



## SAN DIEGO COUNTY SHERIFF'S DEPARTMENT

# *LEGAL AFFAIRS*

# *UPDATE*

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### **The warrantless seizure of a firearm under the emergency exception of the community caretaking doctrine does not violate the Fourth Amendment of the Constitution.**

In January 2013, Lori Rodriguez called 9-1-1 to ask the San Jose Police Department to conduct a welfare check on her husband, Edward Rodriguez. Police had been to the home on prior occasions because of Edward's mental health problems. Before arrival, officers learned that there were guns in the home. Upon arrival, Edward was ranting about the CIA, the army, people watching him, and mentioned "shooting up schools" and that he had a "gun safe full of guns." Additionally, when asked if he wanted to hurt himself, Edward attempted to break his own thumb. Edward was detained pursuant to WIC § 5150 for a mental health evaluation. After Edward's removal, Lori confirmed that there were firearms in the home in a gun safe. Pursuant to WIC § 8102, officers confiscated one firearm registered to Lori, and eleven firearms that were either unregistered or registered to Edward. Lori objected to the removal of her personal gun, but all twelve were confiscated. Edward was admitted to the hospital and discharged approximately one week later.

Lori "re-registered the firearms in her name alone and obtained clearances to own the guns from the California Department of Justice..." However, the City declined to return the guns. Lori sued in federal court alleging that the seizure and retention of the firearms violated her Constitutional rights. The District Court rejected her arguments, and Lori appealed to the United States Court of Appeals for the Ninth Circuit.

The Ninth Circuit focused its analysis on Lori's claim that the officers' warrantless confiscation of her firearms violated her Fourth Amendment rights. *Rodriguez v. San Jose* (July 2019).

#### **WHAT THIS MEANS:**

**A deputy who has probable cause to detain an individual experiencing an acute mental health episode, and to send the individual for evaluation pursuant to WIC §5150 may seize firearms without a warrant, if the deputy expects that the individual will have access to the firearms and pose a serious public safety threat if he returns to the home, and the deputy does not know how quickly the individual might return.**

"A seizure conducted without a warrant is per se unreasonable under the Fourth Amendment, with some limited exceptions." The Ninth Circuit has previously recognized that an officer may conduct a warrantless search or seizure when acting under the emergency exception of the community caretaking doctrine.

According to the Ninth Circuit, the seizure of a firearm in the possession or control of a person who has been detained because of an acute mental health episode responds to an immediate threat to community safety.

The Court analyzes the emergency exception by balancing the following factors based on all facts available to an objectively reasonable officer: 1) the public safety interest; 2) the urgency of that public interest; and 3) the individual property, liberty, and privacy interests.

Here, the public interest at stake was very significant based on the facts, and a reasonable officer would have been deeply concerned that Edward, who was suffering from a mental health incident, might have had access to a firearm in the near future. There was a substantial public safety interest in ensuring that the guns would not be available to Edward if he returned from the hospital. The Ninth Circuit found it important that the officers had no idea how quickly Edward might return from the hospital, as he could only be held for up to 72 hours if he was actually admitted. As such, the urgency of the public safety interest was significant and outweighed Lori's privacy interests.

Based on the above, the Court held that the warrantless seizure of the guns was appropriate.