

IN THE  
**Supreme Court of the United States**

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CARMENCITA BRUNO,

*Petitioner,*

v.

THE CITY OF SCHENECTADY; THOMAS MATTICE, INDIVIDUALLY AND AS AGENT OF THE CITY OF SCHENECTADY; MICHAEL DELLAROCO, INDIVIDUALLY AND AS AGENT OF THE CITY OF SCHENECTADY; JOHN DOE, #5; FAARSTAD, AS JOHN DOE, #4, INDIVIDUALLY AND AS AGENT OF THE CITY OF SCHENECTADY; JOHN DOES, #6-10; VILLAGE OF SCOTIA FIREFIGHTERS COLLECTIVELY; MARK LAVIOLETTE OR KYLE RUDOLPHSEN, AS JOHN DOE, #5, INDIVIDUALLY AND AS AGENTS OF THE EMS DEPARTMENT OF THE COUNTY OF SCHENECTADY; THE VILLAGE OF SCOTIA; POLICE OFFICERS WITH THE CITY OF SCHENECTADY, AS JOHN DOE, #1, #2, #3, INDIVIDUALLY AND AS AGENTS OF THE CITY OF SCHENECTADY; POLICE OFFICER WITH THE CITY OF SCHENECTADY, AS JANE DOE, #1, INDIVIDUALLY AND AS AGENT OF THE CITY OF SCHENECTADY,

*Respondent.*

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

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

Whether *Michigan v. Tyler*, 436 US 499, *Michigan v. Clifford*, 464 US 287 (1984) authorizes firefighters and police to unreasonably withhold sustenance and emergency aid to companion dogs after a brief fire was entirely extinguished, for the sake of exercising their official powers-to conduct an investigation; as grounds to interfere, and defeat a person's possessory interest in their live property to the point of death. Does a fire investigation justify abandoning living beings in harm's way, under the facts of this case? Can a search exceed reasonable bounds when a companion animal is abandoned to die in such emergencies? Is the presence of companion animals in private homes; or other structures on one's property, so immaterial/trivial? Which exigency is more eminent lifesaving emergency aid or an investigation? What is the test or order for balancing competing exigency "reasonably" when a non-human living being is present? *And*

*ANY OTHER ISSUE THIS COURT DEEMS WORTHY/  
COMPELLING* (PB)

## **PARTIES TO THE PROCEEDINGS**

Petitioner, (plaintiff below) is Carmencita Bruno. Respondents are the municipality of the City of Schenectady, and its municipal employees; the Village of Scotia and its municipal employees; (collectively "Defendants").

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner Carmencita Bruno respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

### **OPINIONS BELOW**

The order denying motion to supplement and Rehearing Panel/En Banc of the United States Court of Appeals for the Second Circuit, Pet. App. A is unreported.

The summary order of the United States Court of Appeals for the Second Circuit, Pet. App. B, is unreported.

The order of the United States District Court for the Northern District of New York, Pet. App. C, dismissing all of Petitioner's claims with prejudice is not reported, but available at 2016 WL 1057041 (N.D.N.Y. Mar. 14, 2016); and

The order of the United States District Court for the Northern District of New York, Pet. App. D, dismissing most of Petitioner's claims against the Defendants under FRCP 12(b), not reported but available at 2014 WL 689664 (N.D.N.Y. Feb. 20, 2014);

### **JURISDICTION**

The judgment of the United States Court of Appeals for the Second Circuit was entered on August 25, 2018, Pet. App. This Court has jurisdiction under 28 U.S.C. § 1254.

## RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourth Amendment to the United States Constitution provides:

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons *or things to be seized*.”

The due process clause of the Fourteenth Amendment to the United States Constitution provides;

“No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

The First Amendment to the United States Constitution provides:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

42 U.S.C. §1983 provides in pertinent part:

“Every person, who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...”



## INTRODUCTION

In *Michigan v. Clifford*, 464 US 287 (1984) at 306, a divided court observed in a dissent:

“These precepts of *Tyler* have not proved easy to apply, and we are told in the plurality opinion in this case that “[w]e granted certiorari to clarify doubt that appears to exist as to the application of our decision in *Tyler*.” *Ante*, at 289. But that same opinion demonstrates beyond peradventure that if that was our purpose, we have totally failed to accomplish it; today's opinion, far from clarifying the doubtful aspects of *Tyler*, sows confusion broadside.

Consequently, the Petitioner requests clarification as *Tyler* and *Clifford*, or a targeted approach, to millions of households who have formed strong bonds with companion animals.

Petitioner Carmencita Bruno is a pro se attorney that is recovering from cognitive injuries as a result to a blow to her head, at Defendants jail, and PTSD. Petitioner pleas for forbearance, in light of these challenges with respects to this quality of this petition.

Petitioner has an undergrad degree in animal science, with animal first aid training and experience. In Petitioner's region, she collaborated with police K officers, and Animal control officers—including the City of Schenectady. In fact, Schenectady City animal control officer who visited Petitioner's home remarked in open court that: “Ms. Bruno's home and yard is impeccable.” Aside from her private practice, Petitioner provided presentations to the community e.g. challenging foreclosures and how these related to animal protection issues. Petitioner also, provided support to the Albany Law school students and held a weekly animal legal issues seminar that could serve these in their future careers. In her local neighborhood she was the go to person to find practical/legal solutions to issues touching and concerning animals. Petitioner raised three children, of her own who are married and with their children.

Petitioner recovering from former injuries, arrived at her home to find a fire engine in front, and dashed to alert, notice and ascertain the welfare of her babes: Rascal, Sheen, Satin, Spotza, Osa, Sheena, Silk and Geno— [her family dogs for 10 years].

Petitioner first pleaded, with the Fire Chief/Captain to render the regional customary emergency animal aid to her dogs; or permit her to go into her home so she could perform emergency aid and transport to hospital; or at the very minimum bring them out to her, since they occupied her home for investigative purposes. Pet. App. F.

Petitioner assured Fire Chief she was the only human and pleaded for the lives of her babes. Petitioner corrected Fire Chief's mistaken view that the dogs were dead, unconsciousness is not in of itself death, even if it appears to the untrained eye;<sup>1</sup>

The Fire Chief responded, "humans...only humans" and directed that Petitioner be taken away. Defendant Mattice and his associated grabbed Petitioner by her arms into the crowd behind a yellow line; and another was heard, "lock her up" Pet. App. F. Video 1: 18:00: 06-13 Defendant

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<sup>1</sup> POLICE DECENCY & RESPECT FOR THE DIGNITY OF OTHERS IN ACTION: In this regard, Osa Bruno this past August 2017, suffered an abrupt paralysis of her larynx blocking air that caused Osa, to collapse, and become unconscious, by appearances dead. Her breathing stopped, her gums complete pale, her tongue hung out, she involuntarily excreted, and was unresponsive, her eyes lifelessly glazed over. However, resuscitation techniques are common and often effective. Plaintiff administered high flow oxygen to keep brain alive while administering CPR. It took over 8 minutes to resuscitate Osa. In less than ½ hours as Plaintiff prepared the vehicle to run to ER hospital, the same occurred with another round of 12 minutes resuscitation effort that brought her back.

State police stopped Petitioner who was on the phone contacting hospital to have oxygen and necessities at the door and pointed to Osa on oxygen with her other one hand massaging Osa's chest and neck.

The state trooper, upon hospital's acknowledgement, hung up the phone and directed Petitioner to follow him. Petitioner's vehicle could not keep up with Trooper and engine blew. Petitioner mortified, grabbed Osa and oxygen tank. Trooper turned around instantly and drove Plaintiff and Osa to the hospital who were waiting. Osa had emergency surgery and is here today strong, because a police officer's decency, rather than a deliberate indifferent act/omission, and punishing attitude. This is the pervasive contemporary decency that is generally exercised towards animals and their guardians across this country and from many officers personally and dearly known to Petitioner in NYS that the general public has come to expect, whenever reasonable. Respect and consideration for the bond between mammals of humans and non-human is an irrefutable norm in our current society under NY living common law and as codified by NYS statute and case law.

Mattice police officer assured Petitioner looking for her dogs, when the reality was contrary to his words. Whereas, no animal aid whatsoever was underway or ever ensued, despite Petitioners, pleas, demands and protest.

As a result, of non-stop protest and demands Petitioner was painfully arrested and suffered a preventable injury while in police custody at local jail; being was kept incommunicado at all times even when she awoke handcuffed to the bed, at the hospital.

Petitioner subsequently filed claims at the Northern District of New York. The district court's February 2014 order dismissed most of Petitioner's claims against the Defendants under FRCP 12(b), *see Bruno v. City of Schenectady*, No. 1:12-CV-0285 GTS/RFT, 2014 WL 689664 (N.D.N.Y. Feb. 20, 2014), dismissing Petitioners first amendment retaliatory arrest, fourteenth amendment and fourth amendment for meaningful interference of Petitioner's possessory interest in her dogs, and injuries sustained from medical indifference. The March 2016 order granting summary judgment for the Defendants on the remaining claims, *see Bruno v. City of Schenectady*, No. 1:12-CV-0285 GTS/RFT, 2016 WL 1057041 (N.D.N.Y. Mar. 14, 2016) dismissed Petitioner's battery, conversion, infliction of emotional distress; false arrest, and excessive force. The United States Second circuit remanded on the medical indifference and upheld dismissal of all other claims. Pet. App. B

### **STATEMENT OF THE CASE**

This case arises from a brief fire that was extinguished in about 20 minutes with 24 firemen on November 17, 2010. Petitioner arrived on site after an exhausting day of doctor's consults, diagnostics and treatments, to find a fire engine and commotion in front of her home. Fearing for the welfare of her dogs—sole household members aside from Petitioner—Petitioner ran

towards Fire Chief, where no police line existed in her straight line of direction to him, crying aloud, “My babies, my babies!” She exclaimed my babies, my dogs are in here.<sup>2</sup>

Fire chief shouted a false assumption, “They’re all dead, one I think ran out” Petitioner, experienced in animal first aid, exclaimed, “No!...understand that they are in shock just like humans they are mammals, need air...Petitioner asked, please let me go in help them and bring them out...they need air, immediate care and transport...or bring them out to me. To which, firefighter called out to police: “Get her out of here...lock her up.” Pet. App. I.

Petitioner is seen standing behind the yellow line in sheer mental anguish over the welfare of her dogs, watching and requesting the police to help get her dogs out. She begged, cried, then demanded for the right to possess her dogs for their welfare and ultimately protested, “This is animal cruelty, Sir.” Pet App F Video 1 31:01

There was no lack in manpower and no danger to first responders because the building was sound, the brief fire was entirely extinguished, and Petitioner observed firefighter were removing their gear and packing their instrumentalities away because underway was an investigation of the cause of the fire when Petitioner arrived. Pet. App. I

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<sup>2</sup> These living beings, provided solace and companionship from the rigors of law school, after Ms. Bruno raised three human children who were now on their own. Petitioner’s dogs and Petitioner went through good times and bad times (*danced, ate and shared together*) Rascal, Sheen, Satin, Spotza, Silk, Sheena and Osa, were all exuberant to greet Petitioner with displays of affection upon her arrival from much toiling and sitting; affording Petitioner the opportunity to exercise, mutual exchanges of affection and fresh air.

Though determining the cause of the fire is a routine public function, there too was an exigency determined by various courts across, including the New York State Court of Appeals, that lifesaving emergency aid applies to animals.

The district court held that Petitioner did not plausibly state a cause of action in the deprivation of the possessory interest in her dogs, because “the dogs were not lap dogs.” Pet App C: at Section III, B 3<sup>rd</sup> para. [NDNY ECF DOC: 56 P34].

Petitioner reasonably expected emergency animal aid irrespective of size; even cows and horse are provided such aid whenever possible in much less funded areas—in the middle of nowhere in New York and across the country. Moreover, Petitioner often carried her dogs from the home into the vehicle when she did not want their paws to bring offensive material into the home. The dogs only weighed at most 75 lbs., most were less than that—and there were 24 firefighters and four police men on site. Therefore, to adopt a premise of “lap dogs” to create an implausibility standard is unrealistic.

The Second Circuit Court of appeals in the totality of the circumstances permitted the Fire Chief’s capriciousness—rather than respect for Petitioner’s dignity— to meaningfully interfere with Petitioner’s right to her dogs’ and their welfare, to prevail, citing *Michigan v. Tyler*, 436 U.S. 499, and its progeny; and disregarding entirely that defendants were inside conducting an investigation—directly in conflict with this Court’s contempt for carte blanche abuse of official powers at *Tyler*, 436 U.S, and its progeny, producing a disturbing and absurd outcome, under the facts of this case:

“To the extent that Bruno alleges that defendants “seized” her dogs, her complaint does not plausibly allege a Fourth Amendment violation. The dogs were inside her house; she complains instead that defendants who were outside did not go inside to get them. While Bruno herself was plausibly alleged to have been restrained from going into the house, such a seizure of Bruno was not unreasonable. The Supreme Court has held that “[f]ire officials are charged not only with extinguishing fires, but with finding their causes” and preserving “evidence.” *Michigan v. Tyler*, 436 U.S. 499, 510 (1978). Applying these principles here, it was eminently reasonable for fire officials to temporarily prevent Bruno from entering her home while the fire on the premises was still under investigation. The restraint of Bruno outside of her home did not constitute the officials’ seizure of the contents of her home.”

Defendant firefighters and police did not act objectively reasonable under the totality of the circumstances because the exigency of living beings, was present and Fire Chief had personal knowledge the dogs were alive <sup>3</sup> before their arrival, during and after. Fire chief capriciously withheld sustenance (the legal doctrine, emergency aid—applied to animals, as held by courts across the country) from Petitioner’s dogs, even after Petitioner, informed fire chief that mere unconsciousness of some was not death, and that Petitioner wanted to mitigate<sup>4</sup> damages and loss of her property. Petitioner time and again demanded her dogs.

Though Defendants had no need of a warrant to enter upon Petitioner’s property, nor was one needed to conduct an investigation, the same cannot be said, when an owner arrives, the last

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<sup>3</sup> 911 tape from neighbors calling and fire chief phoned the caller with the dogs barking.

<sup>4</sup> *Michigan v. Clifford*, 464 US 287 - Supreme Court 1984 holding that not all investigations are exempt, have limits; and where a homeowner has made at least reasonable effort to secure his fire-damaged property after the blaze has been extinguished is particular to the claim.

blaze is out; and makes a reasonable demand, to have his/her property made of flesh and bones beings secured.

By comparison, under common law conversion, here Defendants having Petitioner's permission revoked—once she made a reasonable demand for the lawful possession of her dogs to provide emergency care. None of the alternatives, Petitioner offered to secure her property's wellbeing was even considered. Not one.


As a result of Petitioner's protest of manifest animal cruelty and unrelenting demands for her dog's welfare, Defendant Mattice, at the very instant Petitioner raised her voice in protest when the Commissioner arrived; and demanded "Get me the Commissioner, he is your Boss." Mattice so identified, and is heard, at Defendant's own dash cam: "What else am I going to do....She's mouthing off in front of cameras."<sup>5</sup> App Pet. F & I: ROA. 16-1131 Video 1, 32:11

The dogs were alive when firefighters arrived, confirmed by 911 audio<sup>6</sup> the caller and dogs are heard barking, and shows Fire chief speaking with a caller from his truck. The dogs were also heard crying into the night, by neighbors who reported the same to the Petitioner. Satin was found early the following morning warm outside behind the house warm and rushed to the hospital, by Petitioner's domestic aide, who every morning would arrive at 6 am to refresh their beds, throws, steam clean floors, walls etc... Satin did not make it. Pet. App. H, I & F

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<sup>5</sup> Media was present at this event.

<sup>6</sup> Even today, Petitioner cannot listen again to those audios—after having heard them briefly once with her therapist years later...it would mean having to end at a hospital. However, if this Court under its inherent authority requests a copy, Petitioner can send a copy. The district court dismissed this claim at the outset, under plausibility standard, BEFORE the 911 dispatch audio were produced in discovery it is not part of the record.

*↳ assistance came too late*  


Petitioner was arrested, held incommunicado denied a phone call time and again; deteriorated and suffered head injury after repeatedly denied medical care. Only after the jail officers heard the thump of Petitioner's head hitting on concrete as she lost consciousness was medical assistance provided. Pet. App. F. I & H

Even at the hospital when Petitioner awakened cuffed to the bed her attempts to call for legal assistance were directly thwarted by police. After, diagnostics, and treatment doctor transferred Petitioner to a crisis unit to treat severe grief reaction. Police officer assigned to Petitioner's room offensively threw directly at her person while still lying in bed, an appearance ticket for a court appearance the very following day. Pet. App. F, I & H

Petitioner was released in the supervisory care of another; and immediately, upon release from the hospital, Petitioner sought to know the whereabouts of her dogs. She was informed by the fire department that the dogs were at the City's dump. Aghast, in excruciating mental pain, Petitioner was driven to all of the City's dump sites, where city employees similarly became mortified. One employee uttered: "OMG, My dogs are my boys! None have been brought in." Pet. App. F. I

Petitioner and her helpers ultimately found her remaining dogs cold and wet inside the house buried under layers of heavy furniture and effects that were from the other side of the room's layout, with their eyes wide open. The dogs did not move that heavy furniture, for they were confined each in their specific area, to maintain order, until Petitioner returned home, while she



was out. The doors, the windows and an 8 ½ by 11 ½ sheet of paper was posted on the front door and side window with Petitioner's cell number in the event of any concern/emergency. The back door was similarly posted, Pet. App. F & I

The city court dismissed all police charges against the Petitioner, as unwarranted under the circumstances a year after Petitioner had filed her claims with the district court. Pet. App. F & I.

The district court dismissed Petitioner's claims with prejudice; and the Second Circuit changed the reason for dismissing Petitioner's claim of meaningful interference to her possessory right in her dogs, from lap dogs into a rather convoluted spatial theme, dismissing all other claims, but remanded on the medical indifference claim. Pet. App. C & B

The Petitioner, does not concede that her other claims should be dismissed as asserted, but for the sake of economy and Petitioner's present limitations, Petitioner focuses on her fourth amendment interference to her property—the unreasonable seizure and conversion of her dogs. Therefore, in the interest of just, Petitioner ~~welcomes~~ *profundly appreciates* the Court's inherent power of sua ponte, as to obvious claims that should not have been dismissed. *CB*

### **REASONS FOR GRANTING THE WRIT**

Review is warranted because this is a representative case with far reaching serious effects to US Households with a special property interest—companion animals. The Second Circuit's judicially crafted an opinion appears infirm with a contortionist spatiality view between Petitioner's location, her property and that of the Defendants that is not well rooted in legal

texts or traditions affecting households with companion animals that promote absurdity and abuse of power.

To turn a blind eye to the inhumane horror and suffering, that vitiates from the facts of this case, marred Petitioner's dignity and violates not only our cultural and societal norms regarding companion animals, and their owners/guardians, but it erodes the fundamental legal and moral fabric values<sup>7</sup> of this Republic, imbedded unequivocally, in plain language the constitution.

Moreover, it is also disrupts abundant legislation woven into the American society to protect animals against cruelty,<sup>8</sup> followed by a nonpartisan strong public policy legislation in 2006

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<sup>7</sup> "It is well established that there is a distinct connection between animal violence and violence towards humans. Studies in this area date back as far as the 1970s, when the Federal Bureau of Investigation performed a retrospective study on various serial killers and mass murderers, finding that many of the most notable offenders started out as animal abusers...David Berkowitz (Son of Sam), who was described as "having hated dogs and having killed a number of neighborhood animals," and Albert DeSalvo (The Boston Strangler), who trapped dogs and cats in crates as a child and shot arrows through the boxes in order to kill the animals. Further studies illustrate that animal abusers are five times more likely to commit violent crimes A. William Ritter, Jr., *The Cycle of Violence Often Begins with Violence Toward Animals*, 30 PROSECUTOR 31, 32 (1996); see Gary L. Francione, *Animals, Property and Legal Welfarism: "Unnecessary" Suffering and the "Humane" Treatment of Animals*, RUTGERS L. REV. 721, 750 (1994) and "as many as 75 percent of violent offenders in prison have earlier records of animal cruelty." Joseph G. Sauder, *Enacting and Enforcing Felony Animal Cruelty Laws to Prevent Violence Against Humans*, 6 ANIMAL L. 1, 3 (2000)."

This type of animal cruelty is recognized as a social issue that may inherently result in our relationships with other humans and may actually "distort or inhibit empathy, making it even easier to disregard the feelings . . . [of humans and animals]." Clifton P. Flynn, *Acknowledging the "Zoological Connection": A Sociological Analysis of Animal Cruelty*, 9 SOC'Y & ANIMALS 71, 74 (2001). Since animal cruelty is a clear warning sign of potential violence against humans, it is no surprise that the underlying purpose of many animal cruelty statutes is to prevent this outcome.

when Congress acted—as a result of public outrage on the heels of Katrina, to place federal safeguards requiring local municipalities who are recipients of FEMA funds to plan and provide the rescue, transport and sheltering of animals, during natural disasters and emergencies to mitigate suffering and loss 42 U.S.C.A. § 5196a-d (2006) aka PETS ACT.

The law and principles need to be in a workable, non-ambiguous manner for U.S. households.

Sixty-eight percent of U.S. households, or about 85 million families, keep a companion animal/s, according to the 2017-2018 National Pet Owners Survey conducted by the American Pet Products Association (APPA). Over 89.7 million dogs lived in households in the United States as pets, in 2017. The keeping of companion animals is a strong economic factor in the US, where total pet industry expenditures reached \$60.59 billion by 2015, continually creating business and employment even during a recession.<sup>9</sup>

Similarly, the National Fire Protection Association “NFPA” expressed its strong policy regarding the life safety of animals attributable to every building:

“The commenters state that “operating budgets may put this particular life safety concern on a lower rank than priorities affecting human life safety.” That stance does not coincide with one of the fundamental principles of *NFPA 150*, namely that *animals are sentient beings with a value greater than that of simple property and lack the ability of self-preservation* when housed in buildings and other structures.” (emphasis supplied).

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<sup>8</sup> “Protection of animals has long been recognized as an appropriate governmental concern. In *United States v. Stevens* (2010) 559 U.S. \_\_\_\_ [176 L.Ed.2d 435, 130 S.Ct. 1577], the United States Supreme Court recently noted “the prohibition of animal cruelty itself has a long history in American law, starting with the early settlement of the Colonies. ... (‘No man shall exercise any Tyranny or Cruelty towards any brute Creature which are usually kept for man's use’).” ([130 S.Ct. at p. 1585].)”

<sup>9</sup> Citing data from a September 2016 survey conducted by the Human Animal Bond Research Institute (HABRI) and Cohen Research Group, Pet Population and Ownership Trends in the U.S.: Dogs, Cats, and Other Pets, 2nd Edition, May 2017, 174 Pages

Therefore, giving a blank check to officials-defendants solemnizes unconscionableness and heavy handedness, when in fact it was feasible to provide emergency aid, or at a minimum give them to Petitioner. Fire Chief is clearly heard, “search for humans only” at Petitioner when she clamored for their lives, because it was obvious to Petitioner—a trained animal science graduate, experienced animal emergency first aid—that Defendants did not understand, nor did they want to—in that they did not even want to hear Petitioner whatsoever—calling for her to be taken away, and locked her up instead. Reasonable firefighters, do not abandon animals in such emergencies, when it is relatively safe to rescue; nor treat humans in such complete disregard; in sheer agony and tormented by the pain and suffering their loved companions are experiencing, before her very own eyes. The attributes, of pain and suffering, aside from a measure of intelligence, and reciprocity, is what distinguishes animals as property from other forms of property.

People v. Rogers, 708 N.Y.S.2d at 795, the appellate term, nominally took the position that animals are property for purposes of the emergency exception, stating:

“Since the protection of property is encompassed in the [emergency] doctrine, this court finds no reason not to include therein the protection of animals which constitute property.” (3 NY Jur 2d, Animals, sec. 3). *The fact that no human life was in danger does not vitiate the urgency of the rescue.*” *Id.* (emphasis added).

The holding of the Second Circuit reasoning, and that the District Courts, neither play out fairly, with realities on the ground, nor is it consistent with evolving standards of reasonableness; in direct conflict with stare decisis. Its summary order is open to varying interpretation and standards that promulgate more confusion, than clarity—operating a manifest injustice.

As such the Summary Order serves to cause heavy handiness of officials towards its citizens, causing needless suffering to households and companion animals.<sup>10</sup> That effectuates a doctrinal anachronism discounted by society's present culture.

**I. The second circuit summary order calls for an exercise of this court's supervisory power because the expounding of the law therein represents a departure from this court's precedent in a person's right to be secure in one's property interests.**

As President John Adams (1797-1801) eloquently put it:

“Property is surely a right of mankind as real as liberty.” Adding, “The moment the idea is admitted into society that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence.”

With narrow exceptions The Fourth Amendment enforces the notion that “each man’s home is his castle”, secure from unreasonable searches and seizures of property by the government. A ‘seizure’ of property occurs when there is some meaningful interference with an individual's possessory interests in that property.” *United States v. Jacobsen*, 466 U.S. 109, 113 (1984). Reasonableness is the ultimate measure of the constitutionality of a search or seizure.

Under qualified immunity, an officer may be sued only when no reasonable officer would believe that the officers' conduct was legal. *Graham v. Connor*, 490 U.S. 386 (1989) and Justice Ginsburg's concurrence in *Saucier v. Katz*, 533 U.S. 194 (2001) stated that:

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<sup>10</sup> “*The American Animal Hospital Association supports the concept of animals as sentient beings. Sentiency is the ability to feel, perceive or be conscious, or to have subjective experiences. Biological science, as well as common sense, supports the fact that the animals that share our lives are feeling, sensing beings that deserve thoughtful, high-quality care. The care that is offered should provide for the animal's physical and behavioral welfare and strive to minimize pain, distress, and suffering for the animal.*” Michael Cavanaugh, DVM, DABVP, executive director and chief executive officer of AAHA position statement. In 2012, AAHA became one of the first United States animal health organizations to take a strong stance on the issue.

"an officer whose conduct is objectively unreasonable under *Graham* should find no shelter under a sequential qualified immunity test.

The test essentially is an objective one: whether "the expectation [is] one that society is prepared to recognize as 'reasonable.'" *Katz v. United States*, 389 U. S. 347, 361 (1967) See also *Smith v. Maryland*, 442 U. S. 735, 739-741 (1979).

Here Petitioner's expectation to secure her beloved dogs from destruction when it is generally known *time mattered*—secured under the emergency exception adopted by the courts far and wide; provides a reasonable standard society has accepted. *Tuck v. United States* (D.C. 1984); *Siebert v. Severino*, 256 F.3d 648, 657 (7th Cir. 2001) *DiCesare v. Stuart*, 12 F.3d 973, 977 (10th Cir.1993) dead and starving horses should have acted quickly for exigency exception to apply, quoting *Michigan v. Tyler*, 436 U.S. 499, 511, 98 S.Ct. 1942, 1950-51, 56 L.Ed.2d 486 (1978); *Shapiro v. City of Glen Cove*, 236 Fed. Appx. 645, 2007 U.S. Pet.. LEXIS 12138 (2nd Cir. 2007); *Leathem v. United States*, 1997 U.S. Pet.. LEXIS 23305 (9th Cir. 1997); *Recchia v. City of Los Angeles Department of Animal Services*, 2013 U.S. Dist. LEXIS 150326, \*13 (C.D. Cal. 2013); *Viilo v. Eyre*, 547 F. 3d 707 - Court of Appeals, 7th Circuit 2008 *This does not mean, however, that the state may, consistent with the Fourth Amendment, destroy a pet when it poses no immediate danger and the owner is looking on.*" Along the same lines... the Ninth Circuit held that the right was clearly established in 1998 that an officer cannot kill a person's pet unnecessarily.

Here, Petitioner argues that permitting a dog to die,<sup>11</sup> by refusing to provide emergency aid is effectively destroying the property of another unnecessarily—especially when the demand was made to either aid or give to Petitioner to render such aid herself, when the circumstances did not produce any danger with an available manpower of over 28 first responders. Pet. App. E & I.

Though Defendants will argue that providing such aid is an additional burden and risk—such argument is devoid of factual legal reasoning in this case because: *First*, the pure emergency exception unlike probable cause and exigent circumstances exception, provides the officer in question have acted solely to save life or property, See *Brigham City v. Stuart*, 547 U.S. at 403 (2006); Despite this distinction, courts across the country, including this Court in *Clifford*,<sup>464</sup> at 295; has recognized that *both exceptions can apply in the same situation*.

In *People v. Gallmon*, 19 NY 2d 389, NY: Court of Appeals 1967:

Police are expected and often required to investigate the unquelled crying of babies, sounds and blows in what turn out to be matrimonial disputes, to assist in child deliveries, and to resolve the causes of unusual sounds suggesting *harm to persons, animals and property*.

Often, this is the order of first responder's rescue efforts. In fact, as these make way through a building if an animal is found these are taken out so long as it neither hampers a responder's safety nor detract from efforts/resources in saving a human.

Federal Jurisdictions have also held:

"[t]he need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency." *Mincey v. Arizona*, 437 U.S. 385, 392, 98 S.Ct. 2408, 2413, 57 L.Ed.2d 290 (1978)(quoting *Wayne v. United States*, 115 U.S. Pet. D.C. 234, 241, 318 F.2d 205, 212 (opinion of Burger, J.), *cert. denied*.: "Although the exigency in the present case involved the protection of animal life rather than human life, we believe that the "public interest" in the preservation of life in general and in the

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<sup>11</sup> In New York, animal protection laws are primarily contained in Article 26 of New York's Agriculture and Markets Law (§ 331 – 379), forbidding neglect, withholding sustenance, "furthering" suffering, death...

prevention of cruelty to animals in particular "require[s] some flexibility in the application of the general rule that a valid warrant is a prerequisite for a search."

*Second*, as a matter of strong public policy and interest, Congress in unison passed the PETS Act, amending the Stafford Act, because of the number of households who have formed strong bonds with their animals; and the unwillingness of persons abandoning their animals, even in the face of hardships.

*Third*: This Court, on the heels of *Michigan v. Tyler*, 436 U. S. 499 (1978), addressing the applicability of the fourth amendment's warrant clause to the activities of firefighters and inspectors following a fire; restated in *Michigan v. Clifford*, 464 US 287 (1984) that private effects often remain on the fire-damaged premises." Privacy expectations will vary with *the type of property*, the amount of fire damage, the prior and continued use of the premises, and in some cases the owner's efforts to secure it against intruders.

Here, pursuant *Clifford*, 464 US 287, the type of property were not mere tables and chairs that do not suffer pain—rather companion animals are living beings; the amount of fire damage was simply some charring on side walls, smoke on ceiling of the front of the building, there was no structural damage to the building that made it unsafe to enter upon, even less for first responders trained in safety identification; and Petitioner made genuine persistent effort to secure her dogs against intruders upon their welfare in that she incessantly demanded them, to provide them with timely medical attention, described by the district court, as “disruptive harangue.” Pet. App. C p. 35



Petitioner does not argue that a burning building creates an exigency that justifies a warrantless entry by fire officials to fight the blaze and that once in the building, officials need no warrant to *remain* for "a reasonable time to investigate the cause of a blaze after it has been extinguished." *Tyler*, 436 U. S., at 510.

Rather, that under Clifford's factors and the reasonableness test as it applies to the animal aid emergency doctrine is one that has been widely accepted, and where first responders are charged with specifically responding to animals in need whenever possible, in the State of New York, with due regard for federalism, as supported, by legal authority from appellate term courts and NY Court of Appeals interpreting Article 26 of New York's Agriculture and Markets Law (§ 331 – 379) and the emergency aid doctrine.

What was unreasonable in light of practice on the ground, and myriads of cases, is that Petitioner demanded her dogs, to spare them from certain death, namely mitigating the loss of her loved ones, under the current scheme of property,<sup>12</sup> nonetheless. Fire chief, plainly, but stated: with deliberate indifference withheld them [meaningfully interfered], over Petitioner's interest to protect her dogs and provide the sustenance they required under the circumstances—the Defendants tacitly—by omission--furthered their demise.<sup>13</sup>

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<sup>12</sup> While the legal status of animals remains to be resolved, the ASPCA and various states have recognized that the cultural and social relationship that humans have with animals clearly transcends that of property, better reflected by the term "guardian" than by the term "owner." Some states have codified the term, even though the law has yet to catch up with realities on the ground.

<sup>13</sup> CRUELTY TO ANIMALS N.Y. AGRIC. & MKTS. LAW§353 Overdriving, torturing and injuring animals; *failure to provide proper sustenance*.

The object of an investigative search is important even if exigent circumstances exist. *Michigan v. Clifford*, 464 US 287 (1984) at 295. Nonetheless, an animal in need of assistance has also been widely held, to be an important exigency as shown herein.

The threat to animal life is a basis for exigent circumstances. NY's statute evidences a strong public policy against the mistreatment of animals, *People v. Rogers*, 708 N.Y.S.2d 795,797 (N.Y. Pet.. Div. 2000), irrespective of who you are.

Therefore, doing the qualified immunity math: Objectively, a reasonable officer would believe that the officers' conduct in the Petitioner's case was illegal to abandon animals in need of medical care.<sup>14</sup> *Graham v. Connor*, 490 U.S. 386 (1989) Therefore, defendants should find no

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<sup>14</sup> N.Y. AGRIC. & MKTS. LAW§ 350 (2) "Torture" or "cruelty" includes every act, *omission*, or neglect, whereby unjustifiable physical pain, *suffering or death is caused or permitted*.

The following cases have considered what constitutes animal cruelty is in NYS: *People v. Romano*, 908 N.Y.S.2d (N.Y. App. Term 2010), the trial court found no reasonable pet owner would fail to seek medical care, when lack of grooming causes the animal pain and suffering. Holding: a citizen can readily comprehend that he or she must refrain from causing unjustifiable injury to a domestic pet by failing (1) to groom the animal for several months and (2) to seek medical care for the animal when clear, objective signs are present that the animal needs such care.

*In People v. Curcio*, 874 N.Y.S.2d 723 (N.Y. City Crim. Ct. 2008). Lack of care to a dog caused the dog to suffer needlessly. Defendant's conduct is criminal according to the statute for "furthering an act of cruelty by causing or permitting unjustifiable physical pain." The court found that they may consider the feelings of the dog. Common sense provided the court with the answer that the defendant's lack of care caused the dog to suffer needlessly.

*People v. Sitors*, 815 N.Y.S.2d 393 (N.Y. Crim.Ct. 2006). Defendant charged with 20 counts of animal cruelty for failing to provide proper sustenance. The Town Court read "necessary sustenance" in the statute as indicating the care that was necessary to sustain life.

*People v. Mahoney*, 804 N.Y.S.2d 535 (N.Y. App. Term 2005). Defendant charged with animal cruelty for depriving a dog of necessary sustenance when he did not provide adequate veterinary care and shelter. The dog was found inter alia lying in her blood, "*too weak to move,....*" Defendant, did not seek further medical treatment. Holding: Court upholds defendant's guilt as found by a jury. *The court found the term "sustenance" is distinguishable from food or drink, and includes veterinary care and adequate shelter to maintain the dog's health and comfort.*

shelter under a sequential qualified immunity test. Qualified immunity provides ample protection to all, but the plainly incompetent or those who knowingly violate the law. *Malley v. Briggs*, 475 U.S. 335,341 (1986).

Petitioner produced for the lower courts, routine examples how first responders do in fact, rescue and provide emergency aid to animals irrespective of the owner's location. Pet App. I

**A. Petitioner's location at the zone of the scene did not lessen or obliterate her fundamental possessory interest under the Fourth and Fourteenth Amendment, as a matter of law.**

"The Fourth Amendment "protects people, not places." *United States v. Chadwick*, 433 US (1977) and its progeny.

Whereas, the Second Circuit's Summary Order contorted the facts and the law, by focusing on the location of Petitioners and Defendants, as if this unheard of, standard/test/view delegitimizes this Court's precedence that irrespective of location of a person's whereabouts, what is protected is the person's interest. Pet. App E

There is no question, that Petitioner's dogs were in Petitioner's home, and Defendants' were in her home conducting an investigation, sometimes coming in and out, as Petitioner observed, directly in front of her home.

Hence forth the issue is: Is it reasonable to permit a fire investigation to abandon living beings in harm's way, under the particular facts of this case? Which exigency is more eminent? What

is the test for balancing competing exigencies when a non-human living being is present and can feasibly be assisted without danger to first responders?

**II. The question presented is important because it is far reaching into the sanctuary of U.S. households that hold property treated with a unique standard of care thus one of first impression that should be settled by this court.**

*Kelo v. New London*, 545 US 469 (2005):

Our jurisprudence has recognized that the needs of society have varied between different parts of the nation, just as they have evolved over time in response to changed circumstances.

In *Tuck v. United States* (D.C. 1984) courts have recognized a public interest "in the preservation of life in general and in the prevention of cruelty to animals in particular."

"Here, Sergeant Boone entry and seizure were held necessary to render emergency medical assistance to animals: when she arrived at the scene she was informed of the suffering animals by the two people and Mr. Bright; the temperature that day was in excess of 100 degrees Fahrenheit; the temperature inside the store was hotter than that on the street; she noticed several animals in cages in the display window area of appellant's store; the display chamber was a fully enclosed room facing the street, without any open doors or visible vents; she did not observe any fans cooling down the chamber; she observed the animals, a small puppy in particular, for approximately two to three minutes; the puppy was panting heavily and appeared "lifeless" and "on its last legs"; she tapped on the display window to arouse the animals, concentrating on the puppy, but there was no movement in return; she entered the store and observed the change in the puppy once it was removed from the hot chamber; she saw that appellant, despite repeated requests from her fellow officer and Mr. Bright, adamantly refused to remove the rabbit from the display case and in fact attempted to physically prevent Mr. Bright from rescuing the animal."

Reasonably, Petitioner requested to have the rendering of emergency aid to her dogs, that is common in her region and across this country; Petitioner produced abundant materials and reports of the same across the country at the district and appellate level, Pet. App. F&I.

Petitioner in the alternative requested that: *at a minimum*, since her home and contents were seized for the purpose of conducting an investigation that her dog be brought out to her to clear their lungs, promote breathing, and resuscitation if needed be—to Petitioner this is not rocket science, nor to trained first responders, the principals are basically the same with most mammals; aid and transport to hospital, just ten minutes away. The Red Cross, and many local counties provide animal emergency aid training. Pet. App. I. It is unconscionable in today's society, to abandon animals to their deaths when in need of emergency assistance.

In New York, and in her region, as common across the country, there are emergency hospitals open 24/7 with smoke and burn units. The local hospital receives calls routinely from fire fighters, animal control officers, to ask how much albuterol to administer to a dog or cat to re-open up smoke filled lungs and get them breathing again. Pet. App. I.

As a matter of fact, the dog that ran out, OSA, who is seventeen years of age now; was severely injured and she was kept in a police car for nearly two hours, she was crying, from deep burns, whining and told to sit, rather than be immediately transported to a hospital to treat painful wounds, nor did anyone at the scene inform Petitioner she was being held, her condition nor turn Osa to Petitioner. Osa ended up in intensive care for a week, critical care for several other weeks.

The question is whether the public interest underlying the emergency aid doctrine to animals, facilitating immediate first aid response and rescue in harms way, applies to animals under *Tyler and Clifford*.

**III. Petitioner's case presents an ideal vehicle for resolving conflicts and affording clarity.**

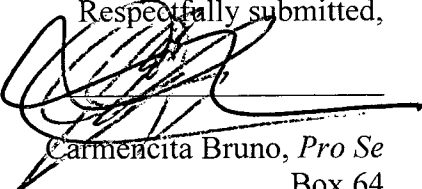
This Court's decision on the question presented relating to emergency aid widely applied, by jurisdictions across the county will be outcome determinative to resolve the conflict with a clearer guide when competing exigencies, as here exists in light of the particular circumstances of the case.

It affords an additional opportunity to clear doubts in *Tyler's* application that was formerly noted by members of the *Clifford* Court, over three decades ago, 34 years to be exact.

**CONCLUSION**

For the forgoing reasons, the petition for a writ of certiorari should be granted.

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Respectfully submitted,  
  
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