

No. 25-6032

FILED

JUN 02 2025

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Thomas E. Nidiffer et al. — PETITIONER
(Your Name)

vs.

David Lovato et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Tenth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Thomas E. Nidiffer,
Laurie-Lynn Francese

(Your Name)

19 Hillside Drive

(Address)

Edgewood, NM 87015

(City, State, Zip Code)

505-206-4775 (TN)

505-319-4243 (LF)

(Phone Number)

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SUPREME COURT, U.S.

QUESTIONS PRESENTED

1. Whether a locked gate surrounding the curtilage of a home clearly revokes the implied social license for law enforcement officers to enter the property without a warrant or probable cause for a "knock and talk," such that officers who physically overcome such a barrier are not entitled to qualified immunity for a Fourth Amendment violation.
2. What exactly must a homeowner do to revoke the implied social license exception to the Fourth Amendment?

LIST OF PARTIES

- ☐ All parties appear in the caption of the case on the cover page.
- ☒ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Thomas E. Nidiffer,
Laurie-Lynn Francese
(Petitioners)

David Lovato,
Armando Campos,
Zachary Sisemore
(Respondents)

RELATED CASES

Nidiffer v. Lovato, 1:22-cv-00374-MV-JMR, U.S. District Court of New Mexico.
Judgment entered March 19, 2024.

Nidiffer v. Lovato, 24-2056, U.S. Court of Appeals for the Tenth Circuit.
Judgment entered March 6, 2025.

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TABLE OF AUTHORITIES

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 6, 2025.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. 42 USC § 1983 - Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.
2. Fourth Amendment to the United States Constitution - The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

On May 24, 2019, three officers from the Edgewood Police Department were dispatched to the home of Thomas E. Nidiffer and Laurie-Lynn Francese (the Owners) to investigate a report alleging marijuana cultivation and sales on the property. The Owners' residence was situated in a residential area within Edgewood, New Mexico, and was enclosed by a chain-linked fence featuring a farm gate. This gate was locked, and when in this state, the front door of the home could not be accessed without climbing over the fence. The officers proceeded to climb over the locked gate and enter the property without obtaining a warrant or explicit consent to do so. After traversing the driveway, the officers encountered Mr. Nidiffer on his front porch and requested permission to search or "walk around" the premises. Mr. Nidiffer explicitly denied consent and asked the officers to leave the property, a request with which the officers complied without further incident. Subsequently, the Owners, acting pro se, initiated a lawsuit under 42 U.S.C. § 1983 in federal district court, asserting that the officers' actions of climbing over the locked gate and entering their property without a warrant or probable cause constituted a violation of their Fourth Amendment rights.

REASONS FOR GRANTING THE PETITION

Tenth Circuit's decision conflicts with the principles articulated in *Florida v. Jardines*, which ultimately affirmed the principle that the curtilage, the area immediately surrounding and associated with the home, warrants the same Fourth Amendment protections as the home itself. The 10th Circuit's decision in *Nidiffer* directly contributes to and exacerbates a significant and unresolved circuit split on a critical Fourth Amendment issue. The *Nidiffer* decision is a direct consequence and further entrenchment of the 10th Circuit's uniquely permissive interpretation of the implied license, as established in *U.S. v. Carloss*. By affirming qualified immunity despite officers physically overcoming a locked gate, the 10th Circuit has broadened its stance from "No Trespassing" signs being insufficient to physical barriers also failing to clearly revoke the license. This approach creates a stark and irreconcilable conflict with other federal circuits that interpret *Florida v. Jardines* more strictly. This divergence results in a fundamental disuniformity in Fourth Amendment protections, where a homeowner's constitutional rights regarding police entry depend entirely on the geographical jurisdiction. Such a profound and active circuit split on "knock-and-talks" demands Supreme Court resolution to ensure consistency and fairness in the application of federal law.

The District Court's explicit finding of a "marked absence of case law" (Appendix C, p. 7) underscores the need for Supreme Court guidance on when physical structures revoke the implied license. The District Court's rare and candid acknowledgment of a "marked absence of case law" on the specific question of whether physical structures like locked gates revoke the implied license is a direct appeal for Supreme Court intervention. This judicial admission confirms that lower courts are genuinely struggling with this complex issue and lack clear,

In conclusion, the Nidiffer v. Lovato case presents an exceptionally clean and compelling vehicle for the Supreme Court to address the unresolved ambiguities of Florida v. Jardines, specifically concerning the revocation of the implied social license by physical barriers like locked gates. Establishing a clear rule on this issue is crucial for protecting the sanctity of the home and its curtilage, as guaranteed by the Fourth Amendment. The Tenth Circuit's decision appears to conflict with the principles articulated in Florida v. Jardines, contributes to a potential circuit split regarding the effect of physical barriers on the "knock and talk" exception, and addresses a significant issue of federal law concerning the scope of Fourth Amendment protections in the curtilage of a home. Review by the Supreme Court is necessary to provide clarity and uniformity in this important area of constitutional law and to ensure that the sanctity of the home and its curtilage is adequately protected against unwarranted governmental intrusion. Petitioners hope that this Supreme Court finds in their favor and provides appropriate remedy.

Dated June 02, 2025

Respectfully submitted by: Thomas E. Nidiffer
Thomas E. Nidiffer

Laurie-Lynn Francese
Laurie-Lynn Francese

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Petitioners pro se

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Thomas E. Nidiffer et al. — PETITIONER
(Your Name)

VS.

David Lovato et al. — RESPONDENT(S)

PROOF OF SERVICE

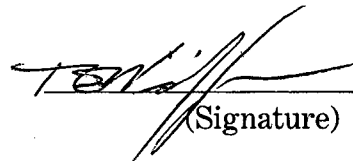
I, Thomas E. Nidiffer, Laurie-Lynn Francese, do swear or declare that on this date, June 02, 2025, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

NMML attn: Laura Vega
P.O. Box 846
Santa Fe, NM 87504

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 02, 2025


(Signature)