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Owning Property Without Privacy: How *Lavan v. City of Los Angeles* Offers Increased Fourth Amendment Protection To Skid Row's Homeless

Benjamin G. Kassis
J.D. 2014, Loyola Law School, Los Angeles

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Owning Property Without Privacy: How Lavan v. City of Los Angeles Offers Increased Fourth Amendment Protection To Skid Row's Homeless

Cover Page Footnote

J.D. Candidate, May 2014, Loyola Law School, Los Angeles; B.A. Communication Studies, Loyola Marymount University, May, 2010.

OWNING PROPERTY WITHOUT PRIVACY: HOW *LAVAN v. CITY OF LOS ANGELES* OFFERS INCREASED FOURTH AMENDMENT PROTECTION TO SKID ROW'S HOMELESS

*Benjamin G. Kassis**

I. INTRODUCTION

In the spring of 2011, Tony Lavan and seven other Los Angeles Skid Row residents became fed up.¹ It had been only a few weeks since their personal belongings were seized and destroyed by Los Angeles city officials, and sensing that their constitutional rights had been infringed, they sought legal counsel. Thereafter Lavan and his seven coplaintiffs (“Plaintiffs”) filed a purported class action against the city of Los Angeles (the “City”), alleging that City officials had violated their individual rights by disregarding the Fourth Amendment to the U.S. Constitution, among other constitutional provisions.²

By the time the case reached the Ninth Circuit, a significant constitutional question had surfaced: Does the Fourth Amendment protect an indigent individual’s unattended personal belongings from unreasonable seizure?³ The court, in a 2–1 decision, answered in the

* J.D. Candidate, May 2014, Loyola Law School, Los Angeles; B.A. Communication Studies, Loyola Marymount University, May, 2010.

1. Skid Row is located in downtown Los Angeles, California, and contains the largest concentration of homeless persons in the city. L.A. HOMELESS SERVS. AUTH., 2011 GREATER LOS ANGELES HOMELESS COUNT REPORT 37 (2011), available at <http://www.lahsa.org/docs/2011-Homeless-Count/HC11-Detailed-Geography-Report-FINAL.PDF>; see also L.A. HOMELESS SERVS. AUTH., 2009 GREATER LOS ANGELES HOMELESS COUNT REPORT 1 (2009), available at http://www.lahsa.org/docs/HC09/SKID_ROW_Jan13_10.pdf (detailing Skid Row homeless population statistics).

2. U.S. CONST. amend. IV (“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.”); *Lavan v. City of Los Angeles*, 797 F. Supp. 2d 1005, 1009 (C.D. Cal. 2011), *aff’d*, 693 F.3d 1022 (9th Cir. 2012).

3. See *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1027 (9th Cir. 2012).

affirmative.⁴

The conclusion reached by the majority of the court is of particular importance to members of homeless communities located in the Ninth Circuit. Because such individuals have no homes in which to store their personal property, questions of ownership, privacy, and property rights are difficult to settle. Perhaps more so than anything, belongings located within the sturdy confines of the home suggest ownership and privacy expectations, while those left on the sidewalk are surely open to ambiguity and dispute. Accordingly, homeless individuals' personal property, often left on sidewalks and in other public areas, will likely come into direct conflict with a city's efforts to remove seemingly unowned property and to maintain clean and unsoiled streets.⁵ The court confronted this conflict in *Lavan v. City of Los Angeles*.⁶

Part II of this Comment discusses the factual background of the case, while Part III sets forth the court's reasoning in concluding that the Fourth Amendment extends to Plaintiffs' belongings. Part IV examines that reasoning in the context of past and current Fourth Amendment jurisprudence and includes a discussion of the opinion's legal and practical significance in the Ninth Circuit. Part V concludes that *Lavan's* explicit shift away from a strictly privacy-based approach to the Fourth Amendment offers an extra layer of constitutional protection to homeless individuals' property.

II. STATEMENT OF THE CASE

As is common practice of many individuals living in Skid Row, Plaintiffs had made a habit of storing their personal belongings in a variety of "mobile shelters."⁷ Nonprofit organizations throughout Skid Row provided such shelters to Plaintiffs, usually in the form of

4. *Id.*

5. *See id.* at 1025; *see also, e.g.,* Alexandra Zavis, *Major Cleanup of L.A. Skid Row, Prompted by Health Report, Begins*, L.A. TIMES (June 20, 2012), <http://articles.latimes.com/2012/jun/20/local/la-me-skid-row-cleanup-20120620> (reporting on personal property seizures on Skid Row).

6. 693 F.3d 1022 (9th Cir. 2012). Though the *Lavan* court also examined and resolved Plaintiffs' Fourteenth Amendment claim, its holding as to the Fourth Amendment demonstrates the legal shift at which this Comment is directed. With respect to the Fourteenth Amendment, the Ninth Circuit held that Plaintiffs' personal belongings constitute protectable "property." *Id.* at 1031–33.

7. *Id.* at 1025.

either carts or apparatuses known as EDARs.⁸ Plaintiffs, like many others, kept numerous important possessions in these tiny shelters, including identification documents, family memorabilia, and various medications.⁹

On numerous occasions between February and March 2011, Plaintiffs temporarily left their shelters unattended on the City's public sidewalks to "perform necessary tasks[,] such as showering, eating, using restrooms, or attending court."¹⁰ During these brief periods, City officials, though notified that the property was not abandoned,¹¹ took and subsequently "trashed" Plaintiffs' carts and EDARs.¹² The City never provided Plaintiffs the opportunity to retrieve their personal belongings before destroying them.¹³

In support of its actions, the City argued that the seizure and destruction¹⁴ of Plaintiffs' personal belongings had been authorized by local statute and that Plaintiffs had been given notice of the same. Specifically, the City pointed to Los Angeles Municipal Code section 56.11, which provides that "[n]o person shall leave or permit to remain any merchandise, baggage[,] or any article of personal property upon any parkway or sidewalk."¹⁵ In addition, the City had posted approximately seventy-three signs throughout Skid Row, warning residents that there would be regular street clean-ups between certain hours.¹⁶

8. *Id.* at 1025 n.4 ("EDARs are small, collapsible mobile shelters provided to homeless persons by Everyone Deserves a Roof, a nonprofit organization.").

9. *Id.* at 1025.

10. *Id.*

11. *Id.* ("The city did not have a good-faith belief that [Plaintiffs'] possessions were abandoned when it destroyed them. Indeed, . . . [bystanders] explained to City employees that the property was not abandoned, and implored the City not to destroy it."). Though subtle, this fact was crucial to *Lavan's* holding. It suggests that Plaintiffs' mobile shelters would not have come within the Fourth Amendment's scope had city officials maintained a "good-faith" belief that the shelters were abandoned.

12. *Lavan v. City of Los Angeles*, 797 F. Supp. 2d 1005, 1017 (C.D. Cal. 2011), *aff'd*, 693 F.3d 1022 (9th Cir. 2012).

13. *Lavan*, 693 F.3d at 1026–27.

14. *Id.* at 1025 (observing that the City seized and immediately destroyed Plaintiffs' belongings).

15. L.A., CAL., MUNICIPAL CODE § 56.11 (1963), available at [http://www.amlegal.com/nxt/gateway.dll/California/lamc/municipalcode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:losangeles_ca_mc](http://www.amlegal.com/nxt/gateway.dll/California/lamc/municipalcode?f=templates$fn=default.htm$3.0$vid=amlegal:losangeles_ca_mc).

16. *Lavan*, 693 F.3d at 1033–34 (Callahan, J., dissenting). The signs read as follows:

Please take notice that Los Angeles Municipal Code § 56.11 prohibits leaving any merchandise, baggage or personal property on a public

Seeking preliminary and permanent injunctions against the City's practices, Plaintiffs brought a putative class action against the City in the U.S. District Court for the Central District of California.¹⁷ Among other things, Plaintiffs alleged that the City's practice of seizing and destroying their personal property was unreasonable and thus violated their Fourth Amendment rights.¹⁸

The district court granted Plaintiffs' motion for a preliminary injunction, finding that they had established a likelihood of success on the merits of their constitutional claim. In particular, Plaintiffs had shown that the City's seizure and swift destruction of their mobile shelters was likely unreasonable, thereby violating the Fourth Amendment.¹⁹

The City appealed, arguing that the district court erroneously applied the Fourth Amendment to Plaintiffs' unattended shelters despite the fact that Plaintiffs' lack of any privacy interest in those shelters should have precluded such protection.²⁰ In other words, the City contended that Plaintiffs could not have established a likelihood of success on the merits because their mobile shelters did not come within the scope of the Fourth Amendment's protection.²¹ In a 2–1 decision, the Ninth Circuit disagreed.²²

III. THE REASONING OF THE COURT

On appeal, the City drew upon the Fourth Amendment standard established in *Katz v. United States*²³ and argued that Plaintiffs did not have a reasonable expectation of privacy in their unattended shelters.²⁴ The City argued that, under *Katz*, this absence of privacy

sidewalk. The City of Los Angeles has a regular clean-up of this area scheduled for Monday through Friday between 8:00 and 11:00 am. Any property left at or near this location at the time of this clean-up is subject to disposal by the City of Los Angeles.

Id.

17. *Lavan*, 797 F. Supp. 2d. at 1009.

18. *Id.*

19. *Id.* at 1016.

20. *Lavan*, 693 F.3d at 1027.

21. *Id.* ("The City's only argument on appeal is that its seizure and destruction of [Plaintiffs'] unabandoned property [does not] implicate[] . . . the Fourth . . . Amendment.")

22. *Id.* at 1027–33.

23. 389 U.S. 347 (1967).

24. *Lavan*, 693 F.3d at 1027.

expectations precluded the Fourth Amendment's protection.²⁵

The *Lavan* court began its opinion by introducing the Search and Seizure Clause of the Fourth Amendment and ultimately held that its protections do extend to Plaintiffs' mobile shelters left unattended on the City sidewalks.²⁶ In reaching this conclusion, the court distinguished the Fourth Amendment's protection against unreasonable searches from its protection against unreasonable seizures.²⁷ Citing to *United States v. Jacobsen*,²⁸ the court initially observed that a search is a governmental intrusion "upon an expectation of privacy that society is prepared to consider reasonable," while a seizure is a government action that causes "meaningful interference with an individual's possessory interests in [his] property."²⁹ Once a court determines that a government action constitutes a search or seizure, it then must determine whether the search or seizure was reasonable.³⁰

Based on the distinction set forth in *Jacobsen*, the court determined that a reasonable expectation of privacy is not required to show a Fourth Amendment violation arising out of a seizure, which occurred here.³¹ To further support its reasoning, the court cited the Supreme Court's holdings in *United States v. Jones*³² and *Soldal v. Cook County*.³³ Collectively, these holdings suggest that "a reasonable expectation of privacy is not required for Fourth Amendment protections to apply."³⁴ Essentially, by way of the above

25. *Id.*; see also *id.* at 1035–39 (Callahan, J., dissenting) (“[B]ecause the district court misapprehended the law, its ruling should be vacated” since “[a] district court’s decision is based on an erroneous legal standard if: (1) the court did not employ the appropriate legal standards that govern the issuance of a preliminary injunction; or (2) in applying the appropriate legal standards, the court misapprehends the law with respect to the underlying issues in the litigation.” (quoting *Walczak v. EPL Prolong, Inc.*, 198 F.3d 725, 730 (9th Cir. 1999))).

26. *Id.* at 1030 (majority opinion).

27. *Id.* at 1027.

28. 466 U.S. 109 (1984).

29. *Lavan*, 693 F. 3d at 1027 (citing *Jacobsen*, 466 U.S. at 113).

30. See *Lavan*, 693 F.3d at 1030.

31. *Id.* (“[B]y seizing and destroying [Plaintiffs’] unabandoned [belongings], the City meaningfully interfered with [Plaintiffs’] possessory interests in that property.”).

32. 132 S. Ct. 945, 950 (2012) (holding that “Fourth Amendment rights do not rise or fall with the *Katz* formulation”).

33. 506 U.S. 56, 64 (1992) (noting that the *Katz* emphasis on privacy has not “snuffed out the previously recognized protection for property under the Fourth Amendment”); see also *Lavan*, 693 F.3d at 1027–28 (“Appellees need not show a reasonable expectation of privacy to enjoy the protection of the Fourth Amendment against seizures of their unabandoned property.”).

34. *Lavan*, 693 F.3d at 1028.

three opinions, the court held that Plaintiffs were able to seek protection of their belongings against unreasonable seizure regardless of whether they maintained a “reasonable expectation of privacy” in them.³⁵ Accordingly, nothing more than “some meaningful interference” with an individual’s property is required to trigger the Fourth Amendment’s protection against unreasonable government seizure.³⁶ To this end, Plaintiffs’ shelters, though unattended to and left in public view, constitute protectable property under the Fourth Amendment.

Having established that the district court had applied a proper Fourth Amendment legal standard, the Ninth Circuit concluded its analysis by affirming the district court’s discretionary findings—that (1) the City did interfere with Plaintiffs’ possessory interests in their property by seizing Plaintiffs’ mobile shelters, and (2) the City’s seizure and immediate destruction of the shelters were likely to be found unreasonable.³⁷

IV. ANALYSIS: THE NINTH CIRCUIT’S ADOPTION AND EXPANSION OF EMERGING FOURTH AMENDMENT PRECEDENT

In sum, *Lavan v. City of Los Angeles* held that the Fourth Amendment protects against unreasonable government seizures notwithstanding any objective privacy interest.³⁸ Such a holding appears unremarkable enough. In fact, the court’s ultimate finding in *Lavan* seems to be no more than a logical extension of the Fourth Amendment precedent established in *Jacobsen*, *Jones*, and *Soldal*.³⁹

35. *Id.*

36. *Id.* at 1027, 1030.

37. *Id.* at 1030–31. As to the City’s argument regarding Plaintiffs’ violation of the municipal code, the court reasoned:

[e]ven if we were to assume, as the City maintains, that Appellees violated LAMC § 56.11 . . . the seizure and destruction of [their] property remains subject to the Fourth Amendment’s reasonableness requirement. Violation of a City ordinance does not vitiate the Fourth Amendment’s protection of one’s property. Were it otherwise, the government could seize and destroy any illegally parked car or unlawfully unattended dog without implicating the Fourth Amendment.

Id. at 1029.

38. *Id.* at 1027–28.

39. *United States v. Jones*, 132 S. Ct. 945 (2012); *Soldal v. Cook County*, 506 U.S. 56 (1992); *United States v. Jacobsen*, 466 U.S. 109 (1984); *see also Lavan*, 693 F.3d at 1028.

Lavan, however, represents more than a mere application of facts to judicial precedent. Rather, it solidifies an expansion of Fourth Amendment protection against unreasonable seizures and endorses a significant move away from the *Katz* privacy-based scheme of the last several decades.⁴⁰ In order to fully explore the opinion, this Comment examines pre- and post-*Katz* Fourth Amendment jurisprudence, the *Lavan* court's outright endorsement of a shift away from *Katz*, and the particular impact that the opinion has on homeless communities located within the Ninth Circuit.

A. *The Mid-Twentieth Century Emphasis Shift from Property Rights to Privacy Interests*

Until the latter half of the 1900s, Fourth Amendment jurisprudence protected against trespass to property, not persons.⁴¹ In order for a policeman to conduct an informational search in pre-1900 America, for instance, he would have to do so by physically intruding upon a private setting and placing himself within earshot of an otherwise confidential conversation.⁴² However, the advent of “remote surveillance [and other] communication devices” created a less physically intrusive means by which government officials could glean information from potential wrongdoers, and the property-based approach to the Fourth Amendment became problematic.⁴³ Naturally, these newfound deficiencies inherent in the strictly property-based approach necessitated a more modernized constitutional doctrine, one with an eye toward the person.⁴⁴ In 1967 this tension led the

40. See *Lavan*, 693 F.3d at 1027–31; see also Sherry F. Colb, *What Is a Search? Two Conceptual Flaws in Fourth Amendment Doctrine and Some Hints of a Remedy*, 55 STAN. L. REV. 119, 120 (2002) (observing that *Katz* “[u]sher[ed] in modern Fourth Amendment doctrine”).

41. Will Stancil, *Warrantless Search Cases Are Really All the Same*, 97 MINN. L. REV. 337, 340 (2012).

42. See *id.*

43. *Id.*; see also *Olmstead v. United States*, 277 U.S. 438, 464 (1928) (holding that “the search is to be of material things—the person, the house, his papers, or his effects”). But see *Katz v. United States*, 389 U.S. 347, 353 (1967) (finding that “the underpinnings of *Olmstead* . . . [have] been so eroded by our subsequent decisions that the ‘trespass’ doctrine there enunciated can no longer be regarded as controlling”).

44. Daniel J. Solove, *Fourth Amendment Pragmatism*, 51 B.C. L. REV. 1511, 1517–18 (2010). Solove observes that the Court’s initial approach was to “focus on physical types of intrusions.” *Id.* at 1517. However, “technology changed everything. Developed in the late nineteenth century, telephone communication—and the ability to wiretap telephone conversations—posed new and challenging Fourth Amendment questions.” *Id.* at 1518.

Supreme Court to consider *Katz v. United States*.⁴⁵

Katz shifted the Fourth Amendment's focus from trespass to property to the individual's interest in and expectation of his or her privacy. "[T]he Fourth Amendment protects people, not places," repeated Justice John Marshall Harlan II, not more than a handful of words before establishing what would become the modern bedrock of Fourth Amendment jurisprudence: the *Katz* test.⁴⁶ The test is two-fold, requiring that in order to challenge government action under the Fourth Amendment, a complainant must show "first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable.'"⁴⁷ In *Katz*, the government action at issue was a search rather than a seizure, but the emphasis on privacy that *Katz* established would, for decades, become the polestar of the Search and Seizure Clause in its entirety.⁴⁸ However, two recent Supreme Court opinions created the opportunity for yet another Fourth Amendment shift, both of which became the basis for the holding in *Lavan v. City of Los Angeles*.⁴⁹

B. *The Inevitable Dissolution of Privacy Interests As a Fourth Amendment Precondition*

In 2012 the Supreme Court issued its opinion in *United States v.*

45. 389 U.S. 347 (1967).

46. *Id.* at 361; *see also* Colb, *supra* note 40 (explaining how *Katz* established the Court's current approach to Fourth Amendment applicability); Solove, *supra* note 44, at 1518–19 (same).

47. *Katz*, 389 U.S. at 361.

48. *Id.* at 356; *see also, e.g.*, *Oliver v. United States*, 466 U.S. 170, 177–78 (1984) ("Since *Katz v. United States*, the touchstone of [Fourth] Amendment analysis has been the question whether a person has a 'constitutionally protected reasonable expectation of privacy.'" (citation omitted) (quoting *Katz*, 389 U.S. at 360 (Harlan, J., concurring))); *United States v. Jacobsen*, 466 U.S. 109, 113 (1984) (finding that "a 'seizure' of property occurs when there is some meaningful interference with an individual's possessory interests in that property," but further observing that the government action *was reasonable* because the complainant's "privacy interest in the [item seized] had been largely compromised" and thus "could no longer support an expectation of privacy" (emphasis added)); *Rakas v. Illinois*, 439 U.S. 128, 148–49 (1978) (holding that the complainants were unable to seek Fourth Amendment protection "since they made no showing that they had any legitimate expectation of privacy" in the area searched or the items seized); *United States v. Miller*, 425 U.S. 435, 441–42 (1976) (holding that bank records seized by government officials were not protected under the Fourth Amendment because no legitimate expectation of privacy existed in them).

49. *See generally* *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1027–30 (9th Cir. 2012) (explaining how the Supreme Court's recent holdings in *Jones* and *Soldal* expanded Fourth Amendment protection beyond privacy expectations).

Jones and held that a reasonable expectation of privacy is not required to trigger the Fourth Amendment's protection.⁵⁰ There, the Court held that surveillance equipment attached to the underbody of a car constituted a search under the Fourth Amendment, not because the owner had had a reasonable expectation of privacy in the information obtained through the surveillance equipment, but because the government physically had trespassed on the individual's personal property.⁵¹ In so holding, the Court both scrutinized the *Katz* test and attempted to clarify its limits.⁵² Specifically, the Court stated that "Fourth Amendment rights do not rise or fall with the *Katz* formulation" and that *Katz* "did not narrow the Fourth Amendment's scope."⁵³ Though not attempting to replace the *Katz* test itself, the Court nevertheless invited *Lavan*-like opinions into Fourth Amendment jurisprudence by placing an explicit emphasis on property, not privacy.⁵⁴ In doing so, the Court referenced the second case crucial to *Lavan*'s reasoning: *Soldal v. Cook County*.⁵⁵

Jones relied heavily on the *Soldal* opinion to scrutinize and demarcate the *Katz* test's breadth.⁵⁶ In *Soldal*, the Court held that the forcible removal of a trailer home triggered the Fourth Amendment's protections, even though the state officials effecting the removal did not "invade the [complainant's] privacy."⁵⁷ According to *Soldal*, the *Katz* test established that "property rights are not the sole measure of Fourth Amendment violations," but *Katz* did not "snuff[f] out the previously recognized protection for property."⁵⁸ Though not purporting to alter the *Katz* test itself, *Soldal* undoubtedly illuminated it, suggesting that *Katz* is but one way in which a person might assert protection under the Fourth Amendment.⁵⁹ *Jones* simply followed suit, and the two opinions provided the *Lavan* majority with enough

50. United States v. Jones, 132 S. Ct. 945, 949–50 (2012).

51. *Id.* at 949.

52. *See id.* at 950–53; *see also Lavan*, 693 F.3d at 1028 (explaining how *Jones* "reiterated that a reasonable expectation of privacy is not required for Fourth Amendment protections to apply" because Fourth Amendment rights do not turn exclusively on the *Katz* test).

53. *Jones*, 132 S. Ct. at 950–51.

54. *Id.* at 949 (referring to the "significance of property rights in search-and-seizure analysis").

55. *Id.* at 951.

56. *See id.*

57. 506 U.S. 56, 60–62 (1992).

58. *Id.* at 64.

59. *See id.*

judicial strength to support its primary holding—that some meaningful interference with one’s property, regardless of any privacy expectation, is wholly sufficient not only to challenge a government seizure but to do so successfully.⁶⁰

*C. The Legal and Practical Significance
of Lavan in the Ninth Circuit*

As noted above, *Lavan v. City of Los Angeles* represents a significant endorsement of non-privacy-based Fourth Amendment law in the Ninth Circuit, and advances the property-based approach reintroduced by *Soldal*, and plainly set forth in *Jones*.⁶¹ Doubtless, the outcome of a Fourth Amendment challenge to government seizure is no longer contingent on any “reasonable expectation of privacy” at all. In the Ninth Circuit, the former requirement is sufficient to trigger the Amendment’s protection against seizure of unabandoned property, but it is no longer necessary—this is *Lavan*’s bottom line.⁶²

While the facts in *Lavan* required the court to consider the Fourth Amendment primarily in the context of government seizures,⁶³ the court reached its conclusion only after acknowledging the limited reach of *Katz* with respect to the Search and Seizure Clause as a whole.⁶⁴ As mentioned above, the court’s open endorsement in dicta of a property-based, “irrespective of privacy” approach to the search context suggests that the court’s holding would not have changed had Los Angeles city officials merely searched Plaintiffs’ belongings.⁶⁵ The City officials’ theoretical search of such belongings still would thus have triggered the Fourth

60. See *Jones*, 132 S. Ct. at 951; see also *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1027–28 (9th Cir. 2012) (reasoning that the Fourth Amendment protects against meaningful interference with one’s property even when there is no reasonable expectation of privacy).

61. As referenced above, *Lavan* was a split decision. The dissent, rather vehemently, contended that an expectation of privacy was required for *Lavan* and his co-plaintiffs to have Fourth Amendment standing, a common prerequisite under Ninth Circuit precedent prior to *Lavan*. See *Lavan*, 693 F.3d at 1035–39 (Callahan, J., dissenting); see also, e.g., *United States v. SDI Future Health, Inc.*, 568 F.3d 684, 694–95 (9th Cir. 2009) (“[T]o say that a party lacks [F]ourth [A]mendment standing is to say that his reasonable expectation of privacy has not been infringed.” (emphasis omitted)).

62. *Lavan*, 693 F.3d at 1030 (majority opinion).

63. See *id.* at 1023–27.

64. *Id.* at 1027–30.

65. *Id.* at 1029.

Amendment, even if Plaintiffs maintained absolutely no expectation of privacy in them.⁶⁶

As a result of *Lavan*, plaintiffs in the Ninth Circuit have gained an alternative method through which to vindicate their constitutional rights, and need not stake their Fourth Amendment claims—search or seizure—on a reasonable expectation of privacy.⁶⁷ This developing approach to Fourth Amendment standing is of particular value when considering its protection of indigent individuals' property. Indeed, it is difficult to imagine a societal faction in the Ninth Circuit more significantly affected by *Lavan* than its homeless communities, the largest among them being Los Angeles's Skid Row.⁶⁸

The property-based Fourth Amendment standard set forth in *Lavan* undoubtedly provides Skid Row's homeless an extra layer of constitutional protection. For certain, indigent communities often lack the walls and borders that protect personal property, and such hard boundaries also suggest that the owner has in her property an expectation of privacy, both actual and reasonable.⁶⁹ Those living about the sidewalks and street corners of Skid Row do not maintain similar fortunes, as their belongings are perpetually left within the reach and view of the public. Tony Lavan himself echoed this sentiment. Seeing a Los Angeles police officer order unattended belongings off of a city sidewalk, Lavan hollered to a nearby reporter, "What are we supposed to do? Where do they want us to go? . . . 'We live here!'"⁷⁰

Thus, it is not surprising that an indigent plaintiff, like Tony Lavan, might confront considerable difficulty in establishing an expectation of privacy in his or her belongings—homeless individuals do not have much of it, and it is simply unrealistic to suppose otherwise. Ask any one of them, and he or she will tell you: privacy isn't free. Those able to afford it may not find difficulty establishing an objective expectation of privacy in their belongings,

66. *Id.*

67. *Id.*

68. *Jones v. City of Los Angeles*, 444 F.3d 1118, 1121 (2006) ("Skid Row has the highest concentration of homeless individuals in the United States.").

69. *See Sandy Banks, Mission Hopes a Fee Will Change Skid Row's Culture*, L.A. TIMES, Mar. 15, 2011, at A2.

70. *Id.*

but there are many who cannot.⁷¹ This is one of the practical, real-world effects of *Lavan*: it offers protection to the legitimate belongings of those who do not live in privacy, those who are not accustomed to it, and those who will likely not come to expect it.

V. CONCLUSION

A little over forty-five years ago, Justice Harlan endorsed a seemingly simple idea: the “Fourth Amendment protects people, not places.”⁷² At the time, the words were used to preface the privacy-based test that his concurrence in *Katz* would establish, but that *Lavan* would decline to apply decades later. However, and perhaps ironically, *Lavan*’s reinterpretation of the Fourth Amendment, albeit guided by *Jones* and *Soldal*, has only reinforced the spirit of that statement. By extending the Fourth Amendment’s reach far beyond mere interests in privacy, the *Lavan* court has made clear that all persons in the Ninth Circuit, regardless of circumstance, are afforded protection against unreasonable search and seizure.

71. See, e.g., *United States v. Pineda-Moreno*, 617 F.3d 1120, 1123 (9th Cir. 2010) (Kozinski, C.J., dissenting) (“[P]oor people are entitled to privacy, even if they can’t afford all the gadgets of the wealthy for ensuring it.”).

72. *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring) (quoting *id.* at 351 (majority opinion)).