Supreme Court, U.S.
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No. 20-1443

In the

# Supreme Court of the United States

CANDACE AGUILERA,

*Petitioner*,

v.

CITY OF COLORADO SPRINGS, a municipality,

*Respondent*.

On Petition For Writ Of Certiorari To
The United States Court of Appeals for the 10th Circuit

## PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

I ask the Supreme Court to clarify how long the government agents, can stay on the Private spiritual property and continue to search, after the implied license to knock and talk to has been revoked. The 10 circuit applies two cases to shut down my spiritual free exercise claims by leaping over fourth amendment protections. In *United States v. Carloss*, 818 F.3d 988, 990 (10th Cir. 2016) consent was given and Carloss led officers to his room. In *United States v. Shuck*, 713 F.3d 563, 568 (10th Cir. 2013) nobody was even home. However in my case, I was present. I objected to the search not once but twice. Then I left my spiritual property because officers would not leave, and threatened me.

Defendant Marshall Mc Clarin became angry and threatened plaintiff I Candace Aguilera, "If you do not let us in, nobody will be allowed in". (Doc# 01110251778, P.120)

This case is almost identical to *Sause v. Bauer*, 138 S. Ct. 2561, 129 S. Ct. 315, 201 L. Ed. 2d 982, 172 L. Ed. 2d 229 (2018). The 10th Circuit will not recognize womans Spiritual rights. I am an indigenous woman born in the Farming community of Lamar Colorado. I am a member of a protected class under the 14th amendment. I don't have an attorney but I do have Faith.

## PARTIES TO THE PROCEEDING

Petitioner is Ms. Candace Sgaggio, who was the plaintiff–appellant in the Tenth Circuit.

Respondents, who were defendants–appellees in the Tenth Circuit, are:

CITY OF COLORADO SPRINGS, a municipality; DANIELLE MCCLARIN, in her official and individual capacity; ANGIE NEIVES, in her official and individual capacity; ROGER VARGASON, in his official and individual capacity; BRETT LACEY, in his official and individual capacity; ROBERT MITCHELL, in his official and individual capacity,

## RELATED PROCEEDINGS

Aguilera v. City of Colorado Springs

1:18-cv-02125

The United States District Court District of Colorado

CANDACE AGUILERA vs City of Colorado Springs

No. 19-1398

10th Circuit Court of Appeals

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# PETITION FOR A WRIT OF CERTIORARI

Petitioner Candace Sgaggio respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Tenth Circuit.

## OPINIONS BELOW

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT No. 19-1398 (Appendix A 1a-16a)

The United States District Court District of Colorado No. 1:18-CV- 02125 KMT (Appendix B 18a-38a)

## JURISDICTION

The U.S. Court of Appeals for the Tenth Circuit entered its order and judgment (Appendix A 1a-16a) on Nov 18, 2020

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254. (1)

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourth Amendment to the U.S. 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.

First Amendment

> 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, as relevant here:

> 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

The 10th circuit has for some time now, eroded protections guaranteed by the fourth amendment, by using multiple different 10th circuit knock and talk cases.

In my case however the implied license, that is intertwine with the knock and talk had been revoked, resulting in the Government violating my reasonable right to privacy.

As the Court's opinion states, "the Fourth Amendment protects people, not places." The question, however, is what protection it affords to those people. Generally, as here, the answer to that question requires reference to a "place." My understanding of the rule that has emerged from prior decisions is that there is a twofold requirement, 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."

*Katz v. United States*, 389 U.S. 347, 361 (1967)

## STATEMENT OF THE CASE

10 circuit allows the following rulings to Side Step *Katz v. United States*, 389 U.S. 347, 361 (1967)

However in my case the implied license that comes with a knock and talk left at 11:34 and 11:38. We ask the Supreme Court to clarify how long the government agents, can stay on the property and continue to search, after the implied license to knock and talk has been revoked.

In any event, the Fourth Amendment is not implicated where officers are on private property and perform a so-called "knock and talk." See *United States v. Shuck*, 713 F.3d 563, 568 (10th Cir. 2013) (holding that "officers did not violate the Fourth Amendment when they approached [a] trailer's back door with an intent to speak to

its occupants regarding the reported odor of marijuana" and saw in plain view a PVC pipe that smelled of marijuana). "Observations made from such vantage points are not covered by the Fourth Amendment." *Id.* at 567 (brackets and internal quotation marks omitted); see also *Carloss*, 818 F.3d at 993 ("The mere purpose of discovering information in the course of engaging in [a knock and talk] does not cause it to violate the Fourth Amendment."). Thus, Officer Vargason did not need a warrant to photograph Aguilera's license plate while on GreenFaithMinistry porch. (10th Circuit ORDER , Appendix 14a)

On two different occasions it's clear that, I would not consent to a search.

Also the cases is the 10th circuit uses are not relevant to my circumstances.

"Detective Ruhman then knocked at the back door but received no response. " *United States v. Shuck*, 713 F.3d 563, 565 (10th Cir. 2013)

In my case. I told respondents, "If you want in the building you will have to contact Reverend Baker, I will not let you in,"

The second time I stated "this is private property do you have a warrant?"

*United States v. Shuck* cannot apply to my case. It is clear I revoke the implied license of a knock and talk.

10 circuit also states *Carloss*, 818 F.3d at 993.

But in *United States v. Carloss* the implied license for a knock and talk was intact because consent was given. In my case there was no consent, the implied license for the knock and talk was revoked.

When the officers asked Carloss if they could search the home, Carloss told them he would have to get "the man of the house," referring to Dry. (*Id.)* As Carloss started to go inside, apparently to get Dry, the officers asked if they could go in with Carloss; he said, "sure." (*Id.* at 19.)

Carloss and the officers entered the back door, went through a storage or "mud" room into a room that Carloss identified as his. (*Id.* at 34.) In Carloss's room, the officers saw drug paraphernalia and a white powder residue that appeared to be methamphetamine.

*United States v. Carloss*, 818 F.3d 988, 991 (10th Cir. 2016)

The following is from my Amended Complaint. Doc# 01110251778 is from 10 circuit Appellate case 19-1398, Filed 10/29/2019

18. On July 10, 2017 approximately 11:30 AM Candace Aguilera : Property manager, Volunteer, High Priestess (second minster in command), member, etc. who leases two rooms at the Establishment located at 1850 North Academy was confronted by Defendants Officer Roger Vargason, Marshall's Danielle Mc Clarin

and Angie Nieves outside GreenFaithMinistry Church 1850 North Academy Blvd. (Doc# 01110251778 P.120)

19. Defendant Fire Marshall Danielle Mc Clarin persecuted Plaintiff I Candace Aguilera "We are here to check the occupancy of the building." (All evidence point in a different direction.) Plaintiff I Candace Aguilera responded "If you want in the building you will have to contact Reverend Baker, I will not let you in, " Defendant Marshall Mc Clarin became angry and threatened plaintiff I Candace Aguilera, "If you do not let us in, nobody will be allowed in". Which deprived GreenFaithMinistry, Plaintiff I Candace Aguilera, members via Guilt by Association, of it's spiritual/religious free exercise, mission, censorship, necessary business for a spiritual/religious establishment to sustain itself, suppression, spiritual/religious activities, etc.. (Doc# 01110251778 P.120)

24. At 11:34 AM. On Camera 8,9 Plaintiff I Candace Aguilera confronts on privately owned property and GreenFaithMinistry spiritual/religious property Defendants Vargason, Nieves and Mc Clarin who are persecuting a spiritual/religious establishment, its members and asks for identification. Defendant Marshall Mc Clarin became angry and threatened plaintiff I Candace Aguilera, "If you do not let us in, nobody will be allowed in". Which deprived GreenFaithMinistry, Plaintiff I Candace Aguilera, members via Guilt by Association, of it's spiritual/religious free exercise, mission, censorship, necessary business for a spiritual/religious establishment to sustain itself, suppression, spiritual/religious activities, etc. This

Order affectedly illegally seizes the Establishment in violation of the 4th amendment and was the Direct order that made, I Candace Aguilera and four other church members/volunteers/ vacate their place of worship. Which leads Plaintiff I Candace Aguilera to believe members of GreenFaithMinistry including myself were persecuted via Guilt by Association.(Exhibit 5,6) (Doc# 01110251778 P.123)

28. At 11:38 AM. on Camera 9 (Exhibit 11,12) Defendant Officer Roger Vargason can be seen pulling forcefully on the secured entrance doors, illegally trespassing outside on private property and attempting to illegally enter GreenFaithMinistry private property building without a legit warrant nor providing one. Defendant Roger Vargason persecuted GreenFaithMinistry members and volunteers to "Open the door" Plaintiff I Candace Aguilera came to the door. (Doc# 01110251778 P.127)

Defendant Officer Roger Vargason points in a demanding manner at Plaintiff I Candace Aguilera, Defendant Officer Roger Vargason unlawfully orders and persecuted Plaintiff I Candace Aguilera via abuse of limited power, coercion, intimidation to "Open this door. If you do not open this door, you will be in trouble" Defend Roger Vargason then uses all his weight and leans noticeably back in attempt to pull the secured entrance door. Plaintiff I Candace Aguilera responds "this is private property do you have a warrant? This angers Defendant Officer Roger Vargason who reply's "Oh now I am talking to Rob Corry" (Marijuana lawyer out of Denver) Defendant Officer Roger Vargason continues to attempt to unlawfully, lawlessly, arbitrary, forcefully open secured doors in violation of Art. 6,

Clause 2 Supremacy Clause, Constitutions, Fourth Amend.. Defendant Officer Roger Vargason also continues to maliciously threaten plaintiff I Candace Aguilera. Defendant Officer Roger Vargason makes the false, unjustified accusation and persecuted statement "we know you have an illegal grow in there." Defendant Officer Roger Vargason also made the false, unjustified accusation and persecuted statement "what you're doing is illegal." It is very disturbing and clear the real reason why these government agents where at GreenFaithMinistry and it wasn't for no occupancy or within their capacity, but instead to violate Art. 6, Clause 2 Supremacy Clause, Constitutions, First Amend. Guilt by Association, Establishment Clause, Free Exercise Clause Viewpoint and Idea, Fourth Amend. No Search Clause, Plaintiff I Candace (Doc# 01110251778 P.128)

At 11:44 on cameras 8,9 Defendant Roger Vargason can be seen taking pictures of Members license plates, including the vehicle that Plaintiff I Candace Aguilar drives. (Exhibits 14,15) (Doc# 01110251778 P.133)

At 12:09 AM. On Camera 9. Defendant Fire Marshall Angie Nieves is viewed unlawfully questioning and interrogating a GreenFaithMinistry member who is reading the schedule at the secured doors. At this time the Establishment had already been seized by and unlawful order given by Defendant Marshall Mc Clarin.. None of Defendant Marshall, Angie Nieves questioning and interrogating has anything to do with occupancy, limited granted power, etc (Exhibits 14,15) (Doc# 01110251778 P.133)

At 12:12 AM. On camera 8 GreenFaithMinistry member get intimidation and persecuted away by Defendant Officer Roger Vargason, Marshalls Nieves and Mc Clarin acting suspiciously by Rocks bar directly south of GreenFaithMinistry. (Exhibit 17) 36. Defendant Officer Roger Vargason, Marshalls Mc Mclarin, and Nieves leave GreenFaithMinistry at 12:17pm. (Doc# 01110251778 P.135)

## REASONS FOR GRANTING RELIEF

This implicit license typically permits the visitor to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave. Complying with the terms of that traditional invitation does not require fine-grained legal knowledge; it is generally managed without incident by the Nation's Girl Scouts and trick-or-treaters. Thus, a police officer not armed with a warrant may approach a home and knock, precisely because that is "no more than any private citizen might do." *Kentucky v. King*, 563 U.S. 452, 469, 131 S. Ct. 1849, 179 L. Ed. 2d 865, 881 (2011).

*Florida v. Jardines*, 569 U.S. 1, 11 (2013)

Action by Respondents violates the above law. "absent invitation to linger longer" the invitations to linger was revoked before respondents even knocked. The 10th circuit is more concerned with protecting officers. They care not about my rights. I do not fit the white male Christian mold, therefore I don't have the right to exercise freely.

The Tenth Circuit's decision in my case is errored. I revoked the implied license that is present during a knock and talk in *Kentucky v. King*, 563 U.S. 452, 131 S. Ct. 1849, 179 L. Ed. 2d 865 (2011). After not once but twice giving statements that show I did not consent to the search. The implied license was removed. By doing so I restored my expectation of privacy. Society also has reasonably recognized that if officers do not have a warrant they are not allowed to stay and search.

"My understanding of the rule that has emerged from prior decisions is that there is a twofold requirement, 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."" *Katz v. United States*, 389 U.S. 347, 361 (1967)

Warrant is required to search a private commercial premise.

"A suitable warrant procedure *held* required by the Fourth Amendment to effect unconsented administrative entry and inspection of private commercial premises. Cf. *Camara v. Municipal Court, (*1967)" *See v. City of Seattle*, 387 U.S. 541, (1967)

**This Case Merits a reversal.** Just like in the *See v. City of Seattle*, 387 U.S. 541, (1967) and *Collins v. Virginia*, 138 S. Ct. 1663, 1675 (2018)

"The judgment of the Supreme Court of Virginia is therefore reversed, and the case is remanded for further proceedings not inconsistent with this opinion." *Collins v. Virginia*, 138 S. Ct. 1663, 1675 (2018)

"A suitable warrant procedure *held* required by the Fourth Amendment to effect unconsented administrative entry and inspection of private commercial premises. Cf. *Camara v. Municipal Court, ante*, p. 523. Pp. 542-546. 67 Wn.2d 475, 408 P.2d 262, reversed." *See v. City of Seattle*, 387 U.S. 541, (1967)

Evidence from pictures my Amended shows that I left the building before 12:12.

Seizure Aguilera contends that Fire Marshall McClarin's threat, "If you do not let us in, nobody will be allowed in," "illegally seize[d] [GreenFaithMinistry] in violation of the 4th [A]mendment." Aplt. Opening Br. at 44. We conclude that Aguilera has standing to advance this claim to the extent it is based on her leasing of two rooms in the building. But she fails to allege that any defendant meaningfully interfered with her possessory interests in the building. See *United States v. Shrum*, 908 F.3d 1219, 1229 (10th Cir. 2018) (observing that "a Fourth Amendment 'seizure' occurs when there is some meaningful government interference with an individual's possessory interests in property" (alterations and internal quotation marks omitted)). As we have already observed, following Fire Marshall McClarin's alleged threat, Aguilera entered the building, locked the door, excluded the officers, and then later exited the building without being asked to

leave. Thus, no Fourth Amendment seizure occurred. (10th circuit order Apendix 15a)

I did not immediately leave I had to gather my things and make sure doors were locked, but the order did force me out of my building. I did follow the order given to me by respondent.

Defendant Marshall Mc Clarin became angry and threatened plaintiff I Candace Aguilera, "If you do not let us in, nobody will be allowed in". Which deprived GreenFaithMinistry, Plaintiff I Candace Aguilera, members via Guilt by Association, of it's spiritual/religious free exercise, mission, censorship, necessary business for a spiritual/religious establishment to sustain itself, suppression, spiritual/religious activities, etc. (Doc# 01110251778 P.120)

At 11:44 on cameras 8,9 Defendant Roger Vargason can be seen taking pictures of Members license plates, including the vehicle that Plaintiff I Candace Aguilar drives. (Exhibits 14,15) (Doc# 01110251778 P.133)

Exhibits (14,15) show three cars a white 4 runner, grey ford and a red jeep. All three cars were present at 11:44.

Exhibit 16,17 contained in this petition show that my car and the other members cars were all gone by 12:12 showing that I had left the building after it was seized by respondents order.

I do not have to be praying for my Free exercise to be burdened.

Aguilera's own allegations belie the coercive or compulsory nature of Fire Marshall McClarin's threat. She alleges that immediately after Fire Marshall McClarin made the threat, she went inside GreenFaithMinistry and locked the entry door behind her. Indeed, she remained inside with the door locked, refused to open it even as Officer Vargason pulled on it and told her to open it, and she declared, "this is private property do you have a warrant?" R. at 128. It is unclear when she finally exited GreenFaithMinistry. Given these allegations, Aguilera has failed to assert a connection between Fire Marshall McClarin's threat (even when viewed together with Officer Vargason's actions) and her decision to vacate GreenFaithMinistry. Significantly, Aguilera has not alleged that Fire Marshall McClarin (or any other officer) ever ordered her to vacate the building. (10th circuit ORDER, Appendix 11a)

The pictures in my Amend complaint and this petition make it clear I left before 12:12.

But *Sause* has no apparent application here. Aguilera does not assert in her complaint that she was ordered to stop praying or worshipping in any manner. Nor does she allege that she was engaged in prayer or worship inside GreenFaithMinistry at any time during the officers' presence outside the building. Further, as discussed below, the officers were lawfully present on the porch outside GreenFaithMinistry when they communicated with Aguilera. In short, Aguilera has failed to allege that any defendant burdened her exercise of religious beliefs or

practices. Thus, the district court did not err in dismissing her Free Exercise claim. (10th circuit ORDER, Appendix 12a)

We disagree Forcing one out of their church for no legitimate law enforcement reason does burden ones free exercise.

A burden "rises to the level of being 'substantial' when" the government "prevents the plaintiff from participating in an activity motivated by a sincerely held religious belief" or "present[s] an illusory or Hobson's choice where the only realistically possible course of action available . . . trenches on sincere religious exercise." *Yellowbear*, 741 F.3d at 55 (citing *Abdulhaseeb v. Calbone*, 600 F.3d 1301, 1315 (10th Cir. 2010), *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 450 (1988), and *Thomas v. Review Bd.*, 450 U.S. 707, 716 (1981)). See also *Koger v. Bryan*, 523 F.3d 789, 802 (7th Cir. 2008) ("the prohibition against substantially burdening sincerely held religious beliefs is well-established in Free Exercise Clause cases").

This Court repeatedly has made clear that government action that substantially burdens a citizen's religious exercise is unconstitutional unless it furthers some legitimate government interest. See, e.g., *Lukumi*, 508 U.S. at 531–32; *Hernandez v. Comm'r*, 490 U.S. 680, 699 (1989); *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972). See also *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 348–53 (1987). As this Court reiterated in *Lukumi*, government action that substantially burdens religious exercise must be "justified by a compelling governmental interest" and "narrowly

tailored to advance that interest." 508 U.S. at 531–32. See *Koger*, 523 F.3d at 802–03 ("the difficult burden laid on a defendant who must show that its conduct was the 'least restrictive means of achieving some compelling state interest' has been established for decades") (emphasis added) (quoting *Thomas*, 450 U.S. at 718).

In *Fifth Avenue Presbyterian Church v. City of New York*, for example, the Second Circuit ruled that officers who dispersed homeless persons from church property violated the church's free exercise rights because the officers had neither "sufficiently shown the existence of a relevant law or policy that is neutral and of general applicability" that justified their actions nor demonstrated that their actions were "justified by a compelling state governmental interest." 293 F.3d 570, 576 (2d Cir. 20020)

I pray the court recognizes, because Candace Sgaggio proceeded pro se, this Court "must construe [her] complaint liberally, holding [her] to a less stringent standard than formal pleadings drafted by lawyers." *Butler v. Compton*, 158 F. App'x 108, 110 (10th Cir. 2005). "This rule means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so despite the plaintiff's failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements." *Id.* (quoting *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991)); see *Walker v. Schult*, 717 F.3d 119, 124 (2d Cir. 2013) (pro se Appellate Case: 16-3231 Document: 01019697696 Date Filed: 09/28/2016 Page: 29 18

complaints "must be construed liberally, 'to raise the strongest arguments [they] suggest'").[1]

## CONCLUSION

I pray that the court will accept my petition. I pray that safeguards set in place by the framers, under the fourth amendment will be replenished not watered down by the 10th circuit. I asked that the opinion handed down by the 10th circuit is reversed. I pray that I will be allowed to freely exercise and feel safe free from government intrusions.

Respectfully submitted

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[1] "[L]iberal construction of the pleadings is particularly appropriate where, as here, there is a pro se complaint raising civil rights issues." *Jehovah v. Clarke*, 798 F.3d 169, 176 (4th Cir. 2015); see *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012) ("[Courts] have an obligation where the petitioner is pro se, particularly in civil rights cases, to construe the pleadings liberally and to afford the petitioner the benefit of any doubt."); *Jacobs v. Ramirez*, 400 F.3d 105, 106 (2d Cir. 2005) ("[W]hen the plaintiff proceeds pro se, as in this case, a court is obliged to construe his pleadings liberally, particularly when they allege civil rights violations.").