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THERE'S NO PLACE LIKE HOME: THE SECOND CIRCUIT
DISTURBS FOURTH AMENDMENT PROTECTIONS IN
*TORCIVIA v. SUFFOLK COUNTY**

JILLIAN E. SPRONG**

I. THE GREAT AND POWERFUL FOURTH AMENDMENT: AN INTRODUCTION
TO MODERN SEARCH AND SEIZURE JURISPRUDENCE

In August 2015, during a heated marital discussion, Edward Caniglia picked up his handgun and asked his wife to “shoot [him] now and get it over with.”¹ After receiving a distressed call from Caniglia’s wife the next morning, police went to the Caniglia home to conduct a routine wellness check.² Officers found Caniglia alive and stable, but transported him to a psychiatric facility for evaluation.³ Police then entered Caniglia’s home in his absence, without a warrant, to locate and seize his lawfully owned firearms.⁴ During the 2021 term, the Supreme Court unambiguously condemned this action.⁵ According to the unanimous Court, warrantless entry into an individual’s home absent exigent circumstances or consent violates the Fourth Amendment of the United States Constitution.⁶

* The headings used throughout this Note were inspired by the classic 1939 film *THE WIZARD OF OZ*. See *THE WIZARD OF OZ* (Metro-Goldwyn-Mayer 1939).

** J.D. Candidate, 2024, Villanova University Charles Widger School of Law; B.A., 2018, University of Pennsylvania. This Note is dedicated to Kathy, David, and Alison, my fiercest supporters without whom I would not reach any of my goals. I also dedicate this Note to Matt, whose partnership and love makes me a better person. I am grateful to my colleagues at the *Villanova Law Review* for their feedback and edits throughout the writing process.

1. *Caniglia v. Strom*, 953 F.3d 112, 119 (1st Cir. 2020).

2. See *Caniglia v. Strom*, 141 S. Ct. 1596, 1598–99 (2021) (describing the factual circumstances that ultimately led the Court to find that police violated Caniglia’s Fourth Amendment privacy rights). After the initial dispute, Mrs. Caniglia spent the night in a nearby hotel. *Caniglia*, F.3d at 119. She spoke to her husband once that evening, and did not have concerns about his mental state. See *id.* By the next morning, however, Mrs. Caniglia could not reach her husband and became concerned that he committed suicide. *Id.*

3. See *Caniglia*, 141 S. Ct. at 1598 (highlighting Caniglia agreed to his transport on the condition that officers would not seize the firearms inside his home).

4. See *id.* (noting Mrs. Caniglia allowed officers into her home after they allegedly “misinformed” her about Caniglia’s lack of consent to firearm seizure).

5. See *id.* at 1599–1600 (holding warrantless police entry into Caniglia’s home violated the Fourth Amendment because the police lacked lawful justification to invade his in-home privacy interests).

6. See *id.* (reaffirming the Supreme Court’s historical stance that warrantless home entry is seldom constitutionally justified); see also Leo Yu, *Home Is Where We Unite: A Look at a Classic Fourth Amendment Issue*, 84 TEX. BAR J. 972, 972–73 (2021) (highlighting the Supreme Court’s recent tendency to reaffirm the strength of Fourth Amendment privacy interests in the home). In *Caniglia*, the Court high-

The Fourth Amendment protects individual privacy against certain forms of governmental intrusion—namely, unreasonable searches and seizures.⁷ Generally, searches and seizures of an individual’s person or property are presumed unreasonable unless conducted pursuant to a specific government-issued warrant supported by probable cause.⁸ However, because Fourth Amendment privacy protections center around reasonableness, the warrant requirement is not limitless; in the interests of governmental efficiency and public safety, the common law recognizes several exceptions to the general rule.⁹

Because warrant exceptions are not codified in federal law, the courts face the challenging task of identifying their scope and application in varying factual circumstances.¹⁰ While a diverse set of exceptions exist, courts commonly find them inapplicable to searches and seizures within the home.¹¹ On multiple occasions, the Supreme Court has affirmed a core right afforded by the Fourth Amendment is the right of persons to “retreat

lighted how in-home privacy interests are at the “very core” of Fourth Amendment protections. *See Caniglia*, 141 S. Ct. at 1599 (quoting *Florida v. Jardines*, 569 U.S. 1, 6 (2013)).

7. *See* U.S. CONST. amend. IV (stating “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated”).

8. *See* *Katz v. United States*, 389 U.S. 347, 357 (1967) (stating the Fourth Amendment requires “adherence to judicial processes” and therefore imposes a presumptive warrant requirement on all searches and seizures (quoting *United States v. Jeffers*, 342 U.S. 48, 51 (1951))); *see also* *Terry v. Ohio*, 392 U.S. 1, 20 (1968) (“[P]olice must, whenever practicable, obtain advance judicial approval for searches and seizures through the warrant procedure.”).

9. *See* *Katz*, 389 U.S. at 357 (noting the Fourth Amendment warrant requirement is subject to some “specifically established and well-delineated exceptions”). *See generally* *Annual Review of Criminal Procedure*, 50 GEO. L.J. ANN. REV. CRIM. PROC. 51 (2021) (collecting and synthesizing existing Fourth Amendment warrant exceptions).

10. *See* Catherine Norton, Comment, *Keeping Faith with the Fourth Amendment: Why States Should Require a Warrant for Breathalyzer Tests in the Wake of Birchfield v. North Dakota*, 87 MISS. L.J. 237, 244 (2018) (explaining how, “absent more clear-cut guidance from the founding era,” the Supreme Court has to determine whether to “exempt a certain type of search from the warrant requirement”); *see also* Craig M. Bradley, *Two Models of the Fourth Amendment*, 83 MICH. L. REV. 1468, 1473, 1475 (arguing warrant exceptions are not “well-delineated” and therefore create “massive confusion” among lower courts). Bradley identified over twenty exceptions to the warrant requirement, including searches incident to arrest, automobile searches, exigent circumstances, plain view searches, and inventory searches. *See id.* at 1474–75.

11. *See, e.g.,* *Collins v. Virginia*, 138 S. Ct. 1663, 1672 (2018) (stating the Supreme Court has repeatedly “declined to expand the scope of . . . exceptions to the warrant requirement to permit warrantless entry into the home”). The *Collins* Court refused to extend the “automobile exception” to the warrant requirement (which generally permits warrantless searches of cars located on public roads) to automobiles parked in curtilage (defined as areas immediately surrounding and associated with the home). *See id.* at 1671–72 (“Nothing in our case law, however, suggests that the automobile exception gives an officer the right to enter a home or its curtilage to access a vehicle without a warrant.”).

into [their] own home[s] and there be free from unreasonable governmental intrusion.”¹² Therefore, the Supreme Court has upheld warrantless searches and seizures in the home in only limited circumstances.¹³ In fact, the Supreme Court recently rejected two novel exceptions to the warrant requirement and reaffirmed the Court’s stance that privacy interests within the home are inviolable.¹⁴

Still, lower courts inevitably face questions about whether warrantless home entry is reasonable in certain circumstances.¹⁵ In response, some courts consider the so-called “special needs exception.”¹⁶ This exception presumes a warrantless search or seizure is reasonable when a government need, beyond the realm of criminal investigation or other law enforcement matter, predominates the warrant requirement and individual privacy interests.¹⁷ To apply the special needs exception, a court must first identify whether some special government interest exists, then subsequently undertake an interest-balancing test to determine whether the identified need outweighs any privacy interests at stake.¹⁸

12. *Silverman v. United States*, 365 U.S. 505, 511 (1961); *see also* *Kyllo v. United States*, 533 U.S. 27, 31 (2001) (“With few exceptions, the question whether a warrantless search of a home is reasonable and hence constitutional must be answered no.”).

13. *See* *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006) (synthesizing instances where the Court has allowed warrantless entry into a home, nearly all of which involve emergencies); *see also* *Mincey v. Arizona*, 437 U.S. 385, 393–94 (1978) (explaining warrants are generally required to search an individual’s home unless an emergency “make[s] the needs of law enforcement so compelling that the warrantless search is objectively reasonable”).

14. *See* *Caniglia v. Strom*, 141 S. Ct. 1596, 1600 (2021) (rejecting “community caretaking” as justification for warrantless home entry and search); *Lange v. California*, 141 S. Ct. 2011, 2024 (2021) (prohibiting police from entering the home of a fleeing misdemeanor suspect without a warrant); *see also* *Yu*, *supra* note 6, at 973 (positing the Fourth Amendment’s application to the home is “one of the few” constitutional issues that can unite the current Supreme Court, despite ideological differences); Motion for Leave to File and Brief of the Institute for Justice as Amicus Curiae Supporting Petitioner at 5, *Torcivia v. Suffolk Cnty.*, 17 F.4th 342 (2d Cir. 2021) (No. 21-1522) (acknowledging the Court’s recent rejections of in-home warrant exceptions).

15. *See infra* notes 21–24, 96–112 and accompanying text (discussing recent cases in which lower courts have evaluated the constitutionality of warrantless searches and seizures within the home).

16. *See, e.g.,* *Roska ex rel. Roska v. Peterson*, 328 F.3d 1230, 1241–42 (10th Cir. 2003) (deciding whether the special needs exception justified warrantless home entry of a social worker in the case of a child welfare investigation).

17. *See* *New Jersey v. T.L.O.*, 469 U.S. 325, 351 (1985) (Blackmun, J., concurring) (outlining the basis of the special needs exception, specifically, that “special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable”).

18. *See* Sam Kamin & Justin Marceau, *Double Reasonableness and the Fourth Amendment*, 68 U. MIAMI L. REV. 589, 605–06 (2014) (describing the reasonableness-balancing test undertaken by the Supreme Court in special needs cases).

To date, the Supreme Court has not explicitly ruled on the scope of the special needs exception, but has identified its applicability in certain administrative and regulatory circumstances.¹⁹ Rarely has the Court allowed the special needs exception to justify warrantless in-home search and seizure; however, the Court has not explicitly prohibited this use.²⁰ As a result, lower courts take inconsistent approaches to the special needs exception as it applies to home entry.²¹ For example, two federal circuit courts and a state court of last resort have declined to extend the special needs exception to home entry in the absence of another warrant exception such as exigent circumstances or consent.²² One circuit has rejected the applicability of the exception to home entry, even in the case of individuals on supervised release.²³ Conversely, two other circuits have extended the special needs exception to home entry outside of the penal

19. *See id.* at 605–07 (discussing instances where the Supreme Court has upheld a special needs search). In their discussion, Kamin and Marceau note the Court initially intended to cabin the application of the special needs exception to narrow non-investigative circumstances, such as employee drug testing, school searches, and border or drunk driving road checkpoints. *See id.* at 605 (collecting cases). However, more recently, the Court has extended the flexibility of the doctrine, thereby applying its reasonableness approach beyond the strict administrative context. *See id.* at 606–07 (citing *Samson v. California*, 547 U.S. 843, 857 (2006) (holding warrantless searches of parolees are, in cases where the government has a strong interest in the search, constitutional)).

20. *See Griffin v. Wisconsin*, 484 U.S. 868, 880 (1987) (using the special needs exception to declare searches and seizures of the homes of individuals on probation constitutionally permissible). *Griffin* represents the narrow circumstance in which the Supreme Court has used the special needs exception to allow in-home searches or seizures. *See id.*

21. *See* Petition for Writ of Certiorari at 18–22, *Torcivia v. Suffolk Cnty.*, 17 F.4th 342 (2d Cir. 2021) (No. 21-1522) (arguing a division exists among lower courts as it pertains to special needs and home entry). *Compare Roska*, 328 F.3d at 1237–42 (holding a special need in the child welfare context does not render warrantless entry constitutional), *with Sanchez v. Cnty. of San Diego*, 464 F.3d 916, 926 (9th Cir. 2006) (holding that home entry with respect to verifying public welfare beneficiaries is constitutional).

22. *See Roska*, 328 F.3d at 1237–42 (declining to find a special need in conducting child welfare inspections and therefore finding the warrantless home entry and search unconstitutional); *Gates v. Tex. Dep’t of Protective & Regul. Servs.*, 537 F.3d 404, 424 (5th Cir. 2008) (same); *State v. Hemenway*, 216 A.3d 118, 131 (N.J. 2019) (declining to find a special need to justify warrantless entry into a home and seize weapons during a domestic violence investigation). The Fifth Circuit, however, has allowed the special needs exception to justify warrantless home entry in the case of individuals under some form of penal supervision. *See infra* note 96 and accompanying text.

23. *See United States v. Hill*, 776 F.3d 243, 249 (4th Cir. 2015) (declining to evaluate the search the home of a person on supervised release under the special needs exception and in turn requiring a warrant and probable cause to search that home (citing *United States v. Bradley*, 571 F.2d 787 (4th Cir. 1978))).

custody context.²⁴ In the 2021 case *Torcivia v. Suffolk County*,²⁵ the Second Circuit went beyond previous special needs decisions and adopted the latter, broader approach.²⁶

This Note argues the Second Circuit, through its holding in *Torcivia*, erroneously extended the scope of the special needs exception to a novel context and diverted from settled Supreme Court precedent regarding Fourth Amendment privacy protections. Further, this Note contends that *Torcivia*, and the expansive application of the special needs exception it represents, introduces dangerous implications for in-home privacy protections against searches and seizures. Part II of this Note examines Fourth Amendment principles, particularly with regard to home security, and outlines the historic and current application of the special needs exception. Part III describes the facts giving rise to the Second Circuit's decision in *Torcivia*. Part IV outlines the *Torcivia* court's reasoning in detail, focusing on its use of the special needs exception to evaluate the constitutionality of an in-home weapons seizure. Part V argues the *Torcivia* court unreasonably broadened the scope of the special needs exception, contrary to Supreme Court precedent and settled constitutional principles, and advocates against application of the special needs exception to home entry. Lastly, Part VI considers the potential judicial and social consequences of *Torcivia*, arguing its holding endangers the sacrosanct right to residential privacy.

II. A TRIP DOWN THE YELLOW BRICK ROAD: BACKGROUND OF RELEVANT FOURTH AMENDMENT PRINCIPLES AND THE SPECIAL NEEDS EXCEPTION

An analysis of *Torcivia* requires a broader understanding of established Fourth Amendment principles, specifically in regard to warrantless searches and seizures. Therefore, this Part first outlines those principles and their specific application to searches and seizures within the home. Next, this Part discusses the background and rationale of the special needs exception, as well as the Supreme Court's past application of the excep-

24. See *Sanchez*, 464 F.3d at 926 (applying the special needs exception to allow for warrantless home entry into the homes of welfare recipients); *McCabe v. Life-Line Ambulance Serv., Inc.*, 77 F.3d 540, 549 (1st Cir. 1996) (applying the special needs exception to allow for warrantless home entry to execute a civil commitment order).

25. 17 F.4th 342 (2d Cir. 2021), *cert. denied*, 143 S. Ct. 438 (2022).

26. See *generally id.* (analyzing an in-home seizure of firearms using the special needs exception). Specifically, the *Torcivia* court held that the special needs exception can be used to justify warrantless entry into a home and subsequent seizure of firearms in cases where the homeowner is transported to a mental health facility during a domestic violence investigation. See *id.* Prior to its decision in *Torcivia*, the Second Circuit employed the special needs exception to, for example, permit the searches of (1) a parolee's home, (2) a person's backyard for environmental purposes, and (3) containers on the New York City subway. See *Moore v. Vega*, 371 F.3d 110, 117 (2d Cir. 2004); *Palmieri v. Lynch*, 392 F.3d 73, 85–86 (2d Cir. 2004); *MacWade v. Kelly*, 460 F.3d 260, 275 (2d Cir. 2006).

tion. Lastly, because the Supreme Court has not broadly approved the special needs exception's applicability to in-home searches and seizures, this Part discusses varying approaches to the issue taken by circuit and state courts.

A. *Overview of Fourth Amendment Principles*

The Fourth Amendment protects the right of United States citizens to be "secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."²⁷ Thus, the text of the Fourth Amendment itself requires government searches and seizures be reasonable in light of competing privacy and government interests.²⁸

As a preliminary matter, whether a government action is considered a search or seizure depends on a person's expectation of privacy regarding the place or object to be searched or seized.²⁹ Therefore, not all government actions that resemble searches and seizures fall within Fourth Amendment protections.³⁰ When a search or seizure does occur, it must be supported by: (1) probable cause that the search or seizure will lead to evidence of a crime, and (2) a warrant specifically delineating the evidence to be searched or seized.³¹ Searches or seizures conducted without probable cause or a warrant generally violate the Fourth Amendment and

27. U.S. CONST. amend. IV. The Supreme Court has expressed that the purpose of the Fourth Amendment "is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials." *Camara v. Mun. Ct. of San Francisco*, 387 U.S. 523, 528 (1967).

28. *See, e.g.,* *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 652–53 (1995) (noting the "ultimate measure of the constitutionality of a governmental search is 'reasonableness'"); *see also* Akhil Reed Amar, *Fourth Amendment First Principles*, 107 HARV. L. REV. 757, 768–71 (1994) (arguing the Fourth Amendment requires government actors only to act reasonably when conducting searches, and citing examples to support that assertion).

29. *See* *Katz v. United States*, 389 U.S. 347, 350–51 (1967) (holding a search occurs when the government violates a person's reasonable expectations of privacy); *United States v. Jones*, 565 U.S. 400, 412 (2012) (holding the Fourth Amendment protects against physical government intrusions of areas or property in which individuals have a reasonable expectation of privacy).

30. *See* *Katz*, 389 U.S. at 350 (clarifying the Fourth Amendment does not impose a general constitutional right to privacy, but protects privacy only in the context of search and seizure).

31. *See, e.g.,* *Riley v. California*, 573 U.S. 373, 381–82 (2014) (collecting cases) (outlining the test for determining Fourth Amendment reasonableness); *see also* *Brinegar v. United States*, 338 U.S. 160, 175–76 (1949) (indicating probable cause "exists where the facts and circumstances within their (the officers') knowledge and of which they had reasonably trustworthy information (are) sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed" (quoting *Carroll v. United States*, 267 U.S. 132, 162 (1925))); Gerald S. Reamey, *When "Special Needs" Meets Probable Cause: Denying the Devil Benefit of the Law*, 19 HASTINGS CONST. L.Q. 295, 300 (1992) (explaining that searches and seizures conducted pursuant to a warrant and probable cause are presumed to be reasonable under the Fourth Amendment).

in turn lead to suppression of the evidence recovered.³² However, because the “touchstone” of Fourth Amendment protections is reasonableness, the common law recognizes certain circumstances exist where a government search or seizure may be reasonable even in the absence of a warrant.³³ Said another way, the Fourth Amendment’s warrant requirement is subject to several established exceptions.³⁴

Despite the breadth of warrant exceptions recognized today, the Supreme Court has repeatedly declined to expand the scope of any exception to permit warrantless entry into the home.³⁵ The view that individual rights to privacy and security are strongest within an individual’s home has roots in early English common law and has dominated American jurisprudence since the ratification of the Fourth Amendment.³⁶ Therefore, the

32. See *Katz*, 389 U.S. at 357 (collecting cases); see also Reamey, *supra* note 31, at 300 (highlighting “[c]ourts sometimes say that warrantless searches and seizures are *per se* unreasonable unless the government shows some *narrowly defined* exception to the warrant requirement” (emphasis added)). But see Amar, *supra* note 28, at 770–71 (questioning the notion that warrantless searches and seizures are *per se* unreasonable).

33. See *Riley*, 573 U.S. at 381 (discussing reasonableness as a core element of the Fourth Amendment); see also Bradley, *supra* note 10, at 1474–75 (identifying over twenty known warrant exceptions); Norton, *supra* note 10, at 244 (explaining how, when assessing the applicability of an exception, the Supreme Court weighs individual with governmental interests to determine whether the search or seizure was reasonable).

34. See generally *Riley*, 573 U.S. 373 (searches and seizures incident to lawful arrest); *Kentucky v. King*, 563 U.S. 452 (2011) (cases of emergent or exigent circumstances); *Horton v. California*, 496 U.S. 128 (1990) (seizure of items in plain view); *New York v. Belton* 453 U.S. 454 (1981) (searches of automobiles); *Terry v. Ohio*, 392 U.S. 1 (1968) (brief investigatory stops of persons and seizure of property). See also Reamey, *supra* note 31, at 300 (noting that exceptions to the warrant requirement are “numerous”).

35. See *Collins v. Virginia*, 138 S. Ct. 1663, 1671 (2018) (holding the automobile exception to the warrant requirement does not permit warrantless entry to a home or curtilage in order to search an automobile); *Horton*, 496 U.S. at 136–37 (holding government actors cannot engage in warrantless seizure of items in one’s home under the “plain view” doctrine, even if the items are contraband, where the actors do not have a legal right to be in the home); see also *Jones v. United States*, 357 U.S. 493, 499 (1948) (noting, generally, warrant exceptions have been “carefully drawn”).

36. See generally Laura K. Donohue, *The Original Fourth Amendment*, 83 U. CHI. L. REV. 1181 (2016) (providing an exhaustive history of the Fourth Amendment, with an originalist perspective). Under English common law, Donohue notes the only exception to a prohibition against entry into one’s home was pursuit of a fleeing felon. See *id.* at 1221. Further, Donohue argues history makes clear that the Framers were concerned with warrantless intrusions into a home, and that “no warrant lacking the appropriate particularity could overcome the presumption against invasion of the home.” See *id.* at 1192; see also Tracey Maclin, *The Complexity of the Fourth Amendment: A Historical Review*, 77 B.U. L. REV. 925, 933 (1997) (noting a change in early English common law that rendered all government intrusions on private property as trespass); Motion for Leave to File and Brief of the Institute for Justice as Amicus Curiae Supporting Petitioner, *supra* note 14, at 9 (highlighting examples of nineteenth century state court cases that refused to allow for warrantless entries into homes).

Supreme Court has consistently reiterated “the home is the first among equals” and exists at the “very core” of Fourth Amendment protections.³⁷ Moreover, many scholars agree the home is subject to the most stringent levels of Fourth Amendment protections.³⁸

According to the Supreme Court, there are two well-established warrant exceptions that can justify the Government’s entry into a home.³⁹ First, the Court typically permits warrantless entry under exigent circumstances, or in other words, where a true emergency exists and entry into the home is the only way to alleviate that emergency.⁴⁰ Second, the Supreme Court has held that police can search or seize items within the home with the consent of the homeowner or the consent of a person of authority within the home.⁴¹ Still, through a significant amount of precedent, the Court seeks to give full practical effect to the right of persons to be secure in their homes.⁴²

37. See *Florida v. Jardines*, 569 U.S. 1, 6 (2013) (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961)) (reiterating that privacy interests in the home, and areas immediately surrounding the home, are of tantamount importance with regard to the Fourth Amendment); *Payton v. New York*, 445 U.S. 573, 601 (1980) (referencing the “overriding respect for the sanctity of the home that has been embedded in our traditions”); *Kyllo v. United States*, 533 U.S. 27, 31 (2001) (noting the importance of “the right of a man to retreat into his own home” (quoting *Silverman*, 365 U.S. at 511)); see also Ric Simmons, Lange, Caniglia, and the Myth of Home Exceptionalism, 54 ARIZ. ST. L.J. 145, 163 (2022) (highlighting the Court’s repeated historical references to home exceptionalism).

38. See, e.g., Matthew Tokson, *The Emerging Principles of Fourth Amendment Privacy*, 88 GEO. WASH. L. REV. 1, 16 (2020) (“The home . . . receives the Fourth Amendment’s strongest protections.”); Stephen P. Jones, *Reasonable Expectations of Privacy: Searches, Seizures, and the Concept of Fourth Amendment Standing*, 27 U. MEM. L. REV. 907, 957 (1997) (asserting the home is a “sacred” area in the realm of Fourth Amendment protections).

39. See generally *Caniglia v. Strom*, 141 S. Ct. 1956 (2021).

40. See *Kentucky v. King*, 563 U.S. 452, 459–60 (2011) (noting that, absent exigent circumstances, a home may not be reasonably entered without a warrant). The Court goes on to list exigencies which justify warrantless home entry, including chasing an active suspect in hot pursuit, preventing the destruction of evidence, or rendering emergency aid to an occupant facing imminent injury. See *id.* However, the *King* Court also held that police-created exigencies do not allow entry into the home. See *id.* at 461.

41. See *Schneckloth v. Bustamonte*, 412 U.S. 218, 248–49 (1973) (holding that voluntary consent can allow a police officer to enter a home, or otherwise protected area, without a warrant); see also *Illinois v. Rodriguez*, 497 U.S. 177, 186 (1990) (holding that a person who police reasonably believe has authority to consent, such as a spouse or child, can convey homeowner consent, even if the third party did not have actual authority to consent).

42. See, e.g., *Brigham City v. Stuart*, 547 U.S. 398, 403–07 (2006). In *Brigham*, the Court held that police may only enter a home without a warrant if there is an objectively reasonable basis for believing that an occupant is or is about to be seriously injured. See *id.* at 403. *Brigham* displays one of several instances where the Supreme Court maintained that police have extremely limited ability to enter homes without a warrant. See *id.* at 403–07.

Examples of the Court upholding the core right to privacy in the home against exceptions to the warrant requirement occurred as recently as the 2021 term.⁴³ The first of these cases is *Caniglia v. Strom*,⁴⁴ decided in May 2021.⁴⁵ There, Edward Caniglia engaged in a heated argument with his wife, after which she left their home to spend the night in a hotel.⁴⁶ During the argument, Caniglia insinuated to his wife he was suicidal, and would potentially act on his thoughts in her absence.⁴⁷ After Mrs. Caniglia did not hear from her husband the next morning, she sent police to their home to conduct a standard welfare check.⁴⁸ Police found Caniglia alive, but transported him to a mental health facility for psychiatric evaluation.⁴⁹ After transport, the police entered Caniglia's home and seized his lawfully owned firearms.⁵⁰ Caniglia challenged the seizure as a violation of his Fourth Amendment rights, but lower courts rejected his challenge.⁵¹ The lower courts reasoned the action of the police officers was justified under a so-called "community caretaking" exception to the warrant requirement.⁵² First outlined in *Cady v. Dombrowski*,⁵³ this exception was traditionally used to justify warrantless searches of automobiles when the police were carrying out caretaking duties, such as responding to disabled vehicles and investigating accidents.⁵⁴

43. See Petition for Writ of Certiorari, *supra* note 21, at 23 (emphasizing the recent and clear stance of the high Court that warrantless entry into the home, more often than not, violates the Fourth Amendment); see also Yu, *supra* note 6, at 972 (highlighting the Supreme Court "declined to recognize more [warrant] exceptions that may justify home entry"). But see Simmons, *supra* note 37, at 148 (arguing the Court's Fourth Amendment rulings have actually "expanded the exceptions to the warrant requirements for home searches").

44. 141 S. Ct. 1596 (2021).

45. See generally *id.* (declining to extend the community caretaking warrant exception to warrantless searches and seizures within the home).

46. See *id.* at 1598 (indicating the severity of the argument prompted Caniglia to retrieve his firearm as it escalated). While Caniglia did not immediately use the firearm or threaten his wife with it, he set the firearm on a table in a room where they were arguing. See *id.*

47. See *id.* (noting Caniglia asked his wife to "shoot [him] now and get it over with").

48. See *id.*

49. See *id.* (noting Caniglia consented to his ultimate transport to a mental health facility on the condition that officers would not seize his firearms). While the Court did not go into detail on Caniglia's behavior at the time of his transport, the Court did state that police "thought that petitioner posed a risk to himself or others." *Id.*

50. See *id.* In concurrence, Justice Alito noted the police attempted to justify its seizure of the weapons in the interest of preventing suicide. See *id.* at 1601 (Alito, J., concurring).

51. See *id.* at 1598–99 (explaining the district court granted summary judgment in favor of the government and the First Circuit affirmed).

52. See *id.* (explaining, and ultimately rejecting, the lower court's use of the community caretaking exception to justify the seizure of firearms within a home).

53. 413 U.S. 433 (1973).

54. See *Caniglia*, 141 S. Ct. at 1598 (citing *Cady*, 413 U.S. at 439–41 (holding that a police officer could search a car without a warrant in the interest of caretak-

The Supreme Court categorically rejected the community caretaking exception as a justification for warrantless home entry and invalidated the First Circuit's reasoning on two grounds.⁵⁵ First, the Court found the holding in *Cady* to be completely inapplicable to the situation at bar because that case involved search and seizure within an automobile, not a home.⁵⁶ Second, the Court, in line with others before it, stated that only consent or exigent circumstances could justify the type of seizure the police undertook in *Caniglia*.⁵⁷

The second recent Supreme Court case to reject warrantless home entry is *Lange v. California*,⁵⁸ decided in June 2021.⁵⁹ The main issue in *Lange* was whether a police officer violated Arthur Lange's Fourth Amendment rights by entering his home and arresting him for a misdemeanor without a valid warrant.⁶⁰ The Court found the officer violated Lange's constitutional rights and held the Fourth Amendment requires case-spe-

ing activities, such as carrying out a traffic stop)). The Supreme Court in *Cady* defined community caretaking functions as those "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *Cady*, 413 U.S. at 441. However, the Court only discussed these functions in the context of automobiles and traffic. *See id.*

55. *See Caniglia*, 141 S. Ct. at 1600.

56. *See id.* at 1599 (discounting *Cady*'s applicability). In reaching its conclusion, the Court stressed the "constitutional difference" between an automobile and a home. *See id.* Justice Thomas, writing for the majority, stated, "what is reasonable for vehicles is different from what is reasonable in the home." *Id.* at 1600. Moreover, Justice Thomas declared the community caretaking exception as applied to the home "goes beyond anything this Court has recognized." *Id.* at 1599.

57. *See id.* at 1599 (declaring the community caretaking exception as applied to the home "goes beyond anything this Court has recognized"). In concurrence, Chief Justice Roberts and Justice Kavanaugh both emphasized the holding did not preclude police officers entering a home to render emergency aid, such as to rescue a person having suicidal thoughts. *See id.* at 1600 (Roberts, C.J., concurring); *id.* at 1603 (Kavanaugh, J., concurring). Still, under *Brigham City v. Utah*, police must have an objectively reasonable basis for believing that entering a home to render emergency aid is necessary. *See* 547 U.S. 398, 406 (2006) (holding police did not violate the Fourth Amendment as a result of an entry into a home where a physical altercation between an intoxicated minor and four adults was occurring). In *Brigham City*, the Court reasoned that officers had an objectively reasonable basis to believe that they needed to administer emergency aid within the home. *Id.* To make this determination, the Court evaluated the specific circumstances of the scene, which included fighting and screaming. *Id.* Also, from a window in the rear of the house, police observed the juvenile striking one of the adults. *Id.*

58. 141 S. Ct. 2011 (2021).

59. *See id.* at 2024 (considering whether police must obtain a warrant to enter the home of a fleeing misdemeanor suspect to make an arrest).

60. *See id.* at 2017 (noting courts are divided over whether the Fourth Amendment always permits an officer to enter a home in pursuit of a fleeing misdemeanor suspect). In *Lange*, a police officer began to tail Arthur Lange in his car under suspicion of drunk driving. *Id.* at 2016. When the officer turned on his lights to pull Lange over, Lange was pulling into his garage. *Id.* As Lange closed his garage door, the officer exited his vehicle, entered the garage, and questioned Lange. *Id.* Based on the questioning, Lange was arrested and charged with driving under the influence. *Id.*

cific exigent circumstances for police officers to make an arrest in the home without a warrant.⁶¹ Further, the Court rejected the California Court of Appeal's finding that a misdemeanor arrest is an exigent circumstance which can justify warrantless home entry.⁶² Justice Kagan, writing for the majority, reiterated the importance of home privacy interests in her opinion.⁶³ After *Caniglia* and *Lange*, warrantless home entry and subsequent, related searches and seizures continue to be limited to instances of exigency and consent.⁶⁴ Notably, both decisions commanded a unanimous Court, despite a strict ideological divide within its current makeup.⁶⁵

B. *History and Current Application of the Special Needs Exception*

A major exception to the warrant requirement still subject to judicial and academic debate is the special needs exception, which has traditionally governed administrative, regulatory, and other non-law enforcement searches.⁶⁶ The general rationale of the special needs exception is that a

61. *See id.* at 2021 (“When the totality of the circumstances shows an emergency—such as imminent harm to others, a threat to the officer himself, destruction of evidence, or escape from the home—the police may act without waiting.”).

62. *See id.* at 2021 (“In misdemeanor cases, flight does not always supply the exigency that this Court has demanded for a warrantless home entry.”). To bolster its conclusion, the Court stated, “[t]his Court has held that when a minor offense alone is involved, police officers do not usually face the kind of emergency that can justify a warrantless home entry.” *See id.* at 2020 (citing *Welsh v. Wisconsin*, 466 U.S. 740, 753–54 (1984) (holding the Fourth Amendment prohibits police from making a warrantless entry of a person’s home to make an arrest for a minor traffic offense)).

63. *See id.* at 2022 (“The need to pursue a misdemeanant does not trigger a categorical rule allowing home entry, even absent a law enforcement emergency. When the nature of the crime, the nature of the flight, and surrounding facts present no such exigency, officers must respect the sanctity of the home—which means that they must get a warrant.”).

64. *See* Petition for Writ of Certiorari, *supra* note 21, at 2, 23 (emphasizing the Supreme Court’s recent stance on the application of warrant exceptions to home entry).

65. *See Fourth Amendment—Search and Seizure—Community Caretaking Exception—Caniglia v. Strom*, 135 HARV. L. REV. 371, 376 (2021) (arguing the unanimous decision in *Caniglia* not only represents the Court’s general hesitancy to carve out new exceptions to the warrant requirement, but serves to increase judicial legitimacy); *see also* Yu, *supra* note 6, at 973 (suggesting the unanimity seen in *Caniglia* and *Lange* implies that “[d]espite ideological differences, all justices agree that the protection of the sanctity of a home is unequivocally the most vital value the Founding Fathers intended to vest into the Fourth Amendment”).

66. *See* Kamin & Marceau, *supra* note 18, at 605 (describing the various “non-criminal” administrative contexts in which the special needs exception has applied, including within schools, airports, and at checkpoints); Fabio Arcila, Jr., *Special Needs and Special Deference: Suspicionless Civil Searches in the Modern Regulatory State*, 56 ADMIN. L. REV. 1223, 1227–30 (2004) (describing the administrative history of the special needs exception). In his discussion, Arcila explains the special needs doctrine arose out of the administrative search doctrine, which the Supreme Court developed initially to assess the constitutionality of civil searches of commercial premises. *See id.* at 1127. The administrative search doctrine allows civil searches of commercial premises to be conducted if reasonable, regardless of the presence

special need “beyond the normal need for law enforcement” makes the warrant probable cause requirement “impracticable” in certain circumstances.⁶⁷

The special needs doctrine originated in the years after *Camara v. Municipal Court*,⁶⁸ in which the Supreme Court first used an interest-balancing test to evaluate the constitutionality of warrantless administrative searches within an individual’s residence.⁶⁹ The *Camara* Court rejected the approach of the lower court and concluded that the Fourth Amendment applies to administrative searches, such as housing inspections, within a person’s residence.⁷⁰ However, the Court went further and held such searches can be constitutional in cases where the Government’s conduct is reasonable in light of administrative interests, even in the absence of probable cause or a warrant.⁷¹ Several scholars contend the reasonableness standard for administrative searches introduced in *Camara*, beyond forming the basis for the special needs exception, marked the beginning of a broader departure from the traditional warrant-and-probable-cause framework.⁷²

of a warrant. *See id.* Arcila argues the Court developed the special needs doctrine to apply the framework of the administrative search doctrine to more personal civil search contexts, such as searches of personal property at an individual’s workplace. *See id.* at 1228.

67. *See* *New Jersey v. T.L.O.*, 469 U.S. 325, 351 (1985) (Blackmun, J., concurring) (outlining the general rationale of what is now known as the special needs exception). Justice Blackmun also noted the Court, to that point, only used a balancing test in a Fourth Amendment inquiry (rather than a warrant-and-probable cause model) in cases where the Court was “confronted with ‘a special law enforcement need for greater flexibility.’” *Id.* (quoting *Florida v. Royer*, 460 U.S. 491, 514 (1983) (Blackmun, J., dissenting)).

68. 387 U.S. 523 (1967).

69. *See id.* at 525–29 (justifying the use of a balancing test for administrative housing inspections). In *Camara*, Roland Camara was arrested and charged with a violation of California housing codes after he refused to allow code inspectors to enter the first floor of his residence. *See id.* at 525. The inspectors were conducting a “routine annual inspection” as required by the San Francisco Housing Code. *Id.* at 526. While awaiting trial on his criminal charges, Camara brought an action alleging that the Housing Code policy allowing warrantless home entry and search was unconstitutional. *See id.* at 525.

70. *See id.* at 534 (“[A]dministrative searches of the kind at issue here are significant intrusions upon the interests protected by the Fourth Amendment, that such searches when authorized and conducted without a warrant procedure lack the traditional safeguards which the Fourth Amendment guarantees to the individual . . .”).

71. *See id.* at 535–37. In *Camara*, the Court held routine inspections were a practicable means of meeting the Government’s need to ensure tenants upheld municipal code requirements, and therefore a balancing test was an appropriate means of measuring reasonableness. *See id.* However, the Court ultimately concluded the balancing test weighed in favor of Camara because, for example, there was no emergency involved and inspectors returned to his residence several times without a warrant. *See id.* at 540.

72. *See* Barry Friedman & Cynthia Benin Stein, *Redefining What’s “Reasonable”*: *The Protections for Policing*, 84 *GEO. WASH. L. REV.* 281, 290 (2016) (arguing that *Camara* introduced a “breach in the doctrinal warrant and probable cause

Building on *Camara*, the Supreme Court first explicitly recognized the idea of a special needs exception in *New Jersey v. T.L.O.*⁷³ The *T.L.O.* Court held the warrantless search of a student's purse that led to the discovery and seizure of drug paraphernalia was reasonable because it served the Government's need to preserve a drug-free educational environment.⁷⁴ Specifically, the Court applied an interest-balancing test to decide whether state interests outweighed individual interests, or vice versa.⁷⁵ Concurring, Justice Blackmun made a significant statement that would become the basis for the special needs exception: "special needs, beyond the normal need for law enforcement, make the warrant and probable cause requirement impracticable."⁷⁶

Later decisions of the Court reaffirmed the validity of this concept and legitimized it as a judicial doctrine.⁷⁷ In fact, since *Camara* and *T.L.O.*, the Supreme Court has used the special needs exception to ap-

model"); Kamin & Marceau, *supra* note 18, at 604 (arguing that *Camara* serves as the basis for the special needs exception and for a broader departure from the warrant and probable cause model). *But see* Kit Kinports, *The Origins and Legacy of the Fourth Amendment Reasonableness-Balancing Model*, 71 CASE W. RES. L. REV. 157, 164, 181 (2020) (arguing against the notion that *Camara* marked the beginning of a broad departure by Supreme Court from a traditional warrant-and-probable cause framework).

73. 469 U.S. 325 (1985). In *T.L.O.*, a fourteen-year-old student was accused of smoking in school, but denied the accusations. *See id.* at 328. Her teachers searched her purse and located cigarettes and drug paraphernalia. *Id.* After the search, T.L.O. confessed to selling drugs. *Id.* at 329. At trial, T.L.O. motioned the Juvenile Court to exclude the evidence recovered as a result of the search, arguing that the warrantless search of her purse violated the Fourth Amendment. *Id.* at 329–30. Prior to *T.L.O.*, the Court alluded to the use of the special needs exception in *United States v. Martinez-Fuerte*. *See* *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976). There, the Court justified the use of neutral border control checkpoints on the basis of special needs. *See id.* at 548, 567.

74. *See T.L.O.*, 469 U.S. at 347. In its opinion, the Court aimed to "strike a balance between the schoolchild's legitimate expectation of privacy and the school's equally legitimate need to maintain an environment in which learning can take place." *Id.* at 340. Ultimately, the Court favored the government interests in preserving drug free schools and maintaining positive learning environments over the student's individual privacy interests in her purse and the items inside. *See id.*

75. *See id.* The search at issue in *T.L.O.* was supported by some level of suspicion—the Court noted that the school has substantial evidence that T.L.O. had been smoking and using drugs. *See id.* at 345.

76. *See id.* at 351 (Blackmun, J., concurring). Although the *T.L.O.* Court did not explicitly outline the existence of a special needs exception, the Court did so in a later case, and in turn applied the rationale in several contexts. *See infra* notes 77–88 and accompanying text.

77. *See generally* *O'Connor v. Ortega*, 480 U.S. 709 (1987). In *O'Connor*, the Court's first special needs decision after *T.L.O.*, a physician was repeatedly accused of sexual harassment by his colleagues. *See id.* at 712. While that physician was on medical leave, hospital officials searched his desk and located incriminating items to use against him at trial. *See id.* at 713. The Court concluded the search was reasonable, because there was a special need beyond that of law enforcement to investigate instances of work-related misconduct and that the special need outweighed the doctor's privacy interests. *See id.* at 725.

prove searches conducted without a warrant in a variety of contexts, including at roadside checkpoints, schools, and airports.⁷⁸ Subsequent cases distill two basic requirements for a search or seizure to be constitutional under the special needs exception: (1) the search must serve some special need beyond the normal need for law enforcement, and (2) the benefits to the government resulting from the search must outweigh the costs to the individual's privacy interests.⁷⁹

In determining whether a special need exists, courts typically look to the principle espoused in Justice Blackmun's *T.L.O.* concurrence—that a qualifying need must satisfy some interest beyond those that are typical for law enforcement.⁸⁰ To date, the Supreme Court's application of this idea has been somewhat broad.⁸¹ However, as a limiting principle, the Court has explained that searches and seizures with the primary purpose of assisting law enforcement, such as crime control, investigation, or other normal police operation, are not within reach of the special needs

78. See generally *Griffin v. Wisconsin*, 483 U.S. 868 (1987) (searches of the homes of individuals on probation); *Nat'l Treasury Emps. Union v. Von Raab*, 489 U.S. 656 (1989) (random drug testing for U.S. Customs Services employees); *Skinner v. Ry. Lab. Execs.' Ass'n*, 489 U.S. 602, 606, 620–24 (1989) (random drug testing for railway workers); *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 644 (1995) (random drug testing for student athletes in schools); *Mich. Dep't of State Police v. Sitz*, 496 U.S. 444 (1990) (neutral highway sobriety checkpoints); *Bd. of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie Cnty. v. Earls*, 536 U.S. 822 (2002) (random drug testing for students participating in extracurricular activities). Lower courts have also employed the special needs exceptions in various contexts. See generally *United States v. Marquez*, 410 F.3d 612 (9th Cir. 2005) (warrantless airport searches); *MacWade v. Kelly*, 460 F.3d 260, 268 (2d Cir. 2006) (container searches on public transportation). For further discussion on lower court application of the special needs exception, particularly with regard to in-home searches and seizures, see *infra* notes 95–112 and accompanying text.

79. See *Von Raab*, 489 U.S. at 665–66 (outlining the test for the special needs exception, which requires a court to “balance the individual's privacy expectations against the Government's interest to determine whether it is impractical to require a warrant”).

80. See Antoine McNamara, Comment, *The “Special Needs” of Prison, Probation, and Parole*, 82 N.Y.U. L. REV. 209, 213 (2007) (noting that courts typically “point to” Justice Blackmun's concurrence in determining whether a special need exists); see also *supra* note 78 and accompanying text (listing the types of cases to which the Supreme Court has applied the special needs exception, and therefore determined a special government need).

81. See Kamin & Marceau, *supra* note 18, at 605 (noting the Court has used the special needs exception to uphold searches in “many, many” contexts); see also *supra* note 78 and accompanying text (outlining the various cases in which the Supreme Court has upheld searches using the special needs exception). Kamin and Marceau highlight how the Supreme Court has employed the exception in cases where searches were conducted absent any suspicion of wrongdoing, as well as in cases where state actors had some level of reasonable suspicion to conduct the search. See Kamin & Marceau, *supra* note 18, at 605. Ultimately, the Court has recognized that no level of suspicion is needed for the special needs exception to apply. See *Von Raab*, 489 U.S. at 665–66 (asserting that a court, when applying the special needs exception, has discretion to decide whether “it is impractical to require a warrant or some level of individualized suspicion in the particular context”).

exception.⁸² In addition, the Court has established procedural safeguards to limit discretion in special needs searches.⁸³ Despite the existence of these safeguards, the special needs exception still affords courts significant flexibility in balancing government and individual interests.⁸⁴

Further, the Court has indicated that subjects of special needs searches typically enjoy a lower expectation of privacy in the area to be searched or property seized.⁸⁵ Therefore, because of the strength of privacy interests in the home, the Supreme Court has only used the special needs exception to permit home entry in narrow cases.⁸⁶ For example, in

82. See *City of Indianapolis v. Edmond*, 531 U.S. 32, 34–48 (2000); *Ferguson v. City of Charleston*, 532 U.S. 67, 70–86 (2001). In *Edmond*, the Court invalidated a system of roadside checkpoints designed to intercept unlawful drugs, because its “primary purpose . . . [was] ultimately indistinguishable from the general interest in crime control.” 531 U.S. at 48. Similarly, in *Ferguson*, the Court invalidated a public hospital’s policy of performing drug tests on pregnant patients without their consent and reporting patients with positive results to law enforcement officials. 532 U.S. at 83–86; see also James R. Jolley, *Reemphasizing Impracticability in the Special Needs Analysis in Response to Suspicionless Drug Testing of Welfare Recipients*, 92 N.C. L. REV. 948, 958–60 (2014) (noting the special needs exception was constructed to operate outside of the law enforcement context, and highlighting the Court’s historical efforts to limit the special needs doctrine); Jonathan Kravis, Case Comment, *A Better Interpretation of “Special Needs” Doctrine after Edmond and Ferguson*, 112 YALE L.J. 2591, 2596 (2003) (stating the special needs exception applies to contexts outside of “everyday police work”).

83. See McNamara, *supra* note 80, at 217 (explaining that the Court has only allowed warrantless special needs searches “when sufficient safeguards are in place to limit discretion and prevent arbitrariness”). In other words, a special needs search must at least be “justified at its inception” to be constitutional. See *New Jersey v. T.L.O.*, 469 U.S. 325, 341 (1985) (quoting *Terry v. Ohio*, 392 U.S. 1, 20 (1968)). An alternative safeguard is the requirement that suspicionless searches be conducted in accordance with a neutral plan or scheme which limits discretion of the searching party. See McNamara, *supra* note 80, at 217–18. For example, in *Sitz*, the Court upheld roadside sobriety checkpoints under the special needs exception because officers stopped every driver traveling through. See *Sitz*, 496 U.S. at 453.

84. See Scott E. Sundby, *A Return to Fourth Amendment Basics: Undoing the Mischief of Camara and Terry*, 72 MINN. L. REV. 383, 385 (1988) (arguing the Supreme Court’s “special needs cases” set the stage for the expansion of the reasonableness balancing test, which in turn led to an increase in judicial discretion in Fourth Amendment cases); Kenneth Nuger, *The Special Needs Rationale: Creating a Chasm in Fourth Amendment Analysis*, 32 SANTA CLARA L. REV. 89, 129–31 (1992) (noting the flexibility with which courts can justify abandoning individual suspicion in favor of a special needs search); see also Thomas K. Clancy, *The Fourth Amendment’s Concept of Reasonableness*, 2004 UTAH L. REV. 977, 1011 (2004) (criticizing the amount of discretion that a reasonableness model, such as the special needs exception, affords courts); Cynthia Lee, *Reasonableness with Teeth: The Future of Fourth Amendment Reasonableness Analysis*, 81 MISS. L.J. 1133, 1136 (2012) (arguing against the allowance of judicial discretion in constitutional inquiries).

85. See Arcila, Jr., *supra* note 66, at 1230 n.27 (describing, through reference to several cases, how the Supreme Court has evaluated expectations of privacy in the context of the special needs exception).

86. See *Petition for Writ of Certiorari*, *supra* note 21, at 24 (arguing that the Supreme Court has applied the special needs exception to home entry in very limited circumstances); see also *infra* notes 87–93 (describing the limited circum-

Griffin v. Wisconsin,⁸⁷ the Court upheld a Wisconsin state law that subjected probationers to warrantless searches of their homes as long as there were “reasonable grounds” to conduct the search.⁸⁸ According to the *Griffin* Court, supervision of probationers is a special need for three reasons: (1) supervision is necessary to ensure that probation restrictions are observed, (2) probation serves as a genuine rehabilitation period for offenders, and (3) supervision ensures offenders do not pose a risk to the community.⁸⁹ Further, warrantless searches reasonably serve that interest because they allow probation officials to quickly respond to evidence of misconduct and create a deterrent effect on probationary misconduct.⁹⁰ In addition, the *Griffin* Court justified the use of the special needs exception by noting that probationers “do not enjoy ‘the absolute liberty’” of other citizens given their probationary status.⁹¹ Using similar reasoning, though not explicitly mentioning the special needs exception, the Court upheld warrantless searches of: (1) a probationer’s home and (2) a pa-

stances under which the Supreme Court has applied the special needs exception to home entry). For further discussion of the constitutional strength of in-home privacy interests, see *supra* notes 35–64 and accompanying text.

87. 483 U.S. 868 (1987). In *Griffin*, the Court considered a probationer’s challenge to the warrantless entry and search of his home. *See id.* at 871–72. Three years into Griffin’s probation, the officers overseeing his probation became suspicious he had weapons in his home. *See id.* at 871. The probation officers entered Griffin’s home without a warrant, searched his apartment, and located a handgun. *See id.* Griffin was charged with felony possession of a firearm. *Id.* at 872. Lower courts denied Griffin’s motion to suppress the handgun resulting from the warrantless search of his home, and he was ultimately convicted. *See id.*

88. *See generally id.* (indicating that these searches, though they did not require a warrant, did require at least some level of suspicion to be reasonable).

89. *See id.* at 875 (finding the Wisconsin law allowing for warrantless searches of probationer homes served a special need beyond the normal need for law enforcement). Although the search of Griffin’s home ultimately led to his conviction for a crime, the Court did not find Wisconsin’s search program to serve investigatory or law enforcement needs, which would preclude the special needs exception. *See id.*

90. *See id.* at 871–74 (applying the special needs balancing test and finding that the interests of the government outweighed any privacy interests for the individual).

91. *See id.* at 874 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 480 (1972)) (justifying the use of a balancing test to evaluate the reasonableness of the search). More specifically, the Court described probation as a “criminal sanction” or form of punishment that places restrictions on an individual’s daily life through government supervision. *See id.*

rolee's person in *United States v. Knights*⁹² and *Samson v. California*.⁹³ Beyond the context of individuals under penal supervision, the Supreme Court has not used the special needs exception as a justification for warrantless home entry.⁹⁴

C. Lower Courts and the Special Needs Exception

Because the Supreme Court has not explicitly drawn a line on the scope of the special needs exception with regard to home entry, circuit courts and at least one state court of last resort take different approaches to such an application.⁹⁵ Given the Supreme Court's decision in *Griffin*,

92. 534 U.S. 112 (2001). In *Knights*, the Court considered the constitutionality of a probation condition that allowed warrantless investigatory searches of a probationer's home based on reasonable suspicion. *See id.* at 114. *Knights* was on probation for a drug offense, and police suspected him for crimes of arson and vandalism. *Id.* at 114–15. A detective entered *Knights*' home without a warrant and located evidence linking him to the crimes. *Id.* at 115. Faced with *Knights*' challenge to the search, the Court employed a balancing test to evaluate its constitutionality. *See id.* at 118–120 (“[T]he reasonableness of a search is determined by assessing, on the one hand, the degree to which it intrudes upon an individual’s privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests.” (quoting *Wyoming v. Houghton*, 526 U.S. 295, 300 (1999))). First, the Court reasoned that *Knights*' status as a probationer served to “significantly” reduce his expectation of privacy. *See id.* at 120. Next, similar to the *Griffin* Court, the *Knights* Court balanced the reduced privacy interest with the governmental interest in protecting the public and reducing the high rate of probationer recidivism. *See id.* at 120–21. Ultimately, the Court rejected the constitutional challenge and found the search to be reasonable. *See id.* at 122. Although the *Knights* Court evaluated the in-home privacy interests a probationer in a similar way to the *Griffin* Court, the *Knights* Court did not rely on the special needs exception because the search at issue had a clear criminal investigatory purpose. *See id.* at 117 (acknowledging that *Griffin* is “not like” *Knights*); *see also* Kinports, *supra* note 72, at 166–67 (explaining “the *Knights* search did not fit within *Griffin*'s rationale” because it did not serve a special need divorced from law enforcement).

93. 547 U.S. 843 (2006). In *Samson*, the Court considered a parole condition imposed by California statute that permitted warrantless, suspicionless searches of a parolee. *See id.* at 846. *Samson*, a parolee, was stopped in public by an officer who knew of his parole status and suspected *Samson* had an outstanding parole warrant. *Id.* Even though the officer ultimately discovered that there was no warrant, he proceeded to search *Samson* pursuant to the condition of his parole. *Id.* 846–47. In upholding the search under a reasonableness model, the *Samson* Court reasoned that parolees have “severely diminished privacy expectations by virtue of their status alone.” *See id.* at 852, 857.

94. *See* *State v. Harris*, 50 A.3d 15, 33–34 (N.J. 2012) (Albin, J., dissenting) (observing that the Supreme Court has “never invoked the special needs doctrine” to allow the government to enter, search, and seize items in a home without a warrant); *see also* *Petition for Writ of Certiorari*, *supra* note 21, at 7 (highlighting how the Court has narrowly used the special needs exception with regard to in-home searches).

95. *See infra* notes 96–112 and accompanying text. This Part does not provide an exhaustive list of lower court special needs cases in all factual circumstances. Rather, it aims to provide an array of examples where lower courts have relied on special needs exception, particularly in regard to in-home searches and seizures.

several circuits are in general agreement that the special needs exception can justify home entry by government actors in cases where an individual is on probation or parole.⁹⁶ However, the Fourth, Fifth, and Tenth Circuits, as well as the New Jersey Supreme Court, have declined to find any special need that would justify warrantless home entry outside of the context of individuals under penal supervision, even amidst potentially dangerous circumstances.⁹⁷ For example, in *Roska ex rel. Roska v. Peterson*,⁹⁸ the Tenth Circuit rejected the assertion that a special need existed for a social worker to enter a home to investigate child abuse.⁹⁹ The Fifth Circuit has taken a similar stance.¹⁰⁰

Going further, the Fourth Circuit rejected the applicability of the special needs exception to home entry in *United States v. Hill*.¹⁰¹ There, the court held that not even the home of a person under supervised release could be subject to a warrantless search under the special needs exception if the individual did not have prior notice of the possibility of such searches.¹⁰² Similarly, in *State v. Hemenway*,¹⁰³ the New Jersey Supreme

96. See generally *United States v. Hill*, 967 F.2d 902 (3d Cir. 1992); *Moore v. Vega*, 371 F.3d 110 (2d Cir. 2004); *United States v. LeBlanc*, 490 F.3d 361 (5th Cir. 2007); *United States v. Warren*, 566 F.3d 1211 (10th Cir. 2009).

97. See *infra* notes 98–104 and accompanying text.

98. 328 F.3d 1230 (10th Cir. 2003).

99. See *id.* at 1242. In *Roska*, the Tenth Circuit considered whether a social worker could enter a home to remove a child absent an emergency or other exigent circumstances. See *id.* at 1240. The court declined to use the special needs exception to allow for such entry, although the record showed evidence that the child at issue was subject to some level of abuse. See *id.* at 1242. Moreover, the court declined apply the exigent circumstances warrant exception, embracing the generally high bar for warrantless home entry. See *id.* at 1240.

100. See *Gates v. Tex. Dep't of Protective & Regul. Servs.*, 537 F.3d 404, 411 (5th Cir. 2008) (declining to find a special need to justify home entry in the child welfare context).

101. 776 F.3d 243 (4th Cir. 2015). In *Hill*, Barker, an individual on supervised release, was suspected of violating a condition that restricted him from moving residences without notifying his probation officer. *Id.* Officers, acting pursuant to an arrest warrant, entered Barker's home and took him into custody for the violation. *Id.* Officers also discovered Dunigan and Hill, two other individuals on supervised release, at Barker's residence, and took both into custody for unrelated violations of their release. See *id.* at 245–46. After all individuals were taken into custody, police conducted a walk-through search of the residence to look for additional evidence of supervised release violations. *Id.* at 246. During their walk-through, police discovered substantial evidence that all defendants were involved in serious drug crimes, and defendants were ultimately charged with conspiracy to possess with intent to distribute heroin, among other crimes. See *id.* Defendants sought to suppress the evidence recovered by officers during the warrantless search of Barker's residence. See *id.*

102. See *id.* at 249 (“[L]aw enforcement officers generally may not search the home of an individual on supervised release who is not subject to a warrantless search condition unless they have a warrant supported by probable cause.”).

103. 216 A.3d 118 (N.J. 2019).

Court emphasized that because an exigency exception exists, there is no reason to “carve out a singular exception to the traditional constitutional protections afforded to the home” by using the special needs doctrine.¹⁰⁴

In contrast, the First and Ninth Circuits have extended the scope of the special needs exception to justify entry into the home outside of the penal custody context.¹⁰⁵ For example, in *Sanchez v. County of San Diego*,¹⁰⁶ the Ninth Circuit held a warrantless administrative search of a welfare benefit recipient’s home was justified under the special needs exception.¹⁰⁷ The court reasoned that these recipients had a lower expectation of privacy because of the benefits they received, similar to that of parolees and probationers.¹⁰⁸ Similarly, in *McCabe v. Life-Line Ambulance Service*,¹⁰⁹ the First Circuit upheld a city policy that permitted officials to enter homes without a warrant to execute involuntary civil commitment orders.¹¹⁰ Still, the *McCabe* court encouraged other courts to undergo fact-specific inquiries in special needs cases, and did not declare every war-

104. *See id.* at 135. The *Hemenway* court held that probable cause is required for police to enter a home and seize firearms in suspected instances of domestic violence. *See id.* at 135–37. Essentially, the New Jersey Supreme Court did not adopt a reasonableness balancing model and instead adhered to the traditional probable cause standard required by Fourth Amendment. *See id.* at 135–37.

105. *See infra* notes 106–111.

106. 464 F.3d 916 (9th Cir. 2006).

107. *See id.* at 926. In *Sanchez*, the court considered the constitutionality of “Project 100%,” a county program that subjected applicants to warrantless home visits and walk-throughs. *See id.* at 920.

108. *See id.* at 926–28. In its analysis, the *Sanchez* court first declared the program’s searches to serve the valid government need of verifying a person’s eligibility for welfare benefits. *See id.* at 926. Next, the court equated welfare recipients to individuals under penal supervision, and therefore determined those recipients to carry a diminished expectation of privacy. *See id.* at 927 (“[A] person’s relationship with the state can reduce that person’s expectation of privacy even within the sanctity of the home.”). The court also argued a beneficiary interest was lower because anyone that applied for benefits consented to the home entry. *See id.* Therefore, in balancing the government need and the privacy interests at play, the court found the program’s home visits to be constitutionally reasonable. *See id.* at 927–28.

109. 77 F.3d 540 (1st Cir. 1996).

110. *See id.* at 553–54. In *McCabe*, a psychiatrist issued an involuntary commitment order for sixty-four-year-old Ruchla Zingler, a Lynn, Massachusetts resident with a history of mental illness and psychiatric hospitalization. *See id.* at 542. When executing the order, police entered her home without a warrant. *Id.* While officers forcibly removed Ms. Zingler from her apartment, she suffered from a cardiac episode and died. *Id.* Ms. Zingler’s estate challenged the City of Lynn’s policy allowing for warrantless entry into homes to execute civil commitment orders. *See id.* at 543. Ultimately, the court determined the City policy “comport[ed]” with the special needs exception, and therefore was constitutionally reasonable. *See id.* at 554. The court reasoned the warrant requirement would place an undue burden on City officials seeking to execute civil commitment orders. *See id.* at 550.

rantless entry to execute a civil commitment order constitutional.¹¹¹ In *Torcivia*, the Second Circuit applied the special needs exception to the novel context of in-home seizure of firearms.¹¹²

III. WE'RE NOT IN KANSAS ANYMORE: THE FACTS OF *TORCIVIA*

In *Torcivia*, police seized lawfully owned firearms from the home of Plaintiff-Appellant, Wayne Torcivia.¹¹³ Torcivia was a man in his fifties with no history of suicide attempts, depression, or mental health treatment.¹¹⁴ The seizure occurred after law enforcement transported Torcivia to a mental health facility, in response to what the Suffolk County Police Department (the Department) described as a suspected incident of domestic violence.¹¹⁵ Torcivia and the Department offer conflicting accounts of the events leading up to Torcivia's transfer and the subsequent seizure.¹¹⁶

However, the *Torcivia* court acknowledged the following facts as undisputed.¹¹⁷ In the early morning hours of April 6, 2014, the Department broadcast a call for officers to respond to a "a violent, domestic dispute of a [seventeen]-year-old female and an intoxicated father" at Torcivia's Ronkonkoma, New York home.¹¹⁸ The request for police presence followed a phone call made by Torcivia's daughter, Adrianna Torcivia, to a social service hotline.¹¹⁹ Adrianna was allegedly attempting to reach Suffolk County's Child Protective Services.¹²⁰ Officers James Adler, Robert

111. *See id.* at 553–54 ("The balancing test for determining whether an administrative procedure comes within the 'special need' exception is designedly fact-specific, and must be calibrated anew in assessing the reasonableness of each administrative search procedure to which it is applied.").

112. *See Torcivia v. Suffolk Cnty.*, 17 F.4th 342, 356–58 (2d Cir. 2021) (analyzing the constitutional claims under the framework of the special needs exception), *cert. denied*, 143 S. Ct. 438 (2022).

113. *See id.* at 351. It is not clear from the Second Circuit's decision how many firearms were ultimately seized from Torcivia's home.

114. *See* Petition for Writ of Certiorari, *supra* note 21, at 8 (describing Torcivia's personal and medical background).

115. *See Torcivia*, 17 F.4th at 349. For further discussion of the events that led this case, and the parties' recollection of those events, see *infra* notes 118–130 and accompanying text.

116. *See id.* at 349–51 (highlighting the differences in accounts between the officers and Torcivia).

117. *See id.* at 349.

118. *Id.* (quoting App'x at 981, *Torcivia v. Suffolk Cnty.*, 17 F.4th 342 (2d Cir. 2021) (No. 19-4167)).

119. *See id.* The court acknowledges it is unclear how many times Adrianna called the social services hotline that evening, but that it was possibly over four different times. *See id.* at 362.

120. *See id.* at 349. Adrianna and her younger brother Joseph were present in the Torcivia home when the call was made. *See id.* at 349 n.2. Torcivia's wife, Jennifer, was in the home as well, but did not interact with police until several hours after they first arrived. *See id.*

Verdu, and Patrick Halperin arrived at Torcivia's home shortly after the dispatch was made and found Torcivia engaged in a verbal altercation with his daughter.¹²¹

According to Torcivia, the verbal altercation the officers encountered was no cause for concern.¹²² Specifically, although Torcivia admitted to consuming "a few" alcoholic drinks that evening, he was "in control" of himself while speaking with his daughter.¹²³ Torcivia alleged the officers caused a rack of curtains to fall in the entryway of his home and that he attempted to pick up those curtains during the course of the conversation.¹²⁴ As a result, according to Torcivia, the officers began to scream and swear at him, and ultimately threatened to tase him.¹²⁵ Torcivia allegedly responded by informing the officers that he had a heart condition and that a taser could therefore kill him.¹²⁶

The officers told a vastly different account of the relevant events.¹²⁷ The officers contended that when they arrived at Torcivia's home, Torcivia was in a "highly agitated state" and was "intoxicated and threatening and belligerent."¹²⁸ Specifically, they alleged Torcivia was engaging in aggressive behavior toward his own daughter, and that he was "immediately aggressive toward the police."¹²⁹ The officers asserted Torcivia asked them to tase him, as though he wanted to die.¹³⁰ According to police, these statements are what prompted them to transport Torcivia to Stony Brook University Hospital's Comprehensive Psychiatric Emergency Program Unit (CPEP) for psychological evaluation.¹³¹

After the officers transported Torcivia to CPEP, Officer Adler conducted a pistol license check and determined Torcivia had a license for firearms.¹³² At the direction of his supervisor and in accordance with a standard practice of the Department, Officer Adler then re-entered

121. *See id.* at 349.

122. *See id.*

123. *Id.* This account is based on Torcivia's testimony during his jury trial before the District Court. *See id.*

124. *Id.*

125. *Id.*

126. *See id.* Torcivia claims, after the officers threatened to tase him, he warned them, "I wouldn't do that, I have a heart condition. I could die." *Id.*

127. *See id.* at 349–50 (highlighting that both parties paint a distinctly different picture of what occurred within Torcivia's home).

128. *Id.* The officers also contended that Torcivia was "yelling, walking back and forth, pacing and ranting." *See* Petition for Writ of Certiorari, *supra* note 21, at 55a (quoting Cty. Defs.' Reply Pl.'s Additional Statement of Material Facts Pursuant Local Rule 56.1, *Torcivia v. Suffolk Cnty.*, 409 F. Supp. 3d 19 (E.D.N.Y. 2019) (15-cv-1791 (LDH) (GRB))).

129. *See Torcivia*, 17 F.4th at 350 (quoting App'x at 1477, *Torcivia v. Suffolk Cnty.*, 17 F.4th 342 (2d Cir. 2021) (No. 19-4167)).

130. *See id.* All three officers testified to this effect during Torcivia's trial in the district court. *See id.*

131. *See id.*

132. *See id.* at 351.

Torcivia's home and located a gun safe, which presumably held his firearms.¹³³ The Department contended this practice was standard after an individual's transport to a mental health facility and was aimed at preventing future instances of suicide or domestic violence.¹³⁴ Officer Adler did not seek a warrant to search Torcivia's home or seize the firearms in the safe.¹³⁵ Therefore, Torcivia and his wife initially refused to provide a password to the safe.¹³⁶ However, Torcivia ultimately provided the password to Officer Adler, who seized his firearms.¹³⁷

At approximately two o'clock in the afternoon on the day following the incident, CPEP doctors determined that Torcivia was not a threat to himself or others and did not require further psychiatric care.¹³⁸ CPEP did not release Torcivia from custody until six o'clock that evening.¹³⁹ In the days following his release from CPEP, Torcivia sought the return of his firearms, but was unsuccessful.¹⁴⁰ Due to his involuntary commitment in this instance, Torcivia was no longer able to hold a pistol license in Suffolk County.¹⁴¹

Two years after the foregoing incident, in 2016, Torcivia sued the officers, Suffolk County, and CPEP employees in the United States District Court for the Eastern District of New York under 42 U.S.C. § 1983.¹⁴² Spe-

133. *See id.* Officer Adler made the following comment in his deposition testimony: "When there is a domestic incident and somebody is transported to CPEP for evaluation that's standard procedure to safeguard weapons until whatever investigation is done." *See id.*

134. *See* Motion for Leave to File Brief and Brief *Amicus Curiae* of the New Civil Liberties Alliance in Support of Petitioner at 22, *Torcivia v. Suffolk Cnty.*, 17 F.4th 342 (2d Cir. 2021) (No. 21-1522) (highlighting Suffolk County's justification of the seizure, which included a discussion of suicide and gun violence statistics).

135. *See Torcivia*, 17 F.4th at 351 (highlighting the Department's failure to secure a warrant prior to police entry into the home).

136. *See id.*

137. *See id.* Torcivia argued his discharge was contingent on his disclosure the password and the subsequent seizure of his firearms. *See id.* Therefore, he contended that he did not consent to the seizure of his firearms. *See id.*

138. *See id.* at 351.

139. *See id.* (acknowledging both parties agreed that Torcivia was not discharged from the facility for several hours after CPEP staff determined him to be stable).

140. *See* Petition for Writ of Certiorari, *supra* note 21, at 12 (highlighting the ultimate hardship that Torcivia faced after the seizure of his firearms).

141. *See* N.Y. PENAL LAW § 400.00(1)(j) (McKinney 2022); Nick Sibilla, *Supreme Court Needs to Close Loophole that Lets New York Cops Seize Guns Without Warrants*, FORBES (Oct. 16, 2021, 7:45 PM), <https://www.forbes.com/sites/nicksibilla/2022/10/16/supreme-court-needs-to-close-loophole-that-lets-new-york-cops-seize-guns-without-warrants/?sh=1d27850513f3> [https://perma.cc/6TH5-ZXHX]. As a result of his weapons seizure, Torcivia also levied Second Amendment claims against Suffolk County. *See Torcivia*, 17 F.4th at 352.

142. *See Torcivia*, 17 F.4th at 352. 42 U.S.C. § 1983 refers to the statute that allows private individuals to seek damages for deprivations of their constitutional rights. *See* 42 U.S.C. § 1983 (2018). To establish a § 1983 violation, an individual must first adequately allege a violation of their constitutional rights. *See Torcivia*, 17 F.4th at 352.

cifically, Torcivia asserted sixteen separate causes of action, alleging violations of his First, Second, Fourth, and Fourteenth Amendment rights.¹⁴³ With regard to his Fourth Amendment claims against Suffolk County and the officers, Torcivia argued Suffolk County's policy of warrantless seizure of firearms was unconstitutional.¹⁴⁴

The parties filed cross motions for summary judgment.¹⁴⁵ The district court granted Suffolk County's motion in part and dismissed Torcivia's Fourth Amendment claims against Suffolk County.¹⁴⁶ Torcivia appealed dismissal of his Fourth Amendment § 1983 claims, challenging the district court's summary judgement order.¹⁴⁷

IV. LIONS, AND TIGERS, AND SPECIAL NEEDS, OH MY! *TORCIVIA* REASONS IN FAVOR OF WARRANTLESS HOME ENTRY

The Second Circuit considered nine of Torcivia's original claims on appeal, several of which were § 1983 claims based on Fourth Amendment violations allegedly committed by Suffolk County, the officers (collectively,

143. *See Torcivia*, 17 F.4th at 352 (discussing the procedural history of Torcivia's suit). Over time, Torcivia voluntarily dismissed several of his initial constitutional claims, and the district court disposed of several of Torcivia's claims at summary judgement. *See id.* However, Torcivia's Fourth Amendment claims survived initial dismissal. *See id.* Torcivia also alleged various claims under New York common law, including unlawful imprisonment, defamation, and negligence. *See id.*

144. *See id.* at 353. In addition, Torcivia raised a § 1983 claim against the state hospital workers that continued to confine him after he was cleared, claiming these workers violated his Fourth Amendment rights by "unreasonably prolonging his confinement at CPEP until he provided his gun safe combination to allow seizure of his firearms." *Id.* at 354.

145. *Id.* Most relevant to this Note, Suffolk County and the officers sought judgment on Torcivia's Fourth Amendment claim regarding the seizure of his firearms. *See id.* However, these defendants also sought judgement on a § 1983 stigma-plus claim and common law claims for unlawful imprisonment. *See id.* Torcivia cross-moved for summary judgment on his Fourth Amendment and due process claims against Suffolk County. *See id.*

146. *See Torcivia v. Suffolk Cnty.*, 409 F. Supp. 3d 19, 30–35 (E.D.N.Y. 2019). The district court reasoned that although a jury could find Suffolk County did, in fact, employ a policy of temporary warrantless seizure, this policy was justified by the special needs exception to the warrant requirement. *See id.* First, in declaring the policy to serve a special government need, the district court engaged in a lengthy discussion about mental health, suicide gun violence, and domestic violence. *See id.* at 31–33 (asserting the County's interest in preserving public safety and preventing gun violence is "particularly acute in circumstances involving mental health and domestic violence"). Next, in balancing this government interest with Torcivia's privacy interests, the district court found the policy to be constitutionally reasonable. *See id.* at 35. Regarding Torcivia's Fourth Amendment claims against the CPEP employees, the district court dismissed all claims on the basis of qualified immunity. *See id.* at 49.

147. *See Torcivia*, 17 F.4th at 354.

county defendants), and employees at CPEP (state defendants).¹⁴⁸ Therefore, the Second Circuit's analysis centered on determining whether any of the defendants violated Torcivia's Fourth Amendment rights.

The court began by addressing Torcivia's § 1983 claims against Suffolk County.¹⁴⁹ First, because Suffolk County's municipal liability rested on whether it employed an unconstitutional policy, the court considered whether the Department did, in fact, have a policy of seizing firearms in domestic violence situations.¹⁵⁰ The court affirmed the district court's finding that a reasonable jury could conclude the County had a policy that required the seizure of Torcivia's firearms after he was transported.¹⁵¹ This finding was critical to the establishment of municipal liability, because without an unconstitutional policy, Suffolk County would not be liable.¹⁵²

Because the court determined a reasonable jury could conclude an unconstitutional policy existed, it then analyzed the district court's finding that a "special need" existed to justify the policy.¹⁵³ According to the court, a seizure must "serve as its immediate purpose an objective distinct

148. *See id.* at 352–53. First, and most relevant to this Note, Torcivia levied two § 1983 claims premised on the Fourth Amendment, including one claim against Suffolk County itself and one claim against the officers. *See id.* at 353. Torcivia raised the following claims: (1) a common law claim against Suffolk County; (2) a First Amendment § 1983 claim against the officers; (3) a common law claim for false imprisonment against the officers; (4) a § 1983 stigma-plus claim against Officer Adler alone; (5) a state law defamation claim against Officer Adler alone; (6) a Fourth Amendment § 1983 claim for unreasonably prolonging his confinement against CPEP employees; and (7) a common law claim for false imprisonment against CPEP employees. *See id.*

149. *See id.* at 354. Because Torcivia brought separate Fourth Amendment claims against Suffolk County and the officers, the court did not consider the constitutionality of the officer's actions in this part of its analysis. *See id.*

150. *See id.* at 355–56 ("We agree with the District Court, and the County does not appear to contest, that the record evidence would support the conclusion of a reasonable juror that the County maintains such a two-pronged policy or practice.").

151. *See id.* Specifically, the district court concluded that the record evidence, particularly testimony from Officer Adler, permitted a reasonable jury to find that it was "standard procedure" of the Suffolk County police department for officers to temporarily "safeguard weapons" if there was (1) a domestic incident and (2) someone was transported to a mental health facility. *Id.* at 355 (quoting *Torcivia v. Suffolk Cnty.*, 409 F. Supp. 3d 19, 29–30 (E.D.N.Y. 2019)).

152. *See id.* at 354–55. To establish a claim for *Monell* liability, the court noted that Torcivia must show the County had "(1) an official policy or custom that (2) cause[d] [him] to be subjected to (3) a denial of a constitutional right." *Id.* at 355 (alterations in original) (quoting *Wray v. City of New York*, 490 F.3d 189, 195 (2d Cir. 2007)). "*Monell* liability" refers to the doctrine first developed in *Monell v. Department of Social Services*, which establishes that a municipality may be held liable for a police officer's actions where a plaintiff can show the officer violated their constitutional right, and that violation resulted from an official municipal policy or custom. *See generally* 436 U.S. 658 (1978).

153. *See Torcivia*, 17 F.4th at 356. The court's special need discussion considered both the county's policy generally and with specific regard the seizure Torcivia challenged. *See id.*

from the ordinary evidence gathering associated with crime investigation” to classify as a special need.¹⁵⁴ The court noted crime control and evidence gathering are not special needs to which the exception applies.¹⁵⁵ In the narrow circumstances of this case, the court classified the prevention of domestic violence and suicide as a special need.¹⁵⁶ In addition, the court rejected Torcivia’s argument that this was a crime control policy, because, in the facts at issue, there was no allegation that he committed any crime.¹⁵⁷ Therefore, in the first part of the analysis, the court determined the policy serves a legitimate special need.¹⁵⁸

Next, the court acknowledged that if there is a special need, warrantless searches must still be “reasonable” to be constitutional.¹⁵⁹ To evaluate reasonableness, the court employed a balancing test adopted by the Second Circuit in an earlier special needs case, *MacWade v. Kelly*.¹⁶⁰ The court outlined the balancing test as follows:

Determining the reasonableness of seizures under the special needs exception requires courts to balance four factors: “(1) the weight and immediacy of the government interest, (2) the nature of the privacy interest allegedly compromised by the [seizure], (3) the character of the intrusion imposed by the [seizure], and (4) the efficacy of the [seizure] in advancing the government interest.”¹⁶¹

With regard to the reasonableness of the policy in general, the court concluded that more factors weighed in favor of the County.¹⁶² According to the court, the first factor weighed in favor of Suffolk County because it has a substantial interest in “preventing suicide and domestic

154. *Id.* at 357 (quoting *MacWade v. Kelly*, 460 F.3d 260, 268 (2d Cir. 2006)).

155. *See id.* (citing *Lynch v. City of New York*, 589 F.3d 94, 100 (2d Cir. 2009) (holding crime control is not a “special need” for the purposes of the warrant exception)).

156. *See id.* (“On the record before us, we think it is accurately understood to address . . . public safety issues at the intersection of mental health and domestic violence. It envisions a temporary seizure of both person and firearms to defuse a critical situation in which an individual may pose a danger to himself and members of his household on account of mental instability or substance abuse and the presence in the home of firearms.”).

157. *See id.* at 357–58 (concluding, even if a policy might have multiple purposes, including one related to crime control, that one purpose does not bar the application of the special needs doctrine).

158. *See id.* at 358.

159. *Id.* at 359.

160. 460 F.3d 260 (2d Cir. 2006). In *MacWade*, the Second Circuit upheld a New York City policy that allowed for random, warrantless searches of containers on the subway system. *See id.* at 271–75. Notably, the *MacWade* court argued that a reduced privacy interest is not a necessary condition of a special needs analysis. *See id.* at 269–70.

161. *Torcivia*, 17 F.4th at 359 (alterations in original) (quoting *MacWade*, 460 F.3d at 269).

162. *See id.* at 359–60.

violence.”¹⁶³ The court then held the second factor weighed in favor of Torcivia because he had a privacy interest in his firearms and in his home.¹⁶⁴ With regard to the third factor, the court found the balance to be “neutral” because, although the seizure was “not so brief and unobtrusive,” the seizure was confined to a “brief investigatory period.”¹⁶⁵ Lastly, under the fourth factor, the court found the policy to be an effective means of upholding Suffolk County’s interests.¹⁶⁶ Therefore, the court concluded the policy to be constitutional.¹⁶⁷

The court also briefly analyzed whether the officers’ conduct in Torcivia’s specific case, regardless of the policy, constituted a violation of his constitutional rights using the same balancing test.¹⁶⁸ As above, the court concluded the first and fourth factors weighed in favor of the County and its interests.¹⁶⁹ With regard to the second factor, the court again favored Torcivia’s privacy interests in his firearms, but did not separately acknowledge Torcivia’s privacy interests in his home.¹⁷⁰ Next, in contrast to its initial finding, the court found the third factor to weigh in favor of Torcivia and described the seizure of his firearms as an “extended

163. *Id.* at 359. To justify this decision, the court discussed at length the dangers of domestic violence and its relationship to suicide and homicide, particularly when firearms are involved. *See id.* at 359–60.

164. *See id.* at 360 (“[W]e have never held that obtaining a license, such as Torcivia’s, to maintain a firearm in one’s home more than marginally reduces an owner’s privacy interest in his home or his firearms, either by itself or by the terms of the license.”). At this point, the court differentiated *Griffin* and acknowledged that Torcivia had a full expectation of privacy in the case at bar. *See id.* (citing *Griffin v. Wisconsin*, 483 U.S. 868, 873–75 (1987)) (differentiating Torcivia from a person on probation or parole).

165. *See id.* at 361.

166. *See id.* at 359, 360 (asserting that the temporary seizure of firearms was an effective policy because, even though a person has already been transported to a mental health facility, it removed “the possibility that the person regains access to the firearms before the conclusion of the investigation or that someone else gains access to the firearms in the meantime”).

167. *See id.* at 361.

168. *See id.* at 361–64.

169. *See id.* at 361–63. Despite this finding, the court acknowledged these two factors weighed in favor of the County to a “more limited extent than they do for the policy in general” and therefore gave some credit to Torcivia’s argument that he was not suicidal and not a public imminent danger. *See id.* at 361. Ultimately, however, the court favored the officers’ decision to seize the weapons because, at the time, they were not yet aware that CPEP determined Torcivia was not suicidal. *See id.* at 362. The first factor concerns “the character of the intrusion imposed by the [seizure]” and the fourth factor concerns “the efficacy of the [seizure] in advancing the government interest.” *Id.* at 359 (alterations in original); *see also supra* note 161 and accompanying text.

170. *See Torcivia*, 17 F.4th at 363 (“Torcivia had a privacy interest in his firearms, and that interest was not more than marginally diminished by the terms of his pistol license.”). The second factor concerns “the nature of the privacy interest allegedly compromised by the [seizure].” *Id.* at 359 (alteration in original); *see also supra* note 161 and accompanying text.

intrusion.”¹⁷¹ Ultimately, even though the court acknowledged the outcome of this test was a “close call,” it did not make a determination on the constitutionality of the officers’ conduct and noted such conduct was not sufficient to establish municipal liability.¹⁷² The court affirmed the district court’s summary judgment ruling regarding Torcivia’s Fourth Amendment § 1983 claims against Suffolk County.¹⁷³

V. A WICKED APPROACH: *TORCIVIA* UNREASONABLY BROADENED THE SPECIAL NEEDS EXCEPTION AND ACTED CONTRARY TO RECENT SUPREME COURT DECISIONS

The Second Circuit’s decision in *Torcivia* is problematic for three primary reasons. First, the *Torcivia* court’s use of the special needs exception unreasonably broadened its scope beyond that recognized by the Supreme Court. Second, apart from the special needs exception, *Torcivia* is contrary to the Supreme Court’s recent decisions in *Caniglia* and *Lange* and the core Fourth Amendment principles that those decisions reaffirm. Third, the Second Circuit’s use of a balancing test to evaluate a constitutional right, both generally and as applied to the facts of *Torcivia*, severely limits in-home privacy interests in favor of stated governmental interests.

A. *Torcivia Introduced an Overly Expansive Application of the Special Needs Exception*

The *Torcivia* court diverged from the Supreme Court’s implicit presumption against applying the special needs exception to searches and seizures within the home.¹⁷⁴ Nearly all of the Court’s special needs decisions involve searches that occur outside the home in some public loca-

171. See *Torcivia*, 17 F.4th at 363. The third factor concerns “the character of the intrusion imposed by the seizure.” *Id.*; see also *supra* note 161 and accompanying text.

172. *Torcivia*, 17 F.4th at 361, 363. According to the court, even if the officers’ seizure itself rose to the level of a constitutional violation, Suffolk County would not be liable for that violation unless the policy itself resulted in the violation. See *id.* at 363. Said another way, the court decided that any constitutional violation would have resulted from officer departure from the policy, not the policy itself, and therefore refused to rule on the reasonableness of the officers’ actions. See *id.* at 363–64 (highlighting a lack of evidence in support of the argument that Suffolk County’s policy caused the potentially unconstitutional seizure).

173. See *id.* at 365. In its opinion, the court also considered *Torcivia*’s Fourth Amendment claims against the state defendants. See *id.* at 366–67 (discussing the merit of *Torcivia*’s constitutional claims against the state employees that held him at the mental health facility). *Torcivia* argued the state defendants unreasonably seized him by not allowing him to leave CPEP until he revealed the password to his gun safe. See *id.* at 367. The court held that there was no evidence of unlawful seizure, and the State Defendants therefore enjoyed qualified immunity from liability. See *id.* at 366–68.

174. See *supra* notes 84–96 and accompanying text (explaining the limited context in which the Supreme Court has employed the special needs exception to allow warrantless home entry for searches or seizures).

tion, such as a school, hospital, or employment setting.¹⁷⁵ Significantly, the only circumstance in which the Court upheld a special needs search within the home involved an individual knowingly under penal supervision.¹⁷⁶ In *Griffin*, the Court emphasized such individuals enjoy a lower expectation of privacy in their homes, and the exception therefore does not otherwise disturb already limited Fourth Amendment protections.¹⁷⁷ Even so, the *Griffin* Court implemented safeguards against discretion in its application of the special need exception, both by requiring “reasonable grounds” for such entry and warning against “unlimited” infringement of probationer’s privacy interests.¹⁷⁸ Beyond only special needs cases, the Court has consistently reiterated that persons under government supervision enjoy lower expectations of privacy, and in turn less stringent Fourth Amendment protection.¹⁷⁹ Lower courts, even the Second Circuit itself, readily align with this principle.¹⁸⁰

175. See *supra* note 78 and accompanying text (cataloguing the Supreme Court’s past special needs cases). For example, although the Court has not considered the special needs exception since 2001, the Court’s three most recent special needs decisions involved public roadside checkpoints, drug testing on pregnant patients in hospitals, and random drug testing for students who participate in extracurricular activities at schools. See *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000); *Ferguson v. City of Charleston*, 532 U.S. 67 (2001); *Bd. of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie Cnty. v. Earls*, 536 U.S. 822 (2002). Of these decisions, the Court only upheld random drug testing for students. See *Earls*, 536 U.S. at 838 (holding the drug testing policy was a reasonable means of furthering the school district’s “important interest in preventing and deterring drug use among its schoolchildren”).

176. See *Griffin v. Wisconsin*, 483 U.S. 868, 873–74, 880 (1987). *Griffin* did not involve a criminal or investigatory search, even though entry into the probationer’s home ultimately led to an independent criminal conviction. See *id.* at 875. Rather, *Griffin* concerned an administrative inspection designed to ensure efficient regulation of the probation system and encourage probationer rehabilitation. See *id.* at 873–74. Also, a probation officer conducted the search in *Griffin*, not a police officer. See *id.* at 871.

177. See *id.* at 874–75 (explaining that probationers have decreased liberty interests in order to assure their rehabilitation and community safety).

178. See *id.* at 875–76 (replacing the traditional probable cause standard with a lesser reasonable suspicion standard and asserting probationers still enjoy some level of privacy interest in their homes); see also McNamara, *supra* note 80, at 217 (describing the requirement of “reasonable suspicion” of wrongdoing as one used in special needs cases to “limit discretion and prevent arbitrariness”). Although the *Griffin* Court limited a probation officer’s discretion in conducting a search of a probationer’s home, under Wisconsin law, officers were not required to reveal the basis of their suspicion to the probation prior to the search. See *Griffin*, 483 U.S. at 875 n.3.

179. See *United States v. Knights*, 534 U.S. 112, 120 (2001) (reasoning probation status serves to “significantly” decrease an individual’s expectation of privacy in the home); *Samson v. California*, 547 U.S. 843, 852 (2006) (stating parolees have a diminished expectation of privacy by nature of their status alone); see also Kinports, *supra* note 72, at 166–70 (highlighting the parallel treatment of probationer and parolee privacy interests seen in *Knights* and *Samson*).

180. See, e.g., *Moore v. Vega*, 371 F.3d 110, 115 (2d Cir. 2004) (asserting the special needs exception can justify entry into a probationer’s or parolee’s home where the entry is reasonably related to a government officer’s duty); *United States*

More broadly, a majority of the Court's special needs decisions have involved searches not conducted by law enforcement, but by some other administrative actor, and have involved only civil search cases.¹⁸¹ The Court has expressly rejected the exception's application to criminal searches and seizures and stated the "primary purpose" of a special need must be "divorced" from an interest in law enforcement in order for the exception to apply.¹⁸² As is true for other exceptions to the general warrant requirement, the Court has been careful to keep the application of the special needs doctrine narrow, and has rarely upheld any search or seizure under the special needs exception since 2002.¹⁸³

By utilizing the special needs exception in *Torcivia*, the Second Circuit went beyond the Supreme Court's implicit special needs boundary as it pertains to home entry.¹⁸⁴ Importantly, *Torcivia* was not subject to any

v. LeBlanc, 490 F.3d 361, 370 (5th Cir. 2007) (holding the special needs exception allows entry into a probationer's home to conduct a walk-through even in the absence of reasonable suspicion). Some lower courts have even extended the diminished expectation of privacy principle discussed above to individuals under a different form of government supervision. See *Sanchez v. Cnty. of San Diego*, 464 F.3d 916, 927–28 (9th Cir. 2006) (determining a warrantless entry into the homes of welfare benefits recipients to be constitutionally reasonable).

181. See Arcila, Jr., *supra* note 66, at 1229 n.25 (citing *Ferguson v. City of Charleston*, 532 U.S. 67, 78–80 (2001); *Mich. Dep't of State Police v. Sitz*, 496 U.S. 444, 453–55 (1990)) (noting the Court has only applied the special needs exception to criminal cases in *Ferguson* and *Sitz*). Throughout his discussion, Arcila criticizes the use of the special needs exception in civil searches, but does not address the issue of special needs in law enforcement searches. See *id.* at 1231–34. He defines civil searches as those "having civil ends" and criminal searches as those with the primary purpose of uncovering wrongdoing. See *id.* at 1224 n.1.

182. See *Ferguson*, 532 U.S. at 79. *Ferguson*, one of the Court's most recent special needs decisions, articulates this clear limiting principle to the special needs exception in the context of criminal cases. See *id.* at 79–80. Ultimately, the *Ferguson* Court invalidated a hospital's involuntary drug testing of pregnant women, without compliance with the Warrant Clause, because the results were shared with law enforcement. See *id.* at 84–86.

183. See *Bd. of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie Cnty. v. Earls*, 536 U.S. 822, 838 (2002) (confirming the constitutionality of a system of random drug testing for students engaged in extracurricular activities); Jolley, *supra* note 82, at 962 ("[T]hree of the four most recent special needs cases indicate a possible trend towards limiting the special needs exception."); see also Arcila, Jr., *supra* note 66, at 1230 (arguing the Court has sought to "mitigate" any negative impact of the special needs exception, and its balancing test, by considering a number of factors, including "whether the individual has diminished privacy interests[,] . . . the search [or seizure] regime's invasiveness, the degree of governmental discretion it allows, [and] the immediacy of the government interest").

184. Compare *Torcivia v. Suffolk Cnty.*, 17 F.4th 342 (2d Cir. 2021), *cert. denied*, 143 S. Ct. 438 (2022), with *Griffin v. Wisconsin*, 483 U.S. 868 (1987). See *Petition for Writ of Certiorari*, *supra* note 21, at 24 (arguing the Supreme Court placed "limits" on its decision in *Griffin*, and the decision is thus not applicable beyond the penal custody context). But see *MacWade v. Kelly*, 460 F.3d 260, 269–70 (2d Cir. 2006) (holding an individual may be subject to a special needs search even where that person has a full expectation of privacy). As *MacWade* suggests, the Supreme Court has never expressly held that a diminished expectation of privacy is required for an application of the special needs exception. See *id.* at 269 (collect-

type of formal government supervision when policed entered his home and seized his weapons.¹⁸⁵ As a law-abiding citizen, his in-home privacy interests in that moment were paramount, and he was entitled to the protection of those interests through a warrant supported by probable cause.¹⁸⁶ In addition, it is arguable whether the County policy included meaningful safeguards to limit officer discretion entering homes to seize weapons.¹⁸⁷

Further, the Suffolk County policy cannot reasonably be viewed as having a primary, immediate purpose that is sufficiently separate from law enforcement.¹⁸⁸ Although the seizure did not result from police suspicion that the weapons were used during a crime, the seizure itself was conducted by police and arose as part of an ongoing investigation of Torcivia and the alleged incident of domestic violence.¹⁸⁹ If police had not been engaged in some investigation of the situation, officers would

ing cases). While this is technically true, the *MacWade* court supported this assertion only by referencing Supreme Court cases that *did not* involve in-home search or seizure, and is therefore not directly applicable here. *See id.* at 269.

185. *See* Petition for Writ of Certiorari, *supra* note 21, at 8 (noting Torcivia had no “record of violence” and was not under penal supervision at the time of seizure). Because Torcivia was therefore an unsupervised citizen at the time of his seizure, there is no reason for him to have a lowered expectation of privacy in his home. *See Griffin*, 483 U.S. at 875 (explaining the reasons why a probationer would have diminished privacy expectations in the home).

186. *See Griffin*, 483 U.S. at 884 (Blackmun, J., dissenting) (“The reasoning that may justify an administrative inspection without a warrant . . . simply does not extend to the invasion of the special privacy the Court has recognized for the home.”).

187. *See Torcivia*, 17 F.4th at 355 (describing the County’s policy); *see also* McNamara, *supra* note 80, at 217–18 (describing special needs safeguards, which include searches or seizures to be premised on (1) some form of reasonable suspicion of wrongdoing or (2) a neutral plan that applies universally groups of people). The Second Circuit described the County police as applicable when (1) police are investigating a domestic incident and (2) when an individual involved was transported to a mental health facility. *See id.* The policy did not require officers have any individualized suspicion beyond those two requirements. *See id.* Further, the policy did not apply equally to all individuals involved in domestic disputes, but only to individuals transported to CPEP. *See id.* Therefore, in theory, officers carrying out the policy could do so regardless of whether a true public safety or health threat existed. *See infra* notes 244–246 and accompanying text.

188. *See Ferguson v. City of Charleston*, 532 U.S. 67, 82–84 (2001) (indicating the special needs doctrine will not apply if the primary and immediate purpose is to help law enforcement and striking down a policy that found drug testing of expectant mothers unconstitutional because doctors were working in conjunction with local law enforcement). Because virtually any law enforcement search or seizure could serve some ultimate public purpose, the *Ferguson* Court emphasized that courts must consider the immediate purpose of the search or seizure and its connection to law enforcement. *See id.* at 84.

189. *See Torcivia*, 17 F.4th at 357 (noting Suffolk County’s policy involved “safeguarding firearms ‘until whatever investigation was done’” (quoting *Torcivia v. Suffolk Cnty.*, 409 F. Supp. 3d 19, 20 (E.D.N.Y. 2019))).

not have discovered Torcivia's pistol license.¹⁹⁰ Additionally, the County policy is carried out in full by law enforcement and is in no way applicable outside of the law enforcement context.¹⁹¹

While the Second Circuit acknowledged the County policy may have had, at least in part, a law enforcement or crime control purpose, the court discounted that purpose as corollary to the primary, immediate purpose of preserving public safety and preventing suicide.¹⁹² However, in doing so, the court overemphasized the special need to preserve public safety or prevent suicide in cases where individuals are detained and transported to mental health facilities.¹⁹³ For example, in Torcivia's specific case, the officers seized Torcivia's firearms after he was already in custody for several hours, where he presented no potential for harm to himself or others.¹⁹⁴ Also, the officers likely had time to secure a warrant in the time Torcivia was in custody (twelve hours), showing the warrant requirement was not, in the words of Justice Blackmun, "impracticable."¹⁹⁵ Therefore, the court's conclusion that the policy served the immediate purpose of preventing suicide and domestic violence is questionable in light of these facts, as well as the overall invasiveness of the in-home seizure.¹⁹⁶

190. *See id.* at 358 (indicating that Officer Adler conducted a pistol check only after he returned to the Torcivia home to "gather more information" about the domestic violence incident).

191. *See Ferguson*, 532 U.S. at 84 (refusing to uphold the drug testing program in part because law enforcement had "extensive involvement . . . at every stage of the policy"); *see also* Jolley, *supra* note 82, at 959–60 (noting the Supreme Court has invalidated sets of suspicionless searches by strictly enforcing a threshold distinction between law enforcement and non-law enforcement purposes).

192. *See Torcivia*, 17 F.4th at 358 (arguing the primary purpose of the seizure at issue was preventing suicide and domestic violence, which is distinct from crime control). The *Torcivia* court also argued the seizure supported a general protection against mental health crises. *See id.* at 357–58.

193. *See infra* notes 201–202 for further discussion of how the court overestimated the level to which a special need existed under the facts of *Torcivia*.

194. *See* Motion for Leave to File Brief and Brief *Amicus Curiae* of the New Civil Liberties Alliance in Support of Petitioner, *supra* note 134, at 23 (noting Torcivia was determined at the mental health facility to not be a threat to himself or others, therefore calling into question the necessity of the seizure).

195. *See id.* (questioning why officers did not obtain a warrant for the firearms during the twelve hours Torcivia was kept in mental health custody); *New Jersey v. T.L.O.*, 469 U.S. 325, 351 (1985) (Blackmun, J., concurring).

196. *See Ferguson*, 532 U.S. at 84 (declaring a court must consider whether the immediate purpose of a search serves an appropriate government need). The *Ferguson* Court emphasized that, even if there was an underlying government purpose behind some search or seizure that is unrelated to law enforcement, the immediate purpose takes priority in determining whether the special needs exception applies. *See id.* at 84–86; *see also* *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 658–60 (indicating a court should consider the invasiveness of a search with regard to privacy interests when deciding to apply the special needs exception).

Rather than evaluating the County policy under the special needs exception and its balancing test, the *Torcivia* court should have conformed to a traditional warrant-and-probable-cause model.¹⁹⁷ Such a model would not necessarily render the policy unconstitutional; rather, there are two well-established exceptions to the warrant requirement the Supreme Court has explicitly reserved to allow warrantless entry into the home: exigent circumstances and consent.¹⁹⁸ Given the nature of the in-home seizure at issue, as well as the strength of home privacy interests, the *Torcivia* court should have considered the applicability of those exceptions before refashioning the special needs exception to the in-home context.¹⁹⁹

At least two federal circuit courts have taken this approach and refused to apply the special needs exception to the in-home context because other warrant exceptions, specifically exigency, already existed.²⁰⁰ Under the specific facts of *Torcivia*, it is unlikely the seizure was conducted under exigent circumstances—*Torcivia* was transported to the mental health facility and held there for several hours without incident, and there was no potential for imminent injury or harm.²⁰¹ Moreover, it is unlikely *Torcivia*

197. See, e.g., *Kentucky v. King*, 563 U.S. 452, 459–60 (2011) (explaining that government entry into a home generally requires a warrant). The traditional warrant-and-probable cause model presumes a search or seizure is only constitutional if law enforcement has (1) probable cause to believe the subject of the search or seizure has engaged in wrongdoing and (2) a corresponding warrant issued by a neutral magistrate. See *id.* at 459 (citing *Payton v. New York*, 445 U.S. 573, 584 (1980)).

198. See *Caniglia v. Strom*, 141 S. Ct. 1596, 1598–99 (2021) (reaffirming exigency and consent and exceptions to a warrant-and-probable cause model that might justify home entry).

199. See *id.* at 1599 (criticizing the First Circuit’s decision to uphold the constitutionality of the in-home weapons seizure using community caretaking rather than on bases such as exigency or consent). Specifically, the Court stated:

The decision below assumed that respondents lacked a warrant or consent, and it expressly disclaimed the possibility that they were reacting to a crime. The court also declined to consider whether any recognized exigent circumstances were present because respondents had forfeited the point. Nor did it find that respondents’ actions were akin to what a private citizen might have had authority to do if petitioner’s wife had approached a neighbor for assistance instead of the police.

Id.

200. See, e.g., *Roska ex rel. Roska v. Peterson*, 328 F.3d 1230, 1242 (10th Cir. 2003) (“We find no special need that renders the warrant requirement impracticable when social workers enter a home to remove a child, absent exigent circumstances.” (emphasis omitted)).

201. See *Torcivia v. Suffolk Cnty.*, 17 F.4th 342, 350–51 (2d Cir. 2021) (explaining *Torcivia* arrived at the mental health facility with officers at approximately 2:00 a.m. on the night of the incident, and did not return home until approximately 6:00 p.m. the following day), *cert. denied*, 143 S. Ct. 438 (2022); see also *King*, 563 U.S. at 460 (outlining the strict requirements of the exigency exception, namely, that exigency is only present in true, objective emergencies, such as in the case of a fleeing felon or imminent destruction of evidence).

consented to the seizure, because his release from the mental health facility was allegedly contingent on him providing his password to his gun safe.²⁰²

B. *Beyond the Special Needs Exception, Torcivia Is Directly Contrary to Two Recent Supreme Court Search and Seizure Decisions*

The Second Circuit's decision in *Torcivia* goes against recent Supreme Court precedent reaffirming the strength of in-home privacy interests.²⁰³ First, the facts of *Torcivia* are very similar to those of *Caniglia*.²⁰⁴ In both cases, plaintiffs were transported to mental health facilities over police fear of mental instability and suicide risk, and, in turn, had their firearms seized from their homes after transport.²⁰⁵ In both cases, plaintiffs subsequently challenged the seizure of their weapons as violations of their Fourth Amendment rights.²⁰⁶ In both cases, police justified the seizures on the basis of preserving public safety and preventing suicide.²⁰⁷ However, the main difference between the two cases is the *Caniglia* Court evaluated the situation under the proposed "community caretaking" warrant exception.²⁰⁸ The *Caniglia* Court ultimately rejected that proposed excep-

202. See *Torcivia*, 17 F.4th at 351 ("Torcivia asserts that [the state employees] conditioned his discharge on his surrender of his firearms."); see also Sibilla, *supra* note 141 (discussing the circumstances surrounding Torcivia's release from the mental health facility and in turn implying that Torcivia did not freely consent to officers entering his home and gun safe). The Supreme Court has established duress or coercion as elements that undermine consent to a search or seizure. See *Schneekloth v. Bustamonte*, 412 U.S. 218, 248 (1973).

203. See Motion for Leave to File and Brief of the Institute for Justice as Amicus Curiae Supporting Petitioner, *supra* note 14, at 5 (basing the Institute's arguments on the Second Circuit's divergence from the Supreme Court's holding in *Caniglia*).

204. See Petition for Writ of Certiorari, *supra* note 21, at 16 (referring to *Torcivia* as a "carbon copy" of *Caniglia*).

205. See *Torcivia*, 17 F.4th at 351–52 (outlining the relevant factual circumstances underlying the constitutional challenge); *Caniglia v. Strom*, 141 S. Ct. 1596, 1598–99 (2021) (same).

206. See *Torcivia*, 17 F.4th at 353 (explaining plaintiff based his Fourth Amendment claims on Suffolk County's seizure of his firearms from his home); *Caniglia*, 141 S. Ct. at 1598 ("Petitioner sued, claiming that respondents violated the Fourth Amendment when they entered his home and seized him and his firearms without a warrant.").

207. See *Torcivia*, 17 F.4th at 357–58 ("Based on the record, we understand the policy to be focused on the related concerns of prevention of domestic violence and prevention of suicide."); *Caniglia*, 141 S. Ct. at 1598 (explaining police seized firearms from Caniglia's home for non-criminal caretaking purposes). In his *Caniglia* concurrence, Justice Alito identified the police purpose of the seizure as "preventing a person from committing suicide." See *Caniglia*, 141 S. Ct. at 1601 (Alito, J., concurring).

208. See *Caniglia*, 141 S. Ct. at 1599 (majority opinion) (explaining the community caretaking exception and questioning its application to in home seizures). For a more detailed discussion of the community caretaking exception, see *supra* notes 53–57 and accompanying text.

tion, noting that caretaking activities should not function to threaten the sanctity of in-home privacy interests, except in the case of true exigency or consent.²⁰⁹

Although *Caniglia* involved a different warrant exception, the Court held that seizures such as those in that specific case and *Torcivia* are unconstitutional.²¹⁰ Despite clear factual similarities, the Second Circuit avoided the “community caretaking” issue in its analysis and instead employed a special needs framework.²¹¹ Rather, the *Torcivia* court chose to differentiate *Caniglia* because it did not concern the special needs exception.²¹² Moreover, the court relied on *Griffin* to conclude the Supreme Court permits the special needs exception as a mode of warrantless home entry.²¹³ However, the court failed to recognize the factual differences between the plaintiff in *Torcivia* and that in *Griffin*, who was already subject to a government supervisory scheme.²¹⁴ Furthermore, the search in *Griffin* arose as part of an individual’s known probation restrictions, and the Court justified it with more than only a broad interest in public safety.²¹⁵ Therefore, *Caniglia* is even more on point than *Griffin*, and the Second Circuit should have given this precedent more weight in its decision.²¹⁶

209. *See id.* at 1599–1600 (rejecting the community caretaking exception as a means to justify warrantless home entry).

210. *See id.* at 1599 (holding warrantless entry into a home or the area surrounding a home absent exigent circumstances or consent is an impermissible intrusion). The *Caniglia* Court also noted police are able to take actions regarding the home that “any private citizen might do,” such as approaching a house and knocking on a door. *Id.* (citing *Florida v. Jardines*, 569 U.S. 1, 8 (2013)). Moreover, to support its reasoning, the Court emphasized the “constitutional difference” between a home and other pieces of property in terms of Fourth Amendment protections. *Id.*

211. *See* Petition for Writ of Certiorari, *supra* note 21, at 16 (questioning the *Torcivia* court’s decision to place minimal significance on the Court’s decision in *Caniglia*).

212. *See Torcivia*, 17 F.4th at 358 n.25 (“Although *Caniglia* involved facts bearing some resemblance to those presented here, it did not address the special needs doctrine or a situation in which officers acted pursuant to a government seizure policy in specified circumstances . . .”).

213. *See id.* (citing *Griffin v. Wisconsin*, 483 U.S. 868, 876 (1987)) (“[T]he special needs exception has been repeatedly recognized by the Supreme Court as permitting searches undertaken without a warrant including in situations involving the warrantless search of a home.” (citations omitted)).

214. *See supra* notes 176–177, 185–186 and accompanying text.

215. *See Griffin*, 483 U.S. at 870–71 (justifying warrantless home entry on the specific government interests in preserving the effectiveness of the probation system and reducing probationer recidivism). For further discussion of the special needs exception and its roots and common application in the administrative or non-criminal context, see *supra* notes 19 and 66–78 and accompanying text.

216. *See Torcivia*, 17 F.4th at 358 n.25 (failing to recognize *Griffin*’s narrow applicability to searches in furtherance of the probation system); *see also Griffin*, 483 U.S. at 874–75 (confining its holding to the context of the probation system).

Further, *Torcivia* discounts general Fourth Amendment principles affirmed in both *Caniglia* and *Lange*.²¹⁷ In *Lange*, the Court refused to find the exigency exception allowed police to enter a home without a warrant to apprehend a fleeing misdemeanor suspect.²¹⁸ First, these cases signify the Court's hesitancy to establish new, or extend the scope of current, warrant exceptions.²¹⁹ In the specific context of the special needs exception, commentators have argued the Court has made recent efforts to limit its scope.²²⁰ Second, these cases reaffirm the notion that the home is the chief privacy interest protected by the Fourth Amendment.²²¹ *Torcivia* circumvents both of these principles by extending the scope of the special needs exception in a way that threatens in-home privacy interests.²²² Until the Supreme Court ceases to give full effect to such principles, the special needs exception should not apply to the context of home entry.²²³

217. See *Caniglia v. Strom*, 141 S. Ct. 1596, 1599 (2021) (rejecting non-emergent caretaking activities as a justification for violating in-home privacy interests); *Lange v. California*, 141 S. Ct. 2011, 2024–25 (declining to allow officers to enter homes without a warrant to pursue a fleeing suspect of a minor offense); see also *infra* notes 218–233 and accompanying text.

218. See *Lange* 141 S. Ct. at 2024–25 (refusing to expand a known warrant exception—exigency—to a novel circumstance, a fleeing misdemeanor suspect).

219. See *Jones v. United States*, 357 U.S. 493, 499 (1948) (highlighting how the Court has “carefully drawn” warrant exceptions); *Katz v. United States*, 389 U.S. 347, 357 (1967) (stating the requirement is subject to some “specifically established and well-delineated exceptions”); see also Reamey, *supra* note 31, at 300 (describing warrant exceptions as “narrowly defined” (emphasis added)).

220. See Jolley, *supra* note 82, at 958–62 (arguing the Court's most recent special needs decisions highlight the Court's efforts to prevent the expansion of the exception's scope). *But see* Reamey, *supra* note 31, at 320 (criticizing the Court's application of the special needs exception, noting in particular, “[i]f the special needs doctrine was originally intended to meet administrative goals[,] . . . it has certainly not been restricted to these applications”).

221. See Yu, *supra* note 6, at 973 (arguing *Lange* and *Caniglia* serve to strengthen in-home privacy protections); Tokson, *supra* note 38, at 16 (emphasizing that the Court historically gives the home the most stringent Fourth Amendment protections).

222. See Motion for Leave to File and Brief of the Institute for Justice as Amicus Curiae Supporting Petitioner, *supra* note 14, at 18–19 (arguing the Second Circuit “directly flouts [the] Court's recent decisions rejecting broad exceptions to the warrant requirement”). In its support for *Torcivia*, the Institute for Justice warned against adopting an interpretation of the special needs exception that would broadly allow home entry for any public safety or health reason. See *id.* at 18 (“[T]he only thing standing between the government and someone's home is a balancing test that undercuts the right to be secure.”).

223. See *supra* note 64–65 and accompanying text (providing evidence to suggest the Court's interest in preserving privacy interests within the home is as strong as ever).

C. *Torcivia Highlights that the Special Needs Exception Is an Inappropriate Vehicle to Allow Warrantless Searches and Seizures in the Home*

The special needs exception requires courts to undergo a reasonable-balance balancing test when evaluating the constitutionality of searches and seizures.²²⁴ Such a test, as employed by the Second Circuit in *Torcivia*, is widely considered less protective of constitutional rights because it both dispenses with a warrant requirement and affords courts significant discretion.²²⁵ In fact, the Supreme Court has cautioned against using a balancing test to evaluate a core constitutional right.²²⁶ Therefore, in most recent search and seizure cases concerning the home and otherwise, the Court still presumes a warrant requirement and declines to undergo an interest-balancing analysis.²²⁷ Security in the home is a core constitutional right; therefore, according to the Court, such rights should not be subject to a balancing test in the absence of exigent circumstances or consent.²²⁸

Scholars frequently discuss the dangers that interest-balancing tests introduce for constitutional rights.²²⁹ First, an interest-balancing inquiry allows the court to exercise significant discretion in its evaluation of constitutional violations.²³⁰ For example, a special needs inquiry often involves the comparison of an overarching government need to a single individ-

224. See, e.g., *Nat'l Treasury Emps. Union v. Von Raab*, 489 U.S. 656, 665–66 (1989) (“[O]ur cases establish that where a Fourth Amendment instruction serves special needs, beyond the normal need for law enforcement, it is necessary to balance the individual’s privacy expectations against the Government’s interests to determine whether it is impractical to require a warrant or some level of individualized suspicion in the particular context.”).

225. See *supra* note 84 and accompanying text (providing evidence of wide scholarly criticism regarding the use of a balancing test to evaluate the constitutionality of any search or seizure). Commentator Kenneth Nuger is particularly critical of the special needs balancing test, arguing it often results in favorable outcomes to the government. See Nuger, *supra* note 84, at 97–98 (“The most troubling aspect of special need analysis is the Supreme Court’s overzealous protection of government’s espoused interests.”).

226. See Motion for Leave to File Brief and Brief *Amicus Curiae* of the New Civil Liberties Alliance in Support of Petitioner, *supra* note 134, at 23 (“An enumerated right in the Constitution should not be subject to a court’s deciding ‘on a case-by-case basis whether the right is really worth insisting upon’” (quoting *District of Columbia v. Heller*, 554 U.S. 570, 634 (2008))).

227. See *Kinports*, *supra* note 72, at 164 (arguing that, in the past several years, the Supreme Court has continuously employed a warrant presumption model to search and seizure cases).

228. See Reamey, *supra* note 31, at 300 (noting “the Fourth Amendment embodies the privacy rights of individual citizens rather than law enforcement needs” and the Supreme Court therefore has a duty to preserve those constitutional rights); see also Sundby, *supra* note 84, at 385 (criticizing the use of a balancing test for any searches or seizures, regardless of their locations).

229. See *supra* note 84 and accompanying text (listing examples of scholarly criticism of a Fourth Amendment balancing test).

230. See Lee, *supra* note 84, at 1149. In her discussion, Lee argues that too much discretion in constitutional inquiries could allow personal and professional biases to leak into those inquiries, which would undermine constitutional rights. See *id.* at 1150.

ual's privacy interest; the latter is therefore more likely to give way.²³¹ Relatedly, interest-balancing inquiries have been criticized for their general nature, rather than their focus on specific facts.²³²

Torcivia highlights these concerns with specific regard to the special needs exception. First, the court exercised significant discretion in drawing its conclusion from the interest-balancing test.²³³ For example, when analyzing the seizure, the court found that only two of four interest factors weighed in favor of Suffolk County, but decided to place higher weight on those factors.²³⁴ Surprisingly, the court focused more on *Torcivia*'s interests in his firearms, rather than those in his home.²³⁵ Moreover, the court failed to adequately consider the specific facts of the case in its analysis.²³⁶ As discussed previously, the Second Circuit did not consider whether *Torcivia* was an objective danger to others when the seizure was conducted, or the amount of time which officers had to potentially secure a warrant if they were concerned with the presence of weapons.²³⁷ In sum,

231. See Friedman & Stein, *supra* note 72, at 297–98 (stating the Court “almost always compares the overarching goal of the search scheme against a single individual’s privacy interest,” thus comparing “an apple to an orchard”); Nuger, *supra* note 84, at 89, 97–98 (arguing the special needs rationale places “an inordinate emphasis on governmental objectives and undervalu[es] Fourth Amendment privacy protections”); Lee, *supra* note 84, at 1147 (stating a less stringent reasonableness model, like that used under the special needs exception, can be viewed as overly deferential to the government).

232. See Kamin & Marceau, *supra* note 18, at 591 (describing scholarly criticism of a generalized interest-balancing approach to evaluating constitutional rights).

233. See *Torcivia v. Suffolk Cnty.*, 17 F.4th 342, 359–63 (2d Cir. 2021) (undergoing the balancing analysis), *cert. denied*, 143 S. Ct. 438 (2022).

234. See *id.* at 363 (concluding that two factors in favor of the County was sufficient to conclude that the government interest outweighed *Torcivia*'s privacy interests).

235. See *id.* (noting *Torcivia* had privacy interests in his firearms, without giving reference to the privacy interest in his home).

236. See Motion for Leave to File Brief and Brief *Amicus Curiae* of the New Civil Liberties Alliance in Support of Petitioner, *supra* note 134, at 22 (criticizing the court's generalized factual analysis). For example, much of the Second Circuit's opinion focused on describing a broad government interest in “preventing suicide and domestic violence.” See *Torcivia*, 17 F.4th at 359. However, the court failed to determine whether any true threat to that interest existed in *Torcivia*'s case. See Motion for Leave to File Brief and Brief *Amicus Curiae* of the New Civil Liberties Alliance in Support of Petitioner, *supra* note 134, at 23 (“As a result, the particularized facts of this individual petitioner’s case were lost amid the generalized analysis.”). At least one circuit court has advocated for a fact-specific analysis is needed to apply the special needs exception. See *McCabe v. Life-Line Ambulance Serv., Inc.*, 77 F.3d 540, 553–54 (1st Cir. 1996) (“The balancing test for determining whether an administrative procedure comes within the ‘special need’ exception is designedly fact-specific, and must be calibrated anew in assessing the reasonableness of each administrative search procedure to which it is applied.”).

237. See *supra* notes 233–236 and accompanying text.

the balancing test in *Torcivia* seemingly favored policy concerns over constitutional rights, and in turn highlights the trouble with employing the special needs exception to in-home seizures.²³⁸

VI. IT'S MELTING! *TORCIVIA* INTRODUCES DANGEROUS IMPLICATIONS FOR IN-HOME PRIVACY INTERESTS

The Second Circuit's decision in *Torcivia* represents a divergence in settled Fourth Amendment jurisprudence and thus has the potential to create significant judicial and social impact. First, *Torcivia* opens the door for courts both within and beyond its jurisdiction to expand the scope of the special needs doctrine.²³⁹ An expanding scope directly contravenes the narrow scope of the exception applied by the Supreme Court, and supports the expansion of the exception to general or investigatory searches.²⁴⁰ This is problematic because if the special needs exception introduces a lower burden for law enforcement, and this lower burden is used to support investigation searches, the government would gain an unreasonable amount of power at the expense of individuals' privacy interests.²⁴¹

An expansion of the special needs doctrine to home entry is likely to undermine Fourth Amendment protections because the home is the place where privacy interests are strongest.²⁴² In the past, the Supreme Court has specifically avoided expanding warrant exception to instances of home entry, noting that doing so "goes beyond" anything that it has recognized.²⁴³ More specifically, the *Torcivia* court's reasoning could allow virtually any policy to be justified on the basis of special needs as long as those policies can be described to have some purpose other than crime

238. See Motion for Leave to File Brief and Brief *Amicus Curiae* of the New Civil Liberties Alliance in Support of Petitioner, *supra* note 134, at 23 (arguing the *Torcivia* court used the decision to further broad policy concerns).

239. See Sundby, *supra* note 84, at 385 (arguing that special needs cases set the stage for the expansion of the reasonableness balancing test to novel contexts).

240. See *supra* notes 174–195 and accompanying text (explaining the overall narrow scope of the special needs exception and how the *Torcivia* decision expands that scope); see also Jolley, *supra* note 82, at 958–62 (arguing the Court's most recent special needs decisions highlight efforts to prevent the expansion of the exception's scope).

241. See Nuger, *supra* note 84, at 129 (arguing that special needs decisions by both the Supreme Court and lower courts are "systematically ameliorating Fourth Amendment protections"); Friedman & Stein, *supra* note 72, at 297 (describing Fourth Amendment reasonableness balancing tests as "rigged" because they tend to favor the government).

242. See, e.g., *Caniglia v. Strom*, 141 S. Ct. 1596, 1599 (2021) (reiterating that privacy interests in the home are the "core" of Fourth Amendment protections); see also *supra* notes 35–65 and accompanying text (outlining the Supreme Court historical and modern protection of home privacy interests).

243. See *Caniglia*, 141 S. Ct. at 1599 (refusing to expand the community care-taking exception to the home); *Lange v. California*, 141 S. Ct. 2011, 2024–25 (2021) (refusing to broaden the scope of the exigent circumstances exception to a novel, non-emergent circumstance).

control.²⁴⁴ For example, this would allow police wide discretion in entering an individual's home—all that would be required of police would be their articulation of some interest in health or safety.²⁴⁵ Commentators have noted the *Torcivia* decision will offer other courts within the circuit a “blank check” to justify home entry, which is contrary to Fourth Amendment principles.²⁴⁶ Further, this holding approves the removal of an important safeguard against home privacy interests—the warrant.²⁴⁷

Torcivia has the potential to influence other courts to alter the scope of warrant exceptions on which the Supreme Court has not explicitly ruled.²⁴⁸ In adding to a growing division between federal circuit courts around the scope of the special needs exception as pertains to warrantless searches and seizures in the home, *Torcivia* complicates an already-existing debate among circuits and commentators.²⁴⁹ Therefore, this case may persuade the Supreme Court to draw a more established line regarding the scope of the special needs exception, particularly in relation to the home, which the Court has not tackled to date.²⁵⁰

244. See *Griffin v. Wisconsin*, 483 U.S. 868, 884 (Blackmun, J., dissenting) (warning against the application of an “administrative-inspection” warrant exception to entries into the home); *Brinegar v. United States*, 338 U.S. 160, 181 (1949) (Jackson, J., dissenting) (criticizing the idea that homes would be subject to “unheralded search and seizure by the police”).

245. See Motion for Leave to File and Brief of the Institute for Justice as Amicus Curiae Supporting Petitioner, *supra* note 14, at 16 (indicating the dangers of a discretionary approach to home entry). This Note does not argue that interests in preserving health or safety are unfounded or that such interests can never justify home entry. In fact, the district court in *Torcivia* engaged in a convincing discussion of the dangers of firearms in relation to mental illness and domestic violence. See *Torcivia v. Suffolk Cnty.*, 409 F. Supp. 3d 19, 31–33 (E.D.N.Y. 2019) (citing studies linking firearm violence to domestic violence and suicide conducted by the World Health Organization and the American Journal of Public Health, among others). Instead, this Note advocates against entry into the home to preserve these broad interests absent a fact-specific analysis revealing some emergency. See *supra* notes 230–237 and accompanying text.

246. See *Sibilla*, *supra* note 141 (arguing *Torcivia* introduces a “loophole” to the warrant requirement that would ease law enforcement’s path to firearm seizure).

247. For a discussion about warrants as safeguards to home privacy interests, as well as exceptions the Supreme Court has set out to the warrant requirement, see *supra* notes 34–41 and accompanying text.

248. See generally *Annual Review of Criminal Procedure*, *supra* note 9 (providing an overview of the vast interpretations of warrant exceptions among lower courts). Because warrant exceptions are developed in common law, it is possible that courts can construct altered or new exceptions in the absence of guidance from the Supreme Court. See *id.*

249. See *supra* notes 95–111 and accompanying text.

250. *Torcivia* chose to petition his case to the Supreme Court in May 2022. See Petition for Writ of Certiorari, *supra* note 21. The Supreme Court denied the petition in November 2022, and therefore, the future of the special needs exception remains unclear. See *Torcivia v. Suffolk Cnty.*, 143 S. Ct. 438 (2022) (denying cert).

