No. 24-535

In the Supreme Court of the United States

GREGORY ROGERS, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly upheld the district court's finding that petitioner failed to show that he had an interest protected by the Fourth Amendment in the driver's area of a car that he was not driving, did not intend to drive, and did not own.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (W.D. Mich.):

United States v. *Rogers*, No. 20-cr-186 (May 12, 2022)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-22a) is reported at 97 F.4th 1038. The order of the district court (Pet. App. 25a-46a) is not published in the Federal Supplement but is available at 2020 WL 6375399.

JURISDICTION

The judgment of the court of appeals was entered on April 10, 2024. A petition for rehearing was denied on June 14, 2024 (Pet. App. 23a-24a). On September 5, 2024, Justice Kavanaugh extended the time within which to file a petition for a writ of certiorari to and including October 15, 2024. On October 9, 2024, Justice Kavanaugh further extended the time within which to file a petition to and including November 8, 2024, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Western District of Michigan, petitioner was convicted on two counts of possessing marijuana with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(D); two counts of possessing a firearm in furtherance of a drug-trafficking crime, in violation of 18 U.S.C. 924(c)(1)(A)(i); and two counts of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1) and 18 U.S.C. 924(a)(2) (2018). Judgment 1. The district court sentenced him to 177 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 1a-22a.[1]

1. In January 2020, police officers in Grand Rapids, Michigan, responded to a reported domestic assault. Pet. App. 2a, 26a. While searching the area for the perpetrator of the reported assault, one officer approached a running car on the opposite side of the street. *Id.* at 26a. While the officer was standing next to the front passenger door and shining a flashlight into the car, petitioner—who was sitting in the passenger seat of the

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[1] Petitioner was also charged in a separate indictment in the same district with assaulting a federal law enforcement officer with a deadly or dangerous weapon, in violation of 18 U.S.C. 111(a) and (b), and discharging a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(iii). 20-cr-186 Indictment 1-2. Petitioner pleaded guilty to the assault offense. Judgment 1. The district court sentenced petitioner to 57 months of imprisonment, to run concurrently with his 177-month sentence in this case. Judgment 2. Petitioner filed a notice of appeal in the second case, and his appeal was consolidated with his appeal in this case. See Pet. App. 9a n.2. But petitioner did not ultimately raise any claim of error regarding the second case, and the court of appeals affirmed the judgment in that case without further discussion. *Ibid.*

otherwise-unoccupied car—rolled the passenger window down a few inches. *Id.* at 27a. The officer engaged him in conversation. *Ibid.*

The officer asked whether the car belonged to petitioner; petitioner responded that it instead belonged to his girlfriend, "Cyesha." Pet. App. 27a. Petitioner indicated that Cyesha had driven to the area to visit a cousin and that he was waiting for her to return. *Ibid.*; see *id.* at 33a. In response to further questions, petitioner gave his name but stated that he did not have any identification on him. *Id.* at 27a.

While petitioner remained in the parked car with one officer standing nearby, a second officer checked petitioner's name in a database and discovered an outstanding warrant for his arrest on state charges of carrying a concealed weapon. Pet. App. 27a-28a. Petitioner was arrested on the warrant. *Id.* at 28a. Officers searched his person at the scene and found a set of car keys and $700 in cash. *Ibid.* After his arrest, petitioner "complained that he had not been driving the vehicle" and "asked to have his mother come get his 'stuff.'" *Ibid.*

The car itself was unoccupied and unlocked. Presentence Investigation Report (PSR) ¶ 22. The officers determined through a license-plate check that the car belonged to Cyesha Cross, who did not appear at the scene at any point during petitioner's arrest. Pet. App. 28a-29a. Rather than leave the car unattended on the street, the officers decided to impound it, which included examining its contents. *Id.* at 3a, 29a. Inside, they found marijuana, two digital scales, and a loaded gun on the driver's side. *Id.* at 3a, 28a-29a. They also determined that the keys found on petitioner's person were keys to the car. *Id.* at 29a. Two days later, petitioner's girlfriend contacted the police and said that she had given

petitioner permission to use her car that day while she was at work and school. *Id.* at 3a.

Petitioner was subsequently released from state custody on bond. PSR ¶ 23. In April 2020, he was arrested in Grand Rapids on a federal warrant arising from the January 2020 incident. PSR ¶ 27; see Pet. App. 3a. The arresting officers found him in the same car as in the January incident, although this time petitioner was sitting in the driver's seat. PSR ¶ 27. After the officers ordered him out of the car, they observed marijuana and a gun on the floorboard directly beneath where he had been sitting. *Ibid.* The gun was loaded, and its serial number had been obliterated. PSR ¶ 28.

2. A grand jury in the Western District of Michigan returned an indictment covering both the January and April incidents, charging petitioner with two counts of possessing marijuana with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(D); two counts of possessing a firearm in furtherance of a drug-trafficking crime, in violation of 18 U.S.C. 924(c)(1)(A)(i); and two counts of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1) and 18 U.S.C. 924(a)(2) (2018). Indictment 1-6.

Petitioner moved to suppress the evidence recovered in the January search on Fourth Amendment grounds. D. Ct. Doc. 22, at 2-13 (Aug. 3, 2020). The district court held an evidentiary hearing on the motion, at which neither petitioner nor his girlfriend testified. Pet. App. 26a, 32a. Other than "a police report showing that [petitioner] had permission to use" the car on the day of the search, he "presented no evidence." *Id.* at 3a-4a.

The district court denied petitioner's motion. Pet. App. 25a-46a. Relying on this Court's decision in *Rakas* v. *Illinois,* 439 U.S. 128 (1978), the district court found

that "as a passenger in a vehicle waiting for the return of its driver and owner, [petitioner] did not have a legitimate expectation of privacy in the interior of the vehicle." Pet. App. 34a. In the alternative, the court found that the officers had a valid basis to impound the car under the circumstances and that the search of the car was therefore permissible under the inventory-search exception to the warrant requirement, explaining that "[a]n inventory search is the search of property lawfully seized and detained, in order to ensure that it is harmless, to secure valuable items (such as might be kept in a towed car), and to protect against false claims of loss or damage." *Id.* at 34a-35a (quoting *Whren* v. *United States*, 517 U.S. 806, 811 n.1 (1996)).

The case proceeded to trial, and the jury found petitioner guilty on all counts. Pet. App. 4a. The district court sentenced petitioner to 177 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3.

3. The court of appeals affirmed, over the dissent of Judge Stranch. Pet. App. 1a-22a. Like the district court, the court of appeals rejected petitioner's arguments for suppression—the only issue petitioner raised in the appeal. See *id.* at 2a.

The court of appeals stated that, "[t]o establish that police violated his Fourth Amendment rights, [petitioner] must show that he had a legitimate expectation of privacy in his girlfriend's car" at the time of the search. Pet. App. 5a (citation and internal quotation marks omitted). And the court observed that that, in order to demonstrate such a legitimate expectation of privacy, petitioner "must have exhibited an actual (subjective) expectation of privacy" and his expectation must also be

one "that society is prepared to recognize as reasonable." *Ibid.* (citation omitted).

Here, viewing the evidence in the light most favorable to the district court's decision, see Pet. App. 3a, the court of appeals determined that petitioner had "exhibited no subjective expectation of privacy in [the] car," *id.* at 7a. In particular, the court explained that petitioner had "affirmatively disclaimed dominion and control over the car" when, while sitting in the passenger seat without a driver's license, he told the officers that his girlfriend owned the car and that she (not petitioner) had driven it to the area to visit a cousin. *Ibid.*; see *id.* at 5a. The court of appeals did not address the district court's alternative holding that "the search was a valid inventory search." *Id.* at 4a.

Judge Stranch dissented. Pet. App. 10a-22a. She would have held that petitioner had a legitimate expectation of privacy in the car based on circuit precedent, see *id.* at 11a-18a, and also would have found the impoundment to be improper, *id.* at 18a-22a.

4. Petitioner sought rehearing. No judge called for a vote on rehearing the case en banc, and the petition for rehearing was denied. Pet. App. 23a. Judge Stranch stated that she would have "grant[ed] rehearing for the reasons stated in her dissent." *Ibid.*

ARGUMENT

Petitioner renews his contention (Pet. 11-26) that the evidence recovered from the search of his girlfriend's car in January 2020 should have been suppressed. The court of appeals correctly rejected that contention, and its fact-bound decision does not conflict with any decision of this Court, another court of appeals, or a state court of last resort. This Court has previously denied a petition for a writ of certiorari presenting a similar

Fourth Amendment claim. See *James* v. *United States*, 140 S. Ct. 298 (2019) (No. 19-5670). It should follow the same course here.

1. a. The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. Amend. IV. As the constitutional text makes clear, "Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be asserted vicariously." *Rakas* v. *Illinois*, 439 U.S. 128, 133-134 (1978) (citation omitted). It has therefore "long been the rule that a defendant can urge the suppression of evidence obtained in violation of the Fourth Amendment only if that defendant demonstrates that *his* Fourth Amendment rights were violated by the challenged search." *United States* v. *Padilla*, 508 U.S. 77, 81 (1993) (per curiam); see *Alderman* v. *United States*, 394 U.S. 165, 171-172 (1969).

Absent the existence of recognized property rights capable of invasion through "physical intrusion," *Florida* v. *Jardines*, 569 U.S. 1, 5 (2013) (citation omitted), the touchstone of such a demonstration is an affirmative showing that the defendant had a "legitimate expectation of privacy in the invaded place," *Minnesota* v. *Olson*, 495 U.S. 91, 95 (1990) (quoting *Rakas*, 439 U.S. at 143). For a "subjective expectation of privacy" to be "legitimate," it must be "one that society is prepared to recognize as reasonable." *Id.* at 95-96 (citation and internal quotation marks omitted); see *Katz* v. *United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring). The inquiries into the subjective and objective components of a reasonable expectation of privacy are "discrete." *Smith* v. *Maryland*, 442 U.S. 735, 740 (1979). Thus, for example, "it is possible for a person to retain

a property interest in an item, but nonetheless to relinquish his or her reasonable expectation of privacy in the object," *United States* v. *Thomas*, 864 F.2d 843, 845 (D.C. Cir. 1989)

b. Car owners and drivers "in lawful possession or control" of a car typically have a reasonable expectation of privacy in that car and, accordingly, the opportunity under the Fourth Amendment to challenge a search. *Byrd* v. *United States*, 584 U.S. 395, 404, 411 (2018). By contrast, simple permission to be in a car (*i.e.*, "legitimate presence") is insufficient to establish such an expectation. *Id.* at 406. Thus, the Court held in *Rakas* v. *Illinois*, *supra*, for example, "that automobile passengers could not assert the protection of the Fourth Amendment against the seizure of incriminating evidence from a vehicle where they owned neither the vehicle nor the evidence." *Minnesota* v. *Carter*, 525 U.S. 83, 87-88 (1998) (citing *Rakas*, 439 U.S. at 139-140).

As the courts of appeals have accordingly observed, a passenger is "merely an invited guest, and an invited guest can become uninvited at the owner's pleasure." *United States* v. *Smith*, 21 F.4th 122, 130 (4th Cir. 2021). "A mere passenger * * * cannot prevent the driver or owner of the car from, for example, picking up random strangers and showing them the interior of the car." *United States* v. *Walton*, 763 F.3d 655, 666 (7th Cir. 2014). Whereas a driver or owner can "invite the police to enter a vehicle," a passenger "has no right to ward off onlookers or protect his privacy in a car that he has no power over." *Ibid.*

c. As both the court of appeals and the district court recognized, petitioner failed to meet his burden of showing that he had a legitimate expectation of privacy in the driver's side of his girlfriend's car when it was searched

in January 2020. Pet. App. 7a-9a, 30a-31a; see *Rawlings* v. *Kentucky*, 448 U.S. 98, 104 (1980) (recognizing that a defendant "bears the burden of proving * * * that he had a legitimate expectation of privacy"). To the extent that a car's passenger could exercise "dominion and control" over such an area, *Byrd*, 584 U.S. at 407 (citation omitted), petitioner did not. Instead, he was sitting in the passenger seat of the running car, without his driver's license, and he told the officers that the car was not his, that it belonged to his girlfriend, that she had driven it to the location, that she was visiting a cousin nearby, and that he was not carrying a driver's license. Pet. App. 2a, 31a. The drugs and digital scales were then found on the driver's side of the car, see *id.* at 28a-29a, "areas in which a passenger *qua* passenger simply would not normally have a legitimate expectation of privacy," *Rakas*, 439 U.S. at 148-149 (passenger lacked legitimate expectation of privacy in glove compartment and under the passenger seat). Petitioner has not demonstrated that, as a nondriver awaiting the driver's apparently imminent return, he had a reasonable expectation of privacy in the area where those items were found.

Petitioner's contrary contentions lack merit. Petitioner emphasizes (Pet. 22) that he had his girlfriend's permission to use the car and that a set of keys to the car were found on his person after he was arrested. Those facts establish that petitioner was legitimately present in the car, but they do not suffice to show that he had a reasonable expectation of privacy. The Court in *Rakas* made clear that the fact that the passengers are "'legitimately on the premises' in the sense that they were in the car with the permission of its owner is

not determinative of whether they had a legitimate expectation of privacy in the particular areas of the automobile searched." 439 U.S. at 148 (brackets omitted); see *Byrd*, 584 U.S. at 406 (observing that *Rakas* "rejected the argument that legitimate presence alone [is] sufficient to assert a Fourth Amendment interest"). In doing so, the Court rejected an attempt to analogize a passenger's presence in a car to the situation of someone able to show a reasonable expectation of privacy in an apartment whose owner had previously given him permission to use it and a key, who stored possessions there, and who let himself in on the day of the search. *Rakas*, 439 U.S. at 141-142 (discussing *Jones* v. *United States*, 362 U.S. 257, 267 (1960)). And the Court observed that even if the car were analogous to a "dwelling place," a passenger's legitimate expectation of privacy still "would not normally" reach areas like the glove compartment, the trunk, or under the seat. *Id.* at 148-149.

Petitioner likewise errs (Pet. 21-22) in seeking to analogize this case to *Byrd* v. *United States*. In *Byrd*, the defendant was stopped by the police while driving a car that had been rented by a third party, who had given the defendant the keys to the car and allowed him to drive it in violation of the terms of the rental agreement. 584 U.S. at 399-401. The question presented in the case was whether the "driver of a rental car ha[s] a reasonable expectation of privacy in the car when he or she is not listed as an authorized driver on the rental agreement." *Id.* at 404. This Court held that the "mere fact that a driver * * * is not listed on the rental agreement" would not in and of itself "defeat his or her otherwise reasonable expectation of privacy," where the driver is "in lawful possession or control of [the] rental

car." *Id.* at 411. But as the court of appeals recognized, Pet. App. 7a, and as this Court emphasized in *Byrd*, "the driver and sole occupant of a rental car" is in a materially different position from a passenger. 584 U.S. at 406. And someone who claims, as petitioner did, to be simply waiting in a running car for the driver to return from a nearby location, and who lacks the license, intention, or apparent permission to move the car, cannot claim to exercise "exclusive control" over the car—let alone over the driver's area of it. *Id.* at 406-407 (quoting *Rakas*, 439 U.S. at 154 (Powell, J., concurring)). A passenger lacks the same degree of control as the driver or "the attendant right to exclude" others. *Id.* at 407; see Pet. App. 7a (emphasizing that petitioner "made it clear to the officers on the scene multiple times that he was not the driver," unlike the defendant in *Byrd*).[2]

Petitioner is also wrong to suggest that the court of appeals rested its decision on any finding that he "relinquish[ed] his Fourth Amendment rights." Pet. 24; see

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[2] Any contention that petitioner had a property interest in the car as a bailee (Pet. 23) was neither pressed nor passed upon below and therefore is not properly before this Court. Cf. *Byrd*, 584 U.S. at 404 (declining to address a bailment argument raised for the first time in merits briefing and observing that "this is 'a court of review, not of first view'") (quoting *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005)). In any event, petitioner misunderstands the law of bailment. Even assuming for the sake of argument that his girlfriend's authorization for him to use her car on other occasions might be the basis for finding an implied bailment contract on those occasions, petitioner was not the bailee of the car at the time of the search. The hallmark of a bailment is the bailor's "delivery of property to the bailee" for a specific purpose, after which the property is to be "restored to the bailor." 8 C.J.S. *Bailments* § 1, at 366 (2005). Here, petitioner indicated at the time of the search that his girlfriend was exercising her possessory interest in her own car, which she had driven to the area for her own purposes.

Pet. 24-26. When the court observed that petitioner had "disclaimed his authority over the vehicle," Pet. App. 6a, the court was not referring to the legal relinquishment of Fourth Amendment rights that petitioner otherwise had. The court was instead simply explaining the factual basis for its conclusion that petitioner lacked any protected Fourth Amendment interest in the car, which he had denied owning or driving. *Id.* at 6a-7a.

2. Petitioner does not identify any sound basis for further review. The decision below was a fact-bound application of settled Fourth Amendment principles to the particular circumstances of this case, which turned on petitioner's failure to carry his burden of showing a legitimate expectation of privacy. This Court "do[es] not grant * * * certiorari to review evidence and discuss specific facts." *United States* v. *Johnston*, 268 U.S. 220, 227 (1925); see Sup. Ct. R. 10; see also *Kyles* v. *Whitley*, 514 U.S. 419, 456-457 (1995) (Scalia, J., dissenting) ("[U]nder what we have called the 'two-court rule,' the policy [in *Johnston*] has been applied with particular rigor when district court and court of appeals are in agreement as to what conclusion the record requires.") (citing *Graver Tank & Mfg. Co.* v. *Linde Air Prods. Co.*, 336 U.S. 271, 275 (1949)).

a. Petitioner errs in asserting (Pet. 11-17) that the decision below implicates a division of authority among federal and state courts regarding car passengers. As a threshold matter, several of the decisions that petitioner invokes—including the Third Circuit's assertedly "illustrative" (Pet. 13) decision in *United States* v. *Montalvo-Flores,* 81 F.4th 339 (2023)—involve claims by drivers, not passengers. See *id.* at 340, 342-343 (defendant was arrested in hotel room and officers later searched his girlfriend's rental car, which she had allowed him to

drive in violation of the rental agreement); see also *United States* v. *Thomas*, 447 F.3d 1191, 1199 (9th Cir. 2006) (pre-*Byrd* Fourth Amendment claim by rental car driver); cf. *United States* v. *Portillo*, 633 F.2d 1313, 1315, 1317 (9th Cir. 1980) (holding that car driver, who was authorized to use the car and had keys to it, had a legitimate expectation of privacy but that car passenger did not), cert. denied, 450 U.S. 1043 (1981).

Consistent with this Court's decision in *Rakas*, every federal court of appeals has recognized that a passenger typically lacks a legitimate expectation of privacy in a car in which he or she happens to be sitting. See, *e.g.*, *United States* v. *Campbell*, 741 F.3d 251, 263 (1st Cir. 2013); *United States* v. *Paulino*, 850 F.2d 93, 96-97 (2d Cir. 1988), cert. denied, 490 U.S. 1052 (1989); *United States* v. *Jackson*, 120 F.4th 1210, 1219 (3d Cir. 2024); *United States* v. *Burnett*, 773 F.3d 122, 131-132 (3d Cir. 2014), cert. denied, 575 U.S. 944 (2015); *Smith*, 21 F.4th at 130 (4th Cir.); *United States* v. *Rodriguez*, 33 F.4th 807, 811 (5th Cir. 2022); *Walton*, 763 F.3d at 666 (7th Cir.); *United States* v. *Smith*, 697 F.3d 625, 630 (7th Cir. 2012); *United States* v. *Russell*, 847 F.3d 616, 618 (8th Cir. 2017); *United States* v. *Anguiano*, 795 F.3d 873, 878-879 (8th Cir. 2015); *Portillo*, 633 F.2d at 1317 (9th Cir.); *United States* v. *DeLuca*, 269 F.3d 1128, 1132 (10th Cir. 2001); *United States* v. *Dixon*, 901 F.3d 1322, 1338-1339 (11th Cir. 2018); *United States* v. *Mitchell*, 951 F.2d 1291, 1298 (D.C. Cir. 1991), cert. denied, 504 U.S. 924 (1992). For that reason, the treatise cited by petitioner (Pet. 17) recognizes that "a passenger will virtually never have standing to challenge a search of a vehicle, absent a claim of ownership of the articles seized." 1 William E. Ringel, *Searches and Seizures, Arrests and Confessions* § 11:20, at 11-178 (2d ed. 2019).

Petitioner invokes (Pet. 14-15) several decades-old decisions from the Fifth, Seventh, and Eighth Circuits, asserting that they suggest—at least on particular facts—a contrary approach. See *United States* v. *Martinez*, 808 F.2d 1050, 1056 (5th Cir. 1987); *United States* v. *Griffin*, 729 F.2d 475, 483 n.11 (7th Cir. 1984); *United States* v. *Rose*, 731 F.2d 1337, 1343 (8th Cir. 1984). But each of those circuits has more recently made clear, consistent with this Court's guidance, that "legitimate presence" in a car does not suffice to show a reasonable expectation of privacy. *Byrd*, 584 U.S. at 404-405; see, *e.g.*, *Rodriguez*, 33 F.4th at 811 (5th Cir.) (explaining that, "'[t]ypically,' a passenger in a car, as distinct from the driver, 'lacks standing to complain of its search'") (citation omitted); *Walton*, 763 F.3d at 666 (7th Cir.) (recognizing the "central distinction[] * * * between a driver of a car and her passenger"); *Russell*, 847 F.3d at 618 (8th Cir.) (noting that a "mere passenger does not have standing to challenge a vehicle search where he has 'neither a property nor a possessory interest'") (citation omitted). Petitioner therefore fails to show that this case would have come out differently had it occurred within those circuits. And any internal tension between the current law in those circuits and the earlier decisions invoked by petitioner would not warrant this Court's review. See *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam) ("It is primarily the task of a Court of Appeals to reconcile its internal difficulties.").

Petitioner's state-court decisions (Pet. 15-16) likewise do not show any conflict warranting review. The Texas Court of Criminal Appeals' decision in *Matthews* v. *State*, 431 S.W.3d 596 (2014), involved a defendant sitting in the driver's seat with keys in the ignition. See *id.* at 605. In the D.C. Court of Appeals' decision in

United States v. *Scott*, 987 A.2d 1180 (2010), the reasonable expectation of privacy of a regular user and borrower of a car was undisputed, see *id.* at 1190; its fact-specific conclusion that the defendant did not abandon that interest does not conflict with the decision below in this case, see *id.* at 1190-1191. And the Indiana Supreme Court's decision in *Campos* v. *State*, 885 N.E.2d 590 (2008), involved a Fourth Amendment claim by a passenger who was authorized to drive the car but was not driving it at the time of the encounter with the police; the car was instead being driven by a third man, who also did not own it. See *id.* at 595, 599. Whatever the import of that decision on its particular facts, the state court recognized that, as a general matter, "[p]assengers in a car driven *by the owner* do not have standing to challenge a search of the car," *id.* at 598 (emphasis added), and that principle would apply here.

b. Petitioner also asserts (Pet. 17-21) that the decision below implicates a division of authority regarding the circumstances under which a person will be held to have "disclaimed or abandoned" any interest in the property to be searched. But that contention rests on a misreading of the decision below. As explained above (see p. 12, *supra*), the court below did not rely on any theory of property abandonment in this case, but rather determined that petitioner had no reasonable expectation of privacy where he had made clear that he was neither the owner nor the driver of the car. See Pet. App. 6a (reviewing petitioner's conduct and statements and explaining that "[h]is failure to exhibit an expectation of privacy at the time of the search prevents him from asserting one now to challenge that search in court").

In reaching that conclusion, the court of appeals drew by analogy from a prior decision involving luggage

searched at an airport. See *United States* v. *Tolbert,* 692 F.2d 1041, 1044-1045 (6th Cir. 1982) (discussed at Pet. App. 6a), cert. denied, 464 U.S. 933 (1983). But that decision made clear "that the term 'abandonment,' as employed herein, does not refer to traditional concepts of property law," and simply treated the concept as part of a case-specific inquiry into whether the defendant had a reasonable expectation of privacy in the place that was searched. *Id.* at 1044; see *id.* at 1044-1045 (defendant had no reasonable expectation of privacy in a suitcase after "insist[ing] that she was traveling without luggage and specifically disclaim[ing] ownership of the bag").

Nor is any "abandonment" decision that petitioner identifies from another circuit inconsistent with the approach in the decision below, under which a defendant's own statements denying ownership are relevant to assessing any subjective expectation of privacy. See *United States* v. *Liu,* 180 F.3d 957, 960 (8th Cir. 1999) (to determine whether luggage was abandoned, courts look at "totality of the circumstances," including denying ownership and relinquishing property); *United States* v. *Colbert,* 474 F.2d 174, 176 (5th Cir. 1973) (en banc) (to determine whether briefcase was abandoned, courts consider "words spoken, acts done, and other objective facts"); see also *United States* v. *Jackson,* 544 F.2d 407, 409 (9th Cir. 1976); *United States* v. *Hawkins,* 681 F.2d 1343, 1346 (11th Cir.), cert. denied, 459 U.S. 994 (1982); *Thomas,* 864 F.2d at 846 (D.C. Cir.). Petitioner fails to show that any of those decisions would have compelled a different result here, had this case arisen in those circuits.

c. Finally, the remaining two decisions cited by petitioner (Pet. 19) were issued by a district court and a state intermediate appellate court and thus do not meet

this Court's traditional criteria for demonstrating a division of authority warranting further review. See Sup. Ct. R. 10.

3. At all events, this case would be an unsuitable vehicle in which to address any issue of petitioner's Fourth Amendment interest in the car, because even if he had such an interest, it was not infringed here. The district court found, as an alternative basis for denying petitioner's motion to suppress, that the police officers had a valid basis to impound the car—after petitioner's arrest left the vehicle unoccupied and unlocked, with its owner not present—and to perform an attendant inventory search. Pet. App. 34a-46a; see Gov't C.A. Br. 37-55. The court of appeals did not address that alternative determination, but it would provide an independent basis for affirmance here. See *Granfinanciera, S.A.* v. *Nordberg,* 492 U.S. 33, 38 (1989) (explaining that the government may "defend its judgment on any ground properly raised below whether or not that ground was relied upon, rejected, or even considered") (citation omitted).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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FEBRUARY 2025