No. 24-922

IN THE
Supreme Court of the United States

JAMES HARPER,
Petitioner,

v.

DOUGLAS O'DONNELL, IN HIS OFFICIAL CAPACITY AS ACTING COMMISSIONER OF THE INTERNAL REVENUE SERVICE, *et al.*
Respondents.

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

BRIEF OF *AMICUS CURIAE* AMERICANS FOR PROSPERITY FOUNDATION IN SUPPORT OF PETITIONER

Cynthia Fleming Crawford
Counsel of Record
Lee A. Steven
AMERICANS FOR PROSPERITY FOUNDATION
4201 Wilson Blvd., Ste. 1000
Arlington, VA 22203
(571) 329-2227
(571) 329-1716
ccrawford@afphq.org
lsteven@afphq.org
Counsel for Amicus Curiae

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QUESTION PRESENTED

Does the Fourth Amendment permit warrantless searches of customer records held by third-party service providers if the records are contractually owned by the customer, or if those records enable surveillance of future behavior? If not, does the third-party doctrine need to be discarded or modified to prevent such searches?

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BRIEF OF *AMICUS CURIAE* IN SUPPORT OF PETITIONER

Under Supreme Court Rule 37.2, Americans for Prosperity Foundation ("AFPF") respectfully submits this *amicus curiae* brief in support of Petitioner.[1]

INTEREST OF AMICUS CURIAE

Amicus curiae AFPF is a 501(c)(3) nonprofit organization committed to educating and training Americans to be courageous advocates for the ideas, principles, and policies of a free and open society. Those key ideas include the freedoms and rights protected by the Fourth Amendment to the United States Constitution, including in particular the freedom from unreasonable searches and seizures as understood by the original framers of the amendment. As part of its mission, AFPF appears as *amicus curiae* before federal and state courts.

AFPF is committed to defending the constitutional principles of liberty enshrined in the Bill of Rights. It believes all Americans should be shielded from the arbitrary exercise of the police power, a principle directly implicated in the present case.

SUMMARY OF ARGUMENT

Our Founding Fathers crafted the Fourth Amendment specifically to outlaw and guard against the use of general warrants and writs of assistance, instruments used by the British Crown throughout the

[1] All parties received timely notice of AFPF's intent to file this *amicus curiae* brief. No counsel for a party authored this brief in whole or in part and no person other than *amicus curiae* or its counsel made any monetary contributions intended to fund the preparation or submission of this brief.

homeland and in the Colonies in the decades leading up to the Revolutionary War. Yet the Internal Revenue Service ("IRS") "John Doe" summons at issue in this case, whose propriety both lower courts upheld, stands in the exact same position as the hated general warrant and writ of assistance. The summons is an instrument used by the IRS to compel a third party to surrender information about individuals who are not even known to the IRS and whose conduct the IRS has no probable cause to suspect of wrongdoing. The summons in this case, generally authorized under 26 U.S.C. §§ 7609(f) and 7609(h)(2), did not identify the Petitioner Mr. Harper by name, nor did it concern a particularized allegation that Mr. Harper had engaged in criminal activity, was likely to be involved in criminal activity, or that he was suspected of any wrongdoing. Indeed, the summons was not even directed at Mr. Harper individually but was worded so generally that it swept into its purview 14,355 individuals encompassing 8.9 million financial transactions on the cryptocurrency exchange Coinbase.

Consequently, Mr. Harper's private financial records, which did not demonstrate any tax delinquency or other wrongdoing, were included in the records that Coinbase ultimately turned over to the IRS. Mr. Harper owned a possessory interest in those records. As applied to Mr. Harper, the execution of the IRS summons violated Mr. Harper's constitutional rights under the property and trespass approach to Fourth Amendment jurisprudence now firmly reestablished by Supreme Court precedent. The lower courts failed to apply the Court's reinvigorated Fourth Amendment jurisprudence and certiorari should be granted to right that wrong, explain the need of the federal courts to properly analyze the property interests at stake in Fourth Amendment cases, and to vindicate

the Founding era's conviction that general warrants and writs of assistance, or their modern day equivalents, have no place in a land of a free people.

ARGUMENT

I. THE FOURTH AMENDMENT IS A SHIELD AGAINST THE UNBRIDLED, ARBITRARY EXERCISE OF THE POLICE POWER.

The Fourth Amendment to the U.S. Constitution lies at the heart of individual liberty, privacy, and the protection of private property. In full, it provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const., amend. IV.

The fundamental purpose of the Fourth Amendment is "to secure the privacies of life against arbitrary power . . . [and] to place obstacles in the way of a too permeating police surveillance." *Carpenter v. United States*, 585 U.S. 296, 305 (2018) (cleaned up); *see Soldal v. Cook Cty.*, 506 U.S. 56, 69 (1992) ("[T]he reason why an officer might enter a house or effectuate a seizure is wholly irrelevant to the threshold question whether the Amendment applies. What matters is the intrusion on the people's security from governmental interference.").

"Few protections are as essential to individual liberty as the right to be free from unreasonable searches

and seizures," this Court affirmed in *Byrd v. United States*, stating further that:

> The Framers made that right explicit in the Bill of Rights following their experience with the indignities and invasions of privacy wrought by general warrants and warrantless searches that had so alienated the colonists and had helped speed the movement for independence. Ever mindful of the Fourth Amendment and its history, the Court has viewed with disfavor practices that permit police officers unbridled discretion to rummage at will among a person's private effects.

584 U.S. 395, 402–03 (2018) (cleaned up). But it is precisely the government's "unbridled discretion to rummage at will among a person's private effects," *id.*, that the IRS summons allowed in this case, in violation of Mr. Harper's constitutional rights.

A. The Fourth Amendment protects against the invasion of people and their property.

Beginning with Justice Harlan's concurrence in *Katz v. United States*, 389 U.S. 347 (1967), Fourth Amendment jurisprudence became rooted in the idea of "reasonable expectations of privacy." *See, e.g.*, *United States v. Miller*, 425 U.S. 435 (1976); *Smith v. Maryland*, 442 U.S. 735 (1979). In the last decade and more, however, this Court has emphasized that the proper means to vindicate the text and purpose of the Fourth Amendment is to return to first principles by focusing on the Amendment's common law foundations in trespass and property.

The Fourth Amendment protects the "right of the people to be secure *in their persons, houses, papers, and effects*." U.S. Const., amend. IV (emphasis added). That text, explained the Court in *United States v.*

Jones, "reflects [the Fourth Amendment's] close connection to property, since otherwise it would have referred simply to 'the right of the people to be secure against unreasonable searches and seizures'; the phrase 'in their persons, houses, papers, and effects' would have been superfluous." 565 U.S. 400, 405 (2012).

As this Court later emphasized, *Jones* was decided "based on the Government's *physical trespass* of the vehicle" upon which the FBI had placed a tracker. *Carpenter*, 585 U.S. at 307 (emphasis added). Similarly, in *Florida v. Jardines*, the Court explained that the Fourth Amendment "establishes a simple baseline, one that for much of our history formed the exclusive basis for its protections: *When the Government obtains information by physically intruding on persons, houses, papers, or effects*, a search within the original meaning of the Fourth Amendment has undoubtedly occurred." 569 U.S. 1, 5 (2013) (cleaned up and emphasis added).

Thus, where there is an actual intrusion—on "persons, houses, papers, or effects"—the question of "reasonable expectations of privacy" is not the primary test to apply in adjudicating claims of Fourth Amendment violations. The reasonable-expectations-of-privacy test is *in addition* to the core intrusion test contained in the express text of the Amendment. As *Jardines* explained: "The *Katz* reasonable-expectations test has been added to, not substituted for, the traditional property-based understanding of the Fourth Amendment, and so is unnecessary to consider when the government gains evidence by physically intruding on constitutionally protected areas." 569 U.S. at 11 (cleaned up); *see id.* ("Thus, we need not decide whether the officers' investigation of Jardines' home

violated his expectation of privacy under *Katz*. One virtue of the Fourth Amendment's property-rights baseline is that it keeps easy cases easy. That the officers learned what they learned only by physically intruding on Jardines' property to gather evidence is enough to establish that a search occurred."); *Jones,* 565 U.S. at 406–07 ("Jones's Fourth Amendment rights do not rise or fall with the *Katz* formulation. At bottom, we must assure preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted. As explained, for most of our history the Fourth Amendment was understood to embody a particular concern for government trespass upon the areas ('persons, houses, papers, and effects') it enumerates. *Katz* did not repudiate that understanding.") (cleaned up); *id.* at 408 ("*Katz* did not narrow the Fourth Amendment's scope."); *Byrd,* 584 U.S. at 403 ("[M]ore recent Fourth Amendment cases have clarified that the test most often associated with legitimate expectations of privacy, which was derived from the second Justice Harlan's concurrence *in Katz v. United States*, supplements, rather than displaces, the traditional property-based understanding of the Fourth Amendment.") (cleaned up); *Soldal*, 506 U.S. at 64 ("But the message of those cases [*i.e.*, those in the line of *Katz*] is that property rights are not the sole measure of Fourth Amendment violations. . . . There was no suggestion that this shift in emphasis had snuffed out the previously recognized protection for property under the Fourth Amendment."); *United States v. Knotts*, 460 U.S. 276, 286 (1983) (Brennan, J., concurring) (*Katz* did not erode the principle "that, when the Government *does* engage in physical intrusion of a constitutionally protected area in order to obtain information, that intrusion may constitute a violation of the Fourth Amendment

even if the same information could have been obtained by other means.").

B. A physical intrusion without probable cause or a particularized warrant violates the Fourth Amendment.

To help make the point that the Fourth Amendment is rooted in the common law of property and trespass, the *Jones* court quoted Lord Camden's famous opinion in *Entick v. Carrington*, 95 Eng. Rep. 807 (C.P. 1765). *See* 565 U.S at 405. *Entick* was one of a series of English cases decided in the mid-1760s that condemned the use of general warrants that had allowed the seizure of individuals, and all of their books and papers, based on the allegation of seditious libel for advocating political views disfavored by the Crown. And *Entick* was instrumental in the crafting of the Fourth Amendment. This Court summarized that history and context in *Stanford v. Texas*:

> It was in enforcing the laws licensing the publication of literature and, later, in prosecutions for seditious libel that general warrants were systematically used in the sixteenth, seventeenth, and eighteenth centuries. In Tudor England officers of the Crown were given roving commissions to search where they pleased in order to suppress and destroy the literature of dissent, both Catholic and Puritan. In later years warrants were sometimes more specific in content, but they typically authorized the arrest and search of the premises of all persons connected with the publication of a particular libel, or the arrest and seizure of all the papers of a named person thought to be connected with a libel. It was in the context of the latter kinds of general warrants that the battle for individual

> liberty and privacy was finally won—in the landmark cases of *Wilkes v. Wood* and *Entick v. Carrington*.

379 U.S. 476, 482–83 (1964); *see Carpenter*, 585 U.S. at 303 ("The Founding generation crafted the Fourth Amendment as a response to the reviled general warrants and writs of assistance of the colonial era, which allowed British officers to rummage through homes in an unrestrained search for evidence of criminal activity.") (cleaned up); *Payton v. New York*, 445 U.S. 573, 583 n.21 (1980) ("It is familiar history that indiscriminate searches and seizures conducted under the authority of 'general warrants' were the immediate evils that motivated the framing and adoption of the Fourth Amendment."); *cf.* James Otis, *Against Writs of Assistance* (1761) ("Now one of the most essential branches of English liberty is the freedom of one's house. A man's house is his castle; and whilst he is quiet, he is as well guarded as a prince in his castle. This writ, if it should be declared legal, would totally annihilate this privilege.").

In *Boyd v. United States*, this Court quoted the judgment of Lord Camden in *Entick* verbatim and at length. It characterized the case "as one of the landmarks of English liberty," 116 U.S. 616, 626 (1886), and further explained its importance to the U.S. Constitution:

> [Lord Camden's judgment] was welcomed and applauded by the lovers of liberty in the colonies as well as in the mother country. It is regarded as one of the permanent monuments of the British Constitution, and is quoted as such by the English authorities on that subject down to the present time. As every American statesmen, during our

> revolutionary and formative period as a nation, was undoubtedly familiar with this monument of English freedom, and considered it as the true and ultimate expression of constitutional law, it may be confidently asserted that its propositions were in the minds of those who framed the Fourth Amendment to the Constitution, and were considered as sufficiently explanatory of what was meant by unreasonable searches and seizures.

Id. at 626–27; *see* 3 Joseph Story, *Commentaries on the Constitution of the United States* § 1895 (1833) (the Fourth Amendment "seems indispensable to the full enjoyment of the rights of personal security, personal liberty, and private property. It is little more. than the affirmance of a great constitutional doctrine of the common law. And its introduction into the amendments was doubtless occasioned by the strong sensibility excited, both in England and America, upon the subject of general warrants almost upon the eve of the American Revolution."); *Riley v. California*, 573 U.S. 373, 403 (2014) ("Our cases have recognized that the Fourth Amendment was the founding generation's response to the reviled 'general warrants' and 'writs of assistance' of the colonial era, which allowed British officers to rummage through homes in an unrestrained search for evidence of criminal activity. Opposition to such searches was in fact one of the driving forces behind the Revolution itself.").

In further explaining the relevance of *Entick* in the American context, the *Boyd* court explained that, although the searches and seizures at issue in *Entick* had been violent and had caused property damage, that violence was *not* the essence of the violation. Rather, it was the physical intrusion of a person and his property without proper warrant.

> The principles laid down in this opinion affect the very essence of constitutional liberty and security. . . . [T]hey apply to *all invasions* on the part of the government and its employes [sic] of the sanctity of a man's home and the privacies of life. It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offence; *but it is the invasion of his indefeasible right of personal security, personal liberty and private property,* where that right has never been forfeited by his conviction of some public offence,—it is *the invasion of this sacred right* which underlies and constitutes the essence of Lord Campden's judgment.

116 U.S. at 630 (emphasis added); *see Carpenter*, 585 U.S. at 303 ("The basic purpose of this Amendment, our cases have recognized, is to safeguard the privacy and security of individuals against arbitrary invasions by government officials.") (cleaned up).

In *Henry v. United States*, this Court articulated these same principles under the rubric of probable cause, explaining that a proper warrant to physically intrude on a person or his property in an attempt to find information requires more than mere or even strong suspicion.

> The requirement of probable cause has roots that are deep in our history. The general warrant, in which the name of the person to be arrested was left blank, and the writs of assistance, against which James Otis inveighed, both perpetuated the oppressive practice of allowing the police to arrest and search on suspicion. Police control took the place of judicial control, since no showing of 'probable cause' before a magistrate was required. [The

> colonies] rebelled against that practice . . . [and] [t]hat philosophy later was reflected in the Fourth Amendment. And as the early American decisions both before and immediately after its adoption show, common rumor or report, suspicion, or even strong reason to suspect was not adequate to support a warrant for arrest. And that principle has survived to this day.

361 U.S. 98, 100–01 (1959) (footnotes omitted).

Thus, the meaning of *Entick* and the numerous Fourth Amendment cases that have followed in its line is that government acts illegitimately when, without a proper nexus to an actual crime or alleged wrongdoing (probable cause) or a properly particularized warrant, it vacuums up an individual's papers and effects or otherwise intrudes on an individual or his property in an attempt to find or secure evidence not yet in its possession. *See Jones*, 565 U.S. at 408 n.5 ("[A] seizure of property occurs, not when there is a trespass, but when there is some meaningful interference with an individual's possessory interests in that property. Likewise with a search. Trespass alone does not qualify, but there must be conjoined with that what was present here: an attempt to find something or to obtain information.") (cleaned up); *Henry*, 361 U.S. at 100 ("[I]t is the command of the Fourth Amendment that no warrants for either searches or arrests shall issue except 'upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."); *Stanford*, 379 U.S. at 486 ("Two centuries have passed since the historic decision in *Entick v. Carrington*, almost to the very day. The world has greatly changed, and the voice of nonconformity now sometimes speaks a tongue which Lord

Camden might find hard to understand. But the Fourth and Fourteenth Amendments guarantee to John Stanford that no official of the State shall ransack his home and seize his books and papers under the unbridled authority of a general warrant—no less than the law 200 years ago shielded John Entick from the messengers of the King.").

Where a search of a person, his home, or his paper or effects takes place without probable cause, then, there is no need to assess whether a plaintiff's reasonable expectations of privacy have been violated or whether any other standards are applicable because the protections identified in the Constitution—the supreme law of this Republic—are immediately applicable. *Cf. Henry*, 361 U.S. at 102 ("It is important, we think, that this requirement [of probable cause] be strictly enforced, for the standard set by the Constitution protects both the officer and the citizen."); *Terry v. Ohio*, 392 U.S. 1, 39 (1968) (Douglas, J., dissenting) ("Until the Fourth Amendment, which is closely allied with the Fifth, is rewritten, the person and the effects of the individual are beyond the reach of all government agencies until there are reasonable grounds to believe (probable cause) that a criminal venture has been launched or is about to be launched.").

To summarize: the Fourth Amendment protections preclude any intrusion by the government into the constitutionally protected areas without probable cause or by general warrant. Mere suspicion, even strong suspicion, is not enough and all warrants authorizing a search or seizure must issue with particularized descriptions of the persons, places, papers, and effects to be searched. This Court has reemphasized these requirements and principles on numerous occasions, including as follows in *Dunaway v. New York*:

> The requirement of probable cause has roots that are deep in our history. Hostility to seizures based on mere suspicion was a prime motivation for the adoption of the Fourth Amendment, and decisions immediately after its adoption affirmed that common rumor or report, suspicion, or even strong reason to suspect was not adequate to support a warrant for arrest. The familiar threshold standard of probable cause for Fourth Amendment seizures reflects the benefit of extensive experience accommodating the factors relevant to the reasonableness requirement of the Fourth Amendment, and provides the relative simplicity and clarity necessary to the implementation of a workable rule.

442 U.S. 200, 213 (1979) (cleaned up); *see Terry*, 392 U.S. at 37 (Douglas, J., dissenting) ("In other words, police officers up to today have been permitted to effect arrests or searches without warrants only when the facts within their personal knowledge would satisfy the constitutional standard of probable cause. . . . The term 'probable cause' rings a bell of certainty that is not sounded by phrases such as 'reasonable suspicion.' Moreover, the meaning of 'probable cause' is deeply imbedded in our constitutional history.").

II. THE LOWER COURTS' FAILURE TO UNDERSTAND AND APPLY THE CORE PROPERTY-BASED APPROACH TO FOURTH AMENDMENT JURISPRUDENCE JUSTIFIES A GRANT OF CERTIORARI IN THIS CASE.

The above understanding of the Fourth Amendment, rooted in the government's intrusion of "persons, houses, papers, and effects" in the hopes of discovering incriminating evidence, applies directly to the instant case. Unfortunately, that approach was

neither understood nor properly applied by either of the lower courts.

It is undisputed that the IRS had no prior evidence or even suspicion of any wrongdoing by Mr. Harper and that its only purpose in executing the summons—at least as applied to Mr. Harper—was a speculative hope that it might find such evidence. That speculation was not sufficient to justify the search and seizure of the records at issue because it did not rise to the level of probable cause required under the Fourth Amendment.

Almost the entirety of both lower courts' Fourth Amendment analysis was based on the *Katz* "reasonable-expectation-of-privacy" test. Discussion of Mr. Harper's alternative Fourth Amendment argument rooted in his property rights in the records seized was perfunctory and, in the end, relied almost exclusively on *United States v. Miller*—a case that applied only a privacy-based analysis—to conclude that no Fourth Amendment violation had occurred.

But there should be no doubt that an unreasonable and unjustified search and seizure of records belonging to Mr. Harper occurred in this case. Mr. Harper's private financial records were collected without his authorization or knowledge and turned over to the IRS under the terms of a general summons that swept up the records of everyone who met the general conditions of that summons—that is, without ever naming Mr. Harper or asserting a claim that Mr. Harper had been or was likely to have been involved in a tax delinquency or any other wrongdoing. Indeed, it is undisputed that Mr. Harper has never been identified as part of or otherwise connected to any crime over which the IRS has jurisdiction and that he has in fact complied with all applicable provisions of the tax code.

The search and seizure was thus conducted without probable cause, without a particularized description of Mr. Harper, and without an alleged nexus between Mr. Harper and an actual crime.

The best description of the summons used to justify the search and seizure of Mr. Harper's private financial records is that it constituted a modern-day general warrant or writ of assistance because it operated as a general permission allowing the IRS to go fishing for possible evidence of a crime. But it is the general warrant and writ of assistance specifically that the Fourth Amendment was created to abolish.

Moreover, as *Carpenter* explained, "our cases establish that warrantless searches are typically unreasonable where a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing. . . . The Court usually requires some quantum of individualized suspicion before a search or seizure takes place." 585 U.S. at 316–17 (cleaned up). Such "individualized suspicion" was lacking here and, thus, an unreasonable search and seizure occurred.

The only possible ground to uphold the decisions of the lower courts, therefore, turns on their reliance on *Miller* to find that the financial records at issue belonged to Coinbase, the cryptocurrency exchange, rather than to Mr. Harper. But that conclusion failed to account for *Miller's* commitment to treating Fourth Amendment rights as a matter of privacy, certain distinctions between the two sets of records at issue, and the *Miller* court's underlying assumption regarding the ownership of the records at issue in that case.

First, as *Miller* explained: "We must examine the nature of the particular documents sought to be protected in order to determine whether there is a

legitimate 'expectation of privacy' concerning their contents." 425 U.S. at 442. The Court's understanding of the records at issue, in other words, was inexorably intertwined with, and read through the lens of, privacy. For that reason alone, application of *Miller* to a property-based Fourth Amendment claim is improper.

Second, at least some of the records at issue in *Miller* could rightly be considered, as a matter of property law, no longer the property of the plaintiff because they were checks and thus "not confidential communications but negotiable instruments to be used in commercial transactions." *Id.* That contrasts with Mr. Harper's records here, all of which concerned his personal identifying information, his records of account activity identifying the date, amount, and type of transaction, and, most importantly of all, the identifying information that will now allow the IRS to track Mr. Harper's cryptocurrency transactions for the rest of his life no matter where or with whom he chooses to transact These records and information were and are particular to Mr. Harper, and he retained and continues to retain control over them. Crucially, at the time of the execution of the IRS summons, no party had a right of access to those records except Mr. Harper and the Coinbase exchange pursuant to their contractual agreements.[2]

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[2] *Cf. Carpenter*, 585 U.S. at 401 (Gorsuch, J., dissenting) ("I doubt that complete ownership or exclusive control of property is always a necessary condition to the assertion of a Fourth Amendment right. Where houses are concerned, for example, individuals can enjoy Fourth Amendment protection without fee simple title. Both the text of the Amendment and the common law rule support that conclusion. . . . Another point seems equally true: just because you have to entrust a third party with your data

Third, the *Miller* court's characterization of the records at issue in that case predicate facts that demonstrate Mr. Harper's possessory interests in the records at issue in this case.[3] Thus, *Miller* noted that "[a]ll of the documents obtained, including financial statements and deposit slips, contain only information voluntarily conveyed to the banks and exposed to their employees in the ordinary course of business. . . . The depositor takes the risk, in revealing his affairs to another, that the information will be conveyed by that person to the Government." 425 U.S. at 442–43. But one cannot "reveal his affairs" or "voluntarily convey information" to another party if one's affairs and information are not already one's own. Further, the nature of any such "conveyance" in the context of financial services is one of bailment, not absolute relinquishment, otherwise the customer would never have the right to access and secure those records at his convenience or prevent others from accessing them.

Justice Gorsuch explained the bailment concept in his dissent in *Carpenter*:

> [T]he fact that a third party has access to or possession of your papers and effects does not necessarily eliminate your interest in them. Ever hand a private document to a friend to be returned? Toss your keys to a valet at a restaurant? Ask your neighbor to look after your dog while you travel? You would not expect the friend to share the document with others; the valet to lend your car to his

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doesn't necessarily mean you should lose all Fourth Amendment protections in it.").

[3] *Cf. Jones*, 565 U.S. at 408 n.5 ("[A] seizure of property occurs . . . when there is some meaningful interference with an individual's possessory interests in that property.").

> buddy; or the neighbor to put Fido up for adoption. Entrusting your stuff to others is a bailment.

585 U.S. at. 399. And Justice Gorsuch specifically distinguished this understanding from that used in *Miller*, noting that whereas Fourth Amendment rights might be extinguished under the reasonable-expectation-of-privacy rubric, "property law may preserve them." *Id.* at 400; *see id.* ("These ancient principles may help us address modern data cases too. Just because you entrust your data—in some cases, *your modern-day papers and effects*—to a third party may not mean you lose any Fourth Amendment interest in its contents.") (emphasis added).

In short, under the traditional property and trespass approach, "Fourth Amendment protections for your papers and effects do not automatically disappear just because you share them with third parties." *Id.* at 396.

It cannot be doubted that this case involved an unreasonable search and seizure of Mr. Harper's papers and effects and that his Fourth Amendment rights were thereby violated. That the lower courts failed to engage these issues and dismissed them with a perfunctory reliance on *Miller* demonstrates the Court's need to step in and vindicate Mr. Harper's Fourth Amendment rights here—both for his sake and for all citizens of the United States who have a right to be protected from a too permeating police surveillance.

CONCLUSION

For the foregoing reasons, this Court should grant the Petition.

Respectfully submitted,

Cynthia Fleming Crawford
Counsel of Record
Lee A. Steven
AMERICANS FOR PROSPERITY FOUNDATION
4201 Wilson Blvd., Ste. 1000
Arlington, VA 22203
(571) 329-2227
(571) 329-1716
ccrawford@afphq.org
lsteven@afphq.org

Counsel for Amicus Curiae

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