

No. _____

In The

Supreme Court of the United States

ROBERT WILLIAM MOATS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

John J. Balenovich
JOHN J. BALENVOICH
LAW OFFICES, LC
3818 MacCorkle Avenue SE
Suite 101
Charleston, WV 25304
(304) 925-2100
john@wvlitigator.com

Counsel for Petitioner

QUESTION PRESENTED FOR REVIEW

Whether the majority opinion of the United States Fourth Circuit of Appeals, which held that the defendant had a consensual encounter with police and was not illegally detained, questioned, or prevented from leaving the area, contravenes rights guaranteed by the Fourth Amendment of the United States Constitution.

LIST OF THE PARTIES

Robert William Moats, Petitioner;

United States of America, Respondent

TABLE OF CONTENTS

	Page:
QUESTION PRESENTED FOR REVIEW	i
LIST OF THE PARTIES	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES	v
PETITION FOR A WRIT OF CERTIORARI.....	1
OPINION BELOW.....	1
JURISDICTION.....	1
CONSTITUTIONAL PROVISIONS INVOLVED.....	1
STATEMENT OF THE CASE.....	2
A. Procedural History	2
B. Statement of Facts	2
REASONS CERTIORARI SHOULD BE GRANTED	4
A. The majority opinion overlooked material factual and legal matters, and conflicts with prior decisions of this Court.....	4
B. This case involves a question of exceptional importance in that it significantly impacts the rights of an individual under the Fourth Amendment.....	8
CONCLUSION.....	11
APPENDIX:	
Unpublished Opinion U.S. Court of Appeals for the Fourth Circuit entered October 19, 2021	Appendix A

Order Denying Rehearing
U.S. Court of Appeals for the Fourth Circuit
entered January 14, 2022 Appendix B

TABLE OF AUTHORITIES

	Page(s):
Cases:	
<i>Elkins v. United States</i> , 334 U.S. 206 (1960)	10
<i>Katz v. United States</i> , 389 U.S. 347 (1967)	9, 10
<i>Terry v. Ohio</i> , 392 U.S. 1 (1968)	6
<i>Torres v. Madrid</i> , 141 S. Ct. 989 (2021)	6
<i>United States v. Black</i> , 707 F.3d 531 (4th Cir. 2013)	7
<i>United States v. Cloud</i> , 994 F.3d 233 (4th Cir. 2021)	6
<i>United States v. Curry</i> , 965 F.3d 313 (4th Cir. 2020)	6
<i>United States v. Foster</i> , 634 F.3d 243 (4th Cir. 2011)	9
<i>United States v. Gray</i> , 883 F.2d 320 (4th Cir. 1989)	5, 6
<i>United States v. Jones</i> , 678 F.3d 293 (4th Cir. 2012)	5
<i>United States v. Martinez-Fuerte</i> , 428 U.S. 543 (1976)	9-10
Constitutional Provision:	
U.S. Const. amend IV	<i>passim</i>

Statutes:

18 U.S.C. § 2.....	2
18 U.S.C. § 922(g)(1)	2
18 U.S.C. § 922(k)	2
18 U.S.C. § 924(a)(1)(B)	2
18 U.S.C. § 924(a)(2)	2
28 U.S.C. § 1254(1)	1
28 U.S.C. § 2101.....	1

Rules:

U.S. Sup. Ct. R. 13(1).....	1
U.S. Sup. Ct. R. 30	1

PETITION FOR A WRIT OF CERTIORARI

Petitioner Robert William Moats respectfully prays for a Writ of Certiorari to the review the decision and judgment of the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

The unpublished opinion of the Fourth Circuit is reported as the *United States of America v. Robert William Moats* (4th Cir. 21-4002), and attached below in the appendix to this petition.

JURISDICTION

The United States Court of Appeals for the Fourth Circuit decided this case on October 19, 2021, with a subsequent petition for rehearing *en banc* having been denied on January 14, 2022, and mandate issued on October 29, 2021. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1), and this Petition is timely filed within ninety days of the underlying Judgment of the Fourth Circuit pursuant to United States Supreme Court Rules 13(1) and 30 and 28 U.S.C. § 2101.

CONSTITUTIONAL PROVISIONS INVOLVED

“The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated...” U.S. Const. amend IV.

STATEMENT OF THE CASE¹

A. Procedural History

Mr. Moats was named in a two-count indictment, the same having been issued in the Southern District of West Virginia on or about January 23, 2020, and was charged with: 1. Felon in possession of a Firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2); and 2. Possession of Firearm with Serial Number Removed in violation of 18 U.S.C. §§ 922(k) and 924 (a)(1)(B). JA 8-10.

The petitioner plead not guilty and filed a motion to suppress, which is the subject of this petition, the same having been denied after hearing by the Hon. John T. Copenhaver, Sr., U.S. District Court Judge Presiding, on August 10, 2020. JA 34-81. After denial of said motion, the petitioner made a conditional plea of guilty specifically preserving his right to appeal the District Court's decision on petitioner's motion to suppress on September 23, 2020. JA 86-97.

On petitioner's direct appeal, the Fourth Circuit Court of Appeals affirmed the district court's ruling on petitioner's motion to suppress evidence in a per curiam opinion on October 19, 2021. App. A. A petitioner for rehearing *en banc* was denied on January 14, 2022. App. B.

B. Statement of Facts

On March 21, 2018, Officer Hedrick Miller with the Charleston Police Department was contacted by the West Virginia State Police in reference to a

¹ Citations to the record are taken from the joint appendix filed in the Fourth Circuit Court of Appeals, Case number 21-4002

female fugitive and possible location of same fugitive. J.A. 39. The female had an active warrant for a probation violation out of Logan County West Virginia. *Id.*

At approximately 12:30 p.m., the same day, Officer Miller, along with two other officers arrived at the reported location to locate the female fugitive. J.A. 40. Officers made contact with a resident of the location. *Id.* Instead of seeking a warrant for the residence, Officer Miller asked the resident for permission to search the premises for the female fugitive which was granted. J.A. 41.

During the search, Officer Miller found the female fugitive and the petitioner both “dead” asleep in the basement. J.A. 52. Both the female and the defendant were asleep side-by-side in a large chair. *Id.*

To further the investigation and identify the female, the officers proceeded to wake up both the female and the defendant. J.A. 56. The police planned to wake both people and to separate the two for officer safety. *Id.*

Once the defendant was awakened by the police, he was told to stand up from the chair. J.A. 42. Upon standing up, officers immediately observed the handle of a small pistol protruding from defendant’s front pants pocket. J.A. 42 and 61. For officer safety, per the police, the gun was immediately removed from defendant’s person and secured in Officer Miller’s coat pocket. J.A. 58.

After the gun was secured by Officer Miller, an assisting officer escorted petitioner outside of the home to await questioning by Officer Miller about the gun. J.A. 43. The assisting officer physically walked with and waited with Mr. Moats

outside the residence. *Id.* Additionally, more patrol units arrived at the scene and waited outside with the defendant and the assisting officer. *Id.*

The defendant's instructions were to stand outside the home and wait for Officer Miller to finish arresting the female fugitive. J.A. 42-43. Once Officer Miller had completed the female's arrest, Officer Miller ordered the defendant to his police car and to produce his identification card. Officer Miller stated that he took the gun from defendant to "run it and make sure it's not stolen." *Id.* Officer Miller then told petitioner that he would give gun back to defendant after he "made sure" that Mr. Moats was not a prohibited person or had an active domestic violence petition. *Id.* Once Officer Miller examined the weapon outside of the home, he noticed the obliterated serial number. J.A. 44.

REASONS CERTIORARI SHOULD BE GRANTED

Mr. Moats respectfully requests that this Court grant his petition in this case because the majority opinion in the Fourth Circuit overlooked relevant factual and legal matters, conflicts with previous decisions of the court which were not fully addressed, and involves a question of exceptional importance, that being the constitutional right of an individual to be free from unreasonable searches of his person by the government. This request is specifically related to the defendant's argument that his motion to suppress should have been granted by the district court.

A. The majority opinion overlooked material factual and legal matters, and conflicts with prior decisions of this Court.

The majority opinion overlooked several material facts in this case and made a ruling that directly conflicts with prior decisions of this Court by ruling Mr.

Moats' encounter with police outside the residence on the date in question was not an investigatory detention. The majority ruled Mr. Moats was not unlawfully seized when he was asked to stand outside by Officer Miller and wait for Officer Miller to complete the arrest of the female. The majority's stance is that, even though Mr. Moats was outside at the direction of police, escorted to a specific area by police, required to wait for Officer Miller to complete a task, and surrounded by multiple officers while waiting for Officer Miller, the defendant was not "detained by police, questioned, or prevented" from leaving the scene. App. A. 5. Moreover, the majority opinion implicitly ruled Mr. Moats' encounter with the police outside the residence was consensual and did not implicate the fourth amendment. In other words, the majority opinion held that no seizure of Mr. Moats' person could have occurred because Mr. Moats was "merely escorted out of the house while the officers arrested the woman and, upon being informed that the officer would not return the firearm, Moats walked away." *Id.*

The majority opinion justified its decision by chiefly relying on *United States v. Gray*, 883 F.2d 320, 322 (4th Cir. 1989), where the Court focused on a variety of factors the Court considers to determine whether police-citizen encounters constitutes a seizure under the fourth amendment. In their reliance on the *Gray* factors, the majority opinion determined Mr. Moats' citizen-police encounter did not rise to the level of an investigatory stop, instead Mr. Moats' interaction with police at the scene was consensual and did not implicate the fourth amendment. *See United States v. Jones*, 678 F.3d 293, 299 (4th Cir. 2012).

This stance by the majority is contrary to the facts in the record, to previous case law in the Fourth Circuit, and the law of this Court. The majority opinion erred when ruling Mr. Moats' interaction outside the residence with the police was not investigatory in nature. This Court can rectify that error by accepting Mr. Moats' petition.

There are three types of citizen-police encounters. Consensual encounters, which does not trigger the fourth amendment, arrest, and investigatory stops. *United States v. Cloud*, 994 F.3d 233, 241 (4th Cir. 2021). It is well settled law that brief "investigatory stops" are "seizures" that implicate the Fourth Amendment. *United States v. Curry*, 965 F.3d 313, 319 (4th Cir. 2020). A "seizure" occurs when officers employ "'physical force' or a 'show of authority' that 'in some way restrain[s] the liberty' of the person." *Torres v. Madrid*, U.S. 141 S. Ct. 989, 995 (2021) (quoting *Terry v. Ohio*, 392 U.S. 1, 19 n.16, (1968)). The physical force or show authority does not have to be drastic for a fourth amendment seizure to occur, "any restraint of movement will do." *Gray* at 322-323. In other words, the fourth amendment is triggered when the police's show of authority is "sufficient to make it apparent that the individual is not free to ignore the officer and proceed on his way." *Id.*

The idea that defendant's encounter with police was consensual and not investigatory ignores several key facts in the record. First and foremost, Mr. Moats was not free to leave the area after he was escorted from the residence. Officer Miller's assisting officer literally walked with the defendant and directed Mr. Moats to a specific place outside the home to wait for Officer Miller. J.A. 42. It is not

reasonable to conclude that Mr. Moats was free to ignore the officers and proceed on his way when the defendant was standing outside in an area designated by the police and surrounded by multiple police officers. The defendant was not free to leave the premises until after he spoke with Officer Miller. Unlike a consensual encounter with police, Mr. Moats could not refuse to identify himself. The police forced him to produce his identification card. When Officer Miller did eventually complete his arrest of the female, the defendant could not have reasonably refused to speak with police. Officer Miller detained the defendant to specifically speak about a gun he found on Mr. Moats' person.

Mr. Moats was subjected to a show of authority by police outside the residence. The majority opinion ruling that the defendant was free to voluntarily leave the residence is not reasonable, contrary to the facts in record, contrary to previous fourth circuit precedent, and contrary to precedent of this Court.

Instead, Mr. Moats was subject to a brief investigatory stop when police detained him outside the residence. This Court has clearly established that investigatory detention of a citizen by an officer must be supported by reasonable articulable suspicion that the individual is engaged in criminal activity. *United States v. Black*, 707 F.3d 531, 537 (4th Cir. 2013).

It is uncontested by the United States in their brief and reiterated by Officer Miller during the suppression hearing that while the defendant was being detained outside the residence the defendant was not suspected of a crime. Officer Miller stated over and over that he was not at the residence to arrest Mr. Moats. J.A. 43,

55 and 56. Officer Miller told Mr. Moats that he only took the gun from Mr. Moats to “run it and make sure it’s not stolen.” J.A. at 43. Officer Miller then told defendant that he would give the gun back to Mr. Moats after he “made sure” that Mr. Moats was not a prohibited person or had an active domestic violence petition. *Id.* Officer Miller went so far to say that he “didn’t care if [Mr. Moats] was inside of the house with a firearm.” *Id.* It is not illegal to have a gun inside a residence. *Id.* at 58.

Officer Miller, by his own words and actions, could not articulate a reasonable suspicion that justifies the investigatory detention of Mr. Moats outside the residence because Mr. Moats was not suspected of any criminal activity. Therefore, the investigatory detention that occurred outside the residence was *de facto* unconstitutional, violates the Fourth Amendment of the United State Constitution, and is contrary to the case law of this Court.

Finally, the case at bar offers a distinct factual situation and presents this Court with an opportunity to clarify what type of police action indicates a show of authority for fourth amendment purposes. There were two separate and distinct detentions in this case caused by the police when Officer Miller decided to remove the defendant from the residence. Further examination of this issue by this Court will be very instructive on the nuances of fourth amendment jurisprudence.

B. This case involves a question of exceptional importance in that it significantly impacts the rights of an individual under the Fourth Amendment.

One of the most fundamental rights we have as American citizens is the right to be free from unreasonable intrusion of the government on one’s person. This

Court has always been protective of the Fourth Amendment and stated over and over the Fourth Amendment must be broadly construed.

Our Bill of Rights enumerate many protections in the law that have never been popular with everyone, and were never meant to be. The individual rights and liberties enshrined in our state and federal constitutions would mean little if this Court did not stand up to the potential tyranny of the state by protecting individual rights. The Fourth Amendment promises freedom from unreasonable searches and seizures, even when this sometimes defeats criminal prosecutions. “The Fourth Amendment protects people, not places.” *Katz v. United States*, 389 U.S. 347, 351 (1967).

It is clear from the record, the gun possessed by the defendant had an obliterated serial number. However, that removed serial number was not discovered by Officer Miller until after Officer Miller took firearm to his vehicle to inspect it. At that point in time, Mr. Moats had already been unconstitutionally detained and his individual rights protected by the Fourth Amendment had been violated.

This Court, in the past, has made the tough decisions that establish precedent for government actors that clearly place one’s constitutional rights on a pedestal and value individually protected rights over evidence collected by police. For example, Courts have explicitly stated it will not accept *post hoc* rationalizations put forth by the government to validate illegal seizures that turn up contraband. *United States v. Foster*, 634 F.3d 243, 249 (4th Cir. 2011). One major purpose of the Fourth Amendment is to prevent hindsight from coloring the evaluation of the reasonableness of a search or seizure. *United States v. Martinez-Fuerte*, 428 U.S.

543, 566 (1976). Another example is the exclusionary rule. It was designed to safeguard through its deterrent effect, to compel respect for constitutional guarantees, and to prevent violation of the same. *See Elkins v. United States*, 334 U.S. 206, 217 (1960).

This case is another opportunity for this Court to reinforce the idea that the interest of protecting a person's constitutional rights outweighs the state's interest in collecting evidence or criminal prosecution. Even in cases, like this one, where suppressing the firearm will destroy the United States case against the defendant. The fact that Mr. Moats was unconstitutionally detained outside the residence by an illegal investigatory detention must be the higher concern.

This case is of exceptional importance because the majority's analysis in the matter at bar could undermine Fourth Amendment protections afforded to many law abiding citizens and such is the greater harm. This Court and the Constitution created the warrant requirement as a check on police to stop overreaching by government actors in the pursuit of "justice." "Over and again," this Court has "emphasized that the mandate of the Fourth Amendment requires adherence to judicial processes." *Katz*, 389 U.S. at 357. Once Mr. Moats was detained and surrounded by the police outside the residence with admittedly no suspicion of criminal activity, Officer Miller should have sought a warrant to take the firearm into evidence. The fact Officer Miller intentionally chose to detain Mr. Moats in an investigatory detention with no suspicion that he had committed a crime and to further collect the firearm without obtaining a warrant is the type of behavior this

Court has previously described as unconstitutional and taken a stance against. The majority's acceptance of same unconstitutional behavior by Officer Miller is contrary to this Court's legal precedent and it is exceptionally important for this Court to clarify the state of the law with regard to individual Fourth Amendment rights versus the needs of the state to collect evidence and prosecute criminal actions.

CONCLUSION

Based on the foregoing arguments, the defendant/appellant respectfully requests that this Court grant his Petition for Writ of Certiorari, ultimately reverse the denial of his motion to suppress and grant such further relief deemed to be necessary and proper.

Respectfully submitted, this the 18th day of January, 2022.

/s/ John J. Balenovich
John J. Balenovich, Esq.
West Virginia Bar No.: 10179
John J. Balenovich Law Offices, LC
3818 MacCorkle Ave., S.E.
Charleston, West Virginia 25304
Telephone: (304) 925-2100
Facsimile: (304) 925-2193
john@wvlitigator.com
Counsel for Petitioner