No. 07-542

In The Supreme Court of the United States

STATE OF ARIZONA,

Petitioner,

vs.

RODNEY JOSEPH GANT,

Respondent.

On Writ Of Certiorari To The Arizona Supreme Court

PETITIONER'S BRIEF ON THE MERITS

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QUESTION PRESENTED

Does the Fourth Amendment require law enforcement officers to demonstrate a threat to their safety or a need to preserve evidence related to the crime of arrest to justify a warrantless vehicular search incident to arrest conducted after the vehicle's recent occupants have been arrested and secured?

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

Page

OTHER AUTHORITIES

OPINIONS BELOW

The Arizona Supreme Court's opinion is reported as *State v. Gant*, 216 Ariz. 1, 162 P.3d 640 (2007). (J.A. 150.) The Arizona Court of Appeals' opinion is reported as *State v. Gant*, 213 Ariz. 446, 143 P.3d 379 (App. 2006), *vacated*, 216 Ariz. 1, 162 P.3d 640 (2007). (Pet. App. B.) The order of the Superior Court of Arizona in and for the County of Pima dated December 7, 2004, denying the motion to suppress is unpublished. (J.A. 143.)

STATEMENT OF JURISDICTION

The Arizona Supreme Court entered the judgment from which relief is sought on July 25, 2007. (J.A. 150.) The State of Arizona filed its Petition for Writ of Certiorari in this Court on October 19, 2007, and this Court granted the petition on February 25, 2008. (*Id*. at 177.) This Court has jurisdiction pursuant to United States Constitution Article III, Section 2 and 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION

The Fourth Amendment to the United States Constitution provides as follows:

> 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 Warrant 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. Background: *Arizona v. Gant* I.

On January 6, 2000, the State of Arizona indicted Gant on one count of possession of a narcotic drug for sale, a class 2 felony, and one count of possession of drug paraphernalia, a class 6 felony. (Direct Indictment, filed 1/6/00.) The charges were based on evidence seized during a search of the passenger compartment of Gant's automobile incident to his arrest for driving on a suspended license. (J.A. 151-52, ¶¶ 2-4.) Gant moved to suppress the evidence, claiming that the search was not incident to his arrest because he had exited his automobile before the police had arrested him. (*Id*. at 9-14.) Based on a stipulated record, the trial court denied the motion, the evidence was admitted, and a jury convicted Gant of the charges. (*Id*. at 21, 25-28, 43, 152-53.)

Gant appealed his convictions to the Arizona Court of Appeals, which reversed. *State v. Gant*, 43 P.3d 188, 194, ¶ 18 (Ariz. App. 2002). The appellate court ruled that the trial court should have suppressed the evidence because the police had not initiated contact with Gant before he stepped out of

his automobile. *Id*. at 194, ¶¶ 15, 18. The Arizona Supreme Court denied review, and the State petitioned this Court for a writ of certiorari, contending that under *New York v. Belton*, 453 U.S. 454 (1981), an arrestee's recent occupancy of the automobile, not the arrestee's "initial contact" with the police, is the sole constitutional prerequisite to a warrantless search of an arrestee's automobile incident to arrest. This Court granted certiorari. *Arizona v. Gant*, 538 U.S. 976 (2003).

Before argument on the case, the Arizona Supreme Court issued its decision in *State v. Dean*, in which it expressly rejected the Arizona Court of Appeals' "contact-initiation" analysis in *Gant* and held that under *Belton* the police may search the passenger compartment of an automobile incident to the arrest of the automobile's recent occupant. 76 P.3d 429, 437, ¶¶ 32-34 (Ariz. 2003). Consequently, this Court vacated the court of appeals' opinion and remanded the case for reconsideration in light of *Dean*. *Arizona v. Gant*, 540 U.S. 963 (2003). On remand, the court of appeals found that the stipulated record was inadequate to determine whether Gant was a recent occupant of his automobile at the time of arrest and ordered an evidentiary hearing on the issue. (Pet. App. B at 4, ¶ 3.)

B. Evidentiary Hearing.

At the evidentiary hearing, the State presented the testimony of the Tucson, Arizona, police officers

who arrested Gant and searched the passenger compartment of his automobile incident to his arrest. (J.A. 46, 96, 125.) In the afternoon of August 25, 1999, Officers Griffith and Reed received an anonymous tip that narcotics activity was occurring at a particular house. (*Id*. at 46-47.) The officers went to that house, which had a white automobile parked nearby. (*Id*. at 47, 50.) Gant answered the door. (*Id*. at 47.) He provided the officers with identification and told them that the person who lived at the house was not there but would return later that afternoon. (*Id*. at 47-48.) The officers left. (*Id*. at 48.) Officer Griffith conducted a routine record check on Gant and discovered that his driver's license had been suspended and that an arrest warrant had been issued for him based on driving on a suspended license. (*Id*. at 49.)

The officers returned to the house that evening to contact the resident. (*Id.*) They found a man sitting in the driveway and an automobile parked in front of the house. (*Id*. at 50, 98.) While they talked with the man, another police officer arrived. (*Id*. at 50.) Officer Reed spoke with the man while Officer Griffith went toward the automobile. (*Id*. at 50, 98.) He found a woman sitting in the front seat. (*Id*. at 50.) After Officer Griffith spoke with the woman, she got out of the automobile. (*Id.*) Officer Griffith found narcotic paraphernalia in her purse and arrested her. (*Id.*) Meanwhile, Officer Reed learned that the man had provided a false name and arrested him as well. (*Id*. at 50, 98.) Once the man was properly identified,

Officer Reed discovered that arrest warrants had been issued for him. (*Id*. at 50.)

As the officers were arresting the man and the woman, they saw a white automobile – the same white automobile that they had seen earlier at the house – pull into the driveway. (*Id.*) Officer Griffith shined his flashlight into the automobile's passenger compartment and recognized Gant as the driver. (*Id*.)

Gant passed within three feet of Officer Griffith as he parked the automobile by the house. (*Id*. at 51, 53-54.) Gant's automobile was ten to twelve feet away from Officer Griffith. (*Id*. at 56.) Gant got out of the automobile, and Officer Griffith called him by name. (*Id*. at 54-55.) Gant responded, and Officer Griffith walked toward him while motioning him to approach. (*Id*. at 55.) Gant walked toward Officer Griffith and met him within ten seconds of getting out of his automobile. (*Id*. at 56.) Officer Griffith arrested and handcuffed him. (*Id*. at 57-58.) Officer Griffith was concerned for his safety because he and the two other officers now had three people in custody. (*Id*. at 60.)

Because Officer Reed had placed the man who had given a false name in one patrol car, and the other officer had placed the woman into his patrol car, Officer Griffith had no patrol car in which to place Gant. (*Id*. at 108-09.) Officer Griffith called for Officer Nolan to come to the house so that he could put Gant in Nolan's patrol car. (*Id*. at 109.) Officer Nolan arrived within two minutes, and Officer Griffith placed Gant in the patrol car. (*Id*. at 75-76.) Officers

Reed and Nolan immediately searched the passenger compartment of Gant's automobile and found drugs and a weapon. (*Id*. at 61-62, 109-10.)

On cross examination, Officer Griffith explained that he had officers search the automobile for "officer safety reasons."[1] (*Id*. at 75.) He acknowledged that four or five police officers were at the scene (*id*. at 58, 76) and that the scene was secure "[t]o a certain extent" (*id*. at 80), but he stated that he was still anticipating the arrival of the resident of the house (*id*.). In response to cross-examination about the unlikelihood that one of the arrestees might gain access to Gant's automobile, Officer Griffith noted, "Strange things have happened." (*Id*. at 80-81.)

When Officer Reed testified about the arrest and search, he stated that officer safety was an issue because the officers had not yet accounted for the resident or owner of the house whom Gant had said would return in the afternoon. (*Id*. at 111-12.) He explained why Gant's arrest created safety concerns for the officers:

> Officer safety is always an issue in a situation like that. It's a suspected drug activity area. It's not unusual for weapons to be involved in drug areas because people maintain weapons because they want to protect

[1] Officer Griffith also testified that he expected the search to reveal evidence relating to Gant's suspended license offense, such as "license paperwork from the court system." (J.A. 73-74.)

> themselves not necessarily from law enforcement but also from other drug users or people [sic] might want to rob them of their drugs or money.
>
> As I mentioned before, we were at least reasonably aware that there may be somebody in the house because we hadn't made contact with the house the second point in time yet, and Mr. Gant had prior told us [sic] that he was not the resident.

(*Id*. at 112.) Officer Reed indicated, however, that Gant presented no threat to anyone once he was secured in the patrol car.[2] (*Id*. at 121.)

Upon consideration of the officers' testimony, the trial court ruled that the search of the passenger compartment of Gant's automobile was incident to his arrest because he was a recent occupant of the automobile. (*Id*. at 148-49.) The trial court found that the officers had contacted Gant immediately after he had gotten out of his automobile and had arrested him "seconds later." (*Id*.) The trial court also found that the officers had searched Gant's automobile "immediately" after he was handcuffed and placed in a patrol car. (*Id*.)

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[2] Officer Reed also testified that it would not be unusual for the search to reveal evidence relating to Gant's suspended license, such as a suspension notification or a citation for driving on a suspended license. (J.A. 111.)

C. Appellate Proceedings.

When the case returned to the court of appeals, the court reversed in a 2-1 decision. (Pet. App. B at 18, ¶ 21.) The majority ruled that the search of the passenger compartment of Gant's automobile was not incident to his arrest because the underlying justifications for such a search – the need to protect the officers' safety and the need to preserve evidence – were not present. (*Id*. at 15, ¶ 18.) The majority stated that the justifications for the search evaporated once Gant and the other arrestees were secured in patrol cars. (*Id.* at 8, ¶ 11.) The majority discounted the officers' expressed concerns about their safety and their uncertainty about the presence of people inside the house because the arrestees were secured in patrol cars. (*Id.* at 9, ¶ 11 n.4.) Without the existence of the justifications for the search, the court commented, the search was not contemporaneous with the arrest. (*Id.* at 15, ¶ 18.)

The dissent rejected this analysis, noting that the majority "single-handedly discard[ed] the bright-line rule set forth in" *Belton*. (*Id.* at 19, ¶ 22.) The dissent explained that the majority's decision returned Arizona law enforcement officers "to the uncertain and dangerous environment" in which, facing a highly volatile situation, they must calculate the probability that weapons or destructible evidence may be involved and estimate what items were or were not within the arrestee's reach at any particular point. (*Id.* at 22, ¶ 25; internal quotation marks and citations omitted.)

On review, the Arizona Supreme Court affirmed the court of appeals' decision by a 3-2 vote, agreeing that the search violated Gant's Fourth Amendment rights.[3] (J.A. 166-67, ¶ 25.) The majority ruled that the search was not incident to Gant's arrest because the underlying justifications for the search did not exist at the time of the search. (*Id*. at 157, ¶ 13.) The majority found that "neither a concern for officer safety nor the preservation of evidence" justified the search because Gant was handcuffed in a secured patrol car under police supervision and the other two arrestees were likewise handcuffed and secured. (*Id.*) Because the record revealed no unsecured civilians in the area and at least four officers were at the scene, the majority concluded that the officers "had no reason to believe that anyone at the scene could have gained access to Gant's vehicle or that the officers' safety was at risk." (*Id.*)

The majority rejected the argument that the underlying justifications for a search of the passenger compartment of an automobile incident to arrest are presumed to exist when a lawful arrest occurs. (*Id*. at 159-60, ¶¶ 16-17.) The majority stated that when the underlying justifications for a search cease, the validity of the search also ceases. (*Id.*) The majority insisted that this analysis was not inconsistent with *Belton*. (*Id*. at 156-58, ¶¶ 11-12, 14.) According to the

[3] Gant made no claim under the Arizona Constitution, and the supreme court declined to consider its application to Gant's case. (J.A. 154, ¶ 8 n.1.)

majority, *Belton* delimited the *scope* of a search incident to arrest of an occupant of an automobile to include the automobile's passenger compartment, but did not address whether the police could still search the passenger compartment "at all once the scene is secure." (*Id*. at 156-57, ¶ 12.) The majority found that this Court's decision in *Thornton v. United States*, 541 U.S. 615 (2004), likewise did not establish when a search is appropriate because that decision merely held that recent occupants of automobiles are "occupants" for purposes of *Belton*. (*Id*. at 161-62, ¶¶ 19-20.)

The majority concluded that, because this Court had never adopted a bright-line rule for determining when a search of an automobile is justified incident to the recent occupant's arrest, the propriety of such a search depends on an examination of the "totality of the circumstances" of each case to determine whether the underlying justifications actually exist at the time of the search. (*Id*. at 164-66, ¶ 23.)

The dissenting justices found that the majority's analysis "departs from *Belton*'s determination that searches in this context should be guided by a 'straightforward rule' that does not depend on case-by-case adjudication." (*Id*. at 173, ¶ 39, quoting *Belton*, 453 U.S. at 458-59.) The majority's "totality of the circumstances" approach, the dissent noted, requires police officers in the field and reviewing courts after the fact to engage in a case-specific analysis that is "at odds with the core premise of *Belton*." (*Id*. at 173-74, ¶ 39.) The dissent found that

the search of Gant's automobile was valid under *Belton*. (*Id*. at 176, ¶ 43.)

SUMMARY OF ARGUMENT

The search of Gant's automobile incident to his arrest did not violate the Fourth Amendment. The Arizona Supreme Court held that the Fourth Amendment did not permit the search because the arresting officers had no reason to fear for their safety or to believe that Gant might destroy evidence in the automobile once the police had secured him in a patrol car. (J.A. 157, 166-67, ¶¶ 13, 25.) But the Fourth Amendment does not require that the police demonstrate that the arrestee actually poses a threat to their safety or to the preservation of evidence before they may conduct such a search. Twenty-seven years ago in *Belton*, this Court established a bright-line rule governing this type of search: "[W]hen a policeman has made a lawful custodial arrest of the recent occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." 453 U.S. at 460. This Court reaffirmed that holding in 2004 in *Thornton*. 541 U.S. at 623. No further demonstration is required.

Belton's bright-line rule is consistent with Fourth Amendment principles. The Fourth Amendment requires searches to be reasonable, and a *Belton* search strikes the proper balance between an

individual's right to privacy and the government's legitimate need to conduct the search. Because automobiles and their contents are exposed to public view and the use of automobiles is highly regulated, an individual has a reduced privacy interest in an automobile's passenger compartment. Weighed against that limited interest are the government's paramount interests in ensuring the safety of law enforcement officers and preserving evidence of crime. Arrests are inherently dangerous, with more than one hundred officers killed and thousands assaulted during arrests in the last decade. Arrestees, even those secured at the scene, and their confederates pose risks to officer safety and to the safeguarding of evidence. A search of an automobile's passenger compartment is essential to protect officers and evidence from these dangers.

Such a search is reasonable also because it is limited. Officers may search recent occupants of automobiles only when the occupants are lawfully arrested. They may search only the passenger compartment, not any other part of the automobile. And they may search the passenger compartment only as a "contemporaneous incident" to the arrest. *Belton* does not allow general, unrestrained searches.

Belton's bright-line rule promotes Fourth Amendment interests by providing a certain and clear guideline for the public and for officers in the field in determining the scope of an individual's protection and an officer's scope of authority under the Fourth Amendment. With the bright-line rule, an

individual knows that if he is arrested as a recent occupant of an automobile, he has no privacy right in the passenger compartment of his automobile. The arresting officer knows that he has the authority to search the passenger compartment of the arrestee's automobile as long as he does so as a contemporaneous incident to the arrest.

The alternative rule that the Arizona Supreme Court has promulgated – deciding the scope of the protection and the scope of authority based on a case-by-case analysis of the circumstances of the arrest – advances no Fourth Amendment interests and poses dangers to officers. If the validity of the search of the automobile's passenger compartment incident to arrest depends on an arresting officer's *ad hoc* assessment that he is secure from danger and that evidence will not be destroyed, a recent occupant of an automobile will not know the scope of his rights under the Fourth Amendment in any given case.

Likewise, an officer will not have any sure way to determine in any arrest situation whether he has the authority to search. The circumstances that factor into a determination that an arrest scene is secure are so numerous, and the effect of those circumstances on the safety of the scene is so fraught with uncertainty and subjective judgment, that officers cannot reasonably be expected to make decisions whether to search with any degree of consistency and accuracy. Either an individual's right under the Fourth Amendment will be violated, or an officer will have incorrectly evaluated the security of the arrest

scene, risking injury or death. In addition, a case-by-case analysis also creates litigation uncertainty because, once an officer searches the passenger compartment and seizes evidence of crime, attorneys and judges, months or years after the search, must determine whether the officer's decision was correct. This does nothing to protect Fourth Amendment rights.

In *Belton*, this Court chose the course that avoided these difficulties. *Stare decisis* counsels staying that course. *Belton*'s bright-line rule is workable, "a straightforward rule, easily applied, and predictably enforced." 453 U.S. at 459. The public and police officers alike know the extent of the Fourth Amendment's protection. Overruling *Belton* would cause hardship on law enforcement officers across the United States because they would have to be re-trained in arrest and search procedures and have to be taught to sift through a plethora of varying circumstances to determine whether they have authority to search. Nothing has changed in this Court's Fourth Amendment jurisprudence or in the nature of arrests of recent occupants of automobiles in the last 27 years to warrant overruling *Belton*. This Court should reaffirm *Belton* and hold that the search of Gant's automobile incident to his arrest did not violate the Fourth Amendment.

ARGUMENT

The Search of the Passenger Compartment of Gant's Automobile Incident to His Arrest Did Not Violate His Fourth Amendment Rights Regardless Whether He Posed a Threat to the Arresting Officers' Safety or Might Have Destroyed Evidence.

In the question presented, this Court has asked whether the Fourth Amendment requires arresting officers to demonstrate a threat to their safety or a risk of destruction of evidence to search the passenger compartment of an automobile incident to the arrest of its recent occupants. The answer is no. The Fourth Amendment does not require a case-by-case analysis to determine whether such a search is proper. In *Belton*, this Court established a bright-line rule that police may search the passenger compartment of an automobile incident to the arrest of its recent occupant without analyzing the actual risks in any given case. *Belton*'s bright-line rule is consistent with Fourth Amendment principles because it authorizes reasonable searches that appropriately balance the limited privacy interest of an arrestee with the government's interest in protecting the safety of arresting officers and preserving evidence of crime. Moreover, because this Court's decision in *Belton* in 1981 created a workable rule that informs police and public alike of the boundaries of the Fourth Amendment right to be free from unreasonable searches and seizures, principles of *stare decisis* counsel against overruling *Belton*.

A. *Belton*'s Bright-Line Rule Permits Searches of an Automobile's Passenger Compartment Incident to the Recent Occupant's Arrest Without a Fact-Specific Analysis of the Threat to Officer Safety or the Need to Preserve Evidence Related to the Crime of Arrest.

This Court first recognized that a search incident to arrest was reasonable under the Fourth Amendment in *Weeks v. United States*, 232 U.S. 383, 392 (1914). The Court had difficulty, however, in defining the scope of the search. Over the following decades it alternately expanded the scope to include the premises where the person was arrested and limited the scope to the area under the control of the person arrested at the time he was arrested. *See Chimel v. California*, 395 U.S. 752, 755-62 (1969) (recounting the decisional vacillations).

The vacillations ended in *Chimel*. The Court defined the scope to include "the arrestee's person and the area 'within his immediate control.'" *Id.* at 763. The Court concluded that the Fourth Amendment permits searches within that boundary because (1) "it is reasonable for the arresting officer to search the person arrested in order to remove any weapons" that the arrested person "might seek to use in order to resist arrest or effect his escape"; (2) "it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction"; and (3) "[a] gun on a table or in a drawer in front of one arrested

can be as dangerous as one concealed in the clothing of the person arrested." *Id*.

This Court next addressed searches incident to arrest in *United States v. Robinson*, 414 U.S. 218 (1973). In that case, an officer arresting Robinson for driving on a revoked license searched his clothing and found heroin. *Id*. at 220-23. The lower court had held that the search of Robinson's clothing was improper because the arresting officer lacked probable cause to believe that Robinson had on his person any evidence relating to driving on a revoked license, *id*. at 233, or that Robinson might be armed, *id*. at 234.

This Court rejected such a limitation, noting that the government had the authority – "'always recognized under English and American law'" – "'to search the person of the accused when legally arrested to discover and seize fruits or evidences of crime.'" *Id*. at 225 (quoting *Weeks*, 232 U.S. at 392). The Court held that the fact of the arrest itself justifies a complete search of the person: "A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification. It is the fact of the lawful arrest which establishes the authority to search." *Id*. at 235.

The Court recognized that searches incident to arrest are justified by the "need to disarm the suspect" and the "need to preserve evidence on his person for later use at trial," *id*. at 234, but disagreed

with the lower court's conclusion that those justifications must actually exist in the case before a search is valid, *id*. at 235. An officer's decision to search is "necessarily a quick ad hoc judgment" that does not need "to be broken down in each instance" into an analysis of each step that must be subsequently litigated in every case:

> The authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect.

Id. Thus, a search of a person incident to his arrest is reasonable under the Fourth Amendment. *Id*.

This Court applied the principles of *Chimel* and *Robinson* to searches incident to the arrest of automobile occupants in *Belton*. In that case, a New York State police officer stopped Belton for speeding on the New York Thruway. 453 U.S. at 455. As the officer spoke with Belton, he smelled burnt marijuana and saw an envelope on the automobile's floor that he associated with marijuana. *Id*. at 455-56. The officer arrested Belton and his three companions, patted them down for weapons, placed them each in separate areas of the Thruway, and searched the automobile. *Id*. at 456. In the backseat, he found Belton's leather jacket, searched it, and discovered cocaine in one of the pockets. *Id*.

On appeal, following Belton's conviction on drug possession charges, the New York Court of Appeals ruled that the search violated the Fourth Amendment because the jacket was "unaccessible" once the officer seized it, and there was "'no longer any danger that the arrestee or a confederate might gain access to the article.'" *Id*. (quoting *People v. Belton*, 407 N.E.2d 420, 421 (N.Y. 1980)). The state court opined that at the point that an arrestee "is effectively neutralized or the object is within the exclusive control of the police," "any exigency which would otherwise have justified a warrantless search has been dissipated and the search is no longer an incident to the arrest." *Belton*, 407 N.E.2d at 422.

This Court rejected such a case-by-case analysis. Recognizing that *Robinson* had established a "straightforward rule, easily applied, and predictably enforced," *Belton*, 453 U.S. at 459, and that lower courts had "found no workable definition" of *Chimel*'s "area within the immediate control of the arrestee" when the arrestee was a recent occupant of an automobile, *id*. at 460, this Court sought "a settled principle" to guide the police in these situations, *id*. Because "articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within 'the area into which an arrestee might reach in order to grab a weapon or evidentiary ite[m],'" *id*. (quoting *Chimel*, 395 U.S. at 763), this Court held that "when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous

incident of that arrest, search the passenger compartment of that automobile," *id*. This "bright-line" rule allows an officer to search a recent occupant's automobile incident to arrest regardless whether the officer actually fears for his safety or believes that evidence may be destroyed. *Michigan v. Long*, 463 U.S. 1032, 1049 n.14 (1983) (stating that "the 'bright line' that we drew in *Belton* clearly authorizes [a search of an automobile] whenever officers effect a custodial arrest").

This Court reaffirmed this point in *Thornton*. Thornton claimed that the search of his automobile incident to his arrest violated the Fourth Amendment and *Belton* because the police did not initiate contact with him when he was still an occupant of his automobile, but approached him only after he had left the automobile. *Thornton*, 541 U.S. at 618-19. He also claimed that even if he was an occupant of the automobile for purposes of *Belton*, the search was still improper because he could not physically reach the automobile's passenger compartment at the time he was arrested. *Id*. at 622 n.2.

In holding that *Belton* applies to recent occupants of automobiles as well as occupants, the Court explained that, although the passenger compartment was not likely readily accessible to Thornton, this did not affect the reasonableness of the search: "The need for a clear rule, readily understood by police officers and not depending on differing estimates of what items were or were not within reach of an arrestee at any particular moment, justifies the sort

of generalization which *Belton* enunciated." *Id*. at 622-23 (footnote omitted). This Court reaffirmed *Belton*'s holding: "Once an officer determines that there is probable cause to make an arrest, it is reasonable to allow officers to ensure their safety and to preserve evidence by searching the entire passenger compartment." *Id*. at 623.

Robinson, *Belton*, and *Thornton* have answered the Court's question in this case. A search of the passenger compartment of an automobile incident to the lawful arrest of the automobile's recent occupant is reasonable under the Fourth Amendment even after the recent occupant is secured because the reasonableness of the search does not depend on demonstrating a threat to the arresting officers' safety or a need to preserve evidence.

B. *Belton*'s Bright-Line Rule Is Reasonable and Provides Clarity that Promotes Fourth Amendment Interests.

Belton's bright-line rule that an officer may search the passenger compartment of an automobile incident to the arrest of the recent occupant regardless whether the arrestee poses a threat to the officer's safety or might destroy evidence is consistent with Fourth Amendment principles. The Fourth Amendment protects individuals against "unreasonable searches and seizures." U.S. Const. amend. IV. *Belton*'s bright-line rule strikes the appropriate balance between an individual's privacy interest and

the government's legitimate interests in officer safety and evidence preservation and appropriately limits the scope of the search. Also, the bright-line rule promotes Fourth Amendment interests by providing clear guidelines for police officers in the field to determine when they have authority to search.

1. Searches conducted under *Belton*'s bright-line rule are reasonable.

A search incident to arrest "is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment." *Robinson*, 414 U.S. at 235. Such a search is reasonable even when it extends beyond the person of the arrestee to "the area into which an arrestee might reach in order to grab a weapon or evidentiary items." *Chimel*, 395 U.S. at 763. Determining that an arrestee's "area of control" includes the passenger compartment of an automobile when the arrestee is a recent occupant of that automobile – as this Court did in *Belton* – is reasonable as well. Whether a search is reasonable under the Fourth Amendment requires "assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests." *Wyoming v. Houghton*, 526 U.S. 295, 300 (1999). The *Belton* rule strikes the proper balance.

a. *Belton*'s bright-line rule correctly balances the need for officer safety and evidence preservation with an arrestee's limited privacy interest in his automobile.

In evaluating the reasonableness of a search under *Belton*, an arrestee's privacy interest in his automobile must give way to the need to protect the arresting officers and to preserve evidence of crime. An individual has a reduced expectation of privacy in the contents of his automobile. *See*, *e.g.*, *Houghton*, 526 U.S. at 303 (automobile searches intrude much less upon personal privacy and dignity than searches of persons, in light of the everyday exposure of automobiles and their contents to public view, police regulation, and potential involvement in traffic accidents); *California v. Carney*, 471 U.S. 386, 390-92 (1985) ("ready mobility" and pervasive regulation result in a reduced expectation of privacy in motor vehicles); *Almeida-Sanchez v. United States*, 413 U.S. 266, 279 (1973) (automobile searches are "far less intrusive on the rights protected by the Fourth Amendment than the search of one's person or of a building"). This reduced expectation of privacy is "diminished further when the occupants are placed under custodial arrest." *Robbins v. California*, 453 U.S. 420, 431 (1981) (Powell, J., concurring in judgment) (citations omitted), *overruled on other grounds by United States v. Ross*, 456 U.S. 798 (1982); *see also United States v. Edwards*, 415 U.S. 800, 808-09 (1974) ("While the legal arrest of a person should

not destroy the privacy of his premises, it does – for at least a reasonable time and to a reasonable extent – take his own privacy out of the realm of protection from police interest in weapons, means of escape, and evidence.") (quoting *United States v. DeLeo*, 422 F.2d 487, 493 (1st Cir. 1970)).

The paramount interest in officer safety outweighs this limited privacy interest. Arrests, especially arrests of recent occupants of automobiles, are dangerous to police officers. *See Pennsylvania v. Mimms*, 434 U.S. 106, 110 (1977) (per curiam) (arresting automobile occupants presents "inordinate risk[s]" for officers); *Robinson*, 414 U.S. at 234 n.5 ("The danger to the police officer flows from the fact of the arrest, and its attendant proximity, stress, and uncertainty."); *see also Washington v. Chrisman*, 455 U.S. 1, 7 (1982) ("Every arrest must be presumed to present a risk of danger to the arresting officer."). Officers cannot predict how persons will react to being arrested. *Chrisman*, 455 U.S. at 7. Between 1997 and 2006, 133 of the 562 officers feloniously killed were killed during arrest situations. FBI U.S. Dep't of Justice, *Uniform Crime Report: Law Enforcement Officers Killed and Assaulted*, http://www.fbi.gov/ucr/killed/2006/feloniouslykilled.html, Table 19 (2006). In that same period, 100 of the officers feloniously killed were killed during traffic stops. *Id*. More than 58,000 officers were assaulted during the same time period, and more than 9,000 of those assaults occurred while attempting arrests, and more than 6,000 of those assaults occurred while making a

traffic stop. FBI U.S. Dep't of Justice, *Uniform Crime Report: Law Enforcement Officers Killed and Assaulted,* http://www.fbi.gov/ucr/killed/2006/officersassaulted.html, Table 66 (2006).

Because arrests are so dangerous and volatile, merely handcuffing the arrestee and securing him in a patrol car does not eliminate the risk to the officers. Handcuffed and secured arrestees, like Gant, can escape and threaten officers. *See Plakas v. Drinski*, 19 F.3d 1143, 1144-45 (7th Cir. 1994) (suspect handcuffed in the backseat of a patrol car escaped and later confronted police); *United States v. Sanders*, 994 F.2d 200, 210 & n.60 (5th Cir. 1993) (citing incidents in which handcuffed arrestees killed police officers). The chance that a secured arrestee may escape a patrol car and reach a weapon or destroy evidence in his automobile is admittedly small, but it is real. As Officer Griffith testified, "Strange things have happened." (J.A. 81.)

Moreover, handcuffing and securing an arrestee does not account for unknown confederates at the arrest scene. In Gant's case, for example, while Gant and two other people at the house were handcuffed and secured in separate patrol cars, the officers were concerned that the residents of the house had not yet been accounted for. (*Id*. at 79-80, 111-12.) Those persons could have come out of the house and gained entry to the automobile to grab a weapon or to destroy evidence. The circumstances surrounding Gant's arrest gave the officers reason to suspect that Gant had a weapon in the passenger compartment

of his automobile. The officers knew that people involved in drug activity maintain weapons to protect themselves from fellow criminals. (*Id*. at 112-13.) The officers came to the house earlier that day because of an anonymous tip about drug activity (*id*. at 47), and they found drug paraphernalia in the purse of the woman arrested at the house before Gant arrived (*id*. at 50). Gant indeed had a weapon in his automobile. (*Id*. at 110.) A search of the passenger compartment of Gant's automobile was necessary to eliminate the safety risk.

The same is true even if officers have accounted for everyone at a scene. For example, in *United States v. Doward*, police officers stopped Doward for a traffic infraction and arrested him after learning of a warrant for his arrest. 41 F.3d 789, 791 (1st Cir. 1994). Although the officers secured Doward in the patrol car, they still had to contend with Doward's passenger, whom they had no reason to arrest. *Id*. Although the officers ordered the passenger to get out of the automobile, *id*., they still needed to search the passenger compartment to prevent him from potentially retrieving a weapon.

In addition, even when officers believe that they have accounted for everyone, the situation may change. In *Doward*, Doward's arrest attracted a crowd, and his daughter emerged from the crowd and interjected herself. *Id*. She, too, could have reached for the weapon in the automobile had the officers not searched it. An arrest may involve "rapidly evolving circumstances fraught with unpredictable risks to life and limb." *Id*. at 793; *see also id*. at 793 n.5 ("[T]he

unpredictable developments ultimately confronting the officers in this case clearly vindicate the *Belton* rationale."). Searching the passenger compartment of the arrestee's automobile is the only way to protect officers in these circumstances.

Officer safety, while the paramount governmental interest, is not the only interest weighing in favor of the *Belton* rule. The government also has an interest in preserving evidence of crimes. At the moment of a person's arrest, he is motivated "to take conspicuous, immediate steps to destroy incriminating evidence." *Cupp v. Murphy*, 412 U.S. 291, 296 (1973). Without searching the passenger compartment of an automobile incident to the recent occupant's arrest, the recent occupant or a confederate may enter the automobile to remove or destroy evidence.

The balance between an individual's limited privacy interest in his automobile and the need to ensure officer safety and to preserve evidence tilts heavily in favor of the government. *See Robbins*, 453 U.S. at 431 (Powell, J., concurring in judgment) ("*Belton* trades marginal privacy of containers within the passenger area of an automobile for protection of the officer and of destructible evidence. The balance of these interests strongly favors the Court's rule."). *Belton* searches are therefore reasonable.

b. *Belton* searches are limited.

Belton searches are reasonable also because they are appropriately limited. *Belton* searches are

restricted in three ways. First, *Belton* authorizes a search of the passenger compartment of an automobile only if its recent occupant has been arrested. 453 U.S. at 460. If an arrestee is not a recent occupant of an automobile, but merely owns one or has access to one, *Belton* does not authorize a search. Second, *Belton* limits the search to the passenger compartment. *Id*. Recent occupants have access to the passenger compartment before the arrest and could easily conceal a weapon or drugs there. *Belton* does not permit the officers to conduct a general search of the entire automobile.

Third, the search must be a "contemporaneous incident" of the arrest. *Id*. Although this Court has not yet given a precise definition of "contemporaneous," lower courts have not permitted *Belton* searches when "the arrest and search are so separated in time or by intervening acts that the latter cannot be said to have been incident to the former." *United States v. McLaughlin*, 170 F.3d 889, 893 (9th Cir. 1999); *United States v. Abdul-Saboor*, 85 F.3d 664, 668 (D.C. Cir. 1996). For example, courts have held that taking the automobile to the police station before searching it or removing the arrestee from the scene of arrest are intervening acts that break the contemporaneity of the search with the arrest. *United States v. Wells*, 347 F.3d 280, 287 (8th Cir. 2003) (removing automobile from scene); *United States v. Lugo*, 978 F.2d 631, 634-35 (10th Cir. 1992) (removing arrestee from scene).

Thus, the scope of *Belton*'s bright-line rule is appropriately limited to serve the government's

particular needs in arresting a recent occupant of an automobile. Searches conducted under *Belton* are therefore reasonable.

2. *Belton*'s bright-line rule provides certainty and clarity that promotes Fourth Amendment interests.

Before this Court decided *Belton*, lower courts had great difficulty in applying *Chimel*'s "area of immediate control" standard to cases in which the arrestee was a recent occupant of an automobile. *Belton*, 453 U.S. at 459. Some courts found the passenger compartment of the automobile within the arrestee's immediate control, some courts found it outside his immediate control. *Id*. This Court recognized that this confusion undermined the Fourth Amendment: "When a person cannot know how a court will apply a settled principle to a recurring factual situation, that person cannot know the scope of his constitutional protection, nor can a policeman know the scope of his authority." *Id*. at 459-60.

This Court ended the confusion by establishing a bright-line rule: "[W]hen a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." *Id*. at 460. The rule does not depend on the existence in any particular case of the justifications underlying the search-incident-to-arrest exception to the warrant requirement. *Id*. at 459

(approving of *Robinson*'s rejection of the need to litigate the existence of the underlying justifications for a search incident to arrest).

From this bright-line rule, a recent occupant of an automobile who is arrested knows that he has no Fourth Amendment protection from a search of the passenger compartment of his automobile conducted as a contemporaneous incident to arrest. The arresting officer knows that he has the authority to search the passenger compartment of the arrestee's automobile as long as he searches it as a contemporaneous incident to the arrest.

This Court understood that police officers need bright-line rules to guide them in the field:

> [T]he protection of the Fourth and Fourteenth Amendments "can only be realized if the police are acting under a set of rules which, in most instances, makes it possible to reach a correct determination beforehand as to whether an invasion of privacy is justified in the interest of law enforcement."

Belton, 453 U.S. at 458 (quoting Wayne R. LaFave, *"Case-By-Case Adjudication" Versus "Standardized Procedures": The* Robinson *Dilemma*, 1974 S. Ct. Rev. 127, 142 (hereinafter LaFave)). The Fourth Amendment "'is primarily intended to regulate the police in their day-to-day activities and thus ought to be expressed in terms that are readily applicable'" to their law enforcement activities. *Id*. (quoting LaFave, 1974 S. Ct. Rev. at 141). "'A single, familiar standard

is essential[,]'" because officers "'have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront.'" *Id*. (quoting *Dunaway v. New York*, 442 U.S. 200, 213-14 (1979)).

The operational rules for officers in the field should not turn upon "'[a] highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions.'" *Id*. (quoting LaFave, 1974 S. Ct. Rev. at 141). The Fourth Amendment "has to be applied on the spur (and in the heat) of the moment," and requires standards that are "sufficiently clear and simple to be applied with a fair prospect of surviving judicial second-guessing months and years after an arrest is made." *Atwater v. City of Lago Vista*, 532 U.S. 318, 347 (2001). "Police shouldn't have to carry well-thumbed copies of the multivolume LaFave treatise on search and seizure with them wherever they go." *United States v. Pittman*, 411 F.3d 813, 816 (7th Cir. 2005).

For the past 27 years *Belton*'s bright-line rule has provided officers with the necessary clarity to easily determine when they may search and when they may not. Of course, situations can arise on the margins that will test the limits of the rule, and trial courts may have to decide close questions whether a person was a "recent occupant" or whether the police conducted the search as a "contemporaneous incident" to the arrest. But in the overwhelming majority of cases, the *Belton* rule has been "a straightforward rule,

easily applied and predictably enforced." *See Belton*, 453 U.S. at 459.

In contrast to applying *Belton*'s bright-line rule, using a case-by-case analysis to determine whether the police may search the passenger compartment of an automobile incident to the arrest of the recent occupant – as the Arizona Supreme Court did in this case – provides no guidance to police officers or to individuals regarding the scope of their Fourth Amendment rights. In a case-by-case analysis, officers can search the passenger compartment only if they find that the justifications underlying the search-incident-to-arrest exception – the need to protect officer safety and to preserve evidence of crime – actually exist at the time of arrest. (J.A. 157, ¶ 13.)

Determining the validity of these searches on a case-by-case basis leaves the public and police at sea in understanding the Fourth Amendment's boundaries. Because every arrest situation is different, with a myriad of variable and unpredictable circumstances, the arrestee has no idea whether he has any privacy interest in the passenger compartment of his automobile, and the arresting officers have no true and quick way of determining whether searching the passenger compartment is permissible under the Fourth Amendment. Arrests are dangerous, and "police must act decisively and cannot be expected to make punctilious judgments regarding what is within and what is just beyond the arrestee's grasp." *United States v. Lyons*, 706 F.2d 321, 330 (D.C. Cir. 1983).

The consequences to the officers if they make a mistake about the apparent security of the arrest scene are grave indeed.

Police face a multitude of circumstances that have varying effects on the security of the arrest scene. In this case, for example, the Arizona Supreme Court believed that six circumstances showed that the arrest scene was sufficiently secure that the arresting officers had no reason to fear for their safety or to believe that evidence might be destroyed: (1) Gant was handcuffed; (2) Gant was secure in a patrol car; (3) an officer "supervised" Gant while he was in the patrol car; (4) two other persons at the scene had been handcuffed and secured in patrol cars; (5) four police officers were at the scene; and (6) one officer believed that the scene was "secure." (J.A. 157, ¶ 13.)

Such an analysis – even assuming it were correct – provides no guidance for officers in the field when they face circumstances that vary even slightly. What if three, not four, officers were present? What if the officers did not have enough patrol cars in which to secure Gant and all of his confederates? Luckily for Officer Griffith, an additional patrol car was nearby, or else he would not have been able to secure Gant. (*Id*. at 108-09.) If that patrol car had not been nearby, would a handcuffed Gant be sufficiently secure for the officers to determine that he posed no threat to their safety, precluding a search incident to arrest?

What if Gant had passengers in his automobile when he was arrested? Because the officers arrested Gant on a warrant for driving on a suspended license, they would have no cause to arrest or otherwise secure the passengers. Would the passengers' freedom from restraint have justified the officers in searching Gant's automobile? The passengers could have known about the location of the weapon in Gant's automobile and used it to deadly effect, or at the very least removed or destroyed the drugs in the automobile. What if, even though Gant and all the other arrestees were secure in patrol cars, the officer still felt threatened? Would that have justified a search of Gant's automobile? While Officer Reed testified that Gant himself posed no threat after he was secure in the patrol car, he also was concerned about the owner or resident of the house whom Gant had said would return and had not yet been accounted for. (J.A. 111-12.)

These are just some of the questions that arresting officers – the rookie and the seasoned veteran alike – would have to resolve "on the spur (and in the heat) of the moment." *Atwater*, 532 U.S. at 347. In many instances, the officers would be unaware of all of the circumstances that could affect their safety, and they often would need to speculate about the effect of some of the circumstances. This Court established *Belton*'s bright-line rule to eliminate the need for arresting officers to simultaneously sift through all the possible relevant circumstances while thumbing through LaFave to determine whether the Fourth

Amendment permits them to search the passenger compartment. That is why this Court reaffirmed *Belton*'s bright-line rule in *Thornton*. 541 U.S. at 622-23 ("The need for a clear rule, readily understood by police officers . . . justifies the sort of generalization that *Belton* enunciated."); *see also Robbins*, 453 U.S. at 431 (Powell, J., concurring in judgment) ("[P]ractical necessity requires that we allow an officer in these circumstances to secure thoroughly the automobile without requiring him in haste and under pressure to make close calculations about danger to himself or the vulnerability of evidence.").

A case-by-case approach also creates litigation uncertainty: "[W]e have traditionally recognized that a responsible Fourth Amendment balance is not well served by standards requiring sensitive, case-by-case determinations of government need, lest every discretionary judgment in the field be converted into an occasion for constitutional review." *Atwater*, 532 U.S. at 347; *see also Oliver v. United States*, 466 U.S. 170, 181 (1984) ("This Court repeatedly has acknowledged the difficulties created for courts, police, and citizens by an ad hoc, case-by-case definition of Fourth Amendment standards to be applied in differing factual circumstances."). Not only must officers in the heat of the arrest weigh and balance innumerable circumstances to determine whether a search of the passenger compartment would be properly incident to the recent occupant's arrest, but once they have made that decision, attorneys and judges in the cool security of the courtroom must review that decision in

hindsight to determine whether the officers' decision was correct. Such after-the-fact analysis is of little help to the officers in the field – doing nothing to ensure that Fourth Amendment rights are protected *before* the police act – and causes distrust of the judicial system when evidence is suppressed even though the police officers acted in good faith.[4]

By eschewing a case-by-case analysis and adopting a bright-line rule in *Belton*, this Court has given appropriate guidance to police officers in the field while protecting Fourth Amendment rights. The *Belton* rule clearly and easily resolves Gant's case. Because of *Belton*, Officers Griffith and Reed understood that their lawful arrest of Gant, whom they knew to be a recent occupant of an automobile, authorized them to search the passenger compartment incident to that arrest. The officers did not need to weigh and balance the plethora of circumstances that surrounded the arrest to determine whether Gant or a confederate posed a sufficient danger to them or to the preservation of evidence to justify the search.

[4] In his concurrence in *Thornton*, Justice Scalia suggested that, rather than continuing to follow *Belton*'s bright-line rule, a search of the passenger compartment incident to the arrest of a recent occupant be limited to situations "[w]hen officer safety or imminent evidence concealment or destruction is at issue," or when "it is reasonable to believe that evidence relevant to the crime of arrest might be found in the vehicle." 541 U.S. at 632. This rule, however, suffers from the same inadequacies as the Arizona Supreme Court's rule. Officers would still need to analyze the circumstances of each arrest "on the spur (and in the heat) of the moment." *Atwater*, 532 U.S. at 347.

Gant suffered no Fourth Amendment violation, and the Arizona Supreme Court's decision to the contrary should be reversed.

C. Principles of *Stare Decisis* Favor Affirming *Belton*'s Bright-Line Rule Because the Rule Is Workable and Protects Fourth Amendment Interests, and No Special Justification Exists to Overrule It.

This Court has already answered the question posed in this case in *Belton* and recently reaffirmed that answer in *Thornton*: The police may search the passenger compartment of an automobile as a contemporaneous incident to the lawful arrest of a recent occupant of that automobile without demonstrating a threat to their safety or a need to preserve evidence. *Belton*, 453 U.S. at 460; *Thornton*, 541 U.S. at 623. Because *Belton* established a workable rule that guides police and protects individuals' Fourth Amendment rights, principles of *stare decisis* counsel against overruling *Belton* and *Thornton*.

"[N]o judicial system could do society's work if it eyed each issue afresh in every case that raised it." *Planned Parenthood v. Casey*, 505 U.S. 833, 854 (1992) (plurality opinion). Respect for precedent is indispensable to the rule of law. *Id*. *Stare decisis* "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne*

v. Tennessee, 501 U.S. 808, 827 (1991). Although *stare decisis* is a "principle of policy" rather than an "inexorable command," *id*. at 828, "the doctrine carries such persuasive force that we have always required a departure from precedent to be supported by some 'special justification,'" *id*. at 842 (Souter, J., concurring) (quoted favorably in *Dickerson v. United States*, 530 U.S. 428, 443 (2000)).

In determining whether a "special justification" exists to overrule a precedent, this Court examines "a series of prudential and pragmatic considerations" to test whether overruling a particular precedent is consistent with the rule of law and to "gauge the respective costs of reaffirming and overruling a prior case." *Planned Parenthood*, 505 U.S. at 854. Such considerations are whether (1) the rule set forth in the precedent is workable, (2) the rule is subject "to a kind of reliance that would lend a special hardship" to its overruling and "add inequity to the cost of repudiation," (3) the law has developed in a way that leaves the rule "a remnant of abandoned doctrine," or (4) "facts have so changed[ ] or come to be seen so differently" that the rule no longer has "significant application or justification." *Id*. at 854-55.

None of these considerations warrants overruling *Belton* and *Thornton*. First, *Belton*'s bright-line rule is workable. Officers understand that when they lawfully arrest a recent occupant of an automobile they may search the passenger compartment of that automobile as a contemporaneous incident to the arrest. The rule is, as this Court wanted it to be, "a

straightforward rule, easily applied, and predictably enforced." *Belton*, 453 U.S. at 459. Only the alternative is unworkable – a case-by-case analysis of each arrest situation. As explained *supra* at 32-35, the circumstances of an arrest situation are too volatile, too variable, and too numerous to require police officers to assess them before deciding whether they have authority to search the passenger compartment. Mistaken assessments can be deadly.

Second, police officers have relied on the *Belton* rule for the last 27 years in conducting searches incident to an arrest of a recent occupant of an automobile, and overruling *Belton* would cause them "special hardship." *Belton* searches have now become routine police practice. *Cf*. *Dickerson*, 530 U.S. at 443 (upholding *Miranda v. Arizona,* 384 U.S. 436 (1966), on *stare decisis* grounds because *Miranda* warnings have "become embedded in routine police practice" and "have become part of our national culture"). Overruling *Belton* would mean extensive retraining for police agencies across the United States in arrest and search procedures, retraining that requires officers to finely and carefully analyze the circumstances of an arrest to determine whether the situation is dangerous or whether the arrestee or a confederate – or someone unknown in the crowd – might reach into the passenger compartment for a weapon or to destroy evidence. This Court has recognized that such a "'drawing of subtle nuances or hairline distinctions'" may be "'literally impossible'" for the officer in the field. *Belton*, 453 U.S. at 458

(quoting LaFave, 1974 S. Ct. Rev. at 141). Overruling *Belton* would undoubtedly make it more difficult for police to conform their conduct to the requirements of the Fourth Amendment.

Third, no principle of law has developed in such a way to make *Belton* "a remnant of abandoned doctrine." This Court cited *Belton* in 2001 in *Atwater* for the need to have bright-line rules in Fourth Amendment jurisprudence. 532 U.S. at 347. And, far from abandoning *Belton*, this Court reaffirmed *Belton* in 2004 in *Thornton*. 541 U.S. at 623. "A litigant who in effect asks [the Court] to reconsider not one but two prior decisions bears a heavy burden of supporting such a change in our jurisprudence." *Walker v. Armco Steel Corp.*, 446 U.S. 740, 749 (1980).

Fourth, no facts have changed since *Belton* that warrant its reconsideration. This Court reaffirmed its view in *Belton* from *Robinson* that police need "straightforward rule[s], easily applied, and predictably enforced" in deciding when searches are appropriate under the Fourth Amendment. 453 U.S. at 459. That view has carried forward to *Atwater* and *Thornton*. *Atwater*, 532 U.S. at 347; *Thornton*, 541 U.S. at 622-23. Although some members of this Court have questioned the factual validity of *Belton*'s generalization that the passenger compartment of an automobile is within the secured recent occupant's immediate area of control, *Thornton*, 541 U.S. at 626 (Scalia, J., concurring in judgment) (calling "speculative" the fear that a secured arrestee can retrieve a weapon or evidence from his automobile);

see also id. at 624 (O'Connor, J., concurring) (referring to *Belton*'s "shaky foundation"), this debate was the core of the dispute at the time the Court adopted the bright-line rule, *see Belton*, 453 U.S. at 468 (Brennan, J., dissenting) ("[T]he Court for the first time grants police officers authority to conduct a warrantless 'area' search under circumstances where there is no chance that the arrestee 'might gain possession of a weapon or destructible evidence.'") (quoting *Chimel*, 395 U.S. at 763). Neither the facts regarding arrests of recent occupants of automobiles, nor the perception of those facts, have changed in such a way to diminish *Belton*'s validity.

None of the prudential or pragmatic considerations in determining whether to overrule precedent justifies overruling *Belton*. One other consideration militates against overruling *Belton*: overruling *Belton* would undermine the validity of *Chimel*. *Belton*'s validity has been attacked because of the questioned accuracy of its generalization that the passenger compartment of the automobile is within the reach of the recent occupant once he is secured away from the automobile. *See Thornton*, 541 U.S. at 626 (Scalia, J., concurring in judgment) (stating that such a person would need the "skill of Houdini and the strength of Hercules"); *see also*, *e.g*., Myron Moskovitz, *A Rule in Search of a Reason: An Empirical Reexamination of* Chimel *and* Belton, 2002 Wis. L. Rev. 657, 676 (hereinafter Moskovitz) (stating that *Belton*'s generalization is false). But *Chimel* is based on a similar generalization: a person arrested and handcuffed

inside a house may still reach a weapon on a table or in a drawer within the room where he was arrested. 395 U.S. at 763.

Once an arrestee is handcuffed, his ability to grab a weapon is substantially reduced. *See, e.g.*, *State v. Murdock*, 455 N.W.2d 618, 620 (Wis. 1990) (four detectives entered defendant's room, arrested and handcuffed defendant and two others, and made them lie on the floor; neither defendant nor the other arrestees attempted to escape or interfere with search of room incident to their arrest). Often, officers arrest a person inside a house, handcuff and remove him from the room or house, and *then* search the room in which he was arrested according to the area that he could have reached at the time of arrest. *See United States v. Turner*, 926 F.2d 883, 885-86 (9th Cir. 1991) (officers arrested defendant in his bedroom based on arrest warrant; officers handcuffed and secured defendant in another room and searched bedroom incident to arrest); *Davis v. Robbs*, 794 F.2d 1129, 1130 (6th Cir. 1986) (officers arrested defendant in home after observing crime occur; after arresting defendant and placing him in squad car, officers searched room where they arrested defendant incident to arrest and seized weapon). Such searches are upheld because *Chimel* established a bright-line rule that applies regardless whether arrestees could actually endanger officers or destroy evidence. *Turner*, 926 F.2d at 887-88 (validity of search determined by defendant's reach area at the time of arrest, not time of the search); *Davis*, 794 F.2d at 1131

(same); *see also Murdock*, 455 N.W.2d at 624 ("actual accessibility, as a practical matter, cannot be the benchmark determining the authority to search").

Should this Court determine that *Belton* is wrong because the generalization underlying its bright-line rule is not true, that determination would undermine *Chimel*'s rationale as well. *See* Moskovitz, 2002 Wis. L. Rev. at 677 ("The problem [with *Belton*'s generalization] can be traced back to the flaw in *Chimel* itself."). If *Chimel* were undermined, this Court would have to reexamine the proper scope of searches incident to arrest in all contexts, an issue with which this Court had struggled for 50 years before *Chimel*. 395 U.S. at 755-62.

This Court need not reopen that question, however, because this Court need not reconsider *Belton*. The principles of *stare decisis* support reaffirming *Belton* and its bright-line rule: when police lawfully arrest a recent occupant of an automobile, they may, as a contemporaneous incident to that arrest, search the passenger compartment of the automobile without demonstrating a threat to their safety or a need to preserve evidence related to the crime of arrest. Under that rule, the police officers properly searched the passenger compartment of Gant's automobile incident to his arrest. The Arizona Supreme Court's decision that the Fourth Amendment required the police to demonstrate that Gant posed a threat to

their safety or to the preservation of evidence is wrong.

CONCLUSION

For these reasons, the State of Arizona respectfully requests that this Court reverse the *Gant* opinion and hold that the search of Gant's automobile incident to his arrest was constitutional under *Belton* and *Thornton*.

Respectfully submitted,

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