

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

**BRIEF IN OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI**

BRYAN E. SCHMID
OFFICE OF THE COUNTY
ATTORNEY OF EL PASO
COUNTY, COLORADO
200 South Cascade Avenue
Colorado Springs, Colorado 80903
(719) 520-6485
bryanschmid@elpasoco.com

*Counsel of Record for Respondent
Robert Mitchell*

QUESTIONS PRESENTED

How long can government agents stay on the Private spiritual property and continue to search, after the implied license to knock and talk to has been revoked. Did the 10th Circuit err in applying the following cases?

1. *United States v. Carloss*, 818 F.3d 988, 990 (10th Cir. 2016) consent was given and Carloss led officers to his room.

2. In *United States v. Shuck*, 713 F.3d 563, 568 (10th Cir. 2013) nobody was even home.

In the case at hand, Petitioner was present at the time of the subject search and objected to the search twice. Petitioner then left the property.

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INTRODUCTION

Petitioner alleges that on July 10, 2017, Respondent, City of Colorado Springs' employees, Roger Vargason and Fire Marshalls Danielle McClarlin and Angie Nieves¹ confronted her outside of "GreenFaithMinistry" a "non-denominational spiritual/religious establishment" and retailer of "religious goods" and violated her "absolute natural rights and the constitutions which expressively mandates its compliance and restricts any opposition by any government and anything below it without contest via absolute natural rights." According to the Tenth Circuit, Petitioner asserted violations of the First Amendment Establishment and Free Exercise Clauses, and the Fourth Amendment for unlawful search and seizure.² The City Respondents (City of Colorado Springs, Officer Vargason, Fire Marshalls McClarlin and Nieves and Brett Lacy) and the County Respondent (Robert Mitchell) filed separate Motions to Dismiss which were granted by the District Court and upheld by the Tenth Circuit in its Order and Judgment issued on November 18, 2020. *See* Petitioner's Appendix, p. 1a (hereinafter Pet. App., p. 2).

Petitioner filed her Petition for Writ of Certiorari on April 13, 2021 in which she asks this

¹ *See* Petitioner's Appendix, p. 3a, n. 2 ("In addition to suing the City of Colorado Springs and the officers who confronted her on July 10, 2017, Aguilera also sued two individuals not present that day—Brett Lacey and Robert Mitchell. They allegedly "worked in concert" as the "Head Fire Marshall" and El Paso County Sheriff's Lieutenant, respectively, to violate Aguilera's rights.")

² *See* Pet. App., p. 4a, n. 3.

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 [*sic*] has been revoked.” Petitioner’s question does not present this Court with a “compelling reason” for granting her Petition nor does it fall into one of the categories of reasons for granting a Petition as those reasons are set forth in the Rules of the Supreme Court of the United States Rule 10 (“U.S. Sup. Ct. R. 10”).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Rules of the Supreme Court of the Unites States,
Rule 10 (a) and (c):

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter;...

(b) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

STATEMENT OF THE CASE

This action arises out of a July 10, 2017, attempted occupancy check of GreenFaithMinistry [*sic*], an alleged “non-denominational spiritual/religious establishment” in Colorado Springs of which Petitioner is the “Property manager, Volunteer, High Priestess (second minster [*sic*] in command) [and] member, etc. who leases two rooms at the Establishment,” by three City employees (Vargason, McClarlin and Nieves) who allegedly suspected GreenFaithMinistry of operating an illegal marijuana grow and retail store within the “establishment.” The three City employees allegedly confronted Petitioner outside the establishment and remained on the front porch (outside) of the establishment for about 45 minutes during which time Respondent Vargason is alleged to have taken photographs of vehicles belonging to, among others, Petitioner.

According to Petitioner's own allegations, the City employees never entered or searched the building GreenFaithMinistry occupies; never prevented anyone from entering it to worship; never required anyone to vacate it; never ordered anyone to stop praying; and never made anyone affirm beliefs contrary to their faith. In short, the District Court found that Plaintiff's Amended Complaint failed to allege facts stating any cognizable claim and therefore, correctly dismissed it pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

The Tenth Circuit panel: upheld the District Court's dismissal of Aguilera's Establishment Clause claim as she failed to plausibly allege a constitutional violation under any prong of the *Lemon v. Kurtzman*, 403 U.S. 602 (1971) test (Pet. App., p. 10a); the dismissal of her Free Exercise claim because she failed to allege that Respondents burdened her exercise of religious beliefs or practices (Pet. App., p. 12a); and the dismissal of her Fourth Amendment claim for illegal search and seizure because Officer Vargason did not need a warrant to photograph Aguilera's license plate from the establishment's porch and because "Aguilera entered the building, locked the door, excluded the officers, and then later exited the building without being asked to leave [], no Fourth Amendment seizure occurred" Pet. App., p. 15a.

Petitioner's lone question for this Court addresses the Tenth Circuit's reliance on the "knock and talk" exclusion of *United States v. Shuck*, 713 F.3d 563, 568 (10th Cir. 2013) to find that "Officer Vargason did not need a warrant to photograph

Aguilera's license plate while on GreenFaithMinistry [sic] porch." Pet. App., p. 14a.

REASONS FOR DENYING CERTIORARI

A. The Petition for Writ of Certiorari Should Be Dismissed as to Robert Mitchell.

The Writ of Certiorari lists the City of Colorado Springs as the sole Respondent³ and the lone issue identified by Petitioner involves the question as to whether the City of Colorado Springs employees (i.e. Vargason, Nieves and McClarin), remained on the GreenFaithMinistry's property too long. Petitioner makes no complaint in her Writ concerning any actions taken by Robert Mitchell. In fact, Lt. Mitchell was not present on Petitioner's property during the relevant time period nor is there any allegation that Lt. Mitchell was personally involved in the enforcement action upon which the Writ is based. For that reason alone, the Petition for Writ of Certiorari, in the event it includes Robert Mitchell as a Respondent, should be denied as to Robert Mitchell.

B. This Court Should Deny the Petition because Petitioner Fails to Present a Compelling Reason and the Issue Presented does not Fall into One of

³ The caption of the Writ of Certiorari lists "City of Colorado Springs, Respondent" but the Parties to the Proceeding section lists the "Respondents, who were defendants-appellees in the Tenth Circuit," including Robert Mitchell.

the Enumerated Categories in U.S. Sup. Ct. R. 10.

“A petition for a writ of certiorari will be granted only for compelling reasons.” U.S. Sup. Ct. R. 10. “This Court does not sit to satisfy a scholarly interest in such issues. Nor does it sit for the benefit of the particular litigants.” *Rice v. Sioux City Mem'l Park Cemetery*, 349 U.S. 70, 74 (1955) citing *Magnum Import Co. v. Coty*, 262 U.S. 159, 163 (1923). “Special and important reasons’ imply a reach to a problem beyond the academic or the episodic.” *Rice*, 349 U.S. at 74 *see also e.g.* *U.S. v. Muniz*, 374 U.S. 150, 151 (1963) (Certiorari would be granted when decision below involved important question in construction of federal statute and when two courts of appeals had previously reached a contrary result.); *Yellin v. U.S.*, 374 U.S. 109, 111 (1963) (Since the case presented constitutional questions of continuing importance, we granted certiorari.).

Rule 10 of the Supreme Court of the United States, characterizes reasons for the granting of a petition as follows:

The following, although neither controlling nor fully measuring the Court’s discretion, indicate the character of the reasons the Court considers:

- (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of

appeals on the same important matter; ...

(c) a ...United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

U.S. Sup. Ct. R. 10(a) and (c). The Rule goes on to provide that “[a] petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.” U.S. Sup Ct. R. 10.

Petitioner frames the questions presented as:

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 [sic] 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.

Petition, p. i.

The question as framed by Petitioner does not rise to the level a compelling reason in that the answer to the question “sits for the benefit” of Petitioner alone and deals with a single episode involving facts pertinent only to Petitioner’s case. *See Rice*, 349 U.S. at 74. The Tenth Circuit found that “*Aguilera had not pled a plausible Fourth Amendment violation*” because “she has no expectation of privacy in the appearance of her vehicle or its license plate, with her car parked in public view off of a street or alleyway”⁴ and the “Fourth Amendment is not implicated where officers are on private property and perform a “knock and talk.”⁵ Furthermore, Petitioner’s question implies that the Tenth Circuit erred in its factual considerations (i.e. it failed to consider the fact of how long the City Respondents remained on her property after she “revoked” her “implied license” to talk) and misapplied a properly stated rule of law; both reasons upon which the Supreme Court says it rarely grants a Petition for Writ of Certiorari. U.S. Sup. Ct. R 10.

The Petition does not implicate conflicting opinion of a United States court of appeals with the

⁴ Pet. App., p. 13a.

⁵ Pet. App., p. 13a-14a citing *United States v. Shuck*, 713 F.3d 563, 568 (10th Cir. 2013).

decision of another United States court of appeals on the same subject (U.S. Sup. Ct. R. 10(a)) nor does it involve an important question of federal law made by a United States court of appeals that has not been, but should be, settled by this Court or that conflicts with a relevant decision of this Court. (U.S. Sup. Ct. R. 10(c)). Petitioner attempts to distinguish the cases relied upon by the Tenth Circuit (*United States v. Carloss* and *United States v. Shuck*) but does not allege that the decision of the Tenth Circuit, based on those cases, is wrong or in conflict with the decision of another United States court of appeals or this Court.

Additionally, the question Petitioner presents here was never presented to the District Court or the Tenth Circuit so it should not be open here. *See Ellis v. Dixon*, 349 U.S. 458, 460 (1955) (“the question of whether the regulations are constitutionally vague was not raised below, and hence is not open here.”); *Mercer v. Theriot*, 377 U.S. 152, 153–54 (1964) (“We now ‘consider all of the substantial federal questions determined in the earlier stages of the litigation * * *.’ for it is settled that we may consider questions raised on the first appeal, as well as ‘those that were before the court of appeals upon the second appeal.’” (Internal citations omitted) (*Emphasis* added)). Nowhere in her Amended Complaint nor in her briefs to the District Court or the Tenth Circuit does Petitioner raise the issue of the amount of time the City Respondents stayed on the property after she “revoked” their “implied license” of a “knock and talk” or whether she had even ever told them to leave the property.⁶

⁶ Plaintiff alleges that she “told the respondents, ‘[i]f you want in the building you will have to contact Reverend Baker, I will not

Petitioner's failure to present a compelling reason or any of the other reasons set forth in U.S. Sup. Ct. R. 10, to this Court in support of her Petition mandates that this Court deny the Petition for Writ of Certiorari.

CONCLUSION

The Petition for Writ of Certiorari should be denied as to Robert Mitchell as he was not present on the property at issue during the relevant times contained in the Writ. The Writ of Certiorari should be denied as a whole as Petitioner failed to present this Court with a "compelling reason" for granting her Petition nor does the issue presented fall into one of the categories of reasons upon which a Petition can be granted as set forth in U.S. Sup. Ct. R. 10.

For all of the foregoing reasons, the County Respondent (Robert Mitchell) respectfully request this Honorable Court deny the Petition for Writ of Certiorari.

Dated: June 15, 2021

Respectfully submitted,

OFFICE OF THE COUNTY ATTORNEY OF
EL PASO COUNTY, COLORADO

let you in" and "[t]he second time I stated 'this is private property do you have a warrant?'" Pet., p. 10. These two statements are what Petitioner asserts represent her revocation of "the implied license of a knock and talk." *Id.*

/s/ Bryan E. Schmid

Bryan E. Schmid
Senior Assistant County Attorney
200 South Cascade Avenue
Colorado Springs, Colorado 80903
(719) 520-6485
bryanschmid@elpasoco.com

*Counsel of Record for Respondent Robert
Mitchell*