No. 19-5671

IN THE SUPREME COURT OF THE UNITED STATES

JAMES LYLE, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether petitioner is entitled to claim that a search of the rental car he was driving violated his individual Fourth Amendment rights, when he was both an unauthorized driver under the rental agreement and an unlicensed driver in violation of criminal law.

2. Whether, if petitioner is entitled to challenge the search, the impoundment of the rental car was reasonable under the Fourth Amendment where petitioner was the driver and sole occupant of the car, petitioner was arrested for driving with a suspended license, and the car was parked on a public street in a busy location.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A51) is reported at 919 F.3d 716. The opinion of the district court (Pet. App. B1-B15) is not published in the Federal Supplement but is available at 2014 WL 4954162. A prior opinion of the court of appeals is reported at 856 F.3d 191.

JURISDICTION

The judgment of the court of appeals was entered on April 1, 2019. A petition for rehearing was denied on May 20, 2019 (Pet. App. C1). The petition for a writ of certiorari was filed on

August 19, 2019 (Monday). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Southern District of New York, petitioner was convicted of conspiracy to distribute 500 grams or more of methamphetamine, in violation of 21 U.S.C. 841(b)(1)(A) and 846, and distribution of 50 grams or more of methamphetamine, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(B). Judgment 1; 9/30/14 Superseding Indictment 1-3. He was sentenced to 120 months of imprisonment, to be followed by five years of supervised release. Judgment 2-3. The court of appeals affirmed. 856 F.3d 191. This Court granted certiorari, vacated the judgment, and remanded for further consideration in light of Byrd v. United States, 138 S. Ct. 1518 (2018). 138 S. Ct. 2024. The court of appeals again affirmed. Pet. App. A1-A51.

1. In 2013, police officers observed petitioner park and exit a car in midtown Manhattan. Pet. App. A6. The officers noticed a knife clipped to petitioner's pants pocket in public view. Ibid. They approached petitioner as he was closing the trunk of the car and, upon further investigation, determined that the knife he was carrying was a "gravity knife." Id. at A6, B2-B3; see N.Y. Penal Law § 265.00(5) (McKinney Supp. 2013) (defining "[g]ravity knife" as "any knife which has a blade which is released from the handle or sheath thereof by the force of gravity or the

application of centrifugal force which, when released, is locked in place by means of a button, spring, lever or other device"). Possession of a gravity knife is illegal in New York. N.Y. Penal Law § 265.01(1) (McKinney Supp. 2013).

The officers asked petitioner whether he had been driving the car. Pet. App. B3. Petitioner initially stated that he had not, but when the officers told him that they had seen him driving it, he admitted to having done so. Id. at A7. The officers asked for identification, and petitioner produced a state identification card with the expiration date scratched off. Ibid. The officers determined that petitioner had been driving with a suspended license, ibid., which is a crime under New York law, see N.Y. Veh. & Traf. Law § 511 (McKinney Supp. 2013). They also determined that the car he had been driving was a rental car and that he was not an authorized driver under the rental agreement. Pet. App. A7. Petitioner claimed that his girlfriend had rented the car and had given him permission to drive it. Ibid.

The officers arrested petitioner for possessing a gravity knife and driving with a suspended license. Pet. App. A7. They also impounded the rental car. Ibid. During a subsequent inventory search conducted at the precinct, police found more than one pound of methamphetamine and approximately $39,000 in cash in the trunk of the car. Ibid.

About a month later, officers received an anonymous tip that people were using methamphetamine in a hotel room in East Windsor, New Jersey. Pet. App. A8. When officers arrived, petitioner opened the door. Id. at A9. The officers obtained consent to search the room and found approximately 14 grams of methamphetamine, $3270 in cash, a digital scale, and plastic baggies. Ibid. The officers arrested petitioner and his girlfriend, who was in the room with him. Ibid.

2. A federal grand jury in the Southern District of New York returned a superseding indictment charging petitioner with one count of conspiracy to distribute 500 grams or more of methamphetamine, in violation of 21 U.S.C. 841(b)(1)(A) and 846, and one count of distribution and possession with intent to distribute 50 grams or more of methamphetamine, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(B). 9/30/14 Superseding Indictment 1-3.

Petitioner moved to suppress the evidence found during the search of the car. D. Ct. Doc. 16 (July 9, 2014). In an affidavit filed in support of his motion, petitioner acknowledged that he had driven the car to Manhattan, that his license was suspended at the time, and that he was carrying a gravity knife that day. D. Ct. Doc. 18, at 1-3 (July 9, 2014); see Pet. App. A11-A12.

The district court denied petitioner's motion to suppress. Pet. App. B12-B15. The court determined that petitioner "lacked

a legitimate expectation of privacy in the rental car." Id. at B12. The court explained that petitioner "ha[d] not established that the car was rented in his name, nor that he was an authorized driver under the rental contract." Id. at B13. The court noted petitioner's assertion that "his girlfriend, who had rented the car, had given him permission to drive it." Ibid. But the court found that assertion -- which was "unsupported by evidence from the car rental company or [his] girlfriend" -- "insufficient to establish [his] expectation of privacy in the rental car." Ibid. "Indeed," the court reasoned, petitioner "knew that he could not have been an authorized driver of the car because he did not even have a valid license at the time." Ibid. The court thus concluded that petitioner could "not challenge the search of the car" under the Fourth Amendment. Ibid.

The district court additionally determined that "[e]ven if [petitioner] had established a legitimate privacy interest in the car, the evidence [recovered from it] would still be admissible because it was found pursuant to a valid inventory search." Pet. App. B13. The court explained that following his arrest -- which was supported by probable cause, id. at B12 -- petitioner "was unable for an extended period of time to move the car, which was parked on a busy street in midtown Manhattan," and "could not have moved the car in any event because he did not have a valid driver's license," id. at B13. The court found that under those

circumstances, "the officers were justified in taking custody of the car to protect it from theft or vandalism" and in making an inventory of its contents. Ibid.; see id. at B6. The court emphasized that "where, as here, the vehicle is a rental car," "impounding the car protects the interests of the owner of the car, the rental company." Id. at B13 n.8.

A jury subsequently found petitioner guilty on all counts. Pet. App. A15. The district court sentenced petitioner to 120 months of imprisonment, to be followed by five years of supervised release. Judgment 2-3.

3. The court of appeals affirmed. 856 F.3d 191. The court stated that the circuits were divided on the question "whether an unauthorized driver of a rental car has a reasonable expectation of privacy in the car." Id. at 200; see id. at 200-201. But the court determined that it did "not need to reach the question of whether an unauthorized driver of a rental car ever has a reasonable expectation of privacy in the car, because [petitioner] was not just an unauthorized driver, but an unlicensed one." Id. at 201. "Accordingly," the court explained, "[petitioner's] use of the rental car was both unauthorized and unlawful." Ibid. (citing N.Y. Veh. & Traf. Law § 511 (McKinney Supp. 2013)). The court reasoned that petitioner "should not have been driving any car because his license was suspended, and a rental company with knowledge of the relevant facts certainly would not have given him

permission to drive its car nor allowed a renter to do so." Ibid. "Under these circumstances," the court explained, "[petitioner] did not have a reasonable expectation of privacy in the rental car" and thus could not challenge the search of the car under the Fourth Amendment. Ibid.; see id. at 200. Because petitioner's motion to suppress was "properly denied" on that basis alone, the court did not address the district court's alternative ground, regarding the "legality of the inventory search," for denying the motion. Id. at 200.

This Court subsequently granted a petition for a writ of certiorari, vacated the judgment of the court of appeals, and remanded the case for further consideration in light of this Court's intervening decision in Byrd, which held that "the mere fact that a driver in lawful possession or control of a rental car is not listed on the rental agreement will not defeat his or her otherwise reasonable expectation of privacy" in the car. 138 S. Ct. at 1531; see 138 S. Ct. 2024.

4. On remand, the court of appeals again affirmed. Pet. App. A1-A51. The court determined that petitioner's motion to suppress "was properly denied for two independent reasons: first, [petitioner] had no reasonable expectation of privacy in the rental car, and, second, the inventory search of the rental car was reasonable." Id. at A17.

With respect to the first reason, the court of appeals "reaffirmed" that petitioner "lacked standing not just because he was an unauthorized driver, but because he was an unlicensed one." Pet. App. A22. The court determined that "Byrd does not require a different result." Id. at A23. The court explained that, "[b]ecause [petitioner] did not have a valid driver's license, it was unlawful for him to be operating the vehicle." Ibid. The court reasoned that, "[j]ust as a car thief would not have a reasonable expectation of privacy in a stolen car, an unauthorized, unlicensed driver in sole possession of a rental car does not have a reasonable expectation of privacy of the vehicle." Id. at A24 (citation omitted). The court therefore found the facts here materially different from those in Byrd, on the ground that petitioner's "operation of the car rendered his possession and control unlawful." Ibid.

The court of appeals further determined that, "[e]ven assuming that [petitioner] had a legitimate privacy interest in the rental car, his challenge to the inventory search fails on the merits as the impoundment of the rental car did not violate the Fourth Amendment." Pet. App. A27. The court declined to hold, as it believed two other circuits had, that "an officer's decision to impound a car [must] be made pursuant to standardized criteria" in order to be reasonable. Id. at A20; see id. at A28. Rather, the court stated that "whether a decision to impound is reasonable

under the Fourth Amendment is based on all the facts and circumstances of a given case." Id. at A27-A28 (citation omitted). "Using a totality of the circumstances analysis," the court determined that "the impoundment here was reasonable" because, "at the time of [petitioner's] arrest," petitioner "was the rental car's driver and sole occupant"; "there was no third party immediately available to entrust with the vehicle's safekeeping"; "the officers could not be certain how long the rental car would be unattended in [petitioner's] absence"; petitioner "would not have been able to operate the car himself upon release due to his suspended license"; "the police were not required to grant" petitioner's request that he be given the "opportunity to arrange for his girlfriend" to "remove the rental car"; the rental car would otherwise have been "left on a public street in a busy midtown Manhattan location where it could have become a nuisance or been stolen or damaged and could have become illegally parked the next day"; and "there is no indication that the officers did not act in good faith or solely for the purpose of investigation in exercising their discretion to impound the rental car." Id. at A28-A29.

ARGUMENT

Petitioner contends (Pet. 11-18) that the court of appeals erred in determining that he lacked a reasonable expectation of privacy in the rental car and that, in any event, the decision to

impound the car was reasonable under the Fourth Amendment. The court of appeals' determinations are correct and do not conflict with any decision of this Court or another court of appeals. In any event, this case is not a suitable vehicle for reviewing either determination alone, because each independently supports the judgment below. Further review is unwarranted.

1. Petitioner contends (Pet. 11-15) that the court of appeals erred in determining that he lacked a reasonable expectation of privacy in the rental car. That contention does not warrant this Court's review.

The Fourth Amendment protects "[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. In Byrd v. United States, 138 S. Ct. 1518 (2018), this Court held that "the mere fact that a driver in lawful possession or control of a rental car is not listed on the rental agreement will not defeat his or her otherwise reasonable expectation of privacy." Id. at 1531. The Court declined to hold, however, that "the sole occupant of a rental car always has an expectation of privacy in it based on mere possession and control." Id. at 1528. The Court explained that the inquiry "turns on the concept of lawful possession." Id. at 1529. And it observed that someone whose "acquisition of [a] rental car" was "a criminal offense * * *

under applicable law" might not have Fourth Amendment rights in that car. Id. at 1530.

The court of appeals correctly determined that petitioner lacked a reasonable expectation of privacy in the rental car because he lacked lawful possession and control of the car. Pet. App. A22-A27. Petitioner did not have a valid driver's license on the day that he drove the car to midtown Manhattan; as petitioner acknowledges (Pet. 4), his license was suspended at the time. See Pet. App. A7, A12; D. Ct. Doc. 18, at 1-3. Under New York law, operating a car without a valid license is a crime. N.Y. Veh. & Traf. Law § 511 (McKinney Supp. 2013). Thus, petitioner's use of the rental car was not only "unauthorized" under the rental agreement, but also "unlawful." Pet. App. A22. As the court explained, petitioner "did not have lawful possession and control of the vehicle in the sense that he unlawfully drove the vehicle onto the scene and could not lawfully drive it away." Id. at A23. And because petitioner "did not have lawful possession or control of the vehicle," "he does not have standing to challenge the search" of the vehicle under the Fourth Amendment. Id. at A26.

Petitioner contends (Pet. 12-15) that regardless of whether he could lawfully drive the car, he could still claim lawful possession and control of the trunk, where the contraband in this case was found. But under the circumstances of this case, the lawfulness of petitioner's possession and control of the trunk

cannot be separated from the lawfulness of his possession and control of the car itself. As the court of appeals explained, petitioner "unlawfully drove the vehicle onto the scene and could not lawfully drive it away." Pet. App. A23. His only connection to the trunk was his status as the car's driver -- the very thing state law rendered illegal and illegitimate. See New York v. Class, 475 U.S. 106, 112-113 (1986) (explaining that a car's "function is transportation and it seldom serves as one's residence or as the repository of personal effects") (citation omitted). And because petitioner "was driving the vehicle illegally," he "did not have lawful possession or control of" either the vehicle or its trunk. Pet. App. A26.

The court of appeals' determination that petitioner lacked a reasonable expectation of privacy under the circumstances of this case does not conflict with any decision of another court of appeals. The Seventh Circuit has likewise determined that a defendant lacked standing to challenge the search of a rental car where the defendant "was not simply an unauthorized driver," but also "an unlicensed one." United States v. Haywood, 324 F.3d 514, 516 (7th Cir.), cert. denied, 540 U.S. 986 (2003). And neither United States v. Best, 135 F.3d 1223 (8th Cir. 1998), nor United States v. Thomas, 447 F.3d 1191 (9th Cir. 2006) -- cited by the decision below, Pet. App. A24 -- addressed the effect of a defendant's lack of a valid driver's license on the reasonableness

of his expectation of privacy in a rental car. Rather, each of those decisions addressed only whether the defendant's expectation of privacy was reasonable in light of his lack of authorization to drive the car under the rental agreement. See Best, 135 F.3d at 1225; Thomas, 447 F.3d at 1196-1199.

2. Petitioner also contends (Pet. 15-18) that the court of appeals erred in determining that the impoundment of the rental car was reasonable under the Fourth Amendment. That contention likewise does not warrant this Court's review. The Court has previously denied review of similar issues, see Miller v. United States, 137 S. Ct. 2240 (2017) (No. 16-7855); Moore v. United States, 137 S. Ct. 2116 (2017) (No. 16-7471); Smith v. United States, 555 U.S. 993 (2008) (No. 08-33), and the same result is warranted here.

a. The court of appeals correctly determined that the impoundment of the rental car was reasonable under the Fourth Amendment. Pet. App. A27-A30.

i. In South Dakota v. Opperman, 428 U.S. 364 (1976), this Court recognized that, in performing their community caretaking functions, police officers will "frequently remove and impound automobiles which violate parking ordinances and which thereby jeopardize both the public safety and the efficient movement of vehicular traffic" and that the authority of police to seize such vehicles without a warrant "is beyond challenge." Id. at 369.

The Court has held that, once a vehicle has been impounded, officers may conduct an inventory of its contents without a warrant. Colorado v. Bertine, 479 U.S. 367, 371-373 (1987).

Recognizing that "an inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence," the Court has stated that such searches must be conducted pursuant to "standardized criteria" or "established routine" and that "[t]he policy or practice governing inventory searches should be designed to produce an inventory." Florida v. Wells, 495 U.S. 1, 4 (1990). Standard inventory procedures "serve to protect an owner's property while it is in the custody of the police, to insure against claims of lost, stolen, or vandalized property, and to guard the police from danger." Bertine, 479 U.S. at 372; see Whren v. United States, 517 U.S. 806, 811 n.1 (1996). Based on those interests, as well as the diminished expectation of privacy in automobiles, see Opperman, 428 U.S. at 367-368, this Court has "accorded deference to police caretaking procedures designed to secure and protect vehicles and their contents within police custody," Bertine, 479 U.S. at 372.[1]

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[1] In an earlier case, this Court upheld an inventory search without requiring standardized criteria, explaining that, once a car has been impounded, such a search was reasonable and served valid interests. See Cooper v. California, 386 U.S. 58, 61 (1967). In Cooper, the Court reasoned that, since the officers had to maintain the car in their custody for a forfeiture proceeding, they had the right to search it "for their own protection" -- even if state law provided no authority for the inventory search. Id. at 61-62. Cooper's approach better comports with this Court's

In this case, petitioner did not challenge the reasonableness of the inventory search following the impoundment of the rental car, and the court of appeals did not address that issue. Pet. App. A27 n.2. Rather, petitioner challenged only the reasonableness of the impoundment of the car in the first place. Ibid. And given the "totality of the circumstances," the court correctly determined that the community caretaking doctrine justified the impoundment of the car. Id. at A28. As the court explained, petitioner "was the rental car's driver and sole occupant," and after he was arrested, "there was no third party immediately available to entrust with the vehicle's safekeeping." Ibid. Moreover, "the officers could not be certain how long the rental car would be unattended in [petitioner's] absence," and "even if [petitioner] did not expect to be in custody long, [petitioner]

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contemporary Fourth Amendment jurisprudence. Once objective justifications exist for an intrusion, Fourth Amendment standards are satisfied, regardless of whether the intrusion violates state law. See Virginia v. Moore, 553 U.S. 164 (2008) (so holding for arrests based on probable cause). When a search serves community protection goals rather than law enforcement interests, it is sufficient to point to circumstances objectively justifying the search, rather than asking whether the intrusion was pretextual. See Brigham City v. Stuart, 547 U.S. 398, 403-404 (2006) (so holding for the emergency aid doctrine). While the purpose of a state-created standardized-criteria rule is to avoid pretextual inventory searches, see Bertine, 479 U.S. at 376 (Blackmun, J., concurring), that purpose is better served by simply asking (as in Cooper) whether the objective circumstances made the search a reasonable one. If they did, "whether state law authorized the search [i]s irrelevant." Moore, 553 U.S. at 171 (discussing Cooper).

would not have been able to operate the car himself upon release due to his suspended license." Ibid. Had the officers not impounded the vehicle, the vehicle would have been "left on a public street in a busy midtown Manhattan location where it could have become a nuisance or been stolen or damaged and could have become illegally parked the next day." Id. at A29. And given that the vehicle was a rental car, impounding the car served to "protect[] the interests of the owner of the car, the rental company." Id. at B13 n.8.

ii. Petitioner argues (Pet. 15-17) that the impoundment of the rental car was unreasonable because the government did not establish that the police officers followed standardized procedures. This Court, however, has never held that the "standardized procedure" requirement for inventory searches applies to the decision whether to impound a car in the first place. The Court's decision in Florida v. Wells, supra, dealt exclusively with the validity of an inventory search and did not discuss the standards governing the initial impoundment. See 495 U.S. at 4-5. Opperman likewise dealt with the reasonableness of a routine inventory search. In concluding that the police were engaged in a caretaking search of a lawfully impounded vehicle, the Court effectively applied a pure reasonableness standard to the impoundment, treating as "beyond challenge" the authority of police to "seize and remove" vehicles that impede traffic --

without regard to the existence of an established policy. 428 U.S. at 369; see id. at 365 (describing vehicle as "lawfully impounded").

Petitioner relies (Pet. 15-16) on Bertine, but that case was "concerned primarily with the constitutionality of an inventory search." United States v. Coccia, 446 F.3d 233, 238 (1st Cir. 2006), cert. denied, 549 U.S. 1149 (2007); see Bertine, 479 U.S. at 371-375; id. at 376-377 (Blackmun, J., concurring). In the penultimate paragraph of Bertine, the Court also considered the defendant's alternative argument "that the inventory search of his van was unconstitutional because departmental regulations gave the police officers discretion to choose between impounding his van and parking and locking it in a public parking place." 479 U.S. at 375. In rejecting that argument, the Court stated that "[n]othing in Opperman or [Illinois v.] Lafayette[, 462 U.S. 640 (1983),] prohibits the exercise of police discretion so long as that discretion is exercised according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity," and it concluded that both of those criteria were satisfied in the case before it. 479 U.S. at 375-376.

Contrary to petitioner's contention (Pet. 15-16), Bertine's discussion does not mean that the absence of standardized criteria necessarily renders an impoundment unreasonable. The cases it cited, Opperman and Lafayette, did not impose any constitutional

restrictions on when an item may be taken into custody for community caretaking purposes, because they took as given that the seizures were lawful. See Lafayette, 462 U.S. at 641-642 (stating that the item whose contents the officers inventoried was a shoulder bag that an arrestee had brought with him to the police station); Opperman, 428 U.S. at 365 (describing vehicle as "lawfully impounded"). Accordingly, while Bertine concluded that the impoundment in that case satisfied the standards that its previous decisions had established for the conduct of inventory searches, it did not consider -- and had no reason to address -- whether an impoundment must invariably do so. Cf. United States v. Knights, 534 U.S. 112, 117 (2001) (finding "dubious logic" in the argument "that an opinion upholding the constitutionality of a particular search implicitly holds unconstitutional any search that is not like it").

A per se rule that police officers may not impound a vehicle unless they do so under standardized procedures is unwarranted. The decision to impound a vehicle, undertaken under an officer's community caretaking responsibilities, must still be reasonable under the Fourth Amendment, a determination that depends on "the facts and circumstances of each case." Opperman, 428 U.S. at 375 (quoting Cooper v. California, 386 U.S. 58, 59 (1967)). While the police may anticipate some commonly recurring situations, "[v]irtually by definition, the need for police to function as

community caretakers arises [in] unexpected circumstances," and they "cannot sensibly be expected to have developed, in advance, standard protocols running the entire gamut of possible eventualities." United States v. Rodriguez-Morales, 929 F.2d 780, 787 (1st Cir. 1991), cert. denied, 502 U.S. 1030 (1992); see, e.g., United States v. Smith, 522 F.3d 305, 315 (3d Cir.) ("[T]he requirement that a community caretaking impoundment be made pursuant to a standard police procedure could lead to untoward results" because, among other reasons, "the standards might not deal with all the situations that could arise"), cert. denied, 555 U.S. 993 (2008); United States v. Petty, 367 F.3d 1009, 1012 (8th Cir. 2004) ("It is not feasible for a police department to develop a policy that provides clear-cut guidance in every potential impoundment situation, and the absence of such mechanistic rules does not necessarily make an impoundment unconstitutional.").

Conversely, an impoundment that conforms to standardized procedures will not necessarily be reasonable under the circumstances. See, e.g., United States v. Cartwright, 630 F.3d 610, 614 (7th Cir. 2010) ("The existence of a police policy, city ordinance, or state law alone does not render a particular search or seizure reasonable or otherwise immune from scrutiny under the Fourth Amendment."), cert. denied, 563 U.S. 969 (2011); Miranda v. City of Cornelius, 429 F.3d 858, 864 (9th Cir. 2005) ("[T]he

decision to impound pursuant to the authority of a city ordinance and state statute does not, in and of itself, determine the reasonableness of the seizure under the Fourth Amendment."). In short, whether an impoundment decision is reasonable will turn on the objective facts that are known to the officials that make the decision -- irrespective of whether other officials had foreseen those precise circumstances and established standardized criteria for dealing with them. See Cooper, 386 U.S. at 61 ("Just as a search authorized by state law may be an unreasonable one under [the Fourth Amendment], so may a search not expressly authorized by state law be justified as a constitutionally reasonable one.").[2]

b. Petitioner errs in contending (Pet. 15-16) that the court of appeals' decision conflicts with the decisions of four other circuits.

As an initial matter, three of the four decisions petitioner cites (Pet. 16) as requiring compliance with a standardized

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[2] The justifications for requiring standardized procedures in the inventory search context also apply with significantly less force to impoundments. As this Court explained in Opperman, conducting an inventory search in accordance with standard procedures helps "ensure that the intrusion [is] limited in scope to the extent necessary to carry out the caretaking function." 428 U.S. at 374-375. But unlike an inventory search, the seizure of a car cannot be limited in scope: "A car is either impounded or it is not." Rodriguez-Morales, 929 F.2d at 787 n.3. And the concern that police will "rummag[e] in order to discover incriminating evidence," Wells, 495 U.S. at 4, is best addressed by imposing limitations on the search itself, rather than the impoundment.

impoundment policy were decided before this Court's decision in Virginia v. Moore, 553 U.S. 164 (2008). This Court in Moore held that the Fourth Amendment is satisfied when objective justifications exist for an intrusion, regardless of whether the intrusion violates state law. See p. 14 n.1, supra. Moore thus upheld as "constitutionally reasonable" the arrest of a motorist whom police had probable cause to believe had violated Virginia law, even though state law itself would have authorized only a citation rather than an arrest. 553 U.S. at 171. The Court held that, because the arrest was "reasonable," it was permissible under the Constitution, and "state restrictions d[id] not alter the" calculus. Id. at 176; see id. at 172 ("We thought it obvious that the Fourth Amendment's meaning did not change with local law enforcement practices -- even practices set by rule."). Moore's rationale indicates that the objective circumstances confronting officers, rather than state-created rules, should be the touchstone in deciding whether an impoundment is reasonable and hence constitutional.

In any event, none of the decisions petitioner cites (Pet. 16) suggests that another court of appeals would have found the impoundment of the rental car unreasonable in the particular circumstances of this case. In United States v. Petty, supra, the Eighth Circuit mentioned the existence of standardized procedures in the course of upholding an impoundment. See 367 F.3d at 1012

("The police had a sufficient basis to conclude that the rental car should be impounded pursuant to their standard policy."). In United States v. Proctor, 489 F.3d 1348 (2007), the D.C. Circuit found a Fourth Amendment violation where law enforcement officers had adopted standardized impoundment procedures, but officers failed to comply with them in impounding the defendant's vehicle. Id. at 1354-1355. Although the court characterized this Court's decision in Bertine as "suggest[ing] that a reasonable, standard police procedure must govern the decision to impound," id. at 1353, the actual rationale for the court's decision was narrower: "that if a standard impoundment procedure exists, a police officer's failure to adhere thereto is unreasonable and violates the Fourth Amendment," id. at 1354 (emphasis added).

In United States v. Duguay, 93 F.3d 346 (1996), the Seventh Circuit identified the absence of standardized impoundment policies as one factor supporting the ultimate finding of a Fourth Amendment violation, but the court did not rely solely on the lack of a policy. Instead, the court pointed to multiple factors that rendered the impoundment "unreasonable." Id. at 353; see ibid. ("Duguay's car was impounded after his arrest, despite the fact that Gloria Vaughn had driven the car, had possession of the keys, and was prepared to remove the car from the street."); ibid. (defendant's brother "was also present at the time of the arrest," and "we do not see what purpose denying possession of the car to

a passenger, a girlfriend, or a family member could possibly serve"); id. at 353-354 (impoundment may also have violated state law). Almost all of the discussion of impoundment in Duguay would have been unnecessary if, as petitioner claims, the absence of a policy were in itself dispositive.

Finally, in United States v. Sanders, 796 F.3d 1241 (2015), the Tenth Circuit concluded that "impoundment of a vehicle located on private property that is neither obstructing traffic nor creating an imminent threat to public safety is constitutional only if justified by both a standardized policy and a reasonable, non-pretextual community-caretaking rationale." Id. at 1248. The court emphasized, however, that officers are "free to impound vehicles that threaten public safety," and they may do so "regardless of whether the impoundment is guided by standardized procedures." Id. at 1249. The government would prevail in this case under that reasoning, given the public safety concern posed by a rental car left unattended "on a public street in a busy midtown Manhattan location where it could have become a nuisance or been stolen or damaged and could have become illegally parked the next day." Pet. App. A29; see id. at B13 (finding that "the officers were justified in taking custody of the car to protect it from theft or vandalism"). Thus, the decision below does not implicate any division in the circuits that would warrant this Court's review.

3. In any event, this case is a poor vehicle for further review of either question presented. Because petitioner's lack of Fourth Amendment rights in the car and validity of the impoundment were "independent" grounds for denying his motion to suppress, Pet. App. A17, he would not be entitled to relief unless he prevails on both. Even assuming either question warranted this Court's review, the Court should grant such review in a case that presents it cleanly.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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NOVEMBER 2019