No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Marino Scafidi,

Petitioner,

v.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT, ET AL.,

Respondent.

PETITIONER'S APPLICATION TO EXCEED 9,000 WORD LIMIT TO FILE PETITION FOR WRIT OF CERTIORARI

Dr. Marino Scafidi D.C.
Pro Se Litigant
58 E La Vieve Lane
Tempe, Arizona 85284
Phone Number: (480) 789 - 3960
marinoscafidi@gmail.com

To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit:

Pursuant to Rule 33.1(d) Petitioner Dr. Marino Scafidi D.C. respectfully requests that the word limit to file a Petition for Writ of Certiorari in this Court be extended from 9,000 words to 13,000 words.

The U.S. Circuit Court of Appeals for the Ninth Circuit denied my petition for rehearing and for rehearing en banc on May 31, 2024 following its decision of April 25, 2024, which affirmed the district court's decision granting summary judgment to the movants, thus dismissing my civil rights law suit brought under 42 U.S.C. §1983. This petition for certiorari was initially due on or before August 28, 2024. After obtaining an extension of time pursuant to Supreme Court Rule 13.5 from the Honorable Justice Kagan on July 11, 2024, the time for filing a petition for a writ of certiorari was extended through the date of Monday, October 28, 2024. Application No. 24A32.

This application to exceed the 9,000-word limit for a Petition for Writ of Certiorari is being filed more than fifteen days before that date. *See* Supreme Court Rule 31.1(d). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Certiorari is warranted because Ninth Circuit's Decision patently departed from several decisions of this Court concerning the application of summary judgment standards and other mandatory precedents related to: collateral estoppel, the federal rules of civil procedure and evidence, and the Fourth and Fourteenth Amendments. The Ninth Circuit's refusal to follow several controlling authorities of this Court does, in and of itself, warrant review and an exercise of this Court's supervisory power, but this Court's intervention is required because the Ninth Circuit's decision conflicts with final state court judgments on important matters of federal and state constitutional law whereby the Nevada state courts concluded the LVMPD violated Scafidi's Fourth and Fourteenth Amendment constitutional rights

in the underlying criminal proceedings; yet the Ninth Circuit Panel blatantly ignored findings of fact and law from these state court orders, which constituted the law of the case and implicated the doctrine of collateral estoppel. This petition will also raise further significant constitutional questions of national importance on which the Ninth Circuit's Decision II conflicts with: (1) prior findings and conclusions of fact and law from the Ninth Circuit's Decision I, whereby the first Panel correctly reversed the district court's first clearly erroneous summary judgment order concluding that "Scafidi's allegations of 'fabricated evidence, or other wrongful conduct undertaken in bad faith' create a triable issue of material fact as to probable cause;" thus creating an intra-circuit split; (2) several mandatory authorities of the Ninth Circuit and persuasive authorities established by other circuit courts of appeal; and (3) findings from the federal district court's second summary judgment orders.

Further, this Court has never addressed some of the significant Fourth and Fourteenth Amendment issues presented in this case that should be, but have not been, settled by this Court: (1) whether a finding of probable cause without exigent circumstances justifying a warrantless seizure of a person in the home also permits a subsequent immediate warrantless search and seizure of property within the home; (2) whether a finding of probable cause justifying a warrantless seizure of a person is a different question from probable cause at the moment at which a prosecution is initiated by the respondents; when considering the petitioner specifically alleged the malicious prosecution was initiated by the respondents based on the fabricated inculpatory evidence contained within their search/ seizure warrant affidavit; (3) whether the petitioner's sworn assertions that law enforcement violated the Fourth Amendment by engaging in a presumptively unreasonable warrantless search and seizure in his room absent probable cause plus exigent circumstances establishes prima facie evidence to defeat the respondents summary judgment motion; (4) whether a probable cause finding justifying an initial warrantless arrest dissipates when law enforcement discovers

and/ or deliberately suppresses exculpatory evidence that would cause an objectively reasonable officer to believe that a suspect is innocent; and must the suspect be immediately released from custody (if seized) when probable cause dissipates; (5) whether the court can retroactively apply inadmissible irrelevant and hearsay evidence that was unknown to the respondent movants at the moment that they fabricated evidence within their search/ seizure warrant affidavit, while it patently ignores petitioner's contradictory evidence including, but not limited to Nevada state court findings that support the petitioner's direct and circumstantial fabrication of evidence claim based on the respondents' mischaracterizing witness statements and suppressing exculpatory evidence.

Specific questions of national importance that this petition will address are:

I. Whether the Ninth Circuit's decision, blatantly ignoring the nonmovant's (plaintiff's) theories of prosecution and factual evidence set forth in his affidavits and answers to interrogatories, violated the Supreme Court precedent regarding "the axiom that in ruling on a motion for summary judgment, '[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor.'" *Tolan v. Cotton, supra, 134 S. Ct. at 1863, quoting Anderson v. Liberty Lobby, Inc., supra, 477 U.S. at 255* ... the court may not ignore the plaintiffs' evidence, which includes the affidavits and answers to interrogatories ... *Tolan*, 572 U.S. at 657 ("By failing to credit evidence that contradicted some of its key factual conclusions, the court improperly 'weigh[ed] the evidence' and resolved disputed issues in favor of the moving party").

II. Whether the Ninth Circuit's decision conflicts with Supreme Court precedent regarding the "general rule that a 'judge's function' at summary judgment is not 'to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.' *Anderson*, 477 U.S., at 249 .... summary judgment is appropriate only if 'the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.' [FRCP] 56(a). ... a court must view the evidence 'in the light most favorable to the opposing party.' *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157, 90 S. Ct. 1598 ... (1970); see also *Anderson, supra*, at 255...." *Tolan v. Cotton, supra*, 134 S. Ct. at 1866.

III. Whether the Ninth Circuit's decision in this case clearly violates Supreme Court precedent regarding "the fundamental principle that at the summary judgment stage, reasonable inferences should be drawn in favor of the nonmoving party." *Tolan v. Cotton, supra*, 134 S. Ct. at 1868.

IV. Whether this Court must exercise its supervisory power when the latter Ninth Circuit's Decision creates intra-circuit conflict because it deliberately or recklessly ignored the Ninth Circuit Panel I's former judgment correctly reversing the district court's clearly erroneous grant of summary judgment to the respondents when it concluded that "Scafidi's allegations of 'fabricated evidence, or other wrongful conduct undertaken in bad faith' create a triable issue of material fact as to probable cause. If credited, Scafidi's affidavit establishes several acts of affirmative misconduct that could cause a reasonable juror to conclude that the police defendants acted in bad faith." *Scafidi v. Las Vegas Metro. Police Dep't*, 966 F.3d 960 (9th Cir. 2020).

V. Whether this Court must exercise its supervisory powers when the Ninth Circuit's Decision creates inter-circuit conflict when it clearly misapprehends basic summary judgments standards; the Sixth Circuit reversed the District Court's summary judgment decision in a § 1983 civil rights case brought by a former school counselor against a police officer for false arrest, arising from an accusation of sexual assault (a case on point with *Scafidi)*, because an improper finding of probable cause to arrest supported the district court's decision. *Wesley v. Campbell*, 779 F.3d 421. (6th Cir. 2015).

VI. Whether the Ninth Circuit's decision in this case, which retroactively applied inadmissible irrelevant and hearsay evidence that was unknown to law enforcement at the time of the presumptively unreasonable warrantless search/ seizure, violated Supreme Court precedent that when the constitutional validity of a warrantless arrest is challenged, it is the function of a court to determine whether at the moment the arrest was made, the officers had probable cause to make it -- whether at that moment the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the petitioner had committed or was committing an offense. *Brinegar v. United States*, 338 U.S. 160, 175-176.

VII. Whether the court can retroactively apply inadmissible irrelevant and hearsay evidence that was unknown to the movants at the moment they fabricated evidence within their search/ seizure warrant affidavit, while it

patently ignores the nonmovants contradictory evidence and Nevada state court findings of law and fact that support the nonmovants direct and circumstantial fabrications of evidence claims based on the movants mischaracterizing witness's statements and suppressing exculpatory evidence.

VIII. Whether the Ninth Circuit's decision in this case, which only made a finding of probable cause to support a warrantless arrest, conflicts with Supreme Court precedent that "it is a 'basic principle of Fourth Amendment law' that searches and seizures inside a home without a warrant are presumptively unreasonable." *Payton*, 445 U.S. at 586. "The Fourth Amendment has drawn a firm line at the entrance to the house ... absent exigent circumstances that threshold may not reasonably be crossed without a warrant." *Id,* at 590.

IX. Whether this Court must exercise its supervisory power when the Ninth Circuit's Decision creates inter-circuit and intra-circuit conflict when it ignores mandatory and persuasive authorities that establish when a nonmovant asserts via affidavits and answers to interrogatories that law enforcement violated the Fourth Amendment by engaging in a presumptively unreasonable warrantless search and seizure in his hotel room absent probable cause and exigent circumstances; he establishes prima facie evidence to support his Fourth Amendment warrantless search and seizure claims and defeats a movants summary judgment motion ... *See Gilker v. Baker,* 576 F.2d 245, 246 (9th Cir. 1978) ("Once a warrantless arrest is established, the burden of going forward with the evidence passes to the defendant."). *See also, Martin v. Duffie,* 463 F.2d 464, 467 (10th Cir. 1972) (plaintiff who has been arrested without a warrant "need only present a prima facie case of illegal arrest in order to sustain his burden"); *Patzig v. O'Neil,* 577 F.2d 841, 849 n. 9 (3d Cir. 1978); *Dellums v. Powell,* 566 F.2d 167, 175-76 (D.C. Cir. 1977) ... because the Supreme Court has held that 'Searches and seizures inside a home without a warrant are presumptively unreasonable,' *Brigham City v. Stuart*, 547 U.S. 398, 403, 126 S. Ct. 1943, 164 L. Ed. 2d 650 (2006).

X. Whether a probable cause determination justifying a warrantless arrest in the home extinguishes a subsequent probable cause claim disputing the legality of an immediate warrantless search/ seizure of property within the home incident to the warrantless arrest.

XI. Whether a former probable cause determination justifying a warrantless seizure in petitioner's hotel room is a different question from probable

cause at the time of a subsequent search/ seizure warrant affidavit; when considering the facts contained within the four corners of the latter warrant affidavit differ from facts known at the time of the former warrantless search/ seizure. Alternatively, whether the Ninth Circuit's decision ignoring the petitioner's successful state court challenge of the veracity of sworn statements used by police to procure a search warrant plainly violated the Supreme Court's holding in *Franks* v. Delaware, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978), that a criminal defendant may "... challenge the truthfulness of statements made by law enforcement agents in a search warrant affidavit" should the defendant make "'a substantial preliminary showing' that: 1) the warrant affidavit contains a false statement made 'knowingly and intentionally, or with reckless disregard for the truth' and 2) that 'the allegedly false statement was necessary to the finding of probable cause.'" quoting *Franks*, 438 U.S. at 155-56.

XII. Whether a former probable cause determination justifying a warrantless seizure in petitioner's hotel room is a different question from probable cause during the continued wrongful arrest/ imprisonment; when considering new exculpatory information that became known after the initial warrantless search/ seizure. In other words, does probable cause dissipate when law enforcement discovers and/ or deliberately suppresses exculpatory and material evidence that would cause an objectively reasonably officer to believe that a suspect is innocent; and must the suspect be immediately released from custody if probable cause dissipates?

XIII. Whether the Ninth Circuit's decision ignoring Nevada state court judgments that concluded the LVMPD violated the Fourth Amendment (illegal search/seizure warrant ruling because probable cause was never established due to fraudulent misrepresentations within the warrant affidavit) and Fourteenth Amendment (failure to preserve foreseeably exculpatory evidence), patently violated the Supreme Court's holding in *Allen v. McCurry*, 449 U.S. 90, 96, 101 S. Ct. 411, 66 L. Ed. 2d 308 (1980); 28 U.S.C. § 1738; that "[F]ederal courts must 'give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered" ... collateral estoppel under 28 U.S.C. § 1738 based on state-court criminal proceedings applies to subsequent civil litigation under 42 U.S.C. § 1983. *Id* at 101, 104-05. Alternatively, whether the Ninth Circuit's decision was insufficiently deferential to the Nevada state courts decisions concluding the movants had violated the Fourth and Fourteenth Amendments when

the Ninth Circuit failed to show that the state court rulings, as decided by the Supreme Court in *Richter*, were "so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fair-minded disagreement."

XIV. Whether a former probable cause determination justifying a warrantless seizure in petitioner's hotel room is a different question from probable cause at the moment at which a subsequent prosecution was initiated by the respondents; when considering the petitioner specifically alleged the malicious prosecution was initiated by the movants based on fabricated evidence contained within their search/ seizure warrant affidavit.

I will be unable to submit the petition for writ of certiorari within the 9,000-word limit provided by Rule 33.1(g)(i) because legal counsel that assisted me in the Ninth Circuit proceedings is not admitted to practice before the Supreme Court. I have diligently tried to secure counsel admitted to the U.S. Supreme Court Bar since the end of April, but I have not been able to retain representation that can help me thus far. I contacted approximately fifty private law firms and approximately fifteen law schools with Appellate/ Supreme Court Clinics for legal assistance; thus far no one can help me. Therefore, I will likely be compelled to proceed pro se, and given the complexity of the several important constitutional issues discussed above, the rife material facts, the extensive procedural history and judgments from the underlying state court criminal proceedings (that went up to the Nevada Supreme Court) and the federal court civil proceedings (that went up to the Ninth Circuit twice); the requested word limit extension from 9,000 words to 13,000 words is reasonably necessary to present the petition. My completed first draft is approximately 12,500 words (not including the questions presented, the list of parties, the table of

contents, the table of cited authorities, the listing of counsel at the end of the document, or any appendix).

Attorney Craig Anderson, whom is the respondent LVMPD and the individual police officers' counsel in this case, advised me by email that he does not object to the requested word limit extension. Attorney Brent Vogel, whom is respondent Dermanelian's counsel in this case, did not respond to my email inquiring if he objected to the requested word limit extension.

WHEREFORE, Petitioner Marino Scafidi respectfully prays that this Court grant his application for a word limit exceeding 9,000 words to file his petition for writ of certiorari.

Dated: September 11, 2024

Respectfully submitted,

/s/ Marino Scafidi
Dr. Marino Scafidi D.C.
Pro Se Litigant
58 E La Vieve Lane
Tempe, Arizona 85284
Phone Number: (480) 789 - 3960
marinoscafidi@gmail.com

CERTIFICATE OF SERVICE

I, Marino Scafidi, certify that I have this day served the foregoing Application to Exceed the 9,000 Word Limit to file a Petition for Writ of Certiorari by priority mail, addressed to the Clerk of the Supreme Court of the United States, 1 First Street, NE Washington, DC 20543.

A copy of the foregoing has been served via priority mail to:

Craig R. Anderson
10001 Park Run Drive
Las Vegas, NV 89145-8857
Respondent

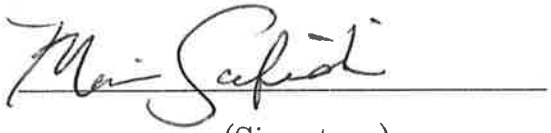
Brent Vogel
6385 South Rainbow Boulevard
Suite 600
Las Vegas, NV 89118
Respondent

This the 11th day of September, 2024.

/s/ Marino Scafidi
Dr. Marino Scafidi D.C.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 11, 2024



(Signature)