

No. 2022-8014

IN THE SUPREME COURT OF THE UNITED STATES

JEFFREY WINDSOR, PETITIONER

v.

UNITED STATES, RESPONDENT

*ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE THIRTEENTH CIRCUIT*

BRIEF FOR THE RESPONDENT

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QUESTIONS PRESENTED

- I. Whether the automobile exception justifies a warrantless search of electronic data from devices installed in an automobile given the requirements of the Fourth Amendment and this Court's decision in *Riley v. California*, 573 U.S. 373 (2014).

- II. Whether a magistrate judge's acceptance of a Rule 11 felony guilty plea is valid and binding under the Federal Magistrates Act of 1968 without the acceptance of the plea by an Article III judge.

TABLE OF CONTENTS

OPINIONS BELOW.....	1
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.....	1
STATEMENT OF THE CASE.....	2
I. Officers found a video recording of Mr. Windsor handling illicit substances when reviewing his vehicle’s computer systems to investigate a near-fatal crash they believed he caused.....	2
II. Mr. Windsor entered his felony guilty plea before a magistrate judge.....	4
SUMMARY OF THE ARGUMENT	5
ARGUMENT	6
I. The Automobile Exception permits officers to review a vehicle’s computer system without a warrant when they have probable cause to search the vehicle for evidence.....	6
A. This Court should not extend the rule in Riley regarding warrantless SITAs of cell phones to situations involving the Automobile Exception.....	7
B. Even if this Court extends Riley to situations involving the Automobile Exception, the search of the recording system in Mr. Windsor’s car was reasonable given the differences between this technology and personal cell phones.....	12
C. If the officers lawfully accessed the vehicle’s computer systems, they did not violate other privacy protections involving the Automobile Exception.	17
II. The Federal Magistrates Act authorizes magistrates to accept Rule 11 felony guilty pleas.....	21
A. Magistrates may accept felony guilty pleas because this action is a valid additional duty under the Magistrates Act.	22
1. Acceptance of felony guilty pleas is an additional duty under § 636(b)(3).	22
2. Allowing a magistrate to accept a felony guilty plea furthers the Magistrates Act’s purpose of increasing the efficiency of the federal judiciary.	24
B. Magistrates may accept felony guilty pleas because the duty is consistent with the U.S. Constitution.	25
1. Acceptance of a felony guilty plea does not violate Article III’s personal guarantee.	26
2. Acceptance of a felony guilty plea does not violate Article III’s structural protections.	27
C. Magistrates may accept felony guilty pleas because the duty is a nondispositive matter consistent with the Federal Rules of Criminal Procedure.	28
CONCLUSION.....	30

TABLE OF AUTHORITIES

CASES

<i>Arizona v. Gant</i> , 556 U.S. 332 (2009).....	8, 9, 10, 12, 18
<i>Bojaj v. Berghuis</i> , 702 F. App'x 315 (6th Cir. 2017).....	17
<i>California v. Acevedo</i> , 500 U.S. 565 (1991).....	7, 8
<i>California v. Carney</i> , 471 U.S. 386 (1985).....	9
<i>Carroll v. United States</i> , 267 U.S. 132 (1925).....	7, 9
<i>Collins v. Virginia</i> , 138 S. Ct. 1663 (2018).....	20
<i>Commodity Futures Trading Comm'n v. Schor</i> , 478 U.S. 833 (1986).....	27
<i>Florida v. Jardines</i> , 569 U.S. 1 (2013).....	19
<i>Gomez v. United States</i> , 490 U.S. 858 (1989).....	24
<i>Horton v. California</i> , 496 U.S. 128 (1990).....	18
<i>Illinois v. Gates</i> , 462 U.S. 213 (1983).....	7
<i>Levine v. United States</i> , 362 U.S. 610 (1960).....	26
<i>Maryland v. Buie</i> , 494 U.S. 325 (1990).....	8, 9, 10
<i>McKee v. Gen. Motors Co.</i> , No. 3:21-CV-05815, 2022 WL 1423671 (W.D. Wash. May 5, 2022).	14
<i>McLeod v. Dewey</i> , No. 7:18-CV-66, 2020 WL 1644975 (M.D. Ga. Apr. 2, 2020).....	18
<i>Michigan v. Thomas</i> , 458 U.S. 259 (1982).....	18
<i>New Jersey v. T.L.O.</i> , 469 U.S. 325 (1985).....	8
<i>New York v. Belton</i> , 453 U.S. 454 (1981).....	12
<i>Oliver v. United States</i> , 466 U.S. 170 (1984).....	19
<i>Peretz v. United States</i> , 501 U.S. 923 (1991).....	22, 23, 24, 25, 26, 27, 28
<i>Perez v. Arnold</i> , No. 2:17-cv-01379, 2019 WL 4392405 (E.D. Cal. Sept. 13, 2019).....	17
<i>Riley v. California</i> , 573 U.S. 373 (2014).....	10, 12, 14, 15
<i>Segurola v. United States</i> , 275 U.S. 106 (1927).....	26
<i>Silverman v. United States</i> , 365 U.S. 505 (1961).....	19
<i>United States v. Bascaro</i> , 742 F.2d 1335 (11th Cir. 1984).....	26
<i>United States v. Benton</i> , 523 F.3d 424 (4th Cir. 2008).....	22, 23, 24, 27
<i>United States v. Blakeney</i> , 949 F.3d 851 (4th Cir. 2020).....	17
<i>United States v. Burgess</i> , 576 F.3d 1078 (10th Cir. 2009).....	19
<i>United States v. Camou</i> , 773 F.3d 932 (9th Cir. 2014).....	10, 12
<i>United States v. Ciapponi</i> , 77 F.3d 1247 (10th Cir.).....	22, 28

<i>United States v. Coleman</i> , 707 F.2d 374 (9th Cir. 1983).....	26
<i>United States v. Dees</i> , 125 F.3d 261 (5th Cir. 1997).	22, 24, 28
<i>United States v. Figueroa</i> , 818 F.2d 1020 (1st Cir. 1987).....	26
<i>United States v. Finnesy</i> , 953 F.3d 675 (10th Cir. 2020).....	29
<i>United States v. Gagnon</i> , 470 U.S. 522 (1985).....	26
<i>United States v. Garcia</i> , 936 F.3d 1128 (10th Cir. 2019).....	29
<i>United States v. Harden</i> , 758 F.3d 886 (7th Cir. 2014).....	22
<i>United States v. Johns</i> , 469 U.S. 478 (1985).	18
<i>United States v. Osborne</i> , 345 F.3d 281 (4th Cir. 2003).	23
<i>United States v. Raddatz</i> , 447 U.S. 667 (1980).	27
<i>United States v. Reyna-Tapia</i> , 328 F.3d 1114 (9th Cir. 2003).....	23
<i>United States v. Riego</i> , No. 1:21-CR-00596, 2022 WL 17546714 (D.N.M. Dec. 9, 2022).	17
<i>United States v. Robinson</i> , 414 U.S. 218 (1973)	8, 9, 10
<i>United States v. Ross</i> , 456 U.S. 798 (1982).....	7, 9, 12, 18
<i>United States v. Torres</i> , 258 F.3d 791 (8th Cir. 2001).....	22
<i>United States v. Vega-Martinez</i> , 425 F.3d 15 (1st Cir. 2005).....	22
<i>United States v. Williams</i> , 23 F.3d 629 (2d Cir. 1994).	22, 23, 24, 29
<i>United States v. Woodard</i> , 387 F.3d 1329 (11th Cir. 2004).	22
<i>Yakus v. United States</i> , 321 U.S. 414 (1944).....	26

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. IV.	1, 7
U.S. Const. art. I, § 8, cl. 9.....	1
U.S. Const. art. III, § 1.....	1

STATUTES

28 U.S.C. § 636.....	1, 22, 25, 27, 28
47 C.F.R. § 64 (2022).	13
49 C.F.R. § 563 (2022).	13, 19

RULES

Fed. R. Crim. P. 11.	23, 28, 29
Fed. R. Crim. P. 59.	28

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OPINIONS BELOW

The court of appeals' opinion affirming the judgment of the district court, Record ("R.") 14, is unreported. The district court's opinion denying Mr. Windsor's motions to suppress video from his vehicle's recording system and withdraw his guilty plea, R. 4, is unreported. The magistrate judge's opinion denying Mr. Windsor's motion *in limine* to suppress the digital evidence, R. 1, is unreported.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fourth Amendment to the United States Constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated" U.S. Const. amend. IV.

Article III of the United States Constitution states: "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior courts, shall hold their Offices during good Behaviour" U.S. Const. art. III, § 1.

Article I of the United States Constitution authorizes Congress to "constitute Tribunals inferior to the supreme Court." U.S. Const. art. I, § 8, cl. 9. Acting under this authority, Congress passed the Federal Magistrates Act of 1968 to create the position of magistrate judges, whose decisions are subject to review by Article III judges, and outline magistrates' authorities and duties in the judicial system. 28 U.S.C. § 636.

STATEMENT OF THE CASE

I. Officers found a video recording of Mr. Windsor handling illicit substances when reviewing his vehicle's computer systems to investigate a near-fatal crash they believed he caused.

On Valentine's Day of 2022, Jeffrey Windsor drove his 2019 Cadillac CT6 onto Pioneer Parkway, a highway that runs through a national park. *See* R. 4. While turning around a bend, Mr. Windsor recklessly attempted to pass another car, a Toyota Camry, across a median while driving fifty-nine miles per hour in a thirty-five mile-per-hour zone. *Id.* When a third car driven by Steffen Carell approached him from the opposite direction, Mr. Windsor swerved back into his lane causing the Camry to crash into an off-road structure. R. 5. Although they later made full recoveries, the scene was dire when National Park Police arrived. The passengers of the demolished Camry had to be extracted and rushed to the hospital with what witnesses believed at the time to be life-threatening injuries. R. 5–6.

Once the ambulances with injured victims had left, Park policemen began investigating the cause of the crash. Mr. Windsor, who officers described as “fidgety, avoidant, and trying to rush through any questions,” told the officers he and his passenger were returning from a party at a friend's house. R. 5. Mr. Carell told a Park policeman that Mr. Windsor “quickly moved into his lane before swerving back to the other.” *Id.*

With this witness account that Mr. Windsor may have been driving recklessly, officers sought to ascertain more information about this potentially fatal crash. To do so, they used a Berla device to obtain information from Mr. Windsor's Cadillac's on-board computers, including data from its Event Data Recorder (EDR), navigation system, and Surround Vision Recorder (SVR). *See* R. 6. An SVR is a dashcam system built into the car that can record the car when

parked and in motion.¹ Officers did not use any technology to obtain this data other than the Berla device applied on Pioneer Parkway immediately after the accident.

Two days later, experienced crash investigators reviewed the data on Mr. Windsor's Cadillac previously collected using the Berla device. *Id.* While reviewing video footage from the vehicle's SVR to learn about the crash, investigators happened on video recorded earlier on the day of the accident. R. 7. This footage showed Mr. Windsor engaging in a dangerous crime.

Because he did not manually deactivate the SVR, Mr. Windsor recorded himself packaging and storing more than two thousand pills of deadly rainbow fentanyl.² *Id.* Investigators determined from the footage that the video was taken in Mr. Windsor's garage and obtained a search warrant for his home. *Id.* Officers executed the warrant and found the fentanyl pills where the video showed Mr. Windsor hiding them. *Id.*

After his arrest, Mr. Windsor filed a motion *in limine* to suppress the evidence obtained from the Berla device, reasoning that officers did not obtain a warrant before pulling the data. *See* R. 1. Magistrate Judge Jude Thorfinson of the U.S. District Court for the District of Wythe denied his motion, R. 3, and district court Judge James Keyes did the same. R. 10. Writing for the Thirteenth Circuit, Chief Judge Ashton Jameson affirmed the lower courts' rulings. The court held the search of Mr. Windsor's vehicle and its computer systems after the crash was reasonable under the Fourth Amendment's Automobile Exception. R. 18.

¹ The SVR is not purchased with a memory card already activated to record. The owner or driver must provide their own memory card and can manually stop or start recording as they wish.

² The DEA has warned that rainbow fentanyl is intentionally colored and designed to look like candy and appeal to young adults. *See DEA Warns of Brightly-Colored Fentanyl Used to Target Young Americans*, DEA (Aug. 30, 2022), <https://www.dea.gov/press-releases/2022/08/30/dea-warns-brightly-colored-fentanyl-used-target-young-americans>.

II. Mr. Windsor entered his felony guilty plea before a magistrate judge.

Less than two months after his arrest, through and with the effective assistance of counsel, Mr. Windsor consented to appear before Magistrate Judge Thorfinson to enter a conditional guilty plea, reserving the right to appeal his motion *in limine*. R. 7. During the colloquy, Judge Thorfinson asked Mr. Windsor, “you understand that I am a magistrate judge, not a district judge, and that by signing this waiver and consent, if I accept your plea agreement, that it is final, correct?” Mr. Windsor consented; without objecting, he entered his felony guilty plea before Judge Thorfinson. *Id.*

On the same day, Judge Thorfinson then conducted a Rule 11 felony plea proceeding and formally accepted Mr. Windsor’s guilty plea. Neither party objected to the plea proceeding.

Three weeks later, after Magistrate Judge Thorfinson denied his motion *in limine* but before district court Judge Keyes ruled on the matter, Mr. Windsor moved to withdraw his plea pursuant to Rule 11(d)(1) of the Federal Rules of Criminal Procedure. R. 8. Relying on this Court’s decision in *Peretz v. United States*, the district court denied Mr. Windsor’s motion and sentenced him to 120 months’ imprisonment. *See* R. 13, 15. It held that a magistrate’s acceptance of a guilty plea is comparable to other duties a magistrate is allowed to perform under the Federal Magistrates Act, such as *voir dire*, which this Court recognized in *Peretz*. R. 12. Mr. Windsor appealed.

Judge Jameson of the Thirteenth Circuit affirmed the district court’s ruling, adding that Mr. Windsor had no right to withdraw his plea because he consented to have the magistrate accept it. R. 19. Mr. Windsor appealed, and this Court granted his petition for certiorari. R. 23.

SUMMARY OF THE ARGUMENT

Though it is critical to our Nation's foundations of individual liberty and privacy, the Fourth Amendment is not unlimited. The Amendment itself speaks only to unreasonable searches and seizures. The Framers realized reasonable searches and seizures are sometimes necessary to ensure a well-ordered and harmonious society.

The longstanding Automobile Exception permits the government to search vehicles and containers within them on public roads when probable cause exists, such as after a serious traffic accident. Such a search is reasonable because automobiles are inherently mobile—thereby risking destruction of valuable evidence—and pervasively regulated. These justifications decrease a driver's expectation of privacy when on a public road.

The Search Incident to an Arrest (SITA) doctrine balances an arrestee's constitutional rights with the government's compelling interest to ensure officer and public safety. This Court held in *Riley v. California* that a warrantless search of a cell phone incident to an arrest violated privacy protections because, once detained and physically searched, the device poses no threat yet contains vast amounts of unrelated personal information. This rule is tied to situations involving a SITA; it should not be extended to the Automobile Exception context where officer safety is a nonissue, evidence is readily destructible, and privacy expectations are decreased.

Even if this Court determines otherwise, warrantless searches of the impersonal data on automobile computers are more reasonable than those of personal information contained on cellphones, particularly after a near-fatal accident. These devices differ greatly. A vehicle's computer system is less mobile, carries much less data and functionality, and has a separate regulatory framework than cell phones. It also requires stronger affirmative consent to use.

The search does not invoke other legal and policy protections under the Fourth Amendment. Courts have determined searching a vehicle's computer system to be permissible, particularly when searched in the context of an active, ongoing accident investigation. Officers also did not violate timing and location restrictions.

Furthermore, under the Federal Magistrates Act's "additional duties" clause, a magistrate may, with the parties' consent, accept a guilty plea in a felony case because the duty is consistent with the Constitution. As Mr. Windsor did here, any criminal defendant may waive his right to an Article III judge, thereby avoiding a violation of Article III's personal guarantee. Expanding the magistrate's authority to accept felony guilty pleas does not threaten Article III's structural guarantee of an independent adjudicator because a district court judge supervises and reviews every magistrate decision. Allowing magistrates to accept felony guilty pleas also comports with Rules 59 and 11 of the Federal Rules of Criminal Procedure, as well as Congress's intent for the Magistrates Act to promote efficiency in the federal judiciary.

The Thirteenth Circuit, like the courts beneath it, correctly declined to punish the National Park police for identifying a possible cause of a near-fatal crash through evidence reasonably obtained with the Automobile Exception. The appellate court also properly did not permit Mr. Windsor to withdraw his guilty plea. At risk of impeding law enforcement from keeping society safe, this Court should affirm on both issues.

ARGUMENT

I. The Automobile Exception permits officers to review a vehicle's computer system without a warrant when they have probable cause to search the vehicle for evidence.

The Automobile Exception to the Fourth Amendment's warrant requirement authorizes warrantless searches of vehicles on public roads when officers have probable cause that they may find evidence of an offense. The scope and justifications of this type of search greatly differ from

those for a Search Incident to an Arrest (SITA), so rules on electronic devices pertaining to one exception should not apply to the other. However, even if this Court extends SITA standards to the Automobile Exception, the stark differences between cell phones and a vehicle's digital computer systems justify admitting into evidence the video from Mr. Windsor's car. The government's search also does not invoke other privacy concerns, further justifying the search.

A. This Court should not extend the rule in *Riley* regarding warrantless SITAs of cell phones to situations involving the Automobile Exception.

The Fourth Amendment protects “persons, houses, papers, and effects” from “unreasonable searches and seizures” by government officials. U.S. Const. amend. IV. Police officers usually must show probable cause to obtain a warrant from a judge to fulfill this requirement. U.S. Const. amend. IV. However, this Court has recognized numerous exceptions to the warrant stipulation in situations where obtaining one would be unreasonable, impractical, or impedimental to law enforcement's duties.

One of these exceptions is the Automobile Exception, which this Court has recognized for nearly one hundred years. *See Carroll v. United States*, 267 U.S. 132, 153 (1925). Under this rule, it is not unreasonable for officers to conduct a warrantless search of a vehicle and any containers within it if they have probable cause to believe evidence may be found. *California v. Acevedo*, 500 U.S. 565, 580 (1991). Probable cause exists when, from the viewpoint of an objective and trained law enforcement officer, the totality of the factual circumstances indicates “a fair probability” that evidence “will be found in a particular place.” *Illinois v. Gates*, 462 U.S. 213, 238 (1983). So long as police have probable cause, the limitations and privacy protections of a search are “no narrower—and no broader—than the scope of a search authorized by a warrant supported by probable cause.” *United States v. Ross*, 456 U.S. 798, 823 (1982).

Another exception to the warrant requirement is a SITA. Unlike the Automobile Exception, a SITA occurs when officers formally arrest a suspect and then immediately conduct a limited search before obtaining a warrant. Courts have recognized three areas subject to a SITA: the person, including any pockets; premises in or immediately adjoining to the place of arrest; and vehicles. *See United States v. Robinson*, 414 U.S. 218, 235 (1973) (SITA of the person); *Maryland v. Buie*, 494 U.S. 325, 334–36 (1990) (SITA of premises); *Arizona v. Gant*, 556 U.S. 332, 343 (2009) (SITA of vehicles).

The Automobile Exception and a SITA apply to dissimilar situations and have different standards for what and where officers may examine. This Court should not apply rules applicable to the latter to situations involving the former.

First, each type of search has a different standard required to conduct it. Officers need probable cause to search a car without an arrest. *Acevedo*, 500 U.S. at 580. By contrast, for a SITA of a vehicle, officers must only have reasonable suspicion that evidence relevant to the offense of the arrest may be found in the vehicle. *Gant*, 556 U.S. at 343.³ Reasonable suspicion is a lower standard than probable cause, as it only requires a “‘common-sense conclusion about human behavior’ upon which ‘practical people’ . . . are entitled to rely.” *New Jersey v. T.L.O.*, 469 U.S. 325, 346 (1985). This threshold is more of a hunch than a logical conclusion based on facts. Officers do not need probable cause or reasonable suspicion for a SITA of the person or premises. *See Robinson*, 414 U.S. at 235; *Buie*, 494 U.S. at 334–36.

³ This Court also held in *Gant* that a SITA of a vehicle may occur when a suspect is unsecured and capable of reaching the vehicle’s passenger compartment; no level of suspicion is required for a search in this situation. *Gant*, 556 U.S. at 343. However, the Court acknowledged these circumstances are rare. *Id.* at 343 n.4.

The scope of the two types of searches also differs. A SITA of a vehicle is limited to searches for “evidence relevant to the crime of arrest,” but a warrant is necessary to look for anything else. *Gant*, 556 U.S. at 343 (quoting *Thornton v. United States*, 541 U.S. 615, 632 (2004)). In other words, “the likelihood of discovering offense-related evidence” is the basis for the search and officers must stick within that parameter when conducting it. *Id.* at 344. By contrast, the Automobile Exception “allows searches for evidence relevant to offenses other than the offense of arrest.” *Id.* at 347 (interpreting *Ross*, 456 U.S. at 820–21). Because the reach of the Automobile Exception “is broader” than that authorized by a SITA, *Gant*, 556 U.S. at 347, officers may search more places and objects inside a vehicle when they do not arrest the person.

Additionally, the reasons for each exception are not the same. This Court has justified the Automobile Exception by noting “the overriding societal interests in effective law enforcement.” *California v. Carney*, 471 U.S. 386, 393 (1985). Requiring officers to take the time necessary to obtain a warrant, rather than permitting them to search the vehicle during the stop, would impede them from doing their jobs to protect society. For one, suspects would likely drive to other locations and destroy any evidence of wrongdoing, so there is an exigency to immediately search the vehicle. *See Carroll*, 267 U.S. at 153. Also, people have lower expectations of privacy in cars compared to homes and other private buildings because of “the pervasive and continuing governmental regulation and controls” of vehicles driving on public roads, “including periodic inspection and licensing requirements.” *Carney*, 471 U.S. at 392 (quoting *South Dakota v. Opperman*, 471 U.S. 386, 368 (1985)).

By contrast, the main purpose of a SITA is to secure the area and keep the arresting officers safe. *Robinson*, 414 U.S. at 235; *Buie*, 494 U.S. at 334–36. A SITA of a vehicle is designed to “protect[] arresting officers and safeguard[] any evidence of the offense of arrest that

an arrestee might conceal or destroy” before being taken into custody. *Gant*, 556 U.S. at 339. A SITA of a person is intended to disarm the person. *Robinson*, 414 U.S. at 234. A SITA of premises is more of a “protective sweep” than “a full search of the premises”—the search “may extend only to a cursory inspection of those spaces where a person may be found.” *Buie*, 494 U.S. at 335. Although situations involving a SITA and the Automobile Exception both involve exigencies, the type of urgency differs: a person under arrest is constrained from going to another location to destroy incriminating evidence, whereas a person not arrested can do so while officers wait to get a warrant.

This Court has examined searches of electronic devices in the SITA context. *Riley* was a consolidation of two cases where officers seized a cell phone from each defendant’s pocket during a SITA of the person. *Riley v. California*, 573 U.S. 373, 378–80 (2014). The Court held that law enforcement may examine the physical aspects of a phone to prevent it from being used as a weapon⁴ but may not—after eliminating all potential threats—examine data on the phone without a warrant since the device poses no danger. *Id.* at 386–87. Because the justification of this type of search is to disarm the suspect to ensure officer safety, searching digital data does not further this justification. *Id.* at 387. It also gives the government access to vast amounts of personal information. *Id.* The Ninth Circuit extended this rule from the SITA context to the Automobile Exception, albeit in a case where officers searched the defendant’s cell phone after he was arrested, processed, and booked. *See United States v. Camou*, 773 F.3d 932, 942–43 (9th Cir. 2014). The appellate court differentiated between cell phones and other types of physical containers usually found in vehicles despite the broader scope of the Automobile Exception. *Id.*

⁴ The Court noted the possibility of a suspect hiding a razor blade in a phone case. *See Riley*, 573 U.S. at 387.

The present case demonstrates that this Court should not apply SITA rules to the Automobile Exception. SITA does not apply here because Mr. Windsor was not arrested on the night of the accident. *See* R. 6. Rather, officers had probable cause—Mr. Carell’s statement about Mr. Windsor’s reckless driving—to search his car. R. 5. This authority included using the Berla device to pull crash data from the car’s computer systems to help explain the cause of the accident.⁵ *See* R. 6–7. However, even if the earlier information had not been directly relevant to the crash, investigators would have been permitted to examine it—unlike in a SITA situation—because of the Automobile Exception’s broad scope. Holding otherwise would rewrite long-established rules on the breadth of the Exception and handicap law enforcement from effectively solving offenses.

Suppressing the vehicle’s data in Mr. Windsor’s case would also defeat the rationale behind the Automobile Exception—permitting the government to capture evidence while the vehicle is immobilized. The officers did not arrest Mr. Windsor on the night of the accident, so requiring them to obtain a warrant before capturing the vehicle’s data would have enabled him to delete it all before investigators could review it. Consequently, the cause of the crash would have a much higher chance of remaining unsolved—the exact result the Automobile Exception intends to prevent.

Furthermore, the rule on cell phones in *Riley* is too inextricably tied to the SITA context to apply to cases like this one involving the Automobile Exception. This Court barred warrantless cell phone searches during a SITA because, after the arrest, the data on the devices could not harm officers and thus did not fit the justification of a SITA of the person. Once a

⁵ For example, the SVR recordings from prior in the day could help officers identify conduct or other factors that contributed to the crash, especially when considering that Mr. Windsor acted “fidgety” and “avoidant” with officers after the accident. R. 5.

suspect is in custody, the electronic device is secure and officers have time to seek a warrant. Officer harm is irrelevant in situations invoking the Automobile Exception, including when Park police peacefully questioned Mr. Windsor after the crash. *See* R. 5–6. *Ross* instructs that the Automobile Exception is defined by the purpose and justifications for the search, not the “the nature of container in which the [evidence] is secreted.” *Ross*, 456 U.S. at 824. This Court should thus reject the Ninth Circuit’s distinction between electronic devices and other types of containers in the context of the Automobile Exception.

B. Even if this Court extends *Riley* to situations involving the Automobile Exception, the search of the recording system in Mr. Windsor’s car was reasonable given the differences between this technology and personal cell phones.

Under both the SITA and Automobile Exceptions, officers may search any “container” found within vehicles without a warrant so long as they meet the proper standard to conduct the search. *See Gant*, 556 U.S. at 344; *Ross*, 456 U.S. at 820. This Court has identified a container as “any object capable of holding another object.” *New York v. Belton*, 453 U.S. 454, 460 n.4 (1981) (overruled on other grounds by *Gant*, 556 U.S. at 342–44). In vehicles, this definition includes “closed or open glove compartments, consoles, or other receptacles located anywhere within the passenger compartment, as well as luggage, boxes, bags, clothing, and the like.” *Id.*

This Court suggested in *Riley* that cell phones may not be considered containers in the context of a SITA of the person. *See Riley*, 573 U.S. at 397 (“Treating a cell phone as a container whose contents may be searched incident to an arrest is a bit strained as an initial matter.”). The Ninth Circuit applied *Riley* to the Automobile Exception because it determined that “[t]oday’s cell phones are unlike any of the container examples the Supreme Court has provided in the vehicle context.” *Camou*, 773 F.3d at 943. However, a vehicle’s Event Data Recorder (EDR) system is unlike cell phones as the Supreme Court has treated them under the Fourth

Amendment. An EDR better fits the definition of a container than a cell phone does, so these two technologies should not be subject to the same privacy limitations even if this Court applies *Riley* to the Automobile Exception.

For one, EDRs in vehicles have their own regulatory scheme separate from that of cell phones. Each vehicle sold in the United States that is equipped with an EDR must meet minimum standards for data elements, performance, data capture, and crash test. *See* 49 C.F.R. § 563.6 (2022). The minimum required data include nonpersonal items like speeds, engine RPM, acceleration, seatbelt status, airbag status, and other physical parameters relevant to a crash. *See id.* at § 563.5(b). The regulations do not require including audio and video data, but manufacturers may supplement their EDRs with them. By contrast, Congress established a separate statutory scheme to govern cell phones. *See* 47 C.F.R. § 64 (2022). These laws pertain to personal issues like carrier use of customer proprietary information, solicitation, emergency notifications, and texting while driving. *See id.* Thus, Congress intended to treat EDRs and cell phones as different technologies under the law.

These regulations also reflect Congressional intent to afford greater privacy protections to cell phones than to EDR data. Laws require vehicle owner manuals to include only a disclaimer that EDR data may be collected by anyone with access to a vehicle and without consent. The warning states that “law enforcement could combine the EDR data with the type of personally identifying data routinely acquired during a crash investigation . . . [L]aw enforcement . . . can read the information if they have access to the vehicle.” 49 C.F.R. § 563.11 (2022). By contrast, Congress required cell phone providers not only to disclose when they collect a subscriber’s personal information but to obtain the subscriber’s express consent to do so. 47 C.F.R. § 64.5107

(2022). Congress could have afforded more privacy protections to EDR data by requiring consent to collect data, just as it did with cell phones. It chose not to.

Furthermore, a car's onboard computer system is limited to the confines of the vehicle to which it is attached, whereas a cell phone normally travels with its owner. As evidenced by *Riley*, people usually keep cell phones in their pockets, bring them into cars when driving somewhere, and then take them out of the vehicle when arriving at a destination. They generally possess them securely and set passwords on them. By contrast, a vehicle's computer systems, including its EDR, stay with the car when the owner exits. Also, people do not buy phones and cars together, whereas a car's digital systems come bundled with the car. In other words, the recording system is just as much a component of the vehicle as the steering wheel, radio, or glove compartment. These parts and areas are subject to searches under the Automobile Exception, and EDR technology should be no different.

Digital systems in vehicles also carry, import, or export a limited amount of data compared to cell phones. EDRs record dynamic time-series data prior to, during, or after a crash event that would be helpful to investigators. Unlike a cell phone, a vehicle's infotainment and other computer systems do not and are not intended to store "vast quantities of personal information." *Riley*, 573 U.S. at 386. Rather, car manufacturers design such systems to supplement the basic task a car is designed to accomplish: driving. Most data stored in them are limited and pertain to impersonal information about the car's operation: radio preferences, music, seat positions, climate settings, and addresses inputted into the navigation system. *See, e.g., McKee v. Gen. Motors Co.*, No. 3:21-CV-05815, 2022 WL 1423671, at *6 (W.D. Wash. May 5, 2022) (dismissing a consumer privacy lawsuit alleging that a car's computer stored cell phone records).

These kinds of information do not reflect the issues this Court and the Ninth Circuit were concerned with in *Riley* and *Camou*, respectively. A vehicle cannot store, for example, “millions of pages of text,” “internet browsing history,” “a prescription,” or “a bank statement.” *Riley*, 573 U.S. at 394. There are also no “pervasive” records of communications over “several months”—cars only store limited recent data for easy retrieval—and the systems do not collect “in one place many distinct types of information.” *Id.* at 394–95. Instead, EDR and other car computer systems align much more closely with the containers described in *Belton* and *Ross*. To the extent a car’s computer stores personal data at all, such data is limited in nature, location, and quantity, much like the contents of a briefcase or a backpack. *See How to Use Surround Vision Recorder, CADILLAC* (last accessed Jan. 26, 2023), cadillac.com/dos-template-library/search-results/content-display.html?documentId=CSP89 (explaining that memory cards, once full, erase the oldest video files to make room for the newest file and also do not backup or archive files on any cloud service). It is therefore reasonable to search it under the Automobile Exception like other types of containers this Court has held are constitutionally permissible.

Lastly, people should have less expectation of privacy in a vehicle’s systems than in a cell phone because they need to affirmatively initiate a car’s system. The device at issue, Cadillac’s Surround Vision Recorder (SVR), is a dashboard camera that can record a 360-degree view. *About Surround Vision and HD Surround Vision, CADILLAC* (last accessed Jan. 26, 2023), cadillac.com/dos-template-library/search-results/content-display.html?documentId=CSP86. For the SVR to begin recording video, the car’s owner must provide and manually install their own memory card. *How to Use Surround Vision Recorder, CADILLAC*. The user can also enable or disable the system at any time. *Id.* These opt-in systems thus differ from cell phones, which come preset to store and share countless types of personal information unless users opt out. *See*

Tatum Hunter, *Cell Carrier Privacy Settings to Change Now*, WASH. POST (Aug. 1, 2022, 9:28 AM), [washingtonpost.com/technology/2022/08/01/cell-carrier-privacy-settings/](https://www.washingtonpost.com/technology/2022/08/01/cell-carrier-privacy-settings/) (“If you’re an AT&T customer, you were automatically opted into its ‘relevant advertising’ selection, which lets the company use your browsing history and videos you watch to . . . share with advertisers . . .”). Accordingly, opting to turn on a device’s data collection capability should yield less privacy than instances where the technology is turned on from the moment of purchase. Courts have refused to suppress evidence on this basis. *See, e.g., United States v. Post*, 997 F. Supp. 2d 602, 603 (S.D. Tex. 2014) (rejecting the defense that an iPhone automatically captured location data without a user’s knowledge or affirmative consent).

In the present case, Mr. Windsor had a lower reasonable expectation of privacy in his vehicle’s computer data than he would have had with a cell phone. When he left the car, the Cadillac’s SVR stayed in the vehicle to capture video of what happened around it, including potential damage when he was not present. Also, the system only stored a minimal amount of mostly impersonal data compared to his phone. SVRs record a separate video file every five minutes and automatically overwrite the oldest file. *Surround Vision Recorder*, GM CAN. (last accessed Jan. 26, 2023), my.gm.ca/cadillac/en/how-to-support/exterior/keys-security-remotes/surround-vision-recorder. Officers needed to review multiple five-minute video files to find the video containing information relevant to the crash—routes, speed, location, video of the accident, etc. *See* R. 6–7. Pulling these data points from periods before the accident does not give access to the kinds of personal information found on cell phones.

Mr. Windsor also took affirmative steps to record himself engaging in criminal activity in front of his Cadillac’s SVR. Mr. Windsor likely inserted a memory card into the vehicle’s

computer.⁶ He could have disabled the video recording functionality before interacting with the pills, manually deleted the files containing this footage before taking the car out of his garage, or removed the memory card. He did not. The officers were therefore permitted to search the SVR in Mr. Windsor's Cadillac under the Automobile Exception even if they may have been prevented from searching his cell phone.

C. If the officers lawfully accessed the vehicle's computer systems, they did not violate other privacy protections involving the Automobile Exception.

Assuming, *arguendo*, the officers lawfully searched the SVR and other systems in Mr. Windsor's Cadillac, additional doctrinal and policy considerations show the officers acted reasonably under the Fourth Amendment when they identified drugs on the collected recordings.

For one, federal courts have uniformly upheld the use and reliability of post-crash EDR data, including in instances where officers did not obtain a warrant. *See, e.g., United States v. Riego*, No. 1:21-CR-00596, 2022 WL 17546714, at *3 (D.N.M. Dec. 9, 2022) (holding that EDR data used by an expert crash reconstructionist was not proven false); *Bojaj v. Berghuis*, 702 F. App'x 315, 317 (6th Cir. 2017) (holding that admitting EDR data does not violate the Due Process Clause). Other courts have not questioned the propriety of collecting such data. *See, e.g., United States v. Blakeney*, 949 F.3d 851, 861 (4th Cir. 2020) (holding that probable cause existed after a fatal traffic accident to obtain a warrant for a vehicle's EDR system); *Perez v. Arnold*, No. 2:17-cv-01379, 2019 WL 4392405, at *3 (E.D. Cal. Sept. 13, 2019), report and recommendation adopted, No. 217CV01379JAMCKD, 2019 WL 6003491 (E.D. Cal. Nov. 14, 2019) (accepting a policeman's use of an EDR to retrieve crash data). At least one court has extended this approach

⁶ It would be immaterial if Mr. Windsor was not the person who manually activated the SVR system if, for example, he purchased the car used. He was driving the vehicle and brought it into his home on the date of the accident, *see* R. 7, so it was his responsibility to know the SVR was activated and recording everything in the car's vicinity.

to a memory card and camera. *See McLeod v. Dewey*, No. 7:18-CV-66, 2020 WL 1644975, at *8 (M.D. Ga. Apr. 2, 2020) (holding that seizure of a camera and its memory card incident to a lawful search warrant was not unreasonable).

Additionally, officers may pull information from vehicles about potential offenses unrelated to the reason for the search. The broad scope of the Automobile Exception⁷ functions similarly to the plain view doctrine. This principle holds the prosecution may admit objects seized during a search if officers had probable cause to search the location, probable cause to access the item, and the evidence was plainly visible and “immediately apparent” that it was incriminating in nature. *Horton v. California*, 496 U.S. 128, 136–37 (1990). A warrant is not required for that additional evidence. *Id.* The Automobile Exception goes even further than this rule, though, because officers may conduct a warrantless search of *any* evidence they stumble upon in a vehicle regardless of how incriminating it is. *Gant*, 556 U.S. at 347 (interpreting *Ross*, 456 U.S. at 820–21).

Investigators are also permitted to collect information at the scene and then, without obtaining a warrant, review the contents later. Officers are not required to search a vehicle “contemporaneously with its lawful seizure” because the Automobile Exception does not have “temporal restrictions.” *United States v. Johns*, 469 U.S. 478, 484–85 (1985). This Court has upheld a warrantless search of containers found within a seized vehicle three days after they arrived at government offices. *Id.* at 486–87. The main justification for the warrantless search—the exigency of obtaining evidence before it can be destroyed—“does not vanish once the car has been immobilized.” *Michigan v. Thomas*, 458 U.S. 259, 261 (1982). This rule holds true for electronic devices, as the Tenth Circuit has explained that officers rarely review data contained

⁷ See *supra* pp. 8–9 for a discussion on the reach of the Automobile Exception.

on them at the scene after capture “given the potential to corrupt or lose evidence.” *United States v. Burgess*, 576 F.3d 1078, 1090 (10th Cir. 2009). EDRs in particular—especially ones with video files—collect vast amounts of data but have finite storage capabilities.⁸ The possibility of relevant information being destroyed increases with each passing day. Therefore, investigators must recover the data immediately after a crash but may wait a short time to review it.

Furthermore, learning information about the inside of a suspect’s home does not violate the Fourth Amendment when the data was lawfully acquired from a vehicle on a public road. This Court has spoken at length about the heightened expectation of privacy in homes as opposed to out in public. *See Silverman v. United States*, 365 U.S. 505, 511 (1961) (“The Fourth Amendment, and the personal rights which it secures, have a long history. At the very core stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.”). These protections include curtilage—the areas “immediately surrounding and associated with the home” to which “the activity of home life extends.” *Oliver v. United States*, 466 U.S. 170, 180, 182 n.12 (1984). Whether a search is conducted in these areas is determined by when and how law enforcement accessed the information; the location of the contents of the information that was pulled is irrelevant to whether a violation occurred. *See Florida v. Jardines*, 569 U.S. 1, 5–6 (2013) (holding that officers conducted a search when they “gathered . . . information by physically entering and occupying” areas “immediately surrounding” the defendant’s home “to engage in conduct not explicitly or implicitly permitted by the homeowner”). In the context of the Automobile Exception, officers must obtain a warrant to search a car parked in a garage within a home because, without consent, they do not have

⁸ EDRs are required to store only a few events in their memory systems. *See* 49 C.F.R. § 563.8(a) (2022). The federal standard only requires that data be retrievable for “not less than 10 days,” so after that time it may be irreversibly lost. *Id.* at § 563.10(c).

authority to be on the suspect's property. *See Collins v. Virginia*, 138 S. Ct. 1663, 1672 (2018). Consequently, the Exception requires "a lawful right of access" to the vehicle for a warrantless search to occur. *Id.* Officers always have lawful access to public roads. *See id.* at 1673 n.3.

Here, investigators were permitted to access the evidence of drug distribution they found while probing Mr. Windsor's role in the near-fatal crash. Another person involved in the accident indicated to the responding officer that Mr. Windsor was driving recklessly. R. 5. This tip gave police probable cause to search the vehicle and use the Berla device to obtain data from its EDR and other computers. *Ross* authorizes the prosecutors to use as evidence against him anything recorded on that device relating to this crash or any other offense, including drug distribution. The recordings showing Mr. Windsor handling illicit drugs were in the plain view of officers while investigating the accident, *see* R. 7, so they did not need a warrant to examine them.

The government also appropriately examined the EDR data after the accident. Officers seized and preliminarily searched speed data at the accident scene using the Berla device, brought the evidence to government headquarters, and examined the video recordings two days later. *See* R. 5–7. These procedures mirror those this Court sanctioned in *Johns*. Police used the Berla device at the scene of the accident to capture data from the system in Mr. Windsor's car to prevent spoliation. The Automobile Exception justifications that permitted this warrantless search did not disappear once officers possessed the information. Park police were following the normal procedures for reviewing electronic data carefully and without disruption, as the Tenth Circuit delineated. Therefore, the Fourth Amendment did not require officers to obtain a warrant simply because they waited a few days to continue an authorized search of Mr. Windsor's car.

Furthermore, law enforcement did not improperly search Mr. Windsor's home when obtaining video of him interacting with the drugs. The search was conducted when officers

obtained the EDR data with the Berla device and then reviewed the information—first on a public road right after the incident and later at police headquarters. Thus, unlike with the defendant in *Collins*, officers here did not obtain evidence of the contraband while on or even close to Mr. Windsor’s property until, using the video, they obtained and executed a warrant to search his home. *See R. 7.*

Lastly, Mr. Windsor knew or should have known the video capabilities of his car’s EDR. By law, the Cadillac’s manual outlines the SVR system’s capabilities and explicitly states that law enforcement usually reviews the system’s data after serious crashes. It was Mr. Windsor’s responsibility while the vehicle sat in his garage to not make recordings—such as of him handling illicit substances—he would not want investigators to eventually see. As such, requiring officers to have secured a warrant before viewing this footage would do nothing to further either the Automobile Exception or privacy protections in the home under the Fourth Amendment. This Court should not suppress this evidence.

II. The Federal Magistrates Act authorizes magistrates to accept Rule 11 felony guilty pleas.

A magistrate is permitted under the Federal Magistrates Act of 1968 (hereinafter “Magistrates Act”) to accept and bind a defendant’s Rule 11 felony guilty plea. This action is an additional duty under § 636(b)(3) and is consistent with Article III of the U.S. Constitution and the Federal Rules of Criminal Procedure. Consequently, this Court should sustain Mr. Windsor’s guilty plea.

A. Magistrates may accept felony guilty pleas because this action is a valid additional duty under the Magistrates Act.

1. *Acceptance of felony guilty pleas is an additional duty under § 636(b)(3).*

Under the Magistrates Act, a magistrate judge may perform, apart from enumerated duties, “additional duties as are not inconsistent with the Constitution and laws of the United States.” 28 U.S.C. § 636(b)(3) (hereinafter “additional duties clause”). Because acceptance of a felony guilty plea is not expressly authorized by the statute, it must fit into the additional duties clause to fall within the scope of a magistrate’s authority. A duty qualifies under this clause if it “bear[s] some relation to the specified duties” in the Magistrates Act. *Peretz v. United States*, 501 U.S. 923, 930 (1991).

Plea acceptance in a felony case is a valid additional duty because it is “the natural culmination” of a Rule 11 proceeding. *United States v. Benton*, 523 F.3d 424, 431–32 (4th Cir. 2008). Every circuit that has addressed this issue agrees that the Magistrates Act authorizes magistrates to conduct Rule 11 proceedings.⁹ Rule 11 proceedings “bear some relation” to evidentiary hearings, which § 636(b)(1)(B) explicitly sanctions. *Peretz*, 501 U.S. at 930; 28 U.S.C. § 636(b)(1)(B) (“[A] judge may also designate a magistrate judge to conduct hearings, including evidentiary hearings”). Consider a hearing to decide a motion to suppress a defendant’s out-of-court statement on grounds of involuntariness. Determining the voluntariness of an out-of-court statement in a suppression hearing is “remarkably similar” to determining the

⁹ See *United States v. Vega-Martinez*, 425 F.3d 15 (1st Cir. 2005); *United States v. Williams*, 23 F.3d 629 (2d Cir. 1994) abrogated by *United States v. Cabrera*, 13 F.4th 140 (2d Cir. 2021); *United States v. Benton*, 523 F.3d 424 (4th Cir. 2008); *United States v. Dees*, 125 F.3d 261 (5th Cir. 1997), cert. denied, 522 U.S. 1152 (1998); *United States v. Harden*, 758 F.3d 886, 891 (7th Cir. 2014); *United States v. Torres*, 258 F.3d 791 (8th Cir. 2001); *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (en banc); *United States v. Ciapponi*, 77 F.3d 1247 (10th Cir. 1996) cert. denied, 517 U.S. 1215 (1996); *United States v. Woodard*, 387 F.3d 1329 (11th Cir. 2004).

voluntariness and factual basis of a plea in a Rule 11 proceeding. In both cases, the court must determine whether the plea, or statement, was made voluntarily or under inappropriate influence. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1120 (9th Cir. 2003) (“The resolution of a motion to suppress on grounds of involuntariness necessarily turns on whether the statement was induced by force, threats, coercion, or improper promises.”); compare Fed. R. Crim. P. 11(b)(2)-(3) (“Before accepting a plea of guilty . . . the court must . . . determine that the plea is voluntary and did not result from force, threats, or promises” and “a factual basis for the plea.”).

Plea acceptance in a felony case is a valid additional duty also because it is far less complex than conducting other tasks that are “unquestionably within a magistrate judge’s authority” like conducting felony *voir dire* and presiding over civil and misdemeanor trials. *Benton*, 523 F.3d at 431–32; *United States v. Osborne*, 345 F.3d 281, 288 (4th Cir. 2003) (“As other circuits have concluded, a magistrate judge capable of supervising an entire civil or criminal misdemeanor trial may surely perform the plea colloquy *so clearly delineated* in Rule 11.”) (emphasis added). Each circuit that has addressed this issue agrees that, in felony cases, conducting Rule 11 proceedings is far less complex than supervising *voir dire*, which this Court held was a valid additional duty in *Peretz*.¹⁰ *Peretz*, 501 U.S. at 935. Unlike the meticulous balancing that *voir dire* requires, Rule 11 is essentially a “catechism.” *Williams*, 23 F.3d at 632. Magistrates lead defendants through “a series of standardized questions” to ascertain the

¹⁰ Specifically, this Court held that where parties consent, magistrates can supervise *voir dire* in felony trials because the task is “comparable in responsibility and importance” to conducting civil and misdemeanor trials, which §§ 636(a)(3) and (c) expressly authorize. *Peretz v. United States*, 501 U.S. at 933, n.16. The Court explained that both require the magistrate to “observe witnesses, make credibility determinations, and weigh contradictory evidence”). *Id.* (internal quotation omitted).

voluntariness of the plea, whether it has factual support, and to advise the accused of their rights. *Dees*, 125 F.3d at 268; *Williams*, 23 F.3d at 632.

Voir dire, on the other hand, is a “delicate process,” *Dees*, 125 F.3d at 268, requiring the magistrate to “elicit from prospective jurors candid answers about intimate details of their lives” and “scrutinize not only spoken words but also gestures and attitudes of all participants to ensure the jury’s impartiality.” *Gomez v. United States*, 490 U.S. 858, 874–75 (1989); *United States v. Osborne*, 345 F.3d 281, 288 (4th Cir. 2003) (“[A]llowing a magistrate judge to supervise *voir dire* proceedings in a felony trial implicates far greater discretion than the delegation of Rule 11 responsibilities.”).

2. *Allowing a magistrate to accept a felony guilty plea furthers the Magistrates Act’s purpose of increasing the efficiency of the federal judiciary.*

Allowing magistrates to accept and bind defendants’ felony guilty pleas would “increas[e] the overall efficiency of the Federal judiciary” and “cull from the ever-growing workload of the U.S. district courts”—the very purpose of the Magistrates Act. H.R.Rep. No. 1629, 90th Cong., 2d Sess., p. 12 (1968), U.S. Code Cong. & Admin. News 1968, pp. 4252, 4255, 4257; *See also Benton*, 523 F.3d at 433 (“[A]llowing magistrate judges to accept pleas for the purposes of Rule 11 preserves judicial resources—the very goal underlying the creation of the office of magistrate judge—and prevents litigants from exploiting bifurcated plea procedures.”). Though Congress has yet to explicitly authorize magistrates to accept guilty pleas in felony cases, the “generality of the category of ‘additional duties’ indicates that Congress intended to give federal judges significant leeway to experiment with possible improvements in the efficiency of the judicial process that had not already been tried or even foreseen.” *Peretz*, 501 U.S. at 932.

After conducting the Rule 11 proceeding, the magistrate, not the district judge, is best prepared to accept or reject a defendant's plea. In the Rule 11 proceeding, the magistrate has personally informed the defendant of their rights, determined whether the plea is voluntary and has a factual basis, and witnessed the defendant enter their plea. The district judge was absent throughout this process, so the magistrate can make a more informed decision whether the defendant's plea aligns with Rule 11's requirements. Moreover, magistrates typically handle lighter caseloads than district judges. They are thus better able to fully consider the defendant's rights and plea during the proceeding by assessing all aspects of its voluntariness and evidentiary support.

The alternative is unsatisfactory: rather than directly accepting the plea, the magistrate would have to draft a report and recommendation for the district judge's review. This extra step serves no practical, due process, or constitutional purpose. Instead, it prolongs litigation and creates more work for Article III judges, which undermines the Magistrates Act's purpose of increasing the efficiency of the federal judiciary.

B. Magistrates may accept felony guilty pleas because the duty is consistent with the U.S. Constitution.

Although accepting a felony guilty plea falls within the "additional duties" clause, it is also a duty that is "[c]onsistent with the Constitution" and thus all the more a valid exercise of a magistrate's power. 28 U.S.C. § 636(b)(3). Mr. Windsor has not raised an Article III argument, but the issue is important because this Court in *Peretz* and each circuit that has ruled on this issue addressed Article III concerns. A magistrate's performance of a duty must not threaten the two protections Article III affords: (1) a criminal defendant's personal right to have their case heard by an Article III judge; and (2) "structural" guarantees of an independent judiciary. *Peretz*, 501

U.S. at 937. Acceptance of a felony guilty plea threatens neither and is thus consistent with the Constitution.

1. *Acceptance of a felony guilty plea does not violate Article III's personal guarantee.*

In *Peretz*, this Court found it “arguable” that Article III even guarantees criminal defendants the right to have an Article III judge present at all critical stages of their felony trial. *Peretz*, 501 U.S. at 936. Even if such a right existed, the defendant may waive it, just as he may the “most basic rights of criminal defendants,”¹¹ either by consenting to the magistrate’s role or failing to object to it. *Peretz*, 501 U.S. at 934 (“[T]he requirement that a criminal defendant consent to the additional duty of jury selection protects a defendant’s interest in requesting the presence of a judge at all critical stages of his felony trial.”); *Yakus v. United States*, 321 U.S. 414, 444 (1944) (“No procedural principle is more familiar to this Court than that a constitutional right may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right.”).

Here, Mr. Windsor waived his right to have an Article III judge conduct his Rule 11 proceeding and accept his plea. Represented by effective counsel, Mr. Windsor did not object to the magistrate’s role; in fact, he signed a waiver and consented to it. R. 7 (“Judge Thorfinson asked Defendant: “You understand that I am a magistrate judge, not a district judge, and that by

¹¹ Courts have listed many other rights a criminal defendant may waive. *See, e.g., United States v. Gagnon*, 470 U.S. 522, 528 (1985) (absence of objection constitutes waiver of right to be present at all stages of criminal trial); *Levine v. United States*, 362 U.S. 610, 619 (1960) (failure to object to closing of courtroom is waiver of right to public trial); *Segurola v. United States*, 275 U.S. 106, 111 (1927) (failure to object constitutes waiver of Fourth Amendment right against unlawful search and seizure); *United States v. Figueroa*, 818 F.2d 1020, 1025 (1st Cir. 1987) (failure to object results in forfeiture of claim of unlawful post-arrest delay); *United States v. Bascaro*, 742 F.2d 1335, 1365 (11th Cir. 1984) (absence of objection is waiver of double jeopardy defense), cert. denied *Hobson v. United States*, 472 U.S. 1017 (1985); *United States v. Coleman*, 707 F.2d 374, 376 (9th Cir. 1983) (failure to object constitutes waiver of Fifth Amendment claim), cert. denied, 464 U.S. 854 (1983).

signing this waiver and consent, if I accept your plea agreement, that it is final, correct?”) (emphasis added). Because Mr. Windsor unequivocally waived whatever right he may have had to an Article III judge, “the Constitution afford[ed] [him] no protection.” *Peretz*, 501 U.S. at 937.

2. *Acceptance of a felony guilty plea does not violate Article III’s structural protections.*

A magistrate’s acceptance of a felony guilty plea also does not violate Article III’s structural protections because the district court has “ultimate control over the magistrate’s plea acceptance.” *Benton*, 523 F.3d at 432. Because Article III protects “the role of the independent judiciary,” *Commodity Futures Trading Comm’n v. Schor*, 478 U.S. 833, 848 (1986), Congress cannot statutorily transfer power away from independent Article III courts to magistrates who are not “insulated by life tenure and irreducible salary.” *Peretz*, 501 U.S. at 938 (quoting *United States v. Raddatz*, 447 U.S. at 685 (Blackmun, J., concurring)).

In *Peretz*, this Court readily dismissed the structural concerns with Article III in the context of whether a magistrate could supervise *voir dire* in a felony trial. It determined that delegating *voir dire* to a magistrate did not even implicate Article III’s structural protections because “the entire process takes place under the district court’s total control and jurisdiction.” *Peretz*, 501 U.S. at 937 (internal quotations and citation omitted). Because the premise of the magistrate role is that a district judge oversees the magistrate, there is an inherent safeguard built into the position that precludes Article III violations. For example, Article III judges appoint and remove magistrates and “retain plenary authority over when, what, and how many pretrial matters are assigned to magistrates.” 28 U.S.C. § 631(a)-(b), (i); *United States v. Raddatz*, 447 U.S. 667, 685 (1980) (Blackmun, J., concurring); *Peretz*, 501 U.S. at 937 (“The ultimate decision

whether to invoke the magistrate’s assistance is made by the district court, subject to veto by the parties.”) (internal quotations omitted).¹²

This supervisory arrangement is no different when a magistrate accepts a guilty plea in a felony case. Even after the plea is accepted, but before sentencing, the defendant may withdraw their plea upon showing a “fair and just reason for requesting the withdrawal.” Fed. R. Crim. P. 11(d)(2)(B). Although the Magistrates Act does not expressly provide for *de novo* review of plea proceedings, parties may still request it because “nothing in the statute precludes a court from providing the review required by the Constitution.” *Peretz*, 501 U.S. at 924; *Dees*, 125 F.3d at 268 (stating that “the only constitutional requirement” is that *de novo* review “be available if the parties so request”); *Ciapponi*, 77 F.3d at 1252 (“The availability of such a procedure adequately protects a defendant's rights under Article III of the Constitution.”).

C. Magistrates may accept felony guilty pleas because the duty is a nondispositive matter consistent with the Federal Rules of Criminal Procedure.

Acceptance of a felony guilty plea must also be “[]consistent with the . . . laws of the United States” to be a valid exercise of a magistrate’s power. 28 U.S.C. § 636(b)(3). Under Rule 59 of the Federal Rules of Criminal Procedure, a magistrate may enter final orders for “[n]ondispositive” matters. Fed. R. Crim. P. 59(a). For “dispositive” matters, a magistrate must only make a report and “recommendation” for how the district judge should rule. Fed. R. Crim. P. 59(b)(1). A matter is dispositive if it “may dispose of a charge or defense.” *Id.*

¹² Such a reading also comports with Congress’s intent to avoid Article III issues. When enacting the Magistrates Act, Congress was “especially cognizant of the fact that the magistrate is an officer of the U.S. District Court, is appointed by the Article III judges of the Court and subject at all times to the directions and control of the judge.” H.R.Rep. No. 90–1629, at 21 (1968), reprinted in 1968 U.S.C.C.A.N. 4252, 4264.

In earlier proceedings, Mr. Windsor argued that plea acceptance is a dispositive matter, meaning the magistrate should only have submitted a recommendation to the district court. However, a felony guilty plea is not a dispositive matter. When drafting Rule 59, the Federal Rules Committee specifically declined to make this determination, leaving the issue for the courts to decide. *United States v. Garcia*, 936 F.3d 1128, 1136–37 (10th Cir. 2019) (concluding from a December 2002 Magistrate Judges Committee Agenda that “[u]ltimately, the Committee recommended that [Rule 59] not enumerate felony guilty pleas as case-dispositive” and “left open this question for courts to decide.”).

Even if it were a dispositive matter, “nothing in the language of Rule 59 indicates that magistrate judges cannot accept felony guilty pleas when the parties consent.” *United States v. Finnesy*, 953 F.3d 675, 688 (10th Cir. 2020) (internal quotation omitted); *Williams*, 23 F.3d at 633 (“Even were a magistrate’s taking of a guilty plea to be viewed as an additional duty of greater importance than those duties specifically assigned to magistrates, the consent requirement—fulfilled in this case—saves the delegation.”). Simply put, “[c]onsent is the key.” *Williams*, 23 F.3d at 633. If the defendant’s consent to a magistrate’s performance of an unenumerated duty is enough to cure a potential Article III problem—as this Court decided in *Peretz*—then it would also, by extension, rectify any conflicts with Rule 59.

Lastly, Mr. Windsor did not have an *absolute* right to withdraw his guilty plea. Under Rule 11, a defendant may only withdraw a plea upon showing a “fair and just reason for requesting the withdrawal.” Fed. R. Crim. P. 11(d)(2)(B). Mr. Windsor did not do so. Thus, this Court should not allow Mr. Windsor to withdraw the guilty plea he entered before the magistrate.

CONCLUSION

This Court should affirm the judgments of the court of appeals and the district court denying Mr. Windsor's motions to suppress the video recording and to withdraw his felony guilty plea.

Respectfully submitted,

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