No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

WALI ROSS,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the
Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I

Whether officers, in order to justify entry into a hotel room to execute an arrest warrant, must have *probable cause* to believe the suspect is present in the room, or some lesser standard such as a *reasonable belief*.

II

Whether Florida's hotel eviction statute gives the renter a possessory interest cognizable under the Fourth Amendment even after checkout time?

PARTIES INVOLVED

All parties appear in the caption of the case on the cover page.

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PETITION FOR WRIT OF CERTIORARI

Wali Ross respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered in Case No. 18-11679, on July 7, 2020, affirming the judgment of the District Court for the Northern District of Florida.

OPINION BELOW

The decision of the United States Court of Appeals for the Eleventh Circuit, *United States v. Wali Ross,* 964 F.3d 1034 (11th Cir. 2020), was issued on July 7, 2020, and is attached as Appendix A to this Petition.

JURISDICTION

The Court of Appeals filed its decision in this matter on July 7, 2020. Petitioner did not move for rehearing. This Court has jurisdiction under 28 U.S.C. § 1254(1) and 28 U.S.C. § 2101(c).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment of the Constitution of the United States provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Art. 4, U.S. Const.

FLORIDA STATUTE INVOLVED

Florida's hotel ejectment statute provides:

> 509.141. Refusal of admission and ejection of undesirable guests; notice; procedure; penalties for refusal to leave
>
> (1) The operator of any public lodging establishment or public food service establishment may remove or cause to be removed from such establishment, in the manner hereinafter provided, any guest of the establishment who, while on the premises of the establishment, illegally possesses or deals in controlled substances as defined in chapter 893 or is intoxicated, profane, lewd, or brawling, who indulges in any language or conduct which disturbs the peace and comfort of other guests or which injures the reputation, dignity, or standing of the establishment; who, in the case of a public lodging establishment, fails to make payment of rent at the agree-upon rental rate by the agreed-upon checkout time; who, in the case of a public lodging establishment, fails to check out by the time agreed upon in writing by the guest and public lodging establishment at check-in unless an extension of time is agreed to by the public lodging establishment and guest prior to checkout; who, in the case of a public food service establishment, fails to make payment for food, beverages, or services; or who, in the opinion of the operator, is a person the continued entertainment of whom would be detrimental to such establishment. The admission to, or the removal from, such establishment shall not be based

upon race, creed, color, sex, physical disability, or national origin.

(2) The operator of any public lodging establishment or public food service establishment shall notify such guest that the establishment no longer desires to entertain the guest and shall request that such guest immediately depart from the establishment. Such notice may be given orally or in writing. If the notice is in writing, it shall be as follows:

> "You are hereby notified that this establishment no longer desires to entertain you as its guest, ad you are requested to leave at once. To remain after receipt of this notice is a misdemeanor under the laws of this state."

If such guest has paid in advance, the establishment shall, at the time such notice is given, tender to such guest the unused portion of the advance payment; however, the establishment may withhold payment for each full day that the guest has been entertained at the establishment for any portion of the 24-hour period of such day.

(3) Any guest who remains or attempts to remain in any such establishment after being requested to leave is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) If any person is illegally on the premises of any public lodging establishment or public food service establishment, the operator of such establishment may call upon any law enforcement officer of this state for assistance. It is the duty of such law enforcement officer, upon the request of such operator, to place under arrest and take into custody for violation of this section any guest who violates subsection (3) in the presence of the officer. If a warrant has been issued by the proper judicial officer for the arrest of any violator of subsection (3), the officer shall serve the warrant, arrest the person, and take the person into custody. Upon arrest, with or without warrant, the guest will be deemed to have given up any right to occupancy or to have abandoned such right of occupancy of the premises,

> and the operator of the establishment may then make such premises available to other guests. However, the operator of the establishment shall employ all reasonable and proper means to care for any personal property which may be left on the premises by such guest and shall refund any unused portion of moneys paid by such guest for the occupancy of such premises.

Fla. Stat. § 509.141.

INTRODUCTION

The Court's decision in *Payton v. New York*, 445 U.S. 573 (1980), has given rise to a split of authority regarding the legal standard required to justify entry of a hotel room (or dwelling) in order to execute an arrest warrant. A number of circuit courts hold that officers must have probable cause to believe the suspect is present in the hotel room (or dwelling) to justify the entry under the reasonableness requirement of the Fourth Amendment. Others, as illustrated by the decision below, hold that officers need only a "reasonable belief" the suspect is present in the hotel room (or dwelling) to satisfy the test of reasonableness. The split of authority was exacerbated by the decision below which provides an excellent vehicle for resolution of the controversy.

Next, recent decisions of the Court emphasized that the primary protection granted to citizens under the Fourth Amendment emanates from property interests, as opposed to reasonable expectations of privacy. *See e.g.*, *Byrd v. United States*, 138 S. Ct. 1518 (2018); *Florida v. Jardines*, 569 U.S. 1 (2013); *United States v. Jones*, 565 U.S. 400 (2012). And Justice Gorsuch noted that the property-based origins of the Fourth Amendment, characterized as "democratically legitimate sources of law" and "positive law," including statutory law, are the prime source of protection afforded under the Fourth Amendment. *See Carpenter v. United States*, 138 S. Ct. 2206, 2268 (2018) (Gorsuch, J., dissenting). Relevant to his motion to suppress evidence, Petitioner claimed a possessory interest in his hotel room—even after checkout time—under Florida's hotel eviction statute, Fla. Stat. § 509.141, such that the hotel's

manager lacked the legal authority to consent to the search of Petitioner's room. The circuit courts, and state courts, too, have expressed divergent views on whether tenants possess a continuing possessory interest upon the termination of leaseholds and the degree to which tenants' claimed possessory interest is affected or defined by state law. This case presents an excellent vehicle by which to resolve the controversy.

STATEMENT OF THE CASE

Wali Ross was charged with two offenses: (1) possession of a firearm and ammunition in violation of 18 U.S.C. § 922(g)(1); and (2) possession with intent to distribute heroin, in violation of 18 U.S.C. §§ 841(a) and 841(b)(1)(C). (ECF 17). Ross filed a motion to suppress evidence seized from his hotel room as the result of an initial search and a second search conducted after check-out time. (ECF 24). After the trial court denied Ross's motion to suppress, Ross pled guilty while reserving the right to contest the district court's ruling on appeal. (ECF 39). Based on an advisory guideline range of 188-235 months in prison, Ross was sentenced to concurrent terms of 120 months in prison for the possession offense and 151 months in prison for the drug offense. (ECF 59 – p2; ECF 60).

In the district court, Ross argued that the firearm obtained as the result of the first search should be suppressed. Having just exited the hotel, fled from the officers and escaped, the claim that officers thought he may have returned to the room was "totally unreasonable," especially because he had no way of knowing the room had been left unguarded. There was "no basis" to believe he had returned to the room. Ross also sought to suppress the heroin seized as the result of the second search, conducted after checkout time, with the consent of the hotel manager. Ross argued the manager did not have authority to consent to the search—even after checkout time—without having provided notice to vacate the premises as required by Fla. Stat. § 509.141. The district court denied his motion to suppress.

On appeal, Ross argued, *inter alia*, that the district court erred in denying his motion to suppress evidence seized from his hotel room, i.e., a firearm and drugs. He argued the finding that officers had a factual basis to enter the room was "objectively unreasonable." The first search, claimed to be a "protective sweep," yielded the firearm but violated the Fourth Amendment.

Ross also challenged a second search of his room conducted after checkout time. The second search was based upon the consent of the hotel manager. Ross claimed the manager lacked the legal authority to consent to the search, even shortly after checkout time, on the basis of Fla. Stat. § 509.141. He argued the statute defined his possessory interest (or reasonable expectation of privacy) in his hotel room. The statute, he argued, provided a specific procedure for evicting a guest who failed to vacate the premises at the agreed-upon checkout time. And he argued that his possessory or property interest in the hotel room continued unless and until the hotel complied with the eviction procedure. The hotel did not comply with the eviction procedure requiring notice to the registered guest. Ross was not the registered guest. The registered guest was a friend, Donicia Wilson. The hotel manager made no attempt to contact Ms. Wilson even though the registration form bore her address and phone number. Still, Ross argued he had a continuing possessory interest in the room when the manager "consented" to the second search. The second search yielded the heroin giving rise to the drug charges.

The Eleventh Circuit affirmed Ross's conviction on the ground that he had abandoned the room and its contents when he fled from law enforcement.

Specifically, the circuit court held it did not have jurisdiction to hear the appeal because Ross's abandonment constituted a lack of "standing" to proceed in the Article III sense. *United States v. Ross*, 941 F.3d 1058 (11th Cir. 2019).

Ross moved for rehearing and rehearing *en banc*. He argued, *inter alia*, that the panel employed an incorrect legal standard in ruling that officers had a "*reasonable belief*" that Ross was in the room thus justifying the initial entry to serve the arrest warrant. He argued that *Payton v. New York* required *probable cause* to believe the suspect was inside the room. And he noted a split of authority whereby some circuits require *probable cause* to believe the suspect was inside the room or dwelling in order to justify the entry and to serve an arrest warrant.

The circuit court agreed to rehear the case *en banc*, but limited its consideration to the issue of standing as a jurisdictional bar to litigate the merits of the Fourth Amendment claim. The *en banc* court held that the doctrine of standing in the Fourth Amendment context was not to be confused with standing in the Article III context, and does not prevent the defendant from litigating the merits of his Fourth Amendment claim on direct appeal. The *en banc* court therefore remanded the case to the three-judge panel for further proceedings. *United States v. Ross*, 963 F.3d 1056 (11th Cir. 2020).

The panel again affirmed Ross's conviction, holding that officers had a "reasonable belief" Ross was in the room, thus justifying the initial entry to execute the arrest warrant, conduct a protective sweep, and seize the firearm found in plain view. *Id.* at 1041-42. As to the second search after checkout time, the panel ruled

that Ross lacked Fourth Amendment standing to contest the search because he lost any "reasonable expectation of privacy" after checkout time. *Id* at 142-44. The panel rejected Ross's claim of a continuing possessory interest in the room after checkout time on the basis of Fla. Stat. § 509.141. *Id*. at 1044, n.7.

Statement of the Facts

Law enforcement possessed an arrest warrant for Wali Ross and information that he could be found at the Bayfront Inn & Suites in Pensacola, Florida. But they had no knowledge of what room he may be in. The officers also knew that Ross had a history of prior convictions for violent crimes and regarded him as dangerous. Eight to ten officers in five vehicles proceeded to the hotel and conducted a stake-out. Officer Dugan went to the rental office and learned that Ross was not a registered guest.

Officers observed Ross exit Room 113 and proceed on foot toward his vehicle, a white pick-up truck. Ross paused and returned to the room, as if he had forgotten his keys. When Ross exited the room again, the officers began to converge on him, but Ross detected their presence and took off running. He jumped a chain-link fence bordering the property and fled across the interstate highway, I-10. The officers took off in their vehicles, drove to the other side of I-10, and searched for Ross, but the search was futile. Ross had escaped.

The officers then realized that no one had remained behind to guard or monitor the hotel room. Officer England and Detective Wheeler returned to the hotel "thinking *perhaps* [Ross] may have gone back." (ECF 71 at 25) (e.s.). Upon their

return, the white truck was still parked in the lot. (ECF 71 at 36). Wheeler got a room key from the desk clerk and learned that Room 113 was rented to Donicia Wilson. (ECF 71 at 40). The registration form bears Wilson's address and phone number.

England and Wheeler went to Room 113 and entered without knocking to conduct a "protective sweep." They exited after determining the room to be safe. On the way out, England observed a plastic bag which he described as "transparent," and which revealed the clear indentation of a firearm. (ECF 71 at 28,38,43). England seized the firearm, exited, and resumed surveillance of the room. The officer explained that "no more than ten minutes" had elapsed from the time they lost sight of Ross until the time they arrived back at the hotel room. (ECF 71 at 41).

The district court asked England to explain "[w]hat gave you the suspicion that someone dangerous was in the room?" (ECF 71 at 44). England did not say he thought a dangerous person was in the room. He testified that Ross had a violent history and they had a warrant for his arrest. (ECF 71 at 44). The officers were going into the room, so "protocol" dictated a "tactical entry." The officers exited after determining no one was there. (ECF 71 at 44).

After discovery of the firearm, officers met with the hotel manager, Ms. Nelson, who explained that checkout time was 11:00 a.m. Law enforcement asked for, and received, Nelson's permission to enter the room after that time. Officers conducted a second search shortly after checkout time. That is when they discovered about 12 grams of a mixture containing heroin.

REASONS FOR GRANTING THE WRIT

This Court should grant the writ because the decision below deepens a split of authority among the circuit courts regarding the proper interpretation of the Court's decision in *Payton v. New York*, 445 U.S. 573 (1980). Some circuit courts hold that *Payton* requires probable cause to believe a suspect is within a dwelling (or hotel room) in order justify entry to serve an arrest warrant. Other circuits hold law enforcement needs only a "reasonable belief" that the suspect is inside the dwelling (or hotel room) in order to justify the entry.

Next, the circuit courts, and state courts, hold divergent views on whether state eviction statutes may give rise to reasonable expectations of privacy in rented premises even after termination of the leasehold. Here, Petitioner argued that a Florida eviction statute applicable to hotels gave him what is more aptly described as a possessory interest (rather than an expectation of privacy). And, he argued, his possessory interest continued—even after checkout time—because the hotel management failed to comply with statutory procedures necessary to evict him from the premises.

These issues represent recurring themes in the criminal law. This case is an excellent vehicle to resolve either or both issues.

I. The circuit courts are split on whether the *Payton* requirement of a "reasonable belief" is the equivalent of probable cause, or reflects some lesser standard of proof.

In *Payton*, the Court held that "an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within." *Id*. at 603. Since *Payton*,

the circuit courts have considered the Court's "reason to believe" language and divided into three camps regarding its interpretation. The first camp holds that "reason to believe" is the equivalent of probable cause. The second holds that "reason to believe" is some lesser standard than probable cause. And the third camp expresses uncertainty or otherwise sidesteps resolution of the issue. In any event, the split of authority has been recognized by the circuit courts. *See United States v. Bohannon*, 824 F.3d 242, 253 (2d Cir. 2016) ("At the outset, we note a circuit split as to the showing necessary to satisfy *Payton's* 'reason to believe' standard, with some courts equating reason to believe to probable cause and others holding that reason to believe is a lesser standard."); *United States v. Vasquez-Algarin*, 821 F.3d 467, 474-77 (3rd Cir. 2016) (surveying divergent views among the circuits); *United States v. Jackson*, 576 F.3d 465, 469 (7th Cir. 2009) ("Our sister circuits disagree about what 'reasonable belief' actually entails and whether its meaning is different from probable cause."); *United States v. Thomas*, 429 F.3d 282, 286 (D.C. Cir. 2005) (describing split of authority).

A number of circuits hold that, under *Payton*, a "reason to believe" the suspect is within the dwelling is the equivalent of probable cause to believe the suspect is within the dwelling. *See United States v. Vasquez-Algerin*, 824 F.3d at 477 (2d Cir. 2016); *United States v. Barrera*, 464 F. 3d 496, 500-505 (5th Cir. 2006); *United States v. Gorman*, 314 F.3d 1105, 1114-15 (9th Cir. 2002) ("We now hold that the "reason to believe," or reasonable belief, standard of *Payton* . . . embodies the same standard of reasonableness inherent in probable cause.").

To the contrary, a number of circuits hold that the reasonable belief standard of *Payton* is a less stringent standard of proof than probable cause. *United States v. Bohannon*, 824 F.3d 242, 253-55 (2d Cir. 2016) (reasonable belief under *Payton* requires something more than reasonable suspicion but less than probable cause); *United States v. Thomas*, 429 F.3d 282, 286 (D.C. Cir. 2005) ("[W]e expressly hold that an officer executing an arrest warrant may enter a dwelling if he has only a 'reasonable belief,' falling short of probable cause to believe, the suspect lives there and is present at the time."); *Valdez v. McPheters*, 172 F.3d 1220, 1224-26 (10th Cir. 1999).

In the third camp lie the noncommittal circuits. These circuits have sidestepped the issue or expressed their opinions only in *dicta*. Here, too, the perceived ambiguity of the *Payton* decision and need for clarity and uniformity are indicated. *See United States v. Hamilton*, 819 F.3d 503, 506 n. 5 (1st Cir. 2016) ("We assume without deciding that reasonable belief is a lesser standard than probable cause, although we note that our decision does not turn on that assumption because the government prevails even under a probable cause standard."); *United States v. Werra*, 638 F.3d 326, 337 (1st Cir. 2011) ("[M]ost circuits to have considered the issue have adopted the 'reasonable belief' standard, and treat it as less stringent than probable cause, . . [w]e have not explicitly made a choice, but have implicitly accepted the majority view."); *United States v. Jackson*, 576 F.3d 465, 469 (7th Cir. 2009) ("Were we to reach the issue, we might be inclined to adopt the view of the narrow majority of our sister circuits that 'reasonable belief' is synonymous with probable

cause."); *United States v. Hardin*, 539 F.3d 404, 416 n.6 (6th Cir. 2008) ("[T]his case, too, does not require that we adopt one standard or the other [reasonable belief or probable cause] to evaluate the district court's ruling on Hardin's motion to suppress." "Although we recognize that our statements on this matter are *dicta*, we nonetheless explain briefly why we believe that probable cause is the correct standard and that the Supreme Court in *Payton* did not intend to create, without explanation or elaboration, an entirely new standard of 'reason to believe.'"); *United States v. Magluta*, 44 F.3d 1530, 1534 (11th Cir. 1995) ("The 'reason to believe' standard was not defined in *Payton*, and since *Payton*, neither the Supreme Court, nor the courts of appeals, have provided much illumination.").

The vast majority of circuit courts have grappled with the interpretation of *Payton's* reasonable belief standard—with differing results. As evidenced by the variety of approaches taken, and the lower courts' expressions of uncertainty, the issue cries out for resolution by the Court.

A. Petitioner's case presents an appropriate vehicle for resolution of the circuit split on the important question presented.

This case involves a question which arises in a vast number of cases throughout the country. In the district court, and on direct appeal, Petitioner argued that the officers did not have an articulable basis to believe he had returned to the hotel room having just fled and escaped from the officers. There was "no basis" to believe Mr. Ross was in the room when officers made their initial entry.

In affirming Ross's conviction, the Eleventh Circuit relied on its post-*Payton* decisions and applied a standard less than probable cause to determine whether officers had a "reasonable belief" that Ross was in the hotel room when they first entered. *See United States v. Ross*, 941 F.3d 1058, 1068-69 (11th Cir. 2020) (citing *United States v. Williams* 871 F.3d 1197, 1201 (11th Cir. 2017); *United States v. Magluta*, 44 F.3d 1530, 1538 (11th Cir. 1995)). In his petition for rehearing and rehearing *en banc*, Ross argued that the circuit court had applied an incorrect legal standard, and an erroneous interpretation of *Payton*, in rejecting the claim that officers had no articulable basis to suspect he was in the hotel room when they entered. The claim was specifically presented and is ripe for resolution by this Court.

There is no need to allow for further percolation in the circuit courts. Nearly every circuit has weighed in on the issue or expressed doubt about the correct rule to be applied after *Payton*. A number of circuits acknowledge the split of authority, and the need for resolution of the controversy is evident from the survey of the circuit court decisions.

B. The decision below is wrong.

The decision below is wrong because it conflicts with the law of the Court established by *Payton*. The controversy regarding the meaning of "reasonable belief" in *Payton* stems from a common misinterpretation of the decision. Reading *Payton* carefully, the Court held that the warrantless entry of a dwelling to effect an arrest is unconstitutional. *Payton*, 445 U.S. at 602-603. But, an arrest warrant founded upon probable cause justifies the entry provided the officer has "reason to believe the

suspect is within." *Id*. at 603. The Supreme Court was careful to observe, however, that "in neither case is it argued that the police lacked probable cause to believe that the suspect was at home when they entered." *Id*. at 583. *Payton's* holding, therefore, was based on the premise that the officers had probable cause to believe the suspect was within the dwelling. The narrowest reading of *Payton* holds that an arrest warrant supports the entry of a dwelling to arrest a suspect provided the police have probable cause to believe the suspect is within. The panel's decision, therefore, conflicts with *Payton*.

Some circuit courts, likewise, have offered persuasive reasoning to conclude that *Payton's* "reason to believe" is the equivalent of probable cause. The Court's subsequent decision in *Maryland v. Buie*, 494 U.S. 325 (1990), supports the conclusion. In *Buie*, the question was whether officers executing a home arrest pursuant to *Payton* could also perform a protective sweep of the residence. The Court answered affirmatively. "Possessing an arrest warrant and probable cause to believe Buie was in his home, the officers were entitled to enter and to search anywhere in the house in which Buie might be found." *Buie*, 494 U.S. at 332-33. The Court appeared to use the term "probable cause" in *Buie* interchangeably with "reason to believe" in *Payton*. *See Vasquez-Algarin*, 821 F.3d at 475, (citing *Hardin*, 539 F.3d at 416 n. 6; *Gorman*, 314 F.3d at 1114).

In addition, the circuit courts have noted that the Court has, at times, used the "reason to believe" language as a "stand-in" for probable cause. *See e.g.*, *Vasquez-Algarin*, 821 F.3d at 477-78. In *Berger v. New York*, 388 U.S. 41, 59 (1967), the Court

noted that the "probable cause" test serves to safeguard constitutionally protected areas until the government has "reason to believe" that a crime has been committed. Another example appears in *Gersten v. Pugh*, 420 U.S. 103 (1975) (the justice of the peace may determine whether there was "reason to believe" a crime had been committed and this determination of "probable cause" could be reviewed on a writ of habeas corpus).

The more well-reasoned decisions support the view that the *Payton* "reason to believe" standard is the equivalent of probable cause. The decision below was wrongly decided because the circuit court applied an incorrect legal standard to determine whether the evidence supported the officers' belief that Ross was in the hotel room at the time of the initial entry.

Finally, the decision below was incorrect because the claim that officers believed Ross was present in Room 113 fails any test of reasonableness. Ross had just fled the scene to escape arrest. The room had been left unguarded for a maximum of ten minutes. It is patently unreasonable to think Ross would have returned to a hotel swarming with police (as far as he knew). He had no way of knowing the room had been left unguarded. He, on foot, probably could not return any sooner than officers in vehicles even if he wanted to. Moreover, the officers never articulated facts to support a belief that Ross had returned to the room. The testimony merely showed that Officer England thought Ross, *perhaps*, may have returned to the room. "Perhaps" is nothing more than a hunch. The officer also testified that he intended

to enter the room regardless. The circuit court's decision, affirming the finding that officers had a reasonable belief of Ross's presence in the room, was wrong.

II. Federal and state decisions reflect a split of authority on whether a landlord's capacity to consent to a search of his or her property by law enforcement is constrained by state statutes regulating eviction.

The circuit courts generally agree that a hotel guest loses his or her reasonable expectation of privacy at checkout time. The Eleventh Circuit so held in the present case. *United States v. Wali Ross*, 964 F.3d 1034, 1042-43 (11th Cir. 2020); *see also United States v. Lanier*, 636 F.3d 228, 232 (6th Cir. 2011); *United States v. Huffhines*, 967 F.2d 314, 318 (9th Cir.1992); *United States v. Ramirez*, 810 F.2d 1338, 1341 (5th Cir. 1987); *United States v. Larson*, 760 F.2d 852, 855 (10th Cir. 1985); *United States v. Jackson*, 585 F.2d 653, 658 (4th Cir. 1978); *United States v. Akin*, 562 F.2d 459, 464 (7th Cir. 1977); *United States v. Parizo*, 514 F.2d 52, 54 (2d Cir. 1975); *United States v. Croft*, 429 F.2d 884, 887 (10th Cir. 1970).

This line of cases is inconsistent with the decisions holding that a holdover tenant retains a reasonable expectation of privacy—even after termination of the lease—to the extent required by state landlord-tenant law or evictions statutes. *See United States v. Washington*, 573 F.3d 279, 284 (6th Cir. 2009) (Ohio landlord-tenant law determines whether a tenant's expectation of privacy is objectively reasonable under the Fourth Amendment; holdover tenant retains legitimate expectation of privacy, and is not a trespasser, where landlord fails to satisfy statutory eviction procedure); *United States v. Botelho*, 360 F.Supp. 620, 623-27 (D. Hawaii 1973) (same result under Hawaii eviction statute).

These conflicting lines of cases cannot be reconciled under the view that the former pertains generally to long-term apartment leases while the latter pertains generally to short-term hotel rentals. *Botelho* involved an apartment rental. *Id*. at 622. More importantly, it is well established that a hotel guest is entitled to no less protection under the Fourth Amendment than a homeowner or long-term tenant. *See Hoffa v. United States*, 385 U.S. 293, 301 (1966); *Stoner v. State of California*, 376 U.S. 483 (1964).

Because the Fourth Amendment must be honored in state courts, state court decisions are relevant to expose a conflict in its application and the need for intervention by the Court. A number of state court decisions serve this purpose. *See State v. Jaques*, 210 A.3d 533 (Conn. 2019) (tenant subject to eviction for non-payment of rent nonetheless retained legitimate expectation of privacy under Connecticut landlord-tenant law where landlord failed to comply with statutory requirements for eviction); *State v. Hinton*, 78 A.3d 553 (N.J. 2013) (holdover tenant loses possessory interest and reasonable expectation of privacy only in late stages of eviction proceedings when, after statutory notice to vacate premises, landlord obtains court order authorizing officer to restore control of premises to landlord); *State v. Dennis*, 914 N.E. 2d 1071 (Ohio Ct. App. 2009) (holdover tenant retains possessory interest and reasonable expectation of privacy during course of eviction proceedings). And pertinent to questions of Florida law involved here, see *Brown v. State*, 891 So. 2d 1120 (Fla. 4th DCA 2005) (failure to strictly comply with notice requirements of Fla. Stat. § 509.141, rendered entry into motel room to arrest disruptive holdover

guest unlawful; evidence seized incident to arrest must be suppressed); *Morse v. State*, 604 So. 2d 496, 500-501 (Fla. 1st DCA 1992) (non-paying guest of Destination Motel retained reasonable expectation of privacy where verbal notice of eviction failed to satisfy writing requirement of Florida landlord-tenant law, citing Fla. Stat. § 83.57 (1989)); *Blanco v. State*, 438 So. 2d 404, 405 (Fla. 1st DCA 1983) (same).

The survey of decisions above demonstrates the widespread nature of the conflict regarding the interplay between rental contracts, landlord-tenant law, and reasonable expectations of privacy under the Fourth Amendment. The conflict is ripe for resolution by the Court.

A. Petitioner's case presents an appropriate vehicle for resolution of the conflict of decisions on the important question presented.

This case is an excellent vehicle for resolution of the important issue relating to the second search and the drug conviction. The record is clear. The issue was preserved at all stages of the proceeding, in the district court and in the circuit court. The split of authority is well developed, mature and ripe for review. Under Rule 10(a), the "compelling reasons" for the exercise of certiorari jurisdiction include a conflict between decisions of the court of appeals on an important matter, and a decision by a court of appeals on an important federal question "that conflicts with a decision of a state court of last resort." *See also City and County of San Francisco, Calif. v. Sheehan*, 135 S. Ct. 1765, 1779 (2015) (Scalia, J. concurring). Here, the decision below conflicts with the decision of the Sixth Circuit Court of Appeals in *United States v. Washington*, 573 F.3d 279, 284 (6th Cir. 2009). In addition, the

decision below conflicts with the decisions of the supreme courts of Connecticut and New Jersey. *See State v. Jaques*, 210 A.3d 533 (Conn. 2019); *State v. Hinton*, 78 A.3d 553 (N.J. 2013). Taken together with the additional circuit court decisions and intermediate state court decisions cited above, there is no need for, nor advantage to, further percolation of the disputed federal question testing the legal capacity of a landlord to consent to a search of the apartment or hotel room of a holdover tenant.

B. The decision below is wrong.

The decision below is wrong under either a "possessory interest" or "reasonable expectation of privacy" analysis. First, as Ross argued below, the preferred analysis under the Court's recent decisions examines whether Ross had a "possessory interest" in Room 113, rather than a "reasonable expectation of privacy." That's not to say that the privacy mode of analysis is dead. *See e.g. Carpenter v. United States*, 138 S. Ct. 2206 (2018). But the Court has remarked that the primary protection granted to citizens under the Fourth Amendment emanates from property or possessory interests, as opposed to "reasonable expectations of privacy." *See Byrd v. United States*, 138 S. Ct. 1518 (2018); *Florida v. Jardines*, 569 U.S. 1, (2013); *United States v. Jones*, 565 U.S. 400 (2012). Here, given Ross's possession of Room 113, the preferred analysis examines whether the manager's consent to search transgressed Ross's possessory interest in Room 113. Here, too, Ross enjoyed a possessory interest derivative to that of the registered guest, Ms. Wilson. *See Minnesota v. Carter*, 525 U.S. 83, 89-90 (1998) (citing *Minnesota v. Olson*, 495 U.S. 91 (1990)) (overnight guest

in home has a reasonable expectation of privacy). And this mode of analysis is bolstered by the role of Florida's eviction statute in the dispute. The mode of analysis makes a difference. Ross's claim is arguably stronger on the theory of a deprivation of a possessory interest because the analysis is driven by statute and property law principles; whereas, the "reasonableness" of an expectation of privacy presents a more amorphous question.

Second, even under the "reasonable expectation of privacy" analysis, Petitioner adopts the well-reasoned view of the Supreme Court of Connecticut.

> The very existence of the statutory landlord tenant scheme in Connecticut is significant in our analysis for objective standards in this context . . . "Because legislative enactments are expressions of this state's public policy . . . they may be relevant to the resolution of whether the defendant's expectation of privacy is one that Connecticut citizens would recognize as reasonable."

State v. Jaques, 210 A.3d at 545 (quoting *State v. Bernier*, 717 A.2d 652 (Conn. 1998)).

> The state, as well as every other state in the nation, has a comprehensive statutory scheme in place detailing the process through which a landlord may retake possession of leased property from a tenant. See *2 Restatement (Second), Property, Landlord and Tenant* § 14.1, note 1, p. 3 (1977). The existence of these statutes demonstrate that society expects landlords to follow the mandatory legal processes in order to lawfully retake possession of a premises, which, in turn, indicates to us that a tenant's expectation of privacy is valid, or at least reasonable, until the time that the landlord complies with the statutory procedure and regains the right of possession.

Id. at 545-56. Here, Florida's hotel eviction statute is analogous to the landlord-tenant eviction statute in *Jaques* and the Florida landlord-tenant eviction statute, Fla. Stat. § 83.56. In other words, Fla. Stat. § 509.141 is the "hotel analogue" to a

typical landlord-tenant eviction statute.

The plain text of Fla. Stat. 509.141 creates a continuing possessory interest in the holdover guest absent the landlord's compliance with the eviction procedure. The statute provides the hotel may remove the guest, "in the manner hereinafter provided," for, *inter alia*, failing to check out at the agreed-upon time. Fla. Stat. § 509.141(1). The "manner hereinafter provided" includes written or oral notice to quit the premises. Fla. Stat. § 509.141(2). If the guest thereafter fails to quit the premises he or she is guilty of a misdemeanor of the second degree and the hotel may summon a police officer who may place the violator under arrest. Fla. Stat. § 509.141(4).

> Upon arrest, with or without a warrant, the guest will be deemed to have given up any right to occupancy or to have abandoned such right of occupancy of the premises, and the operator of the establishment *may then make such premises available to other guests*.

Fla. Stat. § 509.141(4) (emphasis added). Under the plain terms of the statute, the hotel does not regain lawful possession of the hotel room until the holdover guest either voluntarily departs after notice or is arrested.

The decision below was wrong because the circuit court failed to follow the Florida law giving Ross a continuing possessory interest in Room 113—even after checkout time—due to the hotel's failure to comply with the statutory notice requirement. In the alternative, Ross had a reasonable expectation of privacy even after checkout time. The heroin recovered as the result of the second search should have been suppressed. *See Brown v. State*, 891 So. 2d 1120 (Fla. 4th DCA 2005) (failure to strictly comply with notice requirements of Fla. Stat. § 509.141, rendered

entry into motel room to arrest disruptive holdover guest unlawful; evidence seized incident to arrest must be suppressed).

CONCLUSION

For the reasons stated above, the Court should grant the writ.

Respectfully submitted,

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