No. 24-0211

IN THE

United States Court of Appeals
For the Ames Circuit

UNITED STATES OF AMERICA,

Appellee,

v.

HENRIK KAREN,

Defendant-Appellant.

ON APPEAL FROM A FINAL JUDGEMENT OF THE
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF AMES

BRIEF FOR APPELLEE

The William Thaddeus Coleman Jr. Memorial Team

Oral Argument

LEV COHEN
JUSTIN CURL
SOPHIE LI
SOPHIA LOUGHLIN
G. TERRELL SEABROOKS
SADIE STATMAN

MARCH 10, 2025
7:00 P.M.
AMES COURTROOM
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Counsel for Appellee

QUESTIONS PRESENTED

I. Under the Fourth Amendment, the border search doctrine preserves the government's right to intercept contraband. Here, a border patrol agent uncovered child pornography during a suspicionless search of the defendant's phone. Did the district court err in denying the defendant's motion to suppress the evidence of child pornography?

II. Peremptory challenges afford litigants broad discretion to exclude prospective jurors for any reason other than race or gender alone. Here, the government struck a juror after he expressed that his religious views taught him to be forgiving of wrongdoers. Did the district court clearly err in denying the defendant's *Batson* objection?

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The order of the United States District Court for the District of Ames denying Defendant-Appellant Henrik Karen's motion to suppress is reproduced on page 7 of the Joint Appendix ("JA"). This Court's procedural order is reproduced at JA-9.

STATEMENT OF JURISDICTION

Karen was charged under 18 U.S.C. § 2251(a), a federal criminal statute, giving the district court subject matter jurisdiction under 18 U.S.C. § 3231. Karen timely appealed the District Court for the District of Ames's final judgment of conviction. This Court may hear an appeal from a final judgment under 28 U.S.C. § 1291.

RELEVANT PROVISIONS

This case involves the First Amendment, Fourth Amendment, and Fourteenth Amendment to the United States Constitution, as well as the Act of July 31, 1789, Act of August 4, 1790, Act of February 18, 1793, Act of February 4, 1815, and 18 U.S.C. § 2251(a). The relevant provisions are reproduced in the Appendix.

STATEMENT OF THE CASE

Every well-functioning government has obligations to its people. Chief among them are protecting its borders and ensuring fair trials. At the border, the Executive has sweeping authority to control who and what may enter. In the courtroom, peremptory challenges help secure the constitutional guarantee of an unbiased jury. Karen proposes

doctrinal overhauls that would hamstring the government's ability to pursue these interests. Requiring reasonable suspicion for forensic cellphone searches would create a sanctuary at the border for digital contraband. Extending *Batson* to religion would imperil litigants' ability to exclude jurors whose viewpoints may compromise their impartiality. Karen provides no evidence to justify unsettling such fundamental practices. Nor could he. Agent St. John's routine search only reviewed photos, videos, and other electronic files yet uncovered the vilest form of digital contraband: child pornography. And the government's peremptory strike legitimately removed a juror who indicated his beliefs might make it hard for him to convict.

Facts

On July 11, 2022, Defendant-Appellant Henrik Karen flew from Sweden to Ames with a suitcase and a cellphone containing child pornography. JA-10. Customs and Border Protection ("CBP") Agent Roderick St. John was responsible for "conducting random border patrol searches" at Ames City International Airport. *Id.* He searched the effects of "every dozen or so passengers passing through customs" for "contraband of all kinds—drugs, weapons, illegal goods, and other things, including digital child pornography." *Id.* Karen was one of the passengers he stopped that day. JA-2.

Agent St. John searched Karen's personal effects, including his suitcase and cellphone. JA-10. After Karen unlocked his phone, Agent St. John "spent about a minute" searching the photo library for digital contraband. *Id.* He then took Karen to another room for further screening. JA-11. This included a K-9 search of Karen's luggage and a forensic search of his phone. *Id.* As was routine, CBP used a forensic data extraction tool to download a copy of Karen's photos, videos, and other electronic files. *Id.* This "enhanced screening" helps CBP "keep contraband out of the country, especially from people you otherwise wouldn't suspect." *Id.*

The forensic search took approximately one hour and uncovered child pornography without altering or damaging the contents of Karen's phone. *Id.* CBP confiscated the phone and released Karen. JA-3. A subsequent investigation extracted the metadata from the downloaded files and linked the images to Karen's residence in Ames City. *Id.* The United States arrested Karen and charged him under 18 U.S.C. § 2251(a), which prohibits the production of child pornography. JA-3–4.

District Court Proceedings

Karen moved to suppress the evidence of child pornography uncovered by the forensic search. JA-6. The district court denied Karen's motion to suppress because the border search was "justified, lawful, and

did not violate the Fourth Amendment." JA-7. Karen's case proceeded to trial.

During jury selection, the prosecutor asked Juror 17 several questions about his religious views and identity. JA-12. Juror 17 admitted that whether his religious views or identity "impact[ed] how [he] would view this case" was "a hard question to answer." *Id.* He explained that he viewed "pornography of all kinds [as] sinful," but that his "religious beliefs [taught him] to be charitable and forgiving of sins and sinners." *Id.* Ultimately, Juror 17 said that he "suppose[d] . . . [he] could be fair." *Id.* After Judge Thomas denied the government's challenge of Juror 17 for cause, the prosecutor sought to exclude him using a peremptory strike. JA-12–13.

Defense counsel lodged a *Batson* objection, claiming: "I don't think opposing counsel can properly strike someone on the basis of their religion." JA-13. The judge acknowledged the objection and asked the prosecutor for the basis of the peremptory challenge. *Id.* The prosecutor responded that he was not "striking [the] juror from the venire because of his religious identification or affiliation as a Christian." *Id.* Instead, he had concluded that Juror 17 could not be "a fair and impartial juror in this case because of what he believes about sin." *Id.*

Despite "disagree[ing]" with the prosecutor's view, the judge determined, "on that basis," that the peremptory challenge could stand

and excused Juror 17. *Id.* He observed that Karen had not "established a prima facie case of discrimination" nor shown "a pattern of discrimination here or anything of the like." *Id.* The judge also expressed doubt "that religion can form the basis for a *Batson* objection in any event." *Id.*

Following his conviction, Karen timely appealed the denial of both his motion to suppress and his *Batson* objection. JA-8.

SUMMARY OF ARGUMENT

The district court properly denied Karen's motion to suppress. History and precedent confirm the government's plenary powers to intercept contraband at the border. This is no less true for searches of digital devices. Unlike in the interior, the balance of interests at the border has long favored the government, where the traveler's expectation of privacy is correspondingly diminished. That the search was forensic is not dispositive because the manual-forensic distinction does not accurately measure the intrusiveness of a search. But even if the forensic search at issue violated the Fourth Amendment, this Court should deny suppression because Agent St. John acted in objectively reasonable reliance on binding appellate precedent.

The district court also correctly denied Karen's objection under *Batson v. Kentucky* to the government's strike of Juror 17. 476 U.S. 79 (1986). *Batson* does not reach religion because it represents a special rule addressing the total and state-sanctioned exclusion of Black

Americans and women from juries. Without a comparable showing of historical discrimination against religious groups, the essential practice of peremptory strikes should not be further limited. Even if religious affiliation could serve as the basis for a *Batson* objection, religious beliefs cannot. Beliefs receive no heightened scrutiny under the Equal Protection Clause, and extending *Batson* to beliefs risks eliminating peremptory challenges altogether. Finally, the district court did not clearly err in applying *Batson*. Despite appropriate uncertainty over whether *Batson* applied to religion, the trial judge properly proceeded through *Batson*'s three steps and found that Juror 17 was permissibly struck for beliefs about sin and forgiveness that could hinder his ability to sit in judgment of the defendant.

STANDARD OF REVIEW

Whether the Fourth Amendment prohibits suspicionless forensic searches is a question of law reviewed de novo. *United States v. Cano*, 934 F.3d 1002, 1010 n.3 (9th Cir. 2019). In reviewing the denial of a motion to suppress, appellate courts construe all facts "in the light most favorable to the prevailing party below." *United States v. Bervaldi*, 226 F.3d 1256, 1262 (11th Cir. 2000).

Batson's application to religion is a question of law reviewed de novo. *See Tolbert v. Page*, 182 F.3d 677, 680 n.5 (9th Cir. 1999). Appellate courts "accord great deference" to a district court's *Batson*

determination, reviewing for clear error. *United States v. Green*, 599 F.3d 360, 377 (4th Cir. 2010).

ARGUMENT

I. THE DISTRICT COURT CORRECTLY DENIED THE MOTION TO SUPPRESS.

"The touchstone of the Fourth Amendment is reasonableness." *Florida v. Jimeno*, 500 U.S. 248, 250 (2006). While searches in the interior typically require individualized suspicion, searches at the border are different. "The Government's interest in preventing the entry of unwanted persons and effects is at its zenith at the international border," whereas a traveler's expectation of privacy is much diminished. *United States v. Flores-Montano*, 541 U.S. 149, 152, 154 (2004).

The Supreme Court has consistently affirmed that border searches "are reasonable simply by virtue of the fact that they occur at the border." *United States v. Ramsey*, 431 U.S. 606, 616 (1977). Twice the Court has heard cases where circuit courts required reasonable suspicion for a border search of property. Both times, the Court reversed. *See Ramsey*, 431 U.S. at 625; *Flores-Montano*, 541 U.S. at 156.

Two circuits have newly limited the border search doctrine for digital devices. In divided opinions, they held that forensic searches at the border mandate reasonable suspicion. *See United States v. Kolsuz*, 890 F.3d 133, 140 (4th Cir. 2018); *Cano*, 934 F.3d at 1020. Meanwhile, the Eleventh Circuit faithfully applied the Supreme Court's border

search precedents and found that cellphones should be treated exactly as property always has been at the border. *See United States v. Touset*, 890 F.3d 1227, 1233 (11th Cir. 2018) (requiring no suspicion).

The district court correctly denied Karen's motion to suppress. History reflects the government's broad power to search property without suspicion. Because the balance at the border tilts heavily toward the government's interests, Agent St. John's search was reasonable. And even if this Court requires reasonable suspicion for forensic searches, it should still affirm the judgment below because the agent acted in good faith.

A. Suspicionless border searches are grounded in Founding-era principles.

The border search doctrine is deeply rooted in our nation's history. Though "no single rubric definitively resolves which expectations of privacy are entitled to protection," understanding what the Founding era "had in mind when applying the Fourth Amendment" can provide "some basic guideposts" for what is reasonable today. *United States v. Carpenter*, 585 U.S. 296, 304–05 (2018); *see also Virginia v. Moore*, 553 U.S. 164, 168 (2008). Here, history is instructive on two fronts.

First, it confirms an entrenched understanding that the balance of interests is categorically different at the border. Founding-era statutes varied the level of suspicion needed to search and seize

contraband based on proximity to ports of entry. *Compare* Act of Feb. 4, 1815, ch. 31, § 1, 3 Stat. 195, 195 (1815) (authorizing customs officials "to enter on board, search, and examine any ship, vessel, boat or raft" without suspicion), *with id.* § 2 (requiring those same officials to "suspect" smuggling before stopping and searching individuals located away from the port of entry).

Second, it reveals that even the Founding generation used suspicionless searches to enforce customs laws and prevent contraband from entering the country. Relying exclusively on the Act of July 31, 1789, Karen implies that all customs laws required particularized suspicion at the Founding. Appellant's Br. 21. However, this Act was repealed and replaced the next year by a statute that imposed no particularized suspicion requirement. Act of Aug. 4, 1790, ch. 35, § 31, 1 Stat. 145, 164–65 (1790) (authorizing officers to "go on board of ships or vessels . . . within four leagues of the coast" with "free access to the cabin, and every other part of a ship or vessel"). And the August Act accords with later customs laws. *See, e.g.*, Act of Feb. 18, 1793, ch. 8, § 27, 1 Stat. 305, 315 (1793).

Karen maintains that digital devices are akin to papers, and that papers have historically been given special protection from searches because they are a person's "dearest property." Appellant's Br. 20–21. But officers were and still are authorized to inspect papers pursuant to

their customs enforcement duties. *See, e.g.*, Act of Aug. 4, 1790 (authorizing customs officials to "demand[] the manifests" of ships inspected at port); *United States v. Villamonte-Marquez*, 462 U.S. 579, 581–82, 593 (1983) (holding that it was reasonable for customs officials to inspect "documents and papers" "without any suspicion of wrongdoing"). The government's broad power at the border is "as old as the Fourth Amendment itself." *Ramsey*, 431 U.S. at 619.

B. Agent St. John's suspicionless search was reasonable.

Ames should reaffirm the government's plenary authority to conduct suspicionless border searches of property. The border search doctrine secures the government's sovereign interest in seizing contraband before it enters; suspicionless searches of digital devices are instrumental to catching child pornography. That cellphones involve heightened privacy interests does not tip the constitutional balance at the border.

1. Suspicionless forensic searches serve the government's interests of interdicting contraband.

The government has a sovereign interest in controlling "who and what may enter the country." *Id.* at 620. Therefore, the Fourth Amendment's balance of reasonableness is "struck much more favorably to the Government at the border." *United States v. Montoya de Hernandez*, 473 U.S. 531, 541 (1985). To that end, the Government has broad authority "to prevent the introduction of contraband." *Id.* at 537.

Doing so requires "the ability to conduct searches without predictable exceptions." *Florence v. Bd. of Chosen Freeholders*, 566 U.S. 318, 327–28 (2012).

Suspicionless searches of property at the border are necessary for protecting sovereign integrity. In *United States v. Martinez-Fuerte*, the Supreme Court declined to require reasonable suspicion at routine immigration checkpoints on highways "because the flow of traffic tends to be too heavy to allow the particularized study of a given car." 428 U.S. 543, 557 (1976). As such, a reasonable suspicion rule "would largely eliminate any deterrent to the conduct of well-disguised smuggling operations." *Id.* The same is true at the border. United States customs officials processed over 400 million passengers at ports of entry in Fiscal Year 2024. CBP, *Border Search of Electronics at Ports of Entry*, https://www.cbp.gov/travel/cbp-search-authority/border-search-electronic-devices (last visited Feb. 19, 2025). "[C]ustoms officials do not usually have specific knowledge of a person or goods before their inspection. In the absence, therefore, of a broad power of search at the border, officials would commonly have to rely on the cooperation of those they question." Judith B. Ittig, *The Rites of Passage: Border Searches and the Fourth Amendment*, 40 Tenn. L. Rev. 329, 331 (1973).

Requiring reasonable suspicion for forensic cellphone searches would create "a sanctuary at the border" for digital contraband. *United*

States v. Ickes, 393 F.3d 501, 506 (4th Cir. 2005). Unlike the marijuana in *Flores-Montano*, digital contraband need not be carried in a duffle bag or stored in a gas tank. 541 U.S. at 150. Nothing visually distinguishes Karen from the throngs entering the United States without child pornography on their phones. Nearly three quarters of federal child pornography offenders have "little or no criminal history" when they are apprehended. United States Sentencing Commission, *Child Pornography Population Snapshot*, https://www.ussc.gov/research/quick-facts/child-pornography (last visited Feb. 19, 2025). And travelers carrying child pornography are unlikely to reveal it voluntarily. Imposing a reasonable suspicion requirement would inhibit the government's ability to keep out child pornography, which "harms and debases the most defenseless of our citizens." *United States v. Williams*, 553 U.S. 285, 307 (2008).

Karen, relying on *Riley v. California*, argues that cellphones should be treated unlike all other property at the border. 573 U.S. 373, 403 (2014); Appellant's Br. 13–16. But *Riley* "require[d the Court] to decide how *the search incident to arrest doctrine* applies to modern cell phones." 573 U.S. at 385 (emphasis added). "Given the context-specific nature of the Fourth Amendment, *Riley* is not readily transferable to scenarios other than the one it addressed." *United States v. Wood*, 16 F.4th 529, 533 (7th Cir. 2021) (distinguishing parolee exception). The

Court's decision turned on the fact that extending the search-incident-to-arrest exception to cellphone searches would "untether the rule from [its] justifications"—officer safety and evidence preservation. 573 U.S. at 386 (internal quotation marks and citation omitted). But even the *Riley* Court noted that "[p]rivacy comes at a cost" and stressed that exceptions oriented around other government interests would still cover cellphone searches. *Id.* at 401–02. Exigency is one example. *Id.* at 402. The border search is another. *See United States v. Mendez*, 103 F.4th 1303, 1308 (7th Cir. 2024), *cert. denied*, 2025 WL 76441 (2025) ("What is unreasonable after arrest may be perfectly reasonable at customs, as *Riley* itself anticipated."); *Alasaad v. Mayorkas*, 988 F.3d 8, 17 (1st Cir. 2021) (holding the same).

Suspicionless cellphone searches are not merely tethered to the justifications for the border search doctrine; they are "essential to [its] purpose of ensuring that the executive branch can adequately protect the border." *Alasaad*, 988 F.3d at 17. Karen concedes that child pornography is contraband. Appellant's Br. 17. "[C]hild pornography offenses overwhelmingly involve the use of electronic devices." *Touset*, 890 F.3d at 1236. And "[t]he government's interest in detecting child pornography at the border is just as strong as its interest in intercepting firearms, narcotics, or any other prohibited item." *Mendez*, 103 F.4th at 1309. Cellphones may also contain other types of digital contraband,

information about transnational financial crimes, and national security threats. CBP, *Border Search of Electronics at Ports of Entry*, https://www.cbp.gov/travel/cbp-search-authority/border-search-electronic-devices (last visited Feb. 19, 2025); *see also, e.g.*, *United States v. Xiang*, 67 F.4th 895, 900 (8th Cir. 2023) (forensic search revealing economic espionage upheld because "the assertion that the search of [defendant's] electronic device was 'not tethered to any border search justifications' is absurd").

Karen seeks special protection for digital devices at the border. The timing could not be worse. Between 2019, when a circuit court last mandated reasonable suspicion for forensic border searches, and 2023, the number of URLs containing child pornography more than doubled. *Compare IWF*, Annual Report 2019, https://www.iwf.org.uk/media/yx5hjsth/iwf-annual-report-2019.pdf, *with IWF*, Annual Report 2023, https://www.iwf.org.uk/annual-report-2023/. A job that was always difficult is becoming ever more so. *Cf. Jacobson v. United States*, 503 U.S. 540, 548 (1992) ("There can be no dispute about the evils of child pornography or the difficulties that laws and law enforcement have encountered in eliminating it."). Karen claims that forensic cellphone searches "would not make much of a difference" in preventing child pornography from entering the country. Appellant's Br. 17–18. This very case suggests otherwise. *See* JA-11

("[T]hat's why [CBP conducts suspicionless] border searches, to keep contraband out of the country, especially from people [CBP] otherwise wouldn't suspect.").

Karen downplays the risks by stating that child pornography may also be stored in the cloud and shared over the internet. Appellant's Br. 18. But distributing child pornography online is not as straightforward as Karen suggests. Companies constantly filter "email, file-sharing, and similar internet services" for child pornography and refer suspects for criminal charges. *United States v. Miller*, 982 F.3d 412, 418 (6th Cir. 2020). In any case, as the Supreme Court observed for border searches of mail, "[t]he critical fact is that the envelopes cross the border and enter this country, not that [they] are brought in by one mode of transportation rather than another. It is their entry into this country from without it that makes a resulting search 'reasonable.'" *Ramsey*, 431 U.S. at 620.

Nor does it matter whether the government's weighty interest "can be satisfied through less intrusive means." Appellant's Br. 19. The Supreme Court has consistently cautioned that Fourth Amendment reasonableness "does not require employing the least intrusive means, because '[t]he logic of such elaborate less-restrictive-alternative arguments could raise insuperable barriers to the exercise of virtually all search-and-seizure powers.'" *Bd. of Educ. of Indep. Sch. Dist. No. 92*

of Pottawatomie Cnty. v. Earls, 536 U.S. 822, 837 (2002) (quoting *Martinez-Fuerte*, 428 U.S. at 556 n.12). In *Earls*, a school drug tested only students who participated in extracurricular activities. *Id.* While not closely tailored to the government's interest, the policy was upheld as a "reasonably effective means" of "preventing, deterring, and detecting drug use." *Id.* Likewise, suspicionless forensic cellphone searches are at the very least a reasonably effective means of interdicting contraband at the border.[1]

Imposing a reasonable suspicion standard for forensic searches would mean learning a lesson from *Riley*—but not too much of one. *Riley*'s solution was "simple—get a warrant." 573 U.S. at 403. The "somewhat abstract" reasonable suspicion standard attempts to thread the needle. *United States v. Arvizu*, 534 U.S. 266, 274 (2002). But adopting neither categorical rule—*per se* reasonable property searches on the one hand and a warrant requirement on the other—would leave

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[1] Karen's proposed alternative means—suspicionless manual searches and forensic searches with reasonable suspicion—are not necessarily less intrusive. Appellant's Br. 19. Manual searches may in many cases be more invasive than Agent St. John's forensic search. *See infra* Section I.B.2. And the Supreme Court has noted that requiring reasonable suspicion may also be more intrusive than a random suspicionless search regime. *See Earls*, 536 U.S. at 837; *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 663–64 (1995) (suggesting risk of greater intrusion because without suspicionless searches, officials would have to make constant judgment calls on little information, leading to a reliance on pernicious stereotyping).

border officials with far more questions than answers. This is not what the *Riley* Court intended. *Compare Riley*, 573 U.S. at 398 ("If police are to have workable rules, the balancing of the competing interests must in large part be done on a categorical basis—not in an ad hoc, case-by-case fashion by individual police officers." (cleaned up)), *with United States v. Cotterman*, 709 F.3d 952, 984 (9th Cir. 2013) (Smith, J., dissenting) (criticizing the majority's reasonable suspicion rule for requiring moment-by-moment determinations).

The executive's "uniquely sovereign interest" in protecting the border counsels judicial restraint. *Kolsuz*, 890 F.3d at 151 (Wilkinson, J., concurring in the judgment); *accord Hernandez v. Mesa*, 589 U.S. 93, 103 (2020) (urging caution because "the Executive protects this country . . . by attempting to control the movement of people and goods across the border"). Neither *Riley* nor *Carpenter* featured the national security concerns implicated here. Indeed, the *Carpenter* Court emphasized that "our opinion does not consider other collection techniques involving foreign affairs or national security." 585 U.S. at 316.

"It is axiomatic that the United States, as sovereign, has the inherent authority to protect . . . its territorial integrity." *Flores-Montano*, 541 U.S. at 153. This requires stopping contraband and securing the nation's border. As contraband becomes increasingly digitized, forensic cellphone searches are essential to pursuing these

interests. And border officers need wide latitude to conduct those searches without suspicion.

2. Travelers' reduced privacy expectations do not trump the government's interest at the border.

Border searches "have been considered 'reasonable' by the single fact that the person or item in question had entered our country from outside." *Ramsey*, 431 U.S. at 619. "[A]n individual's expectation of privacy is at its lowermost at border entry points." *Denson v. United States*, 574 F.3d 1318, 1340 (11th Cir. 2009). The Supreme Court has only limited the government's border search authority once, when it required reasonable suspicion for an invasive search of a traveler's alimentary canal.[2] *See Montoya de Hernandez*, 473 U.S. at 541. The Court "has never required reasonable suspicion for a search of property at the border, however non-routine and intrusive." *Touset*, 890 F.3d at 1233. Nor should Ames. A cellphone search is not a search of the body. And even if property searches could ever be highly intrusive, the manual-forensic distinction is a poor proxy for intrusiveness, as exhibited by the search at issue here.

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[2] Destructive property searches and searches conducted in a "particularly offensive" manner may also require reasonable suspicion. *Flores-Montano*, 541 U.S. at 154–56 & n.2. Karen does not suggest that Agent St. John's search was destructive or offensive.

a. Travelers' privacy expectations are substantially diminished at the border.

Following *Montoya de Hernandez*, "[h]ighly intrusive searches *of the person*" may be unreasonable if conducted without suspicion. *Flores-Montano*, 541 U.S. at 152 (emphasis added). A cellphone search is not a "highly intrusive search of the person" because it is not a "search of the person." *See* Jeffrey Bellin, *Fourth Amendment Textualism*, 118 Mich. L. Rev. 233, 260 (2019) (noting that "searches of 'persons'" covers only bodily searches). Karen consistently elides the words "of the person" in describing the doctrine, but those three words make all the difference. *See, e.g.*, Appellant's Br. 10. Body searches merit "unique, significantly heightened protection." *Wyoming v. Houghton*, 526 U.S. 295, 303 (1999). The concerns that make them suspect—"(1) physical contact between the searcher and the person searched; (2) exposure of intimate body parts; and (3) use of force"—are as inapplicable to phones as they are to any other type of property. *United States v. Vega-Barvo*, 729 F.2d 1341, 1346 (11th Cir. 1984); *cf. United States v. Lawson*, 461 F.3d 697, 700 (6th Cir. 2006) (stating that while x-ray searches of people may have harmful consequences, "the same is not true about x-rays of objects" (internal quotation marks omitted)). Thus, while a strip search or body cavity search might require reasonable suspicion, a cellphone search plainly does not. *Montoya de Hernandez*, 473 U.S. at 541 n.4.

Even a traveler's "dearest" privacy expectations are "tempered by the fact that the searches are taking place at the border." *Alasaad*, 988 F.3d at 18. In the interior, "a limited search of the outer clothing" requires reasonable suspicion. *Terry v. Ohio*, 392 U.S. 1, 24–25 (1968). At the border, patting down a traveler and requesting she lift her skirt does not. *United States v. Braks*, 842 F.2d 509, 513 (1st Cir. 1988). Likewise, while "the Fourth Amendment has drawn a firm line at the entrance" to a home, *Payton v. New York*, 445 U.S. 573, 590 (1980), that home is subject to suspicionless search if it crosses the border, *see United States v. Alfaro-Moncada*, 607 F.3d 720, 729–30 (11th Cir. 2010) (upholding search of crew member's "home" because while a home in the interior "cannot be used as a means to transport into this country contraband," a "crew member's cabin . . . can and does pose that threat").

Karen warns that allowing suspicionless forensic searches "would be tantamount to saying that the fact of a border crossing somehow entitled the Government to search that traveler's home, car, and office." Appellant's Br. 22 (internal citation omitted). But the government may do exactly that. *See, e.g.*, *Alfaro-Moncada*, 607 F.3d at 729–30 (extensive cabin search); *Flores-Montano*, 541 U.S. at 152 (extensive car search). Courts recognize that "[o]n crossing a border the individual is on notice that a search may be made." *Alfaro-Moncada*, 607 F.3d at 732 (internal citation omitted); *cf. United States v. Aigbekaen*, 943 F.3d 713, 731 n.4

(4th Cir. 2019) (Richardson, J., concurring in the judgment) ("[B]order searches are based in part on implied consent . . . travelers at international crossings have long understood that they are subjecting themselves to search at the border.").

b. Forensic searches are not per se intrusive.

Even if some cellphone searches at the border could be unconstitutionally intrusive, the manual-forensic distinction does not help identify which searches cross that line. Forensic searches may often be less invasive than manual inspections. And continued technological advances threaten to render this distinction obsolete.

Forensic searches are not per se intrusive. They can reduce the degree of intimate human scrutiny and the risk of physical damage that a search entails. In *United States v. Feiten*, a forensic search generated "a 'thumbnail' preview of pictures and videos" and flagged file names that "match[ed] known file names of child pornography." No. 15-20631, 2016 WL 894452, at *6 (E.D. Mich. Mar. 9, 2016) (emphasis omitted). The court held that this was "less invasive of personal privacy" than "inspecting a computer manually, 'page-by-page' in an electronic format." *Id.* Indeed, some types of forensic searches are so unintrusive that they may fall outside the Fourth Amendment entirely. *See* Richard P. Salgado, *Fourth Amendment Search and the Power of the Hash*, 119 Harv. L. Rev. F. 38, 39 (2006) (arguing as much for hash algorithms, which allow investigators to identify and isolate digital files that contain

child pornography without opening other files). Nor is it unprecedented to view a technologically-advanced search as less intrusive than a manual one. Courts have long concluded that an x-ray examination of a passenger's luggage is "less intrusive than an officer . . . personally examining [its] contents." *Vega-Barvo*, 729 F.2d at 1346; *accord United States v. Henry*, 615 F.2d 1223, 1227 (9th Cir. 1980).

Meanwhile, manual searches are not categorically more protective of privacy interests. While Karen calls them "cursory," Appellant's Br. 16, manual inspections can "be conducted by any number of officers, for any amount of time, and include a review of any type of content on the phone, including content that is password protected or encrypted," *United States v. Sultanov*, 742 F.Supp.3d 258, 289 (E.D.N.Y. 2024). Their sole limitation is that CBP must place the phone in airplane mode, as it also does for forensic searches. *See* U.S. Customs and Border Prot., CBP Directive No. 3340–049A, Border Search of Electronic Devices (2018), at 8.[3] CBP can review everything stored on the phone at the time of a search, whether it chooses to do so manually or forensically. *Id.* at 6 (imposing no time or scope limit on manual searches); *see also*

[3] Karen notes that CBP's national policy requires reasonable suspicion for "advanced" searches. Appellant's Br. 19. This has no bearing on the constitutional question. *See Kolsuz*, 890 F.3d at 146 (majority opinion) ("That the agency has chosen to adopt these requirements, of course, does not establish that they are constitutionally mandated.").

Sultanov, 742 F.Supp.3d at 289 (noting same and refusing to adopt manual-forensic distinction).[4]

As technology advances, the manual-forensic framework will make even less sense. The few courts to adopt this distinction have drawn the line between manual and forensic at connecting external equipment to a digital device. *See, e.g.*, *Kolsuz*, 890 F.3d at 146 (majority opinion). But Apple has floated installing hash algorithms directly onto its products. *See* Timothy Gernand, *Scanning iPhones to Save Children: Apple's On-Device Hashing Algorithm Should Survive a Fourth Amendment Challenge*, 127 Dick. L. Rev. 307, 319 (2022). An on-device hash algorithm would perform the exact same operations as one applied to a device via external equipment, yet only the latter would count as a forensic search. A distinction so sensitive to technological change should not be the basis of a constitutional rule. As in any case "considering new innovations," courts "must tread carefully . . . to ensure that [they] do not 'embarrass the future.'" *Carpenter*, 585 U.S. at 316 (quoting *Northwest Airlines, Inc. v. Minnesota*, 322 U.S. 292, 300 (1944) (Frankfurter, J.)).

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[4] Karen and every circuit court to consider the issue agree that manual searches require no individualized suspicion. *See Mendez*, 103 F.4th at 1310 (collecting cases); Appellant's Br. 19.

In a shifting technological landscape, imposing a rigid framework is a difficult task that the judiciary need not shoulder. Courts cannot hold legislative hearings or commission expert reports. *American Elec. Power Co., Inc. v. Connecticut*, 564 U.S. 410, 428 (2011). Nor can they look beyond the facts of the case presented, *id.*, however light on technical detail those facts may be, *see* JA-11. "Legislatures, elected by the people, are in a better position than we are to assess and respond" to technological changes. *Riley*, 573 U.S. at 408 (Alito, J., concurring in the judgment). Congress is the branch with the capacity to answer the empirical questions required to accurately gauge "the magnitude of danger courted by progressive step-ups of search requirements." *Kolsuz*, 890 F.3d at 150 (Wilkinson, J., concurring in the judgment). And the legislature has proven up to the task of protecting privacy. *See* Orin S. Kerr, *The Effect of Legislation on Fourth Amendment Protection*, 115 Mich. L. Rev. 1117, 1120 (2017) (reporting "the recent enactment of more and stronger statutory privacy laws" by federal and state legislatures). Congress's choice not to adopt the sort of rule Karen wants is just that—a choice. This Court should not preempt the legislative process through "the blunt instrument of the Fourth Amendment." *Riley*, 573 U.S. at 408.

c. Agent St. John's search of Karen's cellphone was not unconstitutionally intrusive.

This case does not warrant imposing a reasonable suspicion requirement at the border. Even if some border searches of digital

devices might be unconstitutionally invasive, this cellphone search was not. The intrusive capabilities that worried other circuits were absent from Agent St. John's forensic search.

Not all forensic searches are equally intrusive. Selectively referencing the most extreme cases paints forensic searches in their worst light. Karen warns that they "unlock password-protected files," "restore deleted materials," "retrieve images viewed on websites," and "capture the suspect's browsing history." Appellant's Br. 15. He relies on cases like *Kolsuz*, where the forensic examination "revealed 896 pages' worth of sensitive data including personal contacts, photographs, web browsing history, and a history of [the defendant's] physical location down to precise GPS coordinates," 890 F.3d at 145 (majority opinion) (cleaned up), and *Cotterman*, where the search occurred "170 miles" from the border and agents "access[ed] password-protected files," 709 F.3d at 958 (majority opinion).

But the search here implicated none of those concerns. Agent St. John's search uncovered "photos and videos, and other electronic files" that were not apparent from his previous minute-long manual search. JA-10. It was extensive enough to find Karen's cache of child pornography, but nothing in the record suggests that it revealed text messages or a record of his physical location, let alone unlocked password-protected files, restored deleted material, or captured his

browsing data. *See* Appellant's Br. 15; JA-11. The entire search took an hour, JA-11, exactly as long as the search upheld in *Flores-Montano*, 541 U.S. at 155 n.3 ("[D]elays of one to two hours at international borders are to be expected."). It took place entirely at the border, the phone "having not yet been legally admitted into the United States." *Feiten*, 2016 WL 894452, at *7 (concluding that this alone granted CBP the authority to search for contraband). And Karen does not claim that it either altered or damaged the contents of his phone. The only similarity between Agent St. John's search and the concerns Karen cites is the extraction of metadata—which, the indictment suggests, occurred *after* border officials had reasonable suspicion that Karen was producing child pornography. *See* JA-3 (officers only "extracted the metadata" following discovery of child pornography on Karen's cellphone).

Relying partly on precedent from the Ninth Circuit, Karen urges Ames to reproduce an error that court made two decades ago. In *United States v. Molina-Tarazon*, 279 F.3d 709, 713 (9th Cir. 2002), the Ninth Circuit created a balancing test to determine whether border searches of property required reasonable suspicion. It then applied that test to determine that the suspicionless car search in *Flores-Montano* was unconstitutional. The Supreme Court unanimously reversed. It held that "the reasons that might support a requirement of some level of suspicion in the case of highly intrusive searches of the person . . . simply

do not carry over to vehicles." *Flores-Montano*, 541 U.S. at 152. Ames should avoid the same mistake.

C. Even if Agent St. John's search required reasonable suspicion, suppression is not warranted because he acted in good faith.

The good-faith exception to the exclusionary rule provides independent grounds to affirm. "Exclusion exacts a heavy toll on both the judicial system and society at large." *Davis v. United States*, 564 U.S. 229, 237 (2011). It is a "bitter pill" that "society must swallow" only as a "last resort." *Id.* Because the exclusionary rule is "prudential rather than constitutionally mandated," *Pennsylvania Bd. of Probation and Parole v. Scott*, 524 U.S. 357, 363 (1998), it "applies only where it 'result[s] in appreciable deterrence,'" *Herring v. United States*, 555 U.S. 135, 141 (2009) (quoting *United States v. Leon*, 468 U.S. 897, 909 (1984)). In *Davis*, the Court explained that suppressing evidence collected in "objectively reasonable reliance on binding appellate precedent" does not warrant exclusion. 564 U.S. at 249–50.

Agent St. John reasonably relied on binding Supreme Court precedent. Karen rightly notes that appellate precedent must "specifically authorize[]" a search. Appellant's Br. 24. But he misreads *United States v. Katzin* by construing "specifically authorizes" too narrowly, an interpretation the Third Circuit expressly cautioned against. 769 F.3d 163, 176 (3d Cir. 2014). In *Katzin*, the court emphasized that an officer's reliance is "reasonable when the conduct

under consideration clearly falls well within *rationale* espoused in binding appellate precedent." *Id.* (emphasis added). Accordingly, because Supreme Court precedent had upheld the installation of a beeper on a suspect's vehicle, the *Katzin* court declined to suppress evidence collected through the installation of a more advanced GPS tracker. *Id.* For the purposes of the good faith exception, "the technological distinctions between the beepers of yesteryear and the GPS device used herein are irrelevant." *Id.*

On an issue of first impression, only Supreme Court precedent binds this circuit, and the Court has never required individualized suspicion for a border search of property. *See supra* Section I.B.2. The Supreme Court has long framed agents' border search authority in sweeping terms. Agent St. John reasonably concluded that his forensic search fell within this expansive power. Regardless of whether the "underlying facts in the cases differed—which will nearly always be true—the rationale underpinning the Supreme Court's decisions . . . clearly authorized the agents' conduct." *Katzin*, 769 F.3d at 173. Agent St. John's forensic examination occurred "[a]s part of his routine screening," continuous with his "manual routine search"—a search Karen concedes does not require reasonable suspicion. Appellant's Br. 19. And when courts have consistently declined to hold that *Riley* defeats the border search doctrine, it would be unreasonable to hold that

"law enforcement officers should know otherwise." *United States v. Caballero*, 178 F.Supp.3d 1008, 1021 (S.D. Cal. 2016).

The border search doctrine reflects an enduring judgment that the Fourth Amendment's balance of reasonableness is different at the border. There, history and the Supreme Court speak with one voice. This Court should affirm the denial of Karen's motion to suppress.

II. THE DISTRICT COURT CORRECTLY DENIED THE *BATSON* OBJECTION.

Peremptory challenges safeguard "the constitutional guarantee of trial by an impartial jury." *United States v. Martinez-Salazar*, 528 U.S. 304, 316 (2000). Unlike challenges for cause, peremptory strikes may be exercised "for any reason at all, as long as that reason is related to his view concerning the outcome of the case to be tried." *Batson*, 476 U.S. at 89 (internal citation omitted). The enduring place of peremptory challenges in jury trials reflects the fact that "lawyers will often correctly intuit which jurors are likely to be the least sympathetic" but may "be unable to explain the intuition." *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 148 (1994) (O'Connor, J., concurring). By enabling litigants to play a role in shaping the jury's composition, peremptory challenges encourage "wide acceptance of the jury system and of its verdicts." *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 630 (1991).

The Supreme Court has "recognized only one substantive control" over the peremptory strike: The Equal Protection Clause bars parties from relying solely on race or gender to remove a prospective juror.

Martinez-Salazar, 528 U.S. at 315. In *Batson*, the Supreme Court prohibited purposeful race discrimination in jury selection. 476 U.S. at 86. In *J.E.B.*, the Court extended *Batson*'s rule to gender. 511 U.S. at 127 (majority opinion). It has gone no further. Litigants have repeatedly asked the Supreme Court to consider expanding *Batson* to religion, and the Court has consistently declined. *See, e.g.*, *State v. Davis*, 504 N.W.2d 767, 772 (Minn. 1993), *cert. denied*, 511 U.S. 1115 (1994); *United States v. Stafford*, 136 F.3d 1109, 1114 (7th Cir. 1998), *cert. denied*, 525 U.S. 849 (1998).

The district court properly denied Karen's *Batson* objection. *First*, *Batson* and *J.E.B.* were animated by a need to eliminate the longstanding and categorical exclusion of Black Americans and women from jury service. Because religious groups have not been similarly barred from the jury box, *Batson*'s rule does not reach religion. *Second*, even if *Batson* applies to religious affiliation, it does not extend to religious beliefs. *Third*, the district court did not clearly err in upholding the government's strike of Juror 17. Because the strike was based on belief and not affiliation, and the court correctly deemed the government's explanation non-pretextual, this Court should affirm.

A. *Batson* does not reach religious affiliation.

Batson is "a special rule of relevance . . . a product of the unique history of racial discrimination in this country" that "should not be divorced from that context." *Brown v. North Carolina*, 479 U.S. 940, 942

(1986) (O'Connor, J., concurring in the denial of certiorari). In prohibiting strikes based solely on race, the *Batson* Court was driven by "the compelling need to remove all vestiges of invidious racial discrimination in the selection of jurors." *Gray v. Mississippi*, 481 U.S. 648, 672 (1987) (Powell, J., concurring in part and concurring in the judgment). *J.E.B.* concluded that "with respect to jury service, African-Americans and women share a history of total exclusion." 511 U.S. at 136. That history demanded extending to gender "the special rule of relevance formerly reserved for race." *Id.* at 149 (O'Connor, J., concurring).

The Court has never "state[d] definitively whether heightened scrutiny is sufficient to warrant *Batson*'s protection or merely necessary." *SmithKline Beecham Corp. v. Abbott Lab'ys*, 740 F.3d 471, 484 (9th Cir. 2014). The best reading of *Batson* and its progeny is that heightened scrutiny is necessary but not sufficient. Absent a history of wholesale exclusion from the jury box, *Batson* does not apply. As the Court explained in *Holland v. Illinois*, that the Court has not stretched *Batson* beyond race and gender "demonstrates . . . not how difficult it is to meet our standards for distinctiveness, but *how few groups are systematically excluded from the venire*." 493 U.S. 474, 485 (1990) (emphasis added). For example, national origin is unquestionably a suspect classification. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S.

432, 440 (1985). Still, lower courts have not reflexively extended *Batson* to national origin. *See, e.g.*, *Rico v. Leftridge-Byrd*, 340 F.3d 178, 182 (3d Cir. 2003); *United States v. Douglas*, 525 F.3d 225, 241 (2d Cir. 2008).

Our country undoubtedly has a sordid past of religious discrimination. But as to prejudice in the courtroom, race and gender are unique. From the Founding, by law and by custom, Black Americans and women were categorically barred from jury service and denied the right to participate as equals in civic life. The Supreme Court first struck down a state law banning Black jury participation in 1879. *See Strauder v. West Virginia*, 100 U.S. 303, 308 (1879). Yet the practice of excluding Black jurors persisted well into the twentieth century. Albert W. Alschuler & Andrew G. Deiss, *A Brief History of the Criminal Jury in the United States*, 61 U. Chi. L. Rev. 867, 894 (1994). And even as the *Strauder* Court nullified formal disqualification for jury service based on race, it "expressed no doubt that a State 'may confine the selection [of jurors] to males.'" *J.E.B.*, 511 U.S. at 131 (majority opinion) (quoting *Strauder*) (alteration in original). Indeed, "[g]ender-based peremptory strikes were hardly practicable during most of our country's existence, since, until the 20th century, women were completely excluded from jury service." *Id.* Even after, pernicious stereotypes perpetuated the notion that Black Americans and women were simply unfit to be jurors. *See id.* at 132–33 (cataloguing common stereotypes, such as the belief that

"[t]he natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life"); *State v. Crawford*, 873 So. 2d 768, 776 (La. Ct. App. 2004) (prosecutor struck Black juror after describing him as "too stupid to live much less be on a jury").

No comparable showing is possible for religion. For members of religious groups, "the same ancient stereotypes about their competence and predispositions have not been used to prevent them from . . . being summoned for juries." Barbara Allen Babcock, *A Place in the Palladium: Women's Rights and Jury Service*, 61 U. Cin. L. Rev. 1139, 1173 (1993). Karen cites nineteenth-century state laws excluding religious groups from jury service. Appellant's Br. 32. He omits the fact that such laws were abolished by 1826. *See* Alschuler & Deiss, *supra*, at 877 n.52 (reporting that of all religious qualifications for jurors, "only Maryland's disqualification of atheists persisted in 1789," which itself "disappeared in 1826"). Scattered opinions expressed in magazine articles and juror manuals, *see* Appellant's Br. 32, pale in comparison to the systematic and formal outlawing of jury participation experienced by Black Americans and women. Thus, the Minnesota Supreme Court concluded—in a decision that the Supreme Court declined to disturb—that *Batson* should not be extended to religion "[b]ecause religious bigotry in the use of the peremptory challenge is not as prevalent, or

flagrant, or historically ingrained in the jury selection process as is race." *Davis*, 504 N.W.2d at 771.

Batson and *J.E.B.* represent "narrow limitations on peremptory challenges" imposed in response to the total denial of the right to civic participation on the basis of gender and race. *United States v. Harris*, 197 F.3d 870, 875 (7th Cir. 1999). Because "the similarities between the experiences of racial minorities and women" outweighed the differences, the logic of banning race-based strikes compelled the same for gender. *J.E.B.*, 511 U.S. at 135. As the same cannot be said for religious groups, the deeply-rooted tradition of peremptory challenges merits no further constraints.

B. Even if *Batson* encompasses religious affiliation, it does not reach religious beliefs.

"Absent intentional discrimination violative of the Equal Protection Clause, parties should be free to exercise their peremptory strikes for any reason, or no reason at all." *Hernandez v. New York*, 500 U.S. 352, 374 (1991) (O'Connor, J., concurring). Because litigants do not rely on group stereotypes in challenging jurors for viewpoints expressed in voir dire, belief-based strikes do not implicate the Equal Protection Clause. Unlike race or gender, religious beliefs directly bear on a juror's capacity for impartiality. Excluding prospective jurors due to their beliefs also does not single out religious individuals for unequal treatment—it simply places religious and secular convictions on equal

footing. And even under heightened scrutiny, belief-based strikes would be narrowly tailored to the compelling government interest in empaneling fair and impartial juries.

1. Peremptory strikes based on religious beliefs are constitutionally permissible.

The Equal Protection Clause bars invidious group stereotyping. *J.E.B.*, 511 U.S. at 131. But when litigants exercise peremptory strikes based on religious viewpoints, they do not rely on discriminatory "assumptions" about religious people "as a group." *Batson*, 476 U.S. at 97; *contra* Appellant's Br. 44. Instead, they draw permissible inferences about "biases or instincts" from individual jurors' statements in voir dire. *Edmonson*, 500 U.S. at 631. Courts overwhelmingly agree that drawing a distinction "between a strike motivated by religious beliefs and one motivated by religious affiliation is valid and proper." *United States v. DeJesus*, 347 F.3d 500, 511 (3d Cir. 2003); *accord United States v. Prince*, 647 F.3d 1257, 1263 n.3 (10th Cir. 2011) (observing that "striking a juror for his beliefs is categorically different from striking him because of his status in a protected class").

That a juror's beliefs may be tied to their group membership makes no constitutional difference. Beliefs are not a suspect classification. *See State v. Bolton*, 896 P.2d 830, 842 (Ariz. 1995) ("Nothing about a person's views . . . invokes heightened scrutiny under the Equal Protection Clause."). And Karen grants that courts "have

experience distinguishing between identity itself and experiences or beliefs linked to an identity." Appellant's Br. 38. Even if a strike for identity raises equal protection concerns, a strike for beliefs does not. As Justice O'Connor explained, "*Batson* does not require that the justification be unrelated to race. *Batson* requires only that the prosecutor's reason for striking a juror not *be* the juror's race." *Hernandez*, 500 U.S. at 374. Thus, in *Tolbert v. Gomez*, the Ninth Circuit held that striking a Black venireperson because he expressed concerns about racial prejudice in the justice system did not violate *Batson*, as his opinions were not an impermissible "proxy" for his race. 190 F.3d 985, 987–89 (9th Cir. 1999) ("The assumption that race and an opinion on race are inseparable is antithetical to the very type of racial stereotyping that *Batson* forbids.").

The same holds true for religion. Karen acknowledges that as with race and gender groups, "religious people of the same affiliation hold a wide range of beliefs." Appellant's Br. 34. Just as one juror's viewpoints about racial bias are not surrogates for his race, another juror's religious beliefs are not "proxies" for his "religious identity." *United States v. Brown*, 352 F.3d 654, 671 (2d Cir. 2003); *accord United States v. Stafford*, 136 F.3d 1109, 1114 (7th Cir. 1998) (differentiating between striking a juror "on the basis of his being a Catholic, a Jew, a

Muslim," and striking a juror on the basis of beliefs, "even if the belief had a religious backing").

Challenges motivated by religious beliefs also do not single out religious jurors for unequal treatment. *Contra* Appellant's Br. 29. Rather, they are neutral towards religion because they place religious convictions on par with comparable secular beliefs. *See Tandon v. Newsom*, 593 U.S. 61, 62 (2021). It makes little sense to permit striking jurors for their moral, but not religious, objections to the death penalty. Even if religious jurors are more likely to be affected by belief-based strikes, disparate impact alone does not offend equal protection. *See Washington v. Davis*, 426 U.S. 229, 242 (1976); *see also Hernandez*, 500 U.S. at 362 (plurality opinion) (disparate impact is not "conclusive" under *Batson*).

Finally, Karen suggests that strikes for religious beliefs discriminate against religion in violation of the Free Exercise Clause. Appellant's Br. 29. But the "equal protection principles" that underlie *Batson* provide "no ready lever" to attack peremptory challenges on other constitutional bases. *Brown v. Dixon*, 891 F.2d 490, 497–98 (4th Cir. 1989). In *Holland*, the Supreme Court made clear that the Sixth Amendment does not impose additional restraints on the practice of peremptory strikes. 493 U.S. at 487. Nor does the First Amendment. *See, e.g.*, *United States v. Villarreal*, 963 F.2d 725, 729 (5th Cir. 1992)

(holding that a "venireperson's First Amendment protected view" remains permissible grounds for peremptory strikes and cannot justify a *Batson* challenge).

It is Karen's proposed extension of *Batson* to religious beliefs that risks running afoul of the First Amendment. In conducting the *Batson* analysis, trial courts will be forced to determine whether a prospective juror's beliefs are religious and sincerely held. *See United States v. Seeger*, 380 U.S. 163, 184–85 (1965). This will "inevitably" involve an evaluation of the "character and the sincerity" of the prospective juror's faith. *Goldman v. Weinberger*, 475 U.S. 503, 512–13 (1986) (Stevens, J., concurring). Yet inquiries into the validity of religious convictions are "foreclosed to Government." *Seeger*, 380 U.S. at 184–85.

The Constitution "mandates governmental neutrality between religion and religion, and between religion and nonreligion." *McCreary Cnty., Ky. v. Am. C.L. Union of Ky.*, 545 U.S. 844, 860 (2005). But shielding only religious viewpoints from peremptory challenges elevates "religion over nonreligion." *Id.* Karen's attempts to distinguish between striking jurors "because of" and "in spite of" their religion compounds the constitutional risk. Appellant's Br. 35. Under this approach, religious beliefs with secular analogues would constitute permissible grounds for peremptory strikes. Meanwhile, religious beliefs with no such analogues would be immunized. The First Amendment forbids

effecting such "favoritism" among religious sects. *Larson v. Valente*, 456 U.S. 228, 244 (1982).

2. Religious beliefs directly bear on a prospective juror's capacity for impartiality.

Because "religion is often the foundation for an individual's moral values . . . religious beliefs can be an important consideration for both sides in seating an impartial jury." *State v. Gowdy*, 727 N.E.2d 579, 586 (Ohio 2000). In exercising peremptory challenges, trial lawyers properly rely on "experienced hunches and educated guesses" in making "judgments about a juror's sympathies." *J.E.B.*, 511 U.S. at 148 (O'Connor, J., concurring). Unlike race or gender, religious beliefs are particularly relevant to this analysis. *Compare Batson*, 476 U.S. at 87 (explaining that a person's race is wholly unrelated to his ability to serve as a juror), *with Casarez v. State*, 913 S.W.2d 468, 495 (Tex. Crim. App. 1995), *on reh'g* (Dec. 13, 1995) (a prospective juror's religious beliefs reveal "his sympathies and prejudices"). Courts have thus upheld strikes based on concerns that religious beliefs may make a juror hesitant to convict, unwilling to judge another, or more sympathetic towards the defendant. *See DeJesus*, 347 F.3d at 510; *United States v. Heron*, 721 F.3d 896, 902 (7th Cir. 2013).

Karen does not dispute that prospective jurors may properly be excluded when their religious beliefs impair their ability to apply the law. Appellant's Br. 35. But he errs in suggesting that peremptory

strikes may not be exercised in response to beliefs that "are simply irrelevant." *Id.* Unlike strikes for cause, peremptory challenges do not require a litigant to prove that a venireperson is incapable of applying the law. *See DeJesus*, 347 F.3d at 508 ("*Batson* does not require the party to show that the reason articulated is relevant to a juror's suitability."). The inferences drawn by an attorney from a venireperson's expressed religious beliefs need not be accurate—they may even be "dubious"—but that does not make them "unconstitutional." *Brown*, 352 F.3d at 671.

3. Belief-based strikes are narrowly tailored to the government's compelling interest in empaneling fair and impartial juries.

Since peremptory strikes motivated by religious beliefs do not discriminate on the basis of religion, they warrant no heightened scrutiny. But even under heightened scrutiny, belief-based challenges would pass constitutional muster. Empaneling fair and impartial juries is a compelling government interest. *See United States v. Mitchell*, 502 F.3d 931, 954 (9th Cir. 2007). Peremptory challenges are key to achieving this objective. While strikes for cause can only be used when jurors *explicitly* show bias, the peremptory strike guards against unconscious or unacknowledged partiality. *See United States v. Annigoni*, 96 F.3d 1132, 1139 (9th Cir. 1996). Restricting peremptory challenges thus "increases the possibility that biased jurors will be allowed onto the jury." *J.E.B.*, 511 U.S. at 148.

Peremptory strikes based on religious beliefs are "not substantially broader than necessary" to realize the government's interest in fair and impartial juries. *Ward v. Rock Against Racism*, 491 U.S. 781, 800 (1989). As these strikes are based on viewpoints articulated during voir dire, they involve no assumptions based on group membership. They are not underinclusive because secular individuals may share the perspectives held by religious jurors, such as a commitment to charity and forgiveness. They are not overinclusive because religious people of the same affiliation do not all subscribe to the same beliefs. *Cf. Tolbert*, 190 F.3d at 989 (holding that a juror's views about racial bias in the justice system were not a stand-in for race because they were "shared by many not of his race or belonging to any racial minority").

No "less-restrictive alternative measures" could fulfill the government's interest. *McCullen v. Coakley*, 573 U.S. 464, 479 (2014). Applying *Batson* to belief-based strikes threatens to "cripple the device of a peremptory challenge." *Holland*, 493 U.S. at 484. *First*, extending *Batson* to religious beliefs would require courts to define the contours of religion. Not only is this constitutionally suspect, but it also risks greatly expanding the number of *Batson* objections raised during voir dire. Faced with the prospect of arbitrarily delineating between a religious, spiritual, or philosophical belief, courts will be inclined to adopt an

expansive definition of religion. *See, e.g.*, *Seeger*, 380 U.S. at 165 (construing a "religious" exemption to the draft to include individuals who hold a "sincere and meaningful" belief that occupies a sufficiently significant "place in the life of its possessor"). Under this broad formulation, a juror's religious beliefs "cannot rationally be distinguished" from other personal value systems. *Casarez*, 913 S.W.2d at 495 (warning that trial courts cannot parse a juror's religious beliefs from "their libertarian politics, their advocacy of communal living, or their membership in the Flat Earth Society").

The intractability of defining religion's boundaries will also "increase[] the number of cases in which jury selection—once a sideshow—will become part of the main event." *J.E.B.*, 511 U.S. at 147. This prolonging of voir dire undermines a key purpose of *Batson* itself: permitting "prompt rulings . . . without substantial disruption of the jury selection process." *Hernandez*, 500 U.S. at 358.

Second, if *Batson* covers religious beliefs, it could equally be extended to other First Amendment rights, such as political speech and association. *See Casarez*, 913 S.W.2d at 495 (noting that "the extension of *Batson* to religious belief" necessarily entails "extending it to constitutionally protected beliefs of other kinds"). Many statements made by a potential juror in voir dire could fall within the scope of the First Amendment, circumscribing the grounds available for peremptory

strikes. *See, e.g.*, *Villarreal*, 963 F.2d at 729 ("[T]o hold that a venireperson's First Amendment protected view cannot constitute a basis for exercising a peremptory challenge is effectively to eliminate the peremptory challenge.").

Third, applying *Batson* to religious beliefs will deter litigants from exercising peremptory challenges "out of the fear that if they are unable to justify the strike the court will seat a juror who knows that the striking party thought him unfit." *J.E.B.*, 511 U.S. at 148; *accord Annigoni*, 96 F.3d at 1138 (questioning a juror's impartiality may induce resentment). Expanding *Batson* to religious beliefs creates more bases for objections, which means striking attorneys will routinely have to provide explanations for their intuitive judgments in selecting jurors. This risks distorting peremptory challenges into for-cause strikes, thereby eroding a principal method of ensuring "the selection of a qualified and unbiased jury." *Batson*, 476 U.S. at 91.

Peremptory challenges based on religious belief do not depend on group stereotypes or treat religious and secular jurors unequally. Religious beliefs are particularly pertinent in litigants' analysis of a prospective juror's capacity for impartiality; as such, they are narrowly tailored to a compelling state interest. The discretion afforded to parties in exercising peremptory challenges "may be overridden only for the

strongest constitutional reasons." *United States v. Maxwell*, 160 F.3d 1071, 1076 (6th Cir. 1998). There are no such reasons here.

C. The district court did not clearly err in applying *Batson*'s three-step framework.

Karen concedes that the government's peremptory strike was motivated by Juror 17's religious beliefs. Appellant's Br. 44; *see also* JA-13. Because peremptory challenges based on belief are constitutionally permissible, so long as the government's explanation was correctly found credible, the court below properly denied Karen's *Batson* objection.

In reviewing the *Batson* denial for clear error, Ames must affirm unless left "with a 'definite and firm conviction'" that the denial was a mistake. *Hernandez*, 500 U.S. at 370 (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)). *Batson* objections are assessed under a three-step test. Step one requires the objector to establish "that the totality of the relevant facts gives rise to an inference of discriminatory purpose." *Batson*, 476 U.S. at 94. If a prima facie showing is made, at step two the burden shifts to the striker to provide a neutral justification. *Id.* at 97. Finally, at step three, the trial court decides "whether the opponent of the strike has proved purposeful . . . discrimination." *Purkett v. Elem*, 514 U.S. 765, 767 (1995). "[T]he ultimate burden of persuasion regarding [discriminatory] motivation rests with, and never shifts from, the opponent of the strike." *Id.* at 768.

The district court correctly denied Karen's *Batson* objection. Karen failed to make a prima facie case of religious discrimination at step one. JA-13. While the district court could have stopped there, it chose to continue the *Batson* inquiry. At step two, the government explained that its strike was not based on Juror 17's Christian identity, but on his beliefs about sin and forgiveness. *Id.* Lastly, because the government's justification was not pretext for discrimination against Christians, the district court correctly denied the objection. *Id.*

Karen alleges that the district court's "indecisive approach" to applying *Batson* led it to commit reversible errors. Appellant's Br. 39. But the court's hesitancy about *Batson*'s scope, *see* JA-13, in no way jeopardized the procedure. The court went through each step of the inquiry, *id.*, notwithstanding the understandable confusion about its applicability to religion, *see supra* Section II.A. And because the court proceeded past step one out of an "abundance of caution," any flaws at subsequent steps do not constitute reversible error. *United States v. Guerrero*, 595 F.3d 1059, 1063 (9th Cir. 2010) (no error where the court failed to reach step three because it had correctly found no prima facie discrimination yet still proceeded to step two). This Court should affirm the judgment below.

1. Karen failed to establish a prima facie showing of discrimination.

The party raising a *Batson* objection must first produce "evidence sufficient to permit the trial judge to draw an inference that discrimination has occurred." *Johnson v. California*, 545 U.S. 162, 170 (2005). The objector bears the "burden . . . to flesh out the record." *United States v. Girouard*, 521 F.3d 110, 116 (1st Cir. 2008). Conclusory statements do not satisfy step one. *See Anderson v. Cowan*, 227 F.3d 893, 901 (7th Cir. 2000) (simply pointing to the race of the excluded juror was insufficient to make a prima facie showing).

Defense counsel's objection—"I don't think opposing counsel can properly strike someone on the basis of their religion," JA-13—was entirely conclusory. Even if defense counsel had offered more, he could not have met his burden of production on the facts presented. In making a prima facie showing, litigants may proffer all "relevant circumstances" bearing on whether discrimination has occurred, including "statistical evidence" of a pattern, "side-by-side comparisons" of jurors who were struck with jurors not excluded, and "evidence of a prosecutor's disparate questioning." *Flowers v. Mississippi*, 588 U.S. 284, 302 (2019).

Here, the district court found no evidence of a pattern of strikes against Christians. JA-13. While Karen asserts that the trial judge incorrectly treated the lack of a pattern as a prerequisite to fulfilling step one, Appellant's Br. 41, nothing in the record suggests that the judge understood a pattern to be a *necessary* condition, *see* JA-13

(finding no "evidence of a pattern of discrimination here or *anything of the like*" (emphasis added)). Nor is there evidence that the prosecutor failed to challenge a non-Christian juror with similar views. Karen argues that the government's questions during voir dire may "support . . . an inference of discriminatory purpose," Appellant's Br. 41 (quoting *Batson*, 476 U.S. at 97), but omits that they may also "refute [the] inference of discriminatory purpose," *Batson*, 476 U.S. at 97. Because the trial judge can assess litigants' courtroom behavior, he is in a "far better position" than the reviewing court to "evaluate whether the defendant raised an inference of discrimination." *Guerrero*, 595 F.3d at 1064. Here, the government struck Juror 17 only after he disclosed specific beliefs about sin and forgiveness. JA-12. It is plausible that the district court determined that the questioning refuted an inference of discriminatory intent.

Regardless, any error at step one was cured by the district court proceeding to steps two and three. *See Hernandez*, 500 U.S. at 359 (concluding that once *Batson* steps two and three have been satisfied, "the preliminary issue of whether the defendant had made a prima facie showing becomes moot").

2. The government provided a neutral explanation for striking Juror 17.

Step two "sets a low bar for the strike's proponent to clear." *United States v. Lovies*, 16 F.4th 493, 504 (7th Cir. 2021). "Unless a

discriminatory intent is inherent in the prosecutor's explanation," step two is satisfied. *Hernandez*, 500 U.S. at 360. The explanation need not be "persuasive, or even plausible" to warrant proceeding to step three. *Purkett*, 514 U.S. at 767–68 (finding "unkempt hair" a sufficient explanation).

Here, the prosecutor explained, "I am not striking this juror from the venire because of his religious identification or affiliation as a Christian," but rather "what he believes about sin." JA-13. Far from relying on "unsupported assumptions," Appellant's Br. 44, the government took the juror at his word, JA-12 ("My religious beliefs teach me to be charitable and forgiving of sins and sinners."). Demanding an "individualized assessment of how [Juror 17's] beliefs might impact his judgment" exceeds what step two mandates. Appellant's Br. 43; *see United States v. Blanding*, 250 F.3d 858, 861 (4th Cir. 2001) (holding litigant was "entitled" to infer that a white juror with a confederate flag bumper sticker is racist, "whether or not [the inference is] warranted").

Karen's attempt to analogize to *Kesser* and *Porter* is unconvincing. Appellant's Br. 43. The step two explanations held invalid in those cases relied on blatant racial stereotyping. *See Kesser v. Cambra*, 465 F.3d 351, 353 (9th Cir. 2006) (explaining that Native Americans are "'resistive' and 'suspicious' of the criminal justice system"); *Porter v. Coyne-Fague*, 35 F.4th 68, 78 (1st Cir. 2022) (claiming

juror would be biased simply because he and the defendant were "members of the same race"). Rather than engaging in impermissible identity-based reasoning, the government explained that its peremptory challenge was grounded in the identity-neutral discussion of Juror 17's beliefs about sin. *See* JA-13. The district court did not err in finding the government met the burden imposed by *Batson*'s second step.

3. The government's explanation was not pretextual.

At step three, the trial court "determines whether the opponent of the strike has carried his burden of proving purposeful discrimination." *Purkett*, 514 U.S. at 768. "[I]mplausible or fantastic" and "silly or superstitious" justifications may be pretext for discrimination. *Id.* The district court "assess[es] the *honesty*—not the accuracy—of a proffered . . . explanation." *Lamon v. Boatwright*, 467 F.3d 1097, 1101 (7th Cir. 2006). Because this analysis hinges on the striking attorney's "credibility and demeanor . . . 'in the absence of exceptional circumstances, we would defer to [the trial court].'" *Snyder v. Louisiana*, 552 U.S. 472, 477 (2008) (quoting *Hernandez*, 500 U.S. at 365–66).

Karen offers no reason to depart from the deference ordinarily afforded a district court's step three finding. The government's explanation fully comports with the trial record. *See Flowers*, 588 U.S. at 302 (citing "a prosecutor's misrepresentations of the record when defending the strikes" as a factor relevant to determining whether

discrimination has occurred). The prosecutor excluded Juror 17 out of concern that he could not "be a fair and impartial juror in this case because of what he believes about sin." JA-13. Juror 17's own words provide an "objective buttress" enhancing the credibility of this explanation. *United States v. Bentley-Smith*, 2 F.3d 1368, 1375 (5th Cir. 1993). Moreover, the prosecutor's questioning refutes the notion that he assumed Juror 17 would hold certain beliefs about sin and forgiveness simply *because* he was a Christian. Instead, the strike stemmed from the sentiments Juror 17 expressed in voir dire and the government's reasonable assumption that such views would impair his ability to serve impartially.

That Juror 17 claimed he could be "fair" does nothing to discredit the government's justification. JA-12; *contra* Appellant's Br. 42–43. In *Sifuentes v. Brazelton*, the Ninth Circuit upheld the prosecutor's strike of a juror who stated that his religion taught him not to judge others, but also assured the government that he could apply the death penalty in accordance with "the laws of the land." 825 F.3d 506, 522 (9th Cir. 2016). Finding no evidence of pretext, the court emphasized that litigants need not take a juror's words at face value. Rather, parties are free to "tak[e] into account tone, demeanor, facial expression, emphasis—all those factors that make the words uttered by the

prospective juror convincing or not." *Id.* at 516 (internal quotation marks and citation omitted).

Here, the prosecutor asked whether Juror 17's "religious views or . . . religious identity" would "impact how [he] would view this case." JA-12. The juror equivocated, acknowledging, "that's a hard question," before stating both that he viewed "pornography of all kinds [as] sinful" and that he believed in "forgiving . . . sins and sinners." *Id.* Juror 17's bare assertion that he "supposed . . . [he] could be fair" does not negate the government's reasonable concerns. *Id.* Lastly, the district court's disagreement with the prosecutor's assessment did not amount to a finding of pretext. JA-13; *see, e.g.*, *United States v. Jones*, 408 F. App'x 589, 593 (3d Cir. 2010) (identifying no pretext where the court "disagreed with the prosecutor's perceptions" but found no racial animus).

Karen asserts that the district court's "cursory" treatment of step three compels remand. Appellant's Br. 44. But a "court faced with a *Batson* challenge need not follow every detail of the ideal, step-three analysis . . . in order to conduct a constitutionally permissible analysis." *Lewis v. Lewis*, 321 F.3d 824, 834 (9th Cir. 2003). And a district court is not required to explain its finding at length to satisfy *Batson*. *See, e.g.*, *United States v. Shanshan Du*, 570 F. App'x 490, 497 (6th Cir. 2014) (finding "I don't think there is any basis for a *Batson*" satisfactory).

When appellate review is possible because the district court conducted a full *Batson* inquiry, remand is unnecessary. *See United States v. Alvarez-Ulloa*, 784 F.3d 558, 566 (9th Cir. 2015) (refusing to remand where there were no "outstanding issues that would benefit from an additional hearing").

Nor did the district court err by failing to "weigh[] the totality of the circumstances." Appellant's Br. 45. The record reveals both that the district court considered relevant factors, such as a pattern of discrimination, and considered the government's explanation credible. JA-13 ("[T]his is your peremptory challenge, *and on that basis*, I will excuse this juror from the venire." (emphasis added)). Karen alleges that the district court failed to address a litany of other factors. Appellant's Br. 45. But that is not what the law requires. Courts are not obligated to mechanically run through a checklist of reasons that a strike was not pretextual. *See Lewis*, 321 F.3d at 834 (observing that the district court "need not use all of the tools for evaluating the validity of a prosecutor's reasons that are available to it").

In the end, Ames can affirm the district court's denial even under Karen's own test. Karen would permit a strike for religious belief if the prosecutor would have struck a secular individual for an analogous conviction. *See* Appellant's Br. 35–36. He bases this standard on *Brown*, which upheld the peremptory strike of a religious venireperson without

any evidence that the prosecutor actually struck a secular individual holding comparable beliefs. 352 F.3d at 659 ("[O]ne would *expect* a prosecutor, who held such a view, to strike the 'religious activist' in one case, while in the next case, and on the same assumption, to strike a secular activist." (emphasis added)).

Nowhere does Karen apply this standard to the facts of the proceedings below. This is understandable—Juror 17 could have been struck "in spite of" his religious identity. Appellant's Br. 35. He expressed beliefs about charity and forgiveness. JA-12. Secular individuals are routinely excluded for the same. *See, e.g.*, *United States v. Lewis*, 40 F.4th 1229, 1242 (11th Cir. 2022) (upholding strike of prospective juror for saying that "per her moral beliefs, she was not one to sit in judgment of someone else"). Insofar as the record does not reveal whether the prosecutor actually challenged a secular juror with analogous beliefs, that silence works against Karen—who bears the burden of leaving this Court with a definite and firm conviction that a mistake was made.

CONCLUSION

For the foregoing reasons, the district court's order and judgment should be affirmed.

February 24, 2025 Respectfully submitted,

The William Thaddeus Coleman Jr. Memorial Team

/s/ Lev Cohen

/s/ Justin Curl

/s/ Sophie Li

/s/ Sophia Loughlin

/s/ G. Terrell Seabrooks

/s/ Sadie Statman

APPENDIX

U.S. Const. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. IV

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. XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Act of July 31, 1789, ch. 5 § 24

And be it further enacted, That every collector, naval officer and surveyor, or other person specially appointed by either of them for that purpose, shall have full power and authority, to enter any ship or vessel, in which they shall have reason to suspect any goods, wares or merchandise subject to duty shall be concealed; and therein to search for, seize, and secure any such goods, wares or merchandise; and if they shall have cause to suspect a concealment thereof, in any particular dwelling-house, store, building, or other place, they or either of them shall, upon application on oath or affirmation to any justice of the peace, be entitled to a warrant to enter such house, store, or other place (in the day time only) and there to search for such goods, and if any shall be found, to seize and secure the same for trial; and all such goods, wares and merchandise, on which the duties shall not have been paid or secured, shall be forfeited.

Act of August 4, 1790, ch. 35, § 31

And be it further enacted, That it shall be lawful for all collectors, naval officers, surveyors, inspectors, and the officers of the revenue cutters herein after-mentioned, to go on board of ships or vessels in any part of the Unifed States, or within four leagues of the coast thereof, if bound to the United States, whether in or out of their respective districts, for the purposes of demanding the manifests aforesaid) and of examining

arid searching the said ships or vessels; and the said officers respectively shall have free access to the cabin, and every other part of a ship or vessel: and if any box, trunk, chest, cask, or other package, shall be found in the cabin, steerage or forecastle of such ship or vessel, or in any other place separate from the residue of the cargo, it shall be the duty of the said officer to take a particular account of every such box, trunk, cask of package, and the marks, if any there be, and a description thereof; and if he shall judge proper to put a seal or seals on every such box, chest, trunk, cask or package; and such account and description shall be by him forwarded to the collector of the district to which such ship or vessel is bound. And if upon her arrival at the port of her entry, the boxes, trunks, chests, casks or packages so described, or any of them shall be missing, or if the seals put thereon be broken, the master or commander of such ship or vessel shall forfeit and pay for every such box, trunk, chest, cask or package so missing, or of which the seals shall be broken, two hundred dollars. And it shall also be lawful for the inspectors who may be put on board of any ship or vessel, to secure after sunset in each evening, the hatches and other communications with the hold of such ship or vessel, with locks or other proper fastenings, which fastenings shall not be opened, broken or removed, until the morning following, or after the rising of the sun, and in presence of the inspector or inspectors by whom the same shall have been affixed, except by

special license from the chief officer of the port. And if the said locks or other fastenings, or any of them, shall be broken or removed during the night, or before the said rising of the sun, or without the presence of the said inspector or inspectors, the master or person having the charge or command of such shir or vessel, shall forfeit and pay the sum of two hundred dollars.

Act of February 18, 1793, ch. 8, § 27

And be it further enacted, That it shall be lawful for any officer of the revenue to go on board of any ship or vessel, whether she shall be within or without his district, and the same to inspect, search and examine, and if it shall appear, that any breach of the laws of the United States has been committed, whereby such ship or vessel, or the goods, wares and merchandise on board, or any part thereof, is, or are liable to forfeiture, to make seizure of the same.

Act of February 4, 1815, ch. 31, § 1–2

Section 1: *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That it shall be lawful for any collector, naval officer, surveyor, or inspector of the customs, as well in an adjoining district, as that to which he belongs, to enter on board, search, and examine any ship, vessel, boat, or raft, and if he shall find on board the same any goods, wares, or merchandise, which he shall have probable cause to believe are subject to duty, the

payment of which is intended to be evaded, or have been imported into the United States in any manner contrary to law, it shall be his duty to seize and secure the same for trial.

Section 2: *And be it further enacted*, That it shall be lawful for any collector, naval officer, surveyor, or inspector of the customs, as well in any adjoining district, as that to which he belongs, to stop, search, and examine any carriage or vehicle of any kind whatsoever, and to stop any person travelling on foot, or beast of burden, on which he shall suspect there are any goods, wares, or merchandise, which are subject to duty, or which shall have been introduced into the United States in any manner contrary to law; and if such officer shall find any goods, wares, or merchandise, on any such carriage, vehicle, person travelling on foot, or beasts of burden, which he shall have probable cause to believe are subject to duty, or have been unlawfully introduced into the United States, he shall seize and secure the same for trial. And if any of the said officers of the customs shall suspect that any goods, wares, or merchandise, which are subject to duty, or which shall have been introduced into the United States, contrary to law, are concealed in any particular dwelling house, store, or other building, he shall, upon proper application, on oath, to any judge or justice of the peace, be entitled to a warrant, directed to such officer, who is hereby authorized to serve the same, to enter such house, store, or other building, in the day time only,

and there to search and examine whether there are any such goods, wares, or merchandise which are subject to duty, or have been unlawfully imported; and if on such search or examination, any such goods, wares, or merchandise, shall be found, which there shall be probable cause, for the officer making such search or examination, to believe are subject to duty, or have been unlawfully introduced into the United States, he shall seize and secure the same for trial.

18 U.S.C. § 2251(a)

Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor in or affecting interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct, shall be punished as provided under subsection (e), if such person knows or has reason to know that such visual depiction will be transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed, if that visual depiction was produced or transmitted using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer, or if such visual

depiction has actually been transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed.