investigation. Pet.App.43a.

When imaging by the FBI's Computer Analysis and Response Team took longer than expected, agents seized the phones and released Mr. Eta to continue on to Chicago. Pet.App.6a. Only after the manual search had yielded the evidence they sought did the government obtain search warrants for the phones, SIM cards, and the images the FBI had already extracted. Pet.App.6a.

Presented with the fruits of that search, a federal grand jury in the Northern District of Illinois returned a 27-count indictment in May 2019, charging Mr. Eta and several others with wire fraud, computer fraud, and passport fraud. Pet.App.7a; *see* 18 U.S.C. §§ 1030(b), 1343, 1543. The district court had jurisdiction under 18 U.S.C. § 3231.

**B. Proceedings Below.**

Mr. Eta moved to suppress the evidence and fruits obtained from the warrantless manual search of his cell phones, arguing that the border-search exception does not excuse the warrant requirement for digital devices and that agents had used the border crossing to circumvent the Fourth Amendment in a fraud investigation. Pet.App.22a, 29a. Relying on *United States v. Mendez*, 103 F.4th 1303 (7th Cir. 2024), the district court denied the motion, holding that the search required neither a warrant nor individualized suspicion, and rejecting Mr. Eta's argument that the exception reaches only searches tied to contraband, customs, or entry. Pet.App.29a-31a, 36a. Alternatively, the court found reasonable suspicion of general criminal activity and inevitable discovery.

Pet.App.32a-36a. Mr. Eta entered a conditional guilty plea to wire fraud, preserving his suppression challenge, and was sentenced to 109 months' imprisonment. Pet.App.7a.

The Seventh Circuit affirmed, holding that a border search of a cell phone requires no warrant or individualized suspicion. Pet.App.4a. The panel relied on *Ramsey* (a search for contraband), quoting this Court's statement there that border searches "are reasonable simply by virtue of the fact that they occur at the border." 431 U.S. at 616. The court also treated its prior decision in *Mendez* as controlling and declined to revisit it absent "a compelling reason"—sidestepping Mr. Eta's historical argument on the exception's scope. Pet.App.8a-11a. The panel found it irrelevant whether the search lacked any "true border-related justification," holding that *Mendez* approved device searches "without qualification" and that such searches advance the exception's purposes "as a category," with no need for "case-by-case adjudication." Pet.App.13a-14a. The panel added that, "[e]ven assuming … case-by-case adjudication," "Eta would not prevail" because he committed "a transnational crime." Pet.App.15a. The panel did not address Mr. Eta's argument that, as historically understood, the exception reached only searches tied to contraband, customs, or entry.

Finally, the panel held that good faith also precluded suppression because CBP "reasonably suspected the defendant of criminal activity"—based on the fraud investigation and his airport demeanor, neither of which linked his phone to contraband, customs, or admissibility. Pet.App.17a, 19a.

## REASONS FOR GRANTING THE WRIT

The decision below deepens an entrenched and acknowledged circuit split over what, if anything, justifies a warrantless search of a traveler's phone at the border. And it gets the answer wrong. The panel upheld the search simply because it occurred at the border, without clearly asking whether the exception's history or this Court's decision in *Riley* permits warrantless searches of a phone's contents. Neither does.

The question is also exceptionally important. It governs government access to the most private information people carry, and it affects millions of travelers who cross the border each year. And this case is an ideal vehicle: the warrantless search lacked any traditional border-related justification or individualized suspicion tied to contraband, customs laws, or admissibility. The Court should grant review.

### I. THE CIRCUITS ARE OPENLY AND INTRACTABLY DIVIDED OVER WHAT, IF ANYTHING, MUST JUSTIFY A WARRANTLESS BORDER SEARCH OF AN ELECTRONIC DEVICE.

The courts of appeals are deeply and openly divided over when, if ever, the Fourth Amendment allows the government to conduct a warrantless border search of a traveler's cell phone. Indeed, the government itself has acknowledged that this question is worthy of review, recognizing that it presents an "entrenched circuit conflict on an important and recurring Fourth Amendment issue." *Cano* Pet. at 13; *see also infra* Part I.4 (collecting authorities).

Nine circuits have taken sides, and they have adopted at least three incompatible rules. The Ninth

Circuit permits warrantless phone searches at the border only to look for contraband; the First and Fourth Circuits require some nexus to the border-search exception's purposes; and the remaining six circuits largely require no justification at all. The choice among those rules is dispositive in cases like this one: the search here would have been unlawful in three circuits, but lawful in six, including the court below.

**1.** The Ninth Circuit imposes the strictest limit: it permits warrantless border searches of electronic devices only to look for digital contraband. In *United States v. Cano*, 934 F.3d 1002 (9th Cir. 2019), officers searched a traveler's phone for evidence of drug trafficking. The court held that border searches may not be justified by "general law enforcement purposes"; instead, they "must be conducted 'in enforcement of customs laws.'" *Id.* at 1013. Tracing this Court's precedent from *Boyd* to *Montoya de Hernandez*, the court explained that detecting contraband is "the strongest historic rationale for the border-search exception." *Id.* at 1018. It therefore held "that the border search exception authorizes warrantless searches of a cell phone *only to determine whether the phone contains contraband*." *Id.* (emphasis added).

The Ninth Circuit emphasized how narrow that rule is. Officers may not search "for *evidence* of contraband that is *not* present at the border" or "for evidence of past or future border-related crimes"—much less for evidence of ordinary crimes with no connection to the border. *Id.* Instead, the search must aim "'to locate *items being smuggled*.'" *Id.* In short, "border officials are limited to searching for contraband only; they may not search in a manner untethered to the search for

contraband." *Id.* at 1019. Phone searches remain possible under that rule because phones "can contain *digital contraband*" such as "child pornography." *Id.* at 1014. But the rule plainly would have barred the search here, which had no traditional border-related justification and sought only evidence of fraud allegedly committed elsewhere.

**2.** The First and Fourth Circuits have taken a middle path.[2] They do not confine officers to searching for contraband itself, as the Ninth Circuit does. But they still require some tie between the search and the purposes of the border-search exception.

The Fourth Circuit requires that a search "bear[] *some nexus* to the border search exception's purposes." *Aigbekaen*, 943 F.3d at 721 (emphasis added). Those purposes include interdicting contraband, but also "protecting national security, collecting duties, [and]

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[2]Although these decisions describe the searches at issue as "forensic" rather than "manual," the search here falls closer to the forensic side of that line. Those courts contrast "a quick look and unintrusive search" with a forensic search akin to "a computer strip search." *Cano*, 934 F.3d at 1015; *Alasaad v. Mayorkas*, 988 F.3d 8, 13 n.3 (1st Cir. 2021). But the label is only a proxy for whether a search is so "highly intrusive" that it is "nonroutine" and requires reasonable suspicion. *See, e.g.*, *United States v. Aigbekaen*, 943 F.3d 713, 720 (4th Cir. 2019); *see also United States v. Belmonte Cardozo*, 181 F.4th 461, 465 (4th Cir. 2026) (no reasonable suspicion required for "routine" digital border search where "only about two minutes passed between" officer "taking possession" of phones and discovering child pornography). Whatever the merits of that line, *see Aigbekae*n, 943 F.3d at 728 (Richardson, J., concurring in the judgment), agents' hours-long cataloguing of Mr. Eta's phones outside his presence was no "quick look"—and courts in those circuits may thus treat it as nonroutine.

blocking the entry of unwanted persons." *Id.* A search conducted for some other purpose, such as purely *domestic* law enforcement, may be "so attenuated from" those purposes "that it no longer … fall[s] under that exception." *United States v. Kolsuz*, 890 F.3d 133, 143 (4th Cir. 2018).

Applying that standard, the Fourth Circuit upheld the search of a departing traveler's phone for evidence that he "was attempting to export firearms illegally," an "offense that goes to the heart of the border search exception." *Id.* But it rejected a warrantless search of a traveler's devices based only on suspicion that he had "committed grave *domestic* crimes" (sex trafficking), because those crimes were "entirely unmoored from the Government's sovereign interests in protecting national security, collecting or regulating duties, blocking [the defendant]'s own entry, or excluding contraband." *Aigbekaen*, 943 F.3d at 721.

The First Circuit has reached much the same place. It permits certain border searches of electronic devices "for contraband, evidence of contraband, or for evidence of activity in violation of the laws enforced or administered by CBP or ICE." *Alasaad*, 988 F.3d at 21; *see also id.* at 19 ("search for evidence of either contraband or a cross-border crime furthers the purposes of the border search exception").

In adopting that rule, the First Circuit expressly rejected *Cano*'s distinction between "*evidence* of contraband and contraband *itself*," holding that "the border search exception is not limited to searches for contraband itself rather than evidence of contraband or a border-related crime." *Id.* at 20 (emphasis added) (citing *Aigbekaen* with approval). It has since

reaffirmed that rule. *United States v. Qin*, 57 F.4th 343, 346-47 (1st Cir. 2023).

Neither circuit would likely have upheld this search without first asking whether it served a border-related purpose. The Seventh Circuit's ruling eliminates that inquiry altogether, holding that a border search requires no traditional border-related justification at all.

**3.** Finally, six circuits, including the court below, require no border-related justification at all. They permit officers to search anything on a traveler's phone, for any reason or no reason, even when the search has nothing to do with the purposes of the border-search exception. *See United States v. Alisigwe*, No. 24-960, 2026 WL 2751713, at *2 (2d Cir. Sept. 17, 2026) ("government is not limited to searching for contraband or evidence of border offenses … because the government's interest at the border is not limited to detecting physical contraband"); *United States v. Castillo*, 70 F.4th 894, 898 (5th Cir. 2023) (holding that "no reasonable suspicion is necessary to conduct the sort of routine manual cell phone search at the border that occurred here," without asking whether the search served a border-related purpose); *Mendez*, 103 F.4th at 1307 ("searches of people and effects at the border … are 'per se reasonable' and require no particularized suspicion at all"); Pet.App.14a ("border searches of electronic devices—as a category—advance the border search doctrine's purposes"); *United States v. Xiang*, 67 F.4th 895, 900 (8th Cir. 2023) (suggesting agreement that no warrant is required "to conduct a routine border search of electronic devices," and that border searches need not be limited to contraband or

border-related offenses); *United States v. Williams*, 942 F.3d 1187, 1190-91 (10th Cir. 2019) (declining "to find that searches of personal electronic devices at the border must be supported by reasonable suspicion" and rejecting the argument that agents lacked the necessary suspicion because they "did not suspect him of" a crime related to "customs laws" or "the importation of contraband"); *United States v. Pulido*, 133 F.4th 1256, 1274 (11th Cir. 2025) ("border searches never require a warrant" and "the Fourth Amendment does not require any suspicion for forensic searches of electronic devices at the border").

In these circuits, officers may conduct a search of a traveler's phone like the one here without any suspicion—indeed, without any reason at all. That rule supplied the panel's principal constitutional rationale for upholding the search here.

**4.** The courts on both sides of this divide have acknowledged the split. *See, e.g.*, *Alasaad*, 988 F.3d at 21 ("We cannot agree with [the Ninth Circuit's] narrow view of the border search exception."); *Mendez*, 103 F.4th at 1310 ("divergence among the circuits"); *Cano*, 934 F.3d at 1017 (recognizing that its ruling "is in tension with the Fourth Circuit[]"); *United States v. Cano*, 973 F.3d 966, 972 (9th Cir. 2020) (Bennett, J., dissenting from denial of rehearing en banc) (characterizing the panel opinion as "rejected by the Fourth and Tenth Circuits"); *Castillo*, 70 F.4th at 895 ("The circuits are divided over whether reasonable suspicion is required for a forensic search of a cell phone at the border."); *Xiang*, 67 F.4th at 900 (contrasting *Cano* with Second Circuit precedent).

The Solicitor General agrees, *see Cano* Pet. at 13, and so do commentators, *see* William E. Ringel, *Searches and Seizures, Arrests and Confessions* § 15:2 (2d ed. July 2026 update) (discussing "split of authority among the circuits as to whether the border search exception is limited to searches for contraband itself rather than evidence of contraband or a border-related crime").[3]

The courts, in short, are deeply divided over how far a warrantless phone search may reach at the border, and virtually everyone involved—even the government—has acknowledged the split. Right now, whether the same search is lawful turns on nothing more than where a traveler happens to cross the border. Only this Court can resolve that divide.

## II. THE DECISION BELOW IS WRONG.

The Seventh Circuit's rule rests on a single erroneous premise: a border search is reasonable "simply by virtue of the fact that" it occurs at the

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[3] *See, e.g.*, Ashley Veronica Hart, *Electronic Searches at the Border: Reasonable Suspicion or None at All? The Circuit Split and Potential Impact on Higher Education*, 54 Suffolk U. L. Rev. 371, 388-92 (2021) (cataloguing split); Gina R. Bohannon, Comment, *Cell Phones and the Border Search Exception: Circuits Split over the Line Between Sovereignty and Privacy*, 78 Md. L. Rev. 563, 578-85 (2019); Sean O'Grady, Note, *All Watched Over by Machines of Loving Grace: Border Searches of Electronic Devices in the Digital Age*, 87 Fordham L. Rev. 2255, 2273-80 (2019); Jessica G. Martz, *The Border-Search Exception: What Level of Suspicion Is Reasonable in the Digital Era?*, 3 J.L. & Tech. Tex. 97, 118-26 (2019) (all similar); Daniel Vicente Alayo-Matos, *Extraction, Retention, and Use: Applying Use-Restrictions to Fourth Amendment Forensic Electronic Device Search Doctrine at the Border*, 2024 U. Chi. Legal F. 337, 360 (noting splits "on both the scope of and level of suspicion required [at] the border").

border, regardless of what is searched or why. Pet.App.8a (quoting *Ramsey*, 431 U.S. at 616). That premise cannot be reconciled with the history of the border-search exception or with *Riley*'s instruction that a warrant exception may not be "untether[ed]" from "the justifications underlying" it. 573 U.S. at 386.

Whatever standard this Court ultimately adopts, the Seventh Circuit's absolute rule is wrong for three reasons. *First*, history forecloses it: border agents could inspect goods, but they could not read a traveler's private papers—the historical equivalent of a phone's contents. *Second*, *Riley*'s balancing confirms that understanding: phone searches inflict an acute privacy intrusion, while the government has little interest in searching phones at the border absent a traditional border-related justification. *Third*, the rule fails even under the "routine" versus "non-routine" framework this Court has sometimes applied to border searches.

### A. History Establishes That A Warrant Is Required.

The Fourth Amendment's warrant requirement is subject to only a few "specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967). The border-search exception is "as old as the Fourth Amendment itself." *Ramsey*, 431 U.S. at 619. But its scope is limited, and must be understood "in the light of what was deemed an unreasonable search and seizure" at the Founding. *Id.* at 619 n.14 (quoting *Carroll v. United States*, 267 U.S. 132, 149 (1925)). That history is decisive here. The exception has always permitted officers to inspect goods and contraband crossing the border, but it has never

reached a traveler's private papers—and a cell phone is the modern equivalent of those papers.

**1.** From the start, the exception has been limited to detecting contraband, enforcing customs laws, and determining admissibility. It traces to the Collection Act of 1789, in which the First Congress authorized customs officers to "enter any ship or vessel" and search it upon "reason to suspect any goods, wares or merchandise subject to duty shall be concealed." Ch. 5, § 24, 1 Stat. 29, 43. By its terms, then, that authority reached cargo and merchandise—not a traveler's documents or correspondence.

This Court's earliest cases rested on the same footing. *Boyd* cited the Collection Act as proof that the Framers understood cargo and merchandise to be subject to inspection at the border, and "did not regard searches and seizures of this kind as 'unreasonable.'" *Boyd v. United States*, 116 U.S. 616, 623 (1886). And *Carroll* recognized the power to require a traveler "to identify himself as entitled to come in, and his belongings as effects which may be lawfully brought in." 267 U.S. at 154. The Court has since reaffirmed that the exception exists "to regulate the collection of duties and to prevent the introduction of contraband." *United States v. Montoya de Hernandez*, 473 U.S. 531, 537 (1985).

Private papers stood on entirely different ground. In the same passage that relied on the Collection Act, *Boyd* distinguished "[t]he search for and seizure of stolen or forfeited goods, or goods liable to duties and concealed to avoid the payment thereof," from the "totally different" search "for and seizure of a man's private books and papers." 116 U.S. at 623; *see Ex*

*parte Jackson*, 96 U.S. 727, 733 (1878) (papers are protected "wherever they may be"). That line reflects the Founders' abhorrence of general searches of private papers, which traces to *Entick v. Carrington*, 19 How. St. Tr. 1029 (K.B. 1765); *see Stanford v. Texas*, 379 U.S. 476, 481-84 (1965). Lord Camden there declared papers "the owner's … dearest property" and warned that inspecting them at will "would be more pernicious to the innocent than useful to the public." *Boyd*, 116 U.S. at 627-29 (quoting *Entick*). This Court has described *Entick* as a "monument of English freedom," with which "every American statesman [at the Founding] … was undoubtedly familiar." *Id.* at 626-27. And the Framers wrote its lesson into the Fourth Amendment's express protection of "papers." *See id.* at 627.

This Court's border-search cases have always respected that line. Every warrantless border search the Court has upheld was aimed at intercepting contraband or dutiable goods, never at reading a traveler's private papers. *See Ramsey*, 431 U.S. at 609-11 (heroin); *United States v. Flores-Montano*, 541 U.S. 149, 150-53 (2004) (marijuana); *Montoya de Hernandez*, 473 U.S. at 540-41 (drugs); *United States v. Molina-Isidoro*, 884 F.3d 287, 295 (5th Cir. 2018) (Costa, J., specially concurring) ("[E]very border-search case the Supreme Court has decided involved searches to locate items being smuggled into the country."). Even *Ramsey*—the source of the line that border searches are "reasonable simply by virtue of the fact that they occur at the border," 431 U.S. at 616—allowed officers to open international mail packages suspected of containing heroin while stressing that "the reading of any correspondence inside the

envelopes is forbidden." *Id.* at 624. In other words, the very case the courts of appeals invoke to authorize suspicionless phone searches drew a line between inspecting goods and reading private papers.

Congress has drawn the same line from the Founding to today. The same 1789 statute that authorized warrantless searches of vessels required a warrant to search a home for dutiable goods—a rule still in force. *See* Ch. 5, § 24, 1 Stat. at 43; 19 U.S.C. § 1595(a)(1). Customs officers likewise may not read certain international correspondence without consent or a warrant, and they may not open sealed letters of sixteen ounces or less at all. 19 U.S.C. § 1583(c)(2), (d); 19 C.F.R. § 145.3. Even to search trunks or envelopes arriving on vessels, they need "reasonable cause to suspect" unlawfully imported merchandise. 19 U.S.C. § 482(a). Such positive law is a sound barometer of what the Fourth Amendment treats as reasonable. *See Chatrie*, 146 S. Ct. at 2221 (Gorsuch, J., concurring in the judgment); *cf. Byrd v. United States*, 584 U.S. 395, 412 (2018) (Thomas, J., concurring). And because *Riley* likened a phone search to the search of a house, not a container, 573 U.S. at 396-97, these protections for homes and correspondence directly support a warrant requirement here.

Scholars who have examined this history emphatically agree: "[t]here is no historical pedigree associated with searches of papers, as opposed to containers capable of concealing physical contraband, at the border." Note, *The Border Search Muddle*, 132 Harv. L. Rev. 2278, 2294 (2019). Indeed, "[t]he founders were well aware of the dangers of allowing the government untrammeled access to individuals' lives," and "[t]he border exception was therefore

tailored to the country's sovereign interests in revenue generation and admitting qualified aliens, *but it did not permit searches that went further afield*." Laura K. Donohue, *Customs, Immigration, and Rights: Constitutional Limits on Electronic Border Searches*, 128 Yale L.J. Forum 961, 1011 (2019) (emphasis added).

In short, "[t]he history of the border search exception" plainly shows that it "was not initially intended to eliminate Fourth Amendment protections of personal papers." Victoria Wilson, *Laptops and the Border Search Exception to the Fourth Amendment: Protecting the United States Borders from Bombs, Drugs, and the Pictures from Your Vacation*, 65 U. Miami L. Rev. 999, 1019 (2011).

**2.** That historical line resolves this case, because a cell phone is the modern equivalent of a traveler's private papers. A smartphone is not merely a container but a digital archive of its owner's private life—correspondence, diaries, and photographs, all spanning years. *Riley* rejected the analogy between a phone and the physical items a person carries, explaining that a phone search "would typically expose to the government far *more* than the most exhaustive search of a house." 573 U.S. at 396. This Court has since recognized that phones are both "incomparably 'revealing'" and "indispensable." *Chatrie*, 146 S. Ct. at 2212-13. Indeed, a phone's data is "an extension of the individual's mind" "to a much greater degree than the papers in *Boyd*." *Molina-Isidoro*, 884 F.3d at 296-97 (Costa, J., specially concurring) (quoting Samuel A. Alito, Jr., *Documents and the Privilege Against Self-Incrimination*, 48 U. Pitt. L. Rev. 27, 39 (1986)). If the Fourth Amendment protected a traveler's papers from

suspicionless inspection, it surely also protects his far richer digital record.

Nor does searching that digital record serve any of the exception's three purposes: collecting duties, stopping contraband, and regulating who enters the country. *First*, a phone search does nothing to advance "the collection of duties." *Flores-Montano*, 541 U.S. at 153. Duties are owed on goods, and they attach to "physical items, not mere data." Orin S. Kerr, *The Digital Fourth Amendment: Privacy and Policing in Our Online World* 122 (2025). *Second*, a phone search does not "prevent the introduction of contraband." *Flores-Montano*, 541 U.S. at 153. Unlike a smuggled package, digital files do not need the device to cross the border; they can be sent, stored, and retrieved from anywhere. So even keeping a phone "from entering the country" would 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 Alisigwe*, 2026 WL 2751713, at *22 (Lee, J., concurring in the judgment) ("Digital data stored on a cellphone is not 'carried' across a border in any real sense."). *Finally*, a phone search does not "prevent[] the entry of unwanted persons." *Flores-Montano*, 541 U.S. at 152.

In short, each of the exception's purposes concerns the physical movement of people and goods across the border, and a phone's data is neither—so phone searches as a category stretch the exception beyond its historical foundations while serving none of its purposes.

**3.** Founding-era history thus points to a categorical rule: just as the border-search exception never

authorized officers to read a traveler's private papers, it does not authorize a warrantless search of a traveler's phone. The exception's rationales "are inherently linked to physicality, and they fail to justify searches of electronic data." Kerr, *The Digital Fourth Amendment*, *supra*, at 115. A categorical warrant requirement would also supply the clear, "workable rule[]" that *Riley* favors, sparing courts from undue complexity or "'ad hoc'" balancing. *Riley*, 573 U.S. at 398.

But even if the Court stops short of a categorical rule, history at a minimum requires that any warrantless phone search actually serve one of the exception's traditional purposes. A warrant exception may not be "untether[ed]" from "the justifications underlying" it. *Riley*, 573 U.S. at 386; *see Collins v. Virginia*, 584 U.S. 586, 595 (2018). So if a phone search could ever serve a border-related interest—say, by revealing that a traveler is smuggling contraband or is inadmissible—the search must rest on individualized suspicion tied to that interest. *See Montoya de Hernandez*, 473 U.S. at 537; 5 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 10.5(a) (6th ed. 2020). That is how the exception worked from the start: the First Congress authorized customs searches only when officers had "reason to suspect" that dutiable goods were concealed. Ch. 5, § 24, 1 Stat. at 43; *see also* 19 U.S.C. § 482(a).

The search here had neither a traditional border-related purpose, nor any individualized suspicion tied to such a purpose. Indeed, the government has conceded that the search had nothing to do with the traditional border-related interests in contraband, customs, or immigration status; rather, it was

conducted to "assist the FBI" in a fraud investigation. Pet.App.43a. That concession makes this case an ideal vehicle for deciding whether the border-search exception authorizes a warrantless search untethered from any traditional border-related purpose. *See infra* Part IV.

### B. *Riley* Confirms That A Warrant—Or At Least Reasonable Suspicion Tied To A Border Purpose—Is Required.

*Riley* points to the same answer. Where "guidance from the founding era" does not settle the question, *Riley* instructs courts to weigh "the degree to which [a search] intrudes upon an individual's privacy" against "the degree to which it is needed for the promotion of legitimate governmental interests." 573 U.S. at 385. Even if the history were less clear than it is, that balance would tip decisively against the government: The privacy interest implicated by phone searches is enormous, the government's border interest is minimal, and a warrant requirement would cost the government almost nothing. And even if the Court concludes that a border-related interest could sometimes justify a warrantless phone search, the balance would at least demand some reasonable and individualized suspicion tied to that interest.

*First*, the privacy interest at stake is enormous. *Riley* rejected the government's effort to equate a phone with the physical items a person carries, such as a "billfold," "address book," "wallet," or "purse." 573 U.S. at 392-93. "[A]ny extension of that reasoning to digital data," the Court held, "has to rest on its own bottom." *Id.* at 393. And although an arrestee has diminished privacy interests, that does "not mean that

the Fourth Amendment falls out of the picture entirely." *Id.* at 392. The same is true of a traveler's reduced expectation of privacy at the border.

That privacy interest lies at the core of the Fourth Amendment. "[O]f all the rights of the citizen, few are of greater importance … than the right of personal security," which includes the "exemption of his private affairs, books, and papers from the inspection and scrutiny of others." *Sinclair v. United States*, 279 U.S. 263, 271 (1929). "Without the enjoyment of this right, all other rights would lose half their value." *Id.* And as Part III explains, a modern phone holds more of a person's "private affairs, books, and papers" than any container ever could.

*Second*, the government's interest on the other side of the scale is minimal. Searching a phone's contents does little to advance the purposes that justify the border-search exception. *See supra* Part II.A.2. A phone's data is not dutiable, it need not cross the border to enter the country, and it reveals nothing about a person's right to enter. Whatever border interest might remain arises only in the unusual case where officers have reason to suspect that a phone holds evidence of smuggling or inadmissibility—and the interest is no greater than that suspicion. Absent such suspicion, what remains is an ordinary interest in gathering evidence of crime—the very interest the warrant requirement is designed to regulate.

*Third*, a warrant requirement would impose almost no cost. Once agents hold the phone, "data on the phone can endanger no one," and the traveler can no longer carry any digital contraband across the border. *Riley*, 573 U.S. at 387; *see Molina-Isidoro*, 884 F.3d at

295-96 (Costa, J., specially concurring). Agents can simply hold the device while they seek a warrant—and warrants are easier than ever to obtain, sometimes "in as little as five minutes." *Missouri v. McNeely*, 569 U.S. 141, 173 (2013) (Roberts, C.J., concurring in part and dissenting in part); *see Riley*, 573 U.S. at 401. In the rare case where even that brief delay is untenable—say, an imminent threat to public safety—other exceptions, such as exigent circumstances, remain available. *See Riley*, 573 U.S. at 402. This case illustrates the point. The agents planned the search weeks in advance, and once they had Mr. Eta's phones in hand, nothing stopped them from holding the devices while applying for a warrant. Pet.App.6a. They simply chose not to.

The panel below never conducted this balancing. Instead, it upheld digital border searches "as a category," whether or not they serve any border-related purpose. Pet.App.14a. The court therefore saw no problem with a search that served no historically recognized purpose and was designed solely to uncover evidence of ordinary crime. With an enormous privacy interest on one side of the scale and no traditional border-related interest on the other, *Riley* requires a warrant. At a minimum, *Riley* forbids a search like this one, which neither served a traditional border-related purpose nor rested on any individualized suspicion tied to one.

### C. At Minimum, A Search Of A Phone's Contents Is Nonroutine And Requires Reasonable Suspicion Tied To The Border.

Even if a warrant were not always required, the Seventh Circuit's no-suspicion rule would still fail

under the modern framework this Court has applied to border searches. That framework sorts border searches by intrusiveness. "Routine" searches of luggage and belongings require no suspicion; more intrusive "nonroutine" searches require reasonable suspicion. *See Montoya de Hernandez*, 473 U.S. at 541. And the Court has left open whether some border searches are so "highly intrusive" that they require even more. *Id.* at 541 n.4; *Flores-Montano*, 541 U.S. at 152.

A phone search falls squarely on the nonroutine side of that line. *Riley* already explained why. "Modern cell phones, as a category, implicate privacy concerns far beyond those implicated by the search of a cigarette pack, a wallet, or a purse." 573 U.S. at 393. They differ from physical items "in both a quantitative and a qualitative sense," *id.*, because they hold "the privacies of life," *id.* at 403. And searching one "would typically expose to the government far *more* than the most exhaustive search of a house." *Id.* at 396. A search that intrusive cannot be "routine" in any sense. At a minimum, then, it requires reasonable suspicion tied to the exception's traditional purposes. The government had none here: its hours-long review of Mr. Eta's phones sought only evidence of fraud. Pet.App.37a-38a, 43a. By requiring no suspicion at all, the Seventh Circuit's rule gives no protection to a phone's "vast quantities of personal information." *Riley*, 573 U.S. at 386.

## III. THIS QUESTION IS EXCEPTIONALLY IMPORTANT.

Few Fourth Amendment questions matter more than this one. Cell phones are "such a pervasive and insistent part of daily life that the proverbial visitor

from Mars might conclude they were an important feature of human anatomy." *Id.* at 385. Yet in several circuits, including the Seventh, the government may search any traveler's phone, for any reason, with no warrant and no suspicion at all. That rule overrides profound privacy and property interests, governs tens of thousands of searches a year that almost never reach a court, burdens First Amendment freedoms, and deters lawful travel.

**1.** *The privacy and property interests at stake are profound.* More than 90% of Americans carry a cell phone, *see Chatrie*, 146 S. Ct. at 2200, and a phone is unlike anything else a person carries, *see Riley*, 573 U.S. at 393. Since *Riley*, that "gulf" has "only continue[d] to widen," *id.* at 394-95: today's iPhone 17 holds sixteen times the storage this Court found striking a decade ago. Apple Inc., *Apple Debuts iPhone 17* (Sept. 9, 2025). What fills that storage is "the privacies of life," *Riley*, 573 U.S. at 403, and the device that holds them is the traveler's own property—among her "papers, and effects," U.S. Const. amend. IV; *cf. Chatrie*, 146 S. Ct. at 2220 (Gorsuch, J., concurring in the judgment) (Location History data "constitutes one of [Chatrie's] 'effects'"). Searching that device at the border, moreover, intrudes well past the border. Because a phone is a portal to data stored elsewhere, *see Riley*, 573 U.S. at 397, agents can reach information that never crossed the border at all. And the intrusion does not end when the traveler leaves: agents kept Mr. Eta's phones after sending him on to Chicago, Pet.App.6a, and CBP has authority to retain copies of the electronic data it searches, *see* U.S. Customs & Border Prot., Directive No. 3340-049B, § 5.6 (2026).

**2.** *The searches are frequent, increasing, and almost never reviewed.* CBP's electronic-device searches have climbed steadily from 8,503 in 2015 to 55,318 in FY2025—nearly a quarter of them of U.S. citizens. *See* Pet. for a Writ of Certiorari at 208a, *Merchant v. Mayorkas*, No. 20-1505 (U.S. Apr. 23, 2021); CBP Publ'n No. 5202-1025, Border Searches of Electronics at Ports of Entry, FY2025 Statistics (Nov. 13, 2025). Yet few will ever reach a court. Most searched travelers are never charged, and many never learn what officers examined. *See Matta v. United States*, 753 F. Supp. 3d 194, 214 (E.D.N.Y. 2024). The rare search that surfaces usually does so, as here, in a criminal case, where good faith and other remedial doctrines let courts avoid the constitutional question. *See infra* Part IV.3. Unless the Court takes a case like this one, where the question was squarely decided below, it will keep evading review as the searches multiply.

**3.** *The rule turns the border into an all-purpose investigative tool.* If crossing the border exposes information the government otherwise could not search without a warrant, investigators lacking probable cause need only flag their target to CBP, wait for his next trip abroad, and search him on return—using the border-search exception as pretext. That is no hypothetical; it happened here, and it is a familiar tactic. In *United States v. Gurr*, CBP searched a returning fraud target's luggage with FBI agents present and handed his financial records to them. 471 F.3d 144, 147-50 (D.C. Cir. 2006); *see also United States v. Levy*, 803 F.3d 120, 121 (2d Cir. 2015) (CBP, on a DEA task force tip, read and photocopied a returning traveler's notebook for a securities-fraud

prosecution). Border device searches follow the same script. *See, e.g.*, *United States v. Vallerius*, 2018 WL 2325729 (S.D. Fla. May 1, 2018); *United States v. Bongiovanni*, 2022 WL 17481884 (W.D.N.Y. Aug. 5, 2022).

**4.** *The harm extends beyond the travelers searched.* The phones of journalists, lawyers, and doctors hold sources, client confidences, and patient records—material that triggers "special constraints" under the Fourth Amendment, *Lo-Ji Sales, Inc. v. New York*, 442 U.S. 319, 326 n.5 (1979), and demands "scrupulous exactitude," *Zurcher v. Stanford Daily*, 436 U.S. 547, 564 (1978). *Ramsey* itself reserved whether reading travelers' correspondence, given its potential to chill speech, would require the "full panoply of Fourth Amendment requirements." 431 U.S. at 623-24 & n.18. That question is far more pressing for a device that can reveal a person's "familial, political, professional, religious, and sexual associations." *Carpenter v. United States*, 585 U.S. 296, 311 (2018). And the chill is real: journalists must choose between protecting sources and crossing the border, and ordinary travelers delete lawful content for fear of exposure. *See United States v. Sultanov*, 742 F. Supp. 3d 258, 295 (E.D.N.Y. 2024); Seth Harp, *I'm a Journalist But I Didn't Fully Realize the Terrible Power of U.S. Border Officials Until They Violated My Rights and Privacy*, The Intercept (June 22, 2019) (CBP officer spent three hours reading journalist's "correspondence with colleagues, editors, and sources").

**5.** *The rule deters lawful travel itself.* Few travelers can keep a separate travel phone—itself open to the same suspicionless search—and fewer can wipe years

of data before every trip. Nor can they go without one: for many, a phone is the only practical way to access travel documents, navigate abroad, reach family, or do business. The Fourth Amendment does not let the government force millions of travelers to choose between forgoing international travel and surrendering the privacy of their digital lives.

In sum, few Fourth Amendment questions affect more people more profoundly. And only this Court can resolve the entrenched split on the question presented.

## IV. THIS CASE PRESENTS AN IDEAL VEHICLE.

This case is an ideal vehicle for deciding what the Fourth Amendment requires for the government to search a traveler's phone at the border. The search here concededly served none of the exception's traditional purposes, so the question is cleanly presented. The conflict among the circuits is fully developed and ripe for this Court's resolution. The alternative good-faith holding below poses no obstacle. And this case complements another petition pending in *Anibowei v. Blanche*, No. 26-208, which presents the same issue.

**1.** *The question is cleanly presented.* Most electronic border-search cases involve searches for digital contraband, *see, e.g.*, *Mendez*, 103 F.4th at 1309; *United States v. Touset*, 890 F.3d 1227, 1235 (11th Cir. 2018), or searches bearing on whether the traveler may lawfully enter the country. Those cases cannot test whether the exception extends beyond its traditional purposes, because the search indisputably serves one of them. *See Montoya de Hernandez*, 473 U.S. at 537.

In this case, by contrast, the government conceded in the courts below that the search had nothing to do with contraband or Mr. Eta's immigration status. Its sole purpose was "to assist the FBI" in a fraud investigation unrelated to the government's traditional interests in border enforcement. Pet.App.43a. That concession forecloses any fallback argument that the search served some interdiction or entry-related interest. It leaves only the question whether the exception authorizes a search for evidence of ordinary crime, untethered from any traditional border-related purpose. Cases presenting the question so cleanly are rare.

**2.** *The conflict is fully developed.* Further percolation would serve no purpose. Nine circuits have weighed in, offering "lots of different rationales." Kerr, *Second Circuit Rejects Limits*, *supra*; *see supra* Part I. And every circuit to take a side has dug in. The Ninth Circuit denied rehearing en banc in *Cano* over a six-judge dissent. *See Cano*, 973 F.3d 966. The Fifth Circuit did the same in *Anibowei v. Bondi*, No. 24-11042 (5th Cir. Mar. 20, 2026), even though the panel's ruling rested solely on circuit precedent that never grappled with the question, *Anibowei*, 2025 WL 3231720 (5th Cir. Nov. 19, 2025). The Fourth Circuit has applied its rule in case after case, *see United States v. Nkongho*, 107 F.4th 373 (4th Cir. 2024); *Aigbekaen*, 943 F.3d 713; *Kolsuz*, 890 F.3d 133; the First Circuit has recently doubled down on its position, *Qin*, 57 F.4th at 352-53; and the Eleventh Circuit now treats its prior precedent as "mak[ing] this an easy affirmance," *Pulido*, 133 F.4th at 1274. The decision below is the latest in a growing line of Seventh Circuit authority, *see Mendez*, 103 F.4th 1303; *United States*

*v. Skaggs*, 25 F.4th 494 (7th Cir. 2022); *United States v. Wanjiku*, 919 F.3d 472 (7th Cir. 2019), and the panel declined to revisit *Mendez* absent a "compelling reason," however strong the historical case against it. Pet.App.11a. Left alone, the circuits will not resolve the conflict themselves.

**3.** *The good-faith holding is no obstacle.* The panel below held, in the alternative, that the good-faith exception would bar suppression. Pet.App.17a. But this Court granted review despite the same issue just last Term. In *Chatrie*, 146 S. Ct. 2193, the courts below had denied suppression on good-faith grounds, and the Solicitor General opposed certiorari for that reason, arguing that resolving the Fourth Amendment question "would not in itself have any practical effect on the outcome of this case." Br. in Opp. at 9, *Chatrie*, No. 25-112 (U.S. Nov. 24, 2025). The Court granted review anyway, limited to the Fourth Amendment question. It decided that question and left good faith for the Fourth Circuit to "consider anew." *Chatrie*, 146 S. Ct. at 2204 n.4. That approach was not "advisory," the Court explained, because *United States v. Leon*, 468 U.S. 897, 925 (1984), itself invites courts to "resolv[e] the Fourth Amendment issue" first, "to guide future action by law enforcement officers and magistrates." *Id.* *Carpenter* took a similar path: the Sixth Circuit addressed good faith only on remand. *See United States v. Carpenter*, 926 F.3d 313 (6th Cir. 2019). The Court can do the same here—or, if it

prefers, add a question on whether the exclusionary rule applies.[4]

Indeed, if a good-faith holding were enough to defeat review, this Court would almost never be able to resolve this important constitutional question. Lower courts reviewing digital border searches have repeatedly relied on good faith—often without reaching the constitutional question at all. *See, e.g.*, *Molina-Isidoro*, 884 F.3d at 290 ("We do not decide the Fourth Amendment question."); *Wanjiku*, 919 F.3d at 479 (avoiding "the thorny issue of the appropriate level of suspicion required" because agents acted in good faith); *Kolsuz*, 890 F.3d at 137 (declining to resolve "whether there must be a warrant based on probable cause" because of good faith); *Belmonte Cardozo*, 181 F.4th at 472 n.9 ("suppression would still not be appropriate based on Officer Oliphant's good-faith reliance"); *Aigbekaen*, 943 F.3d at 725 ("good-faith exception applies").

Moreover, the good-faith holding is bound up with the merits. The panel found good faith because CBP reasonably suspected Mr. Eta of *general criminal activity*. Pet.App.19a. But whether that suspicion—unconnected to contraband, customs, or admissibility—can really serve as a good-faith justification for a warrantless phone search is the question presented. It cannot: such a standard would

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[4] The *Chatrie* petitioner made precisely this request, explaining that "if the Court is concerned" with the good-faith issue, it "should grant review on both questions presented," since "[t]he good-faith exception is independently cert-worthy." Reply Br. at 11, *Chatrie*, No. 25-112; *see* Pet. at i, *Chatrie*, No. 25-112 (presenting as Question 2 whether exclusionary rule should apply). The same assurance of practical effect is available here.

let agents search any traveler's phone for evidence of any crime, without a warrant. And the panel cited no precedent, predating the search here, that adopted that standard; it simply assumed one. Resolving the question presented would thus show that the premise of the panel's good-faith holding was never the law.[5]

**4.** *This case complements Anibowei.* Granting review here would complement, not duplicate, the petition already pending in *Anibowei v. Blanche*, No. 26-208 (response requested Sept. 29, 2026). *Anibowei* is a facial civil challenge to the CBP and ICE directives authorizing cell-phone searches "without a warrant." *Anibowei* Pet. at i, No. 26-208. This case, by contrast, presents a concrete fact pattern: a search that actually occurred, challenged by a criminal defendant seeking to suppress its fruits. And it squarely raises both the warrant question *and* the related question—whether a warrantless search must at least rest on a border-related purpose. This Court regularly consolidates related petitions, including in the digital-search context. *See, e.g.*, *West Virginia v. B.P.J.*, 146 S. Ct. 2356 (2026); *Riley*, 573 U.S. at 378-80 (consolidated cases involving flip phones and smartphones). Granting both petitions would let the Court consider the border-search exception's application to digital

[5] The district court's alternative inevitable-discovery holding, Pet.App.35a, is no obstacle either. The Seventh Circuit did not adopt it—and for good reason. Inevitable discovery requires proof that agents not only could but *would* have obtained a warrant. *United States v. Pelletier*, 700 F.3d 1109, 1116 (7th Cir. 2012). Here, agents investigated Mr. Eta for nearly two years and never sought one; they went to the border *because* they could not get one. A warrant the government never tried to get, and could not have gotten, was not inevitable.

devices in both settings. *See also* Pet. at i, *Belmonte Cardozo v. United States*, No. 26-6011 (U.S. Oct. 27, 2026) (raising the same Fourth Amendment question). The Court should therefore grant both petitions or, at a minimum, hold this one for *Anibowei*.

## CONCLUSION

This Court should grant the petition.

November 4, 2026

Respectfully submitted,

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