No. 16-467

In the Supreme Court of the United States

EFRAIN TAYLOR,
Petitioner,

v.

STATE OF MARYLAND,
Respondent.

On Petition for Writ of Certiorari to the Court of Appeals of Maryland

REPLY BRIEF FOR PETITIONER

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The State concedes the primary argument in support of granting the petition: this Court's opinion in *Arizona v. Gant*, 556 U.S. 332 (2009), left "some questions open" on how to apply the search warrant exception it created. BIO at 12. The State narrows Petitioner's formulation of the main question, though, from an open query on the quality and quantity of suspicion required to support the warrantless search, to "how it might be applied when a driver is arrested pursuant to an arrest warrant." BIO at 12. In so doing, the State fails to appreciate that its formulation highlights the same core issue presented in the instant petition.[1] Namely, how to apply the "crime of arrest" exception announced in *Gant* where there is no indication, save for the fact of arrest, that the vehicle in question contains evidence of the crime of arrest.

The issue is one of particularity; or, the lack thereof. Under circumstances where there is no individualized basis for the belief that evidence generated by criminal behavior is contained inside the vehicle, there exists no objective, measurable belief that "evidence bearing on that offense will be found in the place to be searched." *Safford Unified School Dist. No. 1 v. Redding*, 557 U.S. 364, 370 (2009). There is no fact particularizing the officer's suspicion to the recently vacated vehicle, as

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[1] Nowhere is this clearer than the State's citation to the dissent from the GVR order in *Megginson v. United States*, 556 U.S. 1230 (2009). The dissenting opinion from that order made clear that the "important question" left open by *Gant* was not its application to cases involving arrest warrants, but the "**meaning and specificity** of the reasonable suspicion requirement in *Gant*." 556 U.S. at 1230 (Alito, J., dissenting) (emphasis added).

opposed to any vehicle stopped at any time for an arrest of the same crime. The sole, categorical justification for the search is that the crime of arrest could, generally, produce physical evidence that fits within the stopped car or truck. *See Brown v. State*, 24 So.3d 671, 678 (Fla. Dist. Ct. App. 2009) (concluding that the "crime of arrest" exception in *Gant* may be satisfied entirely from the inference drawn from the nature of the offense itself). Based on that general belief, "it is not illogical to assume that evidence of a crime is most likely to be found where the suspect was apprehended." *Thornton v. United States*, 541 U.S. 615, 630 (2004) (Scalia, J., concurring).[2]

Suppression courts and law enforcement professionals around the country require this Court's guidance on whether the lack of objective and specific indicia that "evidence of a crime will be found in a particular [vehicle]," *Illinois v. Gates*, 462 U.S. 213, 238 (1983), is irrelevant, and that the entitlement to a search arises nonetheless from the nature of the crime of arrest; or, whether in accordance with the principles announced in *Terry v. Ohio*, 392 U.S. 1 (1968), and its progeny, the search requires a "particularized and objective basis" for believing that the vehicle, specifically, will contain evidence of the arrestee's crime. *United States v. Cortez*, 449 U.S. 411, 417 (1981).

The State endorses the former approach as "long-established" by *Terry* itself. BIO at 9. It is not. This

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[2] *Chimel v. California*, 395 U.S. 752 (1969), held that it is unconstitutional to base a search on that assumption. 395 U.S. at 764-65.

Court in *Terry* made clear that the limitations imposed by the Fourth Amendment are not susceptible to categorization, but "have to be developed in the concrete factual circumstances of individual cases." 392 U.S at 29. Any governmental intrusion into a constitutionally-protected area must therefore be justified by "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Id*. at 21. Categorical approval for an entire class of searches or seizures would render meaningless the guarantees of the Fourth Amendment, which rely on the "detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances." *Id.*

In the five decades since the *Terry* opinion, this Court has consistently refused to endorse categorical search and seizure rules that remove particularity from the applicable analysis. *See e.g., Ybarra v. Illinois*, 444 U.S. 85, 93-97 (1979) (rejecting proposed categorical rule "to permit evidence searches of persons who, at the commencement of the search, are on 'compact' premises subject to a search warrant, at least where the police have a 'reasonable belief' that such persons 'are connected with' drug trafficking and 'may be concealing or carrying away the contraband'"); *Missouri v. McNeely*, 133 S.Ct. 1552, 1561-62 (2013) (rejecting a categorical exigency exception to the warrant requirement for drawing and testing the blood of a recent DUI arrestee); *Richards v. Wisconsin*, 520 U.S. 385, 391-95 (1997) (rejecting categorical exception to the knock-and-announce rule in felony drug investigations); *Mincey v. Arizona*, 437 U.S. 385, 392-95 (1978) (rejecting categorical exception to the warrant

requirement permitting warrantless search of a homicide scene).

This Court's disapproval of single-factor, categorical rules in the context of the Fourth Amendment is well-founded. A contrary approach leads to absurd, unworkable results. Nowhere is this better illustrated than the instant DUI case where, under *Gant*, a search entitlement derived from the nature of the crime of arrest would contravene common sense:

> [I]t is not too far-fetched to imagine a situation where a police officer observes a patron drink several beers in an establishment in a short period of time. If the police officer then observes the patron leave the establishment, get into a vehicle in the parking lot, and drive off, the officer has probable cause to pursue the vehicle, effect a traffic stop, and arrest the driver for DUI….
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> [Under a rule permitting a search based entirely on the nature of the offense], the officer above could lawfully search the passenger compartment of the vehicle without a warrant even though he has absolutely no reason to believe that evidence of DUI is inside—to the contrary, his firsthand observation of the driver drinking several beers gives him a good reason to believe that no evidence of DUI is contained in the vehicle. This result seems completely contrary to *Gant* 's statement that a warrantless search of a vehicle's passenger compartment incident to arrest is lawful when "it is

> reasonable to believe the vehicle contains evidence of the offense of the arrest."

United States v. Reagan, 713 F.Supp.2d 724, 732-33 (E.D. Tenn. 2010) (citations omitted).

It does not stand to reason that the *Gant* opinion broke with 50 years of consistent Fourth Amendment jurisprudence to obtain this incongruous result. Nonetheless, jurisdictions around the United States have interpreted *Gant* as reaching that conclusion, analyzing the constitutionality of vehicular searches by reference only to the nature of the crime of arrest. *See e.g.*, *United States v. Madden*, 682 F.3d 920, 926-27 (10th Cir. 2012); *Commonwealth v. Perkins*, 989 N.E.2d 854, 858 (Mass. 2013); *People v. Bridgewater*, 918 N.E.2d 553, 558 (Ill. 2009); *Meister v. State*, 933 N.E.2d 875, 878 (Ind. 2010). At the same time, other jurisdictions have looked beyond the nature of the offense to determine whether a reasonable belief existed. Those jurisdictions review the totality of facts to determine the existence of an objective and particular basis for the vehicular search. *See e.g.*, *United States v. Williams*, 616 F.3d 760, 765-66 (8th Cir. 2010); *United States v. Vinton*, 594 F.3d 14, 26 (D.C. Cir. 2010); *State v. Mbacke*, 721 S.E.2d 218, 222-23 (N.C. 2012); *Robbins v. Commonwealth*, 336 S.W.3d 60, 63-64 (Ky. 2011).

The State acknowledges a split of authority on this issue, but deems it not "significant" enough to warrant review by this Court. BIO at 13. At the same time, the State recognizes that the *Gant* opinion left open a question of how to apply its newly-announced warrant exception. BIO at 12. With that question left open for nearly a decade, suppression challenges in the 10th

Circuit, Massachusetts, and Indiana, among other places, are reviewed differently under *Gant* than those brought in Washington D.C., North Carolina, and Kentucky, among others. Moreover, in cases of DUI specifically, four jurisdictions have adopted three different standards. *See Taylor v. State*, 137 A.3d 1029, 1033-34 (Md. 2016) (holding that an officer's unquantified experience, alone, gives rise to a reasonable belief in DUI cases); *United States v. Taylor*, 49 A.3d 818, 824 (D.C. 2012) (holding that reasonable suspicion, under the totality of circumstances and particularized to the vehicle at issue, gives rise to a reasonable belief in DUI cases); *State v. Cantrell*, 233 P.3d 178, 184 (Idaho Ct. App. 2010) (holding that the nature of offense, generally, gives rise to a reasonable belief in DUI cases); *Cain v. State*, 373 S.W.3d 392, 397 (Ark. Ct. App. 2010) (same).

There is a significant split of authority on how to interpret and apply the second search warrant exception in *Arizona v. Gant*, 556 U.S. 332 (2009). Resolving that split will clarify how to apply the exception uniformly among the million arrests for DUI that occur annually.[3]

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[3] During 2015, approximately 1,089,171 individuals were arrested for driving under the influence. United States Department of Justice, Federal Bureau of Investigation *Uniform Crime Reporting: Crime in the United States, 2015* at Table 29 (September 2016). DUI arrests accounted for approximately 10% of total arrests, nationwide. *Id.*

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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