No. _____

IN THE SUPREME COURT OF THE UNITED STATES

LAMONTE DIONDRE GASTON,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

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

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QUESTION PRESENTED

Can the government justify a search under the inventory search exception to the Fourth Amendment's warrant requirement if no inventory log is created?

PRAYER FOR RELIEF

Petitioner, Lamonte Diondre Gaston, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit.

JURISDICTION

The court of appeals entered judgment on October 23, 2018. *See* Pet. App. A. The court of appeals then denied Mr. Gaston's petition for panel rehearing and rehearing en banc on January 2, 2019. *See* Pet. App. C. This Court has jurisdiction to review the judgment under 28 U.S.C. § 1254(1).

OPINION BELOW

The unpublished memorandum disposition of the United States Court of Appeals for the Ninth Circuit is appended hereto as Appendix A; the dissent to the memorandum is appended as Appendix B; and the order denying Mr. Gaston's petition for rehearing and rehearing en banc is appended as Appendix C.

INTRODUCTION

This case presents an important question about the inventory search exception to the Fourth Amendment's warrant requirement: can the government justify a search under the inventory search exception when no inventory log is produced? This question is crucial to Fourth Amendment jurisprudence because this Court has been clear that the inventory search exception exists only to facilitate a narrow caretaking function. Specifically, by documenting items found in an impounded car, law enforcement protects the owner's property, as well as themselves against property-

loss claims and danger. Thus, what law enforcement must do to further the goals of this narrow exception is critical. Without defined parameters for what is required for a valid inventory search, a loophole exists in Fourth Amendment jurisprudence: if creating an inventory log is not required to invoke the inventory-search exception, then law enforcement officers can claim they are conducting an inventory search anytime they want to circumvent the Fourth Amendment for "general rummaging in order to discover incriminating evidence." *Florida v. Wells*, 495 U.S. 1, 4 (1990).

In this case, a majority of the Ninth Circuit found that the search of Mr. Gaston's car was a valid inventory search because "[San Diego Police Department] policy requires officers to search areas where 'valuable items' are likely to be kept." *See* Pet. App. A at 4. Even though "the facts [of Mr. Gaston's case] suggest that one of the searching officer's motives was an ongoing criminal investigation," the search was still valid. *Id.* But in reaching this decision, the court disregarded the absence of any inventory log. At least two state supreme courts have held that when no inventory log is produced, the prosecution cannot resort to the inventory search exception. Thus, there is a division between the Ninth Circuit and two state courts of last resort regarding this important question of federal law. *See* Sup. Ct. R. 10 (a), (c). This Court should therefore grant Mr. Gaston's petition to reconcile the conflict.

CONSTITUTIONAL PROVISION

This petition involves the Fourth Amendment to the United States Constitution. The Fourth Amendment 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 persons or things to be seized.

STATEMENT OF THE CASE

After impounding Mr. Gaston's car, San Diego Police Department (SDPD) officers conducted a warrantless search of the car and a locked container inside the trunk of the car for the stated purpose of conducting an inventory. Inside of the locked container, the officers found a gun and ammunition.

The SDPD has a written policy that governs inventory searches, including a provision requiring that "[a]ll items of value must be listed on the vehicle report." Pet. App. D at 3. Despite finding valuable items in the trunk belonging to Mr. Gaston during their search, including a DVD player, tools, a Wii video game player, a leather jacket, and various items of clothing, officers did not create an inventory log documenting these items. In a separate investigative report, however, officers documented the gun and ammunition they discovered inside of the locked container. The government then charged Mr. Gaston with being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g).

In district court, Mr. Gaston moved to suppress the gun and ammunition, arguing that the search of his car did not comply with SDPD policy, demonstrating that officers were really just rummaging for evidence of a crime. The district court denied Mr. Gaston's motion, finding that the officers "acted within the parameters of the San Diego Police Department policy."

On appeal, Mr. Gaston continued to argue that the purported inventory search of his car was invalid because officers did not comply with the written SDPD inventory search policy and their actions indicted that they were actually just investigating. Specifically, in violation of policy, officers failed to produce an inventory log and instead documented only evidence of a crime, which they used to prosecute Mr. Gaston for being a felon in possession of a firearm.

In an unpublished memorandum, the majority dismissed Mr. Gaston's arguments, concluding that "the district court's finding that the search was conducted within the framework of sufficiently established policy and practice was not clearly erroneous." *See* Pet. App. A at 2. The memorandum noted that because "SDPD policy requires officers to search where 'valuable items' are likely to be kept during an inventory search," the search was a valid inventory search. *Id.*

By contrast, the dissent found that the district court erred in upholding the search because "[m]ost significantly, the officers did not in fact produce an 'inventory.' There is nothing in the record that even remotely resembles an 'inventory.'" Pet. App. B at 1. Instead, the dissent noted, surrounding circumstances indicated that "the search took place as part of an investigation." *Id.* Moreover, "[w]ritten department inventory policy requires officers to list all 'items of value' in the vehicle report. The officers here failed to do so." *Id.* Rather, the officers listed only "the lock box and its contents under the section heading for 'investigation,'" in a separate arrest report. *Id.* at 2. Thus, the dissent concluded that "[t]he officers' 'inventory' search was but 'a ruse

for general rummaging in order to discover incriminating evidence.'" *Id*. (quoting *Wells*, 495 U.S. at 4.

Mr. Gaston then sought panel rehearing and rehearing en banc. The Ninth Circuit denied Mr. Gaston's petition. *See* Pet. App. C.

REASONS FOR GRANTING THE WRIT

This Court should grant Mr. Gaston's petition to resolve an important question of federal law that divides the Ninth Circuit from at least two state courts of last resort: can the prosecution rely on the inventory-search exception to the Fourth Amendment's warrant requirement if no inventory log is produced? The answer is crucial because the caretaking function that inventory searches promote is premised on the "principle that an inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence. The policy or practice governing inventory searches should be designed to *produce an inventory*." *Wells*, 495 U.S. at 4 (emphasis added).

Interpreting this Court's case law regarding the purpose of and requirements for an inventory search, the Utah Supreme Court has held that without "any kind of a list of the items in the automobile" or use of a "standard inventory form," a "search cannot be fairly characterized as an inventory search." *State v. Hygh*, 711 P.2d 264, 269-70 (Utah 1985). Likewise, the Louisiana Supreme Court has held that a search is invalid as an inventory search when no inventory log is created. *State v. Jewell*, 338 So. 2d 633, 638-39 (La. 1976).

In its decision in this case, however, a majority of the Ninth Circuit held to the contrary, focusing only on the SDPD policy requiring an inventory search of a vehicle after impoundment, and disregarding the absence of any inventory log actually being created. The result is a schism between a court of appeal and state courts of last resort that raises a question about what is required for a valid inventory search, and more broadly, what the Fourth Amendment demands. Thus, this Court should grant review to resolve this important question of constitutional law. *See* Sup. Ct. R. 10 (a), (c).

I. This case presents an important question because the Fourth Amendment's protection against unreasonable searches and seizures is a fundamental tenet of the criminal justice system.

This Court recently reiterated that "[t]he 'basic purpose of [the Fourth Amendment],' our cases have recognized, 'is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials.'" *Carpenter v. United States*, 138 S. Ct. 2206, 2213 (2018) (quoting *Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523, 528 (1967)). This is so because "[t]he Founding generation crafted the Fourth Amendment as a 'response to the reviled 'general warrants' and 'writs of assistance' of the colonial era, which allowed British officers to rummage through homes in an unrestrained search for evidence of criminal activity.'" *Carpenter*, 138 S. Ct. at 2213 (quoting *Riley v. California*, 134 S. Ct. 2473, 2394 (2014)). Accordingly, exceptions to the warrant requirement must necessarily be narrowly tailored to guard against modern day unrestrained searches.

When it comes to the inventory-search exception, however, lower courts have interpreted this Court's inventory-search case law differently. In view of this split in

authorities, law enforcement officers in some states must produce an inventory log if they are going to conduct a warrantless search under the inventory-search exception. By contrast, officers in the Ninth Circuit can label a warrantless search an inventory search and not inventory any items—even items of value—found during their search. This conflict is significant because this Court has instructed that a search conducted for the purpose of protecting property and the police "should be designed to produce an inventory." *Wells*, 495 U.S. at 4. Ultimately, the question here turns on how to interpret this Court's precedent. This Court is, therefore, the only institution that can resolve the dispute.

II. Courts are divided over what constitutes an inventory search.

More than forty years ago, this Court established that inventory searches are an exception to the Fourth Amendment's warrant requirement because of the caretaking function they promote:

> When vehicles are impounded, local police departments generally follow a routine practice of securing and inventorying the automobiles' contents. These procedures developed in response to three distinct needs: the protection of the owner's property while it remains in police custody; the protection of the police against claims or disputes over lost or stolen property; and the protection of the police from potential danger.

South Dakota v. Opperman, 428 U.S. 364, 369 (1976) (citations omitted).

Thus, *Opperman* and its progeny establish that the only function of an inventory search is caretaking—to protect a defendant's property and to protect law enforcement against loss claims and danger. Applying this Court's decisions, lower

courts have created more explicit—often contradictory— rules about what is required for a valid inventory search.

A. Consistent with this Court's parameters, at least two state courts of last resort have found that a search cannot be justified under the inventory-search exception where no inventory log is produced.

In *Hygh*, the Utah Supreme Court held that a search cannot be an inventory search if an inventory log is not created. 711 P.2d at 269-70. There, after a warrantless search of the car, the officer attempted to rely on the inventory-search exception to validate the search, but "did not make any kind of a list of the items in the automobile, much less use a standard inventory form." *Id*. Notably, the court found that "[w]ithout this, the search cannot be fairly characterized as an inventory search." *Id*. at 270. In finding the search invalid and reversing the conviction, the court held that "a purported inventory should be held unlawful when it is not shown … 'that standard inventory forms were completed and kept for future reference (showing presence or absence of valuables).'" *Id*. at 269 (quoting 2 LaFave, Search & Seizure § 7.4, at 576-77 (1978)). Importantly, both "[a]rticle I, section 14 of the Utah State Constitution, and the fourth amendment to the United States Constitution prohibit unreasonable searches and seizures," by using identical language. *Id*. at 267.

Utah is not the only state to invalidate a purported inventory search where there was no inventory log created. In *Jewell*, the Louisiana Supreme Court found an inventory search invalid where "one of the officers after the arrest proceeded to make what he termed an 'inventory search' of the vehicle," but "[n]o evidence in the record show[ed] … that standard inventory forms were completed." 338 So. 2d at 638-39.

Ultimately, the court there concluded that "the facts surrounding the search … support[ed] a conclusion that the police officers were searching for incriminating evidence, and that they were not collecting personal items found in the car which might be stolen and thus needed to be inventoried." *Id.* at 639. Like Utah, the Louisiana state constitution "prohibits 'unreasonable searches, seizures, and invasions of privacy' by [] governmental agents," and is "similar" to "American constitutional provisions." *Id.* at 636. Thus, courts continue to interpret this Court's case law to require production of an inventory log when the government invokes the inventory-search exception.

B. The Ninth Circuit in this case found that even though law enforcement produced no inventory log, the warrantless search was valid as an inventory search.

Contrary to the approach taken by other courts, the Ninth Circuit took a different view of this Court's inventory search case law. In direct contrast to *Hygh* and *Jewell*, in finding that the search in Mr. Gaston's case was valid, a majority of the Ninth Circuit completely disregarded the absence of any inventory log. In so doing, the Ninth Circuit minimized that "the facts suggest[ed] that one of the searching officers' motives was an ongoing criminal investigation," and concluded that the search was nonetheless justified as an inventory search. *See* Pet. App. A at 3. Thus, the court essentially adopted a rule that as long as the government claims a warrantless search is an "inventory search," law enforcement need not actually create an inventory of anything found.

III. This case is a good vehicle for the Court to resolve the question presented.

This case presents a good opportunity for the Court to resolve the split of authority over what is required for a valid inventory search, because a member of the panel dissented, demonstrating the case squarely raises the issue and is dispositive of Mr. Gaston's prosecution. Directly addressing the majority decision's error, the dissent explained that "significantly, the officers did not in fact produce an 'inventory.' There is nothing in the record that even remotely resembles an 'inventory,' a 'caretaking procedure[] … to itemize the property to be held by the police.'" Pet. App. B at 1 (quoting *Opperman*, 428 U.S. at 370-71). Rather, "[b]y contrast, as the officers' incident reports reveal, the search took place as part of an 'investigation.'" *Id.* at 2. Moreover, "[w]ritten department inventory policy requires officers to list all 'items of value' in the vehicle report. The officers here failed to do so." *Id*. Not only that, but "officers neglected to report any of the other items of value they found while searching Gaston's car, including a Wii video game player, a DVD player, a leather jacket, and tools." Pet. App. B. at 1. Critically, by failing to produce an inventory log, "officers' actions undermined a key purpose for permitting warrantless inventory searches in the first place." *Id*. at 3. The disparity between the two conclusions highlights the need for further consideration of this issue. Furthermore, this issue is dispositive of Mr. Gaston's case: if the search is invalid, the gun and ammunition must be suppressed, and the government would, therefore, have no evidence with which to prosecute Mr. Gaston. Thus, Mr. Gaston's case is a good vehicle for the Court to resolve this important question.

IV. This Court has emphasized that the inventory-search exception to the warrant requirement must be narrowly tailored to accomplish specific caretaking goals.

In granting Mr. Gaston's petition, this Court should make clear that the panel majority is wrong. Because an inventory search exception exists only to serve a caretaking function, "[t]he policies behind the warrant requirement, and the related concept of probable cause, are not implicated in an inventory search." *Colorado v. Bertine*, 479 U.S. 367 (1987). Moreover, to further these caretaking goals, inventory search policies should specifically be "designed to *produce an inventory*." *Wells*, 495 U.S. at 4 (emphasis added). The validity of an inventory search, therefore, requires at least production of an inventory log.

This Court has not explicitly held that an inventory log is necessary to validate an inventory

search. But this Court's inventory search case law clearly suggests that without such a log, the purpose of an inventory search necessarily could not be achieved. For example, in *Opperman*, the absence of an inventory log was not at issue. But there, "pursuant to standard police procedures, the officer inventoried the contents of the car." 428 U.S. at 366. This Court explained that this inventory was proper because "the process is aimed at securing or protecting the car and its contents." Further, there was no suggestion that the process of inventorying "valuables inside the car" in accordance with procedure "was a pretext concealing an investigatory police motive." *Id*. at 375-76.

Similarly, in *Bertine*, the inventory policy required a "detailed inventory" of the car's contents and officers complied. 479 U.S. at 370. Again, this Court emphasized that the purpose of such an inventory is to "protect property taken into [police] custody," implying that property could not be properly protected if it were not first inventoried. *Id*. at 373.

Thus, the majority's finding that the search of Mr. Gaston's car was a valid inventory search despite the total absence of any inventory log, is inconsistent with this Court's case law.

V. Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted,

April 2, 2019

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