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

MOTION FOR LEAVE TO FILE AND BRIEF OF THE INSTITUTE FOR JUSTICE AS AMICUS CURIAE SUPPORTING PETITIONER

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MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

As required by Supreme Court Rule 37.2(a), the Institute for Justice timely notified the parties of its intention to submit an amicus curiae brief in this case. Petitioner consented, but respondents withheld consent. Under Supreme Court Rule 37.2(b), the Institute for Justice respectfully moves this Court for leave to file the attached brief in support of petitioner.

This case presents the Court with an opportunity to reconsider the so-called "special needs" exception to the Fourth Amendment's warrant requirement. Unlike other historically rooted, narrowly defined exceptions, "special needs" stems from this Court's innovations in Fourth Amendment law, employing a relativistic balancing test that privileges government interests, belittles serious intrusions, and thereby leaves the people's right to be secure to "judges' assessments of its usefulness . . . " *New York State Rifle & Pistol Association, Inc.* v. *Bruen*, 597 U.S. ___, slip op. at 14 (June 23, 2022) (citation omitted). The decision below—upholding a warrantless, nonconsensual, nonemergency entry and seizure within the home—confirms the exception's innate danger. That danger will continue to grow unless this Court intervenes.

The Institute for Justice is a nonprofit, public-interest law center committed to securing the foundations of a free society by defending constitutional rights. A central pillar of IJ's mission is the protection of private property rights, including by challenging

programs that allow officials to trespass on private property without first securing a warrant based on individualized probable cause. Relying on this Court's special needs decisions, the decision below gives officers a blank check to conduct discretionary, warrantless invasions in countless contexts. Through the attached brief, the Institute for Justice traces the exception's dubious origins, describes its dangerous impact on Fourth Amendment law, and invites the Court to reconsider whether a special needs exception is compatible with the people's "right to be secure." That analysis is critical to a comprehensive understanding of the "special needs" exception and its legal and practical failings.

Accordingly, the Institute for Justice respectfully requests that this Court grant its motion to file the attached brief as amicus curiae.

Respectfully submitted,

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QUESTION PRESENTED

Whether the "special needs" exception to the Fourth Amendment allows warrantless, non-emergency entries and seizures within the home.

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AMICUS CURIAE BRIEF

The Institute for Justice respectfully submits this brief as amicus curiae in support of petitioner.

INTEREST OF AMICUS CURIAE

The Institute for Justice (IJ)[1] is a nonprofit, public-interest law center committed to securing the foundations of a free society by defending constitutional rights. A central pillar of IJ's mission is the protection of private property rights, both because the ability to control one's property is an essential component of personal liberty and because property rights are inextricably linked to all other civil rights. See *United States* v. *James Daniel Good Real Prop.*, 510 U.S. 43, 61 (1993) ("Individual freedom finds tangible expression in property rights.").

IJ's property-rights work includes challenges to programs that allow officials to trespass on private property without first securing a warrant based on individualized probable cause. See, *e.g.*, *LMP Servs., Inc.* v. *City of Chicago*, 2019 IL 123123, 2019 WL 2218923 (Ill. May 23, 2019), cert. denied, 140 S. Ct. 468 (Nov. 4, 2019); *McCaughtry* v. *City of Red Wing*, 831 N.W.2d 518

[1] Both parties were timely notified of the Institute for Justice's intent to file this brief as amicus curiae. Petitioner consented, but respondents withheld consent. Neither party's counsel authored this brief in whole or in part, and no person or entity other than the Institute for Justice made a monetary contribution toward the preparation and submission of this brief.

(Minn. 2013); *Black* v. *Village of Park Forest*, 20 F. Supp. 2d 1218 (N.D. Ill. 1998). IJ also regularly files amicus briefs in Fourth Amendment cases before this Court. See, *e.g.*, *Lange* v. *California*, 141 S. Ct. 2011 (2021); *Caniglia* v. *Strom*, 141 S. Ct. 1596 (2021); *Bovat* v. *Vermont*, 141 S. Ct. 22 (Oct. 19, 2020); *Collins* v. *Virginia*, 138 S. Ct. 1663 (2018); *Carpenter* v. *United States*, 138 S. Ct. 2206 (2018); *City of Los Angeles* v. *Patel*, 576 U.S. 409 (2015); *Riley* v. *California*, 573 U.S. 373 (2014).

SUMMARY OF ARGUMENT

Amicus agrees with petitioner: The Second Circuit erred by relying on the so-called "special needs" exception to uphold a warrantless, non-emergency home entry. Amicus also agrees that the decision below goes well beyond any of this Court's special needs decisions. Amicus submits that the special needs exception should be abandoned entirely. This brief traces the exception's dubious origins, describes its dangerous impact on Fourth Amendment law, and invites the Court to reconsider whether a special needs exception is compatible with the people's "right to be secure."

This Court recently rejected two broad exceptions to the Fourth Amendment's warrant requirement that would have allowed warrantless, non-emergency entries and seizures within the home. *Lange* v. *California*, 141 S. Ct. 2011, 2024 (2021) (rejecting categorical exception for pursuit of fleeing misdemeanor suspect);

Caniglia v. *Strom*, 141 S. Ct. 1596, 1600 (2021) (rejecting "community caretaking" as justification for warrantless home entry). Those decisions honored the Fourth Amendment's opening words, the people's "right to be secure," by requiring the government to get a warrant or show a historically recognized warrant exception before intruding into the home. See Laura K. Donohue, *The Original Fourth Amendment*, 83 U. Chi. L. Rev. 1181, 1192 (2016) ("The Founders were worried about all intrusions and no warrant lacking the appropriate particularity could overcome the presumption against invasion of the home.").

But a handful of decisions, starting with *Camara* v. *Municipal Court*, 387 U.S. 523 (1967), upheld warrantless searches and seizures under what is now called the "special needs" exception. Those decisions treat warrantless civil searches as categorically less intrusive than warrantless criminal searches, *id.* at 537 (describing inspections of renters' homes as a "limited invasion of the urban citizen's privacy"), and as justified by the need to enforce non-criminal health and safety laws, *id.* By gutting the warrant requirement, the Court's special needs decisions opened the door to a case-by-case weighing of competing interests.

The special needs exception does serious harm to the people's right to be secure in their homes. Most warrant exceptions are narrow and historically rooted; look at exigent circumstances. *Lange*, 141 S. Ct. at 2022–24. Special needs, by contrast, stems from this Court's innovations in Fourth Amendment law, employing a relativistic balancing test that privileges

government interests, belittles serious intrusions, and thereby leaves the people's right to be secure to "judges' assessments of its usefulness. . . ." *New York State Rifle & Pistol Association, Inc.* v. *Bruen*, 597 U.S. ___, slip op. at 14 (June 23, 2022) (citation omitted).

The decision below is a result of that special needs rationale. Under the lower court's logic, the government can skip the warrant requirement so long as it (or even a court) conjures up a loose health or safety purpose for the intrusion. The result is that officers have a blank check to conduct discretionary, warrantless invasions in countless new contexts. Indeed, the Second Circuit interpreted "special needs" broadly enough to justify distinguishing *Caniglia*, 141 S. Ct. at 1598–99—a case involving a warrantless home entry in virtually identical circumstances—in a mere footnote.

This case provides an opportunity to reject yet another broad, atextual, ahistorical exception to the Fourth Amendment's warrant requirement. Below, Amicus explains that this Court's recent decisions rejecting broad warrant exceptions honor the people's right to be secure in their homes. Section I, *infra*. Amicus then explains that the special needs exception—which lacks principled limits, privileges government interests, and trivializes serious intrusions—threatens the people's right to be secure in their homes. Section II, *infra*. Finally, Amicus explains that the Second Circuit's and other courts' reliance on a broad special needs exception to justify warrantless home invasions requires this Court's intervention. Section III, *infra*.

Amicus urges this Court to grant the Petition and eliminate the special needs exception.

ARGUMENT

I. This Court's recent decisions rejecting broad exceptions to the Fourth Amendment's warrant requirement bolster the people's right to be secure in their homes.

The Fourth Amendment was designed to prevent the warrantless, discretionary intrusions permitted by the special needs exception. Since its creation, the exception has conflicted with the Amendment's text and history; that conflict will only worsen as lower courts apply its rationale in novel circumstances. By rejecting the special needs exception here, the Court would return lost protections and align search and seizure doctrine with the Fourth Amendment's text and history.

Last term, this Court rejected broad exceptions to the Fourth Amendment's warrant requirement that would have allowed home entries without exigent circumstances. *Lange* v. *California*, 141 S. Ct. 2011, 2024 (2021) (rejecting categorical exception for pursuit of fleeing misdemeanor suspect); *Caniglia* v. *Strom*, 141 S. Ct. 1596, 1600 (2021) (rejecting "community caretaking" as a justification for warrantless home entry). Both decisions rejected calls to "expand the scope of . . . exceptions to the warrant requirement to permit warrantless entry into the home." *Caniglia*, 141 S. Ct. at 1600 (citation omitted); *Lange*, 141 S. Ct. at 2019

("[W]e are not eager—more the reverse—to print a new permission slip for entering the home without a warrant.").

Lange and *Caniglia* honor the Fourth Amendment's opening words: "[t]he right of the people to be secure." At the Founding, that language was understood to encompass not only the right to be "spared" an unreasonable search or seizure, but also a right to be free from "harms attributable to the *potential* for unreasonable searches and seizures." Luke M. Milligan, *The Forgotten Right to Be Secure*, 65 Hastings L.J. 713, 738–50 (2014) (emphasis added). For example, lauded scholar Samuel Johnson defined "secure" to mean free from fear of potential threats. See, *e.g.*, SAMUEL JOHNSON, 2 A DICTIONARY OF THE ENGLISH LANGUAGE 1777, at 177 (W. Strahan ed., 1755). William Blackstone similarly described "personal security" as a "person's legal and uninterrupted enjoyment of his life, his limbs, [and] his body" as well as freedom from "menaces" to his safety. *Commentaries on the Laws of England* 125, 130 (1765).

The Founders enshrined the right to be secure in response to the "immediate evils that motivated the framing and adoption of the Fourth Amendment." *Payton* v. *New York*, 445 U.S. 573, 583 (1980). Those immediate evils, the "reviled 'general warrants' and 'writs of assistance' . . . allowed British officers to rummage through homes in an unrestrained search for evidence of criminal activity." *Riley* v. *California*, 573 U.S. 373, 403 (2014). As James Otis, who famously condemned writs of assistance in Paxton's Case, put it, they were

"most destructive of English liberty" because they "place[d] the liberty of every man in the hands of every petty officer." CHARLES FRANCIS ADAMS ed., 2 THE WORKS OF JOHN ADAMS 523–25 (1850). Otis concluded that the looming threat of arbitrary intrusion—and the fear it instilled—made "every householder in this province . . . less secure than he was before." Milligan, *supra*, at 740.

The Founders' emphasis on security in the home was also an outgrowth of that generation's "frequent repetition of the adage that 'a man's house is his castle[.]'" *Payton*, 445 U.S. at 596. The ubiquity of the castle metaphor shows that "[t]he Framers valued security and intimately associated it with the ability to exclude the government." Thomas K. Clancy, *What Does the Fourth Amendment Protect: Property, Privacy, or Security?*, 33 Wake Forest L. Rev. 307, 353–54 (1998); see also *Carpenter* v. *United States*, 138 S. Ct. 2206, 2239–40 (2018) (Thomas, J., dissenting) (collecting prominent uses of castle metaphor to show that the Framers "were quite familiar with the notion of security in property"). But castles do more than exclude: they provide confidence against potential future intrusions. Milligan, *supra*, at 748. Thus John Adams—"the original author of the 'to be secure' phraseology"—observed that a home provides "as compleat a security, safety and Peace and Tranquility" as a castle. *Id.* (citation omitted) (emphasis added).

To preserve the people's right to be secure in their homes, this Court has repeatedly refused to "print a new permission slip for entering the home without a

warrant." *Lange*, 141 S. Ct. at 2019; *Caniglia*, 141 S. Ct. at 1600 ("[T]his Court has repeatedly 'declined to expand the scope of . . . exceptions to the warrant requirement to permit warrantless entry into the home.' ") (quoting *Collins* v. *Virginia*, 138 S. Ct. 1663, 1672 (2018)).

And for good reason. A robust warrant requirement promotes people's security in at least two ways:

First, requiring that a neutral magistrate weigh the justification for the entry puts a crucial check on officers' discretion to arbitrarily thrust themselves into homes. See *Johnson* v. *United States*, 333 U.S. 10, 14 (1948) (lack of a warrant requirement "would reduce the Amendment to a nullity and leave the people's homes secure only in the discretion of police officers"); *Brinegar* v. *United States*, 338 U.S. 160, 180–81 (1949) (Jackson, J., dissenting) ("Among deprivations of rights, none is so effective in cowing a population, crushing the spirit of the individual and putting terror in every heart" as when "homes, persons and possessions are subject at any hour to unheralded search and seizure by the police.").

Second, the warrant requirement reduces the risk—inherent in all policing—of injuries or loss of life. See *Terry* v. *Ohio*, 392 U.S. 1, 13 (1968). This Court has recognized that forcibly entering a home, specifically, can "provoke violence in supposed self-defense by the surprised resident." *Hudson* v. *Michigan*, 547 U.S. 586, 594 (2006). Requiring a warrant "minimizes the

danger of needless intrusions" into the home. *Payton*, 445 U.S. at 586 (quotes omitted).

Importantly, though, the warrant requirement cannot remain robust if it waxes and wanes based on officers' reasons for entering a home on any given occasion. After all, "[t]he Founders were worried about *all* intrusions and no warrant lacking the appropriate particularity could overcome the presumption against invasion of the home." Donohue, *supra*, at 1192. And early state court decisions, channeling that concern in Fourth Amendment cases, thus rejected entries not based on valid warrants whether the officers' stated purpose was "public safety," *Connor* v. *Commonwealth*, 3 Binney 38 (Pa. 1810), "searching for stolen goods," or any "other" reason, *Grumon* v. *Raymond*, 1 Conn. 39 (1814).

Of course, there are rare cases when "the exigencies of the situation" (facts on the ground) justify a warrantless home entry. *Lange*, 141 S. Ct. at 2017 (cleaned up). But that exception—like all warrant exceptions—is both "narrow and well-delineated," *Flippo* v. *West Virginia*, 528 U.S. 11, 13 (1999) (per curiam), and "jealously and carefully drawn," *Jones* v. *United States*, 357 U.S. 493, 499 (1958). Immediate entry must be "*objectively* reasonable" to justify skipping a warrant, *Lange*, 141 S. Ct. at 2017 (cleaned up) (emphasis added), so that officers' ability to enter does not turn on their mere say-so. Requiring that exceptions be historically rooted, narrowly defined, and jealously guarded ensures that the people's right to be secure in their homes does not fall to an exception that "swallow[s] the rule,"

City of Los Angeles v. *Patel*, 576 U.S. 409, 424–25 (2015)—a result that, again, this Court has refused to allow. *Caniglia*, 141 S. Ct. at 1600; *Lange*, 141 S. Ct. at 2019.

II. The so-called "special needs" exception is ahistorical, atextual, unprincipled, and threatens the people's right to be secure in their homes.

The "special needs" exception lacks any meaningful limiting features. It arose not from historical practice but from this Court's innovations in Fourth Amendment law. It is applied using a relativistic balancing test that overvalues asserted government interests and undervalues the people's right to be secure in their homes. And, as the decision below shows, it has taken on a life of its own in the lower courts. In both origin and application, the special needs exception is in deep conflict with the right to be secure. The Court should therefore grant the Petition and reject the existence of a free-standing "special needs" exception to the warrant requirement.

a. The special needs exception originates from this Court's decision in *Camara*, 387 U.S. 523. There, a renter violated California law by refusing a warrantless inspection of his home. Rather than apply the traditional warrant and probable cause requirements, or asking whether a traditional exception, like exigency, justified the warrantless inspection, the Court balanced the search's intrusiveness against the

government's interests in conducting the search. *Id.* at 535–37. As a result of that balancing, the Court invented "administrative warrants" and held that probable cause for such warrants exists where there are "reasonable legislative or administrative standards for conducting an area inspection." *Id.* at 538. The Court also relied on a distinction between criminal and civil law enforcement, including the supposedly "limited invasion" posed by nonconsensual rental inspections. *Id.* at 537.

The term "special needs" first appeared in a case applying *Camara*'s rationale to uphold a warrantless search in the public-school context. In *New Jersey* v. *T.L.O.*, 469 U.S. 325 (1985), the Court upheld the warrantless search of a high school student's purse after she was found smoking cigarettes in violation of school code. The majority first applied *Camara*'s balancing test, noting that school settings necessitate the "easing of . . . restrictions to which searches by public authorities are ordinarily subject." *Id.* at 340. The majority concluded that "reasonableness," rather than a warrant or probable cause, is the only thing needed to conduct a school search. *Id.* at 341. In a concurring opinion, however, Justice Blackmun warned against employing *Camara*'s balancing test as a rule rather than the exception. He cautioned that "[o]nly in those exceptional circumstances in which special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable, is a court entitled to substitute its balancing of

interests for that of the Framers." *Id.* at 351 (Blackmun, J., concurring).

Two years later, the Court used that "special needs" language in *Griffin* v. *Wisconsin*, 483 U.S. 868, 873–75 (1987). *Griffin* was a challenge to regulations authorizing probation officers to search a probationer's home without a warrant if there were "reasonable grounds" to think it contained contraband. *Id.* at 870–71. Applying *Camara*'s balancing test, the Court offered several reasons why the "special needs" of probation systems justify dispensing with the warrant and probable cause requirements. First, the state exercises "legal custody" over probationers, a control analogous to "parental custody." *Id.* at 876. Second, probation systems are extensions of the state-operated penal system. Third, probation officers need to "respond quickly to evidence of misconduct" by conducting "expeditious searches." *Id.* Finally, probation officers have the welfare of the probationer in mind, which cannot be said for police officers' "searches against the ordinary citizen." *Id.*

This Court has since relied on a special needs rationale to uphold warrantless searches aimed at deterring drug use in public schools, *Vernonia School Dist. 47J* v. *Acton*, 515 U.S. 646, 653 (1995), and deterring employees from drug and alcohol use in certain high-risk environments, *Nat'l Treasury Emps. Union* v. *Von Raab*, 489 U.S. 656, 665–66 (1989) (armed drug-interdiction agents); *Skinner* v. *Ry. Lab. Executives' Ass'n*, 489 U.S. 602, 620 (1989) (railroad employees).

But before long, the special needs rationale spread to other areas of search and seizure law. By rejecting the warrant requirement, the special needs cases "set the stage for the long-term expansion of the reasonableness balancing test without proper justification or limits." Scott E. Sundby, *A Return to Fourth Amendment Basics: Undoing the Mischief of* Camara *and* Terry, 72 Minn. L. Rev. 383, 385 (1988). And expand it did. Originally confined to "non-criminal" cases, special needs quickly showed up in criminal law enforcement. See, *e.g.*, *Terry*, 392 U.S. at 21 (applying *Camara*'s rationale to uphold officer's warrantless physical search of suspect); *Michigan* v. *Long*, 463 U.S. 1032, 1046 (1983) (applying *Camara*'s rationale to uphold warrantless protective search of passenger compartment in vehicle); *New York* v. *Class*, 475 U.S. 106, 116 (1986) (applying *Camara*'s rationale to uphold officer's warrantless removal of papers from vehicle's dashboard). In these decisions, as it had in *Camara* and its progeny, the special needs rationale meant that the government could overcome "inviolable minimum protections" when respecting them became "too inconvenient." Ronald F. Wright, *The Civil and Criminal Methodologies of the Fourth Amendment*, 93 Yale L.J. 1127, 1141–42 (1984).

b. The "special needs" exception is incompatible with the right to be secure. First, there is no textual or historical basis for distinguishing between searches or seizures conducted for civil, as opposed to criminal, purposes. The Fourth Amendment's language makes no such distinction. Just the opposite: The Founders

were worried about "*all* intrusions," Donohue, *supra*, at 1192 (emphasis added), and so the Amendment bans "unreasonable searches and seizures." Period.

Second, this Court's special needs decisions undermine the right to be secure by privileging the government's asserted interests. *Camara* opined that invasions for "civil" purposes are less intrusive than criminal investigations, 387 U.S. at 537 (describing nonconsensual inspections of renters' homes as a "limited invasion of the urban citizen's privacy"),[2] and relied on the pressing need to enforce non-criminal health and safety laws, *id*.

Neither of those justifications hold water. "The 'intrusiveness' of a search or seizure has nothing to do with its ultimate purpose . . . [p]rivacy dissolves at the moment of intrusion, no matter what follows." Wright, *supra*, at 1136. So *Camara*'s empirical claim about the "limited" nature of non-criminal invasions is just false. See, *e.g.*, *id.* at 1136–37 (describing intrusiveness of civil searches). As for *Camara*'s claim about the need to enforce civil laws, that logic would apply to an equal if not "greater" degree for criminal laws—and yet the warrant requirement applies with full force when police are enforcing such laws. *Id.* at 1138–39. *Camara* and its progeny, however, "reengineer[ed] Fourth Amendment law," leaving "less protection for citizens against arbitrary government intrusions than it did

[2] As noted above, this rationale quickly expanded beyond the realm of "civil" enforcement. Wright, *supra*, at 1134–35.

fifty years ago." *State* v. *Short*, 851 N.W.2d 474, 497 (Iowa 2014).

That decreased protection is palpable in the lower courts. For example, in *Palmieri* v. *Lynch*, 392 F.3d 73, 84 (2d Cir. 2004), the Second Circuit upheld an environmental conservation agent's warrantless entry into the plaintiff's enclosed back yard through a closed gate. Applying this Court's special needs cases, the Second Circuit held that the agent's warrantless entry was "minimally intrusive" because its purpose was an environmental inspection. *Id.* at 83. The court concluded that the warrantless invasion was justified by the agency's "strong interest" in inspecting the property without "additional burdens of cost and time." *Id.* at 85. It is only because of *Camara* and its progeny that such vague assertions of inconvenience can overcome an otherwise straightforward violation of the Fourth Amendment's warrant requirement.

Finally, the special needs cases introduced dangerous innovations where other rationales might explain the Court's conclusions. For example, some of the Court's special needs decisions involve the government's exercise of custodial or supervisory authority. *Acton*, 515 U.S. at 655 (noting that the state's "custodial and tutelary" power over public school children requires "a degree of supervision and control that could not be exercised over free adults"); *Von Raab*, 489 U.S. at 670 (noting the federal government's interest in ensuring the "unimpeachable integrity and judgment" of federal drug interdiction agents); *Griffin*, 483 U.S. at 876 (emphasizing the state's "custodial authority" to

operate probation systems). Although "not unlimited," *Griffin*, 438 U.S. at 875, the government's authority to supervise those in its custody or control is a stronger justification than the amorphous "special needs" rationale. Rather than engage with potentially relevant justifications, this Court's special needs decisions relied on a novel rationale detached from the Fourth Amendment's text and history.

The "special needs" exception invites the same warrantless, discretionary intrusions that the Fourth Amendment was designed to prevent. Indeed, how could the Framers assert that the home provides the safety and security of a castle, Milligan, *supra*, at 748, if that security depends on "judges' assessments of its usefulness"? *New York State Rifle & Pistol Association Inc.* v. *Bruen*, 597 U.S. ___, slip op. at 14 (June 23, 2022) (citation omitted). Rather, the Fourth Amendment's enumeration of the right to be secure "takes out of the hands of government . . . the power to decide on a case-by-case basis whether the right is *really worth* insisting upon." *Id.* The special needs exception conflicts with that basic truth of our constitutional system.

III. The lower court's decision exemplifies the dangers of a broad special needs exception.

The decision below illustrates the threat posed by a broad special needs exception. Indeed, if a loose interest in "health or safety" can authorize officers to enter and seize property within the home—without a

warrant, exigent circumstances, or consent—then the Fourth Amendment "leave[s] the people's homes secure only in the discretion of police officers." *Johnson*, 333 U.S. at 14. The Court recently rejected that result in virtually identical circumstances. *Caniglia*, 141 S. Ct. at 1600. This case provides an opportunity to reject yet another unprincipled exception that would allow discretionary, warrantless entries within the home.

On April 6, 2014, officers transported Wayne Torcivia from his home to a mental health facility following an argument between Torcivia and his teenage daughter. Pet. App. 6a. At no point during that argument did Torcivia's daughter claim that she had been assaulted, or that a firearm had been used, displayed, or referenced in any way. *Id.* at 25a. After Torcivia had already departed for the facility, an officer learned that lawfully owned handguns were stored in the home. *Id.* at 10a. The officer entered the house and seized Torcivia's handgun without a warrant, pursuant to a Suffolk County policy. *Id.* at 12a. The officer did not try to obtain a warrant in the more than 12 hours that Torcivia was under evaluation, *id.* at 10a–12a, nor did the government attempt to justify its search or seizure on the basis of exigent circumstances or consent, *id.* at 39a. The district court nevertheless found, *sua sponte*, that the search and seizure were justified under the special needs exception. *Id.* at 65a.

On appeal, the Second Circuit upheld the warrantless search and seizure under the special needs exception. *Id.* at 32a–33a. The court found that the officer's entry and seizure were pursuant to a policy aimed at

"preventing domestic violence and . . . suicide." *Id.* at 24a. Because it deemed those goals distinct from a "general interest in crime control," the court held that the special needs exception applied. *Id.* at 26a. Next, the court reasoned that the warrantless entry and seizure was a "minimal intrusion," *id.* at 32a, outweighed by a "substantial governmental interest in preventing suicide and domestic violence," *id.* at 28a. The court concluded that the entry and seizure were justified under the special needs exception and not "any other Fourth Amendment exception." *Id.* at 26a & n.25.

The decision below gives officers a blank check to conduct discretionary, warrantless invasions in countless contexts. Pursuant to that authority, "homes, persons and possessions are subject at any hour to unheralded search and seizure by the police." *Brinegar*, 338 U.S. at 180–81 (Jackson, J., dissenting). Indeed, under the lower court's reasoning, the government can circumvent the warrant requirement so long as it (or even a court) conjures up a loose interest in health or safety. But what does the government do that cannot somehow be framed in terms of health or safety? And with those countless activities now candidates for the "special needs" exception, the only thing standing between the government and someone's home is a balancing test that undercuts the right to be secure.

The Second Circuit not only failed to grapple with these problems—it directly flouts this Court's recent decisions rejecting broad exceptions to the warrant requirement. See *Lange*, 141 S. Ct. at 2019; *Caniglia*, 141 S. Ct. at 1600; *Collins*, 138 S. Ct. at 1672.

Caniglia is strikingly on point. There, the Court rejected the notion that the "community caretaking" doctrine justifies warrantless searches and seizures in the home. 141 S. Ct. at 1600. As here, officers entered and seized firearms from the petitioner's home without a warrant after transporting him for a mental health evaluation. *Id.* at 1598. As here, the lower court deemed it relevant that the search and seizure were "distinct from the normal work of criminal investigation." *Id.* at 1599. As here, the lower court applied a balancing test and concluded that the state's interest in responding to alleged "mental health crises" outweighed the petitioner's interest in the "sanctity of his home." *Caniglia* v. *Strom*, 953 F.3d 112, 125 (1st Cir. 2020). As here, the lower court did not rely on consent or exigent circumstances. 141 S. Ct. at 1599. And this Court reversed, holding that the lower court's rule "goes beyond anything this Court has recognized." *Id.*

The Second Circuit nevertheless tried to distinguish *Caniglia*—in a single footnote—on the ground that it did not involve the special needs exception. Pet. App. 26a & n.25. That distinction is unconvincing: The Second Circuit's "special needs" logic, though applied under a different label, was identical to the "community caretaking" logic rejected in *Caniglia*. Compare *Caniglia* v. *Strom*, 953 F.3d 112, 125 (1st Cir. 2020) ("[T]he reasonableness of caretaking functions requires the construction of a balance between the need for the caretaking activity and the affected individual's interest in freedom from government intrusions."), with Pet. App. 28a (balancing "the weight and

immediacy of the government interest," "the nature of the privacy interest," "the character of the intrusion," and "the efficacy of the [seizure] in advancing the government interest"). The Second Circuit should have recognized that it could not simply revive the community caretaking doctrine by using the magic words "special needs."

Moreover, if the special needs exception were relevant to the facts below, this Court would surely have noted that in *Caniglia*. There, while rejecting a broad community caretaking exception, the Court noted the potential relevance of other exceptions, each of which the lower court had declined to apply. *Caniglia*, 141 S. Ct. at 1599 (listing "consent," "exigent circumstances," and "actions . . . akin to what a private citizen might have the authority to do"). But not once did the Court mention the special needs rationale or its balancing test. Yet in circumstances virtually identical to *Caniglia*, the Second Circuit invoked special needs—and only special needs—to justify a warrantless, nonconsensual, nonemergency entry and seizure within the home.

Unfortunately, this is not the first time lower courts have relied on "special needs" to uphold warrantless intrusions. See, *e.g.*, *Cassidy* v. *Chertoff*, 471 F.3d 67, 84 (2d Cir. 2006) (upholding searches of ferry commuters' bags and vehicles); *MacWade* v. *Kelly*, 460 F.3d 260, 271 (2d Cir. 2006) (upholding searches of subway passengers' bags); *Palmieri* v. *Lynch*, 392 F.3d 73, 75 (2d Cir. 2004) (upholding entry into "completely enclose[d]" backyard to conduct regulatory inspection);

Long v. *Pend Oreille Cnty. Sheriff's Dep't*, 385 Fed. Appx. 641, 642 (9th Cir. 2010) (upholding entry and seizure of documents from home in connection with guardianship proceeding); *Neumeyer* v. *Beard*, 421 F.3d 210, 213–14 (3d Cir. 2005) (upholding random searches of prison visitors' vehicles); *Sanchez* v. *Cnty. of San Diego*, 464 F.3d 916, 926 (9th Cir. 2006) (upholding mandatory searches of welfare applicants' homes to determine eligibility). In the lower courts, the special needs exception is anything but "jealously and carefully drawn." *Jones*, 357 U.S. at 499.

This Court's special needs decisions introduced an unprincipled, atextual, and ahistorical exception to the Fourth Amendment's warrant requirement. The decision below merely confirms the exception's innate danger—one that will continue to grow unless this Court intervenes. The Court should grant the Petition to continue its recent trend of bolstering the right to be secure by rejecting yet another runaway exception to the warrant requirement.

CONCLUSION

The Court should grant the Petition for review, reject the existence of a "special needs" exception, and reverse the decision below.

Respectfully submitted,

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