

App. No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

WAYNE TORCIVIA,
Petitioner,

v.

SUFFOLK COUNTY, NEW YORK,
MARY CATHERINE SMITH, KRISTEN
STEELE, DIANNA D'ANNA, ADEEB YACOUB, M.D.,

Respondents.

**APPLICATION TO THE HON. SONIA SOTOMAYOR
FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT**

Pursuant to Supreme Court Rule 13(5), Wayne Torcivia hereby moves for an extension of time of 60 days, to and including May 28, 2022, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari will be March 29, 2022. This application is being filed at least 10 days before that date. See *id.* For the following reasons, the application should be granted.

1. The United States Court of Appeals for the Second Circuit rendered its decision on November 9, 2021 (Exhibit 1) and denied a timely petition for rehearing and rehearing en banc on December 29, 2021 (Exhibit 2). This Court has jurisdiction under 28 U.S.C. § 1254(1).

2. This case involves an unprecedented expansion of state powers on two fronts: (i) blocked from applying the “community caretaker” exception to the warrant requirement by this Court’s opinion in *Caniglia v. Strom*, 141 S. Ct. 1596 (2021), the Second Circuit instead extended the “special needs” exception to the Fourth Amendment warrant requirement to allow police to enter the home and seize firearms; and (ii) the Second Circuit ratified the continued confinement of an individual in a mental health facility after psychiatric evaluation found he was not a danger to himself or others, for sole purpose of coercing surrender of his firearms to police.

3. First, the panel’s application of the “special needs” exception to the Fourth Amendment’s warrant requirement is far afield of the administrative and regulatory purposes for which it was created, the absence of which would be frustrated by the application of the warrant requirement. Under the “special needs” exception, the location searched is historically limited to those places where an individual has a reduced expectation of privacy.

4. Second, the “special needs” exception has only been extended to the home by this Court in cases involving probationers and parolees, based on their diminished expectation of privacy in their homes, possessions, and persons. See *Griffin v. Wisconsin*, 483 U.S. 868 (1987) (probationer’s residence); *United States v. Knights*, 534 U.S. 112 (2001) (same); *Samson v. California*, 547 U.S. 843 (2006) (parolee). While the application of the “special needs” exception in those circumstances makes some sense to prevent the warrant requirement from

interfering to an appreciable degree with the administration of the probation/parole system by making it difficult for probation officials to respond promptly to evidence of misconduct and reduce the deterrent effect of an expeditious search, *Griffin*, 483 U.S. at 876, the Fourth Amendment should prevent the exception's application to the home outside of those narrowly defined contexts.

5. Indeed, outside of the probation/parole context, only the First and Ninth Circuits have found “special needs” allowed the warrantless entry of law enforcement into the home. See *Henderson v. City of Simi Valley*, 305 F.3d 1052 (9th Cir. 2002) (police escort into house to collect belongings); *McCabe v. Life-Line Ambulance Serv., Inc.*, 77 F.3d 540 (1st Cir.1996) (warrantless entry and seizure of a resident from his home pursuant to a civil commitment order issued by a medical doctor upon finding a likelihood of serious harm). The panel decision is also directly at odds with the highest court in New York's neighboring state, New Jersey. See *State v. Hemenway*, 239 N.J. 111, 138, 216 A.3d 118, 133 (2019).

6. Faced with a factual scenario almost identical to *Caniglia v. Strom*, the panel relied on “public safety” arguments similar to those rejected by this Court less than one year ago. See *Caniglia v. Strom*, 141 S. Ct. 1596 (2021).

7. Also at issue the Second Circuit's departure from well-settled precedent preventing the continued confinement of non-dangerous individuals in a mental health facility. By granting qualified immunity for the intentional confinement of an individual who has been evaluated and deemed not to present a danger to himself or others, for the sole purpose of coercing the surrender of his firearms to police, the

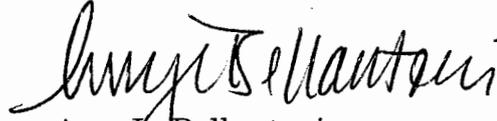
panel disregarded this Court's guidance in *O'Connor v. Donaldson* (1) that state officials charged with the administration of mental hospitals are clearly bound by federal constitutional law and (2) that a wholly sane and innocent person has a constitutional right not to be physically confined by the State when his freedom will pose a danger neither to himself nor to others. 422 U.S. 563, 573 n.8 (1975).

8. These are important issues that will warrant the Court's eventual review, and good cause exists for the Court to grant Petitioner's request for a 60-day extension of time. Petitioner's counsel is a solo practitioner. Since the issuance of the petition for rehearing and rehearing en banc on December 29, 2021, counsel was out of the office with COVID-19. Upon her recovery, she was tasked with addressing motion practice in several federal district court, circuit court, and state cases, some of which involved multi-party litigation. Though the drafting of the Petition for Certiorari is substantially underway, Petitioner is also in the process of seeking experienced Supreme Court counsel to assist in this matter. Additional time will be required for any new counsel to become familiar with the facts and relevant law. The press of other matters before this and other Courts will likely make preparation in the short time allotted impossible absent an extension of time.

9. No prejudice will result from granting this request for an extension of time.

WHEREFORE, Petitioner requests that an extension of time to and including
May 28, 2022 be granted to allow for the filing of a petition for certiorari.

Respectfully submitted,



Amy L. Bellantoni
Counsel of Record for Petitioner
THE BELLANTONI LAW FIRM, PLLC
2 Overhill Road, Suite 400
Scarsdale, New York 10583
(914) 367-0090
abell@bellantoni-law.com