No. 22-978

In the Supreme Court of the United States

JACKIE JACKSON,

Petitioner,

v.

OHIO,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

BRIEF IN OPPOSITION

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QUESTION PRESENTED

If one officer lawfully orders a driver out of a vehicle and opens the door to remove the driver, does the Fourth Amendment require other officers to ignore criminal evidence that the door's opening exposes?

LIST OF DIRECTLY RELATED PROCEEDINGS

The petition's list of related proceedings is complete and correct.

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INTRODUCTION

When Jackie Jackson refused to cooperate with police during a traffic stop, an officer ordered Jackson to exit the car. That officer opened the door to remove Jackson. And later, with the door still open, a second officer spotted marijuana in plain view. This led police to search the car, in which they found a handgun.

The State charged Jackson with gun-related crimes. He sought to suppress evidence of the gun under the "exclusionary rule," which requires courts to exclude evidence obtained in violation of the Fourth Amendment. *See Mapp v. Ohio*, 367 U.S. 643, 649–55 (1961). The trial court denied Jackson's request on the ground that the officers did not violate the Fourth Amendment. The Ohio Court of Appeals followed suit. So did the Ohio Supreme Court.

Jackson now petitions for a writ of certiorari. He urges this Court to resolve an alleged split regarding whether officers perform a "search" subject to the Fourth Amendment when they open a car door. There is no split. To the contrary, courts uniformly follow the rule that opening a car door constitutes a search only if officers open the door to look for information. Applying that rule, the Ohio Supreme Court correctly held that the officer in this case performed no search when he opened the door to remove Jackson.

Because Jackson has identified neither a circuit split nor an important issue worthy of this Court's attention, the Court should deny his petition for a writ of certiorari.

STATEMENT

This case began when police officers stopped Jackie Jackson for a suspected window-tint violation. Pet.App.3a. Jackson was "visibly agitated" and argued with officers. *Id.* He also ignored officers' commands to remove his key from the car's ignition and to provide his license. *Id.* In light of Jackson's recalcitrance, the lead officer opened Jackson's car door and ordered Jackson out. Pet.App.4a. Jackson complied, at which point the same officer reached into the car and removed the keys from the ignition. *Id.*

The lead officer did not close the door. And while officers spoke with Jackson and patted him down, a different officer approached the open vehicle and looked inside. *Id.* That second officer spotted a joint in plain view between the door and the driver's seat. *Id.* The officer's discovery of marijuana prompted police to search the car. Inside, they found a pistol hidden in a laundry basket. *Id.*

The State charged Jackson with three weapons-related offenses. *Id.* Jackson moved to suppress the evidence, arguing that "the officer lacked authority to order him from the car," making the pistol's discovery "fruit of the poisonous tree." *Id.* The trial court denied the motion to suppress, and Jackson pleaded no contest. Pet.App.5a.

The First District Court of Appeals affirmed. *Id.* It noted that Jackson waived any legal challenge to the traffic stop itself. It further held that the officers complied with the Fourth Amendment when they ordered Jackson out of the car, discovered the joint in

plain view, and searched the car after finding the joint. *Id.*

The Ohio Supreme Court also affirmed, over the dissent of two justices. It first held that police lawfully ordered Jackson to exit his car. Pet.App.6a (citing *Pennsylvania v. Mimms*, 434 U.S. 106, 111 n.6 (1977)). Second, the court held that the lead officer did not perform a "search" for Fourth Amendment purposes when he opened Jackson's door; officers perform a search only when they act with the goal of acquiring information, and the officer opened Jackson's door to remove him from the car, not to obtain information. Pet.App.7a–12a. Third, the court held that the second officer did not violate the Fourth Amendment when he spotted the joint in plain view. Pet.App.12a–13a. Finally, the court held that the resulting search of Jackson's car was lawful under the automobile exception, as the drugs gave the officers probable cause to believe that the car contained contraband. Pet.App.13a.

Jackson timely petitioned this Court for a writ of certiorari.

REASONS FOR DENYING THE PETITION

This Court should deny Jackson's petition because there is no split or important issue calling for intervention, and because this case would be a poor vehicle for addressing the question Jackson urges this Court to answer.

I. This case presents no important issue worthy of the Court's attention.

Jackson asks this Court to resolve a supposed split among lower courts. But there is no split, and

Jackson offers no good reason to consider his fact-bound case.

A. This case presents no circuit split.

1. Jackson says this case presents a circuit split. That claim runs into a rather serious problem: Jackson has not identified any court in which he would prevail under the Fourth Amendment. Under *Pennsylvania v. Mimms*, officers may lawfully order a car's occupants to exit the vehicle during a lawful traffic stop. 434 U.S. at 111 & n.6. Jackson no longer disputes the lawfulness of the stop. Nor does Jackson dispute that, under *Mimms*, the lead officer lawfully ordered him to exit his car. So the real question at the heart of this case is this: Does an officer violate the Fourth Amendment when, while removing a driver from a vehicle under *Mimms*, the officer opens the door for the driver instead of allowing the driver to open the door himself?

Jackson has not identified any case holding that merely opening a car door in conjunction with a *Mimms* order would violate the Fourth Amendment. And, perhaps because "opening the car door is not so different from the practice of ordering drivers to step out of their cars during short investigatory stops" under *Mimms*, *Hampton v. Commonwealth*, 231 S.W.3d 740, 748 (Ky. 2007), Ohio is unaware of any circuit or state high court holding that opening a door in these circumstances categorically violates the Fourth Amendment. Courts, in fact, appear to have universally rejected Fourth Amendment claims in such circumstances. *See, e.g.*, *State v. Ferrise*, 269 N.W.2d 888, 890 (Minn. 1978) (explaining that "there is little practical difference between ordering a driver to open his door and get out of his car, on the one

hand, and opening the door for the driver and telling him to get out, on the other"); *see also Hampton*, 231 S.W.3d at 748; *United States v. Stanfield*, 109 F.3d 976, 981 (4th Cir. 1997); *State v. Mai*, 202 N.J. 12, 22–23 (2010).

Cases in Jackson's own brief illustrate the point. One extended *Mimms* to categorically allow for opening a car door in certain circumstances related to officer safety. *United States v. Meredith*, 480 F.3d 366, 369–71 (5th Cir. 2007). Another relied on *Mimms* to conclude that opening a door to protect officer safety during a traffic stop is reasonable. *McHam v. State*, 404 S.C. 465, 481–82 (2013), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 181 n.2 (2018).

State v. Malloy, 498 P.3d 358 (Utah 2021), is not to the contrary. That decision, in the course of rejecting state-court precedents holding that it *never* makes a constitutional difference whether the officer or someone else opens a car door, declared that "the identity of a door-opener may well have constitutional significance" in a hypothetical future case. *Id.* at 364. But the court did not decide whether opening the door in that case qualified as a "search," let alone an "unreasonable" search that violated the Fourth Amendment. *Id.* The court had no need to reach the issue; the defendant's motion to suppress failed under the good-faith exception even if he proved a Fourth Amendment violation. *Id.*

Even *United States v. Ngumezi*, 980 F.3d 1285 (9th Cir. 2020), would not recognize a Fourth Amendment violation here. The Ninth Circuit in that case held only that the *Mimms* rationale does not apply "when an officer enters the vehicle" upon

opening the door. *Id.* at 1289. The Court did not consider whether merely opening the door during the course of a *Mimms* stop violates the Fourth Amendment. (Although the lead officer in Jackson's case entered the car to retrieve Jackson's keys, Jackson has not sought relief on the ground that the officer's doing so constituted a search. He has thus forfeited any argument regarding the lead officer's entering the vehicle.)

In the end, Jackson has not identified any case finding a Fourth Amendment violation where an officer opened a door in connection with a *Mimms* order.

2. Having failed to identify any court that would have found a Fourth Amendment violation in this case, Jackson changes the subject. He argues that most courts have adopted "a bright-line rule: If a police officer opens the door of a car, and the police find contraband inside, that is a search, regardless of the officer's purpose in opening the door." Pet.9. No court has adopted that rule. Indeed, precedents from this Court, and every case Jackson cites, establish a different rule: opening a car door constitutes a search only when the officer acts with the goal of obtaining evidence.

Supreme Court precedent. This Court has announced two frameworks for determining whether an officer's conduct constitutes a "search" under the Fourth Amendment. Under the first framework, a "search" entails the "invasion" of a space in which citizens have a "reasonable expectation of privacy." *Katz v. United States*, 389 U.S. 347, 360–61 (1967) (Harlan, J., concurring). The second framework requires proof that officers committed a "common-law

trespass." *United States v. Jones*, 565 U.S. 400, 405 (2012). But *both* tests apply only to actions taken "to obtain information." *Id.* at 408 n.5; *see also South Dakota v. Opperman*, 428 U.S. 364, 376 (1976); *Grady v. North Carolina*, 575 U.S. 306, 310 (2015) (*per curiam*). Thus, for example, an officer who opens a door to rescue a child from a hot car does not perform a "search." While opening the door invades the owner's expectation of privacy and commits a trespass, there is no search unless the officer acts "to obtain information." *Jones*, 565 U.S. at 408 n.5.

Determining the search's purpose does not require examining officers' subjective motives. Rather, the relevant question is whether the "challenged conduct *objectively* manifests an intent" to look for information. *See Torres v. Madrid*, 141 S. Ct. 989, 998 (2021). This is in keeping with the rest of the Court's Fourth Amendment jurisprudence, which rarely permits "prob[ing] the subjective motivations of police officers." *Id.*; *see also Devenpeck v. Alford*, 543 U.S. 146, 153–54 (2004); *Whren v. United States*, 517 U.S. 806, 812–13 (1996). Just as officers do not effect a "seizure" when they physically touch someone by accident "or for some … purpose" other than restraining them, *Torres*, 141 S. Ct. at 998, officers do not perform a search if objective evidence shows they entered an area for a reason other than acquiring information.

Lower-court authority. In light of these principles, no court has adopted a bright-line rule under which officers perform a search every time they find evidence of a crime after opening a car door. Instead, courts uniformly hold that officers perform a Fourth Amendment search when they open a car door for the

purpose of obtaining information. The cases Jackson cites all fit this description.

Two of Jackson's door-opening cases involved obvious attempts to obtain information. In *Meredith*, an officer opened a car door to do "a visual inspection" of a man who claimed he was unable to exit the car. 480 F.3d at 367. The officer in *McHam* opened a car door "to watch what [the occupants] were doing." 404 S.C. at 470. Neither case holds that courts must apply a categorical rule under which door-opening is always a search when it leads to the discovery of criminal evidence. Instead, each applied the just-discussed principles to find a search on the facts presented.

That leaves two other cases. In *Malloy*, as mentioned above, the Utah Supreme Court overruled a state-court precedent holding that it never makes a constitutional difference whether an officer or a defendant opens a car door. 498 P.3d at 364. But the court expressly declined to go any further, stressing that its opinion should not be read to "hold that a Fourth Amendment 'search' is effected every time a police officer touches a vehicle." *Id.* The court did not, as Jackson says, hold that a "search takes place where the officer opens the door." Pet.11. It did not even hold that a search had occurred under the facts of that case. *Malloy*, 498 P.3d at 364.

The last remaining case is *Ngumezi*, which applied "a bright-line rule," 980 F.3d at 1289, but not the one Jackson urges. It said "that opening a door *and entering the interior space of a vehicle* constitutes a Fourth Amendment search." *Id.* (emphasis added). *Ngumezi* did not hold, as Jackson suggests, that merely opening a door is a search. And in any event,

Ngumezi arose in a situation where the officer undoubtedly entered the car to look for information; he "opened the passenger door, leaned into the car, and asked Ngumezi for his driver's license and vehicle registration." *Id.* at 1286. So the case does not suggest that officers effect a search when they open a door for reasons unrelated to information-gathering.

To be sure, some cases have language that seems to support Jackson when read in isolation. *See Ngumezi*, 980 F.3d at 1289; *Meredith*, 480 F.3d at 369. But "statements in an opinion cannot be wrested from [the] facts to establish a legal principle." *Drew v. United States*, 104 F.2d 939, 944 (6th Cir. 1939).

Now consider the cases finding that officers conducted a search by touching a vehicle's tires. *See* Pet.11. Those cases also turn on officers' pursuit of information. One held that an officer effected a search by pushing on a suspicious tire, since doing so constituted "a trespass … conjoined with an attempt to find something or obtain information." *United States v. Richmond*, 915 F.3d 352, 357 (5th Cir. 2019) (quotation omitted). But the case clarified that a "mere physical touching" without more would have been insufficient to trigger the Fourth Amendment. *Id.* The other case Jackson cites held that parking attendants who marked cars' tires to monitor parking violations effected a search, since their touching "amount[ed] to an attempt to obtain information under *Jones*." *Taylor v. City of Saginaw*, 922 F.3d 328, 333 (6th Cir. 2019). These cases thus support the conclusion that a search requires acting with the purpose of obtaining information. *Accord Jones*, 565 U.S. at 404, 408 n.5.

The Ohio Supreme Court decision is consistent with all of these decisions; it conflicts only with Jackson's false rule. The court initially observed that officers perform no "search" unless they "attempt to find something or obtain information." Pet.App.7a (quoting *Jones*, 565 U.S. at 408 n.5). It then applied that rule, concluding that the officer who opened Jackson's door did so in order "to secure Jackson," who "was being uncooperative," Pet.App.8a, not to obtain evidence. Indeed, bodycam footage showed that the officer in question had no intent to look for information; when the officer entered the car to remove Jackson's keys, he did not look around and apparently failed to see the marijuana sitting in plain view. *Id.* Thus "[n]othing in the record indicates that the officer opened the door for any reason other than to get Jackson out of the car." *Id.* As a result, the officer effected no search.

The Ohio Supreme Court acknowledged that opening a car door *would* be a search if the officer acted to "ascertain[] what was inside the car." *Id.* In those circumstances, opening the door would be "a physical trespass 'conjoined with an attempt to find something or to obtain information.'" *Id.* (ellipses omitted) (quoting *Jones*, 565 U.S. at 408 n.5). But like other courts, the Ohio Supreme Court refused to adopt a categorical rule under which the opening of a car door *always* constitutes a search. *Id.*

Before moving on, a word on a recent case acknowledging a circuit split on a related question. There is, as the Third Circuit noted in *United States v. Dowdell*, 70 F.4th 134 (3d Cir. 2023), some confusion regarding whether officers must have reasonable suspicion to open a door *to look for information*.

Id. at 144 & n.5. But that issue is not presented here, since the lead officer did not open Jackson's door looking for information. And no court has adopted a categorical rule pursuant to which officers violate the Fourth Amendment by opening a door if they are *not* looking for information. (Nor, as addressed in the previous section, has any court held that merely opening a door to remove an occupant from a car under *Mimms* violates the Fourth Amendment.)

In the end, there is no split concerning the categorical rule that Jackson proposes. Opening a car door, like any other physical trespass, is a search only if it is done to obtain information. The record shows that the officer who opened Jackson's door acted with the objective purpose of removing him from the car. So the officer effected no search. Jackson's case does not raise a novel question or "disrupt[]" a lower-court "consensus." Pet.11.

3. Jackson seems to recognize that, unless the first officer effected a search by opening the door, the second officer committed no search when he saw marijuana in plain view. Pet.18–19. Rightly so. Because the first officer lawfully opened the door, the second officer was "lawfully in a position from which" to view the evidence. *Minnesota v. Dickerson*, 508 U.S. 366, 375 (1993). When an officer's lawful action places criminal evidence in plain view, the plain-view doctrine applies as it normally would; it allows the police to seize the evidence and conduct any otherwise-permissible follow-on searches. *See, e.g.*, *United States v. Jackson*, 131 F.3d 1105, 1107–11 (4th Cir. 1997). And here it makes no difference whether the second officer took a "long investigative look" into the car rather than observing the evidence inadvertently.

Pet.6 (quotation omitted). "[E]ven though inadvertence is a characteristic of most legitimate 'plain-view' seizures, it is not a necessary condition." *Horton v. California*, 496 U.S. 128, 130 (1990).

In any event, and more relevant for present purposes, Jackson never even suggests that the lawfulness of the second officer's plain-view search implicates a circuit split.

B. Jackson raises no important question calling for this Court's review.

Jackson next urges this Court to hear his case to vindicate the plain meaning of "search." But nothing in his brief suggests that the Court's current jurisprudence fails to afford that word its original meaning.

Jackson's primary argument on this score has little to do with the question that he says divides the circuits. Instead, it involves the question whether officers' conduct should be considered individually or jointly. In its decision below, the Ohio Supreme Court separately considered the lead officer's opening the door and the second officer's viewing the marijuana. That, Jackson says, contradicts the common meaning of "search," since "ordinary English speakers would say that a 'search' has taken place" when "one officer opens the door of a car and another officer looks inside for contraband." Pet.12–13.

It is hard to understand the relevance of this observation. While ordinary English speakers would say that a "search" took place, they would say that the "search" occurred when the second officer looked

inside the car, not when the first officer opened the door to remove the driver.

Jackson tries to squeeze something useful out of his ordinary-English argument by stressing that people commonly refer to a collective effort as a single act. He fails to see, however, that people speak in this way only when multiple individuals jointly pursue a common goal. For example, it is perfectly natural to say that John Lennon and Paul McCartney wrote "Hey Jude" together. Pet.13. But it would be quite unnatural to say the same about two musicians who pursued no common goal. Consider a recent example from the Federal Reporter. Rap artist Rick Ross released a mixtape in which he "perform[ed] his own new lyrics over audio samples of popular songs by well-known recording artists." *In re Jackson*, 972 F.3d 25, 31 (2d Cir. 2020). Another rapper, 50 Cent, wrote one of the songs from which Ross sampled. *Id.* at 31–32. The ordinary speaker would not say that Rick Ross and 50 Cent wrote Ross's mixtape together; he would say that Rick Ross wrote a song using 50 Cent's work.

These analogies show that Jackson paints with too broad a brush. It is true that two individuals' combined efforts *can* constitute a single act. And that is just as true for officers as it is for musicians. Thus, if two officers devise a plan in which one opens the door while a second looks inside for evidence, *see, e.g.*, Pet.21, both officers should be treated as engaging in one search. It is not true, however, that two individuals' combined efforts *always* constitute a single act. Thus, if one officer opened a door to save a child from a hot car and a second officer independently entered the car to look for criminal evi-

dence, no one would say that the first officer participated in the second officer's "search." Context matters.

Nothing in the Ohio Supreme Court's decision below precludes courts from considering context. The court treated the officers' conduct separately because it had no reason to treat the officers as acting jointly. That fully accords with the plain meaning of "search."

Perhaps sensing this fatal flaw, Jackson seems to speculate that the first officer left the car door open so that his fellow officers could look inside. *See* Pet.16, 17–18. But the Ohio Supreme Court already found "[n]othing in the record indicat[ing] that the officer opened the door for any reason" other than getting Jackson out. Pet.App.8a. Jackson provides no basis for doubting the court's assessment. In any event, any quibble on this score would amount to a request for factbound error correction unworthy of this Court's attention.

II. This case is a bad vehicle for deciding the question presented.

The officers' conduct in this case was constitutional *even if* their actions effected a search. Thus, the Court could affirm the Ohio Supreme Court without reaching the question Jackson asks it to resolve. That makes this case a poor vehicle for addressing that question.

The "touchstone" of Fourth Amendment analysis "is always the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." *Mimms*, 434 U.S. at 108–09 (quotation omitted). To determine reasonableness,

courts must "balance" the "public interest" and "the individual's right to personal security free from arbitrary interference by law officers." *Id.* (quotation omitted). There is "no ready test for determining reasonableness other than by balancing the need to search or seize against the invasion which the search or seizure entails." *Terry v. Ohio*, 392 U.S. 1, 21 (1968) (quotation omitted, alteration accepted).

Officer safety weighs heavy in the balance. "Law enforcement officials literally risk their lives each time they approach occupied vehicles during the course of investigative traffic stops." *Stanfield*, 109 F.3d at 978. For that reason, this Court "has consistently accorded officers wide latitude to protect their safety." *Id.*; *see also, e.g.*, *Mimms*, 434 U.S. at 110; *Stanfield*, 109 F.3d at 982; *Meredith*, 480 F.3d at 371. Accordingly, an "objectively reasonable belief of a threat to officer safety" can justify a "warrantless search." *United States. v Quarterman*, 877 F.3d 794, 797 (8th Cir. 2017).

On the other side of the scale, opening a car door is a "comparatively minor" intrusion when done for the "limited purpose" of determining whether the occupants are a threat. *Stanfield*, 109 F.3d at 982. The fact that opening the door exposes more of the driver's person is a "*de minimis*" intrusion. *Mimms*, 434 U.S. at 111. And opening the door exposes "little more of the interior compartment than was visible through" the car windows. *Stanfield*, 109 F.3d at 988.

Weighing these factors, officers interacting with Jackson reasonably opened the car door when he refused to cooperate. From the beginning of the traffic stop, Jackson "protested" and "argue[d]" with the po-

lice. Pet.App.3a. Jackson ignored the instruction to remove the keys from the ignition and to provide his license. *Id.* It was clear that Jackson was uncooperative and posed a potential threat to the officers. They were entitled to respond to the "tense, uncertain, and rapidly evolving" situation by swiftly removing Jackson from his car. *Plumhoff v. Rickard*, 572 U.S. 765, 775 (2014). Weighing the officers' safety against the minor intrusion of opening the door rather than letting Jackson open it himself, the officer acted reasonably. Opening the door was thus constitutional even if it constituted a search.

Even Jackson seems to recognize that the balance tips in favor of officer safety when security concerns are present. Pet.12 n.2. The cases he cites agree, noting that the "substantial" interest in "officer safety" can "justify the opening of a door to an occupied vehicle under reasonable circumstances." *McHam*, 404 S.C. at 481 (citing *Mimms*, 434 U.S. at 110); *see also Mai*, 202 N.J. at 15; *Meredith*, 480 F.3d at 370; *Stanfield*, 109 F.3d at 982. And in such situations, this Court has admonished that "judges should be cautious about second-guessing a police officer's assessment, made on the scene, of the danger presented by a particular situation." *Ryburn v. Huff*, 565 U.S. 469, 477 (2012) (*per curiam*). That does not mean that courts always find an officer's actions reasonable when the officer posits a safety rationale, *see United States v. Morgan*, __ F.4th __, 2023 WL 4175235 at *4 (6th Cir. 2023), but this case does not present a close call.

CONCLUSION

The Court should deny the petition for a writ of certiorari.

Respectfully submitted,

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