No. 08-1482

In the Supreme Court of the United States

TOMMY ZEKE MINCEY, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether petitioner had a reasonable expectation of privacy in a rental car, when petitioner was not an authorized driver under the rental contract and, while the renter gave him permission, the contract prohibited the renter from doing so.

2. Whether any such expectation of privacy was extinguished during a traffic stop when the rental car company instructed the police not to release the car to petitioner and consented to its search.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-21a) is not published in the Federal Reporter but is reprinted in 321 Fed. Appx. 233.

JURISDICTION

The judgment of the court of appeals was entered on November 24, 2008. A petition for rehearing was denied on December 22, 2008 (Pet. App. 25a). On March 5, 2009, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including May 21, 2009, 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 North Carolina, petitioner was convicted of possession with intent to distribute heroin, in violation of 21 U.S.C. 841(a). He was sentenced to imprisonment for a term of 150 months, to be followed by eight years of supervised release. Pet. App. 1a-2a, 11a. The court of appeals affirmed. *Id.* at 1a-21a.

1. On October 3, 2005, a police officer stopped a car driven by petitioner for a traffic violation near Statesville, North Carolina. In response to the officer's request, petitioner produced a Michigan driver's license in the name of Kenyatta Anthony James with a photograph matching his appearance. He told the officer that he had recently moved to Georgia and gave his address. The officer also asked for the car's registration. Petitioner gave the officer a rental agreement from Armada Rental Company (Armada). He said that the car had been rented by his girlfriend in Georgia, and her name was on the rental agreement. The officer noted that the rental agreement did not identify petitioner as an authorized user. Pet. App. 3a-5a; Gov't C.A. Br. 3-4; Gov't Resp. to Mot. to Suppress Exh. 1 (GX 1).[1]

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[1] The rental agreement was signed by Janell C. Crosby. In relevant part, the second page stated:

> 1) DRIVERS: In no event shall the vehicle be used, operated or driven by any person other than (1) Renter, or (2) Additional Renter as named on page 1 of this contract. * * *
>
> 2) PROHIBITED USE: The vehicle shall not be used * * * (6) by any person not specified in paragraph 1 above.

GX 1, at 2. The first page of the rental agreement included a section stating in bold type: "ONLY THE BELOW NAMED PERSONS ARE AUTHORIZED AS ADDITIONAL DRIVERS. IF NONE, PRINT

The officer returned to his vehicle with petitioner's driver's license and the rental agreement in order to run computer checks before issuing a warning citation to petitioner. The officer ran computer checks on the driver's license number and the name on the license, but both checks indicated that no such Michigan driver's license was on file. The officer also ran a computer check on the Georgia plates and confirmed that the car was owned by Armada. The officer then called Armada, and an employee confirmed that petitioner was not an authorized user of the rental car. When the officer asked for consent to search the car, the employee responded that someone from the company would call him back. About five minutes later, a different Armada employee called the officer. She confirmed that petitioner was not authorized to drive the rental car and told the officer not to release the car to him. The employee also gave the officer permission to search the car. Pet. App. 4a-6a; Gov't C.A. Br. 5-6.

Shortly thereafter, the officer returned to the rental car and asked petitioner to step out of the car. He returned the driver's license to petitioner and handed him a warning citation. The officer explained that he had spoken with the rental company and could not release the rental car because petitioner was not an authorized driver under the rental agreement. The officer offered to drive petitioner to the next exit on the highway. Pet. App. 6a-7a; Gov't C.A. Br. 6-7.

The officer told petitioner that he and two other police officers who had arrived at the scene were going to search the car with the rental company's permission.

'NONE' ACROSS THIS SECTION AND HAVE SIGNED BY CUSTOMER." *Id.* at 1. The rental agreement given to the officer stated "None" and was initialed by "J.C.C." *Ibid.*; see also Pet. App. 7a n.3.

Petitioner consented to a pat-down for weapons, and the officer found a cell phone in his pants pocket. Petitioner asked if he could return to the car to retrieve a cell phone to call his girlfriend, who he said had given him permission to drive the car. The officer declined to allow petitioner to enter the car and reminded him that he had a cell phone in his pants pocket. Pet. App. 7a; Gov't C.A. Br. 7; C.A. App. 174.

When the officers searched the car, they found 140 grams of high-purity heroin hidden in the console around the car's gearshift. Petitioner was arrested and interviewed. He eventually admitted his true identity. Petitioner also gave the officers a statement concerning his travels but denied knowing that heroin was in the rental car. Pet. App. 7a-10a; Gov't C.A. Br. 7-8.

2. Petitioner was charged in an indictment with one count of possession with intent to distribute at least 100 grams of heroin, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(B). C.A. App. 10. Before trial, petitioner moved to suppress the heroin and his subsequent statements on the ground, *inter alia*, that the search of the rental car violated the Fourth Amendment. *Ibid.* At the suppression hearing, petitioner's girlfriend, Janell Crosby, testified that she rented the car for petitioner because he did not have a credit card to secure the rental. According to her testimony, petitioner accompanied her to the Armada rental office, and she drove the rental car from the parking lot to a gas station down the street, where she gave it to petitioner with her permission to drive it. C.A. App. 195-197, 209.

At the conclusion of the suppression hearing, the district court orally denied the motion to suppress. Pet. App. 23a-24a. The court ruled that petitioner, as an unauthorized driver under the rental contract, "had no

standing to contest the search and seizure of the rental car." *Id.* at 24a. The court found that "[t]he fact that Ms. Crosby may have [purported] to let [petitioner] have the car and testified that she did does not change the analysis." *Ibid.* In addition, the court found that "[t]he rental car agency gave permission for the search of the vehicle." *Ibid.*

Following trial, the jury found petitioner guilty of the single count of possession with intent to distribute at least 100 grams of heroin. The district court sentenced petitioner to 150 months of imprisonment. Pet. App. 11a.

3. The court of appeals affirmed in an unpublished opinion. Pet. App. 1a-21a. The court observed that it was "well settled that only where a search intrudes upon a space as to which an individual has 'a legitimate expectation of privacy' may the individual contest the search on Fourth Amendment grounds." *Id.* at 12a. After noting that petitioner's "subjective expectation of privacy in the rental vehicle is not in dispute," *ibid.*, the court concluded that its decision in *United States* v. *Wellons*, 32 F.3d 117 (4th Cir. 1994), cert. denied, 513 U.S. 1157 (1995), was "squarely on point" with respect to whether petitioner's subjective expectation of privacy was objectively reasonable. Pet. App. 12a. The court observed that *Wellons* held that "an unauthorized driver of a rental vehicle has no legitimate privacy interest in the vehicle," even where "the authorized lessee allows the unauthorized driver to drive the rental vehicle." *Id.* at 13a.

The court found "no persuasive reason" to overturn or alter *Wellons*. Pet. App. 13a. The court observed that the cases relied upon by petitioner were "factually distinguishable" because any permission petitioner had

from his girlfriend to drive the car "clearly terminated once the rental company affirmatively advised [the police officer] that [petitioner] * * * was not entitled to possess the vehicle and that the vehicle was not to be released to [petitioner] at the scene of the traffic stop." *Id.* at 14a n.9.

The court of appeals held that petitioner, "as an unauthorized driver under the Armada rental contract, had no legitimate expectation of privacy in the rental vehicle and cannot contest the warrantless search of the vehicle on Fourth Amendment grounds." Pet. App. 15a. In light of that holding, the court found it unnecessary to address the district court's alternative holding that the warrantless search was reasonable in light of Armada's consent. *Id.* at 15a-16a.

ARGUMENT

Petitioner contends (Pet. 8-19) that the court of appeals erred in holding that he did not have a legitimate expectation of privacy in the rental car. He further contends that the court of appeals' decision conflicts with decisions of other courts of appeals. Contrary to petitioner's contention, there is no square conflict among the courts of appeals on the questions presented. Moreover, this case is an inappropriate vehicle for resolving any tension that exists among the decisions of the courts of appeals because Armada's consent provided the officers with an independent basis for the search. Further review is therefore unwarranted.

1. An individual's ability to "claim the protection of the Fourth Amendment depends * * * upon whether" he "has a legitimate expectation of privacy in the invad-

ed place." *Rakas* v. *Illinois*, 439 U.S. 128, 143 (1978).[2] A court may not exclude evidence under the Fourth Amendment unless it finds that an unlawful search or seizure "invaded [*the defendant's*] legitimate expectation of privacy rather than that of a third party." *United States* v. *Payner*, 447 U.S. 727, 731 (1980); see also *Rawlings* v. *Kentucky*, 448 U.S. 98, 105-106 (1979).

To claim the protection of the Fourth Amendment, a defendant "must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable; *i.e.*, one that has 'a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society.'" *Minnesota* v. *Carter*, 525 U.S. 83, 88 (1998) (quoting *Rakas*, 439 U.S. at 144 n.12); see, *e.g.*, *Minnesota* v. *Olson*, 495 U.S. 91, 98 (1990) ("To hold that an overnight guest has a legitimate expectation of privacy in his host's home merely recognizes the everyday expectations of privacy that we all share."). Although legitimate expectations of privacy "need not be based on a common-law interest in real or personal property," the Court "has not altogether abandoned use of property concepts in determining the presence or absence of the

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[2] Although the Court had formerly analyzed questions concerning an individual's ability to claim Fourth Amendment protections under the rubric of "standing," the Court made clear in *Rakas* that "definition of those rights is more properly placed within the purview of substantive Fourth Amendment law than within that of standing." 439 U.S. at 140. Nonetheless, "standing" is sometimes used as a shorthand for having a sufficient interest to challenge a search or seizure. See *Arizona* v. *Johnson*, 129 S. Ct. 781, 787 (2009) ("A passenger," who is seized by a stop, "therefore has standing to challenge a stop's constitutionality."). Petitioner does not challenge the stop of the car, but instead challenges its search.

privacy interests protected by [the Fourth] Amendment." *Rakas*, 439 U.S. at 144 n.12.

The court of appeals correctly held that petitioner did not have a legitimate expectation of privacy in the rental car because he was an unauthorized driver under the Armada rental contract. As the owner of the car, Armada could authorize others to drive the car. Those authorized to use a car by its lawful owner generally acquire an expectation of privacy in the car. See, *e.g.*, *United States* v. *Miller*, 821 F.2d 546, 549 (11th Cir. 1987). That is because authorized users of a car have lawful possession and may legitimately expect that—within the scope of authority granted to them by the car's owner—they can exclude others from the car. See *Rakas*, 439 U.S. at 144 n.12 ("[O]ne who owns or lawfully possesses or controls property will in all likelihood have a legitimate expectation of privacy by virtue of this right to exclude [others]."); *United States* v. *Walker*, 237 F.3d 845, 849 (7th Cir. 2001) ("A person listed as an approved driver on a rental agreement has an objective expectation of privacy in the vehicle due to his possessory and property interest in the vehicle.").

Petitioner, in contrast, did not lawfully possess the rental car because Armada had not authorized him to drive it. The consent of petitioner's girlfriend Janell Crosby, did not authorize petitioner to drive th car because she lacked that power under the terms of her rental agreement. Since Crosby had no authority to allow persons not mentioned in the rental agreement to drive the car, petitioner could not legitimately expect that he would be able to control the car and exclude others, such as Armada, from it. Accordingly, petitioner had no expectation of privacy in the car that "society is prepared to recognize as 'reasonable.'" *Rakas*, 439 U.S.

at 144 n.12 (quoting *Katz* v. *United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring)); see also 6 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 11.3(e) at 201-202 (4th ed. 2004) (*LaFave*) ("[M]ost courts agree that an occupant of a vehicle cannot be said to have standing by virtue of his presence if he is in possession of a stolen or otherwise illegally possessed or controlled vehicle.") (footnote omitted).

Contrary to petitioner's contention (Pet. 8-15), there is no square conflict among the courts of appeals over whether an unauthorized driver of a rental car has a legitimate expectation of privacy in the car. In addition to the court of appeals in this case, see Pet. App. 13a; *United States* v. *Wellons*, 32 F.3d 117, 119 (4th Cir. 1994), cert. denied, 513 U.S. 1157 (1995), the Fifth and Tenth Circuits agree that an unauthorized driver of a rental car does not have a legitimate expectation of privacy in the car, even when the renter purports to give him permission to drive it in contravention of the rental agreement. See *United States* v. *Seeley*, 331 F.3d 471, 472 & n.1 (5th Cir. 2003) (per curiam); *United States* v. *Boruff*, 909 F.2d 111, 117 (5th Cir. 1990), cert. denied, 499 U.S. 975 (1991); *United States* v. *Roper*, 918 F.2d 885, 886, 887-888 (10th Cir. 1990); *United States* v. *Obregon*, 748 F.2d 1371, 1374-1375 (10th Cir. 1984).[3]

[3] Relying on *United States* v. *Kye Soo Lee*, 898 F.2d 1034 (1990), petitioner argues (Pet. 9 n.1) that the Fifth Circuit has held that a driver has a reasonable expectation of privacy in a rental vehicle so long as he has the renter's permission to drive it. In that case, the Fifth Circuit reasoned that "where a person has borrowed an automobile from another, with the other's consent, the borrower becomes a lawful possessor of the vehicle and thus has standing to challenge the search." *Id.* at 1038. The court did not discuss the terms of the rental agreement and whether it prohibited use by unlisted drivers. *Id.* at 1036. In its most recent decision addressing the privacy interests of drivers who are not

While two other circuits, the First and Sixth, have applied a "totality of the circumstances" test to similar questions, *United States* v. *Smith*, 263 F.3d 571, 586 (6th Cir. 2001); *United States* v. *Sanchez*, 943 F.2d 110, 114 (1st Cir. 1991), those courts' decisions make clear that they would not have recognized a Fourth Amendment privacy interest on the part of petitioner in the circumstances of this case. In *Sanchez*, the First Circuit refused to recognize a protected privacy interest in the driver where "at best the defendant was operating the vehicle with the authority of a person who himself had been given the authority to operate the vehicle by somebody else," *id.* at 113 (quoting district court), and the driver failed to demonstrate "a more intimate relationship with the car's owner or a history of regular use of the [car]—from which a presumption of permission [from the owner] could be drawn," *id.* at 114.

In *Smith*, the Sixth Circuit specifically "acknowledge[d] that *as a general rule*, an unauthorized driver of a rental vehicle does not have a legitimate expectation of privacy in the vehicle." 263 F.3d at 586 (emphasis added). The court held, however, that the case before it was "not governed by the general rule" because of its "truly unique" facts. *Ibid.* The "most significant[]" distinguishing fact was that "unlike any of the drivers in any of [the other] cases," Smith "personally had a business relationship with the rental company," including

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authorized under a rental agreement, the Fifth Circuit distinguished *Kye Soo Lee* on that ground. *Seeley*, 331 F.3d at 472 n.1. The court held that the case was controlled by *Boruff*, which specifically held that when, "[u]nder the express terms of the rental agreement," the renter of a car "had no authority to give control of the car to" another, an unauthorized driver has "no legitimate expectation of privacy in it," 909 F.2d at 117. See *Seeley*, 331 F.3d at 472 (citing *Boruff*).

having been the person who reserved the car in his name and provided the credit card that paid for the rental. *Ibid.* Smith's wife, who picked up the car, had done so using the reservation number given to Smith. *Ibid.* In the Sixth Circuit's view, those facts made Smith the "*de facto* renter." *Id.* at 587. Whatever tension might exist between the broad rule of the Fourth, Fifth, and Tenth Circuits and the totality-of-the-circumstances approach of the First and Sixth Circuits does not warrant this Court's review, at least in this case, because it is clear that those circuits applying the more context-specific approach would reach the same result as the court below on the facts of this case.[4]

Nor, contrary to petitioner's suggestion (Pet. 9-11), is there a direct conflict between the court of appeals' decision in this case and rulings of the Eighth and Ninth Circuits. Petitioner cites *United States* v. *Thomas*, 447 F.3d 1191, 1199 (9th Cir. 2006), *United States* v. *Best*, 135 F.3d 1223, 1225 (8th Cir. 1998), and *United States* v. *Muhammed*, 58 F.3d 353, 355 (8th Cir. 1995) (per curiam), as having "held that a driver has a reasonable

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[4] In *United States* v. *Cooper*, 133 F.3d 1394 (1998), the Eleventh Circuit similarly emphasized the defendant's direct relationship with the rental company. Although the rental agreement had expired, the defendant had personally rented the car and was listed as the authorized driver on the contract, and in the past the company been lenient with respect to overdue rentals. *Id.* at 1397, 1400. The Eleventh Circuit concluded that those facts made Cooper's situation "materially different" from that of an unauthorized driver. *Id.* at 1400. While the analysis in *Cooper* indicates that the Eleventh Circuit would not recognize an unauthorized driver's privacy interest, that court has not, contrary to the court of appeals' understanding (Pet. App. 13a-14a), specifically addressed that issue. Cf. *United States* v. *McCulley*, 673 F.2d 346, 352 (11th Cir. 1982) (rejecting Fourth Amendment claim by co-defendants who agreed to share expenses with the renter).

expectation of privacy in a rental car so long as he has the renter's permission to drive it." Pet. 9. Those cases do not support that proposition.

In *Muhammed*, the defendant "presented absolutely no evidence that he had been granted permission to drive the car." 58 F.3d at 355. The court of appeals thus rejected his claim of a legitimate expectation of privacy. *Ibid.* The court noted that the parties agreed that "the defendant must present at least some evidence of consent or permission from the lawful owner/renter to give rise to an objectively reasonable expectation of privacy," *ibid.*, but in the absence of any such evidence, the court of appeals had no occasion to announce any holding on the showing that would support such an expectation. Later, in *Best*, the Eighth Circuit cited *Muhammad* in remanding a case for further findings, stating that "[i]f Thomas [the renter] had granted Best permission to use the automobile, Best would have a privacy interest giving rise to standing." *Best*, 135 F.3d at 1225. That remand order, however, does not definitively resolve the nature of the relationship required to establish such a privacy interest; in particular, the court did not discuss whether the rental contract precluded the renter from giving unauthorized persons use of the car. Finally, in *Thomas*, the Ninth Circuit rejected the defendant's claim that, although he was an unauthorized driver under the rental contract, he had an expectation of privacy. The court held that "it is undisputed that Thomas failed to show that he received [the renter's] permission to use the car." 447 F.3d at 1199. While the opinion's earlier discussion purported to reject the view that a rental agreement's failure to list the defendant as an authorized driver meant that he could not challenge a search, *id.* at 1198, the court did not have before it facts that

required it to determine when such a challenge was permitted. See *id.* at 1199 ("An unauthorized driver *may* have standing to challenge a search if he or she has received permission to use the car.") (emphasis added). In view of the ultimate rejection of the defendants' claims in *Muhammed* and *Thomas*, and the remand of the defendant's claim in *Best*, neither the Eighth nor the Ninth Circuit can be said to have definitively resolved the issue in this case in a defendant's favor. Language in the opinions does not create a square conflict on the question presented that would warrant this Court's review.[5]

2. Petitioner also seeks review (Pet. 20-22) of the court of appeals' statement, in a footnote, that any permission conferred on petitioner by the authorized driver "terminated once the rental company affirmatively advised [the officer] that [petitioner], as an unauthorized driver under the rental contract, was not entitled to possess the vehicle and the vehicle was not to be released to [petitioner]." Pet. App. 14a n.9. That issue does not warrant this Court's review.

The court of appeals observed that its discussion of the termination of any derivative authorization petitioner might have had was "not necessary to the result reached here." Pet. App. 14a n.9. In any event, that statement is correct: when a rental company instructs

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[5] In *State* v. *Van Dang*, 120 P.3d 830 (2005), also relied upon by petitioner (Pet. 9), the New Mexico Supreme Court likewise rejected the driver's Fourth Amendment claim. *Id.* at 834. The court's discussion of *Smith*, *id.* at 834 & n.1, suggests that, like the Sixth Circuit, the New Mexico Supreme Court would not treat the rental agreement as definitive in itself. But the court did not hold, because the issue was not presented, what facts would be sufficient to support a Fourth Amendment claim by a driver who was not authorized under the terms of the contract.

the police not to release a rental car to an unauthorized driver at the scene of a traffic stop, "any permission that had previously been extended to [the unauthorized driver] by the authorized driver of the rental vehicle [is] effectively extinguished by the rental company, the actual owner of the vehicle and issuer of the subject rental contract." *Ibid*.

Contrary to petitioner's claim (Pet. 20-21), the court of appeals' analysis does not conflict with the Eleventh Circuit's decision in *United States* v. *Cooper*, 133 F.3d 1394 (1998). In *Cooper*, the defendant was an authorized driver of a rental car whose rental agreement expired four days before he was stopped by a police officer. The officer called the rental company, which told the officer to tow and return the car. *Id*. at 1396. The court rejected the government's argument that the defendant ceased to have an expectation of privacy once the rental company exercised its right to repossess the car during the stop. *Id*. at 1397, 1398-1399. The court emphasized that the defendant was "listed on the rental contract as an authorized driver" and that the driver and rental company "were in privity of contract." *Id*. at 1400. The court also noted that, based on the rental company's policy, of which the driver was well aware, "a simple phone call could have extended the rental contract past the date of the warrantless search." *Id.* at 1396, 1402. In such circumstances, the court held that the defendant did not lose his legitimate expectation of privacy in the car when the rental agreement expired in the absence of any action by the rental company to enforce the agreement before the stop. *Id*. at 1400-1401.

There is no conflict between the holding in *Cooper* and the court of appeals' decision in this case. Indeed, the Eleventh Circuit stressed in *Cooper* that, as the per-

son "listed on the rental contract as an authorized driver," the defendant's "expectation of privacy was materially different from that of" an unauthorized third-party driver such as petitioner. 133 F.3d at 1400. Thus, there is no conflict on the second question presented by petitioner, and it does not warrant this Court's review.

3. This case is not a suitable vehicle for addressing an unauthorized driver's reasonable expectations of privacy in a rental car because the search of the rental car was valid even assuming petitioner had a reasonable expectation of privacy. As the district court ruled, the consent given by Armada, the rental company that owned the car, provided a valid basis for officers to search the car under the Fourth Amendment. Pet. App. 24a; see generally *Georgia* v. *Randolph*, 547 U.S. 103, 110-112 (2006); *United States* v. *Matlock*, 415 U.S. 164, 169-171 & n.7 (1974).

So long as the rental car was in the lawful possession of Crosby, the bailee, Armada, as the bailor, generally could not consent to a search of the car. See 4 *LaFave* § 8.6(b) at 245; cf. *Stoner* v. *California*, 376 U.S. 483 (1964) (night hotel clerk could not validly consent to search of guest's room); *Chapman* v. *United States*, 365 U.S. 610 (1961) (landlord could not validly consent to search of house that he rented to another). Here, however, petitioner was not the bailee of the car, and he was not in lawful possession of it. Rather, he was an unauthorized user who was driving the car in direct violation of the terms of the rental agreement between Armada and Crosby. In those circumstances, the district court correctly concluded that Armada's consent justified the search. See *State* v. *Hill*, 94 P.3d 752, 758-759 (Mont. 2004); cf. 4 *LaFave* § 8.6(c) at 245-247. In *Randolph*, the Court declined to hold that one resident of a home could

consent to a search of the domicile over the objection of another resident who was present and asserting his refusal to permit entry. 547 U.S. at 114. The Court stressed "[t]he want of any recognized superior authority among disagreeing tenants." *Ibid.* But the rental company that owns a car does have superior rights over an individual who is not a party to the rental agreement and whose driving of the car is specifically prohibited by that contract. See *Hill*, 94 P.3d at 758.

Although the court of appeals found it unnecessary to address the issue, Pet. App. 15a-16a, the government is entitled to defend the favorable judgment of the court of appeals on that additional ground before this Court. *Washington* v. *Confederated Bands & Tribes of the Yakima Indian Nation*, 439 U.S. 463, 476 n.20 (1979). Accordingly, because the rental car company's consent provided an independent justification under the Fourth Amendment to search the rental car, petitioner's claims that the courts below incorrectly ruled that he lacked a legitimate expectation of privacy in the rental car do not warrant this Court's review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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