No. 21-1522

IN THE

Supreme Court of the United States

WAYNE TORCIVIA,

Petitioner,

v.

SUFFOLK COUNTY, NEW YORK, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR STATE RESPONDENTS KRISTEN STEELE, DIANA D'ANNA, AND ADEEB YACOUB IN OPPOSITION

LETITIA JAMES
Attorney General
State of New York
BARBARA D. UNDERWOOD*
Solicitor General
JUDITH N. VALE
Deputy Solicitor General
DAVID LAWRENCE III
PHILIP J. LEVITZ
Assistant Solicitors General

28 Liberty Street
New York, New York 10005
(212) 416-8016
barbara.underwood@ag.ny.gov
**Counsel of Record*

COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Whether Suffolk County's policy of temporarily safeguarding firearms during a police investigation comported with the Fourth Amendment as applied here, where the county police transported petitioner for emergency psychiatric evaluation after he was involved in a domestic incident and threatened suicide.

2. Whether this Court should depart from its longstanding precedent rooted in the common law, and from the uniform precedents of the circuit courts of appeals, and limit the doctrine of qualified immunity to only police officers.

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INTRODUCTION

Police officers from Suffolk County, New York, responded to an emergency call from petitioner Wayne Torcivia's daughter. When they arrived at Torcivia's residence, petitioner was intoxicated, belligerent, and aggressive. After petitioner made a suicidal statement to the county officers, they transported him to a state hospital for psychiatric examination. The county officers then sought to temporarily safeguard firearms that petitioner had in his residence. One of the officers later stated that they acted under a Suffolk County policy to temporarily safeguard firearms during an investigation into an individual receiving psychiatric evaluation in connection with a domestic incident. The county officers secured the firearms after petitioner gave his wife the code to the safe where the guns were stored.

Petitioner later filed this lawsuit under 42 U.S.C § 1983, in the U.S. District Court for the Eastern District of New York. Among other claims, he alleged that respondent Suffolk County's policy of temporarily safeguarding firearms violated his Fourth Amendment right against unreasonable seizures. He also alleged that the respondent state hospital officials violated the Fourth Amendment by purportedly retaining him in the hospital until the county officers safeguarded the firearms. The hospital witnesses testified that they did not condition petitioner's discharge on the police safeguarding his firearms.[1]

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[1] This brief is filed on behalf of only the state respondents: Dr. Adeeb Yacoub, psychiatric nurse practitioner Diana D'Anna, and social worker Kristen Steele. Another psychiatric ward employee, respondent social work intern Mary Katherine Smith, is represented by separate counsel, as is respondent Suffolk County.

The district court granted summary judgment to Suffolk County, concluding that the County's policy was a reasonable response to the special needs presented by emergencies involving both acute psychiatric symptoms and domestic incidents. The court also granted summary judgment to the state respondents, concluding that they were entitled to qualified immunity. On appeal, the U.S. Court of Appeals for the Second Circuit unanimously affirmed.

Certiorari should be denied. The only question presented applicable to the state respondents is petitioner's second question presented, i.e., whether qualified immunity should be limited solely to police officers and thus categorically unavailable to any other government officials, including state respondents here. Certiorari is not warranted to review that issue because petitioner failed to raise it in either the district court or the court of appeals. In any event, there is no split in authority on the availability of qualified immunity to state officials who are not police officers. To the contrary, this Court has long applied qualified immunity to such officials. Indeed, petitioner points to no decision from *any* court holding that qualified immunity is available solely to police officers.

Petitioner's first question presented—whether Suffolk County's policy of temporarily safeguarding firearms in certain emergency situations accords with the Fourth Amendment—implicates only respondent Suffolk County and not state respondents. However, essentially in the role of amici curiae, state respondents support Suffolk County's opposition to the petition. Certiorari (and summary reversal) should be denied on the first question presented because, among other reasons, this case is a poor vehicle for addressing the application of the special-needs doctrine to Suffolk

County's policy and the court of appeals applied this Court's longstanding special-needs doctrine to the particular—and unusual—circumstances of this case. This issue is unlikely to recur and thus does not present any important question of nationwide importance.

STATEMENT

A. Factual Background

1. In the early morning hours of April 6, 2014, petitioner's seventeen-year-old daughter called a social-services telephone hotline. The operators of that hotline then contacted the Suffolk County Police Department about a reported "violent domestic dispute" between petitioner and his daughter. (CA2 J.A. 517 ¶¶ 3-4; *see id.* at 373.) Three Suffolk County police officers responded to the call. (CA2 J.A. 517 ¶ 3; *see id.* at 32.)

After being allowed inside petitioner's residence, the Suffolk County police officers observed that petitioner was intoxicated and was acting threateningly and belligerently toward his daughter. (CA2 J.A. 517 ¶ 5; *see id.* at 217, 379.) They observed that petitioner was also agitated. He would "jump up, yell, and scream, calm down, and then explode again and start ranting and raving." (Pet. App. 8a (quotation marks omitted).) He was also "immediately aggressive towards the police." (Pet. App. 8a (quotation marks omitted).) When one of the county officers went to speak to petitioner's daughter, petitioner declared: "All right. That's it. I want you guys to tase me. I have a heart condition. If you tase me, it will kill me. Please tase me and kill me." (Pet. App. 8a (quotation marks and brackets omitted).)

Based on petitioner's behavior and suicidal statement, the Suffolk County police officers decided to

transport petitioner to Stony Brook University Hospital's Comprehensive Psychiatric Emergency Program. (Pet. App. 5a.) Located in a state hospital, this unit provides emergency psychiatric evaluations, psychiatric treatment, and referral for mental-health services.[2] The county officers transported petitioner to the emergency psychiatric unit pursuant to the New York Mental Hygiene Law (MHL), which permits police officers to place in such a facility any person "who appears to be mentally ill and is conducting himself . . . in a manner which is likely to result in serious harm to [himself] or others." MHL § 9.41. (*See* CA2 J.A. 518 ¶¶ 7-8.)

At the emergency psychiatric unit, the patient is examined by a staff physician. MHL § 9.40(a-1), (b). If the physician determines that the patient may have a mental illness which is likely to result in serious harm to the person or others, the patient may be temporarily retained involuntarily and subsequently removed to a hospital for assessment for continuing inpatient treatment. *Id.* § 9.40(b), (e). Alternatively, a patient may decide voluntarily to be hospitalized. *Id.* § 9.13.

When petitioner arrived at the emergency psychiatric unit, a nurse recorded that petitioner was "intoxicated, threatening and belligerent toward [his] 17 year old daughter tonight, upon [police department] arrival [he] asked police to tase him so he would die." (CA2 J.A. 519 ¶ 14.) A test showed that, more than two hours after the police had arrived at his home, petitioner's blood-alcohol level was still approximately twice the legal limit for driving a motor vehicle. (Pet. App. 10a;

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[2] *See* Stony Brook Med., *Comprehensive Psychiatric Emergency Program*, https://www.stonybrookmedicine.edu/patientcare/psychiatry/cpep.

CA2 J.A. 519 ¶ 15.) Hospital staff then waited to conduct a further evaluation of petitioner because the emergency psychiatric unit's policy precludes staff from conducting more than an initial evaluation of a still-intoxicated person. (CA2 J.A. 1094.)

2. After the Suffolk County police officers transported petitioner to the hospital, one of the officers checked a computerized database and learned that petitioner had a pistol license. (CA2 J.A. 518 ¶ 9.) The officer spoke to his supervisor and followed the supervisor's direction to try to temporarily safeguard the firearms. (Pet. App. 10a.) According to the officer, this direction comported with the Suffolk County Police Department's policy to temporarily safeguard weapons during a police investigation when the investigation involves an individual who is transported for emergency psychiatric evaluation in connection with a domestic incident. (Pet. App. 20a-21a; CA2 J.A. 391.)

In keeping with the supervisor's direction, one of the county police officers returned to petitioner's home and spoke with his wife, who stated that she did not know the code to the safe where petitioner's firearms were stored. (CA2 J.A. 518 ¶ 10.) The officer then returned to the emergency psychiatric unit and asked the hospital staff to relay to petitioner the officer's request for the code. (Pet. App. 11a.) Petitioner did not provide the code. The record is unclear about whether petitioner did not provide the code because he was asleep at the time or uncooperative—although petitioner indisputably slept for an extended time while in the hospital. (CA2 J.A. 519 ¶ 16.)

3. Several members of the hospital staff, including Dr. Adeeb Yacoub and psychiatric nurse practitioner Dianna D'Anna, later evaluated petitioner. Accompa-

nying them was an unpaid intern, Mary Catherine Smith. (Pet. App. 9a-10a.) At approximately 2:20 p.m., after petitioner had woken up, D'Anna evaluated petitioner, and concluded that he was "not imminently dangerous" to himself or others. She thus recommended to Dr. Yacoub that petitioner be discharged. (CA2 J.A. 519-520 ¶¶ 17-18, 21; *see id.* at 552.) Dr. Yacoub evaluated petitioner later that afternoon and agreed that petitioner should be discharged. (CA2 J.A. 520 ¶¶ 22-23; *see id.* at 556-557 ¶ 4.) The hospital then began completing the necessary, and often time-consuming, paperwork required for discharge. Petitioner was discharged by 6:00 p.m. (CA2 J.A. 521 ¶ 26; *see id.* at 302, 457, 553.)

Between the time that petitioner woke up and the time that he was discharged from the hospital, he provided the code to the gun safe to his wife, who permitted Suffolk County police officers to enter their home and temporarily secure the firearms. (CA2 J.A. 523 ¶¶ 41, 43-44.) Petitioner alleged in this litigation that he gave the code to his wife because Ms. Smith, the social-work intern who is not a state respondent, led him to believe that his discharge from the hospital was conditioned on him surrendering his firearms. (CA2 J.A. 522 ¶ 32.) Smith denied making such a statement (Pet. App. 12a; CA2 J.A. 708) and explained that she has nothing to do with patient discharge (CA2 J.A. 705). According to Smith, she simply asked petitioner for the code to his safe because her supervisor, Ms. Steele (who is a state respondent here), told her that the "police had called and they were going to take the weapons that were in the safe." (CA2 J.A. 705; *see* CA2 J.A. 706-708.) Ms. Steele does not recall making that request. (*See* CA2 J.A. 1076.) Smith and Steele both testified that Steele did not tell Smith that petitioner's

discharge was conditioned upon him surrendering his weapons. (CA2 J.A. 522 ¶¶ 33-34; *see id.* at 707-708, 1076.) Petitioner did not allege that anyone other than Smith told him of any such condition on his discharge. (*See* CA2 J.A. 522 ¶¶ 35-37; *see id.* at 298-299.)

While petitioner was in the hospital, his daughter continued to express fear of his return to the residence, and she called child protective services four times to emphasize her concerns. (CA2 J.A. 994 ¶ 90.) Child protective services advised her to leave her home and stay with a friend. (CA2 J.A. 890 ¶ 92.)

B. Procedural History

1. A year later, petitioner commenced this lawsuit, in the U.S. District Court for the Eastern District of New York, seeking compensatory and punitive damages. Most pertinent here, petitioner sued Suffolk County under 42 U.S.C. § 1983, alleging that the County had violated his Fourth Amendment right against unreasonable seizures by applying to him its policy of temporarily safeguarding firearms during a police investigation into an individual who is transported for psychiatric evaluation in connection with a domestic incident.[3] Petitioner also sued the individual Suffolk County police officers who had first responded to the domestic-violence call. None of the individual county officers are respondents here. (*See* CA2 J.A. 28-30, 40 ¶¶ 107-109, 41 ¶¶ 119-120.) Petitioner also brought § 1983 claims (and state law claims) against intern Smith and the state respondents (i.e., Steele, D'Anna, and Yacoub). He alleged that they had violated his Fourth Amendment

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[3] Petitioner also asserted various claims against Suffolk County under, inter alia, the First, Second, and Fourteenth Amendments. None of those claims are at issue here.

rights (and state law) by purportedly prolonging his retention in the emergency psychiatric unit until he gave his wife the code to the gun safe.[4] (CA2 J.A. 30-31, 37 ¶ 87, 40 ¶ 106, 54 ¶ 218, 57 ¶ 236.)

2. After discovery, the district court (Hall, J.) granted Suffolk County's motion for summary judgment on petitioner's Fourth Amendment claim regarding the County's policy. The district court concluded that the County's policy is reasonable and thus permissible under the Fourth Amendment. The court explained that the policy fit within the special-needs doctrine (Pet. App. 65a-75a), under which a warrant may not be required for a search or seizure "when 'special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impractical.'" *Board of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie County v. Earls*, 536 U.S. 822, 829 (2002) (quoting *Griffin v. Wisconsin*, 483 U.S. 868, 873 (1987)). The court found the special-needs doctrine applicable here given that the County's policy was to seize firearms only temporarily while the police investigated, and that police often need to move swiftly to secure firearms and thus prevent further violence, injury, or death when an apparently mentally unstable individual is transported for emergency psychiatric evaluation in connection with a domestic incident. (Pet. App. 75a-76a.)

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[4] Petitioner also alleged claims against the state respondents under the Second and Fourteenth Amendments, and under the Fourth Amendment for seizure of his property (the firearms themselves). He later withdrew those claims (*see* CA2 J.A. 125), and they are not at issue here.

The district court also granted the state respondents' and intern Smith's motions for summary judgment. The court concluded that the state respondents and intern Smith were entitled to qualified immunity on petitioner's Fourth Amendment claim against them. The court explained that, even taking as true petitioner's disputed allegation that the state respondents briefly continued his hospitalization until the police seized his firearms, no clearly established law made such action unconstitutional under the circumstances presented. (Pet. App. 101a.) Rather, the court further explained, it would have been reasonable for the state respondents to believe that they could lawfully retain petitioner for a short time to allow county police officers to safeguard his weapons—particularly given the police's continuing investigation and petitioner's daughter's continuing safety concerns about petitioner's impending return. (Pet. App. 104a.) In the district court, petitioner did not argue that qualified immunity should be limited solely to police officers.

3. Petitioner appealed, and the U.S. Court of Appeals for the Second Circuit (Cabranes, Lynch, and Carney, JJ.) unanimously affirmed. (Pet. App. 1a-48a.)

As relevant here, the court of appeals concluded that Suffolk County's policy of temporarily seizing firearms is reasonable under the special-needs doctrine. The court reasoned that the policy reasonably safeguards firearms temporarily to prevent self-harm and domestic violence when (a) the police are still investigating (b) a domestic incident (c) involving an individual experiencing an acute mental-health condition that necessitated transportation for emergency psychiatric evaluation. (*See* Pet. App. 22a-33a.) For instance, the court explained, Suffolk County has a substantial interest in ensuring that its police officers can act

swiftly to safeguard firearms in such volatile circumstances to prevent suicide and violence while the investigation is ongoing. (Pet. App. 28a-30a, 32a.)

The court of appeals also agreed with the district court that the state respondents and intern Smith were entitled to qualified immunity. As the court explained, petitioner had not identified any Supreme Court or Second Circuit authority that clearly established that the state respondents (or intern Smith) had violated petitioner's Fourth Amendment rights. (Pet. App. 46a-48a.) On appeal, petitioner did not argue that qualified immunity should be limited to police officers.

The court of appeals subsequently denied rehearing and rehearing en banc. (Pet. App. 49-50.)

REASONS FOR DENYING THE PETITION

I. The Qualified Immunity Question Does Not Warrant this Court's Review.

The only question presented that involves the state respondents is petitioner's second question: whether qualified immunity should be limited solely to police officers and thus be categorically unavailable to the state respondent hospital officials. That question provides no basis for this Court's review.

A. Petitioner Failed to Preserve the Qualified Immunity Question.

Certiorari is not warranted to review the qualified immunity question because petitioner failed to preserve this question for review. Petitioner failed to argue in either the district court or the court of appeals that qualified immunity should be limited solely to police officers.

This Court is "a court of review, not first view." *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005). Accordingly, it ordinarily will not decide questions not raised or litigated in the lower courts. *See, e.g., City of Springfield, Mass. v. Kibbe*, 480 U.S. 257, 259 (1987); *United States v. Lovasco*, 431 U.S. 783, 788 n.7 (1977). This preservation requirement ensures that the respondent has a fair opportunity to develop a record, and that this Court has the benefit of a developed record and the informed views of the lower courts on the question at hand. *See Bankers Life & Cas. Co. v. Crenshaw*, 486 U.S. 71, 79 (1988). The need to preserve issues for appeal has particular force here because petitioner requests a sweeping and fundamental change to existing law. *See id.* Certiorari should be denied when petitioner did not raise, and the courts below did not address, such a seismic shift to qualified immunity.

B. There Is No Split in Authority Regarding Qualified Immunity's Application to a Wide Range of State Officials.

Certiorari is not warranted for the additional reason that the Second Circuit's application of qualified immunity to state officials who are not police officers accords with this Court's precedent. Indeed, petitioner does not contend that *any* decision of this Court, a circuit court of appeals, or even a district court has held that qualified immunity should be limited to only police officers and thus categorically unavailable to any other government officials.

This Court and the circuit courts of appeals regularly apply qualified immunity to defendants who are not police officers. For example, this Court has recognized that qualified immunity may apply to an official charged with operating a state hospital who is

alleged to have retained the plaintiff unlawfully—just as petitioner alleges here. *See O'Connor v. Donaldson*, 422 U.S. 563, 577 (1975). This Court has also recognized the applicability of qualified immunity to a wide range of other government officials who were not police officers. *See, e.g.*, *Taylor v. Barkes*, 575 U.S. 822, 824-27 (2015) (per curiam) (state corrections officials); *Lane v. Franks*, 573 U.S. 228, 243-46 (2014) (community college president); *Filarsky v. Delia*, 566 U.S. 377, 393-94 (2012) (municipality's outside counsel); *Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364, 377-79 (2009) (public school officials); *Harlow v. Fitzgerald*, 457 U.S. 800, 815-20 (1982) (senior presidential aides); *Scheuer v. Rhodes*, 416 U.S. 232, 246-50 (1974) (state governor, national guard officials, state university president).

As this consistent precedent reflects, petitioner errs in asserting that only police officers need qualified immunity because only they face "life-or-death" decisions that require immediate action. *See* Pet. 31. Qualified immunity is not limited to government decision-making in potentially lethal situations. Rather, qualified immunity applies broadly to government officers performing all manner of official duties to protect them "from harassment, distraction, and liability when they perform their duties reasonably." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009); *see Harlow*, 457 U.S. at 819 (qualified immunity helps government officials act in the public's interest with independence and without fear of consequences). These basic principles apply to state-hospital staff, just as they do to police officers. The public has a substantial interest in ensuring that state-hospital staff, including state respondents here, are not deterred from properly exercising their medical and professional discretion in determin-

ing whether and under what conditions it is safe to discharge a psychiatric patient from the hospital. *See West v. Adkins*, 487 U.S. 42, 52 (1988) (physicians are called upon to exercise professional discretion and judgment).

Moreover, contrary to petitioner's contention, state respondents' performance of their official duties did involve important decisions regarding health and safety, including potential life-or-death choices. State respondents were tasked with evaluating petitioner's psychiatric condition to determine whether he was likely to be a danger to himself or others. *See* MHL § 9.40(a). And state respondents performed that evaluation when petitioner had threatened his daughter, asked police officers to tase him so he would die, and had firearms in his residence. Indeed, state employees who work in hospitals, prisons, and many other state institutions routinely face such "difficult and delicate judgments" (Pet. 2) that implicate health and safety. Accordingly, even under petitioner's meritless theory, the state respondents would be entitled to qualified immunity.

There is also no merit to petitioner's contention that the Court should upend the doctrine of qualified immunity by inquiring whether immunity existed at common law, before the enactment of 42 U.S.C. § 1983, for subcategories of state officials. *See* Pet. 28-29 (citing *Ziglar v. Abassi*, 137 S. Ct. 1843, 1870-71 (2017) (Thomas, J., concurring)). This Court has never accepted that narrow view of qualified immunity. *See Ziglar*, 137 S. Ct. at 1851, 1866-68 (U.S. Department of Justice and federal prison officials possessed qualified immunity from claims that they conspired to unconstitutionally detain individuals after terrorist attacks). In any event, qualified immunity is well rooted in the

common law, including for a wide range of officials who performed discretionary acts in good faith. *See* Scott A. Keller, *Qualified and Absolute Immunity at Common Law*, 73 Stanford L. Rev. 1337, 1368-77 (2021); *see also, e.g.*, *Kendall v. Stokes*, 44 U.S. 87, 97-99 (1845) (applying to postmaster general "established" principle that government officers are not liable when they "exercise judgment and discretion" in good faith); *Otis v. Watkins*, 13 U.S. 339, 355-56 (1815) (deputy customs inspector).

Petitioner also misses the mark in arguing that drastically limiting qualified immunity would ameliorate a purported problem of constitutional issues remaining unresolved when courts hold that no clearly established right was violated. Lower courts retain the discretion to answer the constitutional question and then determine whether that answer was clearly established when the challenged government conduct occurred. *See Pearson*, 555 U.S. at 237, 242. And many constitutional questions arise, and are resolved, in cases where the qualified immunity defense is not available, such as § 1983 cases against a municipality or in which injunctive relief is sought. *Id.* at 242.

C. The Decision Below Is Correct.

Certiorari is also not warranted because the court of appeals correctly decided that the state respondents are entitled to qualified immunity. The state respondents did not violate clearly established Fourth Amendment precedent from this Court or the Second Circuit, *see City of Escondido, Cal. v. Emmons*, 139 S. Ct. 500, 503 (2019), even if, as petitioner alleged, they retained petitioner in the emergency psychiatric unit for a few hours after determining he was not sufficiently dangerous for involuntary commitment so that the Suffolk

County police officers could temporarily safeguard his firearms. No decision from this Court or the court of appeals below has suggested that such conduct is unconstitutional. *See Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011). On the contrary, a decision from the court of appeals below found analogous conduct reasonable and consistent with the Fourth Amendment. *See Kia P. v. McIntyre*, 235 F.3d 749 (2d Cir. 2000). Specifically, that court held that it was reasonable for hospital officials to briefly retain a newborn in a hospital to comply with child welfare officials' hold on release, even after the hospital concluded that the methadone test result that was the basis for the hold was erroneous. As the court there recognized, it is reasonable for hospital officials to coordinate with the officials who sought the retention in the first place to confirm that their safety concern is resolved before proceeding with the discharge. *See id.* at 762-63. Given this precedent, it was objectively reasonable for the state respondents to believe that any similar coordination with the police was constitutional here.

The two cases on which petitioner relies (Pet. 31) are inapposite because they involved significant delay in discharging a mental-health patient. In *O'Connor*, the plaintiff was held involuntarily in a state mental hospital for almost *fifteen years* after it became clear that he posed no danger to himself or others. 422 U.S. at 564-65. And in *Zinermon v. Burch*, this Court held that the plaintiff stated a procedural due process claim where he was hospitalized for *five months* after signing a consent form for voluntary admission, and where he alleged that his mental illness rendered him incompetent to give such consent. 494 U.S. 113, 121 (1990). These extensive hospital-retention periods are drastically longer than the few hours that elapsed between

Dr. Yacoub's evaluation of petitioner and petitioner's discharge.

II. The Fourth Amendment Question Does Not Warrant This Court's Review, Much Less Summary Reversal.

Petitioner's primary question presented concerns whether Suffolk County's policy—i.e., its policy to temporarily safeguard firearms when an individual is transported for emergency psychiatric evaluation in connection with a domestic incident—comports with the Fourth Amendment. This question does not apply to the claims petitioner asserted against the state respondents. However, essentially in the role of amici curiae, state respondents support Suffolk County's opposition to the petition for certiorari and explain below why neither summary reversal nor certiorari is warranted on the first question presented.

1. This case is a poor vehicle to review the question petitioner asserts regarding Suffolk County's policy. The Second Circuit determined that the County's policy accords with the Fourth Amendment because it fits within the special-needs doctrine. (Pet. App. 22a-26a.) That doctrine provides that a warrant may not be required for a search or seizure "when 'special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impractical.'" *Board of Educ. of Indep. Sch. Dist.*, 536 U.S. at 830 (quoting *Griffin*, 483 U.S. at 873). Petitioner argues that this ruling was in error because the special-needs doctrine is essentially the same as the community-caretaking doctrine that this Court has stated does not apply to warrantless entry into a home. *See* Pet. 4-6, 16-17.

But the factual and procedural complications of the current case render it an exceedingly poor vehicle for this Court to consider the differences between the long-standing special-needs doctrine and the community-caretaking doctrine. First, the gravamen of petitioner's claimed constitutional injury was caused by county police officers, who are not respondents here, purportedly taking actions that departed from the County's policy, rather than by the County's policy itself. Specifically, petitioner contends that the temporary seizure of his firearms violated the Fourth Amendment primarily because county officers purportedly returned to safeguard the guns *after* the investigation determined that petitioner was not dangerous. *See, e.g.*, Pet. 1, 11, 14 & n.3, 26. But the court of appeals found "no support in the record" to indicate that the County's policy is to seize firearms after the police investigation concludes that the individual is not dangerous. Rather, the court concluded that the County's policy is to temporarily safeguard firearms only until there has been sufficient investigation to determine that the individual does not present a danger to himself or others. (Pet. App. 39.) Accordingly, a substantial part of the conduct petitioner challenges is not part of the County's policy, and thus cannot be attributable to the only county respondent here. *See Monell v. Department of Soc. Servs.*, 436 U.S. 658, 694 (1978). For that reason, this case presents no proper opportunity to address the constitutionality of the conduct that forms the basis of petitioner's Fourth Amendment claim.

Second, a ruling regarding the application of the special-needs doctrine to the County's policy would likely not affect the ultimate outcome of this case because there appear to be additional reasons, unrelated to the special-needs doctrine, that support

the constitutionality of the County's policy as applied to the circumstances presented here. For example, the record strongly indicates that petitioner consented to the county police officers safeguarding his gun. There does not appear to be any dispute that petitioner or his wife voluntarily allowed the county officers to enter their home—both when the police first responded to the domestic-incident call and when they returned to secure the firearms. Although petitioner alleged that he agreed to provide the county police with the code to his firearm safe because he thought that was necessary to be discharged from the hospital, there is no evidence from any hospital or police witness that petitioner's discharge was actually conditioned on him providing the code. Rather, intern Smith testified that she simply asked petitioner for the code, and that she did so because she was told that the police had asked for it. See *supra* at 6. And petitioner admitted that he spoke only to intern Smith, and not to any state respondent or county police officer, about the code. The record thus strongly indicates that petitioner provided the code voluntarily. Such consent would provide an independent justification for the seizure. *See, e.g.*, *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973) ("It is . . . well settled that one of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent.").

Moreover, the exigent circumstances doctrine appears to separately justify the County's policy of temporarily safeguarding firearms when there is a domestic incident involving an individual mentally unstable enough to require transportation to an emergency psychiatric unit. Although that participant would be removed from the scene at least temporarily,

firearms might still pose a serious threat to the other participants who remain on the scene, and the transported participant may return while the investigation is ongoing and still be dangerous. As Dr. Yacoub explained, "[t]here are certainly circumstances where a patient may not meet the standard for involuntary commitment but releasing him or her to a home with ready access to firearms would not be safe." (CA2 J.A. 557.)

Indeed, domestic violence and suicide emergencies are quintessential exigent circumstances that make warrantless searches and seizures lawful. *See, e.g.*, *Caniglia v. Strom*, 141 S. Ct. 1596, 1604 (2021) (Kavanaugh, J., concurring) ("The exigent circumstances doctrine applies because . . . [t]he Fourth Amendment does not require officers to stand idly outside as the suicide takes place."); *Georgia v. Randolph*, 547 U.S. 103, 118 (2006) ("No question has been raised, or reasonably could be, about the authority of the police to enter a dwelling to protect a resident from domestic violence[.]"). Certiorari is thus not warranted to address the question regarding the special-needs doctrine because resolution of that question likely would have no effect on the outcome of this case.

2. Certiorari is not warranted for the additional reason that the court of appeals merely applied the well-established special-needs doctrine to the specific facts presented here. As this Court has repeatedly reaffirmed, a warrantless search may be reasonable, and thus comport with the Fourth Amendment, when "special needs . . . make the warrant and probable-cause requirement impractical, and where the primary purpose of the searches is distinguishable from the general interest in crime control." *City of Los Angeles, Cal. v. Patel*, 576 U.S. 409, 420 (2015) (quotation marks

and citations omitted); *see also Kansas v. Glover*, 140 S. Ct. 1183, 1191 (2022) ("[T]he ultimate touchstone of the Fourth Amendment is reasonableness." (quotation marks omitted)). The Court has applied this special-needs doctrine to a broad range of circumstances that, contrary to petitioner's suggestion (Pet. 1, 5-7), extend well beyond the context of probation and parole supervision. *See, e.g.*, *Skinner v. Railway Lab. Execs.' Ass'n*, 489 U.S. 602, 619-20 (1989) (collecting cases involving, for instance, searches of regulated businesses, employees' desks and offices, students' property, and prison inmates' body cavities). The Second Circuit's fact-bound application of this Court's longstanding precedent to the specific circumstances here does not warrant further review—particularly when this case involves an unusual confluence of events unlikely to recur. (*See* Pet. App. 33a.)

Contrary to petitioner's contention (Pet. 18-22), there is no split in authority between the decision below, which applies the special-needs doctrine, and precedents from this Court or other circuit courts of appeals. The petitioner misplaces his reliance on this Court's decision in *Caniglia v. Strom* because that decision addressed the scope of the community-caretaking exception to the Fourth Amendment's warrant requirement, and did not address—let alone overrule—the Court's established precedent regarding the distinct special-needs doctrine. *See* 141 S. Ct. at 1599. Because the Second Circuit made clear that it was not relying on any community-caretaking exception here, the decision below does not conflict with *Caniglia*.

The special-needs doctrine also is fundamentally different from the overbroad application of the community-caretaking exception that this Court disapproved in *Caniglia*. The special-needs doctrine justifies reason-

able programmatic searches and seizures in limited and distinctive contexts where it is impractical to adhere to individualized warrant and probable-cause requirements, such as testing students and employees for drugs; conducting administrative inspections; and, here, temporarily removing firearms from volatile situations involving both mental-health concerns and domestic incidents. By contrast, the sweeping application of the community-caretaking exception that the Court rejected in *Caniglia* was unmoored from circumstances where a probable-cause requirement would be impractical, and thus improperly allowed an "open-ended license" for entry into private homes. 141 S. Ct. at 1600. The special-needs doctrine provides no such open-ended license here.

Furthermore, the Court noted in *Caniglia* that its opinion did not disturb the longstanding exigent circumstances exception to the Fourth Amendment's warrant requirement—an exception that may apply here given petitioner's threatening and suicidal behavior. *See Caniglia*, 141 S. Ct. at 1600 (Roberts, C.J., joined by Breyer, J., concurring); *id.* at 1602 (Alito, J., concurring); *id.* at 1602-05 (Kavanaugh, J., concurring). Indeed, the lack of similarly urgent or dangerous circumstances in *Caniglia* make that case inapposite here. For example, the police went to Caniglia's home only for a "welfare check" because his wife had been unable to reach him by phone after an argument, and there was no evidence of domestic violence concerns. *See id.* at 1598. By contrast, here, petitioner's daughter sought police assistance because of her father's threatening behavior, the county police officers observed petitioner's erratic and belligerent behavior, and they heard him ask to be tased so that he could die. And, in *Caniglia*, there was evidence that Caniglia had not

validly consented to the seizure because the police falsely promised that they would not seize Caniglia's guns if he went for a psychological evaluation. *Id.* at 1598. By contrast, here, the evidence indicates no such deception, and instead suggests that petitioner and his wife *did* consent to the police entering their home to safeguard petitioner's guns.

There is also no conflict between the decision below and the decisions of other courts on which petitioner relies. *See* Pet. 18-20. For instance, unlike the current case, *State v. Hemenway*, 239 N.J. 111 (2019), did not involve any special or exigent circumstances rendering the warrant requirement impracticable. To the contrary, the individual alleging domestic abuse in *Hemenway* actually sought a judicial warrant. *See id.* at 135. And the other cases on which petitioner relies—which did not involve firearm seizures—also found no special or exigent circumstances justifying departure from the usual warrant requirement. *See Roska ex Rel. Roska v. Peterson*, 328 F.3d 1230, 1240-41 (10th Cir. 2003) (no evidence of emergency that made warrant impractical); *Gates v. Texas Dep't of Protective & Regul. Servs.*, 537 F.3d 404, 422-23 (5th Cir. 2008) (similar); *Thomas v. Texas Dep't of Fam. & Protective Servs.*, 427 F. App'x 309, 315 (5th Cir. 2011) (similar); *United States v. Hill*, 776 F.3d 243, 245 (4th Cir. 2015) (similar).

3. Finally, certiorari and summary reversal are unwarranted here because the court of appeals properly determined that the County's policy fits within the special-needs doctrine. The policy addresses the narrow but dangerous situation where an individual is experiencing acute psychiatric crisis in connection with a domestic incident and the police are still investigating. (*See* CA2 J.A. 391.) In that volatile situation, quick

action is often needed to secure firearms and thus lower "the likelihood of firearm-related domestic violence and suicide" if the individual returns or another person gains access to the firearms while the police investigation is still ongoing. (Pet. App. 34a.)

As the court of appeals correctly recognized (Pet. App. 28a-29a), the County's policy reasonably addresses a special need because access to firearms for domestic violence assailants is extremely dangerous, particularly when they may be experiencing mental illness. More domestic violence homicides are caused by guns than by all other causes combined.[5] Guns substantially increase the lethality of domestic assaults. Indeed, assaults on family members are twelve times more likely to result in death when the assault involves a gun.[6] Guns also may increase abusers' ability to continue to abuse victims even when the guns are not fired, through the implicit threat of violence. Nearly two-thirds of abused women who had a gun in their household reported that the gun had been used against them, most frequently through threats.[7] And the number of Americans affected by such violence is massive: one study found that 25 million U.S. adults

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[5] April M. Zeoli & Shannon Frattaroli, *Evidence for Optimism: Policies to Limit Batterers' Access to Guns, in Reducing Gun Violence in America: Informing Policy with Evidence and Analysis* 54 (Daniel W. Webster & Jon S. Vernick eds., 2013).

[6] Linda E. Saltzman et al., *Weapon Involvement and Injury Outcomes in Family and Intimate Assaults*, 267 J. Am. Med. Ass'n 3043 (1992).

[7] Susan B. Sorenson & Douglas J. Wiebe, *Weapons in the Lives of Battered Women*, 94 Am. J. of Pub. Health 1412, 1414 (2004).

have been threatened or injured by an intimate partner with a firearm.[8]

The court of appeals also correctly concluded (Pet. App. 29a-30a) that it is reasonable for the County to safeguard guns quickly and temporarily when domestic incidents involve suicide threats by individuals who may be experiencing mental illness, thereby decreasing the risks of suicide while the police investigate. Suicide is the most common form of firearm death: around 60 percent of firearm deaths—that is, more than 23,000 firearm deaths in the United States each year—result from suicide.[9] And, for potentially suicidal individuals, having access to a firearm in one's home more than triples the risk of death.[10] Approximately 90 percent of suicide attempts with a firearm result in death. By contrast, across all suicide attempts not involving a firearm, only four percent result in death.[11] That disparity is particularly significant because suicide attempts are often impulsive responses in moments of crisis, including acute psychiatric crisis, and the vast majority of those who survive a suicide attempt do not

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[8] Avanti Adhia et al., Nonfatal Use of Firearms in Intimate Partner Violence: Results of a National Survey, 147 Preventive Med. art. 106500 (June 2021).

[9] Giffords L. Ctr. to Prevent Gun Violence, *Statistics* (n.d.) (presenting data from Centers for Disease Control & Prevention, *Underlying Cause of Death, 1999-2020*).

[10] Andrew Anglemyer et al., *The Accessibility of Firearms and Risk for Suicide and Homicide Victimization Among Household Members: A Systematic Review and Meta-Analysis*, 160 Annals of Internal Med. 101 (2014).

[11] Andrew Conner et al., *Suicide Case-Fatality Rates in the United States, 2007 to 2014: A Nationwide Population-Based Study*, 171 Annals of Internal Med. 885 (2019).

go on to die by suicide.[12] In other words, for a suicidal individual with a gun, the risk of death is enormous because guns are so lethal; but with the gun removed temporarily during the time of crisis, the risk of death by suicide—at any time—is dramatically reduced.

Indeed, the reasonableness of the County's policy is reflected in the circumstances here. The county officers temporarily secured petitioner's firearms only because petitioner had engaged in a violent domestic incident with his daughter and threatened suicide by asking the police "to tase him so that he would die," resulting in his transport to an emergency psychiatric facility. See *supra* at 3-4. In these circumstances, temporarily safeguarding petitioner's firearms reduced the risks of further violence or death while the police investigated. Although the psychiatric facility staff ultimately concluded that petitioner was not so imminently dangerous as to require involuntary commitment, as noted, Dr. Yacoub, the examining physician, clarified that there are circumstances where a patient that does not meet the standard for involuntary commitment may still be dangerous if released with access to a firearm. (CA2 J.A. 557.) And here, petitioner's daughter called child protective services four times to express continuing fear of her father's return. See *supra* at 7. As the Second Circuit correctly observed, the possibility that Torcivia would "regain[] access to the firearms before the conclusion of the investigation," or that someone else would gain access to them during that time, "confirms that the policy advances the County's important interest in preventing self-harm or domestic violence." (Pet. App. 30a.)

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[12] David Owens et al., *Fatal and Non-Fatal Repetition of Self-Harm: Systematic Review*, 181 British J. of Psychiatry 193 (2002).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

LETITIA JAMES
Attorney General
State of New York
BARBARA D. UNDERWOOD*
Solicitor General
JUDITH N. VALE
Deputy Solicitor General
DAVID LAWRENCE III
PHILIP J. LEVITZ
Assistant Solicitors General
barbara.underwood@ag.ny.gov

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* *Counsel of Record*