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9

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 BOBBY JOE JACKSON JR.,

16 Defendant.  
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No. 2:23-CR-210-DSF

GOVERNMENT'S OPPOSITION TO  
DEFENDANT'S MOTION TO SUPPRESS;  
EXHIBIT

**Hearing: May 13, 2024, 8:30am**

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1       **I.       INTRODUCTION**

2           Defendant Bobby Joe Jackson Jr. ("defendant") asks this Court  
3 to suppress the evidence recovered from his residence during the  
4 execution of a federal search warrant. Defendant alleges no defect  
5 in the search warrant targeting his property, but claims that an  
6 inventory search of his co-conspirators' property years earlier was  
7 unlawful and indirectly led investigators to defendant. Defendant's  
8 motion must be denied because he has failed to carry his burden of  
9 demonstrating that his own Fourth Amendment rights were violated.  
10 Rakas v. Illinois, 439 U.S. 128, 131 n. 1 (1978) ("The proponent of  
11 a motion to suppress has the burden of establishing that his own  
12 Fourth Amendment rights were violated by the challenged search or  
13 seizure.")

14       **II.   FACTS AND BACKGROUND OF THIS CASE**

15           Defendant has a long history of committing federal crimes, and  
16 of violating the terms of his supervised release. In 2011, this  
17 Court sentenced defendant to 30 months in prison for bank fraud, to  
18 be followed by five years of supervised release. (2:11-CR-535-DSF,  
19 dkt. 40.) Defendant repeatedly violated the terms of his supervised  
20 release, which resulted in various prison sentences and the  
21 reimposition of supervised release. On November 9, 2021, this Court  
22 sentenced defendant to four months in prison to be followed by 36  
23 months of supervised release after defendant admitted to Second  
24 Degree Burglary and Felon in Possession of a Firearm. The Court  
25 also imposed search condition as part of defendant's supervised  
26 release:

27           The defendant shall submit to a search, at any time, with  
28 or without warrant, and by any law enforcement or  
Probation Officer, of the defendant's person and any  
property, house, residence, vehicle, papers, computer,

1 other electronic communication or data storage devices or  
2 media, and effects upon reasonable suspicion concerning a  
3 violation of a condition of supervision or unlawful  
conduct by the offender, and by any Probation Officer in  
the lawful discharge of the officer's supervision  
functions;

4  
5 (2:11-CR-535-DSF, dkt. 119, Pacer page 2.)

6 Despite knowing of this search condition, the government chose  
7 to obtain a search warrant for defendant's residence. (Exh. A, LA  
8 22-MJ-2746-DUTY, search warrant affidavit paragraph 5: "In November  
9 of 2021, Judge Fischer included a search condition as one of the  
10 terms of JACKSON's supervised release.") On July 15, 2021, the  
11 Honorable John E. McDermott, U.S. Magistrate Judge, issued the  
12 search warrant, which was executed on July 22, 2022.

13 During the search, numerous stolen credit cards and social  
14 security cards were found, along with fake identification cards and  
15 driver licenses in names matching the stolen cards, but with photos  
16 of defendant. (Dkt. 1, Complaint Aff. ¶ 6, Pacer pages 5-6.)  
17 Defendant also confessed to the crime in a recorded interview:

18 JACKSON . . . told us that he would buy stolen identities  
19 from McArthur Park. The identity profiles he bought would  
20 include fake driver licenses bearing his photo, along with  
social security numbers and fake credit cards and other  
PII.

21 25. JACKSON said he would use the stolen identities to  
22 commit fraud. JACKSON stated that he has filed for at  
least 20 California Employment Development Program (EDD)  
23 claims using the stolen identities and received about  
\$15,000 from each successful claim. JACKSON would go to  
24 bank ATM machines and would hire others to withdraw the  
fraudulent cash to avoid detection. Occasionally JACKSON  
25 would conduct the withdrawal himself.

26 26. In my discussion with JACKSON, I went down the list of  
27 identities that EDD Investigator Romo previously provided  
me of fraudulent claims from addresses tied to JACKSON.  
JACKSON identified some of those names as identities he  
28 had purchased for his scheme. Others he said belonged to

1 his conspirators. JACKSON claimed he did not remember all  
2 of the names.

3 27. JACKSON also said he used the stolen identities and  
4 identities of friends and family to fraudulently file for  
5 PPP or EIDL loans. . . . JACKSON admitted that the  
6 documents he signed or produced to Small Business  
7 Administration were fraudulent and that he and the  
8 beneficiaries of the loans (his family members and  
9 friends) knew they were not entitled to the loans.

10 . . . .

11 30. JACKSON acknowledged lying to his probation officer  
12 about living in Compton when in fact he lived at the  
13 [search] Address. JACKSON also admitted that he did not  
14 disclose his income or his loan applications to probation.

15 (Dkt. 1, Complaint Aff., Pacer pages 13-16.)

16 On September 12, 2022, defendant was arrested on a bench  
17 warrant for violating the terms of his supervised release based on  
18 the conduct described above. He later admitted the violations and  
19 on October 3, 2022, the Court sentenced him to 13 months in prison  
20 followed by almost 43 months of supervised release. (Dkt. 135.)  
21 While defendant was serving his sentence for his latest violations  
22 of supervised release, the government brought the instant charges  
23 against him by complaint. Trial is currently set for June 7, 2024.

### 24 **III. FACTS AND BACKGROUND OF THE CASE AND INVESTIGATIONS INVOLVING 25 THE INVENTORY SEARCH**

26 The government investigated a private safety deposit box  
27 company called U.S. Private Vaults ("USPV"), which ultimately pled  
28 guilty to conspiring with its customers to launder money. (2:21-cr-  
00106-MCS, dkt. 114.) USPV offered a unique service in California:  
the anonymous rental of safety deposit boxes. While banks and other  
private vault companies offer similar services at much lower prices,  
none permit their customers to remain anonymous. It is this  
anonymity that USPV advertised on its website to attract customers:

1 "Complete Privacy; Biometric Identification; No ID Required."  
2 www.usprivatevaults.com. By providing and promoting total  
3 anonymity, USPV catered to and attracted criminals, who sought to  
4 keep their identities and the source of their cash beyond the reach  
5 of law enforcement and the IRS. (Judge Klausner's Snitko opinion,  
6 2:21-cv-04405-RGK-MAR, dkt. 140, page 2).

7 USPV's website stated, "Our business is one of very few where  
8 **we don't even want to know your name.** For your privacy and the  
9 security of your assets in our vault, **the less we know the better.**"  
10 (Id.) In a posting entitled, "Four Reasons to Store Your Gold At  
11 USPV," USPV argued: "Banks require clients to provide their social  
12 security number and a photo identification as a condition for  
13 renting a safe deposit box. Your information is then filed in the  
14 bank's central data system. This information can be easily accessed  
15 by government agencies (such as the IRS) or attorneys armed with  
16 court orders. If no one is aware you have a safe deposit box, the  
17 contents (your gold) are much safer." It went on to explain that,  
18 "As government chartered institutions, banks are now required to  
19 file 'suspicious activity reports.' . . . U.S. Private Vaults is  
20 not subject to federal banking laws and would only cooperate with  
21 the government under court order." www.usprivatevaults.com.

22 To further the investigation and prosecution of USPV, the  
23 government obtained both a federal search warrant for its premises,  
24 and a seizure warrant for its equipment, including its nests of  
25 safety deposit boxes. Snitko v. United States, 2022 WL 20016427, at  
26 \*3 (C.D.Cal., 2022). The FBI inventoried the contents of the safety  
27 deposit boxes that were in the nests that it had seized. When there  
28 was evidence of criminality in particular boxes, the FBI sought and

1 obtained search warrants for those individual boxes, too. This  
2 includes those boxes that were later claimed by Mitchell and Michael  
3 Magee, who are associates of defendant and are the focus of  
4 defendant's current suppression motion. (LA 21-MJ-2003-DUTY, and LA  
5 21-MJ-2053-DUTY.) When there was no evidence of criminality in the  
6 seized boxes, the FBI did not seek search warrants for them.

7 A group of boxholders for whom there was no evidence of  
8 criminality, and for whose boxes no individual search warrants had  
9 been sought, began a civil class-action lawsuit against the FBI  
10 seeking to have the inventory records of their boxes destroyed.  
11 Snitko v. United States, 90 F.4th 1250, 1252 (9<sup>th</sup> Cir. 2024)  
12 (describing the Snitko plaintiffs as "non-criminal Plaintiffs").  
13 After losing in the district court, these plaintiffs prevailed in  
14 the Ninth Circuit, which held that the FBI's supplemental  
15 instructions on inventorying the safety deposit boxes made the  
16 inventory exception to the search warrant requirement inapplicable:

17 The district court, which recognized a difference between  
18 the Supplemental Instructions and the FBI's "standardized"  
19 ones, seemed to believe that the inventory search doctrine  
20 was nonetheless applicable because the agents merely  
21 followed the Supplemental Instructions "in addition" to  
22 the FBI's standardized ones. But once the government  
23 begins adding a set of "customized" instructions to a  
24 "standardized" inventory policy—particularly the type of  
25 custom instructions presented by this case—the entire  
26 search stops being conducted pursuant to a "standardized"  
27 policy, regardless of whether the customized instructions  
28 conflict with the standardized ones. Here, the fact that  
the Supplemental Instructions were created specifically  
for the USPV search takes this case out of the realm of a  
standardized "inventory" procedure.

25 Snitko, 90 F.4th at 1262.

26 After finding over \$300,000 in cash in Michael Magee's box  
27 4303, and over \$600,000 in Mitchell Magee's box 504, the government  
28 began investigating them. Nothing in either box linked the Magees

1 to defendant, or in any way suggested defendant's involvement with  
2 those boxes. As described above, the government obtained search  
3 warrants for both boxes. (LA 21-MJ-2003-DUTY, box 504; LA 21-MJ-  
4 2053-DUTY, box 4303.) Subsequently, the government also obtained  
5 search warrants for the residences of both Michael and Mitchell  
6 Magee, among other locations associated with them. (LA 21-MJ-3196-  
7 DUTY, LA 21-MJ-3198-DUTY.) It was only after executing these  
8 residential search warrants that the government found evidence that  
9 defendant was in a conspiracy with the Magee brothers. (Exh. A,  
10 pages 9-10, paragraphs (j) and (k).)

11 Defendant makes multiple irrelevant arguments relying upon the  
12 Ninth Circuit's decision in Snitko, which required the sequestration  
13 or destruction of inventory documents as to class members in that  
14 case which, as noted above, the Ninth Circuit wrote was brought by  
15 "non-criminal Plaintiffs." However, the core issue to be addressed  
16 in defendant's suppression motion is whether defendant has met his  
17 burden of showing he has standing to assert a Fourth Amendment  
18 violation resulting from the government's use of information  
19 obtained from the inventory search of boxes held by the Magees (who  
20 have extensive histories of criminality and against whom multiple  
21 criminal search warrants were obtained).<sup>1</sup>

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22  
23 <sup>1</sup> The Ninth Circuit ruled that Snitko class member records  
24 should be sequestered or destroyed. But the issue defendant is  
25 raising is based upon the Ninth Circuit finding a Fourth Amendment  
26 violation relative to the inventory as a whole, and does not depend  
27 upon whether the Magees are class members or not, or whether records  
28 are sequestered, destroyed, or otherwise maintained. In reversing  
the district court's order in favor of the government in Snitko, the  
Ninth Circuit remanded the case and instructed the district court to  
enter an order requiring the "FBI to sequester or destroy the  
records of its inventory search pertaining to class members . . .  
including copies of the records kept on the Sentinel database."  
Snitko, 90 F.4<sup>th</sup> at 1266 (citations and internal quotation marks

As to the core issue, defendant does not allege that he rented a safety deposit box at USPV, or even that any of his belongings were in someone else's box. (Jackson Decl.; Local Criminal Rule 12-1.1: "A motion to suppress shall be supported by a declaration on behalf of the defendant, setting forth all facts then known upon which it is contended the motion should be granted.") Accordingly, it is unnecessary for the Court to decide whether the government's having obtained search warrants for the safety deposit boxes of the Magees would alter the Ninth Circuit's holding that an inventory search without the benefit of such individualized search warrants was improper: defendant lacks standing to contest the inventory search of the Magees' safety deposit boxes.

**IV. THE AUTHORITIES ON WHICH DEFENDANT RELIES ARE NO LONGER THE LAW, AND DO NOT SUPPORT HIS POSITION IN ANY EVENT**

In order to construct an argument for standing, defendant reaches back to a short line of cases from 1948 that has since been limited to their facts. More to the point, as discussed in the next section below, those cases are diametrically opposed to the Supreme Court's current jurisprudence, which holds that "a defendant can urge the suppression of evidence obtained in violation of the Fourth Amendment only if that defendant demonstrates that *his* Fourth Amendment rights were violated by the challenged search or seizure." United States v. Padilla, 113 S.Ct. 1936, 1938-39, 508 U.S. 77, 81-82 (1993) (emphasis in original). Regardless, even the outdated cases relied upon by defendant are insufficient for defendant to establish standing.

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omitted). The remand is plainly limited to class members (which class is discussed in Snitko at 90 F.4<sup>th</sup> at 1259 and in the district court's certification ruling at Dkt. 78 at page 5), but defendant offers no argument showing that the Magees are class members.

1           **A.     MCDONALD AND ITS PROGENY ARE NO LONGER THE LAW**

2           The key case on which defendant relies is McDonald v. United  
3 States, 69 S.Ct. 191, 335 U.S. 451 (1948), in which a divided  
4 Supreme Court issued two concurrences and a dissent in addition to  
5 the opinion quoted by defendant—which was joined by only two  
6 justices. The concurrence, which garnered the support of three  
7 justices, was concerned chiefly with the danger posed by the police  
8 officer's misconduct. He "forced open the window of the landlady's  
9 bedroom and climbed in [wearing] plain clothes but showed his badge  
10 to the frightened woman, brushed her aside and then unlocked doors  
11 and admitted two other officers." Id., 69 S.Ct. 191, 194, 335 U.S.  
12 451, 457-58. Having broken into the residence, the officers were  
13 able to observe the landlady's tenants running an illegal lottery  
14 game. The concurrence reasonably feared that having police in plain  
15 clothes break into homes could result in a shootout based on the  
16 mistaken belief that the officers were burglars:

17           Many home-owners in this crime-beset city doubtless are  
18 armed. When a woman sees a strange man, in plain clothes,  
19 prying up her bedroom window and climbing in, her natural  
20 impulse would be to shoot. A plea of justifiable homicide  
21 might result awkwardly for enforcement officers. But an  
22 officer seeing a gun being drawn on him might shoot first.  
23 Id., 69 S.Ct. 191, 196, 335 U.S. 451, 460-61.

24           Defendant is correct that the two-justice majority opinion in  
25 McDonald seemed to endorse a kind of derivative or co-conspirator  
26 standing theory, whereby evidence inadmissible to McDonald, who  
27 rented the room the police raided without a warrant, was also  
28 inadmissible as to Washington, who was present during the raid, but  
neither stayed in the room nor rented it:

[W]e assume, without deciding, that Washington, who was a  
guest of McDonald, had no right of privacy that was broken  
when the officers searched McDonald's room without a

1 warrant, we think that the denial of McDonald's motion was  
2 error that was prejudicial to Washington as well. In this  
3 case . . . the unlawfully seized materials were the basis  
4 of evidence used against the codefendant. If the property  
5 had been returned to McDonald, it would not have been  
6 available for use at the trial. We can only speculate as  
7 to whether other evidence which might have been used  
8 against Washington would have been equally probative.

9 Id., 69 S.Ct. 191, 193-94, 335 U.S. 451, 456 (citations omitted).

10 While the Supreme Court has not expressly overruled McDonald,  
11 it has limited McDonald to its facts. In Alderman v. United States,  
12 394 U.S. 165, 89 S.Ct. 961, 22 L.Ed.2d 176 (1969), for example, the  
13 Court clarified that coconspirators and codefendants are entitled to  
14 "no special standing," id. at 172, 89 S.Ct. 961, and stated that  
15 McDonald is "not authority to the contrary," id. at 173 n. 7, 89  
16 S.Ct. 961. Appellate courts called McDonald into question even  
17 before the Supreme Court did so in Alderman: e.g., United States v.  
18 Graham, 391 F.2d 439, 445 (6<sup>th</sup> Cir. 1968) ("the Supreme Court may  
19 itself have had later doubts as to the scope of McDonald");  
20 Rosencranz v. United States, 334 F.2d 738, 741 (1<sup>st</sup> Cir. 1964)  
21 (Aldrich, J., concurring) ("The Supreme Court may itself have had  
22 later doubts as to the scope of McDonald, as evidenced by the fact  
23 that although the briefs show it was cited by the parties both in  
24 Jones v. United States, and in Wong Sun v. United States, the court  
25 made no mention of it") (citations omitted).

26 Even cases cited by defendant show that McDonald is limited to  
27 its facts. Defendant relies on Wong Sun v. United States, 83 S.Ct.  
28 407, 419, 371 U.S. 471, 491-92 (1963), arguing that it stands for  
the proposition that the illegally obtained statements of Wong Sun's  
co-conspirators could not be used against Wong Sun even though  
obtaining them did not infringe on Wong Sun's rights. (Dkt. 33,  
Pacer page 15.) But defendant has misread that case. Wong Sun's

1 co-conspirators did not testify against him, so their statements  
 2 could be introduced only if they were not hearsay. But the Court  
 3 explained that no co-conspirator exception to the hearsay rule  
 4 applied:

5 [A]n out-of-court declaration made after arrest may not be  
 6 used at trial against one of the declarant's partners in  
 7 crime. While such a statement is admissible against the  
 8 others where it is in furtherance of the criminal  
 9 undertaking all such responsibility is at an end when the  
 10 conspiracy ends.

11 Id., 83 S.Ct. at 418-19, 371 U.S. at 490 (citations and quotations  
 12 omitted). Indeed, Wong Sun held that only someone whose own rights  
 13 were violated could seek suppression of the resulting evidence:

14 Our holding . . . that this ounce of heroin was  
 15 inadmissible against Toy does not compel a like result  
 16 with respect to Wong Sun. The exclusion of the narcotics  
 17 as to Toy was required solely by their tainted  
 18 relationship to information unlawfully obtained from Toy,  
 19 and not by any official impropriety connected with their  
 20 surrender by Yee. The seizure of this heroin invaded no  
 21 right of privacy of person or premises which would entitle  
 22 Wong Sun to object to its use at his trial.

23 Id., 83 S.Ct. at 419, 371 U.S. at 491-92. Cf. United States v.  
 24 Bozza, 365 F.2d 206, 223 (2<sup>nd</sup> Cir. 1966) (Friendly, J.) (holding that  
 25 Wong Sun is inconsistent with McDonald: "Wong Sun . . . uph[eld]  
 26 the admission against Wong of the narcotics seized from Yee as a  
 27 result of the illegal arrest of Toy, [which] despite the parties'  
 28 citation of McDonald, is likewise inconsistent with a rule that if  
 evidence is subject to suppression at the instance of one defendant,  
 it must be open to challenge by all").

#### 29 **B. EVEN UNDER MCDONALD, DEFENDANT LACKS STANDING**

30 Even if McDonald had not been called into question by the  
 31 Supreme Court in Alderman and Wong Sun, to say nothing of the modern  
 32 Supreme Court cases discussed in the next section, it would not aid  
 33 defendant in his suppression motion. McDonald concerned two

1 defendants tried jointly, at least one of whose Fourth Amendment  
2 rights had been violated. The Court explained that if the motion to  
3 suppress had been granted as to McDonald, the evidence seized from  
4 his residence would have been returned to him, and therefore not  
5 have been available to the government to introduce at trial against  
6 his co-conspirator, Washington: "the unlawfully seized materials  
7 were the basis of evidence used against the codefendant  
8 [Washington]. If the property had been returned to McDonald, it  
9 would not have been available for use at the trial." 69 S.Ct. at  
10 193-94, 335 U.S. at 456.

11 But that is nothing like the case here. First, there is no  
12 joint trial at all; the Magees have not even been charged, only  
13 defendant. Second, the government never intended to use the seized  
14 evidence from the inventory search of the Magee's safety deposit  
15 boxes (i.e., about \$900,000 in cash) against defendant. Indeed, as  
16 far as the record shows, defendant was not even aware of the safety  
17 deposit boxes.

18 Courts have made clear that McDonald only applies in the  
19 context of joint trials. Graham, 391 F.2d 439, 446 ("a joint trial  
20 involving several defendants [is] the situation to which McDonald  
21 and its progeny is limited"); Gillespie v. United States, 368 F.2d  
22 1, 6 (8<sup>th</sup> Cir. 1966) (the "holding of [McDonald and its progeny] does  
23 not appear to have gone farther than to a situation of joint  
24 trial.") Indeed, for defendant to have standing to contest the  
25 inventory search of the Magees' safety deposit boxes would require  
26 an extension of McDonald to cover any situation in which a co-  
27 conspirator had standing. In fact, the Ninth Circuit created such a  
28 derivative standing rule for co-conspirators for a time, but that

1 line of cases was expressly reversed by the Supreme Court. In  
 2 United States v. Padilla, a unanimous Supreme Court summarily  
 3 rejected the Ninth Circuit's "coconspirator exception" to requiring  
 4 defendants to show standing personally before hearing a motion to  
 5 suppress:

6 The Ninth Circuit appears to stand alone in embracing the  
 7 "coconspirator exception." We granted certiorari to  
 8 resolve the conflict, and now reverse. It has long been  
 9 the rule that a defendant can urge the suppression of  
 10 evidence obtained in violation of the Fourth Amendment  
 11 only if that defendant demonstrates that *his* Fourth  
 Amendment rights were violated by the challenged search or  
 seizure. Alderman v. United States, 394 U.S. 165, 171-172,  
 89 S.Ct. 961, 965-966, 22 L.Ed.2d 176 (1969); Rakas v.  
Illinois, 439 U.S. at 131, n. 1, 133-134, 99 S.Ct. at 425-  
 426, n. 1, 425-426.

12 United States v. Padilla, 113 S.Ct. 1936, 1938-39, 508 U.S. 77, 81-  
 13 82 (1993) (emphasis in original) (some citations omitted). The  
 14 Court explained that it had "applied this principle to the case of  
 15 coconspirators in Alderman":

16 The established principle is that suppression of the  
 17 product of a Fourth Amendment violation can be  
 18 successfully urged only by those whose rights were  
 19 violated by the search itself, not by those who are  
 aggrieved solely by the introduction of damaging evidence.  
 Co-conspirators and codefendants have been accorded no  
 special standing.

20 Id. (quoting Alderman.)

21 **V. DEFENDANT HAS FAILED TO CARRY HIS BURDEN TO ESTABLISH STANDING**

22 "The proponent of a motion to suppress has the burden of  
 23 establishing that his own Fourth Amendment rights were violated by  
 24 the challenged search or seizure." Rakas v. Illinois, 439 U.S. 128,  
 25 131 n. 1, (1978). See also, Rawlings v. Kentucky, 100 S.Ct. 2556,  
 26 2561, 448 U.S. 98, 104 (1980) ("Petitioner, of course, bears the  
 27 burden of proving not only that the search . . . was illegal, but  
 28

1 also that he had a legitimate expectation of privacy in" the  
2 location or object searched.) As the Ninth Circuit has explained:

3 In order to contest the legality of a search or seizure,  
4 the defendant must establish that he or she had a  
5 legitimate expectation of privacy in the place searched or  
6 in the property seized. The defendant must have exhibited  
7 an actual, subjective expectation of privacy and, more  
8 importantly, the expectation must be one that society is  
prepared to accept as reasonable and therefore,  
legitimate. The defendant has the burden of establishing  
that, under the totality of the circumstances, the search  
or seizure violated his legitimate expectation of privacy  
in a particular place.

9 United States v. Kovac, 795 F.2d 1509, 1510 (9th Cir. 1986).

10 For over half a century, the Supreme Court has only  
11 permitted defendants whose own Fourth Amendment rights were  
12 violated to seek suppression. Perhaps the published case that  
13 comes closest to the instant one is Padilla. In that case, a  
14 courier driving a Cadillac was stopped by the police and  
15 consented to a search of the vehicle, revealing over 500lbs of  
16 cocaine. The courier agreed to continue transporting the  
17 cocaine under the supervision of the police, enabling them to  
18 later arrest three members of the Padilla family who were  
19 supposed to receive the cocaine, as well as a U.S. Customs  
20 agent and his wife, who actually owned the Cadillac. United  
21 States. v. Padilla, 113 S.Ct. 1936, 1937, 508 U.S. 77, 79  
22 (1993). Xavier Padilla ("Padilla") moved to suppress the  
23 cocaine discovered during the police stop of the Cadillac even  
24 though he neither owned nor drove the vehicle. Under the Ninth  
25 Circuit's unique "co-conspirator exception" to the standing  
26 requirement, he initially prevailed because then a  
27 "coconspirator's participation in an operation or arrangement  
28 that indicates joint control and supervision of the place

1 searched establishes standing." Id., 113 S.Ct. at 1938, 508  
2 U.S. at 80. But the Supreme Court unanimously rejected the  
3 "co-conspirator exception," which defendant implicitly asks  
4 this Court to reinstate, as inconsistent with Supreme Court  
5 precedent dating back to Alderman: "It has long been the rule  
6 that a defendant can urge the suppression of evidence obtained  
7 in violation of the Fourth Amendment only if that defendant  
8 demonstrates that *his* Fourth Amendment rights were violated by  
9 the challenged search or seizure." Id., 113 S.Ct. at 1939, 508  
10 U.S. at 81 (emphasis in original).

11 Indeed, even if defendant had access to the Magees' safety  
12 deposit boxes—and he did not—that would still be insufficient  
13 to permit him to challenge the inventory search of their boxes.  
14 See, United States v. Sarkisian, 197 F.3d 966, 986-87 (9<sup>th</sup> Cir.  
15 1999):

16 We hold that Ivanchikov and Mikayelyan lack Fourth  
17 Amendment standing to challenge the search of the storage  
18 room. It is true that Ivanchikov and Mikayelyan were  
19 listed on the rental agreement as people who possessed the  
20 right to access the storage room, and that the storage  
21 room was locked. Still, we believe that this connection  
alone is insufficient to establish a reasonable  
expectation of privacy in the room. Underlying our  
analysis is the recognition that the defendants'  
expectation of privacy in a commercial storage area is  
lower than that in a residential area.

22 See also Rawlings v. Kentucky, 100 S.Ct. 2556, 2561-62, 448 U.S. 98,  
23 105-06 (1980) (rejecting petitioner's suppression motion because he  
24 failed to demonstrate that "he had a legitimate expectation of  
25 privacy in [Cox's] purse", into which he had placed his drugs, where  
26 he did not contend that he had "any right to exclude other persons  
27 from access to Cox's purse").  
28

**VI. ANY TAINT FROM THE INVENTORY OF THE MAGEES' SAFETY DEPOSIT BOXES IS ATTENUATED**

Assuming for the sake of argument that defendant had carried his burden of establishing standing, no suppression of any evidence would be appropriate in this case. In Utah v. Strieff, 579 U.S. 232, 237–38 (2016) the Court explained the attenuation doctrine: “Evidence is admissible when the connection between unconstitutional police conduct and the evidence is remote or has been interrupted by some intervening circumstance, so that ‘the interest protected by the constitutional guarantee that has been violated would not be served by suppression of the evidence obtained.’” Three factors guide the attenuation analysis: (1) “the ‘temporal proximity’ between the unconstitutional conduct and the discovery of [the] evidence”; (2) “the presence of intervening circumstances”; and (3) “the purpose and flagrancy of the official misconduct.” Id. at 239. Here all three factors militate against any suppression. First, there was an extraordinarily long time between the inventory of the Magees’ safety deposit boxes in March of 2021 and the search of defendant’s residence in July of 2023. Second, there were many intervening circumstances, including a fraud investigation that lasted more than two years and involved search warrants on the safety deposit boxes and residences of the Magees, as well as record checks and a grand jury investigation that revealed that the Magees were engaged in unemployment fraud and that defendant separately engaged in a Paycheck Protection Program fraud. And third, the government misconduct was not flagrant: agents obtained search and seizure warrants for the equipment at USPV, disclosing that they would follow their written inventory policies for the safety deposit boxes that they would necessarily take into their possession. The

1 Ninth Circuit held that their error was in having supplemental  
2 instructions designed to address the many boxes and other usual  
3 circumstances of the vault, which meant that it was no longer a  
4 standardized procedure that came within the inventory search  
5 exception to the search warrant requirement.

6 **VII. THE AFFIDAVIT FOR THE SEARCH WARRANT DEMONSTRATED PROBABLE**  
7 **CAUSE EVEN EXCLUDING THE PURPORTEDLY TAINTED EVIDENCE**

8 Assuming also for the sake of argument that defendant had  
9 standing to challenge the inventory search of the safety deposit  
10 boxes of the Magee brothers, and the Court found that its  
11 impropriety was not attenuated, it would not help him:

12 The mere inclusion of tainted evidence in an affidavit  
13 does not, by itself, taint the warrant or the evidence  
14 seized pursuant to the warrant. A reviewing court should  
15 excise the tainted evidence and determine whether the  
16 remaining, untainted evidence would provide a neutral  
17 magistrate with probable cause to issue a warrant.

18 United States v. Vasey, 834 F.2d 782, 788 (9<sup>th</sup> Cir. 1987) (citations  
19 omitted).

20 Here, excising the purportedly tainted evidence from the search  
21 warrant affidavit nonetheless leaves ample evidence to support the  
22 issuance of a search warrant. Indeed, the only evidence that should  
23 be excised in this scenario is the background assertion that a stash  
24 of cash was found in the safety deposit boxes of the Magees. (Exh  
25 A, search warrant ¶ 6.)<sup>2</sup> But even if the Court excised not only the  
26 evidence relating to the challenged inventory search, but *all*  
27 evidence relating to the Magees and the searches of their  
28

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29 <sup>2</sup> Defendant's Exhibit A is actually not the search warrant  
30 affidavit, although it is largely identical to it. Rather  
31 defendant's Exhibit A is the affidavit in support of a tracker  
32 warrant for defendant's phone. The actual search warrant affidavit  
33 for defendant's residence is attached to this pleading.

1 residences, there would still be much more than probable cause to  
2 issue the search warrant for defendant's residence. Just  
3 information derived from victims and records accessible to law  
4 enforcement show that defendant was engaged in a Paycheck Protection  
5 Program conspiracy with his family members. For example, the search  
6 warrant affidavit reveals that defendant sought a PPP loan in his  
7 true name for a fictitious business when he was actually in prison  
8 using as his address the residence for which the search warrant was  
9 obtained. (Exh. A, search warrant affidavit ¶¶ 11-12.) Similarly,  
10 it shows that defendant and his uncle filed PPP applications using  
11 the exact same reported gross income and requested loan amounts, a  
12 hallmark of cut-and-paste fraudulent applications. (Id. at ¶¶ 16,  
13 17.) Other indications of defendant's PPP fraud include that his  
14 fictitious income from his fictitious business was not reported to  
15 his probation officer, who he also lied to about where he lived,  
16 presumably so that she would not take advantage of defendant's  
17 search condition at the address for which the search warrant was  
18 obtained and where defendant really lived. (Id. ¶ 18.) Moreover,  
19 defendant emailed his conspirators from prison about having arranged  
20 to have their PPP loans forgiven. (Id. ¶¶ 9-10.)

21 **A. SUPPRESSION IS ALSO NOT AVAILABLE BECAUSE OF DEFENDANT'S**  
22 **SEARCH CONDITION**

23 Assuming for the sake of argument that (1) defendant had  
24 standing to challenge the inventory search and (2) that the excised  
25 affidavit lacked probable cause to justify the issuance of the  
26 search warrant, suppression would still not be available: defendant  
27 was on supervised release at the time of the search of his residence  
28 and subject to a search based on "reasonable suspicion concerning a  
violation of a condition of supervision or unlawful conduct by the

1 offender." (2:11-CR-535-DSF, dkt. 119, Pacer page 2.) For the  
2 reasons described above, there was far more than reasonable  
3 suspicion to believe that defendant had violated a condition of  
4 supervision just based on his false statements to his probation  
5 officer.

6 **CONCLUSION**

7 The Court should deny defendant's suppression motion because he  
8 has failed to carry his "burden of establishing that his own Fourth  
9 Amendment rights were violated by the challenged search or seizure."  
10 Rakas v. Illinois, 439 U.S. 128, 131 n. 1, (1978).