No. 21-814

IN THE

Supreme Court of the United States

CHRISTOPHER CASTAGNA; GAVIN CASTAGNA,

Petitioners,

v.

HARRY JEAN; KEITH KAPLAN; DARAN EDWARDS,

Respondents,

JEAN MOISE ACLOQUE; GARY BARKER; MICHAEL BIZZOZERO; TERRY COTTON;

[*Additional parties list on the inside cover*]

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

BRIEF IN OPPOSITION

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Dated: 01/24/2022

BATEMAN & SLADE STONEHAM, MASSACHUSETTS

RICHARD DEVOE; JON-MICHAEL HARBER;
CLIFTON HAYES; GAVIN MCHALE;
KAMAU PRITCHARD; WILLIAM SAMARAS;
STEPHEN SMIGLIANI; ANTHONY TROY;
JAY TULLY; BRENDAN WALSH;
DONALD WIGHTMAN; JAMES DOE, INDIVIDUALLY;
JOHN DOE 1; JOHN DOE 2; JOHN DOE 3; JOHN DOE 4;
JOHN DOE 5; JOHN DOE 6; JOHN DOE 7; JOHN DOE 8;
JOHN DOE 9; JOHN DOE 10; JOHN DOE 11;
JOHN DOE 12,

Defendants.

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REASONS FOR DENYING THE PETITION

1. This Court Lacks Jurisdiction Pursuant To Supreme Court Rule 10(c).

Christopher Castagna and Gavin Castagna ("the Castagnas") have brought this petition for writ of certiorari under Supreme Court Rule 10(c) on grounds that, in their view, the First Circuit decided an important federal question that conflicts with a relevant decision of this Court, namely, Caniglia v. Strom, ___ U.S.___, 141 S. Ct. 1956 (2021). But the First Circuit did no such thing. In denying the Castagnas' Motion to Recall Mandate, to Stay Ruling on Within Motion Pending Ruling on Rule 60(b) Motion, and to Set Deadline to File Petition for Rehearing ("Motion to Recall Mandate") the First Circuit reasoned that, regardless of this Court's decision in Caniglia, the officers were entitled to qualified immunity because it was not clearly established in 2013 that police officers could not enter a home pursuant to the community caretaking exception to the warrant requirement.[1] In reaching that conclusion, the First Circuit referenced cases from the Fifth, Sixth, and Eighth Circuits that predated this case and found that police officers could enter a home pursuant to the community caretaking exception. It also referenced its own precedent, in which the First Circuit left open the question of whether the community caretaking

[1] In denying the Motion to Recall Mandate, the First Circuit did not insist that its holding in Castagna v. Jean, 955 F.3d 211 (1st Cir. 2020)—that it was constitutional for the officers to enter the home pursuant to the community caretaking exception to the warrant requirement—was correct.

exception applied to the home. See MacDonald v. Town of Eastham, 745 F.3d 8, 14 (1st Cir. 2014).[2]

In finding that the officers were entitled to qualified immunity and refusing to recall the mandate, the First Circuit did not render a decision that conflicted with Caniglia. It recognized a circuit split on a constitutional issue and refused to subject officers to liability for picking the wrong side of the debate. This rationale is consistent with this Court's repeated guidance that, to deny qualified immunity, the constitutional question at issue must be "beyond debate." See Ashcroft v. al-Kidd, 563 U.S. 731, 741 (2011); see also District of Columbia v. Wesby, 138 S. Ct. 577, 589 (2018). As this Court has stated explicitly, "[i]f judges thus disagree on a constitutional question, it is unfair to subject the police to money damages for picking the wrong side of the controversy." Wilson v. Layne, 526 U.S. 603, 618 (1999). Given the circuit split, judges clearly disagreed as to whether the community caretaking exception applied to the home. The First Circuit was right to afford the officers qualified immunity under these circumstances.

Recognizing that a circuit split all but guarantees qualified immunity, the Castagnas now urge this Court to decide—for the first time—"that only Supreme Court precedent, not Circuit Courts' precedents, may serve as a basis for determining whether a particular point of law is clearly established for purposes of qualified immunity."

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[2] As of 2013, other circuits had found that the community caretaking exception did not apply to the home. See e.g. United States v. Erickson, 991 F.2d 529, 533 (9th Cir. 1993); United States v. Pichany, 687 F.2d 204, 208-209 (7th Cir. 1982); United States v. Bute, 43 F.3d 531, 535 (10th Cir. 1994).

Castagnas' Brief at p. 10. But to simply read what the Castagnas are urging this Court to do is to dispense with their argument that the officers are not entitled to qualified immunity. To date, this Court has not decided what precedents other than its own are sufficient to "clearly establish" the law. See Harlow v. Fitzgerald, 457 U.S. 800, 818 n.32 (1982) ("we need not define here the circumstances under which 'the state of the law' should be 'evaluated by reference to the opinions of this Court, of the Courts of Appeals or of the local District Court'") (citing Procunier v. Navarette, 434 U.S. 555, 565 (1978)). That said, this Court has repeatedly suggested that circuit court precedent may be enough to establish what a reasonable officer should have known for purposes of qualified immunity. See Hope v. Pelzer, 536 U.S. 730, 747 (2002) (noting during discussion on qualified immunity that "[t]he unreported District Court opinions cited by the officers are distinguishable on their own terms. But regardless, they would be no match for the Circuit precedents"); Taylor v. Barkes, 575 U.S. 822, 826 (2015) ("[T]o the extent that a robust consensus of persuasive authority in the Courts of Appeals could itself clearly establish the federal right respondent alleges…the weight of that authority at the time of Barkes's death suggest that such a right did not exist") (internal quotations and citations omitted); Reichle v. Howards, 566 U.S. 658, 665-666 (2012) ("Assuming arguendo that controlling Courts of Appeals' authority could be a dispositive source of clearly established law in the circumstances of this case, the Tenth Circuit's cases do not satisfy the "clearly established" standard here). Against this backdrop of uncertainty as to what precedents may "clearly establish" the law, the First Circuit's decision to afford the officers qualified immunity

based on the circuit split regarding the community caretaking exception's application to the home does not conflict with Caniglia. Indeed, this Court did not hold in Caniglia that only its precedents, and not those of the Circuit Courts, could "clearly establish" the law for qualified immunity purposes. As a result, since there is no conflict with Caniglia, this Court lacks jurisdiction pursuant to Supreme Court Rule 10(c).

2. Cady v. Dombrowski Did Not Clearly Establish, For Qualified Immunity Purposes, That The Community Caretaking Exception Applies Only To Automobiles.

The Castagnas urge this Court to conclude that Cady v. Dombrowski, 413 U.S. 433 (1973), clearly established, for qualified immunity purposes, that the community caretaking exception applied only to the home. But while the Cady court certainly recognized the distinction between automobiles and homes when enunciating the community caretaking exception, it did not explicitly limit the exception to automobiles. See Cady, 413 U.S. at 445-57. Or at least—that is how several circuit courts saw it. See e.g. United States v. Quezada, 448 F.3d 1005 (8th Cir. 2006) (reasoning that a logical reading of Cady, in conjunction with other Supreme Court precedent, suggests that police officers may enter a home as a community caretaker when he has a reasonable belief that an emergency exists that requires his attention); United States v. York, 895 F.2d 1026, 1029-30 (5th Cir. 1990) (reading Cady to suggest that police may act as community caretakers so long as their function is totally divorced from the detection, investigation, or acquisition of evidence and their response was reasonably foreseeable).

The common theme in the circuits that have recognized the community caretaking exception in the home in the wake of Cady has been the officers' reasonable belief that there was a safety concern inside the home that warranted their attention. Put another way, these circuits have recognized the community caretaking exception in situations that resemble the existing exigent circumstances exception to the warrant requirement, though they apply a lower standard than probable cause to satisfy the Fourth Amendment because the officers are not investigating a crime. The First Circuit applied this same rationale in Caniglia v. Strom, 953 F.3d 112 (1st Cir. 2020), noting that "[t]hreats to individual and community safety are not confined to the highways. Given the doctrine's core purpose, its gradual expansion since Cady, and the practical realities of policing, we think it plain that the community caretaking doctrine may, under the right circumstances, have purchase outside the motor vehicle context." Id. at 124.

In arguing that Cady "clearly established" the law regarding the community caretaking exception, the Castagnas ignore the "gradual expansion of Cady"—rightfully or wrongfully—by the First, Fifth, Sixth, and Eighth Circuits. As discussed above, the fact that the judges in these circuits got it wrong does not mean that the officers in this case should be subject to liability. See Wilson, 526 U.S. at 618. Indeed, after Caniglia was remanded to the District Court for additional proceedings following this Court's decision in May 2021, the District Court found that the officers were entitled to qualified immunity precisely because this Court disagreed with it: "Indeed, the very fact that the Supreme Court disagreed with this Court and the First

Circuit on the issue of community caretaking function illustrates a lack of clarity. Thus, it is not possible that a reasonable Cranston Police Officer could have understood the potentially problematic nature of their conduct." Caniglia v. Strom, ---F. Supp. 3d.---, 2012 WL 5040248, No. 1:15-cv-00525-JJM-LDA (D.R.I. Oct. 27, 2021). The same is true here. The officers were acting in accordance with circuit court precedent. They were not knowingly violating the law. Qualified immunity was designed to protect officers in precisely this circumstance. See Malley v. Briggs, 475 U.S. 335, 341 (1986) ("As the qualified immunity defense has evolved, it provides ample protection to all but the plainly incompetent or those who knowingly violate the law").

CONCLUSION

For all the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,
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