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December 23, 2019

Maria R. Hamilton, Chief Clerk
United States Court of Appeals for the First Circuit
John J. Moakley Courthouse
1 Courthouse Way
Boston, MA 02110

Re: Edward Caniglia
Vs. Robert F. Strom, et al.
No. 19-1764

Oral Argument Scheduled January 8, 2020; Response to Letter of Marc DeSisto of December 20, 2020 providing reference to Rodriguez v. City of San Jose, 930 F.3d 1123 (9th Cir. 2019)

Dear Ms. Hamilton:

While Appellees cite to Rodriguez v. City of San Jose, decided in July 2019, they omit the California Supreme Court decision, People v. Oviedo, 446 P.3d. 262 (Cal. 2019), issued in August 2019 and cited by Appellant (Brief at 21). Oviedo represents the definitive determination of the application of the community caretaking function under California law because the function must be based on “state law and sound police procedures.” Cady v. Dombroski, 413 U.S 433, 447 (1973). (Appellant’s Brief, pp. 19-29).

The Ninth Circuit did not address California state case law. The California Supreme Court rejects the community caretaking function as grounds to seize a person’s firearms from his home under both the Fourth Amendment and the California constitution even though Oviedo was, in fact, suicidal. 446 P.3d at 276. The Court specifically rejected the State’s argument that the police officers were motivated to ensure public safety. Id.

Rodriguez differs factually from this case. The police had been called to Rodriguez’s home on prior occasions because of his mental health problems. When they arrived, Rodriguez was ranting about the CIA, the army, and people watching him. He mentioned “[s]hooting up schools” and having a “gun safe full of guns.” When the police asked if he wanted to harm himself, he tried to break his own thumb. In the ambulance, he repeatedly broke the constraints holding him to the gurney. At the hospital, he was determined to be a danger to himself and was admitted for a week. No similar facts are present here.

In Rodriguez, the police followed two state statutes that permit them to seize a person upon probable cause that he is a danger to himself because of a mental health disorder and to seize the firearms of a person who has been seized for that reason. Cal. Welf. & Inst. Code, §§

5150, 8102 (2013), respectively. The decision could be justified based on the statutes, alone. Here, Defendants disclaim any attempt to comply with the Rhode Island Mental Health Law, or any other statute. (Appellees' Brief, pp. 47-48; Appellant's Brief, pp. 34-41).

Very truly yours,

/s/ Thomas W. Lyons

Thomas W. Lyons

cc. Marc DeSisto, Esq.