No. 06-827

IN THE

Supreme Court of the United States

ZACHARY HRASKY,

Petitioner,

v.

UNITED STATES,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR AMICUS CURIAE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

1. Whether law enforcement officers' exploratory search of the interior of Petitioner's vehicle, after arresting him beyond "reaching distance" from the vehicle, violated the Fourth Amendment's search-incident-to-arrest doctrine.

2. Whether this Court—consistent with the suggestions of several of its Justices—should reconsider its holding in *New York* v. *Belton*, 453 U.S. 454 (1981), at least to the extent it entitles officers to conduct exploratory searches of vehicles' interiors incident to arrests for nothing more than traffic violations.

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INTEREST OF AMICUS CURIAE[1]

The National Association of Criminal Defense Lawyers ("NACDL") is a non-profit organization with direct national membership of over 11,500 attorneys, in addition to more than 28,000 affiliate members from all 50 states. Founded in 1958, NACDL is the only professional bar association that represents public defenders and private criminal defense lawyers at the national level. The American Bar Association recognizes NACDL as an affiliated organization with full representation in the ABA House of Delegates.

NACDL's mission is to ensure justice and due process for the accused; to foster the integrity, independence, and

[1] Pursuant to Rule 37.6, counsel for amicus states that no counsel for a party authored this brief in whole or in part, and that no person other than amicus, its members, or its counsel made a monetary contribution to the preparation or submission of this brief. Letters of consent to the filing of this brief have been lodged with the Clerk of the Court pursuant to Rule 37.3.

expertise of the criminal defense profession; and to promote the proper and fair administration of criminal justice, including issues involving the Bill of Rights. NACDL files approximately 35 amicus curiae briefs each year on various issues in this Court and other courts. NACDL previously filed amicus curiae briefs in this Court in cases, like the present one, involving the automobile search-incident-to-arrest doctrine under the Fourth Amendment. *See Thornton* v. *United States*, 541 U.S. 615 (2004); *Arizona* v. *Gant*, 540 U.S. 963 (2003); *Florida* v. *Thomas*, 532 U.S. 774 (2001).

INTRODUCTION

Amicus agrees with Petitioner that a writ of certiorari should be granted on both questions presented in the petition. Amicus submits this brief to elaborate on the reasons why, in its view, the time is ripe for a fundamental reexamination of *New York* v. *Belton*, 453 U.S. 454 (1981).

This Court announced a bright-line rule in *Belton* that when a police officer arrests an occupant of an automobile, the Fourth Amendment search-incident-to-arrest doctrine authorizes the officer to search the passenger compartment of the automobile. The decision responded to a perceived need for Fourth Amendment clarity in the particular factual context presented. The Court based the *Belton* rule on a "generalization"—suggested by the Court's review of lower court decisions—that items in the passenger compartment of an automobile are "generally, even if not inevitably" within the area into which an arrestee could reach. 453 U.S. at 460. *See infra*, Part I.

Belton's foundations, which already were "shaky" at the time, *Thornton* v. *United States*, 541 U.S. 615, 624 (2004) (O'Connor, J., concurring in part), have been fundamentally eroded in the quarter-century following the decision. It is now standard practice for police officers, when arresting occupants or recent occupants of automobiles, first to restrain the arrestees in handcuffs and secure them in the back of a police car before conducting any search incident to the arrest. The *Belton* "generalization" that arrestees could reach

items in the passenger compartment of an automobile is, in today's world, merely a legal fiction. For this reason, the need that the *Belton* Court perceived for a bright-line rule also has evaporated. Only in the rarest of circumstances, when an arresting officer does not follow standard procedure, will there arguably be a continuing need for clear, advance guidance regarding the scope of the area inside the automobile that the officer may lawfully search. In the mine run of cases, the Constitution's application is clear without *Belton*. Because a handcuffed, removed arrestee will not feasibly be able to reach into his automobile, a search of that automobile cannot be justified under the search-incident-to-arrest doctrine. *See infra*, Part II.

Belton has proved problematic even beyond the cases to which the Court originally intended the decision to apply. *Belton* also has caused a steady erosion of Fourth Amendment restrictions on automobile searches incident to arrests more generally. After *Belton*, when courts have confronted searches in new factual contexts outside *Belton*'s scope, the courts often have viewed as irrelevant the question whether the particular search is justified under the actual rationales for the search-incident-to-arrest doctrine—*i.e.*, the need to prevent an arrestee from obtaining a weapon or destroying evidence. Indeed, courts sometimes have candidly conceded that the arrestee in question could not have accomplished either result. Nevertheless courts approve of these searches, based on the alleged conceptual similarity to *Belton* and a perceived need to maintain bright-line rules in this area. *See infra*, Part III.

Belton also has provided police officers the opportunity and motivation to conduct many more traffic stops and arrests than might otherwise be the case. This Court has held that officers can stop a person for a traffic violation, even if the officers' real motive is to investigate the person for a different crime. *See Whren* v. *United States*, 517 U.S. 806, 813 (1996). This Court also has held that police officers can conduct custodial arrests for such traffic violations. *See Atwater* v. *City of Lago Vista*, 532 U.S. 318, 354 (2001). Under *Bel-*

ton, such arrests enable officers to search the passenger compartments of the arrestees' automobiles. Absent the arrest, no such search could take place. *See Knowles* v. *Iowa*, 525 U.S. 113, 118-119 (1998). *Belton* thus provides officers the means for conducting exploratory searches of suspects' automobiles, free from otherwise applicable Fourth Amendment restrictions. *See infra*, Part IV.

For the foregoing reasons, amicus respectfully submits that *Belton* should be reexamined. Moreover, this case provides the perfect vehicle, as it presents each of the problems articulated above. *See infra*, Part V.

ARGUMENT

I. THE BACKGROUND FOR AND DEVELOPMENT OF *BELTON*'S BRIGHT-LINE RULE

1. In *Chimel* v. *California*, 395 U.S. 752 (1969), this Court sought to clarify the authority of the police to conduct searches pursuant to one exception to the Fourth Amendment warrant requirement: the search incident to a lawful custodial arrest. In *Chimel*, officers arrested the petitioner in his home and then conducted a search of the home's various rooms, including rooms beyond the one in which petitioner was arrested. *See id.* at 753-754. The Court held that when an officer makes an arrest, it is reasonable for the officer to search "the area into which an arrestee might reach in order to grab a weapon or evidentiary item[]," so that the officer can protect his own safety and prevent the destruction of evidence. *Id.* at 763. "There is ample justification, therefore, for a search of the arrestee's person and the area 'within his immediate control'—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence." *Id.*

The Court also reaffirmed its prior holding in *Terry* v. *Ohio*, however, that the scope of any warrantless search "'must be "strictly tied to and justified by" the circumstances which rendered its initiation permissible.'" *Chimel*, 395 U.S. at 762 (quoting *Terry* v. *Ohio*, 392 U.S. 1, 19 (1968)). Applying that principle, the Court held that there was no

justification under the Fourth Amendment search-incident-to-arrest doctrine for police officers arresting a suspect in a home to "routinely search[] any room other than that in which the arrest occurs." *Id.* at 763.

In the course of its decision, the *Chimel* Court rejected an argument proffered by the respondent that it simply "is 'reasonable' to search a man's house when he is arrested in it." 395 U.S. at 764. The Court explained that the respondent's contention was "founded on little more than a subjective view regarding the acceptability of certain sorts of police conduct, and not on consideration[s] relevant to Fourth Amendment interests." *Id.* at 764-765.

> Under such an unconfined analysis, Fourth Amendment protection in this area would approach the evaporation point. It is not easy to explain why, for instance, it is less subjectively 'reasonable' to search a man's house when he is arrested on his front lawn—or just down the street—than it is when he happens to be in the house at the time of arrest.

Id. at 765. The Court therefore rejected the respondent's argument because it had no stopping point: "No consideration relevant to the Fourth Amendment suggests any point of rational limitation, once the search is allowed to go beyond the area from which the person arrested might obtain weapons or evidentiary items." *Id.* at 766. Rather, the Court explained, the proper constitutional test must be grounded in "established Fourth Amendment principles." *Id.* at 765. "The only reasoned distinction is one between a search of the person arrested and the area within his reach on the one hand, and more extensive searches on the other." *Id.* at 766.

2. Twelve years later, in *New York* v. *Belton*, 453 U.S. 454 (1981), this Court sought to clarify the *Chimel* standard as it applied in the particular context of a police officer arresting an occupant of an automobile. In *Belton*, an officer stopped the defendant and three other men for speeding. *Id.* at 455. Upon approaching the car, the officer smelled marijuana and noticed an envelope on the floor associated with marijuana. *Id.* at 455-456. The officer ordered the four men

out of the car and placed them under arrest, "split[ting] them up into four separate areas of the Thruway . . . so they would not be in physical touching area of each other." *Id.* at 456 (internal quotation marks omitted).[2] The officer then searched the passenger compartment of the car, where he discovered drugs. *Id.*

The *Belton* Court observed that "no straightforward rule ha[d] emerged from the litigated cases respecting the question . . . of the proper scope of a search of the interior of an automobile incident to a lawful custodial arrest of its occupants." 453 U.S. at 459. In particular, the lower courts had "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." *Id.* at 460. The Court believed it was imperative for it to address this confusion by announcing a straightforward rule that would permit police officers to determine easily in advance the scope of their authority. *See id.* at 459-460. The protection of the Fourth Amendment, in the Court's view, depended on the creation of such a rule—"'which, in most instances, makes it possible to reach a correct determination beforehand as to whether an invasion of privacy is justified in the interest of law enforcement.'" *Id.* at 458 (quoting Wayne R. LaFave, *"Case-By-Case Adjudication" Versus "Standardized Procedures": The Robinson Dilemma*, 1974 S. Ct. Rev. 127, 142).

To construct its bright-line rule, the *Belton* Court adopted a "generalization" about the real-world circumstances in which officers arrest automobile occupants. The Court explained that its reading of lower court decisions "suggest[ed] the generalization that articles inside the relatively narrow compass of the passenger compartment of an

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[2] It does not appear that the arrestees in *Belton* were handcuffed or placed inside the officer's patrol car. *See* Pet. Br., *New York* v. *Belton*, No. 80-328, 1980 WL 339862, at *3 (March 4, 1980) (stating that arrestees were standing outside the vehicle, and that the officer had "only one set of handcuffs" and therefore did not place them on any of the arrestees).

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].'" 453 U.S. at 460 (quoting *Chimel*, 395 U.S. at 763) (emphasis added). The Court acknowledged that its observation would not hold true for all cases—it was, after all, a generalization. Yet the Court nevertheless established a bright-line, Fourth Amendment rule by reading *Chimel* in light of the generalization: "[W]hen a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." *Id.* at 460 (footnote omitted). In doing so, the Court made clear that it did not intend to "alter[] the fundamental principles established in ... *Chimel*," but rather that its decision simply "determine[d] the meaning of *Chimel*'s principles in this particular and problematic conte[x]t." *Id.* at 460 n.3.

II. THE JUSTIFICATIONS FOR THE *BELTON* DECISION HAVE BEEN FUNDAMENTALLY ERODED

It is questionable whether *Belton*'s factual "generalization" was true at the time it was invoked. *See*, *e.g.*, *Thornton* v. *United States*, 541 U.S. 615, 624 (2004) (O'Connor, J., concurring in part) (referring to "*Belton*'s shaky foundation"); *Belton*, 453 U.S. at 466 (Brennan, J., dissenting) (stating that majority rule is based on a "fiction"). It also is questionable whether it was appropriate for *Belton* to erect a rule of constitutional criminal procedure that, by the Court's own admission at the time, would authorize at least some unconstitutional searches to occur, based solely on a perceived need to provide advance guidance to police officers. *See Mincey* v. *Arizona*, 437 U.S. 385, 393 (1978) ("[T]he mere fact that law enforcement may be made more efficient can never by itself justify disregard of the Fourth Amendment."). Regardless, it is clear today, twenty-five years later, that *Belton*'s "generalization" is no longer true and, relatedly, that the rationale for *Belton*'s bright-line rule has evaporated.

1. The presumption that, when an officer arrests an occupant or recent occupant of an automobile, the arrestee

"generally" can reach throughout the passenger compartment of the automobile has been proven false in the years following *Belton*. For instance, one oft-cited study found that the actual practice of police departments throughout the country is overwhelmingly to remove arrestees and secure them in a police car before conducting a search of the arrestee's automobile. *See* Myron Moskovitz, *A Rule in Search of a Reason: An Empirical Reexamination of* Chimel *and* Belton, 2002 Wis. L. Rev. 657, 675-676.[3] Lower court cases decided since *Belton* support this view, as numerous cases have shown that officers regularly handcuff arrestees and secure them in a patrol car prior to the relevant search. *See Thornton*, 541 U.S. at 628 (Scalia, J., concurring in judgment) (collecting cases). *Contrast Belton*, 453 U.S. at 460 (stating that the Court's "generalization" was based on its "reading of the cases" at the time).

Indeed, so prevalent is the practice of securing an arrestee prior to a search incident to arrest that the government conceded the point in *Thornton*: "The practice of restraining an arrestee on the scene before searching a car that he just occupied is so prevalent that holding that *Belton* does not apply in that setting would . . . largely render *Belton* a dead letter." U.S. Br., *Thornton* v. *United States*, No. 03-5165, 36-37 (U.S. Jan. 22, 2004) (internal quotation marks omitted). The government argued instead that, even if arrestees were handcuffed and secured in virtually all cases, an automobile search should still be justified by the "small but nevertheless deadly risk" that the arrestee would break free and threaten the officer's safety. *Id.* at 39. However, as noted by Justice Scalia in his concurring opinion in *Thorn-*

[3] In its survey of police training manuals, the Moskovitz study found that officers are consistently trained to "remove[] [occupants] from a vehicle before searching it," to "search[] and handcuff[] [the suspects], and secure[] them in the patrol car," and that suspects "should not be permitted to stand near the vehicle while it is being searched." 2002 Wis. L. Rev. at 675-676 (internal quotation marks omitted). The study found *no* instance where an officer was permitted to search a vehicle while an arrestee was in the vehicle or unsecured. *See id.* at 676.

ton, the government failed to cite a "single example" over 13 years where a handcuffed arrestee had retrieved a weapon from his own vehicle to harm a police officer. *See* 541 U.S. at 626-627.

The "generalization" adopted by the *Belton* Court a quarter-century ago is accordingly, today, no more than a legal fiction: "If it was ever true that the passenger compartment is in fact generally, even if not inevitably, within the arrestee's immediate control at the time of the search, it certainly is not true today." *Thornton*, 541 U.S. at 628 (Scalia, J., concurring in judgment) (internal quotation marks and citation omitted).

For this reason, it also is not true, as the *Belton* Court presumed would be the case, that the bright-line rule it announced will "in most instances, . . . reach a correct determination beforehand as to whether an invasion of privacy is justified." 453 U.S. at 458 (internal quotation marks omitted). Rather, as the government's concession in *Thornton* makes plain, the *Belton* rule rarely, if ever, reflects a correct determination of the area into which an arrestee reasonably can reach. The *Belton* rule therefore fails the very justification upon which the Court originally based it. *See* 3 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 7.1 (4th ed. 2004) (stating that standardized procedures should be evaluated based on the extent to which they "approximate the results which would obtain from correct case-by-case application of the [underlying constitutional] principle," and that the *Belton* rule "appear[s] to produce results unsupportable by the applicable principle"). The stark contrast between the facts presumed by the *Belton* Court and the actual facts of contemporaneous police practice means that *Belton*'s real impact has not been to enhance Fourth Amendment protection, as the Court intended. Rather, the continued application of the *Belton* rule today has the effect of condoning searches that, absent the bright-line rule, would, in most cases, indisputably violate the Fourth Amendment.

2. The erosion of the factual foundation for *Belton*'s "generalization" also means that the second basis for the *Belton* decision—the perceived need for a straightforward rule to guide police officers—has evaporated. The *Belton* decision was based on a presumption, derived from the Court's review of lower court decisions, that police officers on the street faced confusion in determining when they could lawfully search the passenger compartment of an automobile as part of a search incident to an arrest. *See* 453 U.S. at 458-460. Today, there is little reason to fear that real police officers conducting actual automobile searches incident to arrests would suffer any similar confusion were *Belton* abandoned. As noted, it is standard police practice for officers to restrain arrestees in handcuffs and secure them in a police vehicle before the officers commence a search of the arrestee's automobile. *Belton* is hardly necessary to clarify the Fourth Amendment's application in these circumstances. *Chimel* already provides all the guidance that is necessary; the search would not be justified as a search incident to arrest because the arrestee has no real possibility of reaching into his automobile. *See Thornton*, 541 U.S. at 626 (Scalia, J., concurring in judgment) (stating that the contrary argument "calls to mind . . . the mythical arrestee possessed of the skill of Houdini and the strength of Hercules" (internal quotation marks omitted)).

To the extent that *Belton* might still be relevant, it addresses only the rare case where an officer does not follow standard procedure, and commences a search of an automobile contemporaneously with the arrest of the automobile's occupant. That rare case, however, is exceedingly more narrow than the varied contexts in which courts apply *Belton* today, and therefore can hardly justify *Belton*'s current broad scope.[4]

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[4] As Justice Scalia noted in his separate opinion in *Thornton*, "if an officer leaves a suspect unrestrained nearby just to manufacture authority to search, one could argue that the search is unreasonable *precisely because* the dangerous conditions justifying it existed only by virtue of the

III. *BELTON* HAS LED TO THE STEADY EROSION OF FOURTH AMENDMENT RESTRICTIONS ON AUTOMOBILE SEARCHES INCIDENT TO ARRESTS

1. In *Chimel*, this Court rejected the respondent's argument to expand the scope of searches incident to arrests made in a home, reaffirming the principle that an exception to the warrant requirement "'must be "strictly tied to and justified by" the circumstances which rendered its initiation permissible.'" 395 U.S. at 762 (quoting *Terry*, 392 U.S. at 19). Perhaps foreshadowing today's automobile search-incident-to-arrest jurisprudence, the Court explained that "once the search is allowed to go beyond the area from which the person arrested might obtain weapons or evidentiary items," "[n]o consideration relevant to the Fourth Amendment suggests any point of rational limitation." *Id.* at 766. For example, "[i]t is not easy to explain why . . . it is less subjectively 'reasonable' to search a man's house when he is arrested on his front lawn—or just down the street—than it is when he happens to be in the house at the time of arrest." *Id.* at 765.

While the *Belton* Court clarified that it intended no change to *Chimel*'s fundamental principles, the *Belton* rule has in practice caused a realization of the fears expressed by the *Chimel* Court. With *Belton* as their primary guidepost in this field, courts continually uphold automobile searches that are conducted after the occupant of the automobile has been separated farther and farther from his automobile, much like the proverbial man arrested on his front lawn or down the street from his house, which the *Chimel* Court hypothesized. There is good reason to fear that under the increasingly "unconfined analysis" the *Belton* decision has inspired, "Fourth Amendment protection in this area [c]ould approach the evaporation point." *Chimel*, 395 U.S. at 765.

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officer's failure to follow sensible procedures." 541 U.S. at 627 (Scalia, J., concurring in judgment).

2. The crux of the problem is as follows. Courts, including this Court, acknowledge that *Belton* authorizes searches of an automobile's passenger compartment in instances where no court or police officer could reasonably conclude that the arrestee could reach the automobile's interior. Thus, when confronting new factual contexts outside *Belton*'s direct scope, courts find it irrelevant that the arrestees in question similarly could not have reached the passenger compartments of their cars. In short, the courts seem to reason that if that fact is irrelevant under *Belton*, it also cannot be relevant to the adjudication of the lawfulness of automobile searches incident to arrests in the slightly different contexts they have been asked to consider. *See Thornton*, 541 U.S. at 622-623. Instead, some courts ask if, as a general matter, a new category of searches is conceptually similar to the category of searches covered by *Belton*. *See*, *e.g.*, *id.* at 621. And some other courts ask if a particular search is closely or rationally connected to a time in which a *Belton* search could have been justified. *See*, *e.g.*, *United States* v. *McLaughlin*, 170 F.3d 889, 891 (9th Cir. 1999). This method of reasoning has led to a steady erosion of Fourth Amendment principles in the automobile search-incident-to-arrest context.

Respectfully, this Court's decision in *Thornton* demonstrates the form of reasoning that adherence to *Belton* has forced courts to conduct. In *Thornton*, this Court acknowledged that the arresting officer "handcuffed petitioner . . . and placed him in the back seat of the patrol car" before the officer commenced the search of petitioner's car. *See* 541 U.S. at 618. For this reason, the Court also acknowledged that "[i]t is unlikely . . . that petitioner could have reached under the driver's seat for his gun." *Id.* at 622. Nevertheless, the Court did not then conclude on that basis that the search lacked justification under the rationales animating the Fourth Amendment search-incident-to-arrest doctrine. To the contrary, with *Belton* as its guidepost, the Court explained: "But the firearm and the passenger compartment in general were no more inaccessible [here] than were the con-

traband and the passenger compartment in *Belton*." *Id.* The important notion for the Court was that, as a general matter—even if not in the particular case before the Court—"the arrest of a suspect who 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." *Id.* at 621. *Belton* commanded this focus on generalities, rather than particular cases, because of its creation of a bright-line rule. For *Belton* to retain its value as a "clear rule," the *Thornton* Court reasoned, it must also cover the general category of arrests where officers confront the suspect outside his car, regardless whether, in fact, "items were or were not within the reach of an arrestee at any particular moment." *Id.* at 623.[5]

Based on *Belton*, lower courts—including the court of appeals in this case (*see infra*, Part V)—have engaged in similarly problematic forms of reasoning when confronting new factual contexts outside *Belton*'s direct scope. The courts do not look to whether a particular search could be justified by the original rationales for the Fourth Amendment search-incident-to-arrest doctrine. Instead, courts consider the conceptual similarity of the situation at hand to the factual situation at issue in *Belton*, or ask whether the search in question was closely and rationally connected to a time at which a *Belton* search could have been justified. In doing so, the lower federal courts continually have upheld searches far removed from the original rationales for the search-incident-to-arrest doctrine. *See*, *e.g.*, *United States* v. *Wesley*, 293 F.3d 541, 548 (D.C. Cir. 2002) (upholding search after arrestee was handcuffed and placed in patrol car);

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[5] The petitioner in *Thornton* sought certiorari only on the question whether *Belton* authorizes warrantless searches where an arrestee is outside the vehicle when the officer "initiate[s] contact" with the arrestee. The petitioner did not seek review of *Belton*'s applicability where an arrestee is beyond "reaching distance" of his vehicle at the time of arrest or search, nor did petitioner request reconsideration of the *Belton* rule itself. *See* 541 U.S. at 622 n.2; *id.* at 624-625 (O'Connor, J., concurring in part).

McLaughlin, 170 F.3d at 892 (upholding search after arrestee was removed from the scene); *United States* v. *Snook*, 88 F.3d 605, 606, 608 (8th Cir. 1996) (upholding search after arrestee was handcuffed and placed in patrol car); *United States* v. *Arango*, 879 F.2d 1501, 1503, 1505-1506 (7th Cir. 1989) (upholding search after defendant was arrested one block from vehicle, then handcuffed and placed in patrol car); *United States* v. *Karlin*, 852 F.2d 968, 970-971 (7th Cir. 1988) (upholding search after arrestee was handcuffed and placed in patrol car); *United States* v. *McCrady*, 774 F.2d 868, 872 (8th Cir. 1985) (upholding search after arrestee was removed from the scene); *see also United States* v. *Morris*, 179 F. App'x 825, 834-835 (3d Cir. 2006) (Becker, J., dissenting) (noting split among circuits on whether incident-to-arrest search is proper after arrestee is driven away, and stating "serious doubts" that *Belton* "can be stretched so far").[6]

The *Chimel* Court perhaps predicted the current problems with the automobile search-incident-to-arrest doctrine. With *Belton* as a backdrop, the lower federal courts that have applied and extended *Belton* are understandably hamstrung in any attempt to articulate principled Fourth Amendment bases for limiting the situations in which automobile searches incident to arrests may lawfully be conducted. The continued erosion of Fourth Amendment principles in this area is therefore likely to continue until the root of the problem—*Belton*—is addressed. *See Thornton*, 541 U.S. at 624 (O'Connor, J., concurring in part) (noting

[6] This Court held even *before* its *Belton* decision that some of these types of searches were beyond the scope of the search-incident-to-arrest doctrine. *See Dyke* v. *Taylor Implement Mfg. Co.*, 391 U.S. 216, 220 (1968) (invalidating search conducted after car and arrestee were removed to police station); *Preston* v. *United States*, 376 U.S. 364, 367-368 (1964) (same); *see also Chambers* v. *Maroney*, 399 U.S. 42, 47 (1970) (affirming principle but upholding search based on automobile exception). The Government previously has conceded this point. *See* U.S. *Thornton* Br. 30-31 (acknowledging that, where "the arrestee or his vehicle has been removed from the scene of the arrest," a search incident to arrest is improper) (citing *Dyke* and *Preston*)).

that lower courts now seem to treat vehicle incident-to-arrest searches as a "police entitlement"—a "direct consequence of *Belton*'s shaky foundation"); *id.* at 636 (Stevens, J., dissenting) ("Without some limiting principle, I fear that today's decision will contribute to a massive broadening of the automobile exception, when officers have probable cause to arrest an individual but not to search his car." (internal quotation marks and citation omitted)).

3. For these reasons, *Belton* has placed lower federal court judges in the awkward position of having to sanction, frequently against their own senses of logic and reason, warrantless searches that, in the absence of *Belton*'s "generalization," would plainly violate the Fourth Amendment. Faced with this dilemma, federal judges have struggled to articulate a variety of approaches to delineate the boundaries of the *Belton* rule, all the while bemoaning its inherent unworkability. *See, e.g.*, *United States* v. *Weaver*, 433 F.3d 1104, 1106-1107 (9th Cir. 2006) (applying *Belton* where search is "roughly contemporaneous" with arrest but not "so separated in time or by intervening acts" that it is not "incident" to arrest, and stating that "[w]e respectfully suggest that the Supreme Court may wish to re-examine this issue"); Pet. App. 5a-6a (applying "continuous sequence of events" standard, and noting "some recent interest in rethinking the doctrine" (internal quotation marks omitted)); *see also McLaughlin*, 170 F.3d at 894 (Trott, J., concurring) (stating that "impressionistic blur" of *Belton* jurisprudence has "abandoned our constitutional moorings and floated to a place where the law approves of purely exploratory searches of vehicles").

In contrast to their federal counterparts, state court judges suffer no similar constraints when assessing the lawfulness of automobile searches under their state constitutions or other applicable state law. Notably, a number of state courts have elected to abandon the *Belton* rule as a matter of state law. *See, e.g.*, *New Jersey* v. *Eckel*, 888 A.2d 1266, 1273, 1275-1277 (N.J. 2006) (rejecting *Belton* rule in context of arrests for "minor motor vehicle offenses"; collect-

ing state cases rejecting *Belton*); *Camacho* v. *State*, 75 P.3d 370, 373-374 (Nev. 2003) (rejecting *Belton* in favor of *Chimel* rule, and requiring affirmative showing of exigent circumstances); *State* v. *Arredondo*, 944 P.2d 276, 284 (N.M. Ct. App. 1999) (rejecting *Belton*'s "bright-line rule" in favor of fact-specific inquiry), *overruled on other grounds by State* v. *Steinzig*, 987 P.2d 409 (N.M. 1999); *Commonwealth* v. *White*, 669 A.2d 896, 902 (Pa. 1995) (holding that Pennsylvania constitution affords "more protection" than *Belton* and limiting scope of search to "immediate area which the person occupies during his custody"); *People* v. *Blasich*, 541 N.E.2d 40, 43 (N.Y. 1989) (rejecting *Belton*'s "bright-line approach" in favor of fact-specific inquiry); *Commonwealth* v. *Toole*, 448 N.E.2d 1264, 1267 & n.4 (Mass. 1983) (rejecting *Belton* rationale for vehicle search based on state statute, which expressly adopted rationale of *United States* v. *Robinson*, 414 U.S. 218 (1973) (Marshall, J., dissenting)).

IV. *BELTON* PROVIDES THE OPPORTUNITY AND MOTIVE FOR POLICE OFFICERS TO ENGAGE IN PRETEXTUAL TRAFFIC ARRESTS TO CONDUCT EXPLORATORY AUTOMOBILE SEARCHES

In *Whren* v. *United States*, 517 U.S. 806, 813 (1996), this Court held that a police officer may detain a motorist based on probable cause that a traffic violation has occurred, even if the officer's reason for detaining the motorist is in fact unrelated to the traffic offense at issue. Five years later, this Court held in *Atwater* v. *City of Lago Vista*, 532 U.S. 318, 354 (2001), that full custodial arrests for minor traffic violations (in that case, failure to wear a seatbelt) are permissible under the Fourth Amendment. Together with these precedents, *Belton* presents police officers *both* the opportunity *and* the motivation to make arrests for traffic offenses in order to conduct searches of the motorists' automobiles incident to the arrests.

That a significant potential exists for such incidents can be inferred from the large number of traffic stops that occur on a daily basis. While national data are not currently avail-

able,[7] statistics collected by the Nebraska Crime Commission (respecting the state in which Petitioner was arrested) show that 1,014,809 traffic stops occurred in 2002 in that state; meanwhile, the entire Nebraska population numbered 1,729,000.[8] In light of this data, it is safe to say that the ever-expanding scope of *Belton* provides police officers with substantial opportunities to conduct exploratory automobile searches, based on nothing more than unarticulated hunches that evidence may be found in those vehicles. *Cf. Atwater*, 532 U.S. at 372 (O'Connor, J., dissenting) (absence of limits on arrest authority gives officers "unfettered discretion to choose" whether to issue a traffic citation and release the motorist under *Knowles*, or effectuate an arrest to conduct a *Belton* search). As Petitioner demonstrates, there is good reason to fear that police officers are taking advantage of *Belton* for this very purpose. *See* Pet. 19-20.

V. THIS CASE IS AN IDEAL VEHICLE FOR THIS COURT TO REEXAMINE *BELTON*

This case presents an excellent opportunity to conduct a fundamental reexamination of *Belton*.

1. Granting certiorari in this case would enable the Court to address squarely the vanishing basis for *Belton*'s

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[7] *See* U.S. Dep't of Justice, Bureau of Justice Statistics, *Traffic Stop Data Collection Policies for State Police, 2001*, *available at* http://www.ojp.usdoj.gov/bjs/abstract/tsdcp01.htm (last visited Mar. 16, 2007); Racial Profiling Data Collection Res. Ctr., Northeastern Univ., *Background and Current Data Collection Efforts*, *available at* http://www.racialprofilinganalysis.neu.edu/background/jurisdictions.php (last visited Mar. 16, 2007) (surveying U.S. jurisdictions collecting traffic stop data).

[8] Nebraska Commission on Law Enforcement and Criminal Justice, *Nebraska Traffic Stops in 2002: A Report to the Legislature on Data Submitted by Law Enforcement per LB593:2001*, at 5, *available at* http://www.ncc.state.ne.us/pdf/stats_and_research/03TrafficStopReport.pdf (last visited Mar. 16, 2007). The Nebraska population is based on U.S. Census estimates. *See* U.S. Census Bureau, *Statistical Abstract of the United States* No. 17 (2003), *available at* http://www.census.gov/prod/2004pubs/03statab/pop.pdf (last visited Mar. 16, 2007).

"generalization"—*i.e.*, the presumption that the passenger compartment of an automobile is "in fact generally, even if not inevitably," within the "immediate control" of an arrestee. 453 U.S. at 460. *See supra*, Part II. Here, consistent with current police practice, a police officer restrained Petitioner in handcuffs and secured him in the back of his patrol car for more than one hour before officers commenced a search of Petitioner's truck. Pet. App. 20a-22a. This case is, accordingly, one of many where the effect of the *Belton* bright-line rule was to condone a search that otherwise plainly would have lacked any justification under the general Fourth Amendment search-incident-to-arrest doctrine.

The case also demonstrates how the perceived need in *Belton* for a straightforward rule to guide police officers has evaporated. Had *Belton* never been decided, and only *Chimel* governed here, the officers would have been hard-pressed to claim any confusion in determining whether their search was a lawful search incident to the arrest of Petitioner. Restrained in the back of a patrol car, neither a court nor the officers could reasonably have concluded that Petitioner could reach weapons or evidence in the passenger compartment of his car.[9] *Belton* created confusion in this case; it did not dispel it. A magistrate judge, district court judge, and dissenting judge on the court of appeals panel all concluded that the officers' search exceeded Fourth Amendment limits, while the panel majority held that it was constitutionally permissible under *Belton*.

2. The court of appeals' decision is a perfect illustration of why *Belton* has led to the gradual erosion of Fourth Amendment restrictions on automobile searches incident to arrests. *See supra*, Part III. The court of appeals did not pause once to consider whether the search in this case could be justified by the rationales supporting the search-incident-to-arrest doctrine—*i.e.*, the need to prevent the arrestee from

[9] Two of the three officers who searched Petitioner's car did not even believe that it had been a search incident to arrest. *See* Pet. App. 19a.

obtaining a weapon or destroying evidence. To the contrary, the court of appeals explained that such an inquiry was irrelevant "[i]n the context of a rule whose applicability does not depend on the presence of one of the specific reasons supporting a search incident to arrest." Pet. App. 5a-6a.

The court of appeals then pointed to past cases in which it had approved searches even more far-removed from the original rationales for the search-incident-to-arrest doctrine—cases where the arrestee "ha[d] exited the vehicle and ha[d] been handcuffed and placed in a police officer's patrol car, or even removed from the scene entirely." Pet. App. 5a (citing *United States* v. *Barnes*, 374 F.3d 601, 603 (8th Cir. 2004); *Snook*, 88 F.3d at 606-608; *McCrady*, 774 F.2d at 871-872). Given these preceding decisions, the court found that preservation of *Belton*'s bright-line rule required it to uphold the lawfulness of the search in this case:

> We think a police officer relying on *Belton* for a clear rule, readily understood by police officers, would justifiably be confused to learn that he is authorized to search a vehicle after a suspect undoubtedly destined for full custodial arrest is handcuffed and placed in a patrol car at the scene, and even after a suspect has been placed in a patrol car and removed from the scene, but not authorized to search a car immediately after an arrestee, still at the scene, unsuccessfully attempts to negotiate his release with a citation. Under existing doctrine as developed under *Belton*, we conclude that the search was reasonable.

Pet. App. 8a-9a (internal quotation marks and citations omitted).

3. The facts of this case also demonstrate well the ease with which *Belton* provides police officers the means to conduct exploratory searches of automobiles absent probable cause for the searches. *See supra*, Part IV. The facts strongly suggest that the officer's initial stop of Petitioner's truck was a pretext for investigating possible drug activity. After Investigator Enslow of the Scottsbluff Police Department received an anonymous tip that Petitioner might be

involved in drug activity, Enslow advised the Nebraska State Patrol to look out for Petitioner's truck. Pet. App. 20a. Enslow advised the State Patrol that Petitioner did not have a valid driver's license and may have been involved in drug activity. *Id.* After receiving that information, a State Patrol officer pulled Petitioner over and detained him—handcuffed and fully secured in the back of the patrol car—for more than one hour to explore Petitioner's possible links to drug activities. *Id.* at 20a-21a. When that interrogation failed to uncover any incriminating evidence, and after Petitioner declined to consent to a search of his truck, the officers arrested Petitioner for a traffic offense and conducted a search of his car. *Id.* at 21a-22a. Absent *Belton*, it can be questioned whether the officers ever would have pursued Petitioner's truck in the first place, much less arrested Petitioner for his traffic offense.

CONCLUSION

For the foregoing reasons, this Court should grant the writ of certiorari and reverse the decision of the Eighth Circuit.

Respectfully submitted.

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MARCH 2007