No. 20-157

IN THE

Supreme Court of the United States

EDWARD A. CANIGLIA,

Petitioner,

v.

ROBERT F. STROM, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

AMICUS CURIE BRIEF OF SECOND AMENDMENT FOUNDATION IN SUPPORT OF PETITIONER FOR REVERSAL

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QUESTION PRESENTED

Whether the "community caretaking" exception to the Fourth Amendment's warrant requirement extends to the home.

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INTERESTS OF AMICUS[1]

Second Amendment Foundation, Inc., (SAF) is a non-profit membership organization incorporated under the laws of Washington with its principal place of business in Bellevue, Washington. SAF is not a publicly traded corporation and has no parent corporation and no publicly held company owns 10 percent or more of its stock.

Amicus has over 650,000 members and supporters nationwide. The purposes of SAF include education, research, publishing and legal action focusing on the Constitutional right to keep and bear arms set forth in the SECOND AMENDMENT. Amicus was also recently a co-petitioner in a case with similar facts to this one. *Rodriguez v. City of San Jose*, cert. denied, No. 19-1057 (Oct. 13, 2020), 2020 U.S. Lexis 4910.

SUMMARY OF ARGUMENT

Extending a paternalistic "community caretaking" exception to the FOURTH AMENDMENT, on the facts of this case, undermines both the FOURTH and SECOND AMENDMENT.

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[1] No counsel for a party authored this brief in whole or in part, and no counsel for a party made a monetary contribution intended to fund the preparation and submission of this brief. No person other than the amicus curiae, or its counsel made a monetary contribution to its preparation or submission. Counsel for Petitioners and Counsel for Respondents consented to this filing in accordance with this Court's Rules.

STATEMENT OF FACTS

Petitioner Caniglia's firearms were seized from his home. No warrant was issued under the FOURTH AMENDMENT's protections. Thus, the requirements of "probable cause, supported by Oath or affirmation, and describing the place to be searched, and the persons or things to be seized" were disregarded.

The government's justification for this intrusion was [and will become a nation-wide policy if the Circuit Court is not reversed by this Court] the "community caretaking" exception to the warrant requirement as articulated in *Cady v. Dombrowski*, 413 U.S. 433 (1973), mis-applied to the home.

ARGUMENT

Community Caretaking. To non-lawyers the concept, in and of itself, seems to evoke warm, safe, peaceful thoughts. The words sound therapeutic and roll off the tongue in a paternalistic patter that makes one think of good neighbors and sanctuary from harsh realities.

As a constitutional doctrine it means an executive branch government employee is making an *ad hoc* decision to abrogate someone's FOURTH AMENDMENT rights. This violation will occur during the seizure (and/or search) of private property, on the grounds that safeguarding that property -- nay public safety itself – can (should?!) negate that AMENDMENT's protections.

On the facts of this case, it means law enforcement officers, with no oversight from the legislature or judiciary, are empowered, on their own initiative, to

deprive a law-abiding citizen of the means of exercising the SECOND AMENDMENT in their home. Make no mistake, the *community caretaking* exception is a trojan horse abrogation of the FOURTH AMENDMENT, designed to undermine the SECOND AMENDMENT at the retail level of governance.

This gambit is not even a judge-empowering interest-balancing scheme that would ensue if a police officer deigned to seek a warrant under the FOURTH AMENDMENT. It is a wholesale shift in constitutional power that sanctions a lone law enforcement officer making a determination, on a case-by-case basis, whether a citizen exercising a fundamental right is consistent with public safety.

In *District of Columbia v. Heller*, 554 U.S. 570 (2008), this Court could find "no other enumerated constitutional right whose core protection has been subjected to a freestanding "interest-balancing" approach." *Id.,* at 634, regardless of who performs the balancing test.

> The very enumeration of the right takes out of the hands of government—even the Third Branch of Government—the power to decide on a case-by-case basis whether the right is really worth insisting upon. A constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all. Constitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future leg-

> islatures or (yes) even future judges think that scope too broad.
>
> *Heller*, 554 U.S. at 634.

The facts of this case are remarkably similar to *Rodriguez v. City of San Jose*, 930 F.3d 1123 (9th Cir. 2019), cert. denied, No. 19-1057 (Oct. 13, 2020), 2020 U.S. Lexis 4910.

In its unbounded antipathy toward the SECOND AMENDMENT, the Ninth Circuit used judicial sleight of hand to dispose of that issue (along with a FIFTH AMENDMENT takings claim and FOURTEENTH AMENDMENT procedural due process claim) -- and then proceeded to gut the FOURTH AMENDMENT when it ratified a warrantless seizure of firearms from a gun safe, where the supposed danger had passed and there was no urgency precluding officers from obtaining a warrant. To find this constitutionally copacetic, the Ninth Circuit performed surgery on the FOURTH AMENDMENT using the *community caretaking* exception.

Not only was the Ninth Circuit wrong from scratch, but it also created inconsistent standards in the federal and state courts within the Ninth Circuit, by conflicting with the California Supreme Court's decision in *People* v. *Ovieda*, 446 P.3d 262 (Cal. 2019). In *Ovieda*, the California Supreme Court held that the so-called "community caretaking" exception to the Fourth Amendment's warrant requirement was limited to vehicle searches and otherwise violated the Fourth Amendment when applied to a residential search absent an emergency. 446 P.2d at 276. After reviewing cases from this Court, the *Oveida* court concluded that "the community caretaking ex-

ception asserted in the absence of exigency is not one of the carefully delineated exceptions to the residential warrant requirement recognized by the United States Supreme Court." *Id*. at 273-76.

Ovieda cannot be reconciled with the Ninth Circuit's *Rodriguez* decision. When this Court denied certiorari in *Rodriguez,* it left that conflict in place within California, while permitting a continuing conflict with the decisional law of this Court. Preventing that conflict from raging across the nation is why this Court's reversal of the First Circuit's decision in this matter is so crucial.

Indeed, the *Ovieda* case also involved guns, yet the California Supreme Court[2] held that "possession of legal firearms in a home is generally lawful (see *District of Columbia* v. *Heller* (2008) 554 U.S. 570, 576–635 * * *), and their presence in an apparently empty home does not, without more, constitute exigent circumstances. There was no indication that firearms were accessible to others or that they posed a threat to officers or the public." 446 P.2d at 269.

It was not surprising that the California Supreme Court had recognized the continuing applicability of the FOURTH AMENDMENT'S warrant requirement in circumstances such as found in *Rodriguez* and this case. The question is not particularly close.

This Court has long held that a warrant is required to search a home and seize items therein unless there is genuine exigency coupled with an inabil-

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[2] A Court not known for being overzealous in upholding SECOND AMENDMENT rights. See *Kasler v. Lockyer*, 23 Cal.4th 472, 97 Cal. Rptr. 2d 334 (2000).

ity to timely comply with the warrant requirement. *McDonald* v. *United States*, 335 U.S. 451, 454-56 (1948)

> Time and again, this Court has observed that searches and seizures conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment – subject only to a few specially established and well delineated exceptions.

Minnesota v. *Dickerson*, 508 U.S. 366, 372 (1993) (citations and internal quotation marks omitted). This Court likewise has made clear that there is no "firearm exception" to the FOURTH AMENDMENT. *Florida* v. *J.L.*, 529 U.S. 266, 272-73 (2000).

This Court has repeatedly emphasized that the warrant requirement is not a frivolity. "We are not dealing with formalities. The presence of a * * * warrant serves a high function. Absent some grave emergency, the Fourth Amendment has interposed a magistrate between the citizen and the police." *McDonald* v. *United States*, 335 U.S. 451, 455–56 (1948).

Because the First (and Ninth) Circuit(s) upheld a warrantless seizure without even the pretense of satisfying this Court's narrow exception for genuinely exigent circumstances, the decision below conflicts with this Court's cases.

Welsh v. *Wisconsin*, 466 U.S. 740, 750 (1984) ("Before agents of the government may invade the sanctity of the home, the burden is on the government to demonstrate exigent circumstances that overcome the presumption of unreasonableness that attaches to all warrantless home entries."). Constitutional

amendments are not mere suggestions. The ability to comply with express requirements demanded by the Constitution should be at least *presumed*, and that any governmental claim of necessity to ignore such requirements should be subject to a strict standard and exacting burden of proof.

Many of the Circuit Courts are contemptuous of the SECOND AMENDMENT and firearm owners in general. This has been well documented and noted by jurists on this and other courts. See, *e.g.*, *Peruta v. California*, 137 S. Ct. 1995, 1997, 1999 (2017) (Thomas, J., dissenting from denial of cert.) ("The approach taken by the *en banc* court is indefensible, and the petition raises important questions that this Court should address."; "The Court's decision to deny certiorari in this case reflects a distressing trend: the treatment of the Second Amendment as a disfavored right."); *Voisine v. United States*, 136 S. Ct. 2272, 2291 (2016) (Thomas, J., dissenting) ("We treat no other constitutional right so cavalierly"); *Friedman v. Highland Park*, 136 S. Ct. 447 (2015) (Thomas, J., dissenting from denial of certiorari) ("Because noncompliance with our Second Amendment precedents warrants this Court's attention as much as any of our precedents, I would grant certiorari in this case."); *cf. Caetano v. Massachusetts*, 136 S. Ct. 1027 (2016) (GVR of State court opinion that gave essentially no respect to this Court's decision in *Heller*); *id*. at 1030, 1033 (Alito, J., concurring) ("Although the Supreme Judicial Court [of Massachusetts] professed to apply *Heller*, each step of its analysis defied *Heller*'s reasoning."; "The lower court's ill treatment of *Heller* cannot stand."); *Silveira v. Lockyer*, 328 F.3d 567, 568-69

(2003) (Kozinski, J., dissenting from the denial of rehearing *en banc*) ("It is wrong to use some constitutional provisions as spring-boards for major social change while treating others like senile relatives to be cooped up in a nursing home until they quit annoying us. * * * Expanding some to gargantuan proportions while discarding others like a crumpled gum wrapper is not faithfully applying the Constitution; it's using our power as federal judges to constitutionalize our personal preferences."), *cert. denied*, 540 U.S. 1046 (2003).

The shabby treatment of SECOND AMENDMENT by the circuit courts is now inspiring a contraction of other constitutional rights that are linked to keeping and bearing arms. This Court must emphatically reject that line of reasoning. The Ninth Circuit did great violence to the warrant requirement of the FOURTH AMENDMENT. This Court should not permit the same transgression by the First Circuit.

CONCLUSION

The decision below should be reversed.

Respectfully submitted,

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