

IN THE
Supreme Court of the United States

GEORGE ANIBOWEI,

Petitioner,

v.

TODD BLANCHE, ATTORNEY GENERAL, ET AL.,

Respondents.

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

**BRIEF OF THE RUTHERFORD INSTITUTE AS
AMICUS CURIAE IN SUPPORT OF
PETITIONER**

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INTEREST OF *AMICUS CURIAE*¹

The Rutherford Institute is a nonprofit civil liberties organization headquartered in Charlottesville, Virginia. Founded in 1982 by its President, John W. Whitehead, the Institute provides legal assistance at no charge to individuals whose constitutional rights have been threatened or violated and educates the public about constitutional and human rights issues affecting their freedoms. The Rutherford Institute works tirelessly to resist tyranny and threats to freedom by seeking to ensure that the government abides by the rule of law and is held accountable when it infringes on the rights guaranteed by the Constitution and laws of the United States.

INTRODUCTION AND SUMMARY OF ARGUMENT

The smartphone offers the most intimate view into the life of an American ever available. These devices contain unfiltered correspondence with friends, family members, and colleagues. They contain photos of the device owner's children. They log an encyclopedic record of their user's movements. And an array of applications compile health records, financial data, and exhaustive histories of media consumption, Internet searches, and even food deliveries. Never before has such a complete picture

¹ No party's counsel authored this brief in whole or in part, and no person or entity other than *amicus* or its counsel made a monetary contribution to fund the brief's preparation or submission. *Amicus* provided timely notice of this filing to all parties.

of a human being been available in one place. If the Fourth Amendment does not require a search warrant to access these devices, it is a dead letter in the twenty-first century.

Yet, that is exactly the view the Government and several Circuits have taken—at least when it comes to international borders. They have reasoned that a narrow, historical border-search exception to the Fourth Amendment’s warrant requirement effectively gives government agents *carte blanche* to search Americans’ devices when they enter the country. That means no warrant is needed to rifle through text messages with family members. No warrant is needed to view personal photographs. No warrant is needed to look through every Uber ride the user has ever taken. In the most invasive searches, which the Government calls “advanced,” this intimate information can be copied and stored on a government database to be used by federal agents or shared with other law-enforcement agencies.

The scope of this warrant-free zone is staggering. Americans cross our nation’s international borders more than *one-hundred million* times per year. Although the Government does not search every device in every crossing, the number of device searches has increased steadily over the last decade. And in the view of the Fifth Circuit and several other Circuits, only policy preferences would prevent the Government from vastly expanding the number of devices searched at our borders. But a privacy right that exists solely at the boundless discretion of law enforcement is no right at all.

Nor is deprivation of that right justified. Nothing

unique to the border justifies a wholesale exception to the Fourth Amendment's warrant requirement. Indeed, in case after case, the Government uses the border-search exception not to find smuggled contraband or to combat cross-border crime, but instead to opportunistically investigate run-of-the-mill domestic crime without obtaining a warrant.

Further, the text and history of the Fourth Amendment make no mention of any border-search exception. And historical practice confirms that for the papers and effects as intimate as those contained on a smartphone, the Government must obtain a warrant.

For all of these reasons, the Court should grant the petition and clarify that the Government must obtain a warrant before it searches Americans' devices at an international border.

ARGUMENT

I. THE PETITION RAISES A QUESTION OF ENORMOUS SIGNIFICANCE FOR AMERICANS' CIVIL LIBERTIES.

The petition before the Court concerns a staggering judge-made exception to the Fourth Amendment: a wholesale relaxation of the warrant requirement for cell phones that cross the U.S. border. That places millions of Americans' Fourth Amendment rights in jeopardy and warrants this Court's review.

**A. Cell Phone Searches Are An Unusually
Intrusive Invasion Of Americans'
Privacy.**

The petition here concerns a relaxed application of the Fourth Amendment to cell phones. That alone should raise alarm bells. Modern smartphones are not ordinary papers or effects. They are effectively digital simulacra of their owners, offering exhaustive accountings of communications, movements, and online activity.

This Court has highlighted the unique privacy interests at stake when it comes to cell phones. “A decade ago officers might have occasionally stumbled across a highly personal item such as a diary, but today many of the more than 90% of American adults who own cell phones keep on their person a digital record of nearly every aspect of their lives.” *Riley v. California*, 573 U.S. 373, 395 (2014) (cleaned up). These phones “collect[] in one place many distinct types of information—an address, a note, a prescription, a bank statement, a video—that reveal much more in combination than any isolated record”—allowing law enforcement to effectively “reconstruct[]” “[t]he sum of an individual’s private life.” *Id.* at 394. Indeed, the “information” gathered by “cell phone[s]” is “detailed, encyclopedic, and effortlessly compiled.” *Carpenter v. United States*, 585 U.S. 296, 309 (2018). In short, “[m]odern cell phones ... are such a ‘pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy’”—and so of course “collect and store ‘detailed information about all aspects of a person’s life.’” *Chatrue v. United States*, 146 S. Ct. 2193, 2200 (2026).

The Court is right. Consider just a handful of examples of the kind of information that can be gleaned from a modern smartphone.

Communications. From call records and voicemails, to text messages and Snapchats,² to work emails and direct messages across social-media platforms, cellphones contain a wealth of private communications. This case proves the point. Mr. Anibowei himself is an immigration attorney whose cell phone contains confidential client communications, including communications relating to clients in removal proceedings adverse to the Department of Homeland Security. *See, e.g.*, Pet. App. 89a–90a. Such confidential communications implicate especially significant Fourth Amendment privacy interests. *See, e.g., Katz v. United States*, 389 U.S. 347, 353 (1967); *Riley*, 573 U.S. at 403.

Location data. A variety of different applications collect granular data about a phone’s location: a “maps app” that “help[s] you navigate,” “[w]eather apps” that provide information about “local conditions,” and “so on.” *Chatrie*, 146 S. Ct. at 2200. As a result, cell phones “provide a full ‘record of the holder’s whereabouts’ and, with that, ‘an intimate window into a person’s life’” and “‘near perfect surveillance’ of an individual holding a cell phone.” *Id.* at 2207–08 (quoting *Carpenter*, 585 U.S. at 311–12). Such intimate, private information is of course protected by the Fourth Amendment. *See id.* at 2215; *see also*

² Snapchat is a popular messaging platform through which users communicate through photographs accompanied by messages. *See What is Snapchat?*, Snapchat, <https://tinyurl.com/j43wratn> (last visited Sep. 18, 2026).

Carpenter, 585 U.S. at 315–16.

Health records. Millions of Americans also store health data on their phones. Popular applications pair with wearable devices—like “Fitbit” and “Whoop”—to continuously track users’ sleep, heart rate, and physical activity so that users can improve their health. *See, e.g., Make every move a healthy one with Google Pixel and Fitbit*, Google, <https://tinyurl.com/ypa6jkca> (last visited Sep. 18, 2026); *How WHOOP works*, Whoop, <https://tinyurl.com/wenun4zd> (last visited Sep. 18, 2026). Other applications—like Amazon’s OneMedical—are used to access primary-care and other medical services and so contain detailed patient medical records. *See Medical Records*, OneMedical, <https://tinyurl.com/3btwk4nh> (last visited Sep. 18, 2026). Such sensitive medical information implicates substantial privacy interests. *See, e.g., Ferguson v. City of Charleston*, 532 U.S. 67, 78 (2001); *accord Riley*, 573 U.S. at 395–96 (noting privacy interest in a user’s online “search for certain symptoms of disease, coupled with frequent visits to WebMD”).

Financial data. More than half of Americans use their mobile phone as their primary means to manage their bank account. *See* Press Release, American Bankers Association, National Survey: Bank Customers Continue to Use Mobile Apps More Than Any Other Channel to Manage Their Accounts (Nov. 18, 2025), <https://tinyurl.com/43razb4y>. Scores more track their budgets and accounts using finance applications like Monarch or Rocket Money. *See, e.g., Tracking*, Monarch, <https://tinyurl.com/yye5mxh2> (last visited Sep. 18, 2026); *How Rocket Money helps you create a budget*, Rocket Money,

<https://tinyurl.com/48wtvk34> (last visited Sep. 18, 2026). This kind of detailed data implicates Americans’ reasonable expectation of privacy, as it can reveal everything from where they purchased groceries to the house of worship to which they tithed.

Internet history. Modern phones also track an extraordinary amount of Americans’ online activity. “An Internet search and browsing history, for example, can be found on an Internet-enabled phone and could reveal an individual’s private interests or concerns[.]” *Riley*, 573 U.S. at 395. So too can Americans’ “chats” with increasingly popular artificial-intelligence applications that are used by 49% of Americans. Jeffrey Gottfried, et al., *Americans and AI 2026: Chatbots, Smart Devices and Views on Impact*, Pew Research Center (June 17, 2026), <https://tinyurl.com/ym2vemta>. And then there are more bespoke applications like ride-share services (e.g., Uber and Lyft), food-delivery services (e.g., GrubHub and DoorDash), and media software (e.g., YouTube and Spotify). It is self-evident that access to all of the information tracked across these “apps ... can form a revealing montage of the user’s life.” *Riley*, 573 U.S. at 396; *see ibid.* (“The average smart phone user has installed 33 apps”).

Information inside the home. Confiscated phones can also give authorities access to the device owner’s home—a domain that lies at “the [Fourth] Amendment’s ‘very core.’” *Florida v. Jardines*, 569 U.S. 1, 6 (2013). According to a recent consumer-group survey, 61% of Americans use home security cameras, and nearly half use doorbell cameras. *See 2026 Home Security Market Report*, SafeHome.org (Apr. 1, 2026), <https://tinyurl.com/5heheemy>. These

systems commonly offer live feeds that are viewed and stored directly on the user’s cell phone. *See ibid.* (noting “broader shift toward ... app-managed, camera-first security”). Combine these systems with smart-home systems that allow mobile application-based management and monitoring of a home’s temperature, lighting, appliances, and more, *see, e.g., Smart Home Tips for Saving Energy*, EnergyStar.gov, <https://tinyurl.com/3tyeahew> (last visited Sep. 18, 2026), and a cell phone offers an intimate view of not only its user but also its user’s domicile.³

While access to even one of the above categories of data would implicate Fourth Amendment scrutiny, cell phones often contain them *all*. That “pervasiveness”—combining volumes of different private data all in one place—means that “cell phones are not just another technological convenience.”

³ Current U.S. Customs and Border Protection policy limits searches to “an examination of information that is resident upon the device at the time it is presented for inspection.” *See Border Search of Electronic Devices at Ports of Entry*, U.S. Customs and Border Protection, <https://tinyurl.com/4psc73dw> (last visited Sep. 18, 2026) (responding to “Does CBP search information that is stored remotely (in the cloud)?”). Additionally, the policy states that officers “may not use the device to access information that is solely stored remotely.” *Ibid.* Nevertheless, users of popular smart-home security systems can save camera and doorbell footage directly to their mobile devices. *See, e.g., How to Create, Save, and Download Video Clips*, Google Home & Nest Help, <https://tinyurl.com/43h3s82f> (last visited Sep. 18, 2026); *How Do I Download Video Clips From My Arlo Feed?*, Arlo, <https://tinyurl.com/bdhezhnz> (last visited Sep. 18, 2026). And as this Court has recognized, “[c]ell phone users often may not know whether particular information is stored on the device or in the cloud,” with the same type of data sometimes stored locally and sometimes remotely. *Riley*, 573 U.S. at 397.

Riley, 573 U.S. at 394–95, 403. Access to these devices provides the most privacy-invasive search ever available to law enforcement. *Compare Jardines*, 569 U.S. at 6 (“when it comes to the Fourth Amendment, the home is first among equals”), *with Riley*, 573 U.S. at 396 (“a cell phone search would typically expose to the government *far* more than the most exhaustive search of a house”).

**B. Warrantless Cell Phone Searches At The
U.S. Border Impose Real Burdens On
Americans’ Privacy.**

Because of the unique privacy interests one has in their cell phone, “the degree to which [a phone search] intrudes upon an individual’s privacy” is significant. *Riley*, 573 U.S. at 385 (quoting *Wyoming v. Houghton*, 526 U.S. 295, 300 (1999)). A blanket international-border exception for cell phones is thus exceedingly strong medicine that would require an especially dire disease as justification. *See ibid.* But the Government’s use of the border-search exception shows that no such justification exists. Instead, the Government has repeatedly used the exception as a tool to violate Americans’ civil liberties by capitalizing on international travel as a convenient opportunity to avoid the Fourth Amendment’s warrant requirement.

Consider just a few examples. In *United States v. Smith*, 673 F. Supp. 3d 381 (S.D.N.Y. 2023), when an American citizen returned home from a trip to Jamaica, federal agents apprehended him, seized his phone, and refused to let him leave until he offered up his phone password. *Id.* at 387–88. The agents suspected the defendant of insurance fraud unrelated to his international travel and believed that his

arrival at Newark Airport presented an opportunity to conduct a forensic search of his phone “[w]ithout seeking a warrant.” *See ibid.* The district court agreed that this opportunistic warrantless search was unconstitutional but nevertheless upheld it because, “absent Supreme Court ... precedent to the contrary,” a “reasonable government agent could have a good faith belief that such a search ... was permissible.” *Id.* at 401.

In *United States v. Fox*, 2024 WL 3520767 (E.D.N.Y. July 24, 2024), law enforcement targeted a flight attendant whom they suspected of fraud. *Id.* at *2. Rather than obtaining a warrant, agents simply “tracked [her] international travel for the apparent purpose of seizing of her phone and laptop at the border.” *Id.* at *1–*2. When she arrived home from an international trip—unrelated to the suspected fraud—they did exactly that. *Id.* at *2–*3. The court ultimately found the Government’s actions unconstitutional and suppressed the evidence recovered from this search. *Id.* at *28.

In *United States v. Sultanov*, 742 F. Supp. 3d 258 (E.D.N.Y. 2024), law enforcement suspected an American citizen of a crime unrelated to international travel. *Id.* at 267. But again, rather than obtaining a warrant, law enforcement officials waited for him to “travel[]” out of the country “to visit his family” and then searched his phone when he returned. *Ibid.* Acknowledging that the legality of such searches is an “unsettled issue ... that is percolating among” federal courts, *id.* at 266, the court denied a motion to suppress under “the good faith exception” to the Fourth Amendment, *id.* at 299.

In *United States v. Belmonte Cardozo*, 181 F.4th 461 (4th Cir. 2026), customs officials referred a U.S. citizen to secondary screening where he was instructed to unlock his phone. *Id.* at 464. Officials then manually searched its contents, discovered evidence of a crime unrelated to his travel, and arrested him. *Id.* at 464–65. He was subsequently convicted, and the Fourth Circuit affirmed that outcome, reasoning that the Government can manually search Americans’ phones even when it lacks “individualized suspicion.” *Id.* at 471.

These cases show that the Government has not used the border-search exception as a limited means to protect the country’s sovereign territory. It has instead abused it to circumvent the Fourth Amendment’s warrant requirement when the target of a domestic investigation happens to go on an international trip. Such opportunistic fishing expeditions impose serious burdens on the privacy guaranteed by the Fourth Amendment.

That burden is both widespread and growing. Americans annually take more than 100-million international trips, *see* International Trade Administration, U.S. Citizen Travel to International Regions 2025 (Mar. 11, 2025), *available at* <https://tinyurl.com/2bhtdep4>, meaning that millions of Americans are effectively in a warrant-free-search zone each year. In fiscal year 2025 alone, U.S. Customs and Border Protection conducted 55,318 border searches of electronic devices—representing a more-than-30% jump in such searches from 2023. *Border Searches of Electronics at Ports of Entry: FY2025 Statistics*, U.S. Customs and Border Protection (Oct. 23, 2025), *available at*

<https://tinyurl.com/b85kx9yb>; see also *Border Searches of Electronics at Ports of Entry: FY2023 Statistics*, U.S. Customs and Border Protection (May 7, 2024), available at <https://tinyurl.com/3n7dav6t>.

Absent this Court’s intervention, the only thing stopping the Government from further expanding its warrantless border-search program is political will.

C. Warrantless Cell Phone Searches Fail To Meaningfully Advance Governmental Interests At The Border.

This Court has grounded the border-search exception in “[t]he Government’s interest in preventing the entry of unwanted persons and effects ... at the international border.” *United States v. Flores-Montano*, 541 U.S. 149, 152 (2004); see also *United States v. Ramsey*, 431 U.S. 606, 616 (1977). The primary historical evidence justifying that interest is a founding-era customs statute that authorized searches of ships suspected of customs evasion. *Ramsey*, 431 U.S. at 616–17. Consistent with that evidence, the Court has consistently grounded the Government’s interest in combatting customs evasion and preventing the smuggling of contraband into the country. See *id.* at 617–19.

A blanket rule authorizing warrantless phone searches at the border does not materially advance this interest. For one, data can be “stored in the cloud”—i.e., on “remote servers rather than on the device itself.” *Riley*, 573 U.S. at 397. The upshot is that a smuggler need not risk physically transporting any incriminating or illicit data on his cell phone when crossing the border and can instead access that

data with any device near-instantaneously over wireless spectrum or fiber-optic cable once in the country. Further, as this Court explained in *Riley*, “other case-specific exceptions may still justify a warrantless search of a particular phone”—particularly “exigent circumstances” such as the “need to prevent the imminent destruction of evidence in individual cases, to pursue a fleeing suspect, and to assist persons who are seriously injured or are threatened with imminent injury.” *Id.* at 401–02. Thus, if there were a true need for immediate, warrantless access to a device at the border in a unique case, law enforcement would still have ample, more tailored tools at its disposal.

The border-search exception’s poor fit to cell phones is exemplified by the above-described examples. *See supra* Section I.B. As those examples demonstrate, the Government has used the exception not to interdict contraband, ensure the payment of duties, or police the nation’s immigration laws, but instead as an opportunity to investigate domestic crime without a warrant. Whatever the law-enforcement merits of that approach, it does not serve the historical border-related interests that justify the border-search exception.

Finally, the historical justifications for the border-search exception are utterly disproportionate to the other side of the Fourth Amendment ledger: “the degree to which [the search] intrudes upon an individual’s privacy.” *Riley*, 573 U.S. at 385 (quoting *Houghton*, 526 U.S. at 300). In the context of searching ships and luggage, the Court has justified the exception because “a port of entry is not a traveler’s home,” and so Americans have a diminished

privacy interest. *Ramsey*, 431 U.S. at 618 (quoting *United States v. Thirty-seven Photographs*, 402 U.S. 363, 376 (1971)). But that is just not true when it comes to searches of modern phones: “A phone not only contains in digital form many sensitive records previously found in the home; it also contains a broad array of private information never found in a home in any form—unless the phone is.” *Riley*, 573 U.S. at 396–97.

This poor fit is exactly why this Court’s guidance is badly needed. Rather than reflexively applying Fourth Amendment warrant-requirement exceptions to cell phones, *Riley* demands a first-principles analysis that accounts for the uniquely heightened privacy interests implicated by cell phones. 573 U.S. at 385–86; *see also* Pet. 14–18. Lower courts—like the Fifth Circuit here—that have mechanically grafted the border-search exception onto modern cell phones are badly in need of a course correction. *Accord Riley*, 573 U.S. at 406–07 (Alito, J., concurring) (“we should not mechanically apply the rule used in the predigital era to the search of a cell phone”).

II. THE TEXT AND HISTORY OF THE FOURTH AMENDMENT FORECLOSE A BOUNDLESS BORDER-SEARCH EXCEPTION FOR CELL PHONES.

A final reason warrants this Court’s review of the question presented in the petition: lower courts’ departure from the Fourth Amendment’s original understanding. The lower courts that have reflexively extended this Court’s border-search-exception precedents to modern cell phones have failed to heed the “gravitational pull” of the Fourth Amendment’s

“text, as well as pre-ratification and post-ratification history.” *United States v. Rahimi*, 602 U.S. 680, 730 (2024) (Kavanaugh, J., concurring).

Start first with the text, which provides a “fixed standard” to assess meaning. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 235 (2022) (citing *Gibbons v. Ogden*, 9 Wheat. 1, 186–189 (1824)); see also *Rahimi*, 602 U.S. at 715 (Kavanaugh, J., concurring) (“As a general matter, the text of the Constitution says what it means and means what it says.”). The Fourth Amendment provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” U.S. Const. amend. IV. That modern cell phones were not “in existence in the 18th century” does not exclude them from this text. *District of Columbia v. Heller*, 554 U.S. 570, 582 (2008) (“We do not interpret constitutional rights that way. ... [T]he Fourth Amendment applies to modern forms of search[.]”); *Chatrpie*, 146 S. Ct. at 2222 (Gorsuch, J., concurring) (“just as the First Amendment protects speech over the internet today no less than it did speech delivered in the town square in 1791, it should hardly come as a surprise that the Fourth Amendment might protect as personal ‘effects’ electronic diaries of one’s travels as it always has more traditional ones”).

Modern cell phones implicate each subject of the Amendment’s text: persons, houses, papers, and effects. Indeed, these devices’ comprehensive collection of everything from communications, medical records, home surveillance, financial data, personal photographs, browsing history, location data, and more means that searches of these phones

threaten to divulge private information about their owners' person, house, papers, and effects. *See, e.g., Riley*, 573 U.S. at 399 (explaining that “[t]he sources of potential pertinent information [on a phone] are virtually unlimited” such that a search “would in effect give ‘police officers unbridled discretion to rummage at will among a person’s private effects’”); *Chatrie*, 146 S. Ct. at 2220 (Gorsuch, J., concurring) (finding that “Location History data qualifies as” device owner’s “effects”); *accord supra* Section I.A.

The founders’ contemporary understanding of the intersection of privacy and property reinforces that text. Because “privacy ... was not part of the political vocabulary of the time,” the founders framed what now are known as “liberty and privacy” rights as “property rights.” Morgan Cloud, *Property is Privacy: Locke and Brandeis in the Twenty-First Century*, 55 Am. Crim. L. Rev. 37, 42–43 (2018). Pre-founding, “the broad concept of property included a person’s rights, ideas, beliefs, and the creative products of her labor.” *Id.* at 37–38. This concept “provided robust protection for the contents of expressive property including, but not limited to, private papers.” *Ibid.* During the founding era, “contemporaries of the Framers decried the exposure of items associated with self-expression, items necessary for survival, and items that contained their most valued possessions.” Maureen E. Brady, *The Lost “Effects” of the Fourth Amendment: Giving Personal Property Due Protection*, 125 Yale L.J. 946, 994 (2016). The founders considered that “[t]he seizure of one’s papers for later perusal was thought to be closely akin to searching through a person’s mind to assess his thoughts.” *See* Randy E. Barnett, *Why the NSA Data Seizures are Unconstitutional*, 38 Harv. J.L. & Pub. Pol’y 3-20, at

6 (2015). And pre-ratification contemporaries considered one's papers to be his "dearest property" with their confiscation considered a "trespass." Cloud, *supra* at 54–55 (quoting Lord Camden). Protections for this form of property—what we would call privacy today—were, in the founders' view, essential to safeguarding liberty. *See id.* at 42–43.

Given this text, history, and tradition, it beggars belief to suggest that the founders would have tolerated a blanket border-search exception of the variety endorsed by the Fifth Circuit below. At the founding, Americans had only recently waged a war over "the reviled 'general warrants' and 'writs of assistance' of the colonial era, which allowed British officers to rummage through homes in an unrestrained search for evidence of criminal activity." *Riley*, 573 U.S. at 403. Had there existed at the founding a complete record of a person's most private thoughts—a portable device that could "expose to the government far more than the most exhaustive search of a house," *id.* at 396—there is simply no reason to believe that the same colonists that dumped tea into the Boston Harbor would have been comfortable with British officers searching such a possession at that same harbor.

Lower courts' failure to heed the text, history, and tradition of the Fourth Amendment further warrants consideration of the exceptionally important question presented by the petition.

CONCLUSION

The Court should grant the petition.

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Respectfully Submitted,

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