No. 2022-8014

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 2022

Jeffrey WINDSOR,

Petitioner,

v.

UNITED STATES,

Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the Thirteenth Circuit

BRIEF FOR PETITIONER

Team No. Y94

ATTORNEYS FOR PETITIONER

QUESTIONS PRESENTED

I. Does the Fourth Amendment prohibit the warrantless search of all personal information stored on a vehicle's on-board computer, including cellphone communications, location data, and video recordings inside the defendant's home, simply because that vehicle has been involved in a traffic accident?

II. Does Rule 11 of the Federal Rules of Criminal Procedure allow a defendant to withdraw a guilty plea for any reason after a magistrate judge accepts it when the magistrate judge has not issued a report and recommendation for the district court to consider?

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment of the 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, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person not things to be seized.

U.S. Const. amend. IV.

As relevant here, Article III provides "[t]he 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." U.S. Const. art. III, § 1.

This case involves portions of the Federal Magistrate Act of 1968, 28 U.S.C. Ch. 43. Relevant portions have been reproduced in Appendix "A." This case also involves Federal Rules of Criminal Procedure 11(d) and 59. Relevant portions have been reproduced in Appendix "B."

STATEMENT OF THE CASE

I. FACTUAL HISTORY

The Collision. On February 14, 2022, Jeffrey Windsor was driving a friend home from a party when his vehicle collided with another. R. at 1. While driving on a two-lane highway, Windsor attempted to pass the driver in front of him but quickly spotted an oncoming vehicle. R. at 1. As he pulled back into his lane, his car clipped another vehicle, a Toyota Camry. R. at 1. As a result, the Camry was pushed off the road. R. at 1. Windsor immediately pulled over to provide

aid for the passengers in the Camry while his friend called for emergency services. R. at 1. The passengers from the Camry were transported by ambulance to the hospital as Park Police arrived. R. at 1–2. The occupants of the Camry were discharged from the hospital the same night. R. at 6.

Investigation of Scene. Park Police arrived at the scene and investigated the cause of the collision. R. at 2. The officers were able to survey the physical damage from the scene. R. at 1. They observed a dent in Windsor's bumper, as well as the damage to the Camry. R. at 5. They also collected statements from Windsor, the passenger in his car, and another driver who witnessed the accident. R. at 6. Windsor complied with all the officers' requests. R. at 2. Windsor's statement was fully corroborated by a statement given by the other driver witnessing the collision. R. at 2. The two statements presented identical stories of the incident—that Windsor had quickly moved into the next lane to try to pass the Camry, spotted oncoming traffic, and in trying to avoid a collision by moving back into his original lane, had clipped the side of the Camry. R. at 5.

Windsor's CT6. Worried that the crash may have resulted in fatalities, the officers decided to download data from the computers in Windsor's vehicle. R. at 5–6. Windsor's 2019 Cadillac CT6 comes equipped with several different computer systems, including an Event Data Recorder ("EDR") and a Surround Vision Recorder ("SVR"). R. at 2, 6. The EDR records information about the car's operations, including speed, crash data, and whether safety mechanisms are working. R. at 6. The SVR uses multiple external cameras to continuously record the vehicle's surroundings, even when no one is in the car. R. at 6. These computers store vast amount of information about Windsor's daily movements, including driving routes, location data, communications from connected devices and video recorded by the car's internal cameras. R. at 6.

Police can access this information using sophisticated devices, such as Berla. R. at 6. Using a Berla, officers extracted a vast amount of private information stored in the CT6's onboard computer, including Windsor's driving routes, video of everywhere the vehicle had been, location data, cell phone history, and more. R. at 3; *see* Berla, https://berla.co/. While still at the scene officers were able to look at the data and determined that Windsor had been driving 59 miles per hour in a 35 mile per hour zone. R. at 6, 15. Officers kept the downloaded data as evidence. R. at 6. At the time the officers seized Windsor's personal information, they did not have a warrant. R. at 6.

Warrantless Search of Digital Data Two Days Later. Although the passengers from the Camry had been discharged from the hospital days prior, and they had confirmed Windsor was speeding, Park Police again examined the data from Windsor's vehicle two days later at the station. R. at 7. Officers must receive special training to use Berla and its sophisticated software to retrieve the information they want. *See* Berla. Officers did not obtain a warrant prior to searching through the data. R. at 2.

Upon review, it became obvious that the data included information prior to the accident. R. at 7. One scene in the video data depicted Windsor in a garage when he was not operating the vehicle. R. at 2. Although this scene was completely unconnected to their reckless driving investigation, the officers viewed the video anyway. R. at 2. The video showed Windsor handling what appeared to be illicit substances. R. at 2. Again going through the data without a warrant, the officers used location data stored in the car to determine that the footage was shot inside Windsor's home garage. R. at 7.

As a result, the officers obtained a warrant to search his home. R. at 7. It was during this search that officers discovered the illicit substances which are the subject of Windsor's criminal charge. R. at 2. No charges arose from Windsor's collision with the Camry.

II. PROCEDURAL HISTORY

The Magistrate's Denial of Windsor's Motion to Suppress. Windsor was indicted with one count on intent to distribute fentanyl in violation of 21 U.S.C. § 841(a)(1). R. at 1. Windsor filed a motion to suppress the video obtained from the seizure of data from his vehicle. R. at 1. On April 5, 2022, the Magistrate denied Windsor's motion to suppress the video. R. at 7. On the same day, Windsor agreed to a conditional plea before the magistrate, reserving his right to appeal the magistrate's order denying suppression of the video. R. at 4. Pursuant to Federal Rule of Criminal Procedure Rule 11, the magistrate administered the plea colloquy. R. at 7.

The District Court. Windsor appealed the denial of his motion to suppress to the district court. R. at 4. There is no indication in the record that the district court accepted Windsor's plea. On April 26, 2022, Windsor filed a motion to withdraw his plea while his appeal was still pending before the district court. R. at 8. On June 3, 2022, the district court affirmed the magistrate's order denying Windsor's motion *in limine* and denied Windsor's motion to withdraw his plea agreement. R. at 4. The district court sentenced Windsor to 120 months. R. at 15.

The Appellate Court. Windsor timely filed his notice of appeal in this case. R. at 14. On September 6, 2022, the Court of Appeals for the Thirteenth Circuit issued an order affirming the district court. R. at 20. It held that the automobile exception applied to technology embedded within a vehicle. R. at 10. It also held that magistrates had authority to accept felony guilty pleas.

R. at 19. Windsor appealed the decision of the Thirteenth Circuit to this Court. R. at 23. This Court granted certiorari. R. at 23.

SUMMARY OF THE ARGUMENT

I.

The court of appeals erred in upholding the search of the on-board computer in Windsor's car. The data from Windsor's vehicle should have been suppressed because police had neither a warrant nor probable cause when they searched through it.

The automobile exception does not authorize law enforcement to search through electronic data stored on a car's computer. A car's computer is not a container of the type this Court's Fourth Amendment jurisprudence applies to the warrant exceptions. This is because none of the underlying justifications of the automobile exception apply to a vehicle's computer. The vast amount of personal data contained within them is easy to seize and pervasive regulation of this information supports the driver's privacy. Because of the vast amount of information contained on these computers about the driver's daily movements, individuals have substantial privacy interests in them. There is no impediment to law enforcement's interests by requiring them to obtain a warrant to search through such highly sensitive personal information.

Windsor's reckless driving caused an accident. Suspecting that the collision may have resulted in some fatalities, officers downloaded information from Windsor's on-board computer. Although obtaining the data at the time was reasonable, the scope of the officers' seizure was not. The data seized spanned far beyond the accident—it also included video of Windsor at home in his garage. It was both feasible and reasonable to obtain a warrant before searching through the data, but the officers did not do so. They waited two days, during which the downloaded

information remained in their possession, before searching through it. The warrantless search of Windsor's electronic information was unreasonable.

Importantly, the officers could not have obtained a valid warrant at time of the search. The passengers from the other car were discharged from the hospital days before the officers conducted their illegal search. Officers no longer had probable cause for vehicular homicide. Had they been able to obtain a valid warrant for reckless driving, their search of Windsor's electronic information would have been limited to data contemporaneous with the accident. But they searched through all his private information and did so two days after the accident. The scope of the officers' search far exceeded their probable cause and was unreasonably intrusive.

The officers' warrantless search violated Windsor's Fourth Amendment rights. The automobile exception did not justify the officer's warrantless search through Windsor's electronic data nor did officers did have probable cause to do so. Any evidence stemming from this illegal search should have been suppressed.

II.

The court of appeals erred in finding Windsor was not entitled to withdraw his guilty plea. Windsor had the absolute legal right to withdraw his plea because it had not been validly accepted before he filed his motion to withdraw.

That Windsor consented to appear before the magistrate judge is inconsequential. The magistrate judge did not have the power to accept Windsor's felony guilty plea, nor is this a power that can be delegated to the magistrate judge by the district court. Article III of the Constitution states that the judicial power to decide cases and controversies is vested in Article III judges. This power is inherent and cannot be transferred by Windsor or the district court to non-Article III judges. The Federal Magistrate Act does not grant magistrate judges the authority

the accept felony guilty pleas either because it cannot be regarded as an "additional duty," particularly when the power to accept guilty pleas is unlike any duty contemplated in the Act. The Federal Rules of Criminal Procedure expressly limit the magistrate to issuing a report and recommendation to the district court in such matters because the case involves a motion to suppress and a dispositive matter, neither of which may be finally adjudicated by a magistrate judge.

The magistrate judge did not have the statutory or constitutional authority to accept Windsor's plea. The magistrate judge did not issue a report and recommendation for the district court to consider. Thus, Windsor's plea had not been validly accepted by the district court at the time he filed his motion. He was absolutely entitled to withdraw his guilty plea.

This Court should reverse the judgment of the United States Court of Appeals for the Thirteenth Circuit.

ARGUMENT AND AUTHORITIES

Standard of Review. This case involves the denial of a motion to suppress and the denial of a motion to withdraw a guilty plea entered by a magistrate judge. As a general matter, this Court reviews de novo the district court's legal decisions and reviews factual findings for clear error. *Ornelas v. United States*, 517 U.S. 690, 698–99 (1996).

As it relates to reviewing a district court's denial of a motion to suppress evidence, the existence or absence of probable cause is reviewed de novo. *United States v. Maglio*, 21 F. 4th 179, 185 (1st Cir. 2021). Consistent with the strong preference that searches are conducted pursuant to a search warrant, probable cause requirements are specific. To justify a search, the circumstances must indicate why evidence of illegal activity will be found "in a particular place." *United States v. Abernathy*, 843 F.3d 243, 249 (6th Cir. 2016). There must, in other

words, be a nexus between the place to be searched and the evidence sought. *United States v. Morton*, 46 F.4th 337, 343 (5th Cir. 2022). The relevant inquiry is if the magistrate judge had a substantial basis for finding that the supporting affidavit established probable cause to believe that the evidence would be found at the place cited by the searching officer. *United States v. Perkins*, 850 F.3d 1109, 1116 (9th Cir. 2017). Although probable cause is "incapable of precise definition or quantification into percentages," it exists when from the "totality of the circumstances" establish a "fair probability" that fruits of a criminal activity will be located within the premises to be searched. *Maryland v. Pringle*, 540 U.S. 366, 381, 383 (2003).

I. NATIONAL PARK POLICE VIOLATED JEFFREY WINDSOR'S FOURTH AMENDMENT RIGHTS WHEN THEY DOWNLOADED ELECTRONIC DATA FROM HIS VEHICLE FOR PURPOSES OF A CRASH INVESTIGATION AND LATER ACCESSED THE DATA WITHOUT A WARRANT, INCLUDING PERSONAL DATA UNRELATED TO THE INVESTIGATION.

National Park police violated Windsor's Fourth Amendment rights by searching through electronic data downloaded from his vehicle without a warrant or probable cause. The Thirteenth Circuit erred in holding that the automobile exception allows officers to conduct unrestrained searches through an individual's personal information just because it is stored on a car's computer. The automobile exception cannot be used to justify the warrantless searches through the private data stored on the on-board computer of Windsor's vehicle.

Windsor's fundamental right to privacy is one of the oldest and most fiercely guarded protections in our nation's history. The Fourth Amendment protects it by providing individuals and their personal information with a shield "against unreasonable searches and seizures." U.S. Const. amend. IV. And this Court has recognized that personal information stored electronically is protected by the Fourth Amendment. *Riley v. California*, 573 U.S. 373, 392–93 (2014) (protecting personal information on cellphone); *Carpenter v. United States*, 138 S. Ct. 2206,

2218 (2018) (protecting cell site location data); *see also State v. Worsham*, 227 So. 3d 602, 606 (Fla. 2017) (protecting "black box" data stored within vehicles).

The Fourth Amendment presumptively requires a warrant for police officers to search private information. *California v. Lange*, 141 S. Ct. 2011, 2016 (2021). A warrantless search is per se unreasonable. *Id.* In narrow circumstances, however, this Court has permitted officers to conduct a search when probable cause justifies applying a well-defined exception to the warrant requirement. *Id.* But the evidence here was obtained without a warrant or probable cause and, as a result, is "in violation of a constitutional guaranty against unreasonable searches and seizures" and "should be suppressed." *McDonald v. United States*, 335 U.S. 451, 456 (1948).

Windsor had a right to privacy in the vast amount of information his car's computer recorded about his every movement. It is undisputed that officers did not have a warrant when they searched through data downloaded from the computer in Windsor's vehicle. None of the exceptions to the Fourth Amendment's warrant requirement justify their search,[1] nor officers did not have probable cause. Therefore, the search was illegal and evidence stemming from it should have been suppressed.

The Thirteenth Circuit erred in holding that highly personal information was not protected by the Fourth Amendment simply because it was stored in a vehicle's computer. The right to privacy is guaranteed. It is the intrusion into an individual's privacy that has to be justified by the

[1] Windsor was not under arrest, so the search incident to arrest exception does not apply. *Riley*, 573 U.S. at 393. Data from the car had to be extracted with a highly specialized tool called the Berla so it was not in plain view. *Horton v. California*, 496 U.S. 128, 155 (1990). There is no record of Windsor giving consent to the search of his data. *Fernandez v. California*, 571 U.S. 292, 311 (2014). The offices pulled the data while the vehicle was stopped at roadside, so the exigent circumstance exception does not apply. *See Warden, Md. Penitentiary v. Hayden*, 387 U.S 294, 298-301 (1967).

government. It is unreasonable to allow the government to indiscriminately search through an individual's electronic data without a warrant when there is no exigent circumstance.

A. The Automobile Exception Cannot Be Used to Justify Warrantless Searches of Electronic Data Downloaded from a Car's Computer.

Exceptions to the Fourth Amendment's warrant requirement require "extraordinary justifications," none of which Park Police had here. *California v. Acevedo*, 500 U.S. 565, 570 (1991). The automobile exception, which permits officers to search a vehicle and containers within it if they have probable cause to believe evidence of contraband is contained within, is justified on two bases: (1) the mobility of the vehicle puts at risk any evidence contained within it since it can be moved easily, and (2) pervasive regulation of automobiles indicates that individuals have a lower expectation of privacy in them. *Id.* (citing *United States v. Ross*, 456 U.S. 798 (1982)). But neither of these justifications support applying the automobile exception to a search of the electronic data involved here.

Even if the automobile exception were to apply, officers do not have unbounded discretion to search everywhere in the car. The scope of the search allowed by the automobile exception is no broader than one authorized by a warrant supported by probable cause. Ross, 456 U.S. at 823. And the search itself must be reasonable. *Riley*, 573 U.S. at 381. Allowing officers to indiscriminately seize all the information recorded on a vehicle's computer is an unreasonable invasion of an individual's privacy given the vast amount of information stored. Such an intrusive collection of personal information violently upsets the balance that must be struck to protect an individual's privacy.

The automobile exception does not justify a warrantless search of electronic data contained on a car's computer, especially when that data is already in police custody. The automobile exception does not apply to the search of Windsor's computer because his computer is not a

container as envisioned by this Court for purposes of the automobile exception. Even if it could be, the rationale underlying the automobile exception still does not apply. Data recovered from Windsor's vehicle is not in danger of being deleted or corrupted, and pervasive regulation of driver information supports his expectation of privacy in this information. Additionally, the search was still unreasonably invasive in scope. Park Police were not entitled to go on a fishing expedition through Windsor's private information.

Windsor has an expectation of privacy in his personal information, regardless of whether it is stored on a cellphone or recorded on the computer in his vehicle. The government's interest in efficiently securing and collecting evidence is easily mitigated given the ease with which this information may be obtained. *Riley*, 573 U.S. at 393. After all, the electronic data was already seized. Park Police simply needed to obtain a warrant.

The automobile exception does not apply. The evidence seized through this warrantless search was unconstitutional and should have been suppressed.

1. Electronic devices, such as onboard computers, are significantly different from the types of physical containers contemplated by cases interpreting the automobile exception.

The computer in Windsor's car is not a container of the type that Park Police could search with probable cause it might contain evidence of a crime. Officers needed to obtain a warrant before searching it.

Computers embedded into vehicles are not containers for purposes of the automobile exception because of the vast amount of electronic information they record about their user's daily movements. Traditionally, the automobile exception's broad scope has allowed officers to search containers storing physical items. *New York v. Belton*, 453 U.S. 454, 459 (1981). For example, this Court upheld convictions based on searches of "glove compartments, consoles, or

other receptacles located anywhere within the passenger compartment." *Id.* at 460 n.4 (defining "container" as "any object capable of holding another object").

Modern-day electronic devices, like the computer in Windsor's car, does not hold physical objects but do store vast amounts of information about their user. *Riley* requires warrants to search through information recorded on an electronic device, regardless of whether it is a computer embedded in a vehicle or a cellphone kept in the person's hand. 573 U.S. at 373 (requiring officers to obtain warrant to search cellphones left in vehicle unless exigent circumstances); *see also United States v. Camou*, 773 F.3d 932, 943 (9th Cir. 2014) (holding that automobile exception does not support warrantless search of cell phone contained within the vehicle) (citing *Riley*, 573 U.S. at 373); *but see United States v. Keck*, 2 F.4th 1085, 1091 (8th Cir. 2021) (concluding automobile exception justified the seizure of laptop computer in back seat of vehicle because agent had probable cause to believe it contained child pornography).

In *Riley*, this Court held that a cellphone was not a container for purposes of conducting a warrantless search incident to arrest. 573 U.S. at 373. Unlike any physical container that a person might carry on his person, the cellphone carried by Riley contained a vast amount of personal information—much more than could be found on Riley's person at any given time. *Id.* at 393. It could be used to recreate the "sum of [his] private life." *Id.*

Although *Riley* addressed the search incident to arrest exception, its rationale naturally extends to computers contained within cars. Unlike the physical containers listed by this Court in *Belton*, Windsor's car computer is not an object which is capable of holding other physical objects. It stores much more. Berla, https://berla.co/discover (last visited Jan. 18, 2023) (recognizing modern-day vehicles come equipped with "over 100+ computer systems, 300 million lines of code, 25 GB of data generated per hour"). The wealth of stored information in

Windsor's car computer is far more like a cellphone than a physical container, and perhaps much more ubiquitous and pervasive.

The computers embedded in Windsor's vehicle aggregated an enormous amount of data about every aspect of his movements. R. at 6. At least two of these computers are mentioned in the record. R. at 6. The EDR aggregated data relevant to the crash, including whether safety mechanisms deployed.[2] Nat'l Highway Traffic Safety Ass'n, *Event Data Recorder*, https://www.nhtsa.gov/research-data/event-data-recorder#:~:text=For%20instance%2C%20EDRs%20may%20record,collision%20notification%20(ACN)%20system (last visited Jan. 18, 2023) [NHTSA]. The Cadillac CT6 came with an SVR, which uses multiple cameras to record its surroundings at all times, even when the vehicle is not being operated. R. at 6.

The vehicle's computer tracked and recorded Windsor's every move, even when he was not driving his vehicle. R. at 6. For example, the SVR recorded video footage of the inside of Windsor's garage. R. at 6. The on-board computer stored a vast amount of personal information, including location data, video recordings, and private text messages. R. at 9. This vast amount of information stored on Windsor's car's computer could easily be used to recreate the "sum of [his] private life."

Applying the rationale of *Riley*, the computer embedded in Windsor's car cannot be characterized as a container of the type included in this Court's Fourth Amendment jurisprudence. Computers store far more personal information in intangible form than did the physical containers considered by this Court in *Belton*. Therefore, the automobile exception cannot apply to justify a warrantless search of its contents.

[2] All vehicles manufactured after 2014 are required to come equipped with EDR which aggregates data for safety purposes. 49 CFR 563.7 (2011). The EDR is required to collect fifteen different types of data including: (1) pre-crash vehicle dynamics, (2) driver inputs, (3) vehicle crash signature, (4) post-crash data. *See* NHTSA.

2. The automobile exception cannot justify the warrantless search of electronic data seized from Windsor's vehicle because the data was not at risk of being destroyed and pervasive regulation supports driver privacy.

The rationales underpinning the automobile exception do not justify a warrantless search of the electronic data from Windsor's car. *See Collins v. Virginia*, 138 S. Ct. 1663, 1670 (2018) (recognizing for the exception to apply, its underlying justifications have to "come into play") (quoting *California v. Carney*, 471 U.S. 386, 392–93 (1985)) In Windsor's case, neither of the justifications to the automobile exception "come into play." The automobile exception, which is justified because of the vehicle's mobility and extensive regulation, cannot be used to justify a warrantless search of electronic data.

First, the data from Windsor's car computer—already in police custody—is not readily mobile or at risk of being destroyed. Since the inception of the automobile exception, law enforcement officers have relied on the "mobility" of vehicles and its attendant risk that evidence contained within them can be moved beyond law enforcement's reach to justify warrantless searches. *Acevedo*, 500 U.S. at 569 (citing *Carroll v. United States*, 267 U.S. 132, 153 (1925)). Not surprisingly, Park Police have done so here by claiming that the data can be "easily erased." R. at 17. But this fear is both unsubstantiated and easily mitigated.

As this Court has suggested, reasonable methods mitigate risks of interference with electronic evidence. *Riley*, 573 U.S. at 393. For example, in circumstances such as this, it may be reasonable for police to seize data to secure it, but refrain from searching it until they obtain a warrant to protect the individual's privacy. *Id.*; *United States v. Burgess*, 576 F.3d 1078, 1089 (acknowledging "substantial support for notion a warrantless seizure is valid but warrantless search is not.") (citation omitted). Police do not have to store vehicles in "Faraday cages" or "wrap [them] in tin-foil" to preserve the electronic data stored inside their computers. Adam M.

Gershowitz, *The Tesla Meets the Fourth Amendment*, Research Paper No. 09-444, at *25, Wm. & Mary L. Sch. (2022). Simply downloading the data is enough. *See Riley*, 573 U.S. at 393; *see also State v. West*, 548 S.W.3d 406, 412 (Mo. Ct. App. 2018) (finding no exigent circumstances justified warrantless search of data in police possession; police could and should get a warrant).

In fact, to review data from a vehicle's computer, officers must extract it, store it, and review it using a specialized program. R. at 5–6; *see* Berla, https://berla.co (last visited Jan. 18, 2023). The data from Windsor's vehicle could not disappear. It was already in police custody. When officers viewed Windsor's electronic data at the station two days after the collision, it was not at risk of being moved or destroyed. The risk-of-destruction rationale does not justify extending the automobile exception to a warrantless search of electronic data already in police possession.

Second, Windsor did not lose any expectation of privacy because vehicles are subject to pervasive regulations. This Court has allowed warrantless searches of vehicles based on reduced expectation of privacy due to vehicle regulations. *California v. Carney*, 471 U.S. 386, 388 (1985). For example, police may stop and examine vehicles when license plates or inspection stickers have expired, or if headlights or other safety equipment is not working. *South Dakota v. Opperman*, 428 U.S. 364, 368 (1976). But regulations surrounding the use of electronic data stored in vehicles supports Windsor's privacy, not the loss of it.

The National Highway Traffic Safety Administration promulgated regulations requiring manufacturers to install Event Data Recorders in all new passenger vehicles. 49 C.F.R. § 563 (2011). The purpose of equipping vehicles with this technology was to investigate potential safety defects and improve vehicle safety for consumers. Fed. Reg., *Federal Motor Vehicle Safety Standards; Event Data Recorders* (Dec. 13, 2012), https://www.federalregister.gov/d/

2012-30082/p-34. From the inception of this regulation, consumer privacy was a core concern. *Id.* The regulations were drafted to maximize driver privacy by minimizing the amount of data gathered, sought owner permission to access the EDR data, and collected information in a way to protect driver anonymity. *Id.* In 2015, Congress attempted to close any remaining gaps when it passed The Driver Privacy Act. S. 766, 114th Cong. (2015). It declared data recorded by EDRs was the properly of the vehicle's owner. *Id.* It prohibited anyone other than owner from accessing it, except for with authorization from "a court or other judicial or administrative authority." *Id.* Pervasive regulation supports Windsor's privacy, not the government's misguided justification for the search.

The automobile exception cannot be used to justify the warrantless search of electronic information because neither underlying rationale "comes into play." Doing so here would "unmoor" the exception's purpose and erode the Fourth Amendment's protections. *Riley*, 573 U.S. at 397. The Thirteenth Circuit erred in holding that the justifications underlying the automobile exception warranted application to electronic devices. R. at 17.

3. Allowing police unrestrained discretion to conduct warrantless searches would negate Fourth Amendment protection for a wide range of privacy interests in the digital age.

The subsequent search of the electronic data from Windsor's car computer violates the Fourth Amendment because it is unreasonable. *Wyoming v. Houghton*, 526 U.S. 295, 300 (1999) (holding reasonableness determined by balancing the degree to which the search intrudes on the individual's privacy and the degree to which it is needed for the legitimate promotion of the government's interest). Allowing a warrantless search of data already in police custody does not further government interests but does endanger profound individual privacy interests.

The government's interest in obtaining evidence relevant to its criminal investigations is a legitimate one. *Carpenter*, 138 S. Ct. at 2218. This is an interest that is reasonably manageable, as the government is able to fully realize these interests by obtaining a warrant. Allowing warrantless searches may contribute to making the collection of evidence more efficient. But the warrant requirement is a fundamental "part of our machinery of government" not to be treated as "an inconvenience." *Riley*, 573 U.S. at 393 (quoting *Coolidge v. New Hampshire*, 403 U.S. 443, 481 (1971)).

On the other side, allowing warrantless searches into individuals' private information profoundly violates the Fourth Amendment's guarantees from unreasonable search and seizure. As technology becomes increasingly entrenched in everyday life, this Court has been careful to ensure that the "progress of science does not erode Fourth Amendment protections" by allowing the government to indiscriminately rummage through individuals' private information. *Carpenter*, 138 S. Ct. at 2218. And that is certainly true when dealing with electronic data. *See, e.g.*, *Riley*, 573 U.S. at 403 (prohibiting warrantless searches of cellphones); *Carpenter*, 138 S. Ct. at 2206 (prohibiting warrantless access to cell site location information); *Kyllo v. United States*, 533 U.S. 27, 27 (2001) (prohibiting thermal technology surveillance of home). As technology grows increasingly integrated with modern day life, any searches through electronic data implicate substantial privacy concerns that dramatically outweigh the government's interest.

Windsor interest in maintaining privacy in his data far outweighed the government's need to collect evidence of his reckless driving. The data stored on the car's computer recorded minute details of Windsor's everyday movements. It contained video taken inside of his home, his location data, and communication from connected devices. R. at 6. This is not information Windsor shared publicly nor did he have control over its collection.

The government's ability to collect evidence of Windsor's reckless driving would not have been impacted if they could not search through his electronic data. They were able to do a full and thorough investigation. At the scene, officers viewed the damaged cars. *See* R. at 5. They observed the victims being transported to the hospital. *See* R. at 5. They obtained statements from several witnesses, including an admission Windsor that the collision resulted from his mistake. R. at 5. The warrantless search was not needed to further the government's interest in collecting evidence of Windsor's reckless driving. The search of data from Windsor's vehicle was unreasonably intrusive, especially given the depth and thoroughness of the entire investigation.

B. Alternatively, the Subsequent Search of the SVR Footage Was Unreasonable.

Even were this Court to decide that the automobile exception was justified in some circumstances, it was not here. The search of Windsor's data was still unreasonable because officers did not have probable cause to conduct it. The requirement that an investigation be justified independently from the stop proceeds from the constitutional imperative that every search or seizure be reasonable, both at its inception and in the manner in which it is conducted. *Kyllo*, 533 U.S. at 31. Searches and seizures must be limited in scope to the purpose that initially gave rise to the government intrusion. *See Hiibel v. Sixth Jud. Dist. Ct.*, 542 U.S. 177, 186 (2004). The search of the SVR footage two days after the accident was a separate search and had to be independently justified as reasonable and based on probable cause. It was not.

Park Police claimed to have probable cause to review the SVR footage because the accident involved a "potential fatality." R. at 6. But by the time investigators examined the SVR footage, Park Police knew there were no potential fatalities. The occupants of the other vehicle had already been released from the hospital. R. at 2; *see Maryland v. Garrison*, 480 U.S. 79, 84

(1986) ("By limiting the authorization to search to the specific areas and things for which there is probable cause to search, the [Fourth Amendment particularity] requirement ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit."). As a result, the search of the SVR footage devolved into an unconstitutional "fishing expedition" through Windsor's private property. *See FTC v. Am. Tobacco Co.*, 264 U.S. 298, 305–06 (1924).

Worse still, investigators knew the SVR footage could include images within Windsor's home—an area the Fourth Amendment provides heightened protection. *Florida v. Jardines*, 569 U.S. 1, 6 (2013) (recognizing the home is at the "very core" of the Fourth Amendment). The vehicle's cameras recorded events happening around it. R. at 6. And these cameras operated while driving and parked, even when no one was in the vehicle. R. at 6.

To permit police to use technology to invade the sanctity of one's home would completely erode the protections guaranteed by the Fourth Amendment. *Kyllo*, 533 U.S. at 28, citing *Silverman v. United States*, 365 U.S. 505, 512 (1960). In *Kyllo*, police used thermal imaging technology to surveil the home of the defendant because they suspected him of growing marijuana indoors. 533 U.S. at 33. Although they used this technology to view the house from a public street, and never physically trespassed into the home, this technology allowed police to peer into Kyllo's home and was an unreasonable intrusion into his privacy. *Id.* at 33. This "sense-enhancing technology" silently invaded the most protected space in Kyllo's life, his home. *Id.*

Similar to the thermal imaging technology in *Kyllo*, the search of the electronic data from Windsor's parked vehicle invaded the sanctity of his home. Officers had specific training about the technology and could have limited their search to data contemporaneous with the collision.

The broad search, which included data far outside the scope of the crash, was an unreasonable invasion of Windsor's Fourth Amendment rights. Similar to the thermal imaging device in *Kyllo*, the officers did not have to trespass into Windsor's home to surveil him within it. Rather, they simply used a backdoor mechanism which would allow them to penetrate into the most protected realm of his life, his home. Such an invasion is absolutely not justified by the automobile exception, nor was it justified by any probable cause in this case. Despite this, the court of appeals allowed Park Police to intrude into Windsor's home without any showing of exigency, which has always been presumptively unreasonable. *See United States v. Karo*, 468 U.S. 705, 715 (1984). Law enforcement officers may enter a home to "fight a fire and investigate its cause, to prevent the imminent destruction of evidence, to engage in 'hot pursuit' of a fleeing suspect, . . . [and] to render emergency assistance to an injured occupant or to protect an occupant from imminent injury." *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006). Unless they have a warrant or consent, however, they cannot enter the home or its curtilage to "conduct an investigation absent [such] an emergency." *United States v. Carloss*, 818 F.3d 988, 1004 (10th Cir. 2016) (Gorsuch, J., dissenting). They did so here and violated Windsor's Fourth Amendment rights in the process.

II. WINDSOR HAD THE RIGHT TO WITHDRAW HIS FELONY GUILTY PLEA THAT HAD BEEN ACCEPTED BY A MAGISTRATE JUDGE BUT NOT BY AN ARTICLE III DISTRICT JUDGE.

Windsor had the absolute right to withdraw his guilty plea because the district court had not accepted it. When the magistrate judge does not have authority to accept the plea, but can only issue a recommendation that the plea be accepted, the acceptance is not final or binding on the defendant. Until and unless the district court accepts the plea, Windsor may withdraw it for any reason. Fed. R. Crim. P. 11(d)(1). This is an absolute right to withdraw—one that cannot be denied for any reason. *United States v. Arami*, 536 F.3d 479, 483 (5th Cir. 2008).

The Thirteenth Circuit erred in holding that magistrate judges have the authority to accept guilty pleas if the defendant consents. Only the district court has that power. U.S. Const. art. III, § 1. A magistrate judge may not acquire—by delegation from the district court or by consent from the defendant—power that the Constitution, the Federal Magistrates Act of 1968, and the Rules deny. The magistrate judge's acceptance of Windsor's guilty plea was not valid or binding. The district court abused its discretion in denying his motion to withdraw his plea.

A. A District Court Judge May Not Delegate the Authority to Accept a Felony Guilty Plea to a Magistrate Judge Because the Constitution Guarantees Windsor the Personal Right to Have His Case Heard by an Article III Judge.

Magistrate judges are not Article III judges. Thus, allowing them to accept Windsor's felony guilty plea violates the structural safeguards provided in the Constitution.

Article III of the Constitution mandates that the judicial power of the United States be vested in judges with life tenure and affords defendants with a personal right to have their cases heard before these courts. U.S. Const. art. III, § 1. Only Article III judges may dispose of cases or controversies. *Lawson v. Stephens*, 900 F.3d 715, 717 (5th Cir. 2018) (holding magistrate's lack of authority to adjudicate dispositive matter necessitated reversal). But magistrate judges are Article I judges. *United States v. Gomez-Lepe*, 207 F.3d 623, 631-32 (9th Cir. 2000).

The separation of powers to protect the judiciary's independence. *Peretz v. United States*, 501 U.S. 923 (1991). But district courts cannot delegate core judicial functions to non-Article III judges. *United States v. Comer*, 5 F. 4th 535, 547 (4th Cir. 2021). Undoubtedly, the power to "decide a case," such as by accepting a felony guilty plea, is a core judicial function. Where federal judges lack authority to adjudicate a case, any resulting judgment is invalid as a matter of law. *Nguyen v. United States*, 539 U.S. 69, 77 (2003). Even Circuits which allow magistrates to administer guilty pleas have recognized that the only way to comport with constitutional

mandates is to ensure that such pleas are not final adjudications and are reviewable by the district court. *United States v. Garcia*, 936 F.3d 1128, 1142 (10th Cir. 2019).

Nor may Windsor consent to grant judicial power to a non-Article III judge. *Id.* Article III vests judicial power with a specific branch of government. *Id.* Therefore, Windsor's consent cannot "authorize the transfer of power away from an independent branch of government." *Id.*

Article III vests the power to decide cases with Article II judges. Neither Windsor's consent nor a delegation from the district court could authorize the transfer of constitutional power to accept the guilty plea from the district court to the magistrate judge.

B. The Federal Magistrates Act's Additional Duty Clause Does Not Authorize Magistrate Judges to Accept Felony Guilty Pleas.

Magistrate judges do not have statutory authority to accept felony guilty pleas. They are "creatures of statute, and so is their jurisdiction." *NLRB v. A-Plus Roofing, Inc.*, 39 F.3d 1410, 1415 (9th Cir. 1994). This statutory grant of authority is limited to adjudicating "petty offenses" and conducting civil trials, if the parties consent. 28 U.S.C. § 636. The FMA provides that magistrates do not have inherent authority over federal criminal cases—rather, they serve at the discretion of the district court judges they are assigned to and are further limited by the Federal Rules of Criminal Procedure. 28 U.S.C. § 636(a)(1)–(b)(1); Fed. R. Crim. P. 59(b). The Federal Magistrate Act does not authorize magistrate judges to accept felony guilty pleas.

First, a plain reading of the FMA shows that Congress did not intend for magistrate judges to have this type of authority. The FMA expressly grants magistrate judges authority over civil trials and misdemeanor offenses, but even this authority is not absolute. 28 U.S.C. § 636(a)–(c)(2); *Peretz v. United States*, 501 U.S. 923, 931 (1999) ("Defendants charged with misdemeanors can refuse to consent to a magistrate."). The authority to accept felony guilty

pleas is excluded from this list. This exclusion is significant. Such a glaring omission makes apparent that Congress did not intend to allow magistrates authority over felony guilty pleas.

In 1979, the Senate Judiciary Committee proposed an amendment to the FMA that would allow magistrates to accept felony guilty pleas. *See* S. Rep. No. 96-322, at 10 (1979) (Conf. Rep.) and H.R. Rep. No. 96-444, at 10 (1979) (Conf. Rep.), *as reprinted in* 1979 U.S.C.C.A.N. 1487, 1491. This proposal was struck down by the Judicial Conference and subsequently withdrawn by the Senate "because of the sensitivity and critical nature of the guilty plea procedure and its close interrelationship with the sentencing function." Report to the Congress by the Judicial Conference of the U.S., The Federal Magistrate System, 52–53 (Dec. 1981). Had Congress intended magistrate judges to perform this function, Congress would have amended the FMA to include this language.

Second, a guilty plea is too consequential in importance to be comparable to any duty enumerated in the FMA. As such, it cannot be considered an "additional duty" within the meaning of the statute. This Court has defined "additional duty," as used in the Act, as a duty which is "comparable" in "responsibility and importance" to specifically enumerated duties. *Peretz,* 501 U.S. at 933 (holding that this clause must strike a balance between judicial efficiency and upholding the integrity of an individual's rights during the judicial process).

In *Peretz*, this Court interpreted "additional duties" clause to include supervision of voir dire in felony criminal trials. Magistrate judges are not allowed to conduct felony criminal trials because to do so would deprive a defendant of a substantial right. *Id.* But there was no danger in allowing magistrate judges to conduct jury selection because the district court still retained ultimate discretion over whether to empanel the selected jury. *Id.* Voir dire signals only the beginning of the criminal process; "numerous substantive opportunities [remain] to contest the

government's evidence, case, and conduct before any determination of guilt." *United States v. Harden*, 758 F.3d 886, 889 (7th Cir. 2014).

Acceptance of a felony guilty plea is not like voir dire. Procedurally and substantively, it is a substitute for a felony criminal trial—which this Court acknowledged magistrate judges are prohibited from conducting. *Peretz*, 501 U.S. at 933. Rule 11 prescribes a specific process. A felony guilty plea obligates the court to ensure that the defendant understands the implications of waiving all constitutional protections, including the right to challenge the government's evidence and requires the court to consider the propriety of the plea itself. Fed. R. Crim. P. 11(b), (c)(3). It signals the end of the criminal proceeding and results in a dramatic change in status for the defendant. *See Harden*, 758 F.3d at 886. Acceptance of a felony guilty plea is not an additional duty—it is of far greater significance than any of duties enumerated in Section 636.

The FMA did not grant the magistrate authority to accept Windsor's guilty plea. A guilty plea is far more complex and important than any additional duty this Court has recognized.

C. The Federal Rules of Criminal Procedure Do Not Allow Magistrates to Adjudicate Dispositive Matters, Only to Submit Recommendations for Their Disposition to a District Court, So Acceptance of Windsor's Plea Was Not Valid.

All powers granted to magistrates are constrained by the Federal Rules of Criminal Procedure. 28 U.S.C. § 636(a)(1). The Federal Rules of Criminal Procedure expressly deny magistrate judges the authority to accept felony guilty pleas. Magistrate judges may not adjudicate dispositive matters, such as motions to suppress or accept pleas. Fed. R. Crim. P. 59(b). They are limited to issuing reports and recommendations, which are not valid or binding upon the district court or on the defendant. Fed. R. Crim. P. 59(b). Before a plea has been validly accepted, a defendant has the absolute right to withdraw it. Fed. R. Crim. P. 11(d)(1).

The magistrate judge did not have authority to adjudicate Windsor's motion to suppress the data downloaded from his vehicle.[3] Rule 59's plain language provides that a district court judge "may refer to a magistrate for recommendation a defendant's . . . motion to suppress evidence." Fed. R. Crim. P. 59(b)(1). After the magistrate conducts the hearing, the magistrate "must enter on the record a recommendation for disposing of the matter, including any proposed findings of fact." Fed. R. Crim. P. 59(b)(1). As a result, the magistrate judge did not have authority to adjudicate Windsor's motion to suppress or accept his conditional plea, but could only make a recommendation to the district court that it be accepted. Windsor's motion to suppress the evidence recovered from his vehicle was dispositive in nature, in that its suppression would have necessitated suppression of the illegally issued warrant which resulted in charges being filed against him. The magistrate did not issue findings and a recommendation on the suppression issue to the district court. Rather, the magistrate "ordered" its suppression was "denied." R. at 3. Under the plain language of the rules, the magistrate did not have authority to adjudicate of Windsor's motion to suppress.

Additionally, acceptance of Windsor's guilty plea involved a dispositive matter, which is outside a magistrate's authority to adjudicate pursuant to the Rules. *Garcia,* 936 F.3d at 1141 ("The acceptance of a felony guilty plea is a dispositive matter, finding the criminal defendant guilty of the crimes charged and disposing of the matter before the court."). Windsor's plea of guilty resulted in a judgment of conviction, which is a "final and consequential shift in the defendant's status." *Harden,* 758 F.3d at 886. This is a decision that "dispose[s] of a charge or offense." Fed. R. Crim. P. 59; *see Harden,* 758 F.3d at 886 (acknowledging that accepting a

[3] The Federal Magistrate Act provides "a [district] judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court, *except* a motion . . . to suppress evidence in a criminal case." 28 U.S.C. § 636(b)(1)(A) (emphasis added).

guilty plea may be more final than a guilty verdict because defendant often waive appellate and habeas corpus protections by accepting culpability).

The magistrate judge did not have authority to accept Windsor's plea, only to make a recommendation it be accepted to the district court. Windsor entered a conditional plea on April 5, 2022. R. at 4. There is no record the magistrate ever filed a report and recommendation with the district court. He filed his motion to withdraw the guilty plea on April 26, 2022. R. at 4. The record does not provide that his plea was ever accepted by the district court. Pursuant to Rule 11(d), Windsor retained the absolute right to withdraw his plea because it had not been accepted by the district court.

Adjudication of a guilty plea, without review and final acceptance by the district court judge, is not valid or binding. Therefore, the district court erred in denying Windsor's motion to withdraw his plea and the court of appeals erred in affirming that judgment.

CONCLUSION

This Court should reverse the judgment of the United States Court of Appeals for the Thirteenth Circuit and remand for further proceedings.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER

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APPENDIX "A"

Federal Magistrates Act of 1968, 28 U.S.C. § 636

(a) Each United States magistrate judge serving under this chapter shall have within the district in which sessions are held by the court that appointed the magistrate judge, at other places where that court may function, and elsewhere as authorized by law—

- **(1)** all powers and duties conferred or imposed upon United States commissioners by law or by the Rules of Criminal Procedure for the United States District Courts;
- **(2)** the power to administer oaths and affirmations, issue orders pursuant to section 3142 of title 18 concerning release or detention of persons pending trial, and take acknowledgements, affidavits, and depositions;
- **(3)** the power to conduct trials under section 3401, title 18, United States Code, in conformity with and subject to the limitations of that section;
- **(4)** the power to enter a sentence for a petty offense; and
- **(5)** the power to enter a sentence for a class A misdemeanor in a case in which the parties have consented.

(b)

- **(1)** Notwithstanding any provision of law to the contrary—
  - **(A)** a judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law.
  - **(B)** a judge may also designate a magistrate judge to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for posttrial [1] relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.
  - **(C)** the magistrate judge shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties. Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The

judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

(2) A judge may designate a magistrate judge to serve as a special master pursuant to the applicable provisions of this title and the Federal Rules of Civil Procedure for the United States district courts. A judge may designate a magistrate judge to serve as a special master in any civil case, upon consent of the parties, without regard to the provisions of rule 53(b) of the Federal Rules of Civil Procedure for the United States district courts.

(3) A magistrate judge may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States.

(4) Each district court shall establish rules pursuant to which the magistrate judges shall discharge their duties.

(c) Notwithstanding any provision of law to the contrary—

(1) Upon the consent of the parties, a full-time United States magistrate judge or a part-time United States magistrate judge who serves as a full-time judicial officer may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court or courts he serves. Upon the consent of the parties, pursuant to their specific written request, any other part-time magistrate judge may exercise such jurisdiction, if such magistrate judge meets the bar membership requirements set forth in section 631(b)(1) and the chief judge of the district court certifies that a full-time magistrate judge is not reasonably available in accordance with guidelines established by the judicial council of the circuit. When there is more than one judge of a district court, designation under this paragraph shall be by the concurrence of a majority of all the judges of such district court, and when there is no such concurrence, then by the chief judge.

(2) If a magistrate judge is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of court shall, at the time the action is filed, notify the parties of the availability of a magistrate judge to exercise such jurisdiction. The decision of the parties shall be communicated to the clerk of court. Thereafter, either the district court judge or the magistrate judge may again advise the parties of the availability of the magistrate judge, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences. Rules of court for the reference of civil matters to magistrate judges shall include procedures to protect the voluntariness of the parties' consent.

(3) Upon entry of judgment in any case referred under paragraph (1) of this subsection, an aggrieved party may appeal directly to the appropriate United States court of appeals from the judgment of the magistrate judge in the same manner as an appeal from any other judgment of a district court. The consent of the parties allows a magistrate judge designated to exercise civil jurisdiction under paragraph (1) of this subsection to direct the entry of a judgment of the district court in accordance with the Federal Rules of Civil Procedure. Nothing in this paragraph shall be construed as a limitation of any party's right to seek review by the Supreme Court of the United States.

(4) The court may, for good cause shown on its own motion, or under extraordinary circumstances shown by any party, vacate a reference of a civil matter to a magistrate judge under this subsection.

(5) The magistrate judge shall, subject to guidelines of the Judicial Conference, determine whether the record taken pursuant to this section shall be taken by electronic sound recording, by a court reporter, or by other means.

APPENDIX "B"

Federal Rules of Criminal Procedure

Rule 11. Pleas

(a) ENTERING A PLEA.

(1) *In General.* A defendant may plead not guilty, guilty, or (with the court's consent) nolo contendere.

(2) *Conditional Plea.* With the consent of the court and the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion. A defendant who prevails on appeal may then withdraw the plea.

(3) *Nolo Contendere Plea.* Before accepting a plea of nolo contendere, the court must consider the parties' views and the public interest in the effective administration of justice.

(4) *Failure to Enter a Plea.* If a defendant refuses to enter a plea or if a defendant organization fails to appear, the court must enter a plea of not guilty.

(b) CONSIDERING AND ACCEPTING A GUILTY OR NOLO CONTENDERE PLEA.

(1) *Advising and Questioning the Defendant*. Before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following:

(A) the government's right, in a prosecution for perjury or false statement, to use against the defendant any statement that the defendant gives under oath;

(B) the right to plead not guilty, or having already so pleaded, to persist in that plea;

(C) the right to a jury trial;

(D) the right to be represented by counsel—and if necessary have the court appoint counsel—at trial and at every other stage of the proceeding;

(E) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses;

(F) the defendant's waiver of these trial rights if the court accepts a plea of guilty or nolo contendere;

(G) the nature of each charge to which the defendant is pleading;

(H) any maximum possible penalty, including imprisonment, fine, and term of supervised release;

(I) any mandatory minimum penalty;

(J) any applicable forfeiture;

(K) the court's authority to order restitution;

(L) the court's obligation to impose a special assessment;

(M) in determining a sentence, the court's obligation to calculate the applicable sentencing-guideline range and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. §3553(a);

(N) the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence; and

(O) that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

(2) *Ensuring That a Plea Is Voluntary.* Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and determine that the plea is voluntary and did not result from force, threats, or promises (other than promises in a plea agreement).

(3) *Determining the Factual Basis for a Plea.* Before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea.

(c) PLEA AGREEMENT PROCEDURE.

(1) *In General.* An attorney for the government and the defendant's attorney, or the defendant when proceeding pro se, may discuss and reach a plea agreement. The court must not participate in these discussions. If the defendant pleads guilty or nolo contendere to either a charged offense or a lesser or related offense, the plea agreement may specify that an attorney for the government will:

(A) not bring, or will move to dismiss, other charges;

(B) recommend, or agree not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request does not bind the court); or

(C) agree that a specific sentence or sentencing range is the appropriate disposition of the case, or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request binds the court once the court accepts the plea agreement).

(2) *Disclosing a Plea Agreement.* The parties must disclose the plea agreement in open court when the plea is offered, unless the court for good cause allows the parties to disclose the plea agreement in camera.

(3) *Judicial Consideration of a Plea Agreement.*

(A) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the court may accept the agreement, reject it, or defer a decision until the court has reviewed the presentence report.

(B) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(B), the court must advise the defendant that the defendant has no right to withdraw the plea if the court does not follow the recommendation or request.

(4) *Accepting a Plea Agreement.* If the court accepts the plea agreement, it must inform the defendant that to the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the agreed disposition will be included in the judgment.

(5) *Rejecting a Plea Agreement.* If the court rejects a plea agreement containing provisions of the type specified in Rule 11(c)(1)(A) or (C), the court must do the following on the record and in open court (or, for good cause, in camera):

(A) inform the parties that the court rejects the plea agreement;

(B) advise the defendant personally that the court is not required to follow the plea agreement and give the defendant an opportunity to withdraw the plea; and

(C) advise the defendant personally that if the plea is not withdrawn, the court may dispose of the case less favorably toward the defendant than the plea agreement contemplated.

(d) WITHDRAWING A GUILTY OR NOLO CONTENDERE PLEA. A defendant may withdraw a plea of guilty or nolo contendere:

(1) before the court accepts the plea, for any reason or no reason; or

(2) after the court accepts the plea, but before it imposes sentence if:

(A) the court rejects a plea agreement under 11(c)(5); or

(B) the defendant can show a fair and just reason for requesting the withdrawal.

Rule 59. Matters Before a Magistrate Judge

(a) NONDISPOSITIVE MATTERS. A district judge may refer to a magistrate judge for determination any matter that does not dispose of a charge or defense. The magistrate judge must promptly conduct the required proceedings and, when appropriate, enter on the record an oral or written order stating the determination. A party may serve and file objections to the order within 14 days after being served with a copy of a written order or after the oral order is stated on the record, or at some other time the court sets. The district judge must consider timely objections and modify or set aside any part of the order that is contrary to law or clearly erroneous. Failure to object in accordance with this rule waives a party's right to review.

(b) DISPOSITIVE MATTERS.

(1) *Referral to Magistrate Judge.* A district judge may refer to a magistrate judge for recommendation a defendant's motion to dismiss or quash an indictment or information, a motion to suppress evidence, or any matter that may dispose of a charge or defense. The magistrate judge must promptly conduct the required proceedings. A record must be made of any evidentiary proceeding and of any other proceeding if the magistrate judge considers it necessary. The magistrate judge must enter on the record a recommendation for disposing of the matter, including any proposed findings of fact. The clerk must immediately serve copies on all parties.

(2) *Objections to Findings and Recommendations.* Within 14 days after being served with a copy of the recommended disposition, or at some other time the court sets, a party may serve and file specific written objections to the proposed findings and recommendations. Unless the district judge directs otherwise, the objecting party must promptly arrange for transcribing the record, or whatever portions of it the parties agree to or the magistrate judge considers sufficient. Failure to object in accordance with this rule waives a party's right to review.

(3) *De Novo Review of Recommendations.* The district judge must consider de novo any objection to the magistrate judge's recommendation. The district judge may accept, reject, or modify the recommendation, receive further evidence, or resubmit the matter to the magistrate judge with instructions.