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CITY OF BEVERLY HILLS  
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## LEGAL UPDATE

### WARRANTLESS SEIZURE OF FIREARMS DID NOT VIOLATE 4<sup>TH</sup> AMENDMENT OR 2<sup>ND</sup> AMENDMENT

*Rodriguez v. City of San Jose (2019 U.S. App. LEXIS 21897)*

**Facts:** In January of 2013, Lori Rodriguez called 911 to have San Jose PD conduct a welfare check on her husband, Edward, who had mental health problems. Upon arrival Edward was ranting about “shooting up schools” and his “safe full of guns”. The officers detained Edward under 5150 WIC. Lori confirmed to officers that there were firearms in the safe. A total of 12 firearms were confiscated from the safe per 8102(a) WIC. Lori specifically objected to the removal of a handgun that was registered to her alone. However, it was still confiscated. Edward was admitted to a hospital and discharged one week later. The City of San Jose filed a petition, under 8102(c) WIC, seeking an order of forfeiture based on the guns’ return would likely endanger Edward or others. Lori objected, asserting a 2<sup>nd</sup> Amendment right. The Superior Court granted the City’s petition and the California Appeals Court affirmed.

**Legal Proceedings:** Lori sued the City and Department alleging violations of her 2<sup>nd</sup> and 4<sup>th</sup> Amendment rights. The District Court granted summary judgement to Defendants and Lori appealed. The 9<sup>th</sup> Circuit addressed both claims.

**Holding:** With regards to the 2<sup>nd</sup> Amendment, the 9<sup>th</sup> Circuit concluded that the California Court of Appeal had considered and rejected a 2<sup>nd</sup> Amendment argument identical to the present one and that the state Court of Appeal’s decision was a final decision. Lori argued the officers violated her 4<sup>th</sup> Amendment rights when they seized her firearms without a warrant. The 9<sup>th</sup> Circuit held that an exception to the warrant requirement did apply here. Specifically, they explained that police have a “community caretaking function”, which refers to a category of police activity relating to the protection of public health and safety. The court explained that **the urgency of the public safety interest** was the key consideration in deciding whether the seizure here was reasonable and held that the urgency of the situation outweighed the significant privacy interest and the firearm seizure was justified.

**Takeaway:** The 9<sup>th</sup> Circuit emphasized that this case did not violate the 4<sup>th</sup> Amendment due to the particular circumstances: the officers had probable cause to detain an individual with an acute mental health episode, they expected he would have access to firearms and present a public safety threat if he returned home, and they did not know how quickly he might return. Subsequent courts may not determine this doctrine would apply on different facts, so the more conservative approach is to seek a warrant to seize the firearms absent a clear exception to the 4<sup>th</sup> Amendment.

**Attachments:** Jones & Mayer Client Alert Memorandum, Rodriguez v. City of San Jose