_____

No.

_____

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL A. GREEN,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

_____

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

_____

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QUESTIONS PRESENTED

This case involves the impoundment and inventory search of a disabled vehicle by a law enforcement officer with an explicitly stated investigatory motive to search the car for evidence of a crime. Under the city's tow policy, the driver of a disabled vehicle that obstructed traffic could request a tow by any licensed tow service located within the city and the law enforcement officer was directed to contact the tow service on behalf of the driver. In this case, the driver of a disabled vehicle requested assistance with a tow, but the officer refused to contact a tow service on the driver's behalf.

Acting on a hunch that the vehicle might be stolen or contain stolen property, the officer impounded and searched the vehicle and found methamphetamine. The driver sought to suppress the methamphetamine and all incriminating evidence, arguing that the officer did not adhere to the tow policy and that the inventory of the vehicle's contents was a mere pretext for a search for evidence of a crime.

The United States Court of Appeals for the Eighth Circuit upheld the search and seizure, concluding that a reasonable interpretation of the tow policy permitted the officer to treat the vehicle as an "abandoned vehicle" that had to be towed under the policy. *United States v. Green*, 929 F.3d 989 (8th Cir. 2019). The court

did not address the officer's motive to search for incriminating evidence, other than to say his actions were "largely" based on concerns related to his community caretaking function and his "sole purpose" for impounding the vehicle was not to investigate criminal activity. *Id*. at 995.

This Court should grant certiorari to address whether an officer with a motive to search for incriminating evidence may impound a vehicle and inventory its contents in contravention of the standard tow policy adopted by the local police department.

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PETITION FOR A WRIT OF CERTIORARI
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Petitioner, Michael Green, respectfully asks this Court to issue a writ of certiorari to review the opinion of the United States Court of Appeals for the Eighth Circuit entered in this proceeding on July 12, 2019, affirming the district court's judgment.

OPINION BELOW

The Eighth Circuit's opinion affirming the judgment of the district court is reported at *United States v. Green*, 929 F.3d 989 (8th Cir. 2019), and is included in

the Appendix at page 1. A copy of the order denying rehearing is included in the Appendix at page 22.

JURISDICTION

Jurisdiction in the United States District Court for the Western District of Missouri was pursuant to 18 U.S.C. § 3231, because Mr. Green was charged and convicted of an offense against the United States, i.e., possession with intent to distribute methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A).

Mr. Green appealed from his conviction and sentence to the United States Court of Appeals for the Eighth Circuit. Jurisdiction in that court was established by 28 U.S.C. § 1291.

The Eighth Circuit denied rehearing on September 3, 2019. In accordance with Sup. Ct. R. 13.3, this petition is filed within ninety days of the date on which the Court of Appeals entered its order denying Mr. Green's petition for rehearing. Petitioner invokes the jurisdiction of this Court under 28 U.S.C. § 1254(1) and Sup. Ct. R. 13.3.

CONSTITUTIONAL PROVISION INVOKED

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation,

and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const., Amend. IV.

I. STATEMENT OF THE CASE

Following his indictment for possession with intent to distribute methamphetamine, Mr. Green filed a motion to suppress the incriminating evidence found during an inventory search of the vehicle he was driving (DCD 25).[1] The law enforcement officer who impounded and searched the vehicle, Officer Andrew Bolin of the Grandview, Missouri Police Department, was the only witness to testify at the suppression hearing (DCD 42, Tr. 2). The dashcam video from his patrol car was admitted as Plaintiff's Exhibit 1 and the Grandview, Missouri Police Department's tow policy was admitted as Plaintiff's Exhibit 2 (DCD 42, Tr. at 9, 21).

A. The Dashcam Video and Officer Bolin's Testimony.

Officer Bolin was dispatched on a suspicious person call and when he arrived at the scene, he found Mr. Green asleep in a Saturn sedan near a "relatively busy" residential intersection (DCD 42, Tr. 2-5; DCD 85, PSR at ¶ 3). Bolin ran the license plate and learned that the plates were registered to an Oldsmobile

[1] The following abbreviations are used: district court docket (DCD); transcript of the suppression hearing (Tr.); dashcam video (P. Ex. 1); Grandview Police Department tow policy (P. Ex. 2); and Presentence Investigation Report (PSR).

belonging to Katherine Gooch in Boonville, Missouri (P. Ex. 1 at 9:25:01, 9:25:44; DCD 42, Tr. at 11-12, 41). Bolin obtained the VIN from the open driver's side door and called it in to the dispatcher (P. Ex. 1 at 9:26:00, 9:26:44; DCD 42, Tr. at 10-11).

Mr. Green awoke and Officer Bolin asked how he was doing (P. Ex. 1 at 9:26:53). Mr. Green explained that his car had broken down and that he had been staying at a local motel in Oak Grove, Missouri (P. Ex. 1 at 9:27:00 – 9:27:18; DCD 42, Tr. 12-13). After a brief conversation, Bolin asked to see Mr. Green's driver's license (P. Ex. 1 at 9:28:10). Mr. Green stated that he was in the area to buy a truck and had visited a friend named Emilio (P. Ex. 1 at 9:28:30 – 9:28:49; DCD 42, Tr. at 15-16, 39). Mr. Green provided Bolin with an identification card rather than a driver's license (P. Ex. 1 at 9:28:53; DCD 42, Tr. at 13).

While Officer Bolin spoke with Mr. Green, the dispatcher informed Officer Bolin that the VIN was for a 1996 Saturn and had "no record, no warrant" (P. Ex. 1 at 9:28:55). Bolin questioned Mr. Green about where his friend lived (P. Ex. 1 at 9:29:03). While Mr. Green looked for a piece of paper on which he had written his friend's address, Officer Bolin spoke with a second officer who had arrived at the scene about the information Officer Bolin had obtained from Mr. Green (P. Ex. 1 at 9:29:45). Bolin provided the dispatcher with the information on Mr. Green's

identification card and the dispatcher responded that Mr. Green had convictions for possession of a controlled substance and burglary (P. Ex. 1 at 9:31:08, 9:32:05; DCD 42, Tr. at 16). Mr. Green provided Bolin the address of his friend and said that he could show Bolin if his GPS was working (P. Ex. 1 at 9:31:42 – 9:31:56).

Officer Bolin asked Mr. Green to get out of the vehicle and Mr. Green complied (P. Ex. 1 at 9:32:31). Bolin asked who the car belonged to and Mr. Green said, "Katherine Gooch" (P. Ex. 1 at 9:32:40). Bolin asked if he could search Mr. Green and Mr. Green assented (P. Ex. 1 at 9:32:48; DCD 85, PSR at ¶ 5).

While frisking Mr. Green, Bolin said that some people in the neighborhood were concerned because of burglaries in the area and asked, "you're on paper for burglary, right?" (P. Ex. 1 at 9:32:59). After searching Mr. Green's pockets, Bolin asked if there was anything illegal in the car and Mr. Green said, "there's nothing in there" (P. Ex. 1 at 9:33:40). Bolin asked if he could search the car, and Mr. Green declined, saying that the car did not belong to him (P. Ex. 1 at 9:33:44; DCD 42, Tr. 17, 45). Officer Bolin said it did not matter who owned the car, but Mr. Green would not consent to a search (P. Ex. 1 at 9:33:58). Apparently forgetting that Mr. Green had told him that the car belonged to Katherine Gooch, Officer Bolin inquired again about the owner (P. Ex. 1 at 9:35:01). Mr. Green said that the

"paperwork" and title were in the glove box (P. Ex. 1 at 9:35:17 – 9:35:39; DCD 42, Tr. at 41). Officer Bolin did not immediately check the glove box for the title, but at some point, Officer Bolin found a motor vehicle inspection, an application for title, and vehicle title in the vehicle (DCD 42, Supp. Tr. at 41, 50).

After Mr. Green refused to consent to a search of the car, Bolin asked, "who's your PO" and "how long have you been on paper" (P. Ex. 1 at 9:36:03, 9:36:14). Mr. Green responded, "two months" (P. Ex. 1 at 9:36:16). After further discussion, Mr. Green said that he was trying to get the car to a garage (p. Ex. 1 at 9:37:30). Later, Bolin said that Mr. Green's probation officer "wouldn't be thrilled since you're probably supposed to cooperate with the police" (P. Ex. 1 at 9:39:35).

Officer Bolin said, "we'll probably have to get this car off the roadway, sir" (P. Ex. 1 at 9:39:40). Mr. Green indicated that he would have the car towed (P. Ex. 1 at 9:39:48). Bolin said the car was not on a private drive and was "broken down" (P. Ex. 1 at 9:39:51). Mr. Green said, "you're telling me I can't tow my own vehicle?" (P. Ex. 1 at 9:40:12). Officer Bolin responded, "what I'm telling you is, I'm going to get it off the roadway" (P. Ex. 1 at 9:40:18).

After a discussion about Mr. Green's prior convictions, Officer Bolin asked Mr. Green to hear him out so that he could explain where he "was coming from as a police officer" (P. Ex. 1 at 9:42:25). Bolin said that there had been some 911

calls about a suspicious party in a vehicle and the callers thought that the party may have burglarized something (P. Ex. 1 at 9:42:32). Officer Bolin said that when he arrived, Mr. Green was passed out in his car, which could mean that Mr. Green was under the influence of something (P. Ex. 1 at 9:42:48). Officer Bolin said that when he tried to get some basic information from Mr. Green, Mr. Green refused to answer (P. Ex. 1 at 9:43:10). Officer Bolin said, "As a police officer, my reasonable suspicion continues to grow" (P. Ex. 1 at 9:43:16). Officer Bolin continued, "Nothing you have said makes me feel at ease that there is no criminal activity afoot" (P. Ex. 1 at 9:43:21).

Mr. Green insisted that he had done nothing wrong and said he just wanted to get the car fixed so he could go home (P. Ex. 1 at 9:43:35). Mr. Green stated that Officer Bolin could see that there was nothing in the car (P. Ex. 1 at 9:43:54). Officer Bolin said that there was nothing in plain view, but without searching the car he could not know for sure, and Mr. Green would not allow him to search (P. Ex. 1 at 9:43:57). Officer Bolin asked Mr. Green to have a seat on the curb while he spoke with another officer (P. Ex. 1 at 9:44:10).

The officers stepped to the side and portions of their conversation were inaudible. Officer Bolin said that the car could be stolen (P. Ex. 1 at 9:46:04). Officer Bolin asked the dispatcher to confirm Mr. Green's driving status, and the

dispatcher stated that he had a non-driver's license (P. Ex. 1 at 9:46:10, 9:46:26). One of the officers said, "there you go" (P. Ex. 1 at 9:46:28). Officer Bolin asked the dispatcher to call Lazer, the tow company (P. Ex. 1 at 9:46:31).

Mr. Green said he was in the process of having the car towed (P. Ex. 1 at 9:48:52). He explained that he had not called a tow company yet, because the internet connection on his phone was down (P. Ex. 1 at 9:48:57). Mr. Green said that if Officer Bolin would give him the name of a tow company, he would call them and get it towed (P. Ex. 1 at 9:50:05, 9:50:19). Mr. Green repeated that he would have the car towed if Officer Bolin would give him a phone number (P. Ex. 1 at 9:51:36).

While speaking to another officer off camera, Officer Bolin said he would ticket Mr. Green, tell him he was free to go, and tow and inventory the car (P. Ex. 1 at 9:55:15). Officer Bolin asked, "are we good for an inventory without arresting?" (P. Ex. 1 at 9:55:31). The other officer said an inventory had to be done anytime a car was towed (P. Ex. 1 at 9:55:35, 9:55:46). The officer suggested issuing citations for "14-89 parking a motor vehicle within 40 feet of an intersection impeding traffic" and "14-179 for park/abandoning an improperly registered motor vehicle on the city street" (P. Ex. 1 at 9:58:15; DCD 42, tr. at 43). A tow truck arrived as Officer Bolin prepared the citations (P. Ex. 1 at 9:58:50).

Officer Bolin said to one of the officers, "what I'm concerned about at this point is that this is really a stolen car" (P. Ex. 1 at 9:59:00). Mr. Green wanted to remove some of his property from the car, but Officer Bolin said that he was "unwilling to let him take property that could have been in a burglary" (P. Ex. 1 at 9:59:08; DCD 42, Tr. 25). Officer Bolin said he would release property, such as a wallet, if it was clearly identifiable as belonging to Mr. Green, otherwise he would not release property that could be stolen (P. Ex. 1 at 9:59:11).

Officer Bolin gave Mr. Green the citations, explained the ordinance violations, and said that Mr. Green was not under arrest (P. Ex. 1 at 10:05:00; DCD 42, Tr. at 25-26). Mr. Green protested that Officer Bolin was refusing him the opportunity to tow the car (P. Ex. 1 at 10:05:06). Mr. Green, presumably referring to a tow service, said, "I just needed the number of a place to do it" (P. Ex. 1 at 10:06:02). Officer Bolin explained to Mr. Green that he had no idea who owned the car—apparently forgetting that Mr. Green had told him that Katherine Gooch owned the car, the license plate was registered to Ms. Gooch, and Mr. Green had told him the title was in the glove box—and because Mr. Green would not provide certain information, there was no way for Officer Bolin to "confirm anything" and he had "no idea if the car is stolen" (P. Ex. 1 at 10:06:15).

Officer Bolin retrieved Mr. Green's phone and wallet (P. Ex. 1 at 10:06:47).

Officer Bolin looked in the wallet and found a debit card with the name Katie Gooch and said that he did not know who that was, again apparently not remembering that Mr. Green had said Ms. Gooch owned the vehicle (P. Ex. 1 at 10:08:33). Officer Bolin told Mr. Green he was free to go (P. Ex. 1 at 10:08:58). Mr. Green spoke with the tow truck driver while Officer Bolin started to search the vehicle (P. Ex. 1 at 10:09:34). Mr. Green lingered for a moment and then walked away from the intersection (P. Ex. 1 at 10:11:21).

After searching the passenger compartment of the vehicle, the officers searched the trunk. Officer Bolin found some cash, then said, "there it is," and told another officer that he had found some narcotics (P. Ex. 1 at 10:15:39; DCD 42, Tr. at 27, 32-33). The drugs were later tested and found to be methamphetamine (DCD 85, PSR at ¶¶ 6-7). Later that day, Mr. Green was questioned by police and released (DCD 85, PSR at ¶ 8). One week later, he was arrested at the home of his girlfriend, Katherine Gooch (DCD 85, PSR at ¶ 10).

B. The Tow Policy

The Grandview policy distinguishes between a "custody tow" and a "non-custody tow" (Appx. at 23). A "custody tow" occurs when:

> A vehicle is towed because it is parked illegally, stolen and recovered, abandoned, disabled on a public street, ordered removed by the Police Department or other authorized agent of the City because of a violation of law

> (including trespass to private property), vehicles impounded by the Police Department, and vehicles ordered removed from private or public property by the Municipal Court under the nuisance ordinances of the City. Tows resulting from accidents are custody tows if the operator is arrested or incapacitated to the extent that he is unable to request a tow service.

(Appx. at 23).

A "non-custody tow" occurs when: "A vehicle is towed at the request of a citizen for assistance in the removal of his/her vehicle" (Appx. at 23).

Under the heading "Towing Procedure for Custody Tows," the policy sets forth four categories in numbered paragraphs: "1.3 Abandoned Vehicles," "1.4 Accidents," "1.5 Arrested Persons," and "1.6 Stolen/Wanted Vehicles" (Appx. at 23-25). Each category has various subparagraphs. The category of "Abandoned Vehicles" provides as follows with respect to disabled vehicles, illegally parked vehicles, and vehicles without license plates or plates that are stolen:

> 1.3 Abandoned Vehicles – Employees of the Grandview Police Department may authorize the contract tow service to remove the following vehicles to a place of secure storage:
>
> * * *
>
> 1.3.2 Vehicles disabled to constitute and [sic] obstruction to traffic and the person in charge of the vehicle is unable to provide for its removal.
>
> 1.3.3 Illegally parked vehicles placed in such a manner

> as to constitute a definite hazard or obstruction to the movement of traffic.
>
> * * *
>
> 1.3.8 Vehicles parked on a public street without license plates, with plates reported stolen or taken without the consent of the owner.

(Appx. at 24).

Because the vehicle Mr. Green was driving was not abandoned, however, Section 1.3 of the policy does not apply. The applicable portion of the tow policy is Section 2, which provides as follows:

> 2. Towing Procedure for Non-Custody Tows
>
> 2.1 A citizen requesting assistance in removing their disabled vehicle may request any licensed tow service located within the City, and the Department will attempt to contact them on behalf of the citizen.
>
> 2.2 In the event, [sic] the citizen does not have a specified request for assistance, the Department member will advise the dispatcher to contact the City's contractual tow service. Officers shall not use their patrol cars to pull any vehicle. Officers may, in properly equipped vehicles, push vehicles from the traveled portion of the roadway.
>
> 2.3 Disabled Vehicles
>
> 2.3.1 Whenever an officer considers it necessary to remove a vehicle, he or she may consult with the owner to obtain a towing firm of their choice if time constraints

> allow.
>
> 2.3.2 If this is not satisfactory the officer will contact the city's contract tow service for immediate removal, and remain at the scene until the vehicle is removed.

(Appx. at 26).

The policy also provided that "[a]ll vehicles towed at the direction of a police officer shall undergo an inventory of contents" (Appx. at 26).

C. The District Court's Ruling

The magistrate judge concluded that the tow was justified under the policy as a "custody tow," since the vehicle was disabled and on a public street (Appx. at 18). The magistrate judge found that the vehicle had been broken down for several hours causing other vehicles to be forced to drive in the opposing lane of traffic to avoid hitting it (Appx. at 17). The magistrate judge also found that Mr. Green had not made arrangements to have the vehicle towed (Appx. at 17-18). According to the magistrate judge, the tow policy provided that an inventory of a vehicle's contents had to be completed before a vehicle could be towed (Appx. at 18).

The magistrate judge concluded:

> . . . the decision to tow defendant Green's vehicle was made on the basis of safety and . . . Detective Bolin had no other viable alternative to having the vehicle towed. The Court further finds that the inventory search of the vehicle was conducted pursuant to standardized police

> procedures and that it was not done in bad faith for the sole purpose of investigation. There is no constitutional violation.

(Appx. at 19). The magistrate judge cited *South Dakota v. Opperman*, 428 U.S. 364, 368-69 (1976), noting that an officer's community caretaking functions required the removal of disabled vehicles and "[t]he authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge" (Appx. at 17).

The district court adopted the magistrate judge's Report and Recommendation (Appx. at 21). Neither the magistrate judge nor the district court made any findings of fact as to whether Officer Bolin had an investigatory motive to seize and search the vehicle. Although the dashcam video revealed that Bolin had made several comments indicative of an investigatory motive, the magistrate judge and district court simply ignored his comments.[2] Relying on *Colorado v. Bertine*, 479 U.S. 367, 372 (1987), however, the district court concluded that an inventory search is valid if conducted pursuant to standard police procedures and

[2] Bolin's comments included the following: "As a police officer my reasonable suspicion continues to grow"; "Nothing you have said makes me feel at ease that there is no criminal activity afoot"; "What I'm concerned about at this point is that this is really a stolen car"; "[I am] unwilling to let him take property that could have been in a burglary"; "[I have] no idea if the car is stolen." (P. Ex. 1 at 9:43:16, 9:43:21, 9:59:00, 9:59:08, 10:06:15).

not done in bad faith or for the sole purpose of investigation (Appx. at 21). The court also concluded that the presence of an investigative motive does not invalidate an otherwise valid inventory search (Appx. at 21).

D. The Eighth Circuit's Opinion

On appeal, Mr. Green argued that Officer Bolin failed to follow Section 2.1 of the tow policy, which provided that for a "non-custody tow," officers were to attempt to contact a licensed tow service located within the city on behalf of citizens requesting assistance in removing their disabled vehicle (Appx. at 4). Although Officer Bolin did not arrest Mr. Green and instead issued traffic citations and told him he was free to leave, the court relied on the "custody tow" portion of the policy (Appx. at 5).

The court concluded that the surrounding circumstances met the definition of a "custody tow" because the vehicle was "parked illegally," "disabled on a public street," and "ordered removed . . . because of a violation of law" (Appx. at 6-8). Although these categories fell under the heading of "Abandoned Vehicles" in Section 1.3 of the policy and Mr. Green had not abandoned the vehicle, the court concluded that the policy could be interpreted in a way that supported Bolin's decision to tow the vehicle (Appx. at 6-8). The court said that Section 1.3 could plausibly be interpreted in one of two ways: 1) the provisions under the subheading

of "Abandoned Vehicles" applied only to vehicles that were in fact abandoned, which would be defined in the ordinary meaning of the word as referring to a vehicle left unattended; or 2) the provisions under the subheading "Abandoned Vehicles" actually defined what constituted an abandoned vehicle for purposes of the policy (Appx. at 7).

The court said that "the policy's construction" was "not an exemplar of clarity, but the district court's interpretation of the policy as authorizing a Custody Tow given the operative facts was reasonable" (Appx. at 8). "We agree with the district court that Officer Bolin reasonably ordered the impoundment pursuant to the policy's "Custody Tow" definition (Appx. at 8). The court concluded that Bolin's decision to inventory and tow the vehicle was based on something other than the suspicion of criminal activity, although it implicitly acknowledged that Bolin also had an investigatory motive (Appx. at 8). "His actions were consistent with his role as a community caretaker, and his decision was *largely* based on concerns related to the purposes of impoundment" (Appx. at 9) (emphasis added). "Because the impoundment was valid, and because Officer Bolin's *sole* purpose for impounding the vehicle was not to investigate criminal activity, the corresponding inventory search was reasonable" (Appx. at 10) (emphasis added).

II. REASONS FOR GRANTING REVIEW

Law enforcement officers sometimes have dual or mixed motives when impounding a vehicle and conducting an inventory search—an improper motive to search for evidence of a crime without probable cause or a warrant and a proper community caretaking motive to impound a vehicle to protect the owner's property and then inventory its contents to protect the officer against false claims of theft or property damage. This Court's precedents regarding the impoundment and inventorying of vehicles have repeatedly emphasized the need for law enforcement officers to act in accordance with standard police procedures and noted the absence of any suggestion that the inventory search was a pretext for concealing the officer's subjective investigatory motive to search for incriminating evidence. *Cady v. Dombrowski*, 413 U.S. 433 (1973); *South Dakota v. Opperman*, 428 U.S. 364 (1976); *Colorado v. Bertine*, 479 U.S. 367 (1987); *Florida v. Wells*, 495 U.S. 1, 5 (1990).

In other contexts, however, the Court has said that an officer's subjective motive cannot invalidate objectively justifiable behavior under the Fourth Amendment. *Whren v. United States*, 517 U.S. 806, 813 (1996) (actual motivations of officers involved in a vehicle stop are irrelevant when stop was justified by probable cause); *Brigham City, Utah v. Stuart*, 547 U.S. 398, 405

(2006) (warrantless entry of a home was justified by objectively reasonable belief that an occupant faced an imminent threat of injury); *Kentucky v. King*, 563 U.S. 452, 464 (2011) (rejecting the argument that exigent circumstances did not justify warrantless entry of a home to prevent the destruction of evidence if the police "created" the exigency).

In this case, the police department had a policy regarding the towing of vehicles, but the officer did not adhere to the policy. Furthermore, the officer had a subjective motive to search the vehicle for incriminating evidence based on his hunch that the vehicle may have been stolen or contained stolen property. This Court should grant certiorari to address whether an officer's subjective motivation to search a vehicle for incriminating evidence can invalidate the impoundment of a disabled vehicle and inventory of its contents when application of the police department's standard policy would require the officer to assist the driver in contacting a tow service if requested by the driver.

III. ARGUMENT

In its cases upholding the impoundment of vehicles and subsequent inventory searches, this Court has been careful to note both the absence of an investigatory motive on the part of the searching officers and the existence of standard police procedures. In *Cady v. Dombrowski*, the Court described an

officer's community caretaking functions as conduct "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." 413 U.S. 433, 441 (1973) (search and seizure of a vehicle's trunk following an accident revealed incriminating evidence of a murder). In deciding that the search of the vehicle in that case did not require a warrant and was reasonable, the Court said "two factual considerations deserved emphasis." *Id*. at 442. First, the police exercised custody of the vehicle where the driver was unable to make arrangements for a tow. *Id*. Second, the decision to search the vehicle's trunk was "standard procedure" for that police department. *Id*. at 443. The court also noted that at the time of the search, the officer "was ignorant of the fact that a murder, or any other crime, had been committed." *Id*. at 447.

In *South Dakota v. Opperman*, the Court upheld the impoundment of an unattended, illegally parked vehicle in which marijuana was found during an inventory search. 428 U.S. 364 (1976). The Court again emphasized that the searching officer acted pursuant to standard police procedures. *Id*. at 366. The Court also noted that the vehicle owner was not present to make other arrangements for the safekeeping of his property and there was "no suggestion whatever that this standard procedure . . . was a pretext concealing an investigatory police motive." *Id*. at 375-76. The Court also observed that

probable cause to search was not required, because inventory searches depend "upon the reasonableness of routine administrative caretaking functions, particularly when no claim is made that the protective procedures are a subterfuge for criminal investigations." *Id*. at 370, n. 5

In his concurring opinion, Justice Powell said that the definition of reasonableness in the Fourth Amendment context depends, in part, on "the more specific dictates of the Warrant Clause." 428 U.S. 364, 381 (1976). He explained why routine inventory searches did not require a warrant, even though they did not fall within any of the established exceptions to the warrant requirement recognized at that time:

> The officer does not make a discretionary determination to search based on the judgment that certain conditions are present. Inventory searches are conducted in accordance with established police department rules or policy and occur whenever an automobile is seized. There are thus no special facts for a neutral magistrate to evaluate.
>
> A related purpose of the warrant requirement is to prevent hindsight from affecting the evaluation of the reasonableness of a search. In the case of an inventory search conducted in accordance with standard police department procedures, there is no significant danger of hindsight justification. The absence of a warrant will not impair the effectiveness of post-search review of the reasonableness of a particular inventory search.

428 U.S. 364, 383 (1976) (internal citations omitted).

In *Colorado v. Bertine*, the Court upheld the warrantless search of closed containers found within a closed backpack during an inventory search of a van following the arrest of the driver. 479 U.S. 367 (1987). The Court's analysis again focused on the fact that "there was no showing that the police, who were following standardized procedures, acted in bad faith or for the sole purpose of investigation." *Id*. at 372. The Court reaffirmed earlier cases in which it concluded that "[w]hen a legitimate search is under way, and when its purpose and its limits have been precisely defined," officers, who have limited time and expertise, should be guided by "a single familiar standard" and not be forced to make "fine and subtle distinctions" as to which containers may be searched by weighing the owner's privacy interest in a particular type of container and whether it may hold valuable or dangerous items. *Id*. at 374-75, citing *Illinois v. Lafayette*, 462 U.S. 640, 648 (1983) and *United States v. Ross*, 456 U.S. 798, 821 (1982).

The Court also rejected the argument that the inventory search was unconstitutional because the police department policy gave the officers discretion to choose between impounding the owner's vehicle and parking and locking it in a public parking place. *Id*. at 375. "Nothing in *Opperman* or *Lafayette* 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." *Id*.

In *Florida v. Wells*, the Court declined to uphold the search of a locked suitcase found in an impounded vehicle where the law enforcement agency "had no policy whatever with respect to the opening of closed containers encountered during an inventory search." 495 U.S. 1, 5 (1990). Absent a policy regarding the opening of closed containers, the search "was not sufficiently regulated to satisfy the Fourth Amendment." *Id*. Standardized criteria are needed to enforce the principle that "an inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence." *Id*. at 4.

When the Eighth Circuit discussed the ways in which the Grandview tow and inventory policy could be plausibly interpreted and said the district court's interpretation was reasonable, the opinion essentially abandoned the need for standardized criteria (Appx. at 7-8). The opinion substituted "a reasonable interpretation of the policy" for the required "standardized policy." The two are not equivalent. A standardized policy satisfies the reasonableness requirement of the Fourth Amendment, because it affects all impounded vehicles in a similar manner and regulates the discretion of the officers conducting the search. *United States v. Marshall*, 986 F.2d 1171, 1176 (8th Cir. 1993).

A reasonable interpretation of a policy does not affect all impounded

vehicles in a similar manner. Nothing guarantees that the interpretation of the policy will not change from officer to officer. It permits an officer to exercise his discretion and formulate his own interpretation of the policy, and a court may then justify that interpretation in hindsight. While an officer is permitted to exercise some amount of discretion in deciding to impound and inventory a vehicle, his discretion must be exercised according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity.

When an impoundment and inventory policy is subject to interpretation it does not satisfy the criteria—lack of discretion, consistent application whenever an automobile is seized, no need for a magistrate to evaluate the facts, and the prevention of justification in hindsight—that Justice Powell said excuses the normal requirement of a warrant or probable cause.

The Grandview tow policy required Officer Bolin to assist Green in obtaining a private tow if requested (Appx. at 26). The policy intentionally limited Bolin's discretion. But the Eighth Circuit read Section 2.1 out of the tow policy by forcing a strained interpretation of the policy that no reasonable officer would adopt. The policy provided a simple to understand and easy to apply standard, as extolled in *Bertine*, which the Eighth Circuit then ignored in an effort to justify the impoundment and inventory in hindsight.

Not only did the Eighth Circuit adopt a tortured reading of the tow policy in order to justify Officer Bolin's actions, it failed to meaningfully address Bolin's obvious investigatory motive. According to the court, since Bolin's motive to search the vehicle for evidence of a crime coexisted with a valid community caretaking function, the Eighth Circuit deemed the search lawful. But this Court's precedents do not allow the existence of a purportedly valid caretaking motive to cure the existence of an investigatory motive in the context of inventory searches.

To be sure, this Court has said that the subjective motivations of an individual officer do not invalidate an officer's objectively justifiable behavior, but it has done so in cases in which probable cause or exigent circumstances existed. *Whren v. United States*, 517 U.S. 806, 813 (1996); *Brigham City, Utah v. Stuart*, 547 U.S. 398, 405 (2006); *Kentucky v. King*, 563 U.S. 452, 464 (2011). This Court has not applied that principle in a case involving an impoundment and inventory search of a vehicle. In fact, in *Whren* the Court explicitly distinguished *Florida v. Wells* and *Colorado v. Bertine* in concluding that subjective motivations play no part in probable cause analysis. 517 U.S, at 811.

In this case, Officer Bolin did not have probable cause or even reasonable, individualized suspicion to believe that Green was involved in criminal wrongdoing. Bolin had nothing more than a hunch that criminal activity might be

afoot. He used the tow policy as a pretext to search the vehicle. Bolin ignored the policy provision that directed him to assist a driver in obtaining a tow for a disabled vehicle by calling a licensed tow service within the city. Instead, he impounded the vehicle so that he could search it under the guise of an inventory needed to protect the police department from false claims of theft or damage to property.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant this petition.

Respectfully submitted,

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APPENDIX

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