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IN THE SUPREME COURT OF MARYLAND

STATE OF MARYLAND, Petitioner, v. [redacted], Respondent.	No. 36 On Writ of Certiorari to the Appellate Court of Maryland

MOTION OF RESTORE THE FOURTH, INC. FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF IN SUPPORT OF RESPONDENT [redacted]

Restore the Fourth, Inc. ("Restore the Fourth"), by and through the undersigned counsel, respectfully moves under Rule 8-511 for leave to file an *amicus curiae* brief in support of Respondent [redacted] in the above-captioned action. As Rule 8-511(b)(2) requires, Restore the Fourth's proposed *amicus* brief is enclosed with this motion.

Identity & Interest of Restore the Fourth

Restore the Fourth is a national, non-partisan grassoots organization that advocates for robust enforcement of the Fourth Amendment to the U.S. Constitution. Restore the Fourth believes that everyone is entitled to privacy in their persons, homes, papers, and effects. Restore the Fourth also believes that advances in technology, law, and governance should foster—not hinder—protection of this fundamental constitutional right.

To advance these principles, Restore the Fourth overseees a network of local chapters whose members include lawyers, academics, advocates, and ordinary citizens. Each chapter devises activities to bolster legal recognition of Fourth Amendment rights. On the national level, Restore the Fourth files *amicus* briefs in significant Fourth Amendment cases. Two recent examples of such briefs are: Brief of *Amici Curiae* Restore the Fourth, Inc., et al. in Support of Respondent, *State of Minnesota v. Torgerson*, No. A22-0425 (Minn. filed Feb. 15, 2023); and Brief of *Amicus Curiae* Restore the Fourth, Inc., in Support of Petitioner, *Torres v. Madrid*, 141 S. Ct. 989 (2021).

Restore the Fourth is interested in [redacted] for two main reasons. First, this case stands to affect the privacy of countless Americans in their personal papers for years to come. Second, this case presents an important opportunity to ensure that digital technology does not erode "that degree of privacy against government that existed when the Fourth Amendment was adopted." *Kyllo v. United States*, 533 U.S. 27, 34 (2001).

Reasons to Allow Restore the Fourth's Proposed Amicus Brief

Restore the Fourth is an "entit[y] with particular expertise" and its proposed *amicus* brief collects authorities "that merit judicial notice." *Neonatology Assocs., P.A. v. Comm'r*, 293 F.3d 128, 132 (3d Cir. 2002) (Alito, J.). Specifically, Restore the Fourth has an established record of helping

courts analyze Fourth Amendment questions.[1] Restore the Fourth's proposed *amicus* brief, in turn, collects authorities relevant to applying "the traditional property-based understanding of the Fourth Amendment" in data privacy cases. *Florida v. Jardines*, 569 U.S. 1 (2013). Restore the Fourth therefore respectfully submits that the information in its proposed brief "will help the [C]ourt toward [the] right answers." *Mass. Food Ass'n v. Mass. Alcoholic Beverages Control Comm'n*, 197 F.3d 560, 567 (1st Cir. 1999).

Consent of the Parties

Through counsel, Petitioner and Respondent have consented to the filing of Restore the Fourth's proposed *amicus curiae* brief.

Issues That Restore the Fourth Intends to Raise

1. Whether the Court should determine the existence of a Fourth Amendment "search" based not only on reasonable expectations of privacy but also based on "the traditional property-based understanding of the Fourth Amendment." *Florida v. Jardines*, 569 U.S. 1 (2013).

2. Whether the Fourth Amendment affords strong protection of private papers against governmental intrusions, regardless of whether these papers happen to exist in physical or digital form.

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[1] *See, e.g.,* Kim Janssen, *Chief Justice of U.S. Supreme Court Cites 'Ferris Bueller's Day Off' During Oral Argument*, CHICAGO TRIB., Jan. 10, 2018, http://trib.in/2nEg1yo (detailing the oral-argument influence of Restore the Fourth's *amicus* brief in *Collins v. Virginia*, 138 S. Ct. 1663 (2018)—a case about the automobile exception to the Fourth Amendment).

3. Whether government copying of a person's private papers (with or without consent) can defeat a person's otherwise strong property interest in these papers for Fourth Amendment purposes?

Contributors to Restore the Fourth's Proposed Amicus Brief

No person—other than Restore the Fourth, its members, and its counsel—has made a monetary or other contribution to the preparation or submission of Restore the Fourth's proposed *amicus* brief.

Conclusion

Based on the foregoing, the Court should grant Restore the Fourth, Inc.'s motion for leave to file an *amicus curiae* brief in support of Respondent [redacted] in *State v.* [redacted] No. 36 (Md.).

Respectfully submitted,

Dated: May 5, 2023

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RULE 1-322.1 CERTIFICATE

I have complied with Rule 1-322.1 regarding the exclusion of personal identifier information or restricted information in court filings.

/s/Mahesha P. Subbaraman
Mahesha P. Subbaraman

CERTIFICATE OF SERVICE

I certify that on this 5th day of May, 2023, a true copy of this Motion for Special Admission was served electronically via the Court's MDEC system and electronically served on all parties or counsel entitled to e-service, and also I hereby certify that on this 5th day of May, 2023, a paper copy of this motion was mailed, first class postage pre-paid to:

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IN THE
SUPREME COURT OF MARYLAND

SEPTEMBER TERM, 2022

NO. 36

STATE OF MARYLAND,

Petitioner,

v.

DANIEL ASHLEY MCDONNELL,

Respondent.

ON WRIT OF CERTIORARI
TO THE APPELLATE COURT OF MARYLAND

BRIEF OF *AMICUS CURIAE* RESTORE THE FOURTH, INC. IN SUPPORT OF RESPONDENT [redacted]

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INTEREST OF THE *AMICUS CURIAE*[1]

Restore the Fourth is a national, non-partisan grassroots organization that advocates for robust enforcement of the Fourth Amendment to the U.S. Constitution. Restore the Fourth believes everyone is entitled to privacy in their persons, homes, papers, and effects. Changes in technology, law, and governance should foster—not hinder—protection of this right.

To advance these principles, Restore the Fourth oversees a network of local chapters, whose members include lawyers, academics, advocates, and ordinary citizens. Each chapter devises activities to bolster legal recognition of Fourth Amendment rights. On the national level, Restore the Fourth files amicus briefs in significant Fourth Amendment cases.[2]

Restore the Fourth is interested in [redacted] for two main reasons. First, this case stands to affect the privacy of countless Americans in their personal papers for years to come. Second, this case presents an important opportunity to ensure that digital technology does not erode "that degree of privacy against government that existed when the Fourth Amendment was adopted." *Kyllo v. United States*, 533 U.S. 27, 34 (2001).

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[1] This amicus brief is filed with the parties' consent. No person—other than *amicus*, its members, and its counsel—has made a monetary or other contribution to the preparation or submission of this brief.

[2] *See, e.g.,* Brief of *Amici Curiae* Restore the Fourth, Inc., et al. in Support of Respondent, *State of Minnesota v. Torgerson*, No. A22-0425 (Minn. filed Feb. 15, 2023); Brief of *Amicus Curiae* Restore the Fourth, Inc., in Support of Petitioner, *Torres v. Madrid*, 141 S. Ct. 989 (2021) (No. 19-292).

STATEMENT OF THE CASE

Amicus accepts Petitioner's Statement of the Case. (Pet'r Br. 2-3.)

QUESTIONS PRESENTED

1. Whether the Court should determine the existence of a Fourth Amendment "search" based not only on reasonable expectations of privacy but also based on "the traditional property-based understanding of the Fourth Amendment." *Florida v. Jardines*, 569 U.S. 1 (2013).

2. Whether the Fourth Amendment affords strong protection of private papers against governmental intrusions, regardless of whether these papers happen to exist in physical or digital form.

3. Whether government copying of a person's private papers (with or without consent) can defeat a person's otherwise strong property interest in these papers for Fourth Amendment purposes.

MATERIAL FACTS

Amicus adopts the statement of facts set forth in the Appellate Court of Maryland's opinion. *See* [redacted], 256 Md. App. 284, 288–90 (2022). The material facts here are straightforward. With [redacted] (Respondent's) consent, the government made a mirror-image copy of a hard drive containing [redacted] private papers. [redacted] later revoked his consent. *See id.* Despite this revocation of consent, the government reviewed the copied papers and used their contents against [redacted]. *Id.*

ARGUMENT

The Fourth Amendment guarantees every American's right to be secure from unreasonable governmental searches and seizures of private papers. Digital papers, however, lack the "physical dimensions" that would otherwise naturally impose Fourth Amendment limits on "where an officer may pry." *United States v. Galpin*, 720 F.3d 436, 447 (2d Cir. 2013).

The government may thus copy and indefinitely detain every private paper on a person's hard drive (i.e., millions of documents) at minimal cost—except to the Fourth Amendment. Appreciating this reality, the Appellate Court held that "individuals have a legitimate expectation of privacy in the digital data within their computer." [redacted], 256 Md. App. 284, 296 (2022). The court directed the suppression of evidence obtained through a non-consensual violation of this expectation. *See id.* at 296–97.

This Court should affirm. The government's contrary advocacy breezes past seminal aspects of Fourth Amendment law, starting with the reality that "searches" occur not only when a person has a reasonable expectation of privacy, but also when the government invades settled property interests. By acknowledging this principle (and others) in data privacy cases, the Court stands to ensure the Fourth Amendment remains a bulwark of "the right most valued by civilized men": the "right to be let alone." *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting).

I. The existence of a "search" turns as much on the traditional property-based understanding of the Fourth Amendment as on reasonable expectations of privacy.

The government frames this case as turning on evaluations of [redacted] "legitimate expectation of privacy" in the mirror-image copy that the government reviewed. (Pet'r Br. 15-16.) In this vein, the government asks the Court to conclude that "[redacted] retained no reasonable expectation of privacy in the image copy." (*Id.*) The government also stresses that a "search" occurs under the Fourth Amendment "when governmental action infringes a 'legitimate expectation of privacy.'" (*Id.* (citation omitted).)

In a footnote, the government admits "a search also occurs when the government engages in a physical, trespassory intrusion on a constitutionally protected area." (Pet'r Br. 18 n.7.) The government then quickly declares that this trespassory test does "not displace the 'expectation of privacy' test." (*Id.*) Through this advocacy, the government cultivates the distinct impression that a "search" does not exist unless the expectation-of-privacy test is met—i.e., satisfaction of the trespassory test *by itself* is not sufficient, or can be ignored if a given case fails the expectation-of-privacy test.

Not so. Over the past two decades, the Supreme Court has made it clear that the trespassory test is *not* subordinate to the expectation-of-privacy test. The trespassory test in fact *comes first*, while the expectation-of-privacy test "supplements, rather than displaces, the traditional property-based

understanding of the Fourth Amendment." *Byrd v. United States*, 138 S. Ct. 1518, 1526 (2018) (cleaned up); *see also, e.g., Soldal v. Cook Cnty.*, 506 U.S. 56, 64 (1992) (expectation-of-privacy test does not "snuf[f] out … previously recognized protection for property under the Fourth Amendment").

By underscoring the rightful place of common law history in Fourth Amendment law, the trespassory test protects "an irreducible constitutional minimum." *United States v. Jones*, 565 U.S. 400, 415 (2012) (Sotomayor, J., concurring). And that reality matters given the "often unpredictable—and sometimes unbelievable—jurisprudence" that the expectation-of-privacy test can yield. *Carpenter v. United States*, 132 S. Ct. 2206, 2266 (2018) (Gorsuch, J., dissenting). Consider the holding that "a police helicopter hovering 400 feet above a person's property invades no reasonable expectation of privacy." *Id.* (citing *Florida v. Riley*, 488 U.S. 445, 449–50 (1989)). As Justice Gorsuch wryly puts it: "[t]ry that one out on your neighbors." *Id.*

Of course, given the tendency of litigants to focus on the expectation-of-privacy test, "courts are pretty rusty at applying the traditional approach to the Fourth Amendment." *Id.* at 2268. But such judicial application is more critical today than ever before given the ever-growing ways that technology is "enhanc[ing] the [g]overnment's capacity to encroach upon areas normally guarded from inquisitive eyes." *Id.* at 2214 (majority opinion). By applying the trespassory test, courts ensure they are performing their duty to uphold

"that degree of privacy against government that existed when the Fourth Amendment was adopted." *Jones*, 565 U.S. at 406 (plurality op.).

In this regard, the government errs in characterizing the trespassory test as one limited to "physical … intrusion[s]." (Pet'r Br. 18 n.7.) In *United States v. Jones*, the Supreme Court pronounced it "ha[d] no doubt" that "a physical intrusion would … [fall] within the meaning of the Fourth Amendment when it was adopted." 565 U.S. at 404–05 (plurality op.). But the key determinant for all the justices who supported the *Jones* opinion was "the common law when the Amendment was framed"—*not* the physicality of the intrusion. *Wyoming v. Houghton*, 526 U.S. 295, 299 (1999).

With this in mind, determining whether the government has performed a "search" under the trespassory test calls for careful review of "the statutes and common law of the founding era to determine the norms that the Fourth Amendment was meant to preserve." *Virginia v. Moore*, 553 U.S. 164, 168 (2008). Only then can one extend "the specific rights known at the founding" to "their modern analogues." *Carpenter*, 132 S. Ct. at 2271–72 (Gorsuch, J., dissenting). In other words, "[o]ne cannot wrench" the phrase "unreasonable searches" from the Fourth Amendment's "historic content." *United States v. Rabinowitz*, 339 U.S. 56, 69–70 (1950) (Frankfurter, J., dissenting). And this historic content teaches the Framers meant for the Fourth Amendment to be a potent safeguard against government review of private papers.

II. Fourth Amendment tradition affords strong protection of private papers against governmental intrusions.

The Fourth Amendment guarantees "[t]he right of the people to be secure in their … papers … against unreasonable searches and seizures." The Framers specifically mentioned "papers" for good reason. During the founding era, one of the greatest threats to liberty was the "general warrant," which allowed British authorities to seize "books and papers that might be used to convict their owner." *Boyd v. United States*, 116 U.S. 616, 626 (1886). Against this threat stood Lord Camden's decision in *Entick v. Carrington*, 95 Eng. Rep. 807 (C.P. 1765)—"a wellspring of the rights now protected by the Fourth Amendment." *Stanford v. Texas*, 379 U.S. 476, 484 (1965).

Lord Camden declared unlawful a general warrant that allowed Crown messengers to "ransack[]" publisher John Entick's home for "four hours" and "cart[] away quantities of [Entick's] books and papers." *Id.* at 483–84. Observing that "papers are often the dearest property a man can have," *Entick*, 95 Eng. Rep. at 817–18, Lord Camden emphasized private papers "are so far from enduring a seizure, that they will hardly bear an inspection." *Boyd*, 116 U.S. at 628 (quoting *Entick*). Private papers were thus subject to the same trespassory rules that dictated "[n]o man can set his foot upon my ground without my license"—even when "the damage be nothing." *Id.* at 627*; see id.* ("[E]very invasion of private property … is a trespass.").

The Supreme Court took these lessons to heart in its earliest Fourth Amendment cases. In *Boyd v. United States*, the Court held "Lord Camden's judgment" extended beyond mere "breaking of … doors" and "rummaging of … drawers" to "all invasions." 116 U.S. at 630. "Breaking into a house and opening … drawers" were "circumstances of aggravation"—not "the essence of the offence." *Id.* Honoring *Entick* required courts "to be watchful" for government searches "**divested of** many of the **aggravating incidents** of actual search and seizure." *Id.* at 635 (bold added).

In *Silverthorne Lumber Co. v. United States*, 251 U.S. 385 (1920), the Supreme Court enforced these rules against an unlawful seizure of "material papers." *Id.* at 391. The government argued that it was entitle retain "copies" of the papers after the lower court had ordered a "return of the originals." *Id.* The Supreme Court rejected the government's argument, pronouncing that "the protection of the Constitution" under the Fourth Amendment was not limited to whether the government had "physical possession" of the original papers. *See id.* The Court further explained that any other conclusion would "reduce[] the Fourth Amendment to a form of words." *Id.*

Entick, *Boyd,* and *Silverthorne* establish that the Fourth Amendment—in forbidding "unreasonable" searches[3]—safeguards private papers against

[3] "The search-and-seizure practices that the Founders feared most—such as general warrants—were already illegal under the common law, and jurists

any "insidious disguise[]" that the government might use to control such papers. *Boyd*, 116 U.S. at 630. This strong protection reaches a person's private papers "wherever" those papers "may be." *Ex parte Jackson,* 96 U.S. 727, 733 (1877). It does not matter whether the papers are originals or copies; nor does it matter whether the papers are physical or digital.

Lord Camden "never would have approved" of Crown messengers keeping copies of Entick's papers over Entick's objection. *Boyd*, 116 U.S. at 630. Lord Camden recognized that when "private papers are removed and carried away **the secret nature of those goods** will be an **aggravation of the trespass**, and demand more considerable damages in that respect." *Boyd*, 116 U.S. at 628 (quoting *Entick*) (bold added).

The Fourth Amendment carries forward these precepts. The Fourth Amendment is not limited to government "mischiefs"; rather, it assumes that one "may have secrets … to which [one's] books, papers, or letters may bear testimony, but which the public have no concern."[4] For Lord Camden and the Framers, courts were bound to guard the "secret nature" of private papers against "any stealthy encroachments thereon." *Boyd*, 116 U.S. at 628, 635. Anything less would be "contrary" to "the principles of a free government" and the "pure atmosphere of … personal freedom." *Id.* at 632.

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such as Lord Coke described violations of the common law as [being] 'against reason.'" *Carpenter*, 138 S. Ct. at 2243 (Thomas, J., dissenting).

[4] THOMAS M. COOLEY, A TREATISE ON THE LAW OF TORTS 294 (1879).

III. Government copying of private papers (with or without consent) does not vitiate Fourth Amendment protection of these papers as a matter of property.

The government argues: "[w]hen someone gives the government consent to seize a digital device … and copy the digital information located on it, they retain no reasonable expectation of privacy in any copies the government creates within that consent." (Pet'r Br. 17.) The government's analysis looks past the Fourth Amendment's strong protection of private papers through its "particular concern for **government trespass** upon the areas" that the Amendment "enumerates" ("persons, houses, **papers**, and effects"). *Jones*, 565 U.S. at 406 (plurality opinion) (bold added).

Putting aside the matter of consent for the moment, government copying of private papers runs headlong into the common law's traditional proscription of constructive trespasses. A "constructive trespass" occurs when a person asserts a "claim of dominion" over another person's property "under pretence of … right or authority." *Haythorn v. Rushforth*, 19 N.J.L. 160, 165 (1842). "[A]ctual, forcible dispossession is not necessary." *Id.* "Any … claim of dominion … the speaker having the [affected property] within his power, may constitute such a taking as will sustain an action of trespass." *Id.*

For example, "making an inventory and threatening to remove goods" is a constructive trespass "although the goods are not touched by the officer." *Id.* Unauthorized sale is another example. *Wall & Wall v. Osborn*, 12 Wend.

39, 40 (N.Y. Supreme Ct. 1834) ("By the act of selling the plaintiffs' property, the defendant assumed a control over it ….."). In short, "any unlawful interference with or assertion of control over the property of another, is sufficient to subject the party to an action of trespass." *Id.*

Consider *Chicago Title & Trust Co. v. Core*, 223 Ill. 58 (1906). The Illinois Supreme Court affirmed a trespass verdict against a title company that wrongfully seized and sold a privately-owned hardware store. *See id.* at 60–61, 66. The title company argued it was entitled to instruct the jury to acquit if the jury believed the store owner had in fact "voluntarily delivered possession" of the store to the title company. *Id.* at 62. This Illinois Supreme Court rejected this narrow view of what constitutes a trespass, explaining "[a]ny unlawful exercise of authority over the goods of another will support trespass, even though no force [is] exerted." *Id.* at 63.

"Papers are the owner's goods and chattels …." *Boyd*, 116 U.S. at 628. Government copying entails a constructive trespass to these chattels. The government exercises "control over the property of another," preventing the owner from being the sole possessor of his private papers. *See Wall & Wall,* 12 Wend. at 40. Government copying thereby impairs the "condition, quality, [and] value" of the owner's originals, rendering these originals incapable of affording the owner sole possession of his papers. *CompuServe Inc. v. Cyber Promotions, Inc.*, 962 F. Supp. 1015, 1021 (S.D. Ohio 1997).

Two commonsense observations support these conclusions. **First**, sole possession and control of papers is what spurs people to create private papers in the first place. A person who knows the government may keep copies of every paper he creates is less likely to create such papers.[5] **Second**, exclusive possession is what affords people full enjoyment of their papers, in terms of choosing who gets to see one's papers, if anyone (e.g., deciding to toss a rough draft before anyone sees it). *See, e.g., Nixon v. Admin. of Gen. Servs.*, 433 U.S. 425, 457 (1977) ("Presidents who have established Presidential libraries have usually withheld matters concerned with family or personal finances, or have deposited such materials with restrictions on their screening.").

Thus, so long as "[t]he papers we create and maintain … reflect our most private thoughts," government copying of these papers is a trespass. *United States v. Cotterman*, 709 F.3d 952, 957 (9th Cir. 2013). And in the digital age, this trespass implicates "the sum of an individual's private life" as government copying may reach "millions of pages of text, thousands of pictures, or hundreds of videos." *Riley v. California*, 573 U.S. 373, 394 (2014); *see Galpin*, 720 F.3d at 447 ("The potential for privacy violations occasioned by an unbridled, exploratory search of a hard drive is enormous.").

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[5] *See* Alex Marthews & Catherine Tucker, *Government Surveillance & Internet Search Behavio*r 4 (Digital Fourth Amendment Research & Educ., 2017), https://bit.ly/2CAW0CB; PEN, CHILLING EFFECTS: NSA SURVEILLANCE DRIVES U.S. WRITERS TO SELF-CENSOR (2013), https://bit.ly/3pfiKkB.

Consent does not change this equation. To begin with, the common law has long recognized that even when a person consents to a third party (here, the government) copying a private paper, a property interest still exists. This may be seen in the advent and history of the telegraph. In little more "than a quarter of a century," the telegraph became a "necessit[y] of commerce" and an "indispensable … means of inter-communication." *Pensacola Tel. Co. v. W. Union Tel. Co.*, 96 U.S. 1, 9 (1877). The telegraph's fast rise to prominence soon presented significant Fourth Amendment challenges.

Unlike private letter correspondence, "the original of any [telegraphic] message sent and a copy of the reply [were] left in possession of the telegraph company"—a private entity distinct from a post office.[6] The following issue emerged: "whether telegrams in possession of the telegraph authorities are the private papers of those who have sent and received them."[7]

In a variety of ways, the common law said 'yes.' For example, state courts held "in every contract for the transmission of a telegraphic dispatch is an obligation on the part of the transmitting company to keep its contents secret from the world." *Cocke v. W. Union Tel. Co.*, 84 Miss. 380, 385 (1904). Breaches of this duty then afforded "[a] right of action beyond question." *Id.* Consent-to-copying did not give telegraph companies a free pass.

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[6] Thomas M. Cooley, *Inviolability of Telegraphic Correspondence*, 18 AM. LAW REGISTER 65, 66 (1879) (new series; in old series: vol. 27).

[7] *Id.* at 69.

Consent also does not change the common-law equation here because [redacted] revoked his consent to the government's copying of his papers. Following the revocation, the government lost any right to continue to retain the copies and became obliged to return or destroy them. *See Weeks v. United States*, 232 U.S. 383, 398 (1914) ("That papers wrongfully seized should be turned over to the accused has been frequently recognized in the early as well as later decisions of the courts."). The government's continued retention of the copies despite [redacted] revocation was a trespass,

The situation is no different than when a homeowner expels an invited guest. "[A]t common law a homeowner could usually revoke any license to enter his property at his pleasure." *United States v. Carloss,* 818 F.3d 988, 1006 (10th Cir. 2016) (Gorsuch, J., dissenting) "And state officials no less than private visitors could be liable for trespass when entering without the homeowner's consent." *Id.* Following a homeowner's revocation of consent, a guest could not remain without being a trespasser. *Id.*

In this case, the government takes on the role of the expelled guest who refuses to leave. [redacted] initial consent to government copying did not afford the government full ownership of [redacted] papers, any more than a invited houseguest may stay forever. Even if "reasonable at its inception," the government's copying ultimately "violate[s] the Fourth Amendment by virtue of its intolerable … scope." *Terry v. Ohio*, 392 U.S. 1, 18–19 (1968).

CONCLUSION

Ninety-five years ago, Justice Brandeis warned that the day might come when the government "without removing papers from secret drawers" would nevertheless be able to "reproduce them in court." *Olmstead*, 277 U.S. at 474 (Brandeis J., dissenting). The government can now make and keep perfect copies of every digital paper that Americans create. The Fourth Amendment's protection of "papers" is meant to prevent abuses of such power. This Court should thus affirm the Appellate Court's direction of evidentiary suppression here—a judgment that ensures "[r]ights declared in words" are not "lost in reality." *Weems v. United States*, 217 U.S. 349, 373 (1910).

Respectfully submitted,

Dated: May 5, 2023

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CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

This *amicus curiae* brief contains 3,440 words, excluding the parts of the brief exempted from the word count by Rule 8-503. This *amicus curiae* brief is printed in 13-point Century Schoolbook and complies with the font, spacing, and type-size requirements stated in Rule 8-112

Dated: May 5, 2023

/s/Mahesha P. Subbaraman
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RULE 1-322.1 CERTIFICATE

I have complied with Rule 1-322.1 regarding the exclusion of personal identifier information or restricted information in court filings.

Dated: May 5, 2023

/s/Mahesha P. Subbaraman
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CERTIFICATE OF SERVICE

I certify that on May 5, 2023, a true copy of this *amicus curiae* brief was served electronically via the Court's MDEC system and electronically served on all parties or counsel entitled to e-service. I also certify that paper copies of this brief will be mailed, first-class postage pre-paid to:

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