No. 20-5589

IN THE SUPREME COURT OF THE UNITED STATES

WALI ROSS, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the rule from Payton v. New York, 445 U.S. 573 (1980), that officers may enter a suspect's dwelling to execute an arrest warrant when they have "reason to believe the suspect is within," id. at 630, requires probable cause to believe that the suspect is inside.

2. Whether petitioner retained a Fourth Amendment interest in a motel room, even after checkout time, by virtue of Fla. Stat. § 509.141 (2017), which governs the removal of certain guests from public lodging establishments.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (N.D. Fla.):

United States v. Ross, No. 17-cr-86 (Apr. 10, 2018)

United States Court of Appeals (11th Cir.):

United States v. Ross, No. 18-11679 (July 7, 2020)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-19) is reported at 964 F.3d 1034. A prior opinion of the en banc court of appeals is reported at 963 F.3d 1056. A prior opinion of a panel of the court of appeals is reported at 941 F.3d 1058. The order of the district court is not published in the Federal Supplement but is available at 2017 WL 5162819.

JURISDICTION

The judgment of the court of appeals was entered on July 7, 2020. The petition for a writ of certiorari was filed on August 28,

2020. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a conditional guilty plea in the United States District Court for the Northern District of Florida, petitioner was convicted of possessing a firearm and ammunition as a felon, in violation of 18 U.S.C. 922(g)(1), and possessing heroin with intent to distribute, in violation of 21 U.S.C. 841(a) and (b)(1)(C). C.A. App. 69, 77. The district court sentenced petitioner to 151 months of imprisonment, to be followed by six years of supervised release. Id. at 78-79. The court of appeals affirmed. Pet. App. 1-19.

1. In July 2017, law enforcement officers received information that petitioner, who had three outstanding arrest warrants, was staying at the Baymont Inn and Suites in Pensacola, Florida. Pet. App. 9; 2017 WL 5162819, at *1. Because petitioner was not registered as a guest, the officers did not know which room he was staying in, so they set up surveillance and waited for him to appear. Ibid. Sometime after 9 a.m., the officers saw petitioner leave Room 113, walk toward a truck, return to the room briefly, and then approach the truck again. Pet. App. 9. At that point, petitioner noticed the officers and fled, scaling a chain-link fence and running toward the interstate highway. Ibid. When the officers arrived on the other side of the highway, they could

not find petitioner and feared that he might have circled back to the now-unmonitored motel. Ibid.

About ten minutes after the chase began, two of the officers returned to the motel to find petitioner's truck still in the parking lot and the door to Room 113 closed. Pet. App. 9. The officers learned from the front desk that Room 113 had been rented for one night to a woman named Donicia Wilson. Ibid. The officers obtained a room key from the front desk. Ibid. Concerned that any occupants could pose a threat, they entered Room 113 without knocking. Ibid. Inside, they conducted a protective sweep and saw a firearm in plain view, but petitioner was not there. Id. at 9-10. The officers seized the firearm and left. Id. at 10.

The officers kept watch outside Room 113 until the motel's standard checkout time of 11 a.m. Pet. App. 10. At that point, when no guest in the room had requested a late checkout time, the motel's manager gave the officers consent to enter and search the room again. Ibid.; 2017 WL 5162819, at *2. During that search, the officers found heroin and a digital scale. Pet. App. 10. Officers located and arrested petitioner ten days later. D. Ct. Doc. 40, at 2 (Nov. 28, 2017).

2. A federal grand jury in the Northern District of Florida returned a two-count indictment charging petitioner with one count of possessing a firearm and ammunition as a felon, in violation of 18 U.S.C. 922(g)(1), and one count of possessing heroin with intent

to distribute, in violation of 18 U.S.C. 841(a) and (b)(1)(C). C.A. App. 15-17.

Petitioner moved to suppress all evidence found in the motel room. C.A. App. 21-24. Petitioner contended that the officers' initial entry into Room 113 violated the Fourth Amendment because, in petitioner's view, "there were no grounds for [the officers] to believe that a dangerous individual (or anyone) was inside the room." Id. at 22. Petitioner contended that the protective sweep of the room likewise violated the Fourth Amendment, on the view that the officers lacked "reasonable suspicion that the area to be searched 'harbor[ed] an individual posing a danger to those on the arrest scene.'" Ibid. (citation omitted). And petitioner argued that the "items seized during the second search" of the room should be suppressed as "the fruit of the illegal first search," on the theory that the second search "would not have occurred absent the illegal first search." Id. at 23.

After conducting an evidentiary hearing, the district court denied the motion to suppress. 2017 WL 5162819, at *1-*6. The court determined that the officers' initial entry into the motel room was justified by the arrest warrant; the fact that "the officers were still in hot pursuit of a fleeing felon"; the "reasonable belief that [petitioner] had returned" to the motel room, "possibly to retrieve belongings and his truck"; and "exigent circumstances." Id. at *3-*4. The court further determined that the officers were justified in seizing the firearm seen in plain

view during the protective sweep. Id. at *4. In addition, the court found that once the 11 a.m. checkout time had passed, petitioner no longer had a reasonable expectation of privacy in Room 113, and the motel's manager validly consented to the second search of the room. Id. at *5. The court also determined that, even assuming that the initial entry and sweep of the room were not justified, the "manager's voluntary consent to search was not tainted." Ibid. Finally, the court agreed with the government that, in any event, the firearm seized during the protective sweep "would have been inevitably discovered, either during a lawful search or through the ordinary hotel procedures." Id. at *6.

Petitioner entered a conditional guilty plea to both counts of the indictment, reserving the right to appeal the denial of his suppression motion. C.A. App. 69, 75. The district court sentenced petitioner to 151 months of imprisonment, to be followed by six years of supervised release. Id. at 78-79.

3. A three-judge panel of the court of appeals affirmed. 941 F.3d 1058.

Although in the district court, the government had argued only that petitioner lacked Fourth Amendment "standing" to challenge the second search, based on the checkout time having expired, the government argued for the first time on appeal that petitioner lacked standing to challenge either of the two searches of the motel room, because he abandoned the room when he ran and thus relinquished any reasonable expectation of privacy in it.

941 F.3d at 1064. The court of appeals determined that the government had not "waived" that new argument, despite not having raised it in the district court, because under the court of appeals' prior decision in United States v. Sparks, 806 F.3d 1323 (11th Cir. 2015), a "challenge to Fourth Amendment standing" based on "a defendant's alleged act of abandonment" "implicates Article III jurisdiction, rendering it non-waivable." 941 F.3d at 1065. But the court of appeals then rejected the abandonment argument, finding that the government had "not discharged its burden of demonstrating that [petitioner] had abandoned his room at the time of the officers' initial entry and protective sweep." Id. at 1066.

The court of appeals determined, however, that petitioner's "challenge to the initial entry and sweep fails on the merits" because "the officers had reason to believe that [petitioner] was in Room 113" and lawfully "conduct[ed] a protective sweep to ensure their safety." 941 F.3d at 1071-1072. And with respect to "the second search, which officers carried out with the consent of hotel management shortly after 11:00 a.m.," the court determined that petitioner "lost any reasonable expectation of privacy in his room at checkout time -- and with it, his Fourth Amendment standing to contest the search." Id. at 1061.

4. The court of appeals subsequently vacated the panel's opinion, granted rehearing en banc, and ordered the parties to file supplemental briefs on whether its prior decision in Sparks should be "overruled to the extent that it holds that a suspect's

abandonment of an item or premises implicates both Fourth Amendment and Article III standing." C.A. En Banc Briefing Notice 1 (Mar. 31, 2020); see C.A. Order 1-2 (Mar. 23, 2020). In its supplemental brief, the government agreed that Sparks should be overruled to that extent. Gov't C.A. En Banc Br. 2-10.

The en banc court of appeals overruled "Sparks's holding that a suspect's alleged abandonment of a place or thing implicates his Article III standing to challenge a search of it." 963 F.3d 1056, 1062. The en banc court determined that "a suspect's alleged abandonment implicates only the merits of his Fourth Amendment challenge * * * and, accordingly, that if the government fails to argue abandonment, it waives the issue." Id. at 1057. The en banc court remanded the case to the panel for further proceedings. Id. at 1066.

5. On remand, the panel of the court of appeals again affirmed the denial of petitioner's suppression motion. Pet. App. 1-19. The court determined that "the government waived its abandonment argument by failing to raise it in the district court." Id. at 8. The court then "reaffirm[ed] the balance of [its] earlier decision." Ibid.

a. The court of appeals determined that the "officers' initial entry and accompanying protective sweep of [petitioner's] room complied with the Fourth Amendment." Pet. App. 13. The court explained that, "[f]or Fourth Amendment purposes, 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 a reason to believe the suspect is within." Ibid. (citation omitted). The court "assume[d] for present purposes that a person's hotel room counts as a 'dwelling.'" Ibid. And it determined that the officers "clearly knew that [petitioner] was staying in Room 113" and that they "had the requisite 'reasonable belief' -- based on 'common sense factors' and permissible 'inferences and presumptions' -- that [petitioner] had returned to the room following his flight toward I-10." Id. at 14.

In particular, the court of appeals emphasized that the officers "knew * * * that [petitioner] had left his truck in the motel's parking lot"; "that after chasing [petitioner], they had lost sight of him and that no one had thought to stay behind to surveil the motel"; and "that when they returned, [petitioner's] truck was still in the motel's parking lot, eliminating the possibility that he had driven away and (on balance) increasing the probability that he was back inside the room." Pet. App. 14. Noting that "the officers' ill-fated pursuit of [petitioner] had lasted no more than 10 minutes," the court found it "eminently reasonable for [the officers] to conclude that [petitioner] had doubled back to the motel and taken refuge in his room." Ibid. And having found that "the officers reasonably believed that [petitioner] was in Room 113," the court explained that they therefore "had authority (1) to enter the room to execute the arrest warrants, (2) to conduct a limited protective sweep of the

room to ensure that no one inside posed a danger to them, and (3) to seize the gun, which they found in plain view." Ibid.

b. The court of appeals further determined (based on an argument that the government had both presented and prevailed on in the district court) that petitioner lacked Fourth Amendment standing to challenge the second search of the motel room. Pet. App. 8. The court of appeals explained that "a short-term hotel guest" generally "has no reasonable expectation of privacy in his room after checkout time," because at that point, "the housekeeping crew will need to -- and has the authority to -- access the room to clean and prepare it for the next registered guest," "'the motel manager has the right to enter and examine the room as if it had been relinquished,'" and a "guest's doorhanger no longer bars entry." Id. at 15-16 (brackets and citation omitted). The court therefore determined that petitioner "had no cognizable privacy interest in Room 113 after 11:00 a.m.," and thus "no Fourth Amendment standing to challenge the second, post-checkout-time search of the room." Id. at 16.

In a footnote, the court of appeals rejected petitioner's assertion that "he had a continuing possessory interest in Room 113 due to the motel's failure to honor Fla. Stat. § 509.141(1)," Pet. App. 18 n.7, which provides that a "public lodging establishment * * * may remove or cause to be removed" any "guest" who "fails to check out by the time agreed upon," if the establishment gives the guest certain notice specified in the

statute, Fla. Stat. § 509.141(1)-(2) (2017). The court determined that "nothing in § 509.141 justifies the conclusion that [petitioner] continued to enjoy an exclusive right to occupy an unpaid-for room absent formal notice." Pet. App. 18-19 n.7. "Rather," the court explained, "the hotel's noncompliance with the statute simply means that [petitioner] couldn't be charged with misdemeanor trespassing for his holdover." Id. at 19 n.7. The court declined to read the statute "so broadly" as to allow someone to "maintain an indefinite possessory interest -- and a reasonable expectation of privacy for Fourth Amendment purposes -- in a hotel room as long as the hotel doesn't explicitly tell him to vacate." Ibid.

ARGUMENT

Petitioner contends (Pet. 11-18) that officers who enter a dwelling to execute an arrest warrant must have probable cause to believe that the suspect is inside. That contention lacks merit, and the court of appeals' decision does not conflict with any decision of this Court. To the extent that the circuits are divided on the question, that division is narrow and has not resulted in divergent outcomes in practice. In any event, this case would be an unsuitable vehicle for further review. This Court has repeatedly denied petitions for writs of certiorari raising similar contentions, see Weeks v. United States, 566 U.S. 924 (2012) (No. 11-8064); Tiewloh v. United States, 559 U.S. 941 (2010) (No. 09-6255); Barrera v. United States, 550 U.S. 937 (2007)

(No. 06-8750); Pruitt v. United States, 549 U.S. 1283 (2007) (No. 06-7731); Thomas v. United States, 549 U.S. 1055 (2006) (No. 06-5386), and the same result is warranted here. Petitioner also contends (Pet. 18-24) that, even after checkout time, he retained a possessory and privacy interest in the motel room under Fla. Stat. § 509.141 (2017). The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of this Court or another court of appeals. Moreover, the outcome of this case would be the same, regardless of the resolution of either question presented. The petition for a writ of certiorari should be denied.

1. In Payton v. New York, 445 U.S. 573 (1980), this Court held that an arrest warrant authorizes officers "to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within." Id. at 603. Petitioner contends (Pet. 11-18) that this Court should grant review to decide whether the "reason to believe" standard in Payton requires officers to have probable cause to believe that the suspect is inside the residence, as opposed to a reasonable belief that the suspect is inside. The court of appeals' decision is correct and consistent with Payton, and no further review of the issue is warranted.

a. In Payton, this Court held that an arrest warrant is required for law enforcement officers to enter a suspect's home to make a felony arrest. 445 U.S. at 574-576. An arrest warrant, the Court explained, authorizes officers "to enter a dwelling in

which the suspect lives when there is reason to believe the suspect is within." Id. at 603. In so holding, the Court expressly rejected the suggestion that the Constitution requires "a search warrant based on probable cause to believe the suspect is at home at a given time." Id. at 602. The Court explained that, "[i]f there is sufficient evidence of a citizen's participation in a felony to persuade a judicial officer that his arrest is justified, it is constitutionally reasonable to require him to open his doors to the officers of the law." Id. at 602-603.

The court of appeals correctly applied that holding. The court recognized that, "[f]or Fourth Amendment purposes, 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." Pet. App. 13 (citation omitted). And it found that standard to be satisfied here because the officers "clearly knew that [petitioner] was staying in Room 113" and "had the requisite 'reasonable belief' -- based on 'common sense factors' and permissible 'inferences and presumptions' -- that [petitioner] had returned to the room following his flight toward I-10." Id. at 14.

b. Consistent with Payton, most courts of appeals that have addressed the question have determined that Payton's "reason to believe" standard means what it says and thus requires that officers have a reasonable belief that a suspect is within a dwelling before executing a warrant. See United States v. Barrera,

464 F.3d 496, 501 (5th Cir. 2006), cert. denied, 550 U.S. 937 (2007); United States v. Thomas, 429 F.3d 282, 286 (D.C. Cir. 2005), cert. denied, 549 U.S. 1055 (2006); Valdez v. McPheters, 172 F.3d 1220, 1224-1226 (10th Cir. 1999); United States v. Risse, 83 F.3d 212, 216 (8th Cir. 1996); United States v. Lauter, 57 F.3d 212, 215 (2d Cir. 1995); United States v. Magluta, 44 F.3d 1530, 1534-1535 (11th Cir.), cert. denied, 516 U.S. 869 (1995); see also United States v. Hill, 649 F.3d 258, 262-263 (4th Cir. 2011) (declining to decide whether probable cause is required); United States v. Jackson, 576 F.3d 465, 469 (7th Cir.) (same), cert. denied, 558 U.S. 1062 (2009); United States v. Hardin, 539 F.3d 404, 416 (6th Cir. 2008) (same). Only the Third and Ninth Circuits have taken a different view, stating that the "reason to believe" standard "embodies the same standard of reasonableness inherent in probable cause." United States v. Gorman, 314 F.3d 1105, 1112 (9th Cir. 2002); see United States v. Vasquez-Algarin, 821 F.3d 467, 477 (3d Cir. 2016) (stating that "Payton's 'reason to believe' language amounts to a probable cause standard").[1]

Despite those different articulations, the courts of appeals' standards have not proved to be materially different in practice.

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[1] Contrary to petitioner's contention (Pet. 12), the Fifth Circuit in Barrera did not adopt a probable cause standard. The Fifth Circuit in Barrera observed that its prior decision in United States v. Route, 104 F.3d 59, 62 (5th Cir.), cert. denied, 521 U.S. 1109 (1997), had "distinguished [Payton's standard] from the standard for probable cause." Barrera, 464 F.3d at 501. Route, in turn, "adopt[ed] * * * the 'reasonable belief' standard of the" majority of the circuits. 104 F.3d at 62.

Indeed, the Ninth Circuit in United States v. Gorman, supra, underscored the "similarity between probable cause and the 'reason to believe' standard," 314 F.3d at 1113, and stressed that "'reasonable grounds to believe' * * * is often synonymous with probable cause," id. at 1114. The decisions of other courts have likewise evidenced little, if any, practical difference between the two standards. As the Fifth Circuit explained, "[t]he disagreement among the circuits has been more about semantics than substance; the courts that distinguish the terms have done so because 'probable cause' is a term of art. * * * Even though they may distinguish the reasonable belief standard from probable cause, they also define the 'reason to believe standard' as requiring that the officers reasonably believe that 'the suspect is probably within' the premises." Barrera, 464 F.3d at 501 n.5 (quoting United States v. Route, 104 F.3d 59, 62 (5th Cir.), cert. denied, 521 U.S. 1109 (1997)).[2] And practical experience confirms that any difference in the circuits' standards is more one of articulation than one of application, as the approaches have not produced materially divergent outcomes. See, e.g., United States

[2] See, e.g., Route, 104 F.3d at 62 (the "reason to believe" standard simply "allow[s] the officer, who has already been to the magistrate to secure an arrest warrant, to determine that the suspect is probably within certain premises without an additional trip to the magistrate and without exigent circumstances") (citation and internal quotation marks omitted); Magluta, 44 F.3d at 1534-1536 (the reasonable belief standard is a "common sense approach" that considers the totality of the facts and circumstances known to the officers).

v. Litteral, 910 F.2d 547, 553-554 (9th Cir. 1990) (finding standard satisfied where an informant told officers that, if the defendant's car was on the premises, he would be inside).

c. In any event, this case would not be a suitable vehicle for this Court's review. In his briefs before the district court and the three-judge panel, petitioner described the applicable standard as one of "reasonable suspicion." C.A. App. 22; Pet. C.A. Br. 16, 18, 27; Pet. C.A. Reply Br. 11; see Pet. C.A. Br. 22-23. Petitioner did not argue for a probable cause standard until his petition for rehearing en banc. C.A. Pet. for Reh'g En Banc 9-11. The court of appeals therefore did not address whether Payton's "reason to believe" standard, 445 U.S. at 603, is different from probable cause. And petitioner himself places the Eleventh Circuit among those "noncommittal circuits" that he contends "have sidestepped the issue or expressed their opinions only in dicta." Pet. 13-14 (citing Magluta, 44 F.3d at 1534); see C.A. Pet. for Reh'g En Banc 9 (stating that "the law of [the Eleventh Circuit] is not entirely clear"). Because petitioner did not raise the issue in his briefs before the panel, and because the court of appeals did not address the issue, further review is unwarranted. See Cutter v. Wilkinson, 544 U.S. 709, 718 n.7 (2005) (explaining that this Court is "a court of review, not of first view").

Moreover, petitioner would not prevail even if a probable cause standard applied. The probable cause standard would require

a "fair probability," "given all the circumstances," that the subject of an arrest warrant would be found in the dwelling. Illinois v. Gates, 462 U.S. 213, 238 (1983). That standard was satisfied here. As the court of appeals explained, the officers "knew that [petitioner] was staying in Room 113"; that petitioner "had left his truck in the motel's parking lot"; that "after chasing [petitioner], they had lost sight of him and that no one had thought to stay behind to surveil the motel"; and that "when they returned, [petitioner's] truck was still in the motel's parking lot, eliminating the possibility that he had driven away and (on balance) increasing the probability that he was back inside the room." Pet. App. 14. "Particularly given that the officers' ill-fated pursuit of [petitioner] had lasted no more than 10 minutes," the circumstances gave rise to a fair probability that petitioner had "doubled back to the motel and taken refuge in his room." Ibid.

And even if a probable cause standard would not be satisfied here, petitioner would still have to prevail on the second question presented in order to be entitled to suppression of the firearm seized during the initial entry and protective sweep. As the district court explained, "[e]ven assuming that the protective sweep was not justified * * * , the hotel management gave law enforcement lawful third-party consent to search after the 11:00 a.m. checkout time lapsed," 2017 WL 5162819, at *4, and "the hotel manager's voluntary consent to search was not tainted by the prior

entry and discovery of a firearm," id. at *5. The firearm therefore would have been independently and inevitably discovered during that subsequent search, even if the earlier protective sweep were not justified. Id. at *6; see Utah v. Strieff, 136 S. Ct. 2056, 2061 (2016) (explaining that "the inevitable discovery doctrine allows for the admission of evidence that would have been discovered even without the unconstitutional source"). Thus, the first question presented alone is not outcome-determinative.

2. Petitioner additionally contends (Pet. 18-24) that, even after checkout time, he retained a possessory and privacy interest in the motel room because the motel did not give him notice to vacate the premises as set forth in Fla. Stat. § 509.141 (2017). That contention likewise does not warrant this Court's review.

a. The court of appeals correctly rejected petitioner's reliance on Section 509.141. Pet. App. 18 n.7. Section 509.141 governs the "ejection of undesirable guests" and establishes "penalties for refusal to leave." Fla. Stat. § 509.141 (2017) (title). It provides that a "public lodging establishment" "may remove or cause to be removed from such establishment * * * any guest of the establishment * * * who * * * fails to check out by the time agreed upon," id. § 509.141(1), if the establishment "notif[ies] such guest that the establishment no longer desires to entertain the guest," "request[s] that such guest immediately depart from the establishment," and "tender[s] to such guest the unused portion of [any] advance payment," id. § 509.141(2). The

statute further provides that "[a]ny guest who remains or attempts to remain in any such establishment after being requested to leave is guilty of a misdemeanor," id. § 509.141(3), and that the establishment "may call upon any [state] law enforcement officer" to "arrest" "any guest who violates subsection (3) in the presence of the officer," id. § 509.141(4).

Petitioner's reliance on Section 509.141 is misplaced. To begin, it is unclear whether petitioner qualified as a "guest" under Section 509.141, given that the motel room was registered in another person's name. See Pet. App. 9. But even assuming that petitioner qualified as a "guest," the statute still has no application here. That is because the statute speaks only to when a "guest" may be "removed" from the premises or "arrest[ed]" for refusing to leave. Fla. Stat. § 509.141(1)-(4) (2017); see Brown v. State, 891 So. 2d 1120, 1120 (Fla. Dist. Ct. App. 2004) (determining that because a "motel manager did not comply with the statute," a motel guest could not be "arrest[ed]" for "remain[ing] in the motel room"). The statute does not address the rights of someone not physically on the premises at all, who would not even be present to receive the specified notice. And it does not address the lawfulness of any entry into a guest's motel room, whether by motel employees, law enforcement officers, or anyone else -- let alone grant a motel guest an "indefinite possessory interest" in a room. Pet. App. 19 n.7. Thus, even if petitioner qualified as a "guest" under Section 509.141, the court of appeals

correctly recognized that it would not support petitioner. Ibid.; see Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 16 (2004) (explaining that this Court's "custom on questions of state law ordinarily is to defer to the interpretation of the Court of Appeals for the Circuit in which the State is located").

b. Petitioner does not identify any conflict of authority on the relevance of Fla. Stat. § 509.141 (2017) to Fourth Amendment analysis. Nor does he identify any conflict on whether, and under what circumstances, a short-term motel guest retains a reasonable expectation of privacy in his room after checkout time. Indeed, petitioner acknowledges (Pet. 18) that the courts of appeals "generally agree that a hotel guest loses his or her reasonable expectation of privacy at checkout time." See United States v. Creighton, 639 F.3d 1281, 1286 (10th Cir. 2011); United States v. Lanier, 636 F.3d 228, 232 (6th Cir. 2011); United States v. Dorais, 241 F.3d 1124, 1129 (9th Cir. 2001); United States v. Kitchens, 114 F.3d 29, 32 (4th Cir. 1997); United States v. Rahme, 813 F.2d 31, 34 (2d Cir. 1987); United States v. Ramirez, 810 F.2d 1338, 1341 (5th Cir.), cert. denied, 484 U.S. 844, 482 U.S. 908, and 481 U.S. 1072 (1987); United States v. Larson, 760 F.2d 852, 855 (8th Cir.), cert. denied, 474 U.S. 849 (1985); United States v. Akin, 562 F.2d 459, 464 (7th Cir. 1977), cert. denied, 435 U.S. 933 (1978); United States v. Parizo, 514 F.2d 52, 54 (2d Cir. 1975).

Rather, petitioner contends (Pet. 18) that the decision below conflicts with various 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, 285 (6th Cir. 2009); State v. Jacques, 210 A.3d 533, 541-542 (Conn. 2019); State v. Hinton, 78 A.3d 553, 565 (N.J. 2013); State v. Dennis, 914 N.E.2d 1071, 1076-1078 (Ohio Ct. App. 2009); Morse v. State, 604 So. 2d 496, 500-501 (Fla. Dist. Ct. App. 1992); Blanco v. State, 438 So. 2d 404, 405 (Fla. Dist. Ct. App. 1983). None of those decisions, however, involved a "short-term hotel guest like [petitioner]." Pet. App. 15. And as the Sixth Circuit has explained, a short-term hotel guest presents a different circumstance, because "[t]here is a presumption * * * that hotel guests will check out at the designated time and their right in the premises does not automatically continue for some indefinite period." Washington, 573 F.3d at 285. Petitioner thus errs in asserting the existence of a conflict of authority.

3. In all events, this case would be a poor vehicle for further review of either question presented because, even if petitioner were to prevail on both questions, his suppression motion should still be denied. Even assuming that neither search of the motel room was justified, all of the evidence found in the room would still be admissible under the inevitable-discovery doctrine because the hotel staff in the ordinary course would have

entered the room to clean, discovered the firearm and the heroin, and contacted the police. See 2017 WL 5162819, at *6; see also Strieff, 136 S. Ct. at 2061. Thus, regardless of the resolution of the questions presented, the outcome of this case would be the same. No further review is warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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