No. 07-542

IN THE

Supreme Court of the United States

STATE OF ARIZONA,

Petitioner,

v.

RODNEY JOSEPH GANT,

Respondent.

On Writ of Certiorari to the Arizona Supreme Court

BRIEF OF RESPONDENT

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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 in order to justify a warrantless vehicular search incident to arrest conducted after the vehicle's recent occupants have been arrested and secured?

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INTRODUCTION

Petitioner and its *amici* propose a radical departure from this Court's Fourth Amendment jurisprudence. They ask this Court to give authorities *carte blanche* to conduct warrantless vehicle searches in all situations involving a recent occupant's arrest, irrespective whether exigencies render the search imperative. They acknowledge that the search-incident-to-arrest doctrine rests on the twin exigency rationales of preventing the arrestee from accessing weapons or destroying evidence but maintain that authorities nonetheless may search a vehicle "incident" to a recent occupant's arrest even when the arrestee cannot conceivably access the vehicle, let alone weapons or evidence that may be inside of it.

Because petitioner's and *amici*'s rule departs from the fundamental basis underlying lawful searches incident to arrest – *i.e.*, the need to protect officers and evidence – this Court should reject it. Here, respondent was firmly in police custody – handcuffed and secured in a locked squad car from which he could not escape – when police searched his car. The lower court properly concluded that this search violated Fourth Amendment reasonableness standards because respondent could reach neither weapons nor evidence located in the vehicle. This Court should affirm.

STATEMENT OF THE CASE

1. On August 25, 1999, Tucson Police Department Officers Todd Griffith and Robert Reed responded to an anonymous tip of possible narcotics activity at a residence, located at 2524 North Walnut Street, Tuscon, Arizona. JA 16, 47, 98, 145. After knocking on the front door, the officers were greeted by

respondent, Rodney Gant, who identified himself and informed the officers that the homeowner would return later that day. JA 47-48, 145. After leaving the residence, Officers Griffith and Reed ran respondent's name through a records database, which revealed that respondent had a suspended license and an outstanding warrant for failure to appear on a driving-on-a-suspended-license charge. JA 48-49, 145.

Later that day, the officers returned to the residence. JA 48-49, 98, 145. Upon arrival, they found two individuals outside the home – a man, Jackie White, in the backyard and a woman, Ms. Porras, in a car parked in front of the house. JA 50, 98-100, 108-09, 145. After a third officer, Officer Ambrose, arrived on scene, the police obtained Porras's consent to search her car and uncovered a crack pipe. JA 50, 60, 108, 145. The officers arrested Porras for possession of drug paraphernalia. *Id.* Upon learning that White had given them a false name, the police also arrested him. JA 50, 98, 108, 145. Both White and Porras were handcuffed following their arrests and placed in the backseats of separate squad cars.[1] JA 145.

After White and Porras were secured in squad cars, respondent drove his car into the residence's driveway. JA 114, 145. Officers Griffith and Reed immediately recognized the car from their earlier visit to the house. JA 10, 145. As respondent pulled into the driveway, Officer Griffith shined his flashlight into the car and confirmed that respondent was the driver. JA 10, 50-52. Respondent parked

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[1] The record indicates that no other arrests were made in connection with the anonymous tip of drug-related activity at the Walnut Street residence. JA 58, 145-46.

and exited his car, firmly shutting the car door. JA 50, 51-52, 70-71, 100. Officer Griffith, then approximately 18-to-20 feet from the car, began to walk toward it, while calling to respondent. JA 57, 70-71, 145. Respondent then began to walk toward Officer Griffith. The two met eight-to-12 feet from the car. JA 56, 61, 106, 145. Officer Griffith immediately handcuffed and arrested respondent for driving on a suspended license and on the basis of the outstanding warrant. JA 57-58, 145-46.

Because Porras and White were secured in the only squad cars on scene, Officer Griffith radioed for backup. JA 109. The officers waited approximately five minutes for Officers Griffin and Nolan to arrive and spent another two minutes securing respondent in the backseat of their squad car. JA 61-62, 117-18. At this point, five officers were on scene – Officers Griffith, Reed, Ambrose, Griffin, and Nolan, JA 58, 76 – and all three subjects were secured in separate squad cars that were incapable of being opened from inside, JA 77, 119.[2] Officer Reed deemed the scene now secure. JA 120-21. With respondent handcuffed in the backseat of a locked squad car, respondent "had no access to anything else," especially his car. *Id.* Officer Reed acknowledged that respondent "no longer presented a threat to me or anyone else." JA 121. According to Officer Griffith, there was no "reasonable possibility" that respondent could have escaped from the squad car or gained access to his car.[3] JA 80.

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[2] The record indicates that all three subjects cooperated with the officers and that they were arrested and taken into custody without incident. JA 145-46.

[3] Petitioner contends that, "[i]n response to cross-examination about the unlikelihood that one of the arrestees might gain access to Gant's automobile, Officer Griffith noted, 'Strange

Only after respondent was secured in a squad car did Officers Reed and Nolan proceed to search respondent's car. JA 126, 128. Officer Reed uncovered a handgun somewhere within the interior compartment. JA 127. Officer Nolan discovered a plastic baggie containing cocaine in the pocket of a jacket in the backseat. JA 26, 127. Throughout the search, Officer Griffith supervised respondent and remained in the "immediate area" of the squad car in which respondent was secured. JA 77. The search of respondent's vehicle thus was undertaken, in the words of Officer Griffith, "[b]ecause the law says we can do it," JA 75, or, in words of Officer Nolan, to find "[j]ust anything of evidence as search incident to his arrest," Trial Tr. 9/13/00, at 21.

2. Respondent was charged with possession of a narcotic drug for sale and possession of drug paraphernalia. JA 152. He moved to suppress the evidence seized from his car, arguing the warrantless vehicle search violated the Fourth Amendment. JA 9. The superior court denied his motion, JA 43, 143, and a jury convicted respondent of both charges, JA 143.

Respondent appealed his conviction to the Arizona Court of Appeals, contending that the superior court erred in denying his motion to suppress. *State* v.

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things have happened.'" Pet. Br. 6 (quoting JA 80-81). This testimony concerned whether Porras could have reached respondent's car, given Officer Griffith's testimony that Porras was handcuffed in the yard when respondent arrived and not yet secured in a squad car. JA 76. Thus, this testimony only relates to whether Porras could have reached respondent's car from the yard. The superior court expressly found that Porras was secured in a squad car before respondent's arrival, JA 145 – presumably crediting Officer's Reed testimony to this effect, JA 108-09, 114 – a point reaffirmed by the Arizona Supreme Court, JA 152. Officer Griffith testified that there was no reasonable possibility of an arrestee escaping from a squad car.

Gant, 43 P.3d 188 (Ariz. Ct. App. 2002). The appeals court agreed, holding that, because respondent voluntarily stopped and exited the car, the warrantless search was not justified under *New York* v. *Belton*, 453 U.S. 454 (1981). *Gant*, 43 P.3d at 194. The Arizona Supreme Court denied the state's request for review. JA 153.

The State then successfully petitioned this Court for a writ of certiorari. *Arizona* v. *Gant*, 538 U.S. 976 (2003). After the parties had submitted merits briefs but before oral argument, the Arizona Supreme Court decided *State* v. *Dean*, 76 P.3d 429 (Ariz. 2003) (en banc), which repudiated the reasoning the court of appeals adopted in this case. The *Dean* court held that *Belton* may apply "when [one] is arrested 'in close proximity to the vehicle immediately after [he] exits the automobile.'" *Id.* at 437 (internal quotation marks omitted). This Court summarily vacated the court of appeals' judgment and remanded the case for reconsideration in light of *Dean*. *Arizona* v. *Gant*, 540 U.S. 963 (2003).

3. The court of appeals immediately remanded the case to the superior court for an evidentiary hearing and instructed the court to make factual findings relevant to whether respondent was a "'recent occupant.'" JA 144. Following an evidentiary hearing, the superior court concluded that respondent was a "recent occupant" under *Dean* and held the vehicle search "justified as incident to his arrest." JA 149, 153. Gant appealed, and the Arizona Court of Appeals reversed. *State* v. *Gant*, 143 P.3d 379 (Ariz. Ct. App. 2006). It held that "the officers did not search Gant's car contemporaneously with his arrest" because neither rationale underlying the search incident to arrest doctrine identified in *Chimel* v. *California*, 395 U.S. 752 (1969), justified the search

once respondent was secured in the squad car. *Gant*, 143 P.3d at 385; see JA 153-54.

The Arizona Supreme Court affirmed. It rejected the state's argument that *Belton* always authorizes police to search a recent occupant's vehicle incident to arrest. Relying principally upon *Chimel* – which this Court also relied upon in *Belton* – the court concluded that authorities may conduct a search incident to arrest only when *Chimel*'s "rationales of officer safety and preservation of evidence" are conceivably implicated. JA 155. Consonant with these rationales, authorities may search only the arrestee's person and "'the area from within which he might gain possession of a weapon or destructible evidence.'" *Id.* (quoting *Belton*, 453 U.S. at 763).

Belton, in the court's view, defined the "permissible scope" of an "otherwise lawful search of an automobile incident to arrest" and did not address the "threshold question" "whether police may conduct a search incident to arrest at all once the scene is secure." JA 155-57. The search in *Belton* was lawful because the arrestees remained unsecured and at the side of the car during the search, implicating *Chimel*'s twin rationales – there remained the conceivable threat that the arrestees would reach into the car to obtain a weapon or destroy evidence. JA 158.

The Court found that the search here, by contrast, was not lawful. At the time of the search, respondent, White, and Porras were handcuffed and locked in patrol cars, with four or five officers on the scene and in close proximity. JA 157. The court concluded that there was "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.*

SUMMARY OF ARGUMENT

1. Petitioner fails to satisfy its burden of demonstrating the reasonableness of the warrantless search of respondent's car. In particular, petitioner heavily relies upon the so-called "bright-line rule" derived from *Belton*. There, the Court held that "the entire passenger compartment may be searched *when* 'the area within the immediate control of the arrestee" … arguably includes the interior of an automobile *and* the arrestee is its recent occupant.'" *Thornton* v. *United States*, 541 U.S. 615, 623 n.3 (2004) (emphases added) (quoting *Belton*, 453 U.S. at 460).

Petitioner cannot show that respondent's area of immediate control "arguably include[d] the interior of [his] automobile." *Id.* The meaning of "the area of immediate control" was well-settled long before *Belton*. In *Chimel*, this Court construed that phrase to "mean the area from within which [the arrestee] might gain possession of a weapon or destructible evidence," 395 U.S. at 763, and in cases following *Chimel*, the Court has made clear that an area is within an arrestee's immediate control so long as there is a present "danger that the arrestee might gain access to the [area] to seize a weapon or destroy evidence." *United States* v. *Chadwick*, 433 U.S. 1, 15 (1977).

Because petitioner was handcuffed and secured in a squad car at the time of the search, there plainly was no conceivable danger that he would gain access to his car to obtain a weapon or destroy evidence. As such, petitioner has not – and cannot – satisfy the *Belton* rule.

2. Petitioner and its *amici* are left to advance a construction of *Belton* that ignores its language and

reasoning and is inimical to this Court's Fourth Amendment jurisprudence. They argue that *Belton* authorizes every vehicle search incident to a recent occupant's arrest, subject only to the vague limitations of attenuated time and/or distance. This test is problematic not only because it disregards the language of *Belton*, which this Court recently reaffirmed in *Thornton*, but also – and more fundamentally – because it would permit searches in situations that are not justified by the exigency rationales underpinning the search-incident-to-arrest doctrine upon which *Belton* is founded.

Petitioner and its *amici* offer only one limitation upon vehicle searches incident to arrest – that the search occur as a "contemporaneous incident" of arrest. They contend that this proviso merely requires that the search occur within close spatiotemporal proximity to the arrest. But this Court unambiguously has held that a search is not "incident to th[e] arrest … if … no exigency exists." *Chadwick*, 433 U.S. at 15. This requirement prohibits searches of areas that are not conceivably accessible to the arrestee at that time.

3. Petitioner and its *amici* retreat to the contention that exigencies that existed at that time justified the search of respondent's car. But this argument hinges on the counterintuitive supposition that an arrestee who is handcuffed and secured in a patrol car could access his car. This argument strains credulity and is wholly unsupported.

Petitioner and its *amici* further speculate about a purported threat by unseen third parties. Such an argument has no basis in *Chimel* or *Belton*, and this Court has expressly found that the search-incident-to-arrest doctrine is concerned only with the threat posed by the arrestee himself. See *Maryland* v. *Buie*,

494 U.S. 325, 336 (1990) ("The justification for the search incident to arrest considered in *Chimel* was the threat posed by the arrestee."). What is more, this Court has authorized warrantless searches under this exigency rationale and has limited their scope to cursory visual inspections of the area immediately surrounding the place of arrest in which a third party could be hiding. *Id.* at 335-36. The search of respondent's car clearly exceeded the permissible bounds under this rationale.

4. Assuming *arguendo* that petitioner and its *amici* correctly have interpreted *Belton*, then this Court should limit *Belton* to its fact and hold it no longer applicable to circumstances like these. Critically, the generalization upon which *Belton* rests under this construction – that recent occupants are capable of accessing a car's entire passenger compartment – has proven empirically false. Standard practices of using handcuffs and securing arrestees in squad cars plainly put the passenger compartment beyond most arrestees' conceivable reach. Given this practice, *Belton*'s so-called bright-line rule produces results that could not obtain under *Chimel*.

Moreover, *Belton* has failed in its chief mission of providing a clear rule easily applied. Petitioner's and its *amici*'s interpretation eliminates one fact-specific question – whether the area to be searched presently is within the arrestee's immediate control – and replaces that question with several others that are no easier to resolve. "Contemporaneous incident," for example, is a phrase that is open to subjective interpretation, obfuscation, and abuse. Nor is it clear what exceptions for "intervening events" (that would preclude a subsequent search) are cognizable under this interpretation. At bottom, petitioner and

its *amici* have not resolved line-drawing issues but created new ones untethered to *Chimel*'s twin rationales, which petitioner's rule would only exacerbate.

Petitioner and its *amici*, as a last effort, contend that *all* vehicle searches incident to arrest are reasonable under the Fourth Amendment. This argument is predicated upon the false premise that the privacy intrusion involved in a vehicle search is minimal. This Court, however, has found vehicle searches to entail a "substantial invasion of privacy," *United States* v. *Ortiz*, 422 U.S. 891, 896 (1975), and it has repeatedly noted that the interference with one's privacy and freedom of movement attendant to an arrest does not justify further intrusions, see, *e.g.*, *Chimel*, 395 U.S. at 766 n.12. On the other hand, petitioner and its *amici* have not identified a particularly weighty government interest. With the arrestee secured in a squad car, the threat to police safety and evidence destruction is negligible.

ARGUMENT

I. THE FOURTH AMENDMENT ONLY PERMITS WARRANTLESS SEARCHES INCIDENT TO ARRESTS WHEN SPECIFIC EXIGENT CIRCUMSTANCES EXIST.

Petitioner bears the burden of persuading this Court that the warrantless search it conducted falls within the "jealously and carefully drawn," *Jones* v. *United States*, 357 U.S. 493, 499 (1958), exceptions to the long-established rule that warrantless searches "are per se unreasonable under the Fourth Amendment – subject only to a few specifically established and well-delineated exceptions," *Katz* v. *United States*, 389 U.S. 347, 357 (1967) (footnote omitted). Petitioner cannot carry this burden in the

circumstances of this case under the only exception it raises – the exception for searches incident to lawful, custodial arrests.[4]

A. All Searches Incident To Arrest Must Rest On *Chimel*'s Twin Exigency Rationales.

This Court repeatedly has reaffirmed that warrantless searches incident to arrest are justified by two – and only two – exigencies: "(1) the need to disarm the suspect in order to take him into custody, and (2) the need to preserve evidence for later use at trial." *Knowles* v. *Iowa*, 525 U.S. 113, 116 (1998) (citing cases going back to *Weeks* v. *United States*, 232 U.S. 383, 392 (1914)); *accord Thornton*, 541 U.S. at 620 (identifying exigencies as "the need to remove any weapon the arrestee might seek to use to resist arrest or to escape, and the need to prevent the concealment or destruction of evidence"); *Chimel*, 395 U.S. at 764 (identifying exigencies as (1) "the need to seize weapons and other things which might be used to assault an officer or effect an escape" and (2) "the

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[4] Petitioner has not argued application of another warrant requirement exception or that the evidence illegally seized would have been inevitably discovered through lawful means. And for good reason – it cannot make the requisite showings. For example, the search here cannot be justified under the "automobile exception," *see United States* v. *Ross*, 456 U.S. 798, 812-13 (1982), because it is undisputed that police did not have probable cause to search respondent's car, JA 134. Nor was the search justified under the plain view doctrine, *Payton* v. *New York*, 445 U.S. 573, 586-87 (1980); there is no record evidence indicating that the evidence seized was in plain view from outside of respondent's car, JA 68. Finally, the search cannot be characterized as an inventory search, *see Colorado* v. *Bertine*, 479 U.S. 367, 371-73 (1987), because police would not have impounded respondent's car but for uncovering evidence during their illegal search, JA 87, 123.

need to prevent the destruction of evidence of the crime-things"). And it likewise has consistently defined the scope of such searches consonant with these two exigency rationales: A search incident to arrest "must be limited to the area 'into which an arrestee might reach.'" *Cupp* v. *Murphy*, 412 U.S. 291, 295 (1973) (quoting *Chimel* 395 U.S. at 763); *Thornton*, 541 U.S. at 620 (Authorities may search only "the person of the arrestee and the area immediately surrounding him."); *Coolidge* v. *New Hampshire*, 403 U.S. 443, 457 n.11 (1971) (Police's authority to search incident to arrest is limited to "only … the 'arrestee's person and the area "within his immediate control."'").

1. This Court laid down the "proper extent" of a search incident to lawful, custodial arrest in *California* v. *Chimel*, where it invalidated the search following respondent's arrest of his "entire three-bedroom house, including the attic, the garage, and a small workshop." 395 U.S. at 754, 762. Because "'[t]he scope of [a] search must be "strictly tied to and justified by" the circumstances which rendered its initiation permissible,'" the *Chimel* Court set forth a rule to ensure that searches incident to arrest are linked to, and do not exceed, the two exigency rationales that render them "imperative" in the first place. *Id.* at 761-62. Recognizing that weapons can be used to effect an assault or escape and evidence can be destroyed or concealed only to the extent they are accessible to the arrestee, this Court held that authorities, incident to lawful, custodial arrest, may search only an arrestee's person and his area of "immediate control – … mean[ing] the area from within which he might gain possession of a weapon or destructible evidence." *Id.* at 763 (quotation marks omitted).

2. Following *Chimel*,[5] this Court made clear that the operative time for assessing the exigencies justifying a warrantless search incident to arrest is the time of the search and, accordingly, held that authorities may search only the area that is within the arrestee's immediate control when the search is commenced.[6]

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[5] Shortly after *Chimel*, this Court held in *United States* v. *Robinson*, 414 U.S. 218, 235 (1973), that authority to search an arrestee's person incident to arrest does not depend on a case-by-case assessment of the probability that the arrestee will, in fact, attempt to effect an assault or escape or conceal or destroy evidence. Under *Robinson*, parties need not "litigate[] in each case the issue of whether or not there was present one of the reasons supporting the authority for a search of the person incident to a lawful arrest." *Id.* Thus, the *Robinson* Court held that "in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment." *Id.*

Robinson was limited to searches of the arrestee's person and did not address whether police may search the area within the arrestee's immediate control if circumstances indicate that there is little probability in a particular arrest situation that weapons or evidence will in fact be found in that area. *See* 3 Wayne R. LaFave, *Search And Seizure: A Treatise On The Fourth Amendment* § 6.3 (4th ed. 2007) ("[T]he question [whether case-by-case justification is required to search an arrestee's area of immediate control] cannot be considered foreclosed by *Robinson*, as the holding there extends only to search of the person, which the Court took care to distinguish from other searches incident to arrest."). But even assuming *Robinson*'s application in this scenario, it would not alter the lawful scope of the search. *See Robinson*, 414 U.S. at 227-28 (Search must be "'strictly circumscribed by the exigencies.'"). Authority to search still would be limited to the area within the arrestee's *immediate* control.

[6] *Chimel* suggested as much. There, this Court explained in setting forth the area of immediate control test that "[a] gun on

In *United States* v. *Chadwick*, 433 U.S. 1, this Court held that a search of an area is invalid under this warrant requirement exception if the arrestee could not conceivably access it when it was searched. There, authorities arrested the defendants as they were loading a footlocker into a car's trunk and searched the footlocker at the stationhouse 90-minutes later. This Court rejected the contention that the warrantless search was incident to the arrests, reasoning that a search is not "incident to th[e] arrest *either* if the search is remote in time or place from the arrest *or* no exigency exists." *Id.* at 15 (internal citation and quotation marks omitted) (emphases added). Because authorities had removed the footlocker to "their exclusive control" before searching it, "there [was] no longer any danger that the arrestee might gain access to the property to seize a weapon or destroy evidence." Thus neither of *Chimel*'s twin exigency rationales justified the search of the footlocker when it was undertaken. *Id.* The same rationales apply squarely here.

Two years later, in *Arkansas* v. *Sander*s, 442 U.S. 753 (1979) this Court confirmed, albeit in *dictum*, that exigent circumstances must justify the search when it is initiated. *Sanders* involved the search of a suitcase within the trunk of a taxicab in which the arrestee was a passenger. This Court concluded that the government rightly had not argued that the warrantless search of the suitcase was justified as an incident to arrest because "it appear[ed] that the bag

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a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested." *Chimel*, 395 U.S. at 763. But the gun on a table or in a drawer is dangerous to the arresting officer only if the arrestee possibly can access it; thus a search of the table or drawer is justified under *Chimel* only if it is within the arrestee's immediate control *at the time of the search*.

was not within his 'immediate control' at the time of the search." *Id.* at 764 n.11.

A warrantless search plainly is not "imperative" if there are no exigencies associated with the area to be searched, *Chimel*, 395 U.S. at 761 (Absence of warrant excusable only if "'the exigencies of the situation made that course imperative.'"), as is the case when there is "no longer any danger that the arrestee might gain access to [that area] to seize a weapon or destroy evidence," *Chadwick*, 433 U.S. at 15. Thus, a search incident to arrest must be limited to the "places it would be *possible* for the arrestee *presently* to reach." 3 LaFave, *supra* § 6.3.

B. Authorities May Search The Vehicle's Entire Passenger Compartment When Any Part Of The Car Is Arguably Within The Immediate Control Of Its Recent Occupant.

1. Against this framework, this Court considered in *New York* v. *Belton*, the scope of a search incident to arrest in the "recurring factual situation" of the arrest of a vehicle's recent occupant. 453 U.S. at 460. In *Belton*, a single officer pulled over a vehicle and its four occupants for speeding. Upon smelling burnt marijuana and seeing an envelope marked "Supergold" – which he associated with marijuana – on the car's floor, the officer ordered the four occupants out of the car and placed them under arrest on the highway's shoulder for unlawful possession of marijuana. *Id.* at 455-56. He then "split them up into four separate areas of the Thruway … so they would not be in physical touching area of each other" but did not restrain the arrestees or secure them in his squad car. *Id.* (internal quotation marks omitted). Thereafter, "[t]he suspects were standing by the side of the car." *Id.* at 457. The

officer searched the vehicle's passenger compartment and found cocaine in the pocket of Belton's jacket, which was in the backseat. *Id.* at 456. Unlike the situation here, the arrestees remained next to the car and unrestrained as the officer searched it. *Id.* at 457.

In considering the search's validity, the Court reaffirmed both the twin exigency rationales underlying and the scope of lawful searches incident to arrest established in *Chimel*. However, because lower "courts ha[d] found no workable definition of 'the area within the immediate control of the arrestee' when that area arguably includes the interior of an automobile and the arrestee is its recent occupant," *Belton* sought to fashion a straightforward rule that would permit authorities to determine the scope of their authority in this specific "category of cases." *Id.* at 460.

This "category of cases" "suggest[ed] the generalization that 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.* (second alteration in original) (quoting *Chimel*, 395 U.S. at 763). The Court then "read *Chimel*'s definition of the limits of the area that may be searched in light of that generalization" and set forth a bright-line rule – "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.* (footnote omitted). It also held that authorities may search containers within the passenger compartment (whether open or closed) because "if the passenger compartment is within

reach of the arrestee, so also will containers in it." *Id.* The vehicle's trunk, however, may not be searched. *Id.* at 460 n.4.

Belton thus established a "bright-line" rule that dispenses with the need for fact-specific inquiries in individual cases into whether particular areas of or objects in the passenger compartment satisfy *Chimel*'s area of immediate control test. But, as noted, this rule applies only to a certain "category of cases" – namely, those in which "'the area within the immediate control of the arrestee' … arguably includes the interior of an automobile and the arrestee is its recent occupant.'" *Id.* at 460. Because *Belton* made clear that its holding was limited to the "particular and problematic" context at issue and "in no way alter[ed] the fundamental principles established in the *Chimel* case regarding the basic scope of searches incident to lawful custodial arrests," *id.* at 460 n.3, *Belton* merely created the legal fiction that if some part of the passenger compartment is within a recent occupant's reach, then all of it is within his reach, including any containers therein.

The *Belton* Court upheld the search of the car's entire passenger compartment at issue there because the government had satisfied both conditions triggering application of *Belton*'s bright-line rule. The four arrestees were recent occupants – they had occupied the vehicle immediately before their arrests and the search. Moreover, the car was "within the area which we have concluded was 'within the arrestee's immediate control' within the meaning of the *Chimel* case." *Id.* at 462. This conclusion is unsurprising given that the arrestees stood unrestrained, next to the car during the search and thus the car was conceivably accessible to them when the officer searched it.

2. Most recently, in *United States* v. *Thornton*, this Court considered *Belton*'s application in situations where police initiate contact with the arrestee after the latter has exited the car. *Thornton* involved the arrest of a suspect who had exited his car immediately before and was still in "'close proximity'" to it when police confronted him. *Thornton*, 541 U.S. at 619.

The Court began its analysis with *Belton* and confirmed its analytic foundation on *Chimel*. It noted that *Belton* searches, like *Chimel* searches, are based on "the need to remove any weapon the arrestee might seek to use to resist arrest or to escape, and the need to prevent the concealment or destruction of evidence." *Id.* at 620. It also reiterated the long-standing rule on the scope of such searches: Authorities may search only "the person of the arrestee and the area immediately surrounding him." *Id.*

Critical in this case, *Thornton* acknowledged *Belton*'s central holding that "the entire passenger compartment may be searched *when* "'the area within the immediate control of the arrestee' … arguably includes the interior of an automobile *and* the arrestee is its recent occupant.'" *Id.* at 623 n.3 (omission in original) (emphases added) (quoting *Belton*, 453 U.S. at 460). This Court explained that the *Belton* rule dispensed with the need for "police officers and courts … to determine whether a particular object within the passenger compartment was also within an arrestee's reaching distance under *Chimel*" when "the car itself was within the arrestee's reaching distance under *Chimel*." *Id.* *Thornton*, thus, confirmed that the *Belton* rule, authorizing a search of the car's entire passenger compartment and containers therein, is triggered when (1) the car is

arguably within the arrestee's immediate control and (2) the arrestee is its recent occupant.

Thornton addressed only the second trigger – the meaning of "'recent occupant.'" Thornton argued that the *Belton* rule applied only when authorities signal confrontation with the suspect while he is in the car. This Court rejected Thornton's proposed test, holding that *Belton* may apply in situations "when [an] officer first makes contact with the arrestee after the latter has stepped out of his vehicle," so long as the arrestee is a "'recent occupant,'" which "may turn on his temporal or spatial relationship to the car at the time of the arrest and search." *Id.* at 617, 622. The court found the arrest of someone inside the car versus someone "who is next to a vehicle" to be a distinction without a difference because both situations "present[ ] identical concerns regarding officer safety and the destruction of evidence." *Id.* at 621. It reasoned that "an arrestee [is no] less likely to attempt to lunge for a weapon or to destroy evidence if he is outside of, but still in control of, the vehicle." *Id.*

Thornton did not address *Belton*'s first trigger – whether the car arguably was within Thornton's immediate control – because Thornton did not raise this issue. He did not advance the argument that the warrantless search of his car was not incident to arrest because his conceivable access to it was foreclosed after he had been secured in a squad car.[7] The *Thornton* Court thus addressed only the narrow

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[7] Actually, Thornton conceded otherwise at oral argument, when his counsel stated that it was of no moment that Thornton was secured in a squad car at the time of the search, Tr. of Oral Argument at 7, *Thornton*, 541 U.S. 615 (argued Mar. 31, 2004) (No. 03-5165).

question presented: "'Whether the bright-line rule announced in *New York* v. *Belton* is confined to situations in which authorities initiate contact with the occupant of a vehicle while that person is in the vehicle'" – a point which it took pains to confirm throughout the decision. *Thornton*, 541 U.S. at 624 n.4 (alteration omitted) (plurality declining to consider issue that was "'not fairly encompass[ed]'" by "[t]he question presented"); *id.* at 622 n.2 (declining to address argument that was "outside the question on which we granted certiorari and was not addressed by the Court of Appeals" (citation omitted)).

In fact, in *Thornton*, five Members of this Court expressed serious doubts that *Belton*'s bright-line rule could justify vehicle searches undertaken after the foreseeable risk of the arrestee gaining access to the passenger compartment had been foreclosed. Justice Scalia, joined by Justice Ginsburg, concluded that to uphold such searches under the guise of *Belton* "stretche[d] [*Belton*] beyond its breaking point." *Thornton*, 541 U.S. at 625 (Scalia, J. concurring in judgment). Justice O'Connor separately concurred to express her "dissatisfaction with the state of the law in this area," in particular that "lower court decisions seem now to treat the ability to search a vehicle incident to the arrest of a recent occupant as a police entitlement rather than as an exception justified by the twin rationales of *Chimel*." *Id.* at 624 (O'Connor, J., concurring). Finally, Justice Stevens, joined by Justice Souter, lamented the lack of a "limiting principle" to the *Belton* doctrine as it has been construed. *Id.* at 636 (Stevens, J., dissenting).

C. Petitioner Has Not Met Its Burden Of Proving The Warrantless Search Of Respondent's Car Was Incident To His Arrest.

Because petitioner seeks to justify the warrantless search of respondent's car as incident to his arrest, it must prove that the areas searched were within respondent's immediate control when police initiated the search. Under the *Belton* rule, petitioner need not prove that every place and object within the passenger compartment of respondent's car was within his immediate control at the time of the search so long as it shows that that respondent was a recent occupant of the car *and* the car's passenger compartment was arguably within his immediate control – that is, it was possible for respondent to reach some part of the car at the time of the search. *Thornton*, 541 U.S. at 623 n.3 ("[T]he entire passenger compartment may be searched *when* 'the area within the immediate control of the arrestee … arguably includes the interior of an automobile and the arrestee is its recent occupant.'" (omission in original) (emphasis added)).

Petitioner cannot meet this burden. No part of respondent's car was conceivably accessible to him when police initiated the search in this case. By that time, police had immobilized respondent, having handcuffed and secured him in the back of a locked squad car (an area modified to preclude escape) where he was being watched by another armed officer. Indeed, the officers on scene acknowledged that there was no reasonable possibility that respondent could escape from the squad car and that his car was not conceivably accessible to him when they initiated the search. JA 77, 80, 119, 121. They deemed the scene secure at this point. JA 120-21. In

short, when police searched the car, there was "no longer any danger that [respondent] might gain access to [his car] to seize a weapon or destroy evidence." *Chadwick*, 433 U.S. at 15. The passenger compartment was plainly not an area "from within which he might [have] gain[ed] possession of a weapon or destructible evidence," *Chimel*, 395 U.S. at 763; as such, when the search was initiated "no exigency exist[ed]," *Chadwick*, 432 U.S. at 15.[8] Therefore, the search of respondent's car was not incident to his arrest, as it did not serve to mitigate either of *Chimel*'s twin exigency rationales.

II. PETITIONER'S AND ITS *AMICI*'S CONSTRUCTION OF *BELTON* IS FUNDAMENTALLY AT ODDS WITH THE FOURTH AMENDMENT.

Petitioner and its *amici* advance a construction of *Belton* that would authorize authorities to search a recent occupant's vehicle where there is no possibility of the arrestee obtaining a weapon or evidence from the car, so long as the search is "'roughly contemporaneous with the arrest'" and occurs as part of a "'continuous sequence events.'" U.S. Br. 15-16. They, thus, would uphold every warrantless vehicle search incident to a recent occupant's arrest unless "'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.'" Pet. Br. 28; U.S. Br. 15-16, 29-30. In this case, they argue that the search

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[8] Petitioner does not contend that the entire passenger compartment was within White and Porras's area of immediate control at the of the search (or at any time during the encounter). Nor could it. White and Porras, like respondent, were secured in squad cars at the time of the search, and therefore no part of respondent's car was conceivably accessible to either of them.

of respondent's car was lawful because "[m]oments after respondent exited his vehicle, the police arrested him and promptly searched that vehicle in one continuous process." U.S. Br. 8.

As an initial matter, petitioner and its *amici*'s proposed test simply cannot be squared with either the principles and reasoning of *Belton* or any reasonable understanding of fundamental Fourth Amendment protections. They present precisely the argument for significantly extending *Belton*'s reach that troubled a majority of the Justices in *Thornton*.

As noted above, the *Belton* Court made clear that it had set forth a bright-line rule to establish a "workable definition of 'the area within the immediate control of the arrestee' *when that area arguably includes the interior of an automobile* and the arrestee is its recent occupant." *Belton*, 453 U.S. at 460 (emphasis added). Petitioner and its *amici* wholly ignore this conjunctive requirement. The Court's language in *Thornton* does not alter that requirement in any way: "[T]he entire passenger compartment may be searched *when* '"the area within the immediate control of the arrestee" … arguably includes the interior of an automobile *and* the arrestee is its recent occupant,'" *Thornton*, 541 U.S. at 623 n.3 (omission in original) (emphases added) (quoting *Belton*, 453 U.S. at 460). Indeed, only if the arrestee's area of immediate control arguably includes the car's passenger compartment is the generalization on which the *Belton* rule depends generally true. See *infra* § III. That is, only if some part of the vehicle is conceivably within the arrestee's reach are the "articles inside the relatively narrow compass of the passenger compartment of an automobile … 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].'" *Belton*, 453 U.S. at 460 (alteration in original) (quoting *Chimel*, 395 U.S. at 763).

Petitioner and its *amici* cannot avoid the consequence that their construction would permit warrantless vehicle searches in situations, like the one here, that are devoid of any exigency. This construction is contrary to this Court's frequent admonitions that a warrantless search is reasonable "only when an exigency makes [it] imperative." *Illinois* v. *Rodriguez*, 497 U.S. 177, 191-92 (1990). Indeed, their test grants authorities a continuing right to search based solely on the fact that the vehicle earlier, even if no longer, was within the arrestee's immediate control. Petitioner and its *amici* ask this Court to ignore the circumstances as they exit at the time of the search and focus instead on those that existed in the past – at the time of arrest. As such, they seek to convert the operative time for assessing the exigencies from the time of the search to the time of the arrest. It is of no moment to this Court's Fourth Amendment analysis, however, that a car earlier was within the arrestee's immediate control. A warrantless search is not rendered reasonable merely because it occurred in close proximity to the time when and place where exigencies existed. It is well-settled Fourth Amendment law that the exigencies are adjudged at the time of the search.[9]

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[9] With exigency-based exceptions to the warrant requirement, this Court has made clear that the exigent circumstances are always assessed at the time of the search. *See Mincey* v. *Arizona*, 437 U.S. 385 (1978) (Subsequent searches of home are unlawful because no exigencies justified the warrantless entry.); *Ker* v. *California*, 374 U.S. 23, 40 n.12 (1963) ("It goes without saying that in determining the lawfulness of entry and the

In this light, a search must be justified by *Chimel*'s twin exigency rationales when it is commenced and thus must be limited to the areas into which the arrestee conceivably could reach at that time. This Court has repeatedly said so in the specific context of searches incident to arrest, see, *e.g.*, *Sanders*, 442 U.S. at 763-64 n.11, and many federal and state appellate courts decisions are in accord, holding that authorities may search only the area under the arrestee's immediate control at the time of the search.[10] In *United States* v. *Lyons*, for example, the

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existence of probable cause we may concern ourselves only with what the officers had reason to believe *at the time of their entry*."). The lower courts are in accord. *See, e.g., Fisher* v. *City of San Jose*, 509 F.3d 952, 961 n.8 (9th Cir. 2007) ("[I]n the criminal law enforcement context, exigent circumstances are always assessed at the time of the search."), *reh'g granted*, 519 F.3d 908 (9th Cir. 2008); *Cabell* v. *Rousseau*, 130 F. App'x 803, 806 (7th Cir. 2005) ("[E]xigent circumstances are measured at the time of the search."); *United States* v. *Hardy*, 52 F.3d 147, 149 (7th Cir. 1995) ("However, the Supreme Court has carved out several exceptions to the warrant requirement, including where 'exigent circumstances' exist at the time of search.").

[10] *See, e.g.*, *United States* v. *Johnson*, 16 F.3d 69, 71-73 (5th Cir. 1994) (assessing arrestee's area of immediate control at the time of search); *United States* v. *McConnell*, 903 F.2d 566, 570 (8th Cir. 1990) (same); *United States* v. *Bonitz*, 826 F.2d 954, 956 (10th Cir. 1987) (same); *United States* v. *Cueto*, 611 F.2d 1056, 1062 (5th Cir. 1980) (same); *United States* v. *Berenguer*, 562 F.2d 206, 210 (2d Cir. 1977) (same); *United States* v. *Mapp*, 476 F.2d 67, 79-80 (2d Cir. 1973) (same); *United States* v. *Baca*, 417 F.2d 103, 105 (10th Cir. 1969) (same); *People* v. *Summers*, 86 Cal. Rptr. 2d 388, 389-90 (Cal. Ct. App. 1999) (same); *State* v. *LaMay*, 103 P.3d 448 (Idaho 2004) (same); *Stackhouse* v. *State*, 468 A.2d 333, 342 (Md. 1983) (same); *State* v. *Vittellone*, 453 A.2d 894, 896 (N.J. Super. Ct. App. Div. 1982) (same); *State* v. *Cook*, 332 S.E.2d 147, 155 (W. Va. 1985) (same). *But see United States* v. *Abdul-Saboor*, 85 F.3d 664, 668-69 (D.C. Cir. 1996) (assessing arrestee's area immediate control at the time of

D.C. Circuit, in an opinion joined by then-Judge Scalia, held: "To determine whether a warrantless search incident to an arrest exceeded constitutional bounds, a court must ask: was the area in question, *at the time it was searched*, conceivably accessible to the arrestee – assuming that he was neither 'an acrobat [nor] a Houdini'?" 706 F.2d 321, 330 (footnote omitted) (emphasis added) (alteration in original) (quoting *United States* v. *Mapp*, 476 F.2d 67, 80 (2d Cir. 1973)).

To advance their construction of *Belton*'s bright-line rule, petitioner and its *amici* focus on a single sentence in *Belton* – "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." *Belton*, 453 U.S. at 460 (footnote omitted). This singular language cannot hold the weight petitioner and its *amici* place on it. Even reading this sentence in isolation (as they ask this Court to do), vehicle searches are valid only if conducted "as a contemporaneous incident of th[e] arrest." *Id.* Although they concede that this language imposes a limitation, they dismiss it as merely prohibiting searches that are "so separated in time or by intervening acts that the latter cannot be said to have been incident to the former." Pet. Br. 28 (internal quotation marks omitted). This dismissal erroneously ignores this Court's settled cases that demonstrate that a search is "incident" to arrest only if it serves to mitigate the exigencies naturally appertaining to the arrest.

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arrest but concluding search is not incident to arrest if arrestee is "'immobilized' so that the area to be searched is not 'conceivably accessible' to him" at time of search).

This Court's decisions, including *Preston* v. *United States*, 376 U.S. 364 (1964), and *Chadwick*, have consistently interpreted the "incident" proviso as requiring a nexus between the search and the exigency rationales underlying this warrant requirement exception. The United States attempts to explain these cases as supporting its proposed test, U.S. Br. 15, but it misses the forest through the trees. Although *Chadwick* and *Preston* identify spatiotemporal proximity as a relevant consideration, both cases were decided on a broader principle – that a search is not "incident" to arrest if "the[] [exigency] justifications are absent." *Preston*, 376 U.S. at 367. Therefore, in *Preston*, the vehicle search, which occurred after the arrestees were in custody and the vehicle was moved to the stationhouse, was invalid because "there was no danger that any of the men arrested could have used any weapons in the car or could have destroyed any evidence of a crime." *Id.* at 368.

In *Chadwick*, the Court unequivocally held that a search is not "incident to th[e] arrest … if … no exigency exists." 433 U.S. at 15. The search at the stationhouse was not incident to arrest because "no exigency exist[ed]" – that is, "there [was] no longer any danger that the arrestee might gain access to [the footlocker] to seize a weapon or destroy evidence." *Id.*

The principle court of appeals decision on which petitioner and its *amici* rely, see Pet. Br. 28 & n.3; U.S. Br. 16, in arguing for their expansion of the *Belton* rule, *United States* v. *Abdul-Saboor*, 85 F.3d 664 (D.C. Cir. 1996), actually cuts against them. There, the D.C. Circuit concluded that, if "when the search occurs, the arrestee has been 'immobilized' so that the area to be searched is not 'conceivably

accessible' to him, then the search is no longer incident to his arrest." *Id.* at 669. In an effort to illustrate the limits to their approach, petitioner and its *amici* cite with approval several lower court decisions that invalidated *Belton* searches conducted after the arrestee's removal from the scene. Pet. Br. 28; U.S. Br. 29 & n.3. They contend that these decisions support their spatiotemporal proximity test. Yet searches in this circumstances are not invalid solely because of isolated considerations of place or time. Again, such a construction flatly ignores the broader exigency principles at work. Thus, for example, a vehicle search conducted after the arrestee has been removed from the scene is invalid because "the arrestee's removal from the scene foreclose[s] any possibility that he could reach for an article within the vehicle." *State* v. *Badgett*, 512 A.2d 160, 169 (Conn. 1986).

Ultimately, the construction of *Belton* petitioner and its *amici* press here would permit warrantless vehicle searches in virtually all situations involving a recent occupant's arrest, even when those situations are entirely divorced from the exigent justifications upon which the search incident to arrest exception rests. The only point of limitation they concede is to require a spatiotemporal nexus between the search and the arrest, which, in practice, is no limitation at all. This proposed spatiotemporal proximity test is nothing more than a rule of convenience that grants authorities unfettered discretion to conduct vehicle searches. This position is a radical departure from *Chimel* that greatly expands police authority to conduct warrantless searches by divorcing that authority from any reasonable conception of the suspect's "area of immediate control." Petitioner and its *amici* proposed rule turns Fourth Amendment law

on its head: Rather than being *per se* unreasonable, warrantless vehicle searches are presumed to be permissible whenever a recent occupant is arrested, subject only to the two "limitations" of attenuated time and/or distance. "But conducting a *Chimel* search is not the Government's right; it is an exception – justified by necessity – to a rule that would otherwise render the search unlawful." *Thornton*, 541 U.S. at 627 (Scalia, J. concurring in judgment).

III. THE EXIGENCIES PETITIONER IDENTIFIES TO JUSTIFY THE SEARCH OF RESPONDENT'S CAR ARE ILLUSORY.

Given the constitutional infirmity of their interpretation of the *Belton* rule, petitioner and its *amici* are left to argue that exigencies justified the search of respondent's car. They, first, make the counterintuitive argument that an arrestee's vehicle is conceivably within his immediate control when he is handcuffed and secured in a locked police cruiser. Pet. Br. 24-25; U.S. Br. 22-23; States Br. 29. In this case, they contend that it was possible for respondent to slip free of his handcuffs or, with his hands bound behind his back, break out of the locked squad car, bypass five presumably armed police officers, one of whom was stationed immediately outside the squad car, bolt to his automobile, and secure a weapon or destructible evidence therein. This scenario is "remote in the extreme." *Thornton*, 541 U.S. at 625 (Scalia, J. concurring in judgment). This Court should not credit this wholly speculative and fanciful rationale, which necessarily presumes respondent is "superhuman," *United States* v. *Vasey*, 834 F.2d 782, 787 (9th Cir. 1987), "an acrobat [and] a Houdini," *Lyons*, 706 F.2d at 330 (internal quotation marks omitted), and "Hercules," *United States* v. *Frick*, 490

F.2d 666, 673 (5th Cir. 1973) (Goldberg, J. concurring in part and dissenting in part), rolled into one, and which directly contradicts the testimonies of officers on scene. When "the arrestee [i]s handcuffed and secured in a patrol car before the police conduct[] the search, the rational underpinnings of *Belton* – officer safety and preservation of evidence – are not implicated." *United States* v. *Weaver*, 433 F.3d 1104, 1107 (9th Cir.), *cert. denied*, 547 U.S. 1142 (2006); see *Vasey*, 834 F.2d at 787 (Given that arrestee "remained handcuffed in the rear of the police vehicle," "[i]t was readily apparent to the officers and to this court that Vasey had virtually no opportunity to reach into his vehicle as the time the search occurred.").[11]

Petitioner's and its *amici*'s argument rests on the contention that "strange things happen," Pet. Br. 25, but tellingly, they have not pointed to a single example in which "strange things" of this nature have actually happened: They have not cited a single instance in which a restrained arrestee escaped from a locked squad car and retrieved a weapon or destructible evidence from a vehicle. See Pet. Br. 24-25; U.S. Br. 22-23; States Br. 29. Their "inability to come up with even a single example of a handcuffed arrestee's retrieval of arms or evidence from his vehicle undermines [their] claims."[12] *Thornton*, 541

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[11] *See* cases cited, *supra* n.10.

[12] As Justice Scalia explained in *Thornton*:

> The risk that a suspect handcuffed in the back of a squad car might escape and recover a weapon from his vehicle is surely no greater than the risk that a suspect handcuffed in his residence might escape and recover a weapon from the next room—a danger we held insufficient to justify a search in *Chimel*, *supra*, at 763.

Thornton, 541 U.S. at 627 (Scalia, J. concurring in judgment).

U.S. at 626-27 (Scalia, J. concurring in judgment). But even if they could point to one anecdotal incident of superhuman behavior, it would be inappropriate and odd to define Fourth Amendment boundaries for arrests on the basis of the rarest case.

Second, although they contend the warrantless search of respondent's car was justified as a search incident to arrest, petitioner and its *amici* next resort to an argument that has no basis in *Chimel*. They maintain that the search here was rendered imperative because of the security threat that hypothetical, unseen third parties posed to police.[13] Pet. Br. 26; U.S. Br. 24; States Br. 26-27. But *Chimel* and its progeny, including *Belton* and *Thornton*, identified only two exigency rationales for the search incident to arrest exception, and the threat posed by hypothetical confederates was not among them. As this Court noted, "the justification for the search incident to arrest considered in *Chimel* was the threat *posed by the arrestee*, not the safety threat posed by … unseen third parties."[14] *Buie*, 494 U.S. at 336 (emphasis added).

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[13] This argument is an obvious red herring. There is no record evidence indicating the presence of anyone on scene except for White and Porras, who were in custody and secured when respondent arrived on scene. Rather, this argument is based again on mere speculation that the residence's owner *could have* returned during the confrontation.

[14] The only authority petitioner and its *amici* cite in support of their proposed expansion of *Chimel*'s exigency rationales is *dictum* contained in a footnote in *United States* v. *Doward*, 41 F.3d 789, 793 n.5 (1st Cir. 1994) (noting "such considerations are not determinative"). But their reliance on *Doward* is misguided. That case addressed the exigencies posed, not by unseen, but actual third-parties at the scene. There, a passenger in the arrestee's vehicle and a "gathering crowd" were at the scene, and the passenger was in close proximity to the

What is more, this Court already has recognized a warrant requirement exception based on the exigency posed by unseen third parties and identified its constitutionally permissible scope in *Maryland* v. *Buie*. There, the Court held that authorities may engage in a "protective sweep" – that is, "a quick and limited" "cursory visual inspection of those places in which a person might be hiding" "conducted to protect the safety of police officers and others" – of the "spaces immediately adjoining the place of arrest." *Id.* at 327, 335. Far from authorizing a full-blown search for weapons of any area to which an unseen third-party might gain access, the *Buie* Court held that the threat posed by unseen third-parties warranted only a "cursory inspection of those spaces where a person may be found," not "a full search of the premises." *Id.* at 335. As such, the top-to-bottom search of the entire passenger compartment of respondent's car cannot be justified on the exigency on which petitioner and its *amici* now (for the first time) claim it was based.

IV. IF PETITIONER CORRECTLY INTERPRETS *BELTON*, SPECIAL JUSTIFICATIONS WARRANT LIMITING *BELTON*'S HOLDING.

If this Court agrees with petitioner and its *amici* that *Belton* authorizes police to search a car whenever the arrestee is its recent occupant, then this Court should reevaluate *Belton*'s bright-line rule. Commentators[15] and many judges[16] have questioned

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vehicle during the arrest and search. *See id.* By contrast, here, no one was in close proximity to respondent's car when it was searched, nor was there anyone else at the scene (except, as noted, White and Porras who were already in custody).

[15] *See, e.g.*, David S. Rudstein, Belton *Redux: Reevaluating* Belton*'s Per Se Rule Governing the Search of An Automobile*

Incident To Arrest, 40 Wake Forest L. Rev. 1287, 1330 (2005) ("[T]he particular per se rule [*Belton*] adopted is based upon a 'considerable overgeneralization.' As a result, for over twenty years police officers have lawfully conducted thousands of searches of automobiles and their contents that cannot be justified by either of the twin rationales of *Chimel* – the need to prevent the arrestee from reaching a weapon or an item of evidence." (footnote omitted)); Albert W. Alschuler, *Bright Line Fever and the Fourth Amendment*, 45 U. Pitt. L. Rev. 227, 274 (1984) ("If any bright line rule had been necessary to resolve issue in *Belton*, it would have been the opposite of the rule that the Court announced."); David S. Rudstein, *The Search of an Automobile Incident to an Arrest: An Analysis of* New York v. Belton, 67 Marq. L. Rev. 205, 261 (1984) (urging return to *Chimel* rule); Wayne R. LaFave, *The Fourth Amendment in an Imperfect World: On Drawing "Bright Lines" and "Good Faith"*, 43 U. Pitt. L. Rev. 307, 329 (1982) ("Any survey of the relevant cases will indicate a number of commonplace events which would put the passenger compartment beyond the arrestee's control – immediate removal of him to a patrol car or some other place away from his own vehicle, handcuffing the arrestee, closure of the vehicle, and restraint of the arrestee by several officers, among others." (footnotes omitted)).

[16] *See, e.g.*, *United States* v. *Hrasky*, 453 F.3d 1099, 1108 n.5 (8th Cir. 2006) ("As law enforcement and reviewing courts continue to be called upon to apply *Belton*, its bright-line rule may become increasingly less illuminating, especially in close cases such as this."), *cert. denied*, 127 S. Ct. 2098 (2007); *United States* v. *White*, 131 F. App'x 54, 57 n.2 (6th Cir. 2005) ("Justices and commentators alike have frequently pointed out that this generalization may well be incorrect, observing that it is unlikely that an individual who is almost certain to be arrested and handcuffed outside of a vehicle will be able to gain access to its passenger compartment in order to grab a weapon or destroy evidence."); *Weaver*, 433 F.3d at 1107 ("We respectfully suggest that the Supreme Court may wish to re-examine" *Belton*'s application in situations like the one here); *United States* v. *Osife*, 398 F.3d 1143, 1147 (9th Cir. 2005) (questioning *Belton*'s analytical soundness because it "relies on the legal fiction that a suspect handcuffed and locked in a patrol car might escape and grab a weapon from the passenger compartment of his own car"); *United States* v. *Barnes*, 374 F.3d 601, 605 (8th Cir. 2004)

the constitutional moorings of *Belton*'s bright-line rule in circumstances like the ones that obtain here. And, as noted, in *Thornton*, five Justices expressed serious discontent with the development of *Belton* beyond its facts. See, *e.g.*, *Sandin* v. *Conner*, 515 U.S. 472, 483 (1995) (Where due process methodology had "strayed from the real concerns undergirding the liberty protected by the Due Process Clause," this Court abandoned it and "return[ed] to the due process principles we believe were correctly established and applied in [earlier cases].").[17]

(Smith, J., dissenting) ("I share the concern expressed by Justices O'Connor and Scalia in *Thornton* that some may view a search incident to an arrest as 'a police entitlement.'"); *United States* v. *McLaughlin*, 170 F.3d 889, 894 (9th Cir. 1999) (Trott, J., concurring) ("[I]n our search for clarity, we have now abandoned our constitutional moorings and floated to a place where the law approves of purely exploratory searches of vehicles."); *State* v. *Hernandez*, 410 So. 2d 1381, 1385 n.2 (La. 1985) (Cooper, J., concurring) ("The *Belton* rule has been incisively criticized a creating the risk that police will make custodial arrests which they otherwise would not make as a cover for a search which the Fourth Amendment otherwise prohibits."); *Rainey* v. *Commonwealth*, 197 S.W.3d 89, 95 (Ky. 2006) (Smith, J. dissenting) ("In my view (and that of five members of the Court that decided *Thornton*), the reasoning supporting this departure from previously settled law with respect to automobile searches is seriously flawed."), *cert. denied*, 127 S. Ct. 1005 (2007).

[17] This Court technically need not overrule any of its holdings in prior cases. Both *Belton* and *Thornton* held that the searches at issue were reasonable and hence lawful under the Fourth Amendment. In both cases, police had probable cause to believe that evidence was in the car, and hence the warrantless searches in *Belton* and *Thornton* fell under the "automobile exception" to the warrant requirement. *See Belton*, 453 U.S. at 463 (Stevens, J., concurring) (noting applicability of the automobile exception).

A. *Belton*'s Generalization Is Empirically False.

The *Belton* rule, like all *per se* rules, required this Court to make a broad generalization. *Coleman* v. *Thompson*, 501 U.S. 722, 737 (1991) ("'*Per se* rules … require the Court to make broad generalizations." (omission in original) (quoting *Continental T. V., Inc.* v. *GTE Sylvania Inc.*, 433 U.S. 36, 50 n.16 (1977)). Specifically, it made "the generalization that 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].'" *Belton*, 453 U.S. at 460 (alteration in original) (quoting *Chimel*, 395 U.S. at 763). The *Belton* Court then construed *Chimel*'s "immediate control" test "in light of that generalization" and fashioned its bright-line rule. It believed that it had set forth a rule, "'which, *in most instances*, ma[de] it possible to reach a *correct determination* beforehand as to whether an invasion

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At any rate, the doctrine of stare decisis would not justify continued adherence to the *Belton* rule. "In constitutional questions, where correction depends upon amendment and not upon legislative action," such as the case here, "this Court throughout its history has freely exercised its power to reexamine the basis of its constitutional decisions." *Smith* v. *Allwright*, 321 U.S. 649, 665 (1944). Indeed, stare decisis is not an "inexorable command," but rather a "principle of policy." *Payne* v. *Tennessee*, 501 U.S. 808, 828 (1991). As such, this Court will depart from stare decisis "'to bring its opinions into agreement with experience,'" *Vasquez* v. *Hillery*, 474 U.S. 254, 266 (1986), and when its opinions are "insusceptible of principled application," *BMW of N. Am., Inc.* v. *Gore*, 517 U.S. 559, 599 (1996) (Scalia, J., dissenting). In short, "when governing decisions are unworkable or are badly reasoned, 'this Court has never felt constrained to follow precedent.'" *Payne*, 501 U.S. at 827 (quoting *Smith*, 321 U.S. at 665).

of privacy is justified in the interest of law enforcement.'" *Id.* at 458 (emphases added) (quoting Wayne R. LaFave, *"Case-By-Case Adjudication" Versus "Standardized Procedures": The* Robinson *Dilemma*, 1974 S. Ct. Rev. 127, 142).

Such a bright-line rule is an anomaly in this Court's Fourth Amendment jurisprudence. The Court has admonished that "Fourth Amendment cases must be decided on the facts of each case, not by extravagant generalizations." *Dow Chem. Co.* v. *United States*, 476 U.S. 227, 238 n.5 (1986). "[F]or the most part *per se* rules are inappropriate in the Fourth Amendment context," *United States* v. *Drayton*, 536 U.S. 194, 201 (2002), and the Court has, therefore, "consistently eschewed bright-line rules," *Ohio* v. *Robinette*, 519 U.S. 33, 39 (1996).

Of bright-line rules generally, the Court has noted: "*Per se* rules should not be applied, however, in situations where the generalization *is incorrect as an empirical matter*; the justification for a conclusive presumption disappears *when application of the presumption will not reach the correct result most of the time*." *Coleman*, 501 U.S. at 737 (emphases added); see *Continental T. V., Inc.* v. *GTE Sylvania Inc.*, 433 U.S. 36, 50 n.16 (1977) ("Cases that do not fit the generalization may arise, but a per se rule reflects the judgment that such cases are not sufficiently common or important to justify the time and expense necessary to identify them."). A bright-line rule, thus, can be countenanced only if the generalization on which it is based is true in the majority of the cases it encompasses.

The *Belton* rule (under this construction) does not meet this standard – the generalization on which it depends has proven to be *empirically false*. The presumption that a vehicle's recent occupant

generally is capable of reaching into the interior of the car is a "considerable overgeneralization." *Richards* v. *Wisconsin*, 520 U.S. 385, 393-94 (1997) (rejecting as a "considerable overgeneralization" a bright-line rule based upon a presumption that every drug investigation poses substantial risks to officers).

In most cases, a car's recent occupant cannot, in fact, access the passenger compartment for a weapon or destructible evidence. Authorities routinely handcuff and subdue arrestees immediately upon arrest and before initiating a vehicle search "incident" to arrest. Reported cases involving this situation are "legion." *Thornton*, 541 U.S. at 628 (Scalia, J. concurring in judgment) (citing cases).[18] A recent empirical study confirms what is manifest from these cases – that it is *standard practice* for authorities to handcuff and secure the arrestee *before* undertaking a search "incident" to arrest. See Myron Moskovitz, *A Rule in Search of a Reason: An Empirical Reexamination of* Chimel *and* Belton, 2002 Wis. L. Rev. 657, 665-66.

The commonplace practice of securing the arrestee in a police cruiser plainly puts the passenger compartment beyond the arrestee's "immediate control." See *Vasquez* v. *Hillery*, 474 U.S. 254, 266 (1986) (This Court departs from stare decisis when necessary "'to bring its opinions into agreement with experience.'"). The *Belton* rule, thus, does not, "in most instances, … reach a correct determination beforehand as to whether an invasion of privacy is

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[18] The pile only has grown higher since Justice Scalia made this observation in 2004. *See, e.g.*, *United States* v. *Nichols*, 512 F.3d 789 (6th Cir. 2008); *United States* v. *Mapp*, 476 F.3d 1012 (D.C. Cir.), *cert. denied*, 127 S. Ct. 3031 (2007); *Hrasky*, 453 F.3d 1099; *Weaver*, 433 F.3d 1104.

justified in the interest of law enforcement." *Belton*, 453 U.S. at 458 (internal quotation marks omitted). Because the passenger compartment is almost always outside a recent occupant's reaching distance during the search, "application of the presumption [in *Belton*] will not reach the correct result most of the time." *Coleman*, 501 U.S. at 737. That is, the *Belton* rule seldom produces results that mirror those that would obtain under an accurate case-by-case application of *Chimel*. See 3 LaFave, *supra* § 7.1 (noting bright-line rules in the Fourth Amendment context should "approximate the results which would obtain from correct case-by-case application of the principle" and concluding that the *Belton* rule "appear[s] to produce results unsupportable by the applicable principle"). *Belton* thus authorizes many searches that otherwise would be unconstitutional. See *supra* § I.A.

B. Petitioner's Embrace Of The Post-*Belton* Rule Does Not Eliminate Line Drawing Inquiries.

Petitioner and its *amici* suggest that *Belton*'s frequent misfires should be excused because of the benefits its bright-line rule provides. Pet. Br. 29-32; U.S. Br. 28-29. But any supposed benefits are not sufficient of themselves to justify a bright-line rule. If it were otherwise, all of Fourth Amendment law would be supplanted by rigid application of *per se* rules. Cf. *Continental T. V., Inc.*, 433 U.S. at 50 n.16 (providing guidelines and minimizing burdens on litigation and the judicial system "are not sufficient in themselves to justify the creation of per se rules"). Indeed, "the mere fact that law enforcement may be made more efficient can never by itself justify disregard of the Fourth Amendment." *Mincey* v. *Arizona*, 437 U.S. 385, 393 (1978).

Moreover, in practice, *Belton*'s bright-line rule has proven to be far less illuminating than petitioner and its *amici* suggest. See *Belton*, 453 U.S. at 469 (Brennan, J. dissenting) (The *Belton* rule "leave[s] open too many questions and, more important, it provides the police and the courts with too few tools with which to find the answers."). As the case law giving rise to *Thornton* demonstrates, the phrase "recent occupant" is susceptible to varying interpretations. *Compare United States* v. *Hudgins*, 52 F.3d 115, 119 (6th Cir. 1995) (holding *Belton* did not apply when arrestee voluntarily exited car before authorities contacted him), *United States* v. *Strahan*, 984 F.2d 155, 159 (6th Cir. 1993) (same), *United States* v. *Fafowora*, 865 F.2d 360, 362 (D.C. Cir. 1989) (same), *Thomas* v. *State*, 761 So. 2d 1010, 1011-13 (Fla. 1999), *and People* v. *Stehman*, 783 N.E.2d 1, 6 (Ill. 2002) (same), *with United States* v. *Thornton*, 325 F.3d 189 (4th Cir. 2003) (holding *Belton* may apply when arrestee voluntarily exited car before authorities contacted him), *aff'd*, 541 U.S. 615 (2004), *United States* v. *Sholola*, 124 F.3d 803, 817 (7th Cir. 1997) (same), *and United States* v. *Snook*, 88 F.3d 605, 606-08 (8th Cir. 1996). Indeed, even after *Thornton*, the courts have struggled in applying this Court's instruction that recent occupant status "*may* turn on [the arrestee's] temporal or spatial relationship to the car at the time of the arrest and search." [19] *Thornton*, 541 U.S. at 622 (emphasis

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[19] *See, e.g.*, *United States* v. *Fields*, 456 F.3d 519, 522 (5th Cir. 2006) ("[T]he *Thornton* Court 'never specified the physical distance between the defendant and his car at the time he was arrested' that would constitute a 'recent occupant.'"); *United States* v. *Palmer*, 206 F. App'x 357, 359 (5th Cir. 2006) ("The majority in *Thornton* does not precisely define the term 'recent occupants' other than to remark that 'the arrest of a suspect who

added). Since *Thornton*, the questions of "how recent is recent, [and] how close is close," *Id.* at 636 (Stevens, J., dissenting), have been frequently litigated in the lower courts, which have reached disparate results.[20] In addition, given *Thornton*'s precatory language, other, different questions also

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is next to a vehicle presents identical concerns regarding officer safety and the destruction of evidence as the arrest of one who is inside the vehicle.'"), *cert. denied*, 128 S. Ct. 39 (2007); *United States* v. *Jones*, 155 F. App'x 204, 207 (6th Cir. 2005) ("The Court expressly declined to define the term … ['recent occupant'], and … the Court never specified the physical distance between the defendant and his car at the time he was arrested or the amount of time that had elapsed since he had exited his car." (citations omitted)), *cert. denied*, 547 U.S. 1029 (2006); *Rainey*, 197 S.W.3d at 94-95 ("Thus courts are left with little guidance in determining an arrestee's status as a "recent occupant….' [T]here is no hard and fast definition of what constitutes 'recent' both in time and distance.").

[20] As to spatial proximity between the arrestee and the car, *compare United States* v. *Arango*, 879 F.2d 1501, 1506 (7th Cir. 1989) (upholding search where arrestee was one block from car), *Rainey*, 197 S.W.3d at 95 (upholding search where arrestee was 50-feet from vehicle), *and Cason* v. *Commonwealth*, 530 S.E.2d 920, 922, 924 (Va. Ct. App. 2000) (upholding search where arrestee was 50-75-feet from vehicle), *with Strahan*, 984 F.2d at 159 (rejecting search where arrestee was 30-feet from car), *and United States* v. *Garcon*, No. 07-80051-CR, 2008 WL 60405, at *11 (S.D. Fla. Jan. 3, 2008) (rejecting search where arrestee was six-feet from car), *and State* v. *Rathbun*, 101 P.3d 119, 121 (Wash. Ct. App. 2004) (rejecting search where arrestee was 40-60-feet from car). As to temporal proximity between the arrestee and the car, *compare Mack* v. *City of Abilene*, No. Civ. A. 104CV050C, 2005 WL 1149807, at *10 (N.D. Tex. May 12, 2005) (upholding search where arrestee had not been in the car for over three hours), *partially vacated on other grounds*, 461 F.3d 547, 552–53 (5th Cir. 2006), *with United States* v. *Laughton*, 437 F. Supp. 2d 665, 673 (E.D. Mich. 2006) (rejecting search where arrestee "had not been near the vehicle for at least thirty minutes by the time the officers even arrived at the scene").

arise, such as whether spatial proximity applies to an arrestee about to get *into* his car. Tr. of Oral Argument at 47, *Thornton*, 541 U.S. 615 (2004) (No. 03-5165).

The only other limitation imposed under this construction of *Belton* is that the search be conducted "contemporaneous[ly]" with the arrest – a component of the supposed bright line rule that has also perplexed courts and resulted in discrepancies. The case-specific issues invited here are obvious. One court, for example, has found 30-to-40 minutes to be too long, see *Vasey*, 834 F.2d at 787-88, while another has upheld a search conducted one-and-one-half hours after the arrest, see *United States* v. *Fiala*, 929 F.2d 285, 288 (7th Cir. 1991).

In petitioner's and its *amici*'s view, *Belton* and its progeny have replaced the question of whether an area conceivably was within the arrestee's reaching distance with several other case-specific questions that are no easier to answer – such as, whether the arrestee was a "recent occupant" of the vehicle or whether the search was a "contemporaneous incident" of arrest. *Belton*, therefore, has failed to provide "a straightforward rule, easily applied, and predictably enforced," *Belton*, 453 U.S. at 458-60, and presents a poor forbearer for the type of expansion petitioner and its *amici* advocate. The reasonableness of a vehicle search incident to arrest still depends on the facts surrounding a given search. All *Belton* has done is shifted the inquiry away from *Chimel*'s fundamental principles to fact-specific questions not meaningfully connected to those principles. "So much for bright lines." *McLaughlin*, 170 F.3d at 895 (Trott, J., concurring).

C. Vehicle Searches Incident To Arrest Are Not *Per Se* Reasonable.

Petitioner and its *amici* also attempt to save their interpretation of *Belton* by arguing that vehicle searches such as the one at issue here are reasonable because the intrusion is minimal and the law enforcement needs are weighty. The premises underlying this argument are hopelessly flawed.

Petitioner and its *amici* first contend that the intrusion of a vehicle search incident to arrest is minimal because the arrestee's already-reduced expectation of privacy is further diminished (or even eliminated) by virtue of his custodial arrest. Although it is true that one has a lesser expectation of privacy in his automobile, "[t]he word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears." *Coolidge*, 403 U.S. at 461-62 (plurality opinion). Contrary to petitioner's and its *amici*'s argument, this Court expressly has recognized that an automobile search entails "a *substantial* invasion of privacy." *Ortiz*, 422 U.S. at 896 (emphasis added).

Nor is the intrusion appreciably lessened because the car's recent occupant was placed under custodial arrest. The *Chimel* Court rejected a similar argument that the warrantless search of the entire place of arrest should be permitted because, once an arrest has been made, the additional invasion of privacy stemming from the accompanying search is "relatively minor." *Chimel*, 395 U.S. at 766 n.12. The Court found no basis to conclude that, "simply because some interference with an individual's privacy and freedom of movement has lawfully taken place, further intrusions should automatically be allowed despite the absence of a warrant that the Fourth Amendment would otherwise require." *Id.*

This Court employed similar reasoning in *Chadwick* to reject the argument that arrestees had a lesser expectation of privacy in a footlocker given their custodial arrests: "Unlike searches of the person, searches of possessions within an arrestee's immediate control cannot be justified by any reduced expectations of privacy caused by the arrest." *Chadwick*, 433 U.S. at 16 n.10. "Respondents' privacy interest in the contents of the footlocker was not eliminated simply because they were under arrest." *Id.*

So too here. A recent occupant does not surrender his privacy interest in his car and the containers within it simply because he was arrested, and his expectation of privacy in it is not lessened by virtue of his custodial arrest. "[T]he search of the passenger compartment of a motor vehicle and any containers therein, such as a purse, briefcase, or locked suitcase, is unrelated to, and differs in kind from, any interference with the arrestee's liberty." Rudstein, 40 Wake Forest L. Rev. at 1310 (footnotes omitted).

On the other side of the balance, petitioner and its *amici* argue that law enforcement needs are weighty. They first point to the security threat to officers when effecting custodial arrests. Without question, "a custodial arrest involves 'danger to an officer' because of 'the extended exposure which follows the taking of a suspect into custody and transporting him to the police station.' *Knowles*, 525 U.S. at 117 (quoting *Robinson*, 414 U.S. at 234-35). This Court has recognized that "[t]he danger to the police officer flows from the fact of the arrest, and its attendant proximity, stress, and uncertainty, and not from the grounds for arrest." *Id.* (quoting *Robinson*, 414 U.S. at 234 n.5). But this Court has already crafted a rule to this end: It permits authorities to search an

arrestee's person and the area within his immediate control. Indeed, *Chimel* expressly concluded that the security threat to police was not sufficiently weighty to permit them to search beyond the area that is within the arrestee's immediate control. *Chimel*, 395 U.S. at 763.

Moreover, petitioner provides no reasoned explanation of how a search of a vehicle that is not conceivably accessible to the arrestee (as is the case most of the time) reduces the security threat to police ensuing from the recent occupant's custodial arrest.[21] Once the arrestee's access to the passenger compartment has been eliminated, so too has any threat of the arrestee obtaining a weapon (or anything) from it. In short, permitting authorities to search a vehicle incident to a recent occupant's arrest, in most instances, would not serve to mitigate any security threat to them.

Petitioner and its *amici* point to a second governmental interest in permitting authorities to search recent occupants' vehicles incident to arrest – the need to preserve evidence. *Chimel*, too, rejected the contention that this law-enforcement interest is sufficiently weighty to permit broad searches, like the one at issue here. *Chimel* expressly overruled a line of cases, including *United States* v. *Rabinowitz*, 339 U.S. 56 (1950), and *Harris* v. *United States*, 331 U.S. 145 (1947), that authorized police to undertake searches incident to arrest of the entire place of arrest in order to uncover evidence of the charged crimes. The *Chimel* Court rejected authority to search on this rationale because it invited "extensive

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[21] *See infra* § III, for discussion of why this argument is purely speculative.

searches" that lacked any "point of rational limitation." *Chimel*, 395 U.S. at 766.

Moreover, there already exists a well-recognized exception to the warrant requirement permitting authorities to search vehicles for evidence, and it applies when authorities have *probable cause* to believe that evidence is within the vehicle. See *Ortiz*, 422 U.S. at 896. As explained above, even an arrestee has a legitimate expectation of privacy in his car and the containers therein, and petitioner's and its *amici*'s proposal to dispense with not only a warrant but also probable cause provides absolutely no protection for a recent occupant's legitimate and substantial privacy interests in his car and the containers within it. While suspicionless, exploratory searches often in fact do uncover evidence of crimes, the premise of the Fourth Amendment is that it is better to let evidence go undetected when there is no basis for a warrant and exigency rendering a warrantless search imperative than to intrude on an individual's privacy.

Ultimately, petitioner's and its *amici*'s "argument is founded on little more than a subjective view regarding the acceptability of certain sorts of police conduct, and not on considerations relevant to Fourth Amendment interests." *Chimel*, 395 U.S. at 764-65. Under their "unconfined analysis, Fourth Amendment protection in this area would approach the evaporation point." *Id.*

V. RESPONDENT WAS ARRESTED FOR NON-EVIDENTIARY OFFENSES.

In *Thornton*, two Members of this Court suggested refashioning *Belton* to rest on the government's interest in gathering evidence relevant to the crime of arrest. *Thornton*, 541 U.S. at 629 (Scalia J.

concurring in judgment). By reframing *Belton* in these terms, they would still permit warrantless vehicle searches incident to a recent occupant's arrest but only in "cases where it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." *Id.* at 632. Such an approach plainly excludes searches, such as the one at issue, that have no conceivable prospect, at inception, of uncovering "evidence relevant to the crime [of] arrest," such as when the arrest is for a "nonevidentiary" offense – an offense which, 'by its nature, does not give rise to cognizable grounds for concluding that evidence probative of its commission might be found in the vicinity of the arrestee.'" See James J. Tomkovicz, *Divining and Designing the Future of the Search Incident to Arrest Doctrine: Avoiding Instability, Irrationality, and Infidelity*, 2007 U. Ill. L. Rev. 1417, 1452 n.222.[22]

In this case, respondent was arrested for nonevidentiary offenses. As several courts have recognized, driving on a suspended license is a crime for which no probative evidence might be found in the arrestee's car and for which authorities have all the evidence necessary to prosecute at the time of arrest. See *United States* v. *Jackson*, 415 F.3d 88, 93 (D.C. Cir. 2005) (It was "entirely implausible" that there was "additional evidence to support the charges of driving on a suspended license, operating an unregistered vehicle, and driving without required vehicle identification tags" in car and officer already

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[22] One of respondent's *amici* expressly advocates this approach. *See* NACDL Br. Respondent supports either this approach or an approach expressly tied to exigencies. Under any rationale other than petitioner's interpretation of the *Belton* rule, respondent's suppression motion should have been granted.

had "all of the evidence that he needed to arrest the driver for the above offenses"); *State* v. *Parker*, 987 P.2d 73, 82-83 (Wash. 1999) (en banc) ("[W]here individuals are arrested for driving with license suspended, there is simply no evidence of the crime to be hidden or lost."); cf. *United States* v. *Robinson*, 414 U.S. 218, 223 n.2 (1973) (quoting police manual that police may not search a vehicle following an arrest for driving after revocation "because there is no probable cause to believe that the vehicle contains fruits, instrumentalities, contraband or evidence of the offense of driving after revocation"). Likewise, respondent's arrest on the outstanding warrant does not support the search under this proposed *Belton* revision. The state had all the evidence it required to prosecute that offense on the day respondent failed to appear, and no further evidence of that offense (or the underlying offense) conceivably existed within the car. In short, officers had no reason to believe that "evidence relevant to the crime of arrest might be found" in respondent's car and the vehicle search plainly did not serve the government's "general interest in gathering evidence *relevant to the crime [of] arrest[]*."[23] *Thornton*, 541 U.S. at 629, 632 (Scalia, J., concurring in judgment) (emphasis added).

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[23] That evidence of offenses unrelated to those of arrest may conceivably be found within an automobile cannot render the search reasonable. This type of exploratory search was rejected by this Court's pre-*Chimel* precedent, on which this approach rests. *See, e.g.*, *Harris*, 331 U.S. at 153.

CONCLUSION

The judgment of the Arizona Supreme Court should be affirmed.

Respectfully submitted,

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