No. 02-1019
In the Supreme Court of the United States

STATE OF ARIZONA,
Petitioner
v.

RODNEY J. GANT,
Respondent.

ON WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF ARIZONA

BRIEF *AMICUS CURIAE* OF THE AMERICAN CIVIL LIBERTIES UNION, AND THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICI* [1]

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization with nearly 300,000 members dedicated to the principles of liberty and equality embodied in the Bill of Rights. The ACLU of Arizona is one of its statewide affiliates. Since its founding in 1920, the ACLU has frequently appeared before this Court, both as direct counsel and as *amicus curiae*. In particular, the ACLU has participated in numerous cases addressing the proper scope of the Fourth Amendment.

The National Association of Criminal Defense Lawyers (NACDL) is a nonprofit corporation founded in 1958 to ensure justice and due process for persons accused of crime; to foster integrity, independence, and expertise of the criminal defense bar; and to promote the proper and fair administration of criminal justice. NACDL strives to defend the liberties guaranteed by the Bill of Rights, and is recognized by the American Bar Association as an affiliate organization.

STATEMENT OF THE CASE

Police officers knew there was an outstanding arrest warrant for respondent, Rodney Gant. The officers saw respondent park his vehicle on a residential driveway. An officer recognized respondent after he shined a flashlight into respondent's vehicle. The officer approached the vehicle as respondent was exiting his car. As respondent was walking toward the police, an officer called his name and respondent acknowledged the officer. Respondent was arrested and placed in a patrol car. A search of respondent's vehicle revealed a weapon and cocaine.

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

Respondent was charged with possession of cocaine and possession of drug paraphernalia. The trial court denied his motion to suppress, finding that the search of the vehicle was a valid search incident to arrest. The Court of Appeals of Arizona reversed. The appellate court found that *New York v. Belton*, 453 U.S. 454 (1981), was inapplicable because the facts did not show that respondent "was or should have been aware either of the police presence at the residence as he approached it or of the light the officer shined into his vehicle." Pet.App. A5. The facts revealed that respondent "voluntarily – that is, not in response to police direction – stopped his vehicle, exited it, and began to walk away from it." *Id*.

The court reasoned that *Belton* "applies only when 'the officer initiates contact with the defendant, either by actually confronting the defendant or by signaling confrontation . . . while the defendant is still in the automobile, and the officer subsequently arrests the defendant (regardless of whether the defendant has been removed from or has exited the automobile).'" *Id*. at A6 (citation omitted). Accordingly, the Court concluded that the search was beyond the permissible scope allowed by *Belton* because the record did not establish that the police contacted respondent while he was inside his vehicle, notwithstanding the officer's shining the flashlight. Pet.App. at A8. The court also ruled that the search violated *Chimel v. California*, 395 U.S. 752 (1969), because the passenger compartment of the vehicle was not within the immediate control of respondent when he was arrested. Pet. App. A8-A9. The Arizona Supreme Court denied review and this Court granted certiorari.

SUMMARY OF ARGUMENT

In *Chimel v. California* and *New York v. Belton*, this Court explained that although searches incident to arrest are an exception to the warrant requirement, an officer's

authority to conduct a search incident to arrest "'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); *Belton,* 453 U.S. at 457, *quoting Terry*. The two traditional rationales for the search incident to arrest exception are officer safety and preserving evidence. *Knowles v. Iowa*, 525 U.S. 113, 116 (1998). *Chimel* announced that search incident to arrest permits a search of the arrestee's person, as well as "the area 'within his immediate control,'" for weapons or evidence. *Chimel,* 395 U.S. at 763. In *Belton*, noting that it was simply applying *Chimel*'s "immediate control" test to the "particular and problematic" context of arresting a car occupant, this Court held that a valid arrest of an automobile occupant permits a contemporaneous search of the passenger compartment incident to the arrest. *Belton,* 453 U.S. at 460, n.3.

The court below held that *Belton* is limited to cases where an officer initiates contact with a suspect while the person is inside a vehicle, circumstances not present in this case. Pet. App. A6. Petitioner seeks reversal of this ruling and urges a standard that permits an automatic and suspicionless search of a car anytime the police arrest a "recent occupant" of the car. *See* Br. Pet. 7 ("Because Gant was a recent occupant within the meaning of *Belton* when he was arrested and the search was contemporaneous with that arrest, the search was valid."); *id*. at 24 ("the only viable test is whether the individual was arrested while he was a recent occupant of the vehicle, i.e., while he was in close spatio-temporal proximity to his occupancy of the vehicle").

This Court should not adopt petitioner's proposal because it is conflicts with *Chimel*'s and *Belton*'s mandate that search incident to arrest power be "strictly tied to and justified by" the circumstances calling for the search and because it is not a "bright-line" rule. Under petitioner's rule, police could observe a suspect park his car, walk a block

away from it, keeping both car and suspect in view. If they then arrested the suspect, they could search the car because the suspect was a "recent occupant" of the vehicle. Although petitioner's proposal would allow this search, the traditional rationales that justify the search incident to arrest exception – officer safety and preservation of evidence – would not.

Second, petitioner's rule will not promote clarity. Although petitioner criticizes the ruling below for blurring the bright-line of *Belton*, Br. Pet. 14, petitioner's proposal is not a *per se* rule. Petitioner's rule, which requires officers to rely on their "training, experience, and the totality of the circumstances," does not provide any concrete standard for determining recent occupancy. *See id*. at 24-25. Moreover, as the Fourth Circuit recently acknowledged, if *Belton* is extended to cover "recent occupants" of a vehicle, officers and judges will still be required to make individualized assessments regarding an arrestee's temporal and spatial proximity to a vehicle. *United States v. Thornton*, 325 F.3d 189, 196 (4th Cir. 2003) ("The *Belton* rule cannot be stretched so as to render it limitless by permitting officers to search any vehicle from which an arrestee has emerged, regardless of how much time has elapsed since his exit or how far he is from the vehicle when arrested.").

The ruling below is consistent with *Chimel*'s and *Belton*'s mandate that search incident to arrest authority be strictly confined. However, instead of the "initiates contact" test relied on by the court below, we propose a *per se* rule that complies with *Chimel*'s and *Belton*'s command that search incident to arrest authority be strictly tied to the need for officer safety and preserving evidence. Specifically, we submit that *Belton*'s bright-line rule should be confined to cases where police seize a person inside a vehicle, the suspect is arrested, and the vehicle is searched contemporaneous with the arrest. If a person was not seized while inside a vehicle, the scope of an officer's authority to search is governed by *Chimel*, not by *Belton*. Restricting

Belton to cases where a person was seized while inside a car avoids case-by-case judgments regarding an arrestee's temporal or spatial proximity to the vehicle. Police officers and judges need only decide whether a person was seized while an occupant of a car. When police seize a person inside a car and the person is subsequently arrested, *Belton*'s *per se* rule applies.

Before explaining why our proposal is a better standard for advancing Fourth Amendment norms generally and the goals of *Belton* specifically, we describe the background and development of the *Belton* rule. *Belton* defined what constitutes "immediate control" under *Chimel* for the frequently occurring situation where police seize and arrest automobile occupants. Determined to provide officers with a "workable rule," the *Belton* Court nevertheless recognized that a *per se* rule authorizing a search of a vehicle's passenger compartment was not compatible with *Chimel*'s "immediate control" test.

The incompatibility was evident in a series of lower court rulings that upheld vehicle searches under *Chimel*'s "immediate control" test even though arrestees were far removed from their vehicles at the time of the search. Rather than forcing officers to make individualized assessments of a car occupant's "grabbing distance," *Belton* adopted a legal fiction to paper over the analytical absurdities that emerged when judges read *Chimel*'s "immediate control" test to permit vehicle searches in cases where there was no way an arrestee – handcuffed and sitting in a police cruiser – would have access to the contents of his vehicle. Although we share Justice White's concerns that the result in *Belton* called for "more caution" than that exhibited by the *Belton* majority, 453 U.S. at 472 (White, J., dissenting), we recognize that this Court is unlikely to overrule *Belton* despite the tension between *Belton*'s bright-line rule and *Chimel*'s intent to strictly confine searches incident to arrest. Our proposal, however, simultaneously satisfies *Chimel*'s mandate that an

officer's search authority be strictly tied to the traditional rationales for the search incident to arrest exception and *Belton*'s determination to provide officers with a "workable rule."

Belton's *per se* search rule does not apply to every case involving a "recent occupant" of an automobile. *Belton* never defined or addressed who is a "recent occupant" for search incident to arrest purposes. Rather, the holding in *Belton* confirms that its bright-line rule only applies to arrestees who were "occupants" of an automobile when their vehicle was seized by the police. While it is true that an arrestee need not be inside his car when the police conduct the search, and that *Belton* itself used both the terms "occupant" and "recent occupant," *Belton*'s analytical focus was directed at an arrestee who was an occupant of a vehicle when seized by the police. The single use of the phrase "recent occupant" in *Belton* was a clear reference to the fact that Roger Belton had been seized while an occupant of an automobile, exited the vehicle, and was arrested shortly after leaving the vehicle.

ARGUMENT

I. THE BACKGROUND AND DEVELOPMENT OF *BELTON*'S *PER SE* RULE

Chimel sought to clarify the authority of the police to search incident to arrest.[2] For half a century prior to *Chimel*,

[2] In resolving Fourth Amendment questions, this Court often considers common law rules to evaluate the reasonableness of a challenged police intrusion. *See, e.g., Wyoming v. Houghton,* 526 U.S. 295, 299-300 (1999). Generally speaking, the common law permitted searches incident to arrest. However, the legality of a search incident to arrest "has historically been formulated into two distinct propositions." *United States v. Robinson,* 414 U.S. 218, 224 (1973). The common law recognized an officer's power to seize weapons or stolen property from an arrestee's *person*. *See* Thomas Y. Davies, *Recovering the Original Fourth Amendment,* 98 MICH. L. REV. 547, 627 (1999). Searching the *area* within the arrestee's control, "while likewise conceded in principle,

the scope of an officer's authority to search incident to arrest was "subject to shifting constitutional standards" and inconsistent statements from the Court. *Chimel*, 395 U.S. at 770 (White, J., dissenting). Prior to the *Chimel* ruling, the Court upheld extensive searches of private premises under the search incident to arrest rule. *See, e.g., United States v. Rabinowitz*, 339 U.S. 56 (1950), *Harris v. United States*, 331 U.S. 145 (1947). Under these precedents, a lawful arrest authorized a search of the entire area "considered to be in the 'possession' or under the 'control' of the person arrested." *Chimel*, 395 U.S. at 760. *Chimel* rejected that standard because it gave police too much power to conduct discretionary searches that were not justified by the historical rationales supporting the search incident to arrest exception.

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has been subject to differing interpretations as to the extent of the area which may be searched." *Robinson*, 414 U.S. at 224. To the extent that the common law "yields [an] answer," *Houghton,* 526 U.S. at 299, on the scope of an officer's authority to search the "area" within an arrestee's control, those sources do not support a broad interpretation of an officer's authority to search incident to arrest.

At the time of the framing, legal authorities did not recognize an officer's power to search an arrestee's home incident to arrest. *See* William J. Cuddihy, *The Fourth Amendment: Origins and Original Meaning, 602-1791*, at 1183-84 (1990) (unpublished Ph.D. dissertation, Claremont Graduate School) (footnote omitted) ("The legal authors of 1761-1776 agreed that houses could be broken into to consummate the arrest process, but they did not also say that houses could be searched during that process. The assumption of most legal authorities, in other words, was that arrests and arrest warrants were not excuses to conduct general searches."). Professor Telford Taylor has asserted that "[t]here is little reason to doubt that search of an arrestee's person and *premises* is as old as the institution of arrest itself," TELFORD TAYLOR, TWO STUDIES IN CONSTITUTIONAL INTERPRETATION 28 (1969) (emphasis added), but the historical support for Taylor's conclusion on the scope of an officer's power to search an arrestee's home incident to arrest is extremely weak. *See* Davies, *supra,* at 646, n.276. Professor Davies has noted that the "reported decisions regarding the allowable scope of search incident to arrest first became evident in court records during the late nineteenth century." *Id.* at 638, n.250. Thus, the common law, at the time of the framing, did not recognize broad powers of search incident to arrest.

Chimel explained that although the Fourth Amendment's Warrant Clause requirements did not control search incident to arrest power, an officer's authority in this context would be judged by the same constitutional norms that governed other warrantless intrusions. Thus, the scope of an officer's authority to search incident to arrest "'must be "strictly tied to and justified by" the circumstances which rendered its initiation permissible.'" *Id.* at 762 (citation omitted). Put simply, an officer's search authority must be limited to the traditional interests that justify the search incident to arrest exception.

Chimel reaffirmed the two historical purposes served by a search incident to arrest: to secure any weapon that the arrestee might use to resist arrest or escape and to preserve the integrity of any evidence the arrestee might conceal or destroy. *Id*. at 763. Mindful that a warrantless intrusion must be strictly tied to the purposes of the search, *Chimel* announced that search incident to arrest authority permits the police to search for weapons or evidence on the arrestee's person, as well as "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*.

Chimel's holding was narrow. Given that the search of Chimel's home extended beyond his person and "grabbing distance," the evidence discovered by the police was suppressed. *Id*. at 768 ("The search here went far beyond the petitioner's person and the area from within which he might have obtained either a weapon or something that could have been used as evidence against him."); *see also* Myron Moskovitz, *A Rule in Search of a Reason: An Empirical Reexamination of* Chimel *and* Belton*,* 2002 WIS. L. REV. 657, 659-60 (*Chimel* announces two rules: "a 'negative' rule and a 'positive' rule. The 'negative' rule establishes where the police *may not* search, and the 'positive' rule establishes where they *may* search…. Since the police violated Chimel's

rights under this 'negative' rule, the search was illegal."). Thus, there was no need for the *Chimel* Court to address the question of "where the police *are allowed* to search" under the "grabbing distance" prong. Id. at 660.

After the *Chimel* decision, some lower courts were "hesitant to apply the *Chimel* rationale to the search of vehicles incident to arrest." 2 WAYNE R. LAFAVE, A TREATISE ON THE FOURTH AMENDMENT § 7.1 at 499 (1978). When occupants of automobiles were placed under arrest, some lower courts applied *Chimel*'s "immediate control" rule in a manner that conflicted with the purposes and rationale of *Chimel*. As Professor LaFave explained in the first edition of his treatise on the Fourth Amendment:

> [C]ourts sometimes interpreted the *Chimel* ["immediate control" or "grabbing distance"] concept as if it were synonymous with possession; if the defendant had been driving the car immediately before his arrest, then the car was considered to be in his control and thus subject to a warrantless search. This approach quite clearly cannot be squared with *Chimel*, where the Court explicitly rejected the notion that it was reasonable to search a place merely because it was in the possession of the arrestee. Equally inconsistent with *Chimel* is the proposition, accepted by a few courts, that the part of the car's interior which the defendant could have reached at the time the vehicle was stopped by the police somehow remains a fixed area of "immediate control" even after the defendant has alighted from the automobile. Under *Chimel*, the question is not whether the defendant could have reached a certain area on a prior occasion; rather, it is whether the defendant can

> *presently* (i.e., at the moment of search) reach that area.

Id. at § 7.1 at 500-01 (footnotes and citation omitted).

New York v. Belton built directly on *Chimel*'s holding. *Belton* addressed the following narrow issue: "When the *occupant* of an automobile is subjected to a lawful custodial arrest, does the constitutionally permissible scope of a search incident to his arrest include the passenger compartment of the automobile *in which he was riding*?" 453 U.S. at 455 (emphases added). In answering this question, the Court reaffirmed what *Chimel* had emphasized: a search incident to arrest "'must be strictly tied to and justified by the circumstances which rendered its initiation permissible.'" *Id*. at 457 (citation and internal quotation marks omitted). The Court also sought a "'single familiar standard'" to guide police officers in determining "the proper scope of a search of the interior of an automobile incident to a lawful custodial arrest of its occupants."*Id*. at 458-59. *Belton* held that "when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." *Id*. at 460 (footnotes omitted). The Court explained that its ruling "does no more than determine the meaning of *Chimel*'s principles in this particular and problematic context. It in no way alters the fundamental principles established in the *Chimel* case regarding the basic scope of search incident to lawful custodial arrests." *Id*. at 460, n.3.

While the *Belton* Court merely sought to resolve how *Chimel*'s "immediate control" test should be applied to occupants of automobiles, the means employed by the Court undermined *Chimel*'s intent to strictly confine search incident to arrest authority to "'the exigencies of the situation [that] made that course imperative.'" *Chimel*, 395 U.S. at 761, quoting *McDonald v. United States*, 335 U.S. 451, 456

(1948). A *per se* rule that authorized a search of a vehicle's passenger compartment was not compatible with the "immediate control" or "grabbing distance" test. When *Belton* was decided, it was standard police practice to have an arrestee secured and removed from a vehicle *prior* to the search. 3 WAYNE R. LAFAVE, SEARCH AND SEIZURE: §7.1 (a), at 435, n. 15 (3d ed. 1996); *See* Moskovitz, *supra* at 675-76 (Current police policies still recommend removing occupants away from the vehicle prior to a search.). Thus, when an officer searches a car, the passenger compartment of the vehicle is unlikely to be within the arrestee's "immediate control" or grabbing distance. In fact, most of the pre-*Belton* lower court cases that applied *Chimel* to vehicles involved "situations in which the arrestee was outside of the vehicle at the time of the search." 2 LAFAVE, *supra* at § 7.1 at 501. Although judges upheld vehicle searches incident to an arrest, many of these rulings were based upon "an assumption that the arrestee was 'possessed of the skill of Houdini and the strength of Hercules' and thus could readily enter the car notwithstanding his distance from it and the manner of his custody." *Id*.

Belton resolved the incompatibility between the "immediate control" test and a *per se* rule by adopting a legal fiction: "articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within 'the area into which an arrestee might reach in order to grab a weapon or evidentiary ite[m].'" *Belton*, 453 U.S. at 460, quoting *Chimel*, 395 U.S. at 763. Although *Belton* denied that its holding "alter[ed] the fundamental principles established in . . . *Chimel*," *id*. at 460, n.3, application of *Belton*'s legal fiction in the typical case exposes a conflict between *Belton*'s determination to provide officers with a "workable

rule," *id*. at 460, and *Chimel*'s goal to strictly confine an officer's search incident to arrest authority.[3]

A. The Factors Compelling *Belton*'s Bright-Line Rule

When an arrest occurs indoors, deciding what constitutes an arrestee's "immediate control" depends on the particular facts of each case. *See* 3 LAFAVE, *supra* § 6.3 (c) at 305-12. In *Belton*, this Court recognized that determining the proper scope of a vehicle search incident to the arrest of an occupant involves a "problematic" application of *Chimel*'s "immediate control" rule. *Belton*, 453 U.S. at 460, n.3. Applying *Chimel's* "immediate control" test in this context is problematic for both practical and doctrinal reasons.

As a practical matter, an officer cannot remove a motorist from a car, effectuate an arrest, secure the arrestee and search his "grabbing distance" in a single stroke. This dilemma is particularly vexing when a single officer encounters a multi-occupant vehicle, as was the case in *Belton*. When conducting the arrest of a motorist or passenger inside a car, an officer first secures an arrestee to protect his or her own safety. Then an officer exercises his authority to search the area within the arrestee's immediate control. In all but the most extraordinary case, when the

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[3] The first substantive question asked during the oral argument in *Florida v. Thomas*, 532 U.S. 774 (2001), highlights the tension between *Belton*'s *per se* rule and *Chimel*'s intent to strictly confine searches incident to arrest to those contexts where a weapon or evidence might be accessible to an arrestee: "QUESTION: And do you say that *Belton* allows the person outside the car to be taken away, secured, removed, and then the officers can go back and search the car?" Tr. Oral Arg. *Florida v. Thomas*, No. 00-391 at 4-5; *see also id*. at 6 (Justice Souter asking: "Well, [the search] may have been part of one ongoing transaction, but it - - that does not, I think, affect the fact that the moment of the search seems to have been totally untethered from the justifications for the *Belton* rule because, as I understand it, at the time the search was made, the defendant was in the house. The defendant couldn't reach into the car for weapons or for evidence.").

officer begins a search incident to arrest, the arrestee is no longer inside the vehicle, *see United States v. Karlin*, 852 F.2d 968, 971 (7th Cir. 1988) ("It seems quite likely that, in instances where occupants of a car are arrested, they will be outside the car and will have been placed under some measure of security before the car is searched."), *cert. denied,* 489 U.S. 1021 (1989), just as a pedestrian will be secured before an officer searches a container or object within the grabbing distance of the pedestrian. *See, e.g., Draper v. United States,* 358 U.S. 307, 314 (1959) (search of a "zipper bag" that arrestee was carrying was valid search incident to arrest).

Chimel's "immediate control" rule also created doctrinal problems when applied to occupants of automobiles. "Sometimes it was assumed that the *Chimel* holding did not carry over to the vehicle cases." 2 LAFAVE, at § 7.1 at 499. Even when courts applied *Chimel*'s holding to cars, the "immediate control" rule offered hazy answers for officers and the judiciary. The "immediate control" test produced inconsistent results when applied on a case-by-case basis to the arrest of a car occupant, *see Belton*, 453 U.S. at 460-61, and lower court rulings often applied *Chimel*'s "immediate control" rule in a manner that conflicted with the intent of that decision. 2 LAFAVE, at § 7.1 at 500-01. Indeed, *Belton* acknowledged that "no straightforward rule ha[d] emerged from the litigated cases" regarding the extent of police authority to search a car incident to the arrest of an occupant. 453 U.S. at 459.

Accordingly, *Belton*'s legal fiction was designed to make it easier for police and judges to apply *Chimel*'s "immediate control" test to a person seized while occupying a car.

> [*Belton*] adopted a factual presumption that, if the arrestee is an occupant of the vehicle, the arrestee can reach in the vehicle and get

> a weapon or destroy evidence. Following *Belton*, a showing of the actual fact of occupancy would automatically provide the presumed fact of access to the passenger compartment which is required by *Chimel* as a prerequisite for a warrantless search of a vehicle incident to arrest.

Glasco v. Virginia, 513 S.E.2d 137, 144 (Va. 1999) (Lacy, J., concurring). Instead of police officers conducting individualized on the spot assessments of an automobile occupant's "grabbing distance," *Belton* established a bright line to resolve the ambiguities that arose when applying the "immediate control" test to an arrestee seized while inside a vehicle. For someone seized while an occupant of a car, *Chimel*'s "immediate control" test would be triggered at the moment the police seizure occurred, and would extend to the entire passenger compartment of the vehicle.

B. The Factors That Compelled *Belton*'s Holding Are Absent When An Officer Seizes A Person Outside A Vehicle

The practical and doctrinal concerns that compelled *Belton*'s holding are absent when a suspect is seized outside a vehicle. When an officer arrests a pedestrian, he does not confront the practical quandary that arises when attempting to arrest a person seated inside a car: simultaneously removing a suspect from a vehicle, searching the arrestee's person for weapons or evidence, and searching the "grabbing distance" of the arrestee all in a single stroke. Consequently, the concerns that prompted *Belton* to adopt a legal fiction in order to give officers a "workable rule," *Belton*, 453 U.S. at 460, are extraneous to an arrest of a pedestrian. Instead, *Chimel* controls the scope of an officer's authority to search incident to arrest.

Similarly, when an officer seizes a person *outside* a vehicle before executing an arrest, there is no longer a need

for a bright-line rule that defines the arrestee's "immediate control" *inside* the vehicle. "The objective and the virtue of the *Belton* decision was to obviate uncertainty in applying the *Chimel* 'lunge area' rule to automobile searches. *Belton* simplified the task of [police] and the courts by declaring that the entire passenger compartment would be deemed within the arrestee's reach, and thus subject to search, when a vehicle occupant is arrested." *Idaho v. Foster,* 905 P.2d 1032, 1038 (Idaho Ct. App.1995). When the seizure occurs outside a car, however, the ambiguity regarding an arrestee's "grabbing distance" inside the car is gone. As the District of Columbia Circuit has recognized, "[n]o such ambiguity exists . . . where the police come upon the arrestees outside of an automobile. Under such circumstances, the rationale for *Belton*'s bright-line rule is absent; instead, the normal framework of *Chimel* applies." *United States v. Fafowora,* 865 F.2d 360, 362 (D.C. Cir.), *cert. denied,* 493 U.S. 829 (1989). *See also United States v. Christian,* 187 F.3d 663, 671, n.6 (D.C. Cir. 1999); *People v. Stehman*, 783 N.E. 2d 1, 7-8 (Ill. 2002) ("where police first confront the arrestee outside his vehicle, the ambiguity which *Belton* seeks to avoid no longer exists, and the rationale for its bright-line rule is absent"). Indeed, a contrary rule is inconsistent with the holding of *Vale v. Louisiana*, 399 U.S. 30 (1970). *Vale* explained that "[i]f a search of a house is to be upheld as incident to an arrest, that arrest must take place *inside* the house, not somewhere outside – whether two blocks away, twenty feet away, or on the sidewalk near the front steps." *Id*. at 33-34 (citations omitted). If police cannot justify a house search as incident to an arrest of a "recent occupant" of that house, they should not be able to justify a car search simply because the arrestee is a "recent occupant" of that car.

Petitioner contends that "it is the mere fact that the individual was arrested while he was a recent occupant of the vehicle that justifies a *Belton* search." Br. Pet. 22. This argument permits an automatic and suspicionless search of

an arrestee's car and the private possessions therein without the concerns that compelled *Belton*'s holding. More importantly, if *Belton* is extended to a case where police seize an individual *outside* of a car, it is severed from its foundation in *Chimel*. As noted, both *Chimel* and *Belton* recognized that the scope of a search incident to arrest "'must be strictly tied to and justified by the circumstances which rendered its initiation permissible.'" *Chimel*, 395 U.S. at 762; *Belton*, 453 U.S. at 457. In practice, this means that searches incident to arrest must be confined to "the arrestee's person and the area 'within his immediate control.'" *Chimel*, 395 U.S. at 763. If police are automatically permitted to search an arrestee's car even though the vehicle is not "'within his immediate control,'" they are not obeying the rule announced in *Chimel*. Put simply, "[i]f there is no connection shown between a person's occupancy of a vehicle and his arrest, then extending the scope of the search incident to arrest to the vehicle is neither 'tied to' nor 'justified by' circumstances of the arrest." *Glasco v. Virginia,* 513 S.E.2d at 144 (Lacy, J., concurring).

Petitioner's position that *Belton*'s *per se* rule applies to a recent occupant of a vehicle, Br. Pet. 24, conflicts with *Chimel*'s rationale and purpose. *Chimel* warned that a search incident to arrest provides no justification "for routinely searching any room other than that which an arrest occurs – or, for that matter, for searching through all the desk drawers or other closed or concealed areas in that room itself." 395 U.S. at 763. Similarly, there is no comparable justification for searching an arrestee's vehicle unless it is "'within his immediate control.'" *Id*. at 763. As the Minnesota Supreme Court aptly put it, "*Belton* does not permit searches of arrestees' vehicles; it permits searches of occupants' vehicles incident to lawful arrest." *Minnesota v. Robb,* 605 N.W. 2d 96, 101 (Minn. 2000).

II. *BELTON*'S HOLDING DOES NOT EXTEND TO ANY "RECENT OCCUPANT" OF AN AUTOMOBILE

Petitioner and its *amici* argue that *Belton* makes no distinction between "occupants" and "recent occupants" of automobiles. Br. Pet. 7-8 & 10-12; Br. U.S. 11 ("*Belton* applies as long as the arrestee is a 'recent occupant' of the vehicle."). The notion that *Belton*'s *per se* rule applies to any recent occupant of a vehicle misreads Justice Stewart's opinion. Moreover, extending *Belton* to "recent occupants" will create greater uncertainty regarding an officer's authority to search incident to arrest.

A. *Belton*'s *Per Se* Rule Applies Only When Police Seize A Person In A Car And the Person Is Subsequently Arrested

Belton's holding does not extend to any "recent occupant" of a car. As the nation's most prominent Fourth Amendment scholar has explained, "*Belton* applies only in the case of 'a lawful custodial arrest of the occupant' of the vehicle." 3 LAFAVE, *supra* §7.1(b) at 436 (footnotes omitted).

A judicious reading of *Belton* confirms that the Court's ruling only applies to an arrestee who was seized while an occupant of a car. First, the facts show that Roger Belton and three others were occupants of a car when their vehicle was seized for speeding. Although Belton had exited the vehicle before being placed under arrest, thus making him a "recent occupant," his status as a "recent occupant" was the direct result of the officer's lawful decision to seize him while he was inside the car and to arrest him after detecting evidence of contraband in plain-view.

Next, when describing the precise issue before it, *Belton* indicates that the Court was focusing on arrestees who were occupants of automobiles – not "recent occupants." In the opening sentences of his opinion, Justice

Stewart wrote: "When the *occupant* of an automobile is subjected to a lawful custodial arrest, does the constitutionally permissible scope of a search incident to his arrest include the passenger compartment of the automobile *in which he was riding*? That is the question at issue in the present case." 453 U.S. at 455 (emphases added).

Significantly, *Belton*'s holding is limited to situations where an arrestee is seized while an "occupant" of a vehicle. The Court stated: "[W]e hold that when a policeman has made a lawful custodial arrest of the *occupant* of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." *Id*. at 460 (footnotes omitted) (emphasis added). Finally, when applying this holding to the facts, Justice Stewart explained that the defendant's "jacket was located inside the passenger compartment of the car in which [Belton] had been a passenger just before he was arrested," thus making the jacket "'within the arrestee's immediate control'" for purposes of *Chimel*. *Id*. at 462 (footnote omitted).

In sum, although it is true that an arrestee need not be inside a vehicle at the moment the officer conducts the search, and that *Belton* itself used both the terms "occupant" and "recent occupant," *see id*. at 460, *Belton*'s analytical focus was directed toward an arrestee who was an occupant of a car when seized by the police. The lone use of the term "recent occupant" in *Belton* was an obvious reference to an arrestee who had been seized by the police while he was an occupant of an automobile and was later arrested after exiting the vehicle. *See also Glasco v. Virginia,* 513 S.E. 2d. at 144 (Lacy, J., concurring) ("A review of the cases surveyed and cited [in] *Belton* as supporting the factual presumption of access to the vehicle created in that case reveals that in all but one case, the arrestee was arrested while in the vehicle, and in all the cases the search of the vehicle occurred after the arrestees exited the vehicles at the

direction of the police and while they were still within close proximity of the vehicles."). *Belton* never defined or addressed who is a "recent occupant" for search incident to arrest purposes. *See Texas v. Kelly,* 963 S.W.2d 866, 869 (Tex. App – San Antonio 1998) ("the 'bright-line' test [of *Belton*] does not address who is a 'recent occupant' for purposes of being subject to a *Belton*-type vehicular search rather than a *Chimel*-type search.").

B. The Term "Recent Occupant" Is Inherently Ambiguous

Petitioner and its *amici* assert that the ruling below blurs the bright-line rule established in *Belton*. Br. Pet. 14; Br. U.S. 16-17. However, extending *Belton* to cover persons who have exited their vehicles prior to being seized by the police will generate greater uncertainty and ambiguity regarding an officer's authority to search a vehicle incident to arrest.

Several lower courts have noted that if *Belton* is extended to permit a search whenever police arrest a "recent occupant" who was not seized while inside a car, the clarity of *Belton* will be diminished. As one court explained, if *Belton* "is stretched to encompass the search of a vehicle that was voluntarily vacated by a person before confrontation with the police began, the 'bright-line' rule becomes hazy and uncertain. [Police] would be left to wonder what combination of temporal and spatial proximity the arrestee must have to the vehicle at the time contact was initiated to allow the search without a warrant." *Michigan v. Fernengel,* 549 N.W.2d 362, 363 (Mich. App. 1996). If *Belton* is applied to every "recent occupant," police will have to make case-by-case determinations regarding whether an arrestee was a "recent" occupant of a vehicle and the arrestee's proximity to the vehicle at the time of arrest. *See Texas v. Kelly,* 963 S.W.2d at 869. When applied to a motorist who was not seized while inside a vehicle, the term "recent occupant" has

various connotations, and invites subjective judgments regarding a person's connection to a vehicle.

Even courts that have adopted a "recent occupant" rule recognize that case-by-case assessments are still necessary to determine an officer's authority to search incident to arrest. For example, the Colorado Supreme Court extended *Belton* to cover a situation "where the occupant of a vehicle anticipates police contact and exits the vehicle immediately before that contact occurs." *Colorado v. Savedra,* 907 P.2d 596, 599 (Colo. 1995) (*en banc*). By extending *Belton* in this context, the court acknowledged that the "issue of temporal proximity between the police encounter and the defendant's presence in the vehicle is the main factor courts consider in determining whether a person is a recent occupant of a vehicle for purposes of *Belton*." *Id*. In practice, this means that the officer in the field will first have to decide whether the arrestee has been outside of a car for a significant period of time, subject to the second-guessing of judges.

Other line-drawing problems have emerged when courts extend *Belton* to an arrestee who was not physically occupying a car when seized by the police. In *United States v. Sholola,* 124 F.3d 803 (7th Cir. 1997), the Seventh Circuit concluded that the defendant was "'positively linked'" to a vehicle when, during a conversation with an officer he had "pointed to a vehicle, opened the front driver's side door with a set of car keys in his hand, and stated, 'See, it's my car.'" *Id*. at 817. Because the defendant was "positively linked" with the automobile, the Seventh Circuit ruled that *Belton* permitted a search of the car incident to arrest, even though the arrestee was neither an occupant nor a "recent occupant" of the vehicle. Judge Wood concurred in the judgment in *Sholola,* but warned that judges should be mindful "not to extend [*Belton*] too far beyond its facts." *Id*. at 823 (Wood J., concurring). Judge Wood feared that the

majority's use of the phrase "positively linked" might "be misunderstood in a future case." *Id.*

Sholola's extension of *Belton* illustrates the dangers of extending *Belton* to "recent occupants." Deciding whether a person is "positively linked" to a car when he or she is seized outside the car requires considering the particular facts of each case. Similarly, determining whether a person is a "recent occupant" requires a particularized assessment of the facts, and requires the type of case-by-case analysis and subjective judgment that petitioner criticizes. *See* Br. Pet. 18. Moreover, extending *Belton* to cover "recent occupants" eviscerates *Chimel*. Judge Wood's criticisms of the "positively linked" test are equally pertinent to a "recent occupant" standard:

> [Some] "[recent occupants]" would plainly fall outside the scope of *Belton*. For example, the police could observe a suspect parking a car in an off-street legal parking lot, and then walking two blocks away from it, keeping both vehicle and suspect under constant surveillance. If they then arrested the suspect, in my view they would need something other than *Belton* to justify a search of the car, even though [the defendant] might be said to [be a "recent occupant" of the car].

Sholola, 124 F. 3d at 823 (Wood J., concurring).

Petitioner and the United States recognize that a "recent occupant" test is not a bright-line rule. Br. Pet. 26-27; Br. U.S. 29. Petitioner's proposal is to have officers decide "based on their training, experience, and the totality of the circumstances whether the arrest occurred in close spatio-temporal proximity to the arrestee's occupancy of the vehicle." Br. Pet. at 25. Rather than proposing a solution, the United States essentially urges the Court to ignore the

ambiguity associated with the term "recent occupant." The Solicitor General asserts that there is "no reason to deny officers the certainty and protection afforded by *Belton* in the more typical case, such as this one." Br. U.S. at 19. The Solicitor General also states that "[i]n determining whether *Belton* authorizes a vehicle search in outlying cases, courts should assess the reasonableness of applying the *Belton* rule in light of the basic concerns underlying the search-incident-to-arrest doctrine and the facts and circumstances of the particular arrest and search at issue." *Id*. at 28.

The petitioner's "totality of the circumstances" alternative is not a bright-line rule. Petitioner's submission contains the same flaws inherent in a "recent occupant" test. Attaching a "close spatio-temporal proximity" prong to a "recent occupant" rule does not eliminate the line-drawing problems for determining the scope of an officer's search incident to arrest powers. As the Fourth Circuit recently acknowledged, "[t]he *Belton* rule cannot be stretched so as to render it limitless by permitting officers to search any vehicle from which an arrestee has emerged, regardless of how much time has elapsed since his exit or how far he is from the vehicle when arrested." *Thornton*, 325 F.3d at 196. Thus, under a "close proximity" prong, officers and judges will still be burdened with weighing temporal and spatial factors to determine when a vehicle search is permissible incident to a lawful arrest.

The Solicitor General ducks the difficult question of defining when an arrestee qualifies as a "recent occupant" by arguing that the facts here show that respondent was clearly a "recent occupant" and that his case represents "the more typical case." Br. U.S. 19. The Solicitor General's claim that the fact pattern here is the typical scenario for *Belton* searches is unsubstantiated by the record and contradicted by the cases cited by the United States. *See* Br. U.S. 19, n.5. Furthermore, what the Solicitor General characterizes as "outlying cases," *id*. at 28, have generated a substantial

amount of litigation in the lower courts regarding the proper scope of *Belton*'s automatic search rule. *See* 3 LAFAVE, §7.1(a) at 436-37, n. 25 & 26 (3d ed. 1996 & Supp. 2003) (citing cases illustrating split among lower courts on *Belton*'s applicability to arrestees who were recent occupants of vehicles); *United States v. Green*, 324 F. 3d 375, 378-79 (5th Cir. 2003) (same). The Solicitor General's proposed solution for these cases is a vague, standardless test. If bright lines are essential to guide officers and judges, then *Belton*'s holding should be left undisturbed and this Court should reject any proposals that require police officers to assess the totality of the circumstances when determining a suspect's recent occupancy of a vehicle.

More importantly, whether petitioner and its *amici* choose to supplement a "recent occupant" rule with a "close proximity," or "positively linked," or "close association" prong, the analytical flaw with all of these addendums is that they allow police officers and judges to interpret *Chimel*'s "immediate control" test as if it were identical to a test of "possession." This type of reasoning recalls an era of this Court's search incident to arrest jurisprudence that permitted police to search the area considered to be in the "possession" or under the "control" of the arrestee. For example, in *Harris v. United States*, 331 U.S. 145 (1947), a five-hour search of a four-room apartment was upheld as a valid search incident to arrest because the arrestee "was in exclusive possession" of the premises. *Id*. at 152. *See also United States v. Rabinowitz,* 339 U.S. 56, 63 (1950) (relying on *Harris* to uphold an hour and a half search of defendant's office as a valid search incident to arrest). The logic that supported the results in *Harris* and *Rabinowitz* was firmly rejected in *Chimel*. Despite that rejection, petitioner proposes that suspicionless car searches are *per se* reasonable conditioned only upon the arrest of a recent occupant. If Fourth Amendment principles "preclude [] indulgence in the fiction that the recesses of a man's house are like the pockets

of the clothes he wears at the time of his arrest," *Harris*, 331 U.S. at 164 (Frankfurter, J., dissenting), then those same principles preclude treating a man's vehicle as the equivalent of a shopping cart pushed by the arrestee at the time of this arrest.

C. A "Recent Occupant" Rule Is Not Required By This Court's Precedents

Michigan v. Long, 463 U.S. 1032 (1983) has not, directly or indirectly, decided the issue preserved in this case. The dicta in *Long* provides no basis for extending *Belton* to "recent occupants." In *Long,* police observed Long's car traveling erratically and speeding. After watching the car swerve into a ditch, the police stopped to investigate. "As [the officers] left their vehicle and walked forward, [Long]…left from the driver's seat side" of his vehicle and met the officers at the rear of the car. *People v. Long*, 288 N.W. 2d 629, 630 (Mich. App. 1980). Suspecting that Long was intoxicated, the officers asked to see his license. As Long walked toward the open door of his car, the officers observed a large hunting knife on the floor. After frisking Long, the police conducted a search of the passenger compartment for other weapons. Inside the car they found marihuana. *Long* held that a protective search of a passenger compartment is valid when reasonable suspicion exists that a car contains weapons potentially dangerous to police.

In dicta, this Court stated "if the officers had arrested Long for speeding or for driving while intoxicated, they could have searched the passenger compartment under *New York v. Belton*." *Long*, 463 U.S. at 1035, n.1; *see also id*. at 1049, n.14 ("[T]he 'bright line' that we drew in *Belton* clearly authorizes… a search whenever officers effect a custodial arrest."). Despite this dicta, the facts in *Long* are consistent with our analysis of *Belton*'s *per se* rule being limited to cases where police seize a person while he or she is an occupant of a car. Long was inside his car when the

deputies stopped to investigate. *See* 288 N.W. 2d at 630. From that moment forward, Long was seized for Fourth Amendment purposes. *See Long*, 463 U.S. at 1051 (noting that during any investigative stop, police may detain person against his will). His ability to exit his vehicle before being ordered to do so by the police did not convert the confrontation into a non-seizure nor negate the applicability of *Belton*'s *per se* rule. *See infra* Part III.

This Court has never held that application of *Belton*'s *per se* rule should have no factual predicate other than the lawful arrest of a recent occupant, as suggested by petitioner or as implied in *Long'*s dicta. Such a holding would constitute a radical departure from the standards announced in *Chimel* and *Belton*. Although in recent years this Court has greatly enlarged the automobile exception, searches under that doctrine are never automatic. Such searches always require probable cause that contraband is inside a car. *See Houghton*, *supra*. Similarly, searches under *Long* require reasonable suspicion that a car's passenger compartment poses a threat to an officer's safety; *Long* does not authorize an automatic search. *See Long*, 463 U.S. at 1049, n.14 ("We stress that our decision does not mean that the police may conduct automobile searches whenever they conduct an investigative stop."). A "recent occupant" rule, however, allows an automatic and suspicionless search of an automobile. This Court has never announced such a holding. Since *Chimel*, this Court's search incident to arrest precedents have embraced Justice Frankfurter's view that "[a]uthority to arrest does not dispense with the requirement of authority to search." *Harris,* 331 U.S. at 165 (Frankfurter, J., dissenting).

III. *BELTON*'S *PER SE* RULE SHOULD BE RESTRICTED TO CASES WHERE A PERSON WAS SEIZED WHILE AN OCCUPANT OF A CAR

The ruling below confines *Belton*'s bright-line rule to cases where an officer initiates contact with a suspect found inside a vehicle. Although the ruling below sought to promote the aims of *Chimel* and *Belton*, judgments about when, where, or how an officer initiates contact with an automobile occupant, the degree or type of police contact, or whether the occupant has "anticipated" possible imminent police contact, do not in our view provide the best reconciliation of *Chimel* and *Belton*. A more workable and efficient rule is available to resolve the line-drawing problems inherent in deciding the "grabbing distance" of a "recent occupant" of a vehicle. The *per se* rule of *Belton* should be limited to cases where a person is seized while inside a car. If police arrest a recent occupant of a vehicle who was not seized while inside the vehicle, the scope of an officer's authority to search incident to arrest is governed by *Chimel,* not *Belton*. Our *per se* rule parallels *Belton*'s holding, is easily applied by police officers, and is consistent with analogous rules that govern an officer's authority to investigate and detain occupants of automobiles. Most importantly, our proposal satisfies *Chimel*'s mandate that an officer's search power be strictly tied to the traditional rationales for the search incident to arrest exception.

First, the facts and holding of *Belton* establish a *per se* rule only when a person is seized while an occupant of a car. Although Belton was ordered out of the car, thus making him a "recent occupant" of the vehicle, his status as a recent occupant was the direct consequence of the officer's lawful decision to seize Belton while he was an occupant of a vehicle. Under these circumstances, *Belton* held that "when a policeman had 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." 453 U.S. at 460 (footnotes omitted) (emphasis added).

Second, confining *Belton*'s bright line to cases where a person was seized while inside a car produces a rule that is easily understood and followed by police officers. Well-trained officers know when they have lawfully seized an occupant of a vehicle. *See Delaware v. Prouse*, 440 U.S. 648 (1979) (random traffic stops are unconstitutional; police may seize a vehicle where probable cause or reasonable suspicion exists that a motorist has committed a traffic violation or other crime). Thus, whenever police detain a vehicle to investigate a traffic violation, as they did in *Belton* or *Long*, they have seized the vehicle and its occupants. If during the course of that seizure, probable cause to arrest develops, *Belton*'s *per se* rule applies regardless of whether the occupants of the vehicle remain seated in the car, have been removed from the car, or have exited the vehicle voluntarily.

A few lower courts have applied *Belton* in "recent occupant" cases to remove the concern that officers might have to "race" to a suspect's vehicle to prevent the suspect from exiting from his or her car. *See, e.g., Nebraska v. Gonzalez*, 487 N.W.2d 567, 572 (Neb. App.1992) ("In order to conduct a valid search, police officers should not have to race from their vehicles to the arrestee's vehicle to prevent the arrestee from getting out of his or her vehicle."); *cf. Colorado v. Savedra,* 907 P.2d at 600; *United States v. Thornton*, 325 F.3d at 196. Confining *Belton*, however, to cases where police seize a car occupant eliminates the concern that officers will have to "race" from their patrol cars to prevent an occupant from exiting his car. If police pull over or detain a vehicle while the suspect is inside, as they did in *Gonzalez*, 487 N.W.2d at 568, a suspect cannot "*Belton*-proof" the car by exiting the vehicle before the officer can vacate his cruiser. A "seizure" occurs "the moment [a motorist] was pulled over by" an officer. *Ohio v. Retherford*, 639 N.E. 2d 498, 506 (Ohio App. 1994); *cf.*

California v. Hodari D., 499 U.S. 621, 626 (1991) (explaining an "arrest requires *either* physical force… *or*, where that is absent, *submission* to the assertion of authority"). Thus, even a suspect who voluntarily exits his vehicle during a traffic stop is still considered "seized" for Fourth Amendment purposes until the traffic stop is completed. *See New York v. Class*, 475 U.S. 108, 116 (1986) (noting that officers could effect the seizure of a motorist who voluntarily exited his car until "they completed their investigation"). Further, under our proposal, an officer will not have to inquire why a motorist exited his vehicle. Where a person is lawfully seized inside his vehicle and arrested, *Belton* applies regardless of why an arrestee exits the car.

Third, limiting *Belton* to cases where a person was seized while an occupant of a car produces a rule that is consistent with analogous Fourth Amendment rules governing an officer's power to investigate and detain occupants of automobiles. For example, *Pennsylvania v. Mimms*, 434 U.S. 106 (1977) (*per curiam*), held that during a traffic stop police may routinely order a driver out of his vehicle. *See also Maryland v. Wilson*, 519 U.S. 408 (1997) (extending *Mimms*' holding to passengers). In reaching this conclusion, however, *Mimms* emphasized that it was not holding "that whenever an officer has an occasion to speak with the driver of a vehicle, he may also order the driver out of the car." *Mimms*, 434 U.S. at 111, n.6 (internal quotation marks omitted).

Mimms and *Wilson* restrict forcible exit orders of car occupants to lawful seizures. A contrary rule would subject anyone in a car to an arbitrary intrusion. Likewise, if police have no basis for seizing an automobile occupant, that person's decision to exit his vehicle should not occasion an automatic search of his vehicle merely because the person is later arrested outside the vehicle. *Compare, Vale*, *supra* (a search of a home cannot be upheld as a valid search incident to arrest if the arrest occurred outside the house). A few

lower courts, however, have applied *Belton* to cases where police arrest "recent occupants" of vehicles who were not subject to seizure while inside their vehicles. *See Glasco v. Virginia, supra*; *Colorado v. Savedra*, *supra*. The courts reasoned that a *per se* search is valid because "a knowledgeable suspect has the same motive and opportunity to destroy evidence or obtain a weapon as the arrestee with whom a police officer has initiated contact." *Glasco*, 513 S.E.2d at 142. This reasoning, however, proves too much.

By analogous reasoning, the police could search a basement or kitchen that a suspect has just exited prior to his arrest in the living room because the arrestee has the "same motive and opportunity to destroy evidence or obtain a weapon" as a person who was initially seized by the police while in the basement or kitchen. This type of sloppy logic was rejected in *Chimel*: "There is no comparable justification . . . for routinely searching any room other than that in which an arrest occurs – or, for that matter, for searching through all the desk drawers or other closed or concealed areas in that room itself." *Chimel*, 395 U.S. at 763. In sum, if police do not have the authority to seize a person sitting in a car, then that person's decision to exit his vehicle cannot justify an automatic search of the vehicle if the person is subsequently arrested outside the car.

Finally, our proposal avoids the line-drawing problems inherent in petitioner's proposal that has officers deciding whether an arrestee was in "close spatio-temporal proximity" to a vehicle for search incident to arrest purposes. Officers and judges should only decide whether a person was seized while an occupant of a car. When police seize a person in a car, and the person is subsequently arrested, *Belton*'s *per se* search rule applies.

Under our proposal, the search of respondent's vehicle was unreasonable because respondent was not seized while an occupant of a vehicle.

CONCLUSION

For the reasons stated above, the judgment of the Court of Appeals of Arizona should be affirmed.

Respectfully Submitted,

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