

No. 26A211

IN THE
Supreme Court of the United States

AUSTIN LODGE,

Applicant,

v.

UNITED STATES OF AMERICA,

Respondent.

**APPLICATION FOR A FURTHER EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT**

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A PETITION FOR A WRIT OF CERTIORARI**

To Chief Justice John. G. Roberts, Circuit Justice for the U.S. Court of Appeals for the Fourth Circuit:

Pursuant to Rules 13.5 and 30.2 of this Court, Applicant Austin Lodge respectfully requests a 30-day extension of time, to and including October 26, 2026, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case. *See* App., 1a-34a. The court of appeals entered its judgment on April 30, 2026. *Id.* at 1a. The court denied Mr. Lodge’s petition for rehearing on May 27, 2026. *Id.* at 35a. By order dated August 27, 2026, the Chief Justice granted Mr. Lodge’s first application for a 30-day extension of time to file a petition for writ of certiorari to September 24, 2026. Mr. Lodge submits this application 10 days before the current due date for the petition. *See* S. Ct. R. 13.5. This Court’s jurisdiction would be invoked under 28 U.S.C. § 1254(1).

1. As explained in the first application for an extension of time, this case concerns an important and recurring Fourth Amendment question: May a court consider all relevant circumstances to determine whether an individual has abandoned property, or must a court instead limit its inquiry to facts known to police at the time of the search?

2. On December 13, 2018, patrolling officers encountered Mr. Lodge as he exited his vehicle and ran toward a nearby trailer—a familial residence where Mr. Lodge periodically resided. App., *infra*, 4a, 18a-19a. The officers suspected Mr. Lodge

had committed a traffic violation and ordered him to stop, but Mr. Lodge proceeded to the trailer. *Id.* at 4a. According to the officers, it appeared a resident briefly opened the door and rebuffed Mr. Lodge's attempt to place a camouflage backpack inside. *Ibid.* Mr. Lodge then fled the premises. *Ibid.* After officers apprehended Mr. Lodge, they located the backpack next to a shed in the backyard of the residence. *Id.* at 5a. Officers searched the backpack without a warrant, and they discovered methamphetamine and marijuana inside it. *Ibid.*

3. A federal grand jury charged Mr. Lodge with two counts of possession with intent to distribute controlled substances, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C), based on evidence recovered from a backpack. App., *infra*, 3a. Mr. Lodge then moved to suppress evidence obtained from the warrantless search of his backpack. *Ibid.* Mr. Lodge contended that he had a reasonable expectation of privacy in the backpack even after he concealed it in the curtilage of a family residence. *Id.* at 9a.

4. A magistrate judge recommended that the district court deny the motion to suppress, based on a finding that Mr. Lodge had abandoned the backpack before officers conducted their search. App., *infra*, at 47a-74a. The magistrate judge recognized that Mr. Lodge had consistently claimed ownership of the backpack, even after he was apprehended by the police without the backpack. *Id.* at 69a. The magistrate judge also recognized that Mr. Lodge had permission to be on the property where the backpack was found. *Ibid.* The magistrate judge nevertheless found that Mr. Lodge had abandoned the property because he discarded it while fleeing from

officers. *Id.* at 70a.

The district court adopted the report and recommendation of the magistrate judge, and it therefore denied the motion to suppress. App., *infra*, 36a-46a. Mr. Lodge then entered a conditional guilty plea to one count of possession with intent to distribute methamphetamine, while preserving his right to appeal the court's suppression ruling. *Id.* at 4a. The court sentenced Mr. Lodge to 151 months in prison. See D. Ct. Doc. 107.

5. A divided panel of the Fourth Circuit affirmed in a published opinion. App., *infra*, 1a-24a.

a. The majority held that the district court did not clearly err in finding that Mr. Lodge had abandoned the property. App., *infra*, 13a-24a. At the outset, the court of appeals recognized that the district court's abandonment analysis was flawed. *Id.* at 15a-17a. The district court had not "meaningfully engag[ed] with the constitutional significance of the bag's placement on private property," even though the "location of the object is among the most consequential facts in any abandonment inquiry." *Id.* at 15a-16a. The court of appeals acknowledged that Mr. Lodge "plausibly could have been found to possess a reasonable expectation of privacy" in the curtilage of the residence where he placed the backpack. *Id.* at 18a. The court of appeals nevertheless declined to upset the district court's abandonment finding. App., *infra*, at 3a. Relying on circuit precedent, the majority considered its analysis "temporally constrained," such that it could "only consider 'objective information available to the officers at the time they performed the warrantless search.'" *Id.* at

14a-15a (quoting *United States v. Mayberry*, 125 F.4th 132, 145 (4th Cir. 2025)). “That constraint,” the court explained, carried “particular significance” in this case, as facts learned after the warrantless search “inform[ed] whether [Mr. Lodge] maintained a reasonable expectation of privacy in the location where he discarded the property in question.” *Id.* at 15a. In particular, testimony revealed that Mr. Lodge had a familial relationship with the homeowner, had permission to be on the property, and routinely resided on the property with his children. *Id.* at 18a-19a. The court, however, determined that the limited “information available to the officers at the time” of the search could “support the abandonment finding.” *Id.* at 22a.

b. Judge Gregory dissented. App., *infra*, 25a-34aa. In his view, the majority erred by “permitt[ing] the entire abandonment analysis to turn only on the objective circumstances known to the officers at the time of the search.” *Id.* at 30a (internal quotation marks omitted). Judge Gregory would have instead remanded for the district court to consider additional evidence as to Mr. Lodge’s intent, with instructions to properly account for the fact that the backpack was abandoned on Mr. Lodge’s familial residence. *Id.* at 34a.

6. This case is a strong candidate for plenary review. The decision below implicates a circuit split as to the proper inquiry for determining abandonment under the Fourth Amendment. See App., *infra*, 16a-19a. Like the Fourth Circuit, several courts of appeals consider only the “objective information available to officers at the time they performed the warrantless search.” *Id.* at 14a-15a (citation omitted); see, e.g., *United States v. Pitts*, 322 F.3d 449, 456 (7th Cir. 2003); *United States v. Nowak*,

825 F.3d 946, 948 (8th Cir. 2016); *United States v. Porter*, 66 F.4th 1223, 1226 (10th Cir. 2023). By contrast, numerous courts of appeals consider “all facts” when determining whether property is abandoned, “including those not known to the police at the time of the search.” *United States v. Paradis*, 351 F.3d 21, 32 (1st Cir. 2003); *see, e.g., United States v. Levasseur*, 816 F.2d 37, 44 (2d Cir. 1987); *United States v. Sylvester*, 848 F.2d 520, 525 (5th Cir. 1988); *United States v. Hunt*, 153 F.4th 858, 866 (9th Cir. 2025); *Pineda v. Warden, Calhoun State Prison*, 802 F.3d 1198, 1204 (11th Cir. 2015); *United States v. Most*, 876 F.2d 191, 197 (D.C. Cir. 1989).

State courts of last resort are similarly divided as to how to conduct the Fourth Amendment inquiry of abandonment. *Compare, e.g., Richardson v. Maryland*, 282 A.3d 98, 111 (Md. 2022) (“[W]e look solely to the external manifestations of [the defendant’s] intent as judged by a reasonable person possessing the same knowledge available to the government agents.”) (citation omitted), *with United States v. Kyle*, 268 A.3d 1256, 1263-64 (D.C. 2022) (“When abandonment is argued to show lack of a Fourth Amendment interest, a court inquiry into all facts, including those not known to the police at the time of their search.”) (citation omitted). This Court’s review is warranted to resolve this entrenched and deep split on an important question of Fourth Amendment law.

7. The requested extension is necessary because Mr. Lodge is in the process of retaining additional counsel, from Haynes and Boone, LLP, in connection with preparing the petition for a writ of certiorari. New co-counsel require time to examine the record and legal issues, consult with undersigned counsel, and prepare the petition.

For the foregoing reasons, Applicant respectfully requests that the time to file a

petition for certiorari be extended further by 30 days, to and including October 26, 2026.

Respectfully submitted.

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Dated: September 14, 2026