No. 21-1344

IN THE
Supreme Court of the United States

CHRISTIN CAMPBELL-MARTIN AND ADAM LEIVA,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

This case asks whether the search-incident-to-arrest exception to the Fourth Amendment's warrant requirement permits police officers to search a car after arresting an occupant for providing false identification, even if the officers have verified the suspect's identity and secured him in a police car. The government does not deny that this issue is exceptionally important. Instead, the government proffers three arguments why this court should deny review. All are wrong.

First, the government argues that the decision below "does not conflict with any decision of this Court, any other court of appeals, or any state court of last resort." Opp. 8. But this Court has already held, on materially identical facts, that the search was "unconstitutional." *Davis v. United States*, 564 U.S. 229, 239–40 (2011). The Eleventh Circuit and Colorado Supreme Court have reached the same conclusion. And the Sixth and Tenth Circuits have reached that conclusion when it comes to similar circumstances. Meanwhile, the Seventh and Eighth Circuits have disagreed with those decisions, creating a 4–2 split, which only this Court can resolve.

Second, the government argues that the "court of appeals' factbound decision is correct." Opp. 8. The decision is neither factbound nor correct. The upshot of the court's opinion is that whenever a vehicle occupant is arrested, the police are free to search that car incident to arrest. App. 12a. The holding therefore affects far more cases than just this one. Moreover, the Eighth Circuit's conclusion is wrong because it is foreclosed by *Arizona v. Gant*, 556 U.S. 332 (2009).

Third, the government contends that the inventory-search exception to the warrant requirement independently renders the search constitutional. But the Eighth Circuit did not pass on that question. Thus, it is an issue, at most, for remand.

In sum, this is the ideal case for this Court to bring order to an important area of the law that affects countless Americans.

ARGUMENT

I. The decision below conflicts with this Court's decision in *Davis*, as well as decisions of other courts

The opinion below directly conflicts with this Court's decision in *Davis* and deepens a split among lower courts. The government's attempts to explain away those conflicts fail.

A. The decision below conflicts with *Davis*

Here, the police searched Petitioners' vehicle after arresting them for providing false identification. The court below held that the search was constitutional as a search incident to arrest. In *Davis*, the police searched the defendant's vehicle after arresting him for providing false identification. All nine Justices of this Court agreed that the search was unconstitutional. *Davis*, 564 U.S. at 239; *id.* at 253 (Breyer, J., dissenting). The decision below thus squarely conflicts with *Davis*.

The government now argues that the "parties in *Davis* limited their arguments in this Court to the good-faith exception." Opp. 13. But that doesn't undermine the fact that this Court concluded the search was unconstitutional. Indeed, the Court said so repeatedly.

Davis, 564 U.S. at 236, 239, 240. The government also claims that *Davis*'s statement that the "'search turned out to be unconstitutional under *Gant*,'" merely reflected "the uniform premise that the search was unconstitutional, and that the good-faith question should therefore be treated as dispositive." Opp. 14 (quoting *Davis*). But the Court did not say that unconstitutionality was a mere premise. Instead, the Court stated, as a matter of fact, that the search was unconstitutional. *Davis*, 564 U.S. at 239. Indeed, Justice Breyer said that the majority had "conced[ed] that, like the search in *Gant*, this search violated the Fourth Amendment." *Id.* at 253 (Breyer, J., dissenting).

More fundamentally, the government never addresses the critical fact in *Davis* that the search being unconstitutional was a prerequisite for the Court's ultimate conclusion that the evidence should not be suppressed because the good-faith exception to the exclusionary rule applied. The only way the good-faith exception comes into play is if the underlying search is unconstitutional in the first place. *See id.* at 236–40 (maj. op.). Thus, *Davis*'s conclusion that the search was unconstitutional, was part and parcel of its holding on the good-faith exception. Accordingly, the Eighth Circuit's holding in this case (that the search was constitutional) conflicts with *Davis*.

B. The decision below deepens a split over the search-incident-to-arrest doctrine

The Eighth Circuit also deepened an existing split among the lower courts. The government's attempts to obscure the split miss their mark.

1. As Petitioners explained, the Eleventh Circuit and the Colorado Supreme Court have both held that a vehicle search in these precise circumstances is unconstitutional.

a. In *Davis*, the Eleventh Circuit, on facts materially identical to the ones here, held that the search-incident-to-arrest exception does not apply when the occupant is arrested for providing false information. 598 F.3d 1259, 1263 (2012). The government argues that conclusion "was not necessary to the Eleventh Circuit's judgment" because the court "affirm[ed] the district court's denial of Davis's suppression motion on good-faith-exception grounds." Opp. 15. But, again, there would have been no reason for the Eleventh Circuit to reach the good-faith exception if the search were constitutional in the first place. Moreover, the Eleventh Circuit definitively said: "There can be no serious dispute that the search here violated Davis's Fourth Amendment rights." *Davis*, 598 F.3d at 1263. And this Court explained that the Eleventh Circuit "*held* that the vehicle search incident to Davis' arrest 'violated [his] Fourth Amendment rights.'" *Davis*, 564 U.S. at 236 (emphasis added). The decision below thus conflicts with the Eleventh Circuit's holding in *Davis*.

There is also no merit to the government's suggestion that the Eleventh Circuit's conclusion was "[un]considered." Opp. 16. The Eleventh Circuit carefully explained that this Court's opinion in *Gant* "makes clear that neither evidentiary nor officer-safety concerns justify a vehicle search under these circumstances." *Davis*, 598 F.3d at 1263. Specifically, the court wrote, "First, both [Davis] and the car's driver had been handcuffed and secured in separate police cruisers before Sergeant Miller performed the

search. Second, Davis was arrested for 'an offense for which police could not expect to find evidence in the passenger compartment,' … because Miller had already verified Davis's identity when he arrested him for giving a false name." *Id.* Thus, neither of the justifications for the search incident to arrest exception applied. The Eleventh Circuit's holding was well-reasoned and sound.

The government is also incorrect that the Eleventh Circuit's analysis "would not control the facts of this case." Opp. 16. The government identifies no fact that would distinguish this case from *Davis*. And the government's suggestion that the Eleventh Circuit has contradicted its holding in *Davis*'s holding is simply untrue. Opp. 16 & n.2. The cases the government cites—both of which are non-precedential—involved different crimes. Adigun was arrested for identity theft; thus, it was reasonable to conclude that evidence of that crime (*e.g.*, stolen drivers licenses) would be found in the car. *United States v. Adigun*, 567 F. App'x 708, 713–14 (11th Cir. 2014) (per curiam). And Gray was arrested for drug possession, which this Court in *Gant* specifically said was a crime for which a vehicle search incident to arrest would likely be constitutional. *United States v. Gray*, 544 F. App'x 870, 879 (11th Cir. 2013) (per curiam).

b. The government also fails to distinguish the Colorado Supreme Court's decision in *People v. Chamberlain*, 229 P.3d 1054 (Colo. 2010). The facts in that case may differ slightly, but the crime was essentially the same: providing false information. The driver in *Chamberlain* gave officers a false address. The police arrested her and searched her car. But the Colorado Supreme Court ruled the search unconstitutional.

In attempting to distinguish *Chamberlain*, the government tries to cabin the Court's opinion as simply concluding that it was not reasonable to believe there would have been evidence in the vehicle showing that the woman had moved addresses. Opp. 18. But that same logic applies to a person providing a false name. Indeed, what *Chamberlain* said applies equally to the facts in this case: "Although it may have been possible to find further evidence in the vehicle, without more it was no more reasonable to believe the defendant's vehicle might contain additional documentary evidence corroborating her admission than it was reasonable to believe Gant's vehicle might contain official notice of his [driver's license] suspension." 229 P.3d at 1058.

c. The government also attempts to distinguish *United States v. McCane*, 573 F.3d 1037 (10th Cir. 2009), and *United States v. Buford*, 632 F.3d 264 (6th Cir. 2011). But both courts concluded that arrests for similar crimes to the one at issue here do not justify a vehicle search incident to arrest. It is true that in both cases the government conceded that the searches were unconstitutional, but that simply proves there is no reasonable argument that the searches were constitutional. It does not undermine the courts' conclusions on that score. And though the courts ultimately ruled that the evidence could come in under the good-faith exception, that necessarily requires a conclusion that the search was unconstitutional to begin with.

2. Finally, the government does not contest the other side of the split at all. Below, the Eighth Circuit explicitly said, "Respectfully, we disagree with the Eleventh Circuit's analysis" in *Davis*. App. 12a. The Seventh Circuit reached a similar conclusion in

United States v. Edwards, 769 F.3d 509, 515 (7th Cir. 2014). These two cases thus squarely split with the opinions of the Sixth, Tenth, and Eleventh Circuits as well as the Colorado Supreme Court. Accordingly, this Court's intervention is necessary to return uniformity to this area of the law.

II. The question presented is exceptionally important

The government does not dispute that this case presents an exceptionally important issue. To be sure, the government argues that this case is factbound. It is not. *See* Part III. The Eighth Circuit's decision will have far-reaching implications. It essentially allows police to search a vehicle any time they arrest the vehicle's occupant. That imperils the protections of the Fourth Amendment, which was designed "to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials." *Carpenter v. United States*, 138 S. Ct. 2206, 2213 (2018).

In addition, the government effectively concedes, as it must, that nearly every American is involved in a traffic stop at some point in their life. And each interaction a person has with an officer while in a vehicle could lead to the warrantless search of a vehicle. It is thus unsurprising that this issue comes up again and again. *See* Pet'n 24–25 (collecting cases). This Court's guidance is urgently needed—not only for drivers and passengers, but law enforcement as well.

III. The decision below is wrong

The Eighth Circuit's decision is clearly wrong. The government's attempted rehabilitation does no good.

1. In *Gant*, this Court "conclude[d] that circumstances unique to the vehicle context justify a search

incident to a lawful arrest when it is 'reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.'" 556 U.S. at 343. *Gant* was careful to explain, however, that "[i]n many cases, as when a recent occupant is arrested for a traffic violation, there will be no reasonable basis to believe the vehicle contains relevant evidence." *Id.* The offense in *Gant* was one such example. Gant was arrested for driving with a suspended license. *Id.* at 344. The Court also cited other examples: driving without a license, failing to provide proof of insurance, failing to wear a seatbelt, and speeding. *Id.* at 343–44. In other cases, however, "the offense of arrest will supply a basis for searching the passenger compartment of an arrestee's vehicle and any containers therein." *Id.* at 344. The cases the Court cited both involved arrests for drug possession.

And when it comes to searches incident to an arrest for giving false identification, this Court dispelled any doubt in *Davis*: such a search is unconstitutional. 564 U.S. at 239. That should have answered this very case. The facts are materially identical (as they will be in many cases), belying the government's contention that this case is factbound.

2. The government nonetheless argues that the Eighth Circuit's contrary holding was correct "because it was reasonable to believe that the SUV might contain evidence relevant to petitioners' false-identification offenses." Opp. 10. Specifically, the government says the police "had not yet found any identification papers for Leiva, and they also could not be confident that the Campbell-Martin driver's license was the driver's only form of identification." *Id.* Therefore, the government argues, there may have been evidence of

their crimes in the vehicle. This argument fails for three reasons.

First, the government ignores that the police had definitively determined who Petitioners were and that they had both given false identities. *See* App. 12a–13a. The crime was complete, and no further information was needed. And even though officers did not have "identification papers for Leiva," Opp. 10, the same was true in *Davis*, 598 F.3d at 1261. Moreover, Leiva's admission of his identity was bound to come in at trial. *See* Fed. R. Evid. 801(d)(2). Thus, it was not reasonable to search for more evidence in the car without a warrant. *See Chamberlain*, 229 P.3d at 1057.

The government responds by mischaracterizing Petitioners' position. According to the government, Petitioners argued that any time a search would uncover merely cumulative evidence of the crime, the search is unjustified. Opp. 11. That is not Petitioners' argument.

Instead, Petitioners' argument is that for certain crimes—such as providing false identification, driving without a license, and driving without a seatbelt—it is not reasonable to search the vehicle for more evidence of the crime. *Gant* made clear that "[t]he nature of the offense of arrest is clearly intended to have significance, and in some cases it may virtually preclude the existence of real or documentary evidence." *Chamberlain*, 229 P.3d at 1057. And this Court put crimes like providing false information in the same camp as traffic infractions. As the Colorado Supreme Court explained, "the driving-under-restraint type of offense for which Gant was arrested necessarily requires proof of awareness, or at least constructive notice, of

the particular restraint being violated, making documentary evidence in the form of official notice a possible object of a search." *Id.* But *Gant* "had little difficulty in declaring the crime of arrest in *Gant* to be an offense for which the police could not expect to find evidence in the passenger compartment of his car." *Id.* Thus, to justify a search incident to arrest, there must be "[s]ome reasonable expectation beyond a mere possibility" that the vehicle contains evidence of the crime of arrest. *Id.* And when it comes to giving false identification, if the officer has ascertained the arrestee's identity, it is not reasonable to search the vehicle incident to arrest. It is not like drug possession where there is a reasonable chance that more *contraband* will be found.

Second, the government's position provides no limiting principle. Despite the government's protests, Opp. 12, its logic would carry over to the crimes *Gant* itself said would *not* justify a search. If a suspect is arrested for driving without a license, a search of the car might uncover an expired license in the car. If police arrest a suspect for not wearing a seatbelt, a search of the car might reveal that the driver cut the seatbelt out of the car—thereby confirming she wasn't wearing one. Even if the police arrest a suspect for speeding, a search of the car might reveal a dash cam that recorded the car's speed. Thus, if the Eighth Circuit and government are correct, *Gant*'s rule is meaningless.

Third, this Court in *Davis* rejected the government's current position, holding that once the suspect has given the false information and the police have ascertained the arrestee's true identity, there is no further justification to search the vehicle. Thus, even if

the Eighth Circuit's holding were not wrong under *Gant* itself, it would be wrong under *Davis*.

3. Relatedly, the government argues that a search of the vehicle is justified because the "government must be prepared to prove at trial guilt beyond a reasonable doubt, a much more stringent standard than the probable cause necessary to support the arrest." Opp. 11. But that need cannot justify searching a car without a warrant any more than it would justify searching a house without one. "[T]he 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). And even if police cannot search a car incident to arrest for some crimes, they can still call the magistrate and ask for a warrant.

IV. This case is an ideal vehicle

Finally, the government is wrong that this case is "an unsuitable vehicle to consider the question presented." Opp. 19. The government does not take issue with the facts that the question was preserved or that the Eighth Circuit's sole basis for deeming the search constitutional was the search-incident-to-arrest exception. Moreover, the government does not argue that any further percolation is necessary.

Instead, the government argues that the inventory-search doctrine, which permits the impoundment and search of a vehicle in certain situations, independently justified the search here. *Id.* But the Eighth Circuit did not pass on that question, and so this Court need not do so either. *See* App. 11a. In addition, Petitioners have never conceded that the search would be justified under that exception. Indeed, the

exception does not apply here for a number of reasons, including that the "inventory search" was "a ruse for a general rummaging in order to discover incriminating evidence." *Florida v. Wells*, 495 U.S. 1, 4 (1990). In any event, whether the inventory-search exception applies to this case is a matter for remand at best. It is no impediment to this Court's deciding the important question presented that divides the lower courts.

CONCLUSION

The Court should grant the petition for writ of certiorari.

July 26, 2022

Respectfully submitted,

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