

No. 19A_____

IN THE
Supreme Court of the United States

CLYDE S. BOVAT,

Applicant,

v.

STATE OF VERMONT,

Respondent.

**APPLICATION FOR AN EXTENSION OF TIME TO FILE A
PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF VERMONT**

SAMANTHA V. LEDNICKY
MURDOCH HUGHES
TWAROG TARNELLI
ATTORNEYS AT LAW, P.C.
131 Main Street
P.O. Box 363
Burlington, VT 05403
(802) 864-9811
slednick@mhhttpc.com

NEAL KUMAR KATYAL
Counsel of Record
HOGAN LOVELLS US LLP
555 Thirteenth Street, NW
Washington, DC 20004
(202) 637-5600
neal.katyal@hoganlovells.com

Counsel for Applicant

February 26, 2020

APPLICATION

To the Honorable Ruth Bader Ginsburg, Associate Justice of the Supreme Court of the United States and Circuit Justice for Vermont:

Pursuant to Rules 13.5 and 13.1 of the Rules of this Court and 28 U.S.C. § 2101(d), applicant Clyde Bovat respectfully request a 60-day extension of time, to and including May 18, 2020, within which to file a petition for a writ of certiorari to review the judgment of the Supreme Court of Vermont in this case.

1. The Supreme Court of Vermont issued its original decision on November 8, 2019. *See Vermont v. Bovat*, 2019 VT 81 (Appendix A). Applicant timely sought reargument, which the Supreme Court of Vermont denied on December 19, 2019 (Appendix B).

2. Unless extended, the time to file a petition for certiorari will expire on March 18, 2020. *See* Sup. Ct. R. 13.1. This application is being filed more than ten days before a petition is currently due. *See* Sup. Ct. R. 13.5. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1257(a).

3. In 2017, police officers went to Bovat's home to investigate an alleged violation of Vermont hunting law. They approached Bovat's residence using the driveway, which proceeds a short way before splitting: To the left is a small parking area, and immediately behind it, a garage. To the right is a walkway that leads to the house. The officers proceeded towards the garage and peered inside an eight-to-twelve inch window. They observed a truck, parked facing away from the window; the license plate number; and what appeared to be animal hair and blood on

the top of the closed rear tailgate. Relying in part on this observation, the officers obtained a search warrant to seize the truck. Based on the evidence obtained using that warrant, officers charged Bovat with several violations of Vermont’s big-game-hunting laws.

4. Bovat moved to suppress this evidence, arguing it was obtained in violation of the Fourth Amendment. The district court denied the motion, and the Supreme Court of Vermont affirmed 3-2 over a dissent by Chief Justice Reiber and Justice Robinson. App. 1a-21a. The majority held that the garage was within the curtilage of Bovat’s home and was therefore “protected from warrantless government intrusions,” but it nevertheless concluded that the officers had “a right to” enter Bovat’s driveway, which the panel classified as a “semiprivate” area. App 4a, 7a. In the majority’s view, because the officers could see the evidence in plain view “through the window of the garage from a place [they] had a right to be,” they “did not violate [Bovat’s] Fourth Amendment rights.” App. 7a.

5. Chief Justice Reiber dissented, joined by Justice Robinson. As they explained, the curtilage, like the home that it surrounds, enjoys the highest level of Fourth Amendment protection. Thus, just as an object observed from within the home is not subject to the plain-view exception unless the officer had a lawful reason to enter the home, an object observed from within the curtilage is not subject to the plain-view exception unless the officers had a lawful reason to intrude to that point in the curtilage. App 10a-11a, 13a (Reiber, C.J., dissenting). Although the knock-and-talk exception—which the majority implicitly relied on to reach its hold-

ing—provides a somewhat expanded license to enter the curtilage “to carry out legitimate police business,” it is black-letter Fourth Amendment law that the officers “must ‘restrict their movements to places visitors could be expected to go.’” App 7a, 13a (quoting 1 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 2.3(f), at 782–784 (5th ed. 2012)). The officers exceeded the scope of that license, the dissent explained, because to see Bovat’s truck, the officers had to enter Bovat’s curtilage, deviate from the normal access route a visitor would follow to get to the house, approach a small garage window, and peer inside. That was an unreasonable invasion of the privacy an individual would expect to have in a portion of the curtilage not readily accessible to the public.

6. The Supreme Court of Vermont’s decision warrants this Court’s review. This case involves a question of substantial importance about the scope of and interaction between the plain-view doctrine and the knock-and-talk exception. The question presented in Bovat’s petition will have a significant effect on an officer’s ability to intrude on the area immediately surrounding an individual’s home, the core harm against which the Fourth Amendment protects. *See, e.g., Florida v. Jardines*, 569 U.S. 1, 6 (2013) (“[W]hen it comes to the Fourth Amendment, the home is first among equals.”); *Kyllo v. United States*, 533 U.S. 27, 31 (2001) (“‘At the very core’ of the Fourth Amendment ‘stands the right of a man to retreat into his own home and there be free from unreasonable government intrusion.’” (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961))). An extension of time will help ensure that the petition effectively presents this important issue.

7. Good cause exists for an extension. The applicant has recently retained additional counsel to file a petition for certiorari. Over the next several weeks, counsel is occupied with briefing deadlines and arguments for a variety of matters, including: (1) an opening brief on the merits in *Ford v. Bandemer*, No. 19-369, consolidated with *Ford v. Montana Eighth Judicial District*, No. 19-368 (U.S.), due March 2; (2) a petition for certiorari in *Enigma Software Group v. Malwarebytes, Inc.*, No. 17-17351 (9th Cir.), due March 30; (3) a reply brief in support of certiorari in *Credit Bureau Center, LLC v. Federal Trade Commission*, No. 19-914 (U.S.), due April 6; and (4) a reply brief on the merits in *Bandemer* and *Montana Eighth Judicial District* due approximately April 17. Applicant requests this extension of time to permit counsel to research the relevant legal and factual issues and to prepare a petition that fully addresses the important questions raised by the proceedings below.

8. For these reasons, Applicant respectfully requests that an order be entered extending the time to file a petition for certiorari to and including May 18, 2020.

Respectfully submitted,

Neal Katyal /NB

NEAL KUMAR KATYAL

Counsel of Record

HOGAN LOVELLS US LLP

555 Thirteenth Street, NW

Washington, DC 20004

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neal.katyal@hoganlovells.com

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