Team 21

No. 18-2417

In the Supreme Court of the United States

ELIZABETH JORALEMON,

PETITIONER

V.

UNITED STATES OF AMERICA,

RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTEENTH CIRCUIT

BRIEF FOR PETITIONER

Team 21
Attorneys for Petitioner

ORIGINAL BRIEF

QUESTIONS PRESENTED

I. Whether a citizen's Fourth Amendment protection against arbitrary Government invasions is violated when the Government warrantlessly obtains a genetic and medical analysis of her DNA from a non-medical commercial service.

II. Whether the Fourth Amendment requires the government to have the minimal level of reasonable suspicion to perform an intensive forensic search of an electronic device seized at the United States Border.

III. Whether Federal Rule of Evidence 106 should be extended for incomplete oral statements, and whether the Rule transcends inadmissibility rules in order to fulfill its purpose.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Supreme Court of the United States

United States Circuit Courts of Appeal

Other Courts

Constitutional Provisions

Other Authorities

OPINIONS BELOW

The Fourteenth Circuit's decision is unpublished but is reproduced in the Record on pages 43-52. The order number of the opinion is No. 18-076. The District Court's oral ruling on Respondent's motion to suppress is unpublished but is reproduced in the Record on pages 27-30. The District Court's order following the hearing is unpublished but is reproduced in the Record on pages 1-3. The number of the Order is 16-CR-643.

CONSTITUTIONAL PROVISIONS

U.S. Constitution Amend. IV 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. Constitution Amend. V provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

I. Statement of the Facts

In 2016, United States Congressman Jerry Livingston, who represented Westnick's Second Congressional District, ran for re-election against Torey Malconey. R. at 1. On June 3, 2016, the Chaotic DERP Squad (C-DERPS), a group of foreign hackers, emailed Congressman Livingston's campaign manager a link to an encrypted messaging service called "TextApp" with a message offering to exchange emails from Ms. Malconey and members of her staff's accounts for cash. R. at 1, 8. Between June 3, 2016, and August 9, 2016, members of Congressman Livingston's senior staff agreed to C-DERPS proposal. R. at 1.

On August 9, 2016, Congressman Livingston's senior staff sent a junior aide, Petitioner Elizabeth Joralemon (Joralemon), to meet Marin Rapstol (Rapstol), a C-DERPS member, at Fullerton Park in Westnick. R. at 1. Joralemon and Rapstol arrived at the meeting with briefcases containing $50,000 in cash and flash drives with emails, respectively. R. at 1–2. Each left with the other's briefcase. R. at 2. Joralemon did not say or otherwise do anything to indicate she was aware of the flash drive's content. R. at 8. On September 7, 2016, Joralemon and Marin met for a second briefcase exchange. R. at 2. At the second meeting, Rapstol asked Joralemon if Livingston's campaign was satisfied with the material provided at the previous exchange; however, Joralemon clearly stated that she did not know what Rapstol was referring to. R. at 9.

<u>Confiscation of Joralemon's Smartphone at the Border</u>

On August 20, 2016, Joralemon returned from a family vacation abroad to Washington Dulles International Airport. R. at 21. Customs and Border Patrol (CBP) Agent Clinton O'Keefe selected Joralemon for a random search and she graciously complied with the Agent's request of a body x-ray scan and a search of her luggage, neither of which revealed any contraband. R. at 5.

After Joralemon cleared both intrusive screenings, O'Keefe unreasonably attempted to search Joralemon's smartphone. *Id.* When Joralemon did not unlock her smartphone for O'Keefe's search, he told Joralemon that CBP would need to confiscate and conduct a digital forensic analysis of the phone and that her phone would not be returned until the analysis was complete. *Id.* Joralemon then handed over the phone and exited the airport. *Id.*

The CBP lab received the request for digital analysis of Joralemon's phone on August 21, 2016, and completed the analysis on September 7, 2016. R. at 10. The resulting analysis, which consisted of 985 pages, did not contain a single finding of illegal contraband nor any evidence of suspicious electronic financial transactions. *Id.* The report included a TextApp chain between Joralemon and a contact saved as "Cheryl." *Id.* TextApp encrypts users' messages and deletes them automatically after thirty days. *Id.* The messages were sparse and vague, leading the forensic analyst to conclude that neither the messages, nor anything else discovered in the 985-page report, warranted recommendation of a criminal investigation. *Id.*

Despite the complete lack of incriminating information, the analyst added a memo on the analysis' results and a transcript of the TextApp conversation to the Interagency Border Inspection System (IBIS). *Id.* The memo and transcript resurfaced on October 20, 2016, when an FBI Special Agent investigating Joralemon searched all federal law enforcement data bases for possible intel. R. at 11. However, the Agent was aware that due to TextApp's feature of deleting messages after thirty days, the messages between Joralemon and "Cheryl" would be deleted by the time the FBI could secure a warrant for Joralemon's phone. *Id.*

Warrantless DNA Collection

On August 23, 2016, a Federal Bureau of Investigation (FBI) official requested a database search from 23andyou.com, a commercial service that "collects and analyzes DNA" to

provide customers personal information about their "genetic makeup," "ethnic background," and "certain genetic conditions," among other intimate details. R. at 7. The FBI official requested that a 23andyou.com employee, who was a former FBI agent, search the service's database for individuals in the Washington, D.C. area with Ashwells, a rare genetic disease affecting one in 100,000 individuals. *Id.*

This request resulted from a sole anonymous tip regarding a conversation overheard at a bar on August 21, 2016. R. at 6–7. The anonymous tipster overheard a female patron discussing why her predisposition for Ashwells prevented her from quitting her job. R. at 6. Because most Ashwells patients die within ten years of diagnosis, the female implied that she needed her employer's insurance to one day afford intensive treatment. *Id.* Based solely on this overheard conversation from an anonymous third party, the FBI requested 23andyou.com perform a warrantless search of American citizens' genetic information. *Id.* The former FBI agent complied, and the search results revealed that Joralemon satisfied the inquiry. R. at 7.

II. Procedural History

Petitioner Elizabeth Joralemon was charged with conspiring to commit computer intrusions in violation of 18 U.S.C. § 1030. Joralemon moved for the District Court to suppress two pieces of evidence. Joralemon argued that introduction of (1) information retained from a 23andyou.com DNA analysis, and (2) data recovered from a forensic search of her cell phone at the airport violated her Fourth Amendment right against unreasonable search and seizure. The District Court denied both motions. At trial, Joralemon also argued that Federal Rule of Evidence 106 should apply to a hearsay statement made by Rapstol to the testifying investigator. The District Court denied Joralemon's objection. Joralemon appealed the District Court's rulings to the United States Court of Appeals for the Fourteenth Circuit.

The Fourteenth Circuit affirmed the District Court's finding and held that the introduction of the phone data and DNA did not violate Joralemon's Fourth Amendment right against unreasonable search and seizure. The Fourteenth Circuit also affirmed the District Court's ruling that Rapstol's statement not be admitted under Rule 106. Joralemon appeals these rulings and upon grant of *writ of certiorari* this court reviews the decision of the Fourteenth Circuit *de novo*.

SUMMARY OF THE ARGUMENT

This Court should reverse the Fourteenth Circuit's decision because (1) Joralemon's genetic information is inadmissible because the FBI did not obtain a warrant prior to accessing her private information; (2) the forensic search of Joralemon's phone is inadmissible because the customs officer did not have reasonable suspicion to conduct a forensic search on her phone; and (3) Rapstol's statement must be introduced in its entirety under Federal Rule of Evidence 106.

First, the Fourth Amendment safeguards individual privacy against arbitrary Government invasions. As long as someone strives to keep something private and that expectation of privacy is reasonable, that information is protected. This Court has made clear that some information is so private and so unique that this expectation remains reasonable despite an individual disclosing it to a third-party. DNA analysis which reveals information for non-identification purposes, such as genetic or hereditary traits, falls under this rubric. Based on a Founding-era understanding of the degree of privacy shielded by the Fourth Amendment, the government cannot weaponize new technology as used by 23andyou.com to circumvent Joralemon's Fourth Amendment right.

Second, the Fourth Amendment guarantee of freedom from unreasonable search and seizure extends to the digital data stored on citizens' electronic devices. Despite the "border search exception" relieving officers from having to secure a warrant to conduct routine searches at the border, this Court should require reasonable suspicion for forensic analyses of electronic

devices due to the immense amount of personal information that can be contained on such devices. Additionally, forensic searches of electronic devices should be deemed "non-routine," automatically subjecting them to the reasonable suspicion standard. Accordingly, this Court should reverse the lower court's decision denying the motion to suppress the forensic analysis results from Joralemon's cellphone.

Third, Federal Rule of Evidence 106 is a partial codification of the common law rule of completeness, which allows a party to admit portions of already admitted evidence in order to give the fact finder context to interpret the admitted portion. Courts have extended Rule 106 through Rule 611(a) to apply to oral statements. Courts have further applied a fairness standard to evaluate whether incomplete oral statements should be admitted to prevent parties from misleading juries by introducing evidence without proper context.

Moreover, in order for it to properly function, Rule 106 must be interpreted broadly to allow for the admission of otherwise inadmissible evidence, such as hearsay. Rule 106's language and its placement in the Federal Rule of Evidence call for a broad reading of the rule that allows for admission of inadmissible hearsay statements. Finally, Rule 106 must be construed broadly in criminal cases to protect criminal defendants' Fifth Amendment right against self-incrimination.

ARGUMENT

I. Law Enforcement Must Obtain A Warrant To Secure Joralemon's DNA Analysis From 23andyou Because Genetic Information Is Qualitatively Unique And Cannot Be Obtained By Otherwise Ordinary Measures.

Joralemon's genetic information is protected by her Fourth Amendment Constitutional right, which protects against arbitrary invasions of privacy and guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches

and seizures." U.S. Const. amend. IV. This Court has determined that when an individual intends to keep something private, and society recognizes her expectation as reasonable, then Fourth Amendment protection applies. *Smith v. Maryland*, 442 U.S. 735, 740 (1979).

This Court most recently emphasized in *Carpenter v. United States* that Fourth Amendment interpretation is not "mechanical," but that the analysis must be informed by the degree of privacy that was expected when written, especially when analyzing the doctrinal application to innovative surveillance tools. 138 S. Ct. 2206, 2213–14 (2018). Thus, no particular formula conclusively dictates which expectations of privacy are reasonable, but the interpreter should consider the following guidelines: (1) the "privacies of life" are protected against "arbitrary power," and (2) the Framers intended "to place obstacles in the way of a too permeating police surveillance." *Carpenter*, 138 S. Ct. at 2214 (citing *United States v. Di Re*, 332 U.S. 581, 595 (1948)).

This Court further highlighted that Fourth Amendment protections still apply to areas historically kept private despite the Government's growing ability to invade these areas with enhanced technology. *Carpenter*, 138 S. Ct. at 2214 (citing *Kyllo v. United States*, 533 U.S. 27, 34 (2001)). Further, this Court concluded that an individual can still enjoy Fourth Amendment protections over "encyclopedic" information he voluntarily discloses to a third party. *Carpenter*, 138 S. Ct. at 2216–17.

Joralemon's DNA carries her genetic blueprint and is the most detailed part about her as a person. Her physical composition, hereditary traits, and predispositions are encyclopedic in nature. The Founding Fathers placed Fourth Amendment protections in our Constitution to protect this kind of information from unwarranted Government intrusion. This Court should find that Joralemon's DNA, even though supplied to a third party, is protected by her Fourth

Amendment right, requiring the Government to first obtain a warrant before accessing her detailed genealogical information.

A. The court should extend *Carpenter*'s logic to DNA analysis because genetic information is qualitatively unique and intended to be kept private.

A Fourth Amendment violation occurs when "the government violates a subjective expectation of privacy that society recognizes as reasonable." *Kyllo*, 533 U.S. at 31–33. Prior to *Carpenter*, if an individual voluntarily disclosed information to a third party, she forewent any reasonable expectation of privacy regarding that information. *Smith*, 442 U.S. at 743. However, *Carpenter* marked a landmark change in the application of the third-party doctrine in holding that an individual maintains an expectation of privacy in the record of her physical movements as captured through cell-site location information (CSLI) despite disclosing the record to a third-party. *Carpenter*, 138 S. Ct. at 2217. This Court specifically declined to extend the third-party application as described in *Smith* and *United States v. Miller* to cover novel circumstances involving advanced technology such as CSLI, keeping in mind "Founding-era understandings" of the Fourth Amendment. *Id.* at 2212–17; *United States v. Miller*, 425 U.S. 435 (1976).

Specifically, this Court reasoned that because of the "unique nature of [CSLI], the fact that the information is held by a third party does not by itself overcome the user's claim to Fourth Amendment protection." *Carpenter*, 138 S. Ct. at 2217. In forming its opinion, the Court relied heavily on Justice Sotomayor's concurrence from *United States v. Jones*, where she explained that the unique attributes of GPS surveillance are relevant to the third-party doctrine analysis precisely because of the information one can infer from tracking someone's movements. *United States v. Jones*, 565 U.S. 400, 416 (2012) (Sotomayor, J., concurring) (attachment of GPS device to defendant's vehicle and monitoring subsequent movements on public roads constituted a "search" under the Fourth Amendment because GPS information contains inferable details of

an individual's life such as political affiliations, religious beliefs, sexual habits, and other personal information.).

Thus, in *Carpenter*, the Court reasoned that because CSLI, like GPS information, is "detailed, encyclopedic, and effortlessly compiled," a person maintains a reasonable expectation of privacy with respect to that information despite giving it to her phone provider. *Carpenter*, 138 S. Ct. at 2216–2217. Allowing law enforcement warrantless access to such sensitive content contravenes Americans' "privacies of life," which the Fourth Amendment aims to protect. *Id.* at 2212 (citing *Riley v. California*, 134 S. Ct. 2473, 2495 (2014)). Therefore, an individual can claim a "justifiable," "reasonable," and "legitimate expectation of privacy" with respect to "encyclopedic" information even when shared with a third party.

Here, Joralemon finds herself in a similar position as the defendant in *Carpenter*. The Government is attempting to circumvent her Fourth Amendment protections via an outdated application of the third-party principle that this Court most recently discarded. Joralemon's genetic information is inherently "detailed, encyclopedic, and effortlessly compiled," because DNA, by definition, carries "genetic information for the transmission of inherited traits," which contains Joralemon's fundamental and distinctive characteristics. Encyclopedia Britannica, *DNA*, (2018). As noted in the Record, the DNA test done by 23andyou.com involves the collection and analysis of "DNA in order to tell customers about their genetic makeup including their ethnic background and some information about certain genetic conditions." R. at 7. Allowing Governmental intrusion into such fundamentally personal information violates Joralemon's most basic "privac[y] of life," that is, her person.

Moreover, the proliferation of commercial services like 23andyou.com could allow law enforcement to "effortlessly compile" citizen's biological data with a simple e-mail to the

provider. Here, 23andyou.com was willing to potentially search thousands of customers' DNA for the FBI. R. at 7. Although, it only returned one result here, this could set a dangerous precedent because in the future, a similar search could return 1,000 individuals' DNA.

Not only is DNA in and of itself "encyclopedic," but law enforcement can infer vast amounts of information from the analysis performed by 23andyou.com. Just as the Government can infer someone's political or religious affiliations from her geolocation, it can also infer and even predict her behavior based off her genetic information. Ashwells is a rare degenerative neurological disease. R. at 6. And although the record is silent on most of the disease's details, Joralemon will likely adjust her life around medical protocol, as already evidenced by her need to remain employed at an unfulfilling job. *Id.* Additional adjustments might entail changes in diet, exercise, environment, regular doctor visits, and any other changes in her conduct that result from a rare diagnosis. Thus, DNA analysis equips law enforcement with an arsenal of past, present, and future personal information regarding an individual based off her DNA.

The Government incorrectly argues that the instant case reflects the circumstances in *Smith v. Maryland*, where the Court held that the Government's use of a pen register to capture the numbers defendant dialed did not constitute a Fourth Amendment "search" because the defendant voluntarily gave this information to his telephone company, foregoing any reasonable expectation of privacy as to the numbers. 442 U.S. at 745–46. However, this Court noted an important limitation of the information obtained in *Smith*, that is, that law enforcement cannot draw any conclusions from the numbers besides that they were dialed. *Id.* at 741; *see also Miller*, 425 U.S. 435, 437 (holding no reasonable expectations of privacy existed in an individual's bank records because banks are third parties to which the defendant disclosed affairs to when he opened his bank account).

There cannot be any serious argument that Joralemon's detailed personal biological data is comparable to the discrete phone numbers and bank records as described in *Smith* and *Miller*. Coded DNA carries vast amounts of intrinsically personal information. It is inherently private and expected to be kept private by virtue of its composition.

The Government also erroneously contends that *Carpenter*'s logic cannot extend to Joralemon's case because it is limited in scope and cites *Palmieri v. United States*, 896 F.3d 579 (D.C. Cir. 2018) as an example. In *Palmieri*, the court held that the Government's access to defendant's Facebook page via the defendant's Facebook friend who had access to his page did not violate his Fourth Amendment protection. *Id.* at 588. However, unlike in *Palmieri*, Joralemon sent her DNA to 23andyou.com, a commercial provider, and did not post her results publicly on a social media site. Facebook's entire purpose is to share personal information with those online and in public—to third parties. This stands in stark contrast to what Joralemon was trying to accomplish when asking for her DNA to be tested for genetic predispositions.

B. Joralemon's DNA analysis is an investigative tool not used for identification purposes because it reveals genetic information.

The majority in *Carpenter* emphasized the long-standing expectation of privacy in one's physical movements. Likewise, there is long-standing jurisprudence recognizing the expectation of privacy with respect to one's DNA. *Schmerber v. California*, 384 U.S. 757, 767 (1966) ("[C]ompulsory administration of a blood test . . . plainly involves the broadly conceived reach of a search and seizure under the Fourth Amendment."); *Maryland v. King*, 569 U.S. 435, 435 (2013) ("[U]sing a buccal swab inside a person's cheek to obtain a DNA sample is a search under the Fourth Amendment.") In *King*, law enforcement's DNA collection and subsequent analysis of an arrestee was constitutional, because it took place during a routine booking

procedure *after* his arrest. *Id.* at 440. Although the majority of the *King* analysis stems from this vital difference, parts of the opinion merit discussion.

In *King*, this Court emphasized that because the post-arrest analysis performed involved *noncoding* parts of DNA that do not reveal *genetic traits* of the arrestee, only identification information was collected, and no Fourth Amendment violation existed. *Id.* at 464–65. This Court then continued, "if in the future police analyze samples to determine, for instance, an arrestee's predisposition for a particular disease or other hereditary factors not relevant to identity, that case would present additional privacy concerns not present here." *Id; see also Boroian v. Mueller*, 616 F.3d 60, 66 (1st Cir. 2010) (discussing DNA profile used for identification "purposely selected because [it is] not associated with any known physical or medical characteristics and do[es] not control or influence the expression of any trait.")[1] (citing *United States v. Weikert*, 504 F.3d 1, 3–4 (1st Cir. 2007)).

To be clear, law enforcement officials would have been required to first obtain a warrant before directly collecting Joralemon's DNA, because it would constitute a physical invasion of privacy that is constitutionally protected. Next, even if Joralemon was already in custody when the FBI obtained her test results, the test performed involved *coding* parts of Joralemon's DNA that revealed her *genetic traits*. R. at 7. Thus, as in *King*, the analysis "reveal[s] information beyond identification." Moreover, because Joralemon's DNA was tested to determine a "predisposition for a particular disease," this case presents additional privacy concerns predicted in *King*.

[1] The First Circuit also noted that "[f]uture government uses of the DNA profiles in CODIS could potentially reveal more intimate or private information about the profile's owner and depart form the uses for which the profiles were originally lawfully created and retained." *Id.* at 69. The Government in this case also conceded that, had they performed new analysis of the DNA, it would "absolutely implicat[e] . . . [the] Fourth Amendment . . ." *Id.* at 70.

Another vital part of the Court's reasoning in *King* was the consideration of the limits placed on law enforcement's use of the DNA analysis. The statute that allowed routine buccal swabbing had specific protections against further invasions of privacy. *Id.* at 465. The Act strictly prohibited the collection and storage of DNA unrelated to identification. *Id.*

Here, no comparable safeguards exist preventing law enforcement from using Joralemon's genetic information in various ways, including learning her ethnic background, familial ties, inferring personal information, and predicting behavior as listed above. By collecting Joralemon's DNA analysis without a warrant, the Government is adding a "valuable weapon in [its] law enforcement arsenal" as an investigative tool used for everything but identification of a suspect. *Id.* at 480 (5–4 decision) (Scalia, J., dissenting).[2]

Because Joralemon's DNA analysis contained private and inferable details inherent to her person, and because the FBI used her analysis for non-identification purposes, her DNA is qualitatively unique in nature and *Carpenter* must apply.

C. Warrantless capture of DNA analysis is barred by the Founding-era understanding of the Fourth Amendment.

This Court's paradigmatic case *Katz v. United States* marked a monumental shift in Fourth Amendment understanding. 389 U.S. 347, 351–52 (1967) (discarding a property-based standard in holding that the Fourth Amendment "protects people, not places."). Since then, this Court has continuously underscored the need to analyze Fourth Amendment application in the context of what the Framers intended to protect, especially in light of advancing technology. *Carpenter*, 138 S. Ct. at 2214; *Jones*, 565 U.S. at 415 ("[T]he same technological advances that have made possible nontrespassory surveillance techniques will also affect the Katz test by

[2] The dissenting opinion, written by Justice Scalia and joined by Justices Ginsburg, Sotomayor, and Kagan, argued that the majority was wholly wrong in its holding that DNA is comparable to identification tools such as fingerprints or photographs. *Id.*

shaping the evolution of societal privacy expectations.") (Justice Sotomayor, concurring); *Kyllo*, 533 U.S. at 34 ("It would be foolish to contend that the degree of privacy secured to citizens by the Fourth Amendment has been entirely unaffected by the advance of technology.").

More specifically, law enforcement cannot utilize technology that the general public lacks in order to explore an individual's private information that would otherwise be unattainable without a warrant. *Kyllo*, 533 U.S. at 34–35. In *Kyllo*, this Court held that the Government's use of a thermal imaging device to detect heat from the defendant's home violated the Fourth Amendment. *Id.* This Court reasoned that to allow law enforcement to weaponize such technology for purposes of invading a home would "erode the privacy guaranteed by the Fourth Amendment." *Id.* at 34.

It was precisely this line of thought that led to the decision in *Carpenter* when the Court considered the accuracy of "sophisticated systems" such as CSLI that were already in place or under development. *Carpenter*, 138 S. Ct. at 2217–19. Moreover, many courts have already predicted, and even conceded, that DNA analysis revealing genetic information violates the Fourth Amendment. *King*, 569 U.S. at 465; *Boroian*, 616 F.3d at 66. Therefore, allowing warrantless access to an individual's DNA analysis eviscerates the "degree of privacy against government that existed when the Fourth Amendment was adopted." *Kyllo*, 533 U.S. at 28.

Here, the Government is weaponizing advanced technology in exactly the way that this Court has specifically forbidden. The FBI was aware that sites like 23andyou.com have access to citizens' DNA, and the FBI knew that the site had analyzed that DNA which resulted in the revelation of private, genealogical information helpful to its investigation. And the FBI knew that it could not directly access that information without a warrant, which the FBI did not have the requisite probable cause to legally obtain. Therefore, this Court must conclude that the

Government first obtain a warrant before accessing Joralemon's genetic information in order to preserve the basic tenants of our Fourth Amendment.

II. Under The Fourth Amendment, The Government Must Have Reasonable Suspicion To Perform A Forensic Search Of An Electronic Device Seized At The United States Border.

The Fourth Amendment of the United States Constitution sets the foundation for one of American citizens' most important freedoms—the right to be free from unreasonable searches and seizures. U.S. CONST. amend. IV. Despite this guarantee, courts have consistently recognized the need for heightened security measures at the border, and accordingly have carved out a narrow "border search exception" to the probable cause standard guaranteed in the Fourth Amendment. *United States v. Ramsey*, 431 U.S. 606, 617 (1977). For Fourth Amendment purposes, courts have determined that an airport is the "functional equivalent" of a border, and that the exception therefore applies at airports as well. *Almeida-Sanchez v. United States*, 413 U.S. 266, 272–73 (1973). However, this exception has come to know many limits, and it is these limits that make the forensic search of Elizabeth Joralemon's cell phone unconstitutional.

Reasonable suspicion is a lower level of justification to incite a search than probable cause and has been defined as "a particularized and objective basis for suspecting the particular person stopped of criminal activity." *United States v. Cortez*, 449 U.S. 411, 417–18 (1981). The Ninth Circuit has eloquently articulated the reason behind requiring reasonable suspicion for forensic searches of electronic devices at the border: "[i]nternational travelers certainly expect that their property will be searched at the border. What they do not expect, is absent some particularized suspicion, agents will mine every last piece of data on their devices or deprive them of their most personal property for days (or … weeks or even months)." *United States v. Cotterman*, 709 F.3d 952, 967 (9th Cir. 2013) (en banc).

The risk of unconstitutional invasions of privacy is at its zenith when indefinite digital data is at issue. *Riley*, 134 S. Ct. at 2493. This Court's landmark opinion on digital privacy rights held that police officers could generally not search information on an arrestee's seized cellphone as an incident of her arrest without a warrant. *Id.* While clarifying that it was permissible for arresting officers to inspect the physical aspect of an arrestee's phone to ensure the phone could not be used as a weapon, this Court emphasized that the ability to do so did not translate to permission to inspect digital data. *Id.* at 2484.[3] These heightened privacy concerns have led courts to hold that the right to examine a suspect's cellphone or digital data is only permissible upon reasonable suspicion. *United States v. Kolsuz*, 890 F.3d 133, 136 (4th Cir. 2018).

Additionally, this Court has held that when advanced search methods are employed that are outside the realm of general public awareness, warrantless intrusion via such technology is unconstitutional. *Kyllo*, 533 U.S. at 34. In Kyllo, this Court further emphasized that when the government uses technology that the general public is unfamiliar with to gain access to a constitutionally protected area such as the home, the intrusion is per se unreasonable and therefore requires a warrant. *Id.* Justice Scalia proceeded to note that regardless of the magnitude of the privacy invasion in the case at hand, "we must take the long view, from the original meaning of the Fourth Amendment." *Id.*

The forensic analysis of Joralemon's cellphone was unconstitutional because reasonable suspicion is required for electronic devices seized at the border, which the government concedes it lacked. Like the defendant in *Riley*, Joralemon was subjected to an intensive search of boundless amounts of personal and revealing information when her phone was unlawfully confiscated.

[3] "Digital data stored on a cell phone cannot itself be used as a weapon to harm an arresting officer or to effectuate the arrestee's escape. Law enforcement officers remain free to examine the physical aspects of a phone to ensure that it will not be used as a weapon … . Once an officer has secured a phone and eliminated any physical threats, however, data on the phone can endanger no one." *Id.*

Moreover, Joralemon's situation is comparable the defendant in *Kyllo*, whose privacy was invaded when he was in the confines of his own home. Similarly, Joralemon not only had data saved in the constitutionally protected area of her cellphone, but she also exercised additional precaution by downloading TextApp to ensure her privacy and security. R. 10. The polices' use of thermal-imaging technology in *Kyllo* is analogous to the forensic cellphone examination at hand here because both search mechanisms involved technology that is beyond the scope of general public awareness. Although these methods are sometimes a legally permissible—or even necessary—means of conducting a search, there must at least be some level of individualized suspicion to justify subjecting someone to intensive privacy violations that the general public is likely not even aware of.

A. The forensic analysis of Joralemon's cellphone was a non-routine search, subject to the reasonable suspicion requirement.

In order for the Government to be relieved of the duty to make a showing of reasonable suspicion when conducting a search at the border, the search must be "routine," rather than non-routine or intrusive. *United States v. Ramsey*, 431 U.S. 606, 619 (1977); *Almeida-Sanchez*, 413 U.S. at 272 (declaring that the power to exclude aliens from the country "can be effectuated by routine inspections and searches of individuals or conveyances seeking to cross our borders."); *Kolsuz*, 890 F.3d at 136.

In *Kolsuz*, customs agents arrested the defendant at the Washington-Dulles International Airport upon discovering firearm parts in his luggage. *Id.* After the arrest, the agents confiscated the defendant's smartphone and sent it offsite for a forensic examination—a process that took over one month and produced a report in excess of 900 pages with data from defendant's cellphone. *Id.* The court determined that the forensic examination fell within the border search exception, but was a non-routine search, thus requiring a level of individualized suspicion. *Id.* However, this

requirement was satisfied by the firearm parts in the defendant's luggage that indicated he was possibly attempting to export illegal firearms, and therefore the forensic search of the phone was constitutional. *Id.* at 143.

Routine searches are reasonable and therefore constitutional by default when conducted at the border. *Ramsey*, 431 U.S. at 622. In *Ramsey*, a customs agent seized a suspicious piece of international mail and searched the package, acting pursuant to a statute that allows authorized officers to search any envelope "in which he may have a reasonable cause to suspect there is merchandise which was imported contrary to law." *Id.* at 611 (citing 19 U.S.C. § 482). The agents' search led them to find narcotics within the envelope, and to ultimately arrest and convict the recipient defendants for narcotics possession. *Id.* at 609.

This Court held that routine searches, such as the screening of international mail at issue here, do not violate the Fourth Amendment because the plenary border-search authority is "reasonable" as required by the constitution, even without probable cause or a warrant. *Id.* at 622; *see also United States v. Montoya de Hernandez*, 473 U.S. 531, 541 (1985) (holding that the warrantless search of defendant's alimentary canal was constitutional because the customs officers had reasonable suspicion to believe that she was smuggling drugs via the canal based on her recent travel activity, peculiar travel items, and other odd behavior that is common among such "balloon swallowers"). *United States v. Flores-Montano*, 541 U.S. 149, 153 (2004) (holding that although the complex balancing of "routine" versus "intrusive" searches is often appropriate, that balancing is inapplicable to cars crossing the border because of both the United States' paramount interest in protecting the border, as well as the large volume of highly dangerous contraband or persons that a vehicle could contain).

However, even the bounds of routine searches have limits. This Court has repeatedly prohibited routine searches based on inappropriate factors and too attenuated from the border itself. *Almeida-Sanchez*, 413 U.S. at 273; *United States v. Brignoni-Ponce*, 422 U.S. 873, 885–86 (1975) (holding that border patrol agents acted impermissibly when they stopped the defendant's vehicle at the United States-Mexico border solely because of his Mexican descent, and that the officers' reliance on this single factor did not justify stopping the vehicle).

Additionally, in *Almeida-Sanchez*, this Court held that the defendants' constitutional rights were violated when they were stopped twenty miles north of the United States-Mexico border. 413 U.S. at 273. This Court refused to apply the border search exception and reasoned that "[t]hose lawfully within the country . . . have a right of free passage without interruption or search, unless a competent official authorized to search has probable cause for believing their vehicles are carrying contraband or illegal merchandise." *Id.* at 274–75 (quoting *Carroll v. United States*, 267 U.S. 132, 154 (1925)); *see also United States v. Touset*, 890 F.3d 1227, 1230 (11th Cir. 2018) (holding that a warrantless forensic examination of the defendant's laptops and external hard drives that revealed child pornography was permissible because the search was supported by reasonable suspicion, based on the defendant's suspicious payments to an entity which had a record of exchanging child pornography and that was from a country with high rates of sex tourism and child pornography).

The forensic examination of Joralemon's cellphone was not a routine search, but rather was non-routine and intrusive, and therefore unconstitutional because there was no reasonable suspicion. Like the non-routine forensic examination of the defendant's phone in *Kolsuz*, the search of Joralemon's phone required reasonable suspicion. However, the customs agent here had no reasonable suspicion to subject Joralemon to a forensic analysis of her smartphone, especially

considering she had successfully cleared a luggage screening and body x-ray, whereas the officers in *Kolsuz* were justified in confiscating the defendant's phone because of the firearms parts that were found in his luggage. R. at 5.

In contrast to the international mail that was searched in *Ramsey*, which could have only contained a finite amount of revealing information about the defendant recipient, the forensic analysis of Joralemon's phone created the opportunity for infinite amounts of Joralemon's personal information to be discovered. R. at 10. Moreover, the defendants in *Ramsey* voluntarily decided to transport their packages via international mail, whereas Joralemon's decision to have her cellphone on her while returning from international travel can hardly be considered a "voluntary decision"—courts have consistently recognized that such devices are necessities of modern travel.

The unjustified seizure of Joralemon's phone for forensic examination is analogous to the unconstitutional searches in both *Almeida-Sanchez* and *Brignoni-Ponce*. Like the defendant in *Almeida-Sanchez*, who was searched once well within the border, Joralemon gave the officers no indication that she was carrying contraband, and the suspicionless search of her devices was a grave privacy violation. Similarly, like the defendant in *Brignoni-Ponce* who was unjustifiably stopped and searched solely because of his Mexican descent, Joralemon's cellphone was unlawfully searched because the forensic analysis was nonroutine, and the officers did not have any indicia of suspicion to support the forensic analysis. And finally, the constitutionality of the forensic analysis of Joralemon's phone greatly differs from the search in *Touset* because unlike the defendant in *Touset* who had suspicious financial transactions linked to an account associated with child pornography, absolutely no suspicious financial transactions were linked to Joralemon's account. R. at 10.

B. The forensic analysis of Joralemon's phone was too attenuated from the original search conducted at the airport, subjecting the analysis to the reasonable suspicion requirement of the "extended border search doctrine."

Despite the circuit split on the level of suspicion required for the border search exception, all of the circuit courts which recognize the "extended border search exception" require reasonable suspicion when the search at issue stems from a routine border search, but then becomes attenuated in time, place, or circumstance from the original search. *United States v. Stewart*, 729 F.3d 517, 525 (6th Cir. 2013) (cert. denied) (emphasizing that there is a point at which the person or item's relationship with the border becomes so attenuated that customs officials no longer retain the right to conduct a suspicion-less search or detention of a traveler's person or effects); *United States v. Yang*, 286 F.3d 940, 948–49 (7th Cir. 2002).

In *Stewart*, customs agents randomly approached the defendant at the airport upon his return from Japan, and because of his confrontational demeanor, the agents took him to a secondary inspection area and obtained the two laptops he had in his possession. 729 F.3d at 520–21. One's battery was dead at the time, but the other laptop revealed child pornography at an initial screening for contraband which merely entailed scrolling through readily available content. *Id.* at 521. Upon the finding of child pornography, both laptops were then sent offsite for a forensic examination. *Id.* The Sixth Circuit held that although the extended border search exception does require reasonable suspicion, the forensic examination of the defendants' laptops was not an extended search; rather, the initial screening of the laptops was a continuation of a permissible routine search, and the results from that screening provided the probable cause necessary to secure a warrant to conduct the forensic examination. *Id; see also Yang*, 286 F.3d at 948–49 (holding that the warrantless search of the defendant's luggage at a different terminal after clearing a routine search at customs was reasonable under the extended border search doctrine, because the officers

were reasonably certain that the defendant was involved in criminal activity based on the conjunction of his traveling companion being caught with a massive amount of drugs in tow, his previous evasion from authorities at the airport, and his travel itinerary from a source country for opium to a known Midwest opium hub).

The off-site extensive forensic analysis of Joralemon's cellphone qualifies as an extended border search, and accordingly required reasonable suspicion. There are similarities between the defendant in *Stewart* and Joralemon. Both defendants were stopped at a United States airport while returning from another country and had no contraband apparent in their belongings, but instead were subjected to their electronic devices being sent off for an unknown amount of time for a forensic analysis. R. at 5. However, the difference between the defendant in *Stewart* and Joralemon is critical—upon an initial screening of readily apparent context on Stewart's phone, the customs agents were able to see child pornography, which incited the suspicion required for a warrant for the forensic examination. In contrast, not only was no contraband apparent from Joralemon's device, but she even cleared a luggage screening and body x-ray. *Id.*

Moreover, the officers who conducted the permissible extended border search of the defendant's luggage in *Yang* had reasonable suspicion to do so based on numerous factors, ranging from the defendant's prior destination and the drugs found on his traveling companion. In contrast, Joralemon was merely returning from a family vacation and had no contraband on her person, nor on the person of any travel associates. R. at 5.

C. The inevitable discovery doctrine is inapplicable because of the private nature of the application that Joralemon used for her messages.

If the Court agrees that the forensic analysis of Joralemon's cellphone was impermissible due to the lack of reasonable suspicion, the Government will likely contend that the results of the search are still admissible under the doctrine of inevitable disclosure. This doctrine carves out a

narrow exception to the bar on evidence gained through unlawful searches and allows the Government to introduce such evidence if it can "show, by a preponderance of the evidence, that the evidence inevitably would have been discovered through lawful means." *Elliot v. State*, 10 A.3d 761, 774 (Md. 2010).

The inevitable discovery doctrine does not apply to the TextApp conversations revealed from the forensic analysis of Joralemon's phone because of the uniquely private nature of the app. The app automatically deleted conversations after thirty days and encrypted all currently existing messages, which would have prevented the messages from still being on Joralemon's phone by the time the government was able to conduct a search warrant. R. at 11. If this Court were to allow the historically very narrow exception of the inevitable disclosure doctrine to apply in this case, it would be going against the precedent set forth in *Riley*, recognizing the extreme invasion of privacy risks that searches of electronic devices pose. *Riley*, 134 S. Ct. at 2489.

III. Rapstol's Additional Statements Are Admissible Under The Rule Of Completeness, Which Transcends Hearsay Inadmissibility.

The rule of completeness is a common law doctrine that allows the party "against whom a part of an utterance has been put in" to "complement it by putting in the remainder, in order to secure for the tribunal a complete understanding of the total tenor and effect of the utterance." *Beech Aircraft Corp. v. Rainey*, 488 U.S. 153, 171 (1988). Functioning as a defensive shield against deceitful evidence, the rule of completeness prevents parties "from misleading the jury by allowing into the record relevant portions of the excluded testimony which clarify or explain the part already received." *United States v. Wilkerson*, 84 F.3d 692, 696 (4th Cir. 1996). Additionally, in order to function properly, the rule of completeness must transcend rules of inadmissibility, including hearsay. *United States v. Bucci*, 524 F.3d 116, 133 (1st Cir. 2008).

Therefore, allowing the Government to exclusively present the selection of Rapstol's statement that inculpates Joralemon while refusing to allow the admission of the second half of the statement misleads the jury. In the interest of fairness this Court should hold that the Rapstol's additional statements are admissible under the rule of completeness, which should be read broadly to transcend rules of inadmissibility.

A. The entirety of Rapstol's oral statement is admissible under the rule of completeness.

Rule 106 of the Federal Rules of Evidence partially codifies the common law rule of completeness by providing: "If a party introduces all or part of a writing or recorded statement, writing or recorded statement—that in fairness ought to be considered at the same time." Although Rule 106 applies to writings and recorded statements, courts have held that the "rule of completeness embodied in Rule 106 is 'substantially applicable to oral testimony,' as well by virtue of Fed. R. Evid. 611(a), which obligates the court to 'make the interrogation and presentation effective for the ascertainment of the truth.'" *United States v. Mussaleen*, 35 F.3d 692, 696 (2d Cir. 1994). Accordingly, the "rule of completeness applies to written statements via Rule 106, and to oral statements through Rule 611(a)." *United States v. Pacquette*, 557 Fed. Appx. 933, 936 (11th Cir. 2014).

Courts have extended the fairness standard in Rule 106 to oral statements. *See Id.* at 936; *United States v. Lopez-Medina*, 596 F. 3d 716, 734 (10th Cir. 2010); *United States v. Shaver*, 89 Fed. Appx. 529, 532 (6th Cir. 2004). In the *United States v. Li*, the Seventh Circuit established a four-part test to determine whether a disputed portion of an oral statement must be admitted under the rule of completeness. 55 F.3d 325, 330 (7th Cir. 1995). This four-part test provides that the trial court should consider whether (1) it explains the admitted evidence, (2) places the

admitted evidence in context, (3) avoids misleading the jury, and (4) insures fair and impartial understanding of the evidence. *Id.*

Furthermore, "[u]nder the Rule 106 fairness standard, the exculpatory portion of the defendant's statement should [be] admitted if it was relevant to an issue in the case and necessary to clarify or explain the portion received." *United States v. Range*, 94 F.3d 614, 621 (11th Cir. 1996). An analysis of the admitted testimony is required to determine whether the remainder of a witness's statement is necessary to clarify or explain the admitted portion requires analysis of the admitted testimony. *Pacquette*, 577 Fed. Appx. at 937. In *United States v. Haddad*, the defendant, who was on trial for knowingly possessing a semi-automatic pistol, told a local police officer that although marijuana found near the gun was his, he did not know about the weapon. 10 F.3d 1252, 1258 (7th Cir. 1993). The Seventh Circuit held that the defendant's exculpatory remarks were admissible in the interest of completeness and context because they were "part and parcel of the very statement a portion of which the Government was properly bringing before the jury." *Id.; see also United States v. Pacquette*, 577 Fed. Appx. 933, 937 (11th Cir. 2014) (finding that the Rule 106 fairness standard applied to a police officer's testimony that was "technically accurate, but incomplete" when the officer testified about the defendant claiming ownership of a bag but excluded the defendant's statement that the cocaine inside of the bag did not belong to him.").

First, the missing portion of Rapstol's statement, under the four-part test established in *Li*, must be admitted under the rule of completeness because (1) it explains Rapstol's statement, (2) it places Rapstol's statement in context, (3) it avoids misleading the jury, and (4) its admission insures fair and impartial understanding of Rapstol's admitted statement. Without the admission of the disputed statement—specifically Joralemon's response to Rapstol clearly stating she had

no idea what was in the briefcase—the admitted portion of the testimony implicates that Joralemon had the requisite mens rea to "knowingly and willfully" conspire to commit computer intrusion. R. at 3, 9. The exclusion of Joralemon's exculpatory sentence misleads the jury members charged with determining whether Joralemon had the requisite mens rea to commit the crime for which she is being tried. To rectify the government's evidentiary manipulation, the rest of Rapstol's statements must be admissible through the rule of completeness.

Furthermore, Rapstol's oral statement that Joralemon said she did not know what was in the briefcase is comparable to the statements at issue in *Haddad* and *Pacquette* where exculpatory oral statements were found admissible under Rule 106's fairness standard. In *Haddad*, the defendant was also charged with a crime that required "knowledge." By excluding the officer's testimony that the defendant did not know about the weapon, the government built its case by misleading the jury.

Here, the government is also trying to build its case by misleading the jury through excluding Joralemon's exculpatory statements that she had no knowledge of the briefcase's content. As in *Haddad*, the admission of Joralemon's exculpatory statement is necessary in the interest of completeness and context because it is "part and parcel" of the "very statement" that the Government is bringing before the jury.

Additionally, the fairness standard applies to Joralemon's exculpatory statement similarly to how it applied in *Pacquette* because, although the police officer's statement about what Rapstol told him is "technically accurate," the already admitted statement is "incomplete" and thus, misleads the jury. Without the admission of the exculpatory statement, the jury does not know that Joralemon did not have the requisite mens rea to commit the crime that she is charged with and thus, the Government is misleading the jury members to wrongfully convict Joralemon.

In this instance, as in *Haddad* and in *Pacquette*, the application of the rule of completeness rectifies this injustice.

Moreover, even if this Court finds that the fairness standard in Rule 106 should not be extended to oral statements, in *Beech Aircraft Corp.*, this Court recognized that the common law rule of completeness continues to operate independently from its partial codification in Rule 106. 488 U.S. at 171–72. Thus, this Court's precedent is clear that the common law rule of completeness independently authorizes the admission of the second half of the Rapstol's statement. Therefore, in the interest of fairness, Joralemon's exculpatory statement to Rapstol must be admissible under either the Rule 106 through Rule 611(a) or through the common law rule of completeness.

B. To properly function, the Rule of Completeness transcends inadmissibility rules which allows Rapstol's hearsay statement to be admissible in its entirety.

Narrowly reading the rule of completeness undermines its purpose of assisting the fact finder in correctly interpreting the incomplete statement. The Advisory Committee noted that Rule 106 "is based on two considerations. The first is to correct a misleading impression created by taking matters out of context. The second is the inadequacy of repair work when delayed to a point later in the trial." Fed. R. Evid. 106 advisory committee's note. To fulfill these considerations, Rule 106 "explicitly changes the normal order of proof in requiring that such evidence must be 'considered contemporaneously' with the evidence already admitted." *United States v. Sutton*, 801 F.2d 1346, 1368 (D.C. Cir. 1986). Thus, the rule of completeness "may be invoked to facilitate the introduction of otherwise inadmissible evidence." *Bucci,* 524 F.3d at 133; *see also United States v. Houlihan*, 93 F.3d 1271, 1283 (1st Cir. 1996) ("Rule 106 can serve

its proper function only if the trial court from time to time if the introduction of some otherwise inadmissible evidence.").

Furthermore, the very structure of the Federal Rules of Evidence demonstrates that Rule 106's reach extends beyond merely the order of proof. *Sutton*, 801 F.2d at 1368. Rule 106 is not found in Rule 611, which governs the "Mode and Order of Interrogation and Presentation." *Id.* Instead, Rule 106 is located in Article I of the Federal Rules of Evidence, "which contains rules that generally restrict the manner of applying the exclusionary rules." *Id*. (citing C. Wright & K Graham, Federal Practice and Procedure: Evidence § 5078, at 376 (1977 & 1986 Supp.)).

Moreover, Rule 106's language, specifically the exclusion of the proviso "except as otherwise provided by these rules," demonstrates that the drafters intended for the rule to be construed broadly. *Id.* "Every major rule of exclusion in the Federal Rules of Evidence contains the proviso, 'except as otherwise provided by these rules,' which indicates 'that the draftsmen knew of the need to provide for relationships between rules and were familiar with a technique for doing this.'" *Id.* (citing C. Wright & K Graham, Federal Practice and Procedure: Evidence § 5078, at 376 (1977 & 1986 Supp.)). By choosing to exclude the proviso language, the drafters of Rule 106 intended for the rule to be construed broadly within the confines of the rules purpose—preventing parties from misleading jurors. *Sutton*, 801 F.2d at 1368.

Finally, a "bar against admitting hearsay" under the rule of completeness "leaves defendants without redress" for "the government's unfair presentation of the evidence." *United States v. Adams*, 722 F.3d 788, 826–27; n.31 (6th Cir. 2013). The trumping function served by the rule of completeness is especially important in criminal proceedings when "a criminal defendant's constitutional right against self-incrimination is involved." *United States v. Quinones-Chavez*, 641 Fed. Appx. 722, 731 (9th Cir. 2016) (Fisher, J., dissenting). Courts have

recognized that criminal defendants "should not be forced to choose between leaving the government's distorted presentation unanswered and surrendering the Fifth Amendment right not to testify." *Id.* In *Simmons v. United States*, this Court held that "one constitutional right should [not] have to be surrendered in order to assert another." 390 U.S. 377, 394 (1968). Thus, the rule of completeness assists the fact finder to interpret incomplete evidence while also protecting defendant's Fifth Amendment right against self-incrimination.

Although the second half of Rapstol's statement is technically inadmissible hearsay, in order for Rule 106 to serve its function in assisting the jury to interpret the Government's already admissible statement correctly, courts must from time to time allow for the introduction of otherwise inadmissible evidence—including Rapstol's hearsay statement. Additionally, Rule 106's language and its placement in the Federal Rule of Evidence call for a broad reading of the rule that allows for admission of Rapstol's hearsay statements.

Rule 106 must also be construed broadly in criminal cases to protect criminal defendants' Fifth Amendment right against self-incrimination. Criminal defendants, including Joralemon, should not be forced to take the stand and concede this right to remedy the Government misleading the jury by introducing incomplete statements. Reading Rule 106 broadly resolves this Fifth Amendment issue while ensuring that juries are not mislead by incomplete evidence. Thus, this Court should find that Rule 106 transcends inadmissible hearsay and allows for the introduction of Rapstol's statement in its entirety.

CONCLUSION

This Court should reverse the ruling of the Court of Appeals for the Fourteenth Circuit and require the FBI to first obtain a warrant before accessing 23andyou.com's database of citizens' DNA analysis results. Additionally, this Court should hold that reasonable suspicion is required for forensic analysis of electronic devices seized at the United States Border due to the boundless amounts of personal information that is stored on these devices and the impracticality of participating in modern travel without these devices in tow.

Lastly, this Court should also admit Rapstol's statement under Rule 106 because Rule 106 should be extended to oral statements and trump hearsay inadmissibility. These holdings collectively promote a just proceeding for not only Joralemon, but all future litigants whose Fourth Amendment rights were trammeled due to the government's struggle to come to grasps with rapid technological advances.

Respectfully submitted,

Team 21
Counsel for Petitioner