No. _____

IN THE SUPREME COURT OF THE UNITED STATES

MARKANTHONY SAPALASAN, Petitioner,

vs.

UNITED STATES OF AMERICA, Respondent.

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

PETITION FOR WRIT OF CERTIORARI

Thomas E. Weaver
The Law Office of Thomas E. Weaver
P.O. Box 1056
Bremerton, WA 98337
(360) 792-9345
tweaver@tomweaverlaw.com

Attorney for Petitioner

QUESTION PRESENTED

"At the stationhouse, it is entirely proper for police to remove and list or inventory property found on the person or in the possession of an arrested person who is to be jailed." *Illinois v. Lafayette*, 462 U.S. 640, 646, 103 S.Ct. 2605, 77 L.Ed.2d 65 (1983) (emphasis added).

Law enforcement lawfully detained a man, separated him from his backpack, and transported him to the police station for questioning. He was determined to be a witness to, but not a suspect in, any crime and released without charges; but his backpack was retained. Several hours after his release, the backpack was the subject of an inventory search.

Does it violate the Fourth Amendment to retain personal property of a person who is not going to be incarcerated and to search the property long after the person has been released?

PARTIES TO THE PROCEEDINGS

Petitioner, the defendant-appellee below, is Markanthony Deleon Sapalasan.

The Respondent, the appellant below, is the United States of America.

RELATED PARTIES AND PROCEEDINGS

United States v. Sapalasan, Alaska District Court, 3:18-cr-00130-TMB.

United States v. Sapalasan, Court of Appeals for the Ninth Circuit, 21-30251.

TABLE OF CONTENTS - PAGE 1 OF 2

APPENDIX

TABLE OF AUTHORITIES

Cases

PETITION FOR A WRIT OF CERTIORARI

The petitioner, Markanthony Sapalasan, petitions this Court for a writ of certiorari to review the final order of the Court of Appeals of the Ninth Circuit.

OPINIONS BELOW

1) The January 15, 2025 Order of the Court of Appeals for the Ninth Circuit denying rehearing *en banc* is reported at 125 F.4th 999 (9th Cir. 2025) and reproduced at Appendix. A-1.
2) The Order Amending the Memorandum is reproduced at Appendix A-3.
3) The October 21, 2024 Amended Memorandum amending the September 18, 2024 opinion is unreported and is reproduced at Appendix A-4 to A-14.
4) The September 18, 2024 Order withdrawing the opinion of April 1, 2024 and denying rehearing and rehearing *en banc* as moot is reported at 117 F.4th 1152 (9th Cir. 2024) and reproduced at Appendix A-15 to A-16.

5) The September 18, 2024 Memorandum of the Court is unreported and reproduced at Appendix A-17 to A-27.

6) The April 1, 2024 opinion of the Court was previously reported at 97 F.4th 657 (9th Cir. 2024) (withdrawn) and is reproduced at Appendix A-28 to A-49.

7) The April 3, 2019 Text Order adopting and accepting the Final Report and Recommendation Regarding Motion to Suppress is reproduced at Appendix A-50.

8) The March 29, 2019 Final Report of Recommendation Regarding Motion to Suppress in the District Court of Alaska is reproduced at Appendix A-51 to A-67.

JURISDICTIONAL STATEMENT

The Court of Appeals entered final judgment on January 15, 2025. A-1. This Court has jurisdiction over the timely filed petition under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS

Fourth Amendment – "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

On August 25, 2018, Anchorage Police Department Officers Tae Yoon and Jonathan Behning responded to a call of gunshots coming from an apartment. They discovered the appellant, Mark Anthony Sapalasan, and another man, walking away from the apartment. Mr. Sapalasan was carrying a backpack. Mr. Sapalasan was detained, briefly questioned, and taken into custody after he was found in possession of a firearm. Officer Youn separated Mr. Sapalasan from his backpack, briefly looked

inside it, and not finding anything of evidentiary value, placed it in the front of his patrol vehicle.

The District Court concluded the initial detention was lawful pursuant to *Terry v. Ohio*[1] and the subsequent detention justified as an arrest based upon probable cause. Although Mr. Sapalasan contested the lawfulness of his detention in the District Court, he treats those conclusions as verities in this Court.

Mr. Sapalasan was transported to the Anchorage Police Department where he was interviewed by detectives. Detectives determined Mr. Sapalasan was a witness to, but not a suspect in, the shooting and released him. The record is unclear how long after his arrest he was released. Inexplicably, his backpack was not returned to him at the time of his release but remained in Officer Youn's patrol vehicle.

At the conclusion of his shift, approximately six hours after taking possession of the backpack and several hours after Mr. Sapalasan's release, Officer Youn conducted an inventory search of the backpack. Inside the backpack he found multiple Ziplock bags containing a large

[1] *Terry v. Ohio*, 392 U.S. 1, 19-20, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968)

quantity of methamphetamine. He stopped the search and sought a search warrant.

Mr. Sapalasan was indicted for Possession with Intent to Distribute and Possession of a Firearm in Furtherance of a Drug Trafficking Crime (18 U.S.C. §924 (c)). After the District Court denied his Motion to Suppress, he proceeded to trial by jury, which convicted him. Because the jury found he possessed more than 50 grams of actual methamphetamine, his mandatory minimum sentence on Count One was ten years and the only lawful sentence on Count Two was five years. The District Court sentenced him to fifteen years.

Mr. Sapalasan timely appealed the search issue, arguing the search of the backpack was unreasonable under the Fourth Amendment. The Ninth Circuit affirmed in a 2-1 published decision. 97 F.4th 657 (9th Cir. 2024) (hereinafter "original decision"). The original decision produced three opinions: the 10-page majority opinion authored by Judge Nelson, a 5-page special concurrence also authored by Judge Nelson, and a 7-page dissent authored by Judge Hawkins. Mr. Sapalasan filed a timely petition for rehearing and rehearing *en banc*.

Five months later, the original panel withdrew the published original decision and replaced it with an unsigned, unpublished decision (hereinafter "replacement decision"). Whereas the original decision was 10-pages long, the replacement decision is a terse, 3-page decision. Judge Nelson's special concurrence disappeared completely while Judge Hawkins' 7-page dissent remained word-for-word unaltered. The statement of facts, which in the original decision had been comprehensively laid out in twenty-two sentences across four paragraphs, was reduced to a single paragraph of six sentences. While the original decision was published, the replacement decision is unpublished and may no longer be cited as precedent.[2] The panel having replaced the previously published decision, the motion for rehearing *en banc* was denied as moot.

Mr. Sapalasan filed a second motion for rehearing or rehearing *en banc*. While the second motion was pending, Judge Hawkins amended his dissent to delete references to the original decision that no longer appeared in the replacement decision. The majority of the *en banc* Court

[2] Prior to the order withdrawing the opinion, courts had already begun citing the published decision as controlling precedent. *United States v. Kowalczyk*, 2024 WL 3158487 (2024).

denied rehearing *en banc* with one judge voting to grant rehearing. Mr. Sapalasan petitions for certiorari.

REASONS FOR GRANTING CERTIORARI

Warrantless searches are presumed unreasonable under the Fourth Amendment unless they fall within one of the jealously guarded exceptions to the warrant requirement. One such exception is the inventory search. This Court has ruled police may, consistent with the Fourth Amendment, conduct warrantless inventory searches of personal property incident to incarceration. *Illinois v. Lafayette*, 462 U.S. 640, 103 S.Ct. 2605, 77 L.Ed.2d 65 (1983). Since its decision forty-two years ago, *Lafayette* has been read correctly and consistently to require that any inventory search of personal property be "incident to incarceration." Despite the clear requirements of *Lafayette*, the Ninth Circuit concluded police may retain the personal property of a person who is not going to be jailed and search the property long after their release. This conclusion flies in the face of unambiguous language from this Court, as well as

forty-two years of consistent application of *Lafayette*, and should be rejected.

In *Layfatte*, this Court envisioned the inventory search as an "evolution of interests along the continuum from arrest to incarceration." *Lafayette* at 644. It concluded, "At the stationhouse, it is entirely proper for police to remove and list or inventory property found on the person or in the possession of an arrested person who is to be jailed." *Lafayette* at 646. In reaching this conclusion, this Court cited four reasons for permitting the inventory search: (1) protection of the owner's property while in police custody; (2) prevent false claims of theft or careless handling of personal items by police; (3) removal of concealed dangerous weapons prior to their introduction to the jail; and (4) ascertaining and verifying the arrestee's identity. *Lafayette* at 646; See, also, *South Dakota v. Opperman*, 428 U.S. 364, 369, 96 S.Ct. 3092, 49 L.Ed.2d 1000 (1975).

The holding and rationale of *Lafayette* make clear that the inventory search must be "incident to incarceration." The Court emphasizes this point no less than four times. "A so-called inventory search is not an independent legal concept but rather an incidental administrative step following arrest and preceding incarceration."

Lafayette at 644 (emphasis added). "In order to see an inventory search in proper perspective, it is necessary to study the evolution of interests along the continuum from arrest to incarceration." *Lafayette* at 644 (emphasis added). "In short, every consideration of orderly police administration benefiting both police and the public points toward the appropriateness of the examination of respondent's shoulder bag prior to his incarceration." *Lafayette* at 647 (emphasis added). "Applying these principles, we hold that it is not 'unreasonable' for police, as part of the routine procedure incident to incarcerating an arrested person, to search any container or article in his possession, in accordance with established inventory procedures." *Lafayette* at 648 (emphasis added). In addition to these four references to incarceration by the Court, the concurrence also emphasized that the inventory search is incident to incarceration, not arrest. "I agree that the police do not need a warrant or probable cause to conduct an inventory search prior to incarcerating a suspect, and I therefore concur in the judgment. The practical necessities of securing persons and property in a jailhouse setting justify an inventory search as

part of the standard procedure incident to incarceration." *Lafayette* at 649 (Justice Marshall, concurring) (emphasis added).

Further evidence that actual incarceration in the jail - as opposed to simply arresting the suspect - is a prerequisite for an inventory search, is the fact that that this Court felt compelled to remand the case. The Court did not simply reverse the lower court but remanded for a factual determination as to whether the appellant had actually been incarcerated. The Court said: "The record is unclear as to whether respondent was to have been incarcerated after being booked for disturbing the peace. That is an appropriate inquiry on remand." *Lafayette* at 648, footnote 3. See, also, *United States v. Robinson*, 414 U.S. 218, fn. 7, 94 S.Ct. 467, 38 L.Ed.427 (1973) (Justice Marshall, dissenting) (the justification for station-house searches is "the fact that the suspect will be placed in jail"); *Colorado v. Bertine*, 479 U.S. 367, fn. 7, 107 S.Ct. 738, 93 L.Ed.2d 739 (1987) (Justice Marshall, dissenting) ("the inventory in [*Lafayette*] was justified primarily by compelling governmental interests unique to the station house, preincarceration context.")

Since the *Lafayette* decision, reviewing courts have consistently held that an inventory search of personal property be incident to incarceration. In *United States v. Peterson*, 902 F.3d 1016 (9th Cir. 2018), the defendant argued he should have been allowed an opportunity to bail out on his warrant prior to the inventory search. The Court of Appeals agreed with this analysis but nevertheless affirmed the search because he was also under arrest for resisting arrest and was, therefore, going to be incarcerated regardless.

State court decisions interpreting *Lafayette* are in accord that an inventory search is unlawful when the arrestee is not going to be incarcerated. *People of Illinois v. Nogel,* 137 Ill.App.3d 392, 484 N.E.2d 516 (1985) (search of misdemeanor arrestee's briefcase unlawful when standard practice was to give him an opportunity to bail out prior to incarceration); *State of Connecticut v. Billias*, 17 Conn.App. 635, 555 A.2d 448 (1989) (inventory search unlawful when there was no evidence the arrestee would be booked and incarcerated); *State of Ohio v. Banks-Harvey*, 152 Ohio St.3d 368, 96 N.E.3d 262 (2018).

When Mr. Sapalasan was released from custody without ever being incarcerated, his backpack should have been returned to him at the same

time. Instead, law enforcement retained possession of the backpack and searched it without a warrant several hours later. This violated the Fourth Amendment, as laid out by this Court in *Lafayette*.

The dissent in Mr. Sapalasan's case agreed that the search was illegal under *Lafayette*. After carefully reviewing this Court's decision in *Lafayette*, Judge Hawkins concluded, "In this case, Sapalasan was never booked, let alone incarcerated. He was questioned by police, determined to be a witness to—but not a suspect in—the shooting, and released. Like an arrestee who makes bail to avoid incarceration, or the arrested driver of a vehicle who provides an alternate person to retrieve his car, Sapalasan's release after questioning obviated any continuing justification for the police to hold or search his property."

The unsigned replacement decision fails to address any of the arguments raised by Mr. Sapalasan's appeal or the dissent. Both Mr. Sapalasan and the dissent rely heavily on the Supreme Court's analysis that an inventory search must be "incident to incarceration" pursuant to *Lafayette*. While the original decision, the special concurrence and the dissent debated at length whether an inventory search must be "incident to incarceration," the replacement decision fails

to even acknowledge the issue, with neither the phrase "incident to incarceration" nor the word "incarceration" appearing in the majority opinion a single time, leaving Judge Hawkins debating this dispositive legal proposition with himself.

Instead, the replacement decision contents itself with the single justification for the inventory search that such searches "deter false claims of theft and careless handling of articles." While majority correctly cites this as one of the justifications for inventory searches, the risk of false claims of theft is reduced remarkably when the person is not to be incarcerated and, therefore, due to have their personal property returned shortly. In addition, the Ninth Circuit has held that a detainee can waive theft claims, take the chance that loss will occur, and avoid the search. *United States v. Wanless*, 882 F.2d 1459 (9th Cir. 1989).

The replacement decision wisely makes no effort to justify the search of Mr. Sapalasan's backpack several hours after his release as a protection of the owner's property while in police custody, search for concealed weapons to be introduced into the jail, or to ascertain Mr. Sapalasan's identity. Those additional rationales carry no weight given Mr. Sapalasan's brief detention and release. If anything, the retention of

his backpack for several hours following his release decreases, rather than increases, any protections he might have from police theft.

The replacement decision also fails to confront the fact that Mr. Sapalasan's personal property was unreasonably retained for several hours after he had been released. The retention of personal property for an unreasonable period of time can itself constitute a Fourth Amendment violation. *United States v. Place*, 462 U.S. 696, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983) (ninety minute delay between seizure and search of luggage unreasonable).

Finally, it is troubling that the majority appears to be avoiding further judicial review of its clearly erroneous decision. While the original decision addressed the issues in detail in a published opinion with a majority decision, a special concurrence, and dissent, the replacement decision condenses both the factual recitation and legal analysis to the point of being meaningless and relegates the issues in this case to an unpublished decision. The Courts of Appeal should not be permitted to avoid further review by gutting and unpublishing their own decisions. As Justice Thomas once put it in a comparable situation, "It is hard to imagine a reason that the Court of Appeals would not have published this

opinion except to avoid creating binding law for the Circuit." *Plumley v. Austin*, 574 U.S. 1127 (2015) (Justice Thomas, joined by Justice Scalia, dissenting from denial of certiorari).

In sum, the replacement opinion completely disregards the holding of *Lafayette* and concludes that an inventory search is lawful even if the owner of the property is not being incarcerated. This broad reading of *Lafayette* untethers both the holding and rationale of *Lafayette* from the Fourth Amendment, ignores forty-two years of consistent application of *Lafayette*, fails to recognize Mr. Sapalasan's privacy concerns, and renders the subsequent search unreasonable. This Court should grant certiorari and reverse.

CONCLUSION

This Court should grant certiorari and reverse the Court of Appeals.

DATED this 18th day of March, 2025.

s/ Thomas E. Weaver
Thomas E. Weaver
Attorney for Petitioner
WSBA #22488