No. 21-_____

In the Supreme Court of the United States

WAYNE TORCIVIA, *Petitioner*

v.

SUFFOLK COUNTY, NEW YORK, ET AL.

On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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MAY 31, 2022

QUESTION PRESENTED

This Court has long held that, without "consent" or "exigent circumstances," warrantless "entry into a home" is "unreasonable under the Fourth Amendment." *Steagald* v. *United States*, 451 U.S. 204, 211 (1981). It has further explained that the contours of "exigent circumstances" and "any other warrant exception permitting home entry are jealously and carefully drawn." *Lange* v. *California,* 141 S. Ct. 2011, 2018 (2021) (cleaned up). Accordingly, the Court has "repeatedly" declined to expand the scope of any exceptions to the warrant requirement for home entry. *Caniglia* v. *Strom*, 141 S. Ct. 1596, 1600 (2021).

Despite this Court's guidance, the Second Circuit, without relying "on any other Fourth Amendment exception," Pet. App. 26a n.25, held that a "special-needs exception" to the warrant requirement allows the government to enter a home to seize the firearms of a person suspected of no crime and who is not subject to penal control or supervision. And that court granted qualified immunity to non-police state officials who, after finding that Petitioner presented no risk to himself or others, continued to confine him in a mental hospital until his firearms were seized.

The questions presented are:

(1) Whether a so-called "special-needs exception" to the Fourth Amendment exists and allows warrantless entry into the home of someone who is not subject to penal control or supervision.

(2) Whether the Court should overrule the judge-made qualified immunity doctrine as to non-police state actors.

PARTIES TO THE PROCEEDING

Petitioner is Wayne Torcivia.

Respondents are Suffolk County, New York, Mary Catherine Smith, in her individual capacity, Kristen Steele, in her individual capacity, Dianna D'Anna, in her individual capacity, and Adeeb Yacoub, M.D., in his individual capacity.

RELATED PROCEEDINGS

This case is directly related to these proceedings in the Eastern District of New York, the U.S. Court of Appeals for the Second Circuit, and this Court:

Torcivia v. *Suffolk Cnty.*, No. 21A521 (Mar. 22, 2022) (granting application for extension of time);

Torcivia v. *Suffolk Cnty.*, No. 19-4167 (2d Cir. Dec. 29, 2021) [Doc. 154] (denying petition for rehearing *en banc*);

Torcivia v. *Suffolk Cnty.*, No. 19-4167 (2d Cir. Nov. 9, 2021) [Doc. 138-1] (affirming grant of summary judgment); and

Torcivia v. *Suffolk Cnty.*, No. 15-cv-1791 (E.D.N.Y. Mar. 29, 2019) [Doc. 148] (granting summary judgment in part).

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INTRODUCTION

On facts virtually identical to the warrantless search rejected in *Caniglia* v. *Strom*, 141 S. Ct. 1596 (2021), the Second Circuit allowed a warrantless search of Petitioner's home and seizure of his lawfully owned firearms by invoking a supposed "special-needs exception" to the Fourth Amendment's warrant requirement. And the Second Circuit justified the entry into Petitioner's home even though Petitioner was accused of no crime, Pet. App. 25a, the search and seizure occurred well after Petitioner had been removed from his home and from any possible access to those firearms, and even though the Second Circuit assumed—on the summary judgment record—that the firearms were seized "*after* the responsible physicians had decided that he was not a danger to himself" or others. Pet. App. 34a-35a n.30, 36a (emphasis added). This court rejected a comparable search under the so-called "community caretaking exception" in *Caniglia*, and the Second Circuit's rebranding of that rejected exception is outrageous. 141 S. Ct. at 1599-1600.

In fact, the special-needs exception previously recognized by this Court has been limited to circumstances where the government already has some preexisting level of heightened penal authority over the homeowner, such as with probationers or parolees. *E.g.*, *Griffin* v. *Wisconsin*, 483 U.S. 868, 873-874 (1987) (probationer); *Samson* v. *California*, 547 U.S. 843 (2006) (parolee). Expanding that limited exception to include the broader ground covered by the rejected "community caretaking" exception both blatantly disrespects this Court's decision in *Caniglia*

and deepens a pre-*Caniglia* split—between the Fourth, Fifth, and Tenth Circuits and the New Jersey Supreme Court on the one hand and the First, Second, and Ninth Circuits on the other—about when the special-needs exception applies.

Indeed, this case is a strong candidate for summary reversal given its utter disdain for this Court's recent *Caniglia* decision rejecting a warrantless search on nearly identical facts. In the process, the Second Circuit has not only exacerbated a pre-existing split, but it has also created "a new permission slip" for warrantless home entry that is foreclosed by this Court's precedents. *Lange* v. *California*, 141 S. Ct. 2011, 2019 (2021).

The Second Circuit's decision also highlights ongoing problems with this Court's qualified-immunity doctrine. Even though this Court's precedents have clearly established that a person cannot be detained in a mental hospital after being cleared of risk to himself or others, the Second Circuit still let hospital workers avoid liability for holding Petitioner just long enough to effectuate the seizure of his firearms. As Justice Thomas has explained, the doctrine of qualified immunity is not based in the text or history of 42 U.S.C. §1983, but is instead judge-made. *Ziglar* v. *Abbasi*, 137 S. Ct. 1843, 1871 (2017) (Thomas, J., concurring in part and in the judgment). Whatever the wisdom of maintaining such immunity in cases involving the police, there is no need to maintain atextual precedent that protects those employees that are not tasked with making "difficult and delicate judgments [police] officers must often make." *Foley* v. *Connelie*, 435 U.S. 291, 299 (1978).

OPINIONS BELOW

The Second Circuit's decision is reported at 17 F.4th 342 and reproduced at Pet. App. 1a-48a. The order denying the petition for rehearing *en banc* is unreported and reproduced at Pet. App. 49a-50a. The district court's summary-judgment opinion is reported at 409 F. Supp. 3d 19 and reproduced at Pet. App. 51a-110a.

JURISDICTION

The Second Circuit issued its opinion on November 9, 2021. Pet. App. 1a. The Second Circuit denied a timely petition for rehearing and rehearing *en banc* on December 29, 2021. Pet. App. 49a-50a. Justice Sotomayor granted Petitioner's timely request for a 60-day extension to file this petition, to and including May 31, 2022. No. 21A521 (Mar. 22, 2022).

This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The relevant constitutional and statutory provisions are reproduced in the appendix at Pet. App. 111a-112a.

STATEMENT

A. Legal Background

1. *Exceptions to the Warrant Requirement.* The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. And this Court has explained that, "when it comes to the Fourth Amendment, the home is first among equals." *Florida* v. *Jardines*, 569 U.S. 1, 6 (2013). Warrantless searches of the home are per se unreasonable under the Fourth Amendment—subject only to a few "specifically established and well-delineated exceptions." See *Katz* v. *United States*, 389 U.S. 347, 357 (1967). And in *Steagald* v. *United States*, this Court explained just how narrow exceptions for home searches are when it held that "a search warrant *must* be obtained absent exigent circumstances or consent." 451 U.S. 204, 205-206 (1981) (emphasis added).

Just last Term, in *Caniglia* v. *Strom*, this Court addressed whether there was another exception that allowed police engaged in "caretaking" activities to enter the home. 141 S. Ct. at 1598. The Court held there was not. *Ibid.* In that case, Caniglia—during an argument with his wife—"retrieved a handgun" and "asked his wife to shoot him." *Ibid.* (cleaned up). She then left the house and called the police the next morning to request that they check on his welfare. *Ibid.* The police ultimately escorted Caniglia to a "hospital for a psychiatric evaluation" and, once he was out of the house, "seized the weapons." *Ibid.* Caniglia sued, and the district court granted summary judgment to the officers. *Ibid.* On appeal, the First

Circuit "assumed that respondents lacked a warrant or consent," "expressly disclaimed the possibility" that the policy was "reacting to a crime," and "declined to consider whether any recognized exigent circumstances were present because respondents had forfeited the point." *Id.* at 1599. But the First Circuit nevertheless justified that search under the "community-caretaking" exception that this Court had recognized in a different context in *Cady* v. *Dombrowski*, 413 U.S. 433 (1973). *Caniglia*, 141 S. Ct. at 1598.

This Court reversed, rejecting the existence of any such exception. *Caniglia,* 141 S. Ct. at 1600. In the process, the Court explained where the First Circuit went wrong: It had ignored how this Court had "repeatedly declined to expand the scope of *** exceptions to the warrant requirement to permit warrantless entry into the home." *Ibid.* (cleaned up; alteration in original). The Court's rejection of a new exception to the warrant requirement in *Caniglia* flowed logically from the Court's repeated instructions that any exception to the Fourth Amendment's warrant requirement be "jealously and carefully drawn." *Georgia* v. *Randolph*, 547 U.S. 103, 109 (2006).

In this case, rather than simply apply this Court's holding in *Caniglia*, the Second Circuit rebranded the community-caretaking exception by turning to another exception—dubbed the "special-needs" exception—and grossly expanded it to cover the very ground of warrantless searches fenced off by *Caniglia*. The special-needs exception had previously developed in relation to persons—such as parolees and

probationers—already under the ongoing supervisory authority of the government in lieu of incarceration. *Griffin* v. *Wisconsin*, 483 U.S. 868, 873-874 (1987). But this Court has never endorsed it as an exception to the Fourth Amendment for the homes of persons not already subject to penal custody or supervision.

In finding a special-needs exception in those narrow circumstances, the *Griffin* Court explained that a "State's operation of a probation system" justified the special-needs exception. Probation is "one point *** on a continuum of possible punishments ranging from solitary confinement in a maximum-security facility to a few hours of mandatory community service" that is "imposed by a court upon an offender after verdict, finding, or plea of guilty." 483 U.S. at 873-874 (cleaned up). The Court emphasized that, while probationer's homes carry some constitutional protection, "they do not enjoy 'the absolute liberty to which every citizen is entitled, but only *** conditional liberty properly dependent on observance of special [probation] restrictions.'" *Id.* at 874 (quoting *Morrissey* v. *Brewer*, 408 U.S. 471, 480 (1972) (both alterations in original)). Even for probationers, however, the Court emphasized that the "permissible degree" of impingement was "not unlimited." *Id.* at 875. The *Griffin* Court thus carefully tailored the application of the special-needs exception to a "probation regime" that would be "unduly disrupted by a requirement of probable cause." *Id.* at 878.

Similarly in *Samson* v. *California*, the Court concluded that "a condition of release can so diminish or eliminate a released prisoner's reasonable

expectation of privacy that a suspicionless search by a law enforcement officer would not offend the Fourth Amendment." 547 U.S. 843, 847 (2006). Although the Court did not mention the special-needs exception by name, it cited *Griffin* extensively and concluded that the same "concern" that justified the search in *Griffin* "applies with even greater force to a system of supervising parolees," *id.* at 854-855, because parolees "have been sentenced to prison for felonies and released before the end of their prison terms and are deemed to have acted more harmfully than anyone except those felons not released on parole," *id.* at 855 (citations omitted).

Other than those two narrow circumstances—parole and probation—this Court has "*never* invoked the special-needs doctrine" to allow the government to search a home and seize items located in it. See *New Jersey* v. *Harris*, 211 N.J. 566, 597, 50 A.3d 15, 33-34 (N.J. 2012) (Albin, J., dissenting) (emphasis added).

2. *Qualified Immunity*. The qualified-immunity doctrine narrows the text of 42 U.S.C. §1983, allowing relief against a government official only if, on an objective reading of the law: (1) the official violated a statutory or constitutional right, and (2) the right was "clearly established" at the time of the challenged conduct. *Ashcroft* v. *al-Kidd*, 563 U.S. 731, 735 (2011). That two-prong inquiry can be made in any order, meaning that the Court can grant qualified immunity even without deciding if a constitutional right was violated. *Pearson* v. *Callahan*, 555 U.S. 223 (2009). In one form or another, qualified immunity has protected governmental officials from liability under Section 1983 for the past fifty years. *Pierson* v. *Ray*, 386 U.S.

547 (1967). As Justice Thomas has explained, this Court has heretofore "appl[ied] this 'clearly established' standard 'across the board' and without regard to 'the precise nature of the various officials' duties or the precise character of the particular rights alleged to have been violated.'" *Ziglar*, 137 S. Ct. at 1871 (Thomas, J., concurring in part and in the judgment) (quoting *Anderson* v. *Creighton*, 483 U.S. 635, 641-643 (1987)).

B. Factual Background of This Case

Petitioner Wayne Torcivia is a 57-year-old man with no record of violence and no history of suicide attempts, depression, or mental health treatment. C.A. ECF 54 at E10-E12; II C.A.App. A431.[1] Early in the morning of April 6, 2014, his teenaged daughter called social services complaining that her father was yelling at her and acting weird. II C.A.App. A373-A375, A380; V C.A.App. A1254-A1255. Neither in that call nor at any point thereafter did she "claim that she had been assaulted, or that a firearm had been displayed or used in any way during the altercation." Pet. App. 25a. Although some of the remaining facts were disputed below, the Second Circuit acknowledged the following facts as being consistent with the summary-judgment record when viewed in the light most favorable to Petitioner, the nonmovant on the motion at issue here. See *Tolan* v. *Cotton*, 572 U.S. 650, 657 (2014) (per curiam).

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[1] Citations to the Record below are listed as [vol] C.A.App. [page]. Citations to the Second Circuit's docket are listed as C.A. ECF [document number] at [page].

Following the call from Petitioner's daughter, social services contacted the Suffolk County Police Department (SCPD or Department), which dispatched three officers to Petitioner's home. Each officer agreed that Petitioner committed no violation of law, and that the daughter's complaint was unsubstantiated. II C.A.App. A378; I C.A.App. A196-A197, A224-A225.

At one point in the discussion between Petitioner and one of the officers, the officer "turned slightly" and accidently dislodged magnetic drapes attached to the front door. V C.A.App. A1203. As Petitioner went to pick them up, *id.* at A1205, the officer "screamed" very loudly to Petitioner to get back and threatened to tase Petitioner if he did not, *id.* at A1206. Petitioner maintains that he told the officer not to tase him, because he has "a heart condition" and "could die." *Id.* at A1236.

The officers understood Petitioner's request *not* to be tased as the precise opposite, that is, as a supposed *desire* to die from tasing. Pet. App. 8a-9a. In response, they handcuffed Petitioner and transported him to Stony Brook Hospital's Comprehensive Psychiatric Evaluation Program (CPEP) for an emergency mental health evaluation. Pet. App. 7a, 9a.

Before leaving the home, two of the officers informed Mrs. Torcivia that they had responded to the daughter's complaint, that Petitioner was acting "irrational," and that they planned to transport him for a mental-health evaluation. V C.A.App A1351-A1353. Without asking whether the Torcivia family had firearms in the home, each officer then left. Only after dropping Petitioner off at CPEP did Officer James Adler learn, via a computer check, that

Petitioner held a New York State pistol license. II C.A.App. A390-A391.

That check was based on a Department policy requiring the seizure of all guns from a home when police respond to a domestic "incident" and a resident is transported to a comprehensive psychiatric emergency program. Pet. App. 19a, 57a. Accordingly, the officer contacted his sergeant, who instructed him to ask Mrs. Torcivia for the guns and, if unsuccessful, return to CPEP to seek consent to the seizure from Petitioner; each attempt failed. II C.A.App. A391-A392, A421. The police did not seek a warrant for Petitioner's firearms and no officer was posted at the home to secure the scene pending seizure of the firearms. *Id.* at A391-A393.

While Petitioner was at CPEP, he underwent an intake interview. II C.A.App. A435. The CPEP chart shows that Petitioner did not appear to be under the influence of drugs or alcohol, and it shows that he told them about the presence of firearms in the home. IV C.A.App. A941-A942. The workers at CPEP then assessed Petitioner under the Columbia Suicide Severity Rating and found that there was no risk or likelihood that he would commit suicide. *Id.* at A940-A941; C.A. ECF 54 at E11-E12. This conclusion was unsurprising—Petitioner has no history of mental-health issues at all, let alone suicidal ideation. C.A. ECF 54 at E10-E12; II C.A.App. A431.

Twelve hours later, Petitioner was evaluated by a psychiatric nurse practitioner. II C.A.App. A552. She concluded that Petitioner was not a danger to himself or others, and she recommended that he be discharged. *Id.* at A552-A553. As was the practice at

CPEP, Petitioner was then evaluated by the attending psychiatrist, who agreed that Petitioner posed no risk to himself or others. *Id.* at A556-A557. He then discharged Petitioner without conditioning his release on surrender of his firearms. *Ibid.*

After Petitioner was discharged, he called his wife to come pick him up. V C.A.App. A1367. The CPEP social worker then had a phone conversation with the Department. III C.A.App. A732. Following that call, she instructed her intern to obtain from Petitioner the combination to his gun safe. *Ibid.* Shortly thereafter, CPEP called Mrs. Torcivia and told her that there was a change of plans and that her husband would not be released while there were firearms in the home. V C.A.App. A1367.

The social-worker intern then passed that information on to Petitioner, explaining that, although he had already been cleared of all risk, he could not leave CPEP until he provided the combination to his gun safe. I C.A.App. A140-A142, A296-A297. She then explained that the police were on their way to his house to seize his firearms. *Id.* at A142, A298-A299. Though Petitioner at first refused (again) to give the combination, he eventually caved to the pressure resulting from his continued confinement and provided the combination to his wife, who produced Petitioner's handguns and long guns for the Department when they arrived without a warrant. *Id.* at A140-A142, A296-A299. Hours after his evaluation cleared him of posing any risk, and only after confirming that the Department had seized his firearms, Petitioner was allowed to exit the locked CPEP Unit. *Id.* at A300.

On May 6, 2014, Petitioner requested the return of his firearms from the Department. II C.A.App. A502. His pistol license was later revoked and, although there was a hearing over the loss of his license in late 2015, Petitioner never recovered his handguns. Pet. App. 59a. And it took over two years for the Department to release his long guns to a gun store, which then transferred them to Petitioner. *Ibid.*

C. Procedural History

Petitioner sued Suffolk County, New York and various individuals who participated in his confinement and the seizure of his firearms under §1983 for the violation of his First, Second, Fourth, and Fourteenth Amendment rights, as well as for violation of New York State law. I C.A.App. A53-A56. As relevant to this Petition,[2] Petitioner alleged that Suffolk County's policy of warrantless seizure of firearms in the kind of circumstances in this case violated the Fourth Amendment. *Id.* at A56; see *Monell* v. *Dep't of Soc. Servs.*, 436 U.S. 658 (1978). He also raised a §1983 claim against the state hospital workers who continued to confine him after he had been cleared, claiming that they violated the Fourth Amendment by "unreasonably prolonging his

[2] A jury trial against the County and the three police officers "resulted in judgment for the County Defendants" on claims not addressed by this petition, including a Fourth Amendment claim for the seizure of Petitioner himself and a First Amendment claim that he was confined in retaliation for exercising his free speech rights. Pet. App. 13a-15a. The verdict as to those claims resulted from the jury's conclusion that Petitioner had not established by a preponderance of the evidence that he did not make suicidal statements before his initial detention. Pet. App. 17a.

confinement at CPEP until he provided his gun safe combination to allow seizure of his firearms." Pet. App. 15a.

1. On cross-motions for summary judgment, the district court granted Suffolk County's motion in part and dismissed Petitioner's Fourth Amendment claims against the county. Pet. App. 109a-110a. The district court agreed, as a factual matter, that a jury could find that Suffolk County had a policy of "temporarily seizing *** an individual's firearms upon their transport to CPEP following a domestic dispute[.]" Pet. App. 66a. But the district court then found, *sua sponte*, that this policy is justified under a "special-needs exception" to the warrant requirement, Pet. App. 66a-76a, even though the county did not advance such a defense, Pet. App. 22a-23a n.24.

As to the state employees who worked at the hospital, the district court granted qualified immunity, finding that "no Second Circuit or Supreme Court precedent *** would have clearly established that, under the circumstances, the CPEP Defendants' conduct violated the Constitution." Pet. App. 101a. Thus, although the CPEP workers continued to detain Petitioner for more than three hours *after* determining he was not a danger to himself or others, the court shielded them from liability. Pet. App. 102a.

2. The Second Circuit affirmed the district court's dismissal of Petitioner's Fourth Amendment claim against the County. The Second Circuit agreed with the district court that there was sufficient evidence to support the existence of a "two-pronged policy" under which the county, for the duration of an investigation, would "temporarily seize[] firearms belonging to an

individual" (1) "who is transported for emergency mental health evaluation" (2) "following a domestic incident." Pet. App. 21a. And the Second Circuit not only agreed with Petitioner that the county's seizure of his guns was a seizure, but the court also "assume[d] the truth of Petitioner's claim that the guns were seized *after* the responsible physicians had decided that he was not a danger to himself." Pet. App. 34a-35a n.30 (emphasis added). That assumption was unassailably correct. See II C.A.App. A453, A455; III C.A.App. A710.

Despite that assumption, the Second Circuit held that a "special-needs exception" applied and that—under that exception—the County's firearm-seizure policy was "constitutionally reasonable" and thus did not "violate the Fourth Amendment." Pet. App. 32a.[3] The court explained that the policy's "immediate goal" was the need "to prevent self-harm and harm within a family when a mental health condition becomes acute,

[3] The Court also suggested that any constitutional violation resulting from the seizure stemmed from the county employees violating the County's policy by seizing Petitioner's firearms after the relevant investigation was complete. Pet. App. 33a, 39a. But there is no question that the employees seized his firearms *pursuant* to the County's policy, whether or not the investigation was still in process. And there is no question that the policy, if not justified by a special-needs exception, violates the Fourth Amendment. Thus, whatever the exact scope of the policy—an issue that is properly left to a jury—the harm to Petitioner resulted from the county's training its officers to follow an unconstitutional policy. *E.g.*, *City of Canton* v. *Harris*, 489 U.S. 378, 389 (1989).

when there may be a heightened risk of domestic violence or suicide, and when firearms are present." Pet. App. 24a.

In so holding, the Second Circuit largely ignored *Caniglia* and confined the only mention of it to a footnote. Pet. App. 26a-27a n.25. The court of appeals simply asserted that "the special needs exception" is "different" than the community caretaking exception at issue in *Caniglia*. *Ibid.* The court further maintained that the special-needs exception has been "repeatedly recognized" by this Court, "including" in *Griffin*, which involved "the warrantless search of a home." *Ibid.* The Second Circuit did not even attempt to address why a person like Griffin—subject to penal control because of a conviction—could be deemed comparable to an individual like Petitioner. The Second Circuit thus held that it could and would "not rely" on *Caniglia*'s rejection of the community-caretaking exception in its analysis. *Ibid.*

As to Petitioner's continued confinement by the non-police state employees, the Court agreed with the district court's grant of qualified immunity even though the parties disputed whether the state employees continued to confine Petitioner "for a few hours after he was medically cleared to be discharged" to effectuate the seizure of his weapons. Pet. App. 46a-47a, 11a-12a. And the court did so by concluding that the right against such confinement was not clearly defined. Pet. App. 46a. Although Petitioner identified this Court's decision in *O'Connor* v. *Donaldson*, 422 U.S. 563 (1975), in his brief, C.A. ECF 47 at 16-17, the Second Circuit ignored it entirely, relying instead on

two of its own decisions that dealt with seizures in entirely different circumstances. Pet. App. 46a-47a.

REASONS FOR GRANTING THE PETITION

Twice last Term, this Court rejected exceptions to the warrant requirement that would allow searches of or seizures in the home. Despite clear guidance from those cases, the Second Circuit concluded that a policy that allowed the initial and ongoing seizure of firearms "complies with the Fourth Amendment" and did not "cause a violation" of Petitioner's constitutional rights. Pet. App. 40a. That is wrong, and it exacerbates a split among the circuits (and state courts of last resort) on the applicability of the special-needs exception to the homes of individuals not in ongoing penal custody. This case also gives the Court a needed opportunity to narrow the judge-made qualified-immunity doctrine to allow claims for constitutional deprivations by non-police actors.

I. As To The First Question, The Court Should Summarily Reverse The Decision Below As Incompatible With *Caniglia*.

On the first question, the Second Circuit reached the wrong conclusion about the existence of a special-needs exception by, among other errors, actively disregarding this Court's decisions from as recently as last year. Compare Pet. App 26a n.25 with *Caniglia*, 141 S. Ct. at 1600. Despite this case's being a near carbon copy of *Caniglia* (which the Second Circuit merely characterized as "facts bearing some resemblance"), the Second Circuit dispensed with this Court's decision in *Caniglia* in a single footnote. Pet. App 26a n.25.

As in *Caniglia*, there was no dispute that the exigent-circumstances exception did not apply. Indeed, this case is even clearer than *Caniglia* as the officers (under the facts assumed below) concluded that the initial complaint that brought them to Petitioner's home was groundless, II C.A.App. A378; I C.A.App. A196-197, A224-A225, and because there was no history of mental illness or suicidal or violent thoughts or conduct, C.A. ECF 54 at E10-E12; II C.A.App. A431. Given the more worrisome initial triggering conduct in *Caniglia*—wherein Caniglia threw his gun on the table and affirmatively asked his wife to shoot him, *Caniglia*, 141 S. Ct. at 1598—the correct outcome of this case is beyond question. And the Second Circuit's efforts to distinguish it constitutes the plainest of plain error, if not outright resistance to this Court's authority.

Departures from precedent this egregious have warranted summary reversal in the past. *Caetano* v. *Massachusetts*, 577 U.S. 411, 411-412 (2016) (per curiam); *United States* v. *Ibarra*, 502 U.S. 1 (1991) (per curiam). It is warranted again here.

II. Even If *Caniglia* Does Not Require Summary Reversal, The First Question Presented Is Worthy Of Plenary Review.

Even if *Caniglia* does not unavoidably require reversal of the decision below, the case is worthy of full review because (a) the decision below deepens a pre-existing split regarding the scope of the special-needs exception, and (b) that decision wrongly decided an important question of constitutional law.

A. Courts are split about the scope of any special-needs exception to the warrant requirement.

Even if this Court disagrees that the Second Circuit's disregard for *Caniglia* warrants summary reversal, the case is worthy of review because the courts of appeals, along with one state court of last resort, are deeply divided over the scope of the special-needs exception to the Fourth Amendment's warrant requirement. In conflict with the decision below, the New Jersey Supreme Court, Fifth Circuit, and Tenth Circuit have declined to apply the special-needs exception to the homes to persons not in penal custody. In fact, the Fourth and Tenth Circuits have gone even further and limited application of that exception even to persons who were in such custody in some circumstances. In contrast, like the Second Circuit here, the First and Ninth Circuits have extended the special-needs exception to cases that did not involve probationers or parolees.

1. In a case much like this one, the New Jersey Supreme Court held that the special-needs exception could not be used to justify the seizure of firearms from the homes of individuals against whom a complaint of domestic violence was filed. *New Jersey* v. *Hemenway*, 239 N.J. 111, 138, 216 A.3d 118, 133 (N.J. 2019). The court emphasized that, because "law enforcement officers can execute a warrantless entry of a home to seize weapons based on exigent circumstances," there was no need to "carve out a singular exception to the traditional constitutional protections afforded to the home" by "invok[ing] the special needs doctrine." *Id.* at 135.

The Tenth and Fifth Circuits have likewise rejected the extension of the special-needs exception to the homes of persons not in penal custody even where suspected danger to family members is involved. Both circuits demand a warrant in such circumstances unless the search would satisfy the ordinary test for exigency.

In *Roska ex rel. Roska* v. *Peterson*, for example, the Tenth Circuit expressly declined to find a "special need that renders the warrant requirement impracticable when social workers *enter a home* to remove a child, absent exigent circumstances." 328 F.3d 1230, 1242 (10th Cir. 2003) (emphasis in original). The Fifth Circuit similarly has rejected attempts to apply the special-needs exception to social workers in those circumstances after finding that any such investigation is not sufficiently separate from the needs of law enforcement. See *Gates* v. *Tex. Dep't of Protective & Regul. Servs.*, 537 F.3d 404 (5th Cir. 2008); *Thomas* v. *Texas Dep't of Fam. & Protective Servs.*, 427 F. App'x 309 (5th Cir. 2011) (same).

2. The Tenth Circuit has gone even further in limiting the special-needs exception, concluding that the exception has limited applicability even as to persons who are in penal custody. In *United States* v. *Pacheco*, that court of appeals held that the special-needs exception could not be used to search a parolee's home after the parolee has been arrested, reasoning that any resulting seizure would be used "entirely for the purpose of using" the phone and its data "as evidence." 884 F.3d 1031, 1040 (10th Cir. 2018).

The Fourth Circuit has adopted the same approach. In *United States* v. *Hill*, it held that the

special-needs exception could not justify a home search, even though the homeowner was on supervised release, unless a condition of his release allowed for such searches. 776 F.3d 243, 249 (4th Cir. 2015).[4]

Under the "special-needs exemption" employed by the Second Circuit here, each of these searches would have been held compatible with the Fourth Amendment.

3. By contrast, the First and the Ninth Circuits have joined the Second Circuit in extending the special-needs exception in cases not involving probationers and parolees.

For example, in *Sanchez* v. *County of San Diego*, the Ninth Circuit held that a policy that allowed a warrantless administrative search of the home of welfare recipients fell under the special-needs exception. 464 F.3d 916, 926 (9th Cir. 2006). The Ninth Circuit reasoned that, because the primary purpose of those searches was not "investigating fraud," but rather to "verify eligibility for welfare benefits," the county had a special need. *Id.* at 926. The court further concluded that the home searches were reasonable considering that need: Not only did the court consider it "reasonable for welfare applicants who desire direct cash governmental aid to undergo eligibility verification through home visits," it also

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[4] The Seventh Circuit expressed "doubt" in the Fourth Circuit's reasoning in *United States* v. *Caya*, 956 F.3d 498 (7th Cir. 2020), but did not decide the question because the challenged search was performed subject to an express condition of release. *Id.* at 503-504.

relied on the fact that the search was limited to "areas of the home that [the investigators] believe will provide relevant information" and cited data showing that the searches had led to increased denial rates and an increased rate in withdrawn welfare applications. *Id.* at 927-928. On those facts—which undisputedly did not involve penal custody—the court held that the special-needs exception applied. *Ibid.*

Similarly, in *Henderson* v. *City of Simi Valley*, the Ninth Circuit extended the special-needs exception to the home after police entered a woman's home so that her daughter—who was protected by a temporary restraining order obtained by her father—could retrieve items over which the order gave her "exclusive temporary use, control, and possession." 305 F.3d 1052, 1054 (9th Cir. 2002). The court concluded that the homeowner's privacy interests were "tempered by the fact that she had notice of the court-ordered property disbursement when she was served with the Order." *Id.* at 1059. And that notice, according to the court, constituted a "special need" justifying a warrantless entry into a home.

Likewise, in *McCabe* v. *Life–Line Ambulance Service, Inc.*, the First Circuit allowed for a warrantless home entry to execute an involuntary civil commitment order that had been issued by a neutral medical expert. 77 F.3d 540, 553-554 (1st Cir. 1996). The Court reasoned that, because such orders "can only issue upon an expert medical finding that the subject presently poses a 'likelihood of serious harm' to herself or others," *id.* at 546, "officers in possession of [such an order], duly issued pursuant to [Massachusetts law], may effect a warrantless entry

of the subject's residence within a reasonable time after the [document] issues," *id.* at 554. Though the Court could have found that the facts of the case presented it with "exigencies," it declined to "enter the skirmish over the distinctions between 'emergencies' and 'exigent circumstances,'" finding instead that the special-needs exception applied. *Id.* at 546-547.

The decision below—with its capacious understanding of what can constitute a special need—thus joins the First and Ninth Circuits in finding a special-needs exception to enter the home of people who are neither probationers nor parolees. That decision also widens a split with the Fifth Circuit and the New Jersey Supreme Court, both of which have rejected a special-needs exception because of the existence of the exigent-circumstances exception. And it deepens a conflict with the Fourth and Tenth Circuits, which have declined to find a categorical special-needs exception even for searching the homes of those in penal custody.

This Court's review is needed to ensure that the applicability of the special-needs exception to a person's home does not turn on the state or circuit—or on the side of the Hudson River—in which the person lives.

B. The issue presented is important, and the court of appeals resolved it incorrectly.

Beyond exacerbating a split among the lower courts, the decision below also answers an important question of constitutional law in a way that cannot be squared with this Court's precedents or the common law.

1. The question presented is unquestionably important. As this Court has explained, the "physical entry of the home is the chief evil against which [the Fourth Amendment] is directed." *Lange*, 141 S. Ct. at 2018 (quoting *Payton* v. *New York*, 445 U.S. 573, 585 (1980)). Thus, cases like this one that create a rule that weakens the Fourth Amendment's protections for the home demand this Court's correction. As explained above, in this Court's cases, the home is the "first among equals." *Jardines*, 569 U.S. at 6. The Fourth Amendment's protections are at their apex during home searches because the home and its contents are "accorded the full range of Fourth Amendment protections." *Lewis* v. *United States*, 385 U.S. 206, 211 (1966).

Recognizing the central importance of the home, this Court has "jealously and carefully drawn" all exceptions to the Fourth Amendment's warrant requirement. That longstanding limitation is not only compelled by the history and tradition of that Amendment, but also prudent: As Justice Jackson explained, the government will "push to the limit" "any privilege of search and seizure without warrant which [the Court] sustain[s]." *Brinegar* v. *United States*, 338 U.S. 160, 182 (1949) (Jackson, J., dissenting).

Because the court of appeals' expansion of the special-needs exception to the home is anything but jealously and carefully drawn, this Court's review is necessary to narrow it.

2. Nor can the expansion of the special-needs exception be justified by *Griffin* given the limits of that decision and this Court's repeated admonition to read any exception to the warrant requirement narrowly. *Griffin* addressed the narrow and constitutionally different circumstances of persons who were still subject to a degree of penal custody, had lost many of their liberties because of their convictions, and hence had far different rights and expectations of privacy, even in their homes. 483 U.S. at 873-875. Such circumstances do not translate to persons who have not been found to have violated the law and thereby lost a substantial degree of their liberty. In *Caniglia*, this Court explained that "[n]either the holding nor logic of *Cady* justified" an extension of the community-caretaking exception to the home. *Caniglia*, 141 S. Ct. at 1599. The same can be said about applying *Griffin* to the home of those not in the state's penal custody.

Indeed, while the Court in *Griffin* recognized that the penal context is what justified the special-needs exception's application to a probationer's home, 483 U.S. at 873-874, this Court specifically warned that even in such penal circumstances the exception was "not unlimited." *Id.* at 875.

In the non-penal context, the exception should be non-existent given that the separate and stricter exigent circumstances exception is more than sufficient to address any genuine *need* to forego a warrant. Indeed, as Justices Alito and Kavanaugh explained in their *Caniglia* concurrences, exigent circumstances already justify home searches where there is a genuine exigency. *Caniglia*, 141 S. Ct. at

1602 (Alito, J., concurring); *id.* at 1603-1604 (Kavanaugh, J., concurring).

And in this case, there was no need, exigent, or otherwise. Petitioner was not even suspected of a crime and had not been punished by the state. Nothing that Petitioner had done suggested he was even dangerous. Indeed, as the Second Circuit admitted, there was no "claim that [Petitioner's daughter] had been assaulted, or that a firearm had been displayed or used in any way during the altercation." Pet. App. 25a.

By expanding the exception on those facts, the Second Circuit ignored all the reasons why the *Griffin* court found that probation justified an exception for special needs. Instead, the Second Circuit extended a decision in which, nearly 20 years ago, it had "h[e]ld that the special needs doctrine does not require, as a threshold matter, that the subject of the search possess a reduced privacy interest." *MacWade* v. *Kelly*, 460 F.3d 260, 270 (2d Cir. 2006); see Pet. App. 23a-24a.

That lowered threshold contravenes this Court's guidance. In other special-needs cases, this Court has explained that warrantless searches should be "limited" to those cases "where the privacy interests implicated by the search are minimal, and where an important governmental interest furthered by the intrusion would be placed in jeopardy by a requirement of individualized suspicion." *Skinner* v. *Ry. Lab. Execs.' Ass'n*, 489 U.S. 602, 606, 624 (1989) (involving blood and urine tests of railroad employees following train accidents and the violation of safety rules).

The Second Circuit's disregard for Petitioner's Fourth Amendment privacy interests in these non-exigent circumstances allowed the government to enter a place where Petitioner's privacy interests were at their apex: his home. And it allowed them to seize Petitioner's firearms from that home even though he had no criminal history, he had committed "no offense," was suspected of "no violation" of the penal law, II C.A.App. A378, and even though the seizure occurred *after* medical staff had determined not only that involuntary commitment was unnecessary, but also that the homeowner was "not imminently dangerous to himself or others." Pet. App. 11a (cleaned up).[5] This Court's special-needs decisions cannot justify such a result.

3. Moreover, no such exception was recognized at common law. Indeed, before the Founding, outside of certain rare circumstances, "the Crown could not intrude on the sanctity of the home without a warrant."[6] The home was not to be "violated" unless "absolute necessity" compelled this to "secure public benefit."[7] Otherwise, in "all cases where the law" was "silent" and "express principles d[id] not apply," the "extreme violence" of entering a home without

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[5] As this Court is acutely aware, New York's hostility to firearms may be the driving force behind the persistent disregard for all manner of constitutional rights in cases where guns make even a cameo appearance.

[6] Laura K. Donohue, *The Original Fourth Amendment*, 83 U. Chi. L. Rev. 1181, 1195-1196 (2016).

[7] 1 Joseph Chitty, *A Practical Treatise on the Criminal Law* 35 (London, A.J. Valpy 1819).

permission was forbidden.[8] The Fourth Amendment, "little more than the affirmance" of the common law,[9] was thus meant by the Framers to continue this tradition and prevent the "evil" of warrantless "physical entry of the home." *Welsh* v. *Wisconsin*, 466 U.S. 740, 748 (1984) (citations omitted). And the only circumstances in which the common law even contemplated such warrantless entry—pursuit of a fleeing felon or to stop an affray (i.e., current violence)—easily fall within what we would now characterize as exigent circumstances. *Lange*, 141 S. Ct. at 2022-2024 (collecting common-law sources).

In sum, no common-law authority would have allowed government officers to enter a person's home and seize his firearms because of the "special need" of the government to seize weapons from a person who had committed no wrong and posed no risk to himself or others. And the Second Circuit's extension of the special-needs exception to the home of a person who was not a probationer or parolee thus swallows the warrant requirement, contravenes the Court's other cases about the central importance of the home, and abandons common-law principles that have traditionally animated this Court's Fourth Amendment decisions. For these reasons, too, review is warranted.

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[8] *Ibid.*

[9] 3 Joseph Story, *Commentaries on the Constitution of the United States* 748 (Boston, Hilliard, Gray & Co. 1833).

III. The Qualified-Immunity Question Also Warrants This Court's Review.

Assuming the Court does not summarily reverse the Second Circuit's resolution of the first question, this Court's review is also warranted to revisit the application of the judge-made qualified-immunity doctrine to claims against non-police employees like the health-care officials who kept Petitioner in custody, long after any concerns about his danger had been resolved, to facilitate the police's warrantless seizure of his weapons.[10] As applied to such officials, the doctrine not only lacks any legal basis, it also does not further the policy interests it is designed to protect.

A. The qualified-immunity doctrine is atextual and lacks historical support.

Nearly 25 years ago, Justice Scalia explained that "the § 1983 that the Court created *** bears scant resemblance to what Congress enacted almost a century earlier." *Crawford-El* v. *Britton*, 523 U.S. 574, 611 (1998) (Scalia, J., dissenting). He was correct.

The very idea of qualified immunity as a shield to §1983 liability is predicated on the notion that the statute incorporated the common law existing when the statute was enacted. See *Tenney* v. *Brandhove*, 341 U.S. 367, 376 (1951). But, in fact, the common law was "extremely harsh to the public official." David E. Engdahl, *Immunity and Accountability for Positive Governmental Wrongs*, 44 U. Colo. L. Rev. 1, 18 (1972).

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[10] Petitioner does not seek summary reversal as to the second question presented.

As Professor Baude has explained, at common law, "lawsuits against officials for constitutional violations did not generally permit a good-faith defense," the precursor to the modern qualified-immunity doctrine, "during the early years of the Republic." William Baude, *Is Qualified Immunity Unlawful?*, 106 Calif. L. Rev. 45, 55-58 (2018).

Nor was there any basis at common law for the present-day, "objective" qualified-immunity doctrine that replaced the good-faith defense. Indeed, this Court has explained that the now-governing "objective" standard "completely reformulated qualified immunity along principles not at all embodied in the common law." *Anderson*, 483 U.S. at 645; *accord Ziglar*, 137 S. Ct. at 1871 (Thomas, J., concurring in part and in the judgment). Thus, as it stands, the qualified immunity doctrine is an example of the Court's "substitut[ing] [its] own policy preferences for the mandates of Congress." *Ziglar*, 137 S. Ct. at 1872 (Thomas, J., concurring in part and in the judgment).

B. Qualified immunity allows significant violations of constitutional rights to go unanswered.

Modern qualified immunity doctrine also limits the establishment of the law, preventing individuals from vindicating their constitutional rights. Abrogating qualified immunity as to non-police state actors would go a long way to ameliorating that problem.

Absent qualified immunity, each case alleging a constitutional violation would clarify what the Constitution requires. Yet since this Court in *Pearson*

v. *Callahan*, 555 U.S. 223 (2009), permitted courts to conduct the two-pronged qualified immunity analysis in any order, courts have frequently granted qualified immunity without ever addressing whether the challenged behavior is unconstitutional. See Aaron L. Nielson & Christopher J. Walker, *The New Qualified Immunity*, 89 S. Calif. L. Rev. 1, 33-51 (2015). As a result, the law is never clarified,[11] and qualified immunity thus forever shields government actors from liability as "[i]mportant constitutional questions go unanswered precisely because no one's answered them before." *Zadeh* v. *Robinson*, 928 F.3d 457, 479 (5th Cir. 2019) (Willett, J., concurring in part, dissenting in part).

A limited abrogation of qualified immunity would allow more such questions to be answered, thereby giving greater guidance to all public officials.

C. Applying qualified-immunity doctrine to non-police state actors does not further the doctrine's purposes.

The purposes of qualified immunity also are not served by its application in cases like this. This Court has justified qualified immunity on the theory that, "[w]hen officials are threatened with personal liability for acts taken pursuant to their official duties, they may well be induced to act with an excess of caution or otherwise to skew their decisions in ways that result in less than full fidelity to the objective and independent criteria that ought to guide their conduct." *Forrester* v. *White,* 484 U.S. 219, 223 (1988).

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[11] See Joanna C. Schwartz, *How Qualified Immunity Fails*, 127 Yale L.J. 2, 65-66 (2017).

Because non-police state actors are typically not faced with the kind of life-or-death situations that require immediate action, shielding them from liability makes little sense.

Here, the non-police state actors acted with no "caution" at all when they confined Petitioner longer than necessary to ascertain that he was not a threat to himself or others. His continued confinement violated the Constitution under this Court's precedents. *O'Connor*, 422 U.S. at 580; accord, *Zinermon* v. *Burch*, 494 U.S. 113, 134 (1990) ("[T]here is no constitutional basis for confining mentally ill persons involuntarily if they are dangerous to no one and can live safely in freedom." (cleaned up)). Yet the Second Circuit held that the "across the board" qualified-immunity doctrine still shielded them.

Nothing in the text or history of §1983 compels the application of the qualified-immunity doctrine to officials *not* tasked—as police are—with making discretionary calls at a moment's notice. Moreover, if qualified immunity did not protect non-police state actors, the law could continue to develop in cases brought against such employees, thereby providing better constitutional guidance to all public officials.

These considerations provide powerful additional reason for review of the qualified-immunity question presented here.

IV. This Case Is An Excellent Vehicle For Answering These Important Questions.

This case presents an ideal vehicle for this Court to answer both questions presented.

1. As to the special-needs exception: Petitioner does not ask this Court to overrule its prior holdings in *Griffin* or *Samson* that the special-needs exception can apply to the homes of those on probation or parole. Rather, Petitioner seeks a return to the well-established principles of those cases, and the narrow view of exceptions to the warrant requirement so recently reaffirmed in *Caniglia*. Petitioner simply asks that this Court revoke the Second Circuit's "new permission slip for entering the home without a warrant." *Lange*, 141 S. Ct. at 2019.

Furthermore, because the claim that is the subject of the first question is against the county alone, see Pet. App. 38a n.34, review of that question will not be hindered by the lower courts' finding of qualified immunity as to the individual police officers, like it would be in other cases. See, *e.g.*, *Torres* v. *Madrid*, 141 S. Ct. 989, 1003 (2021) ("We leave open on remand any questions regarding the reasonableness of the seizure, the damages caused by the seizure, and the officers' entitlement to qualified immunity.").

Further, the answer to the first question presented will decide the Fourth Amendment claim against the county. That is because, if its policy is not justified under the "special-needs exception," the warrantless seizure of Petitioner's firearms violated the Fourth Amendment, as the Second Circuit did not apply "any

other Fourth Amendment exception." Pet. App. 26a n.25.

Moreover, because the policy that the county maintained violated the Fourth Amendment, whether or not the officers complied punctiliously with that policy is irrelevant: Training officers to follow an unconstitutional policy "evidences" such "a deliberate indifference to the rights of" those who live in Suffolk County as to support *Monell* liability. See *City of Canton* v. *Harris*, 489 U.S. 378, 389 (1989) (cleaned up).

The facts in this case thus squarely present the question presented about the special-needs exception.

2. The case also presents an excellent vehicle to reconsider the wisdom of applying the qualified-immunity doctrine to non-police state actors. Other cases that come to this Court challenging the reasonableness of continued confinement after a person is determined not to be a risk to himself or others could well arise against police officers, not against state health-care workers. In those cases, review may be hindered by prior decisions holding that the "rationale for the qualified immunity historically granted to the police rests on the difficult and delicate judgments these officers must often make." *Foley*, 435 U.S. at 299.

Here, by contrast, the CPEP state defendants against whom the Fourth Amendment confinement claims were raised had no discretionary authority whatsoever. New York required Petitioner's release as soon as he was cleared by the physician. N.Y. Mental Hygiene Law §9.40(d) ("If at any time it is determined

that the person is no longer in need of immediate observation, care and treatment in accordance with this section and is not in need of involuntary care and treatment in a hospital, such person shall be released[.]"). Thus, by granting review of the second question presented here, the Court could limit the scope of the judge-made qualified immunity doctrine without having to revisit the "difficult and delicate" judgments that this Court has found to justify qualified immunity to claims against the police.

For these reasons, this case presents an excellent vehicle for deciding both questions presented.

CONCLUSION

The Second Circuit's extension of the special-needs exception to the home of a person not on probation or parole is dangerous and wrong. The Court should grant the petition to reverse that court's—and other federal Circuits'—erosion of the Fourth Amendment's protection for the home. The Court should also grant review of the second question presented and narrow the scope of the qualified-immunity doctrine in cases involving non-police state actors.

Respectfully submitted,

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