

18-1602-cv

Jones v. Cty. of Suffolk

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In the
United States Court of Appeals
For the Second Circuit

August Term, 2018

No. 18-1602-cv

JOHN JONES,
Plaintiff-Appellant,

v.

COUNTY OF SUFFOLK and PARENTS FOR MEGAN'S LAW,
*Defendants-Appellees.*¹

Appeal from the United States District Court
for the Eastern District of New York.
No. 15-cv-111 — Joanna Seybert, *Judge.*

ARGUED: JUNE 19, 2019

DECIDED: SEPTEMBER 4, 2019

Before: CABRANES, RAGGI, and DRONEY, *Circuit Judges.*

¹ The Clerk of the Court is directed to amend the official caption as shown above.

1 The County of Suffolk contracted with the private nonprofit
2 organization, Parents for Megan’s Law (“PFML”), to conduct home visits to
3 verify the addresses of individuals who are registered as sex offenders on
4 the New York State Sex Offender Registry. John Jones, a registered sex
5 offender, was visited by the organization twice. He brought this action
6 under 42 U.S.C. § 1983, alleging that the visits constituted unreasonable
7 seizures in violation of the Fourth Amendment. He appeals from the final
8 judgment of the United States District Court for the Eastern District of New
9 York (Seybert, J.) granting summary judgment in favor of the defendants.
10 The district court held that, even assuming Jones was “seized” within the
11 meaning of the Fourth Amendment, the visits were constitutional under the
12 “special needs” doctrine. We **AFFIRM**.

13
14
15 ERIN BETH HARRIST New York Civil
16 Liberties Union, New York, NY, (Aadhithi
17 Padmanabhan, Christopher Dunn, New
18 York Civil Liberties Union, New York, NY;
19 Lawrence Spirn, Northport, NY, *on the brief*),
20 *for Plaintiff-Appellant*.

21 DANA KOBOS, Assistant County Attorney,
22 *for* Dennis M. Brown, Suffolk County
23 Attorney, Hauppauge, NY, *for Defendant-*
24 *Appellee County of Suffolk*.

25 MAURIZIO SAVOJARDO, III (Michael A.
26 Miranda, *on the brief*), Miranda Sambursky
27 Slone Sklarin Verveniotis LLP, Mineola, NY,
28 *for Defendant-Appellee Parents for Megan’s*
29 *Law*.

1 DRONEY, *Circuit Judge*:

2 Plaintiff-Appellant John Jones brought this 42 U.S.C § 1983 claim
3 alleging that the Defendants-Appellees, the County of Suffolk (the
4 “County”) and the private nonprofit organization Parents for Megan’s Law
5 (“PFML”), violated his Fourth Amendment rights while acting under a local
6 law and contract authorizing PFML to visit the homes of individuals
7 registered on the New York State Sex Offender Registry in Suffolk County,
8 New York, and verify their addresses. On summary judgment, the United
9 States District Court for the Eastern District of New York (Seybert, J.)
10 assumed that the verification visits to Jones’s home constituted seizures and
11 found that PFML was a state actor for purposes of Fourth Amendment
12 analysis.

13 The district court determined that, nonetheless, the verification visits
14 were “reasonable” under the Fourth Amendment because their primary
15 purpose was to serve the “special need” of “verify[ing] the addresses of
16 registered sex offenders in order to improve the accuracy of the sex offender

1 registry.” *Jones v. Cty. of Suffolk*, 15-cv-111, 2018 WL 2023477, at *18
2 (E.D.N.Y. May 1, 2018). The court granted summary judgment in favor of
3 the defendants. Jones now appeals that decision, arguing that the special
4 needs doctrine does not apply because the visits constituted a law
5 enforcement effort to seek evidence that previously convicted sex offenders
6 committed the crime of violating New York state’s registration
7 requirements.

8 We assume without deciding that the visits were the product of state
9 action and constituted seizures under the Fourth Amendment, but hold that
10 they were reasonable under the special needs doctrine. We therefore
11 AFFIRM.

12 **I. BACKGROUND²**

13 **A. SORA and the Suffolk County Verification Program**

14 In July 1995, New York state enacted its version of a “Megan’s Law,”³

² In reviewing the district court’s grant of summary judgment, we rely on the undisputed facts in the record, drawing reasonable inferences in the light most favorable to the nonmoving party. *See Scott v. Harris*, 550 U.S. 372, 378 (2007).

³ “Megan’s Laws” are named after Megan Kanka who “was the seven-year-old victim of

1 the New York State Sex Offender Registration Act (“SORA”), requiring
2 individuals convicted of certain offenses to register as sex offenders in a
3 state registry maintained by the state Division of Criminal Justice Services.
4 *See* 1995 N.Y. Laws 2870 (codified at N.Y. CORRECT. L. §§ 168–168-w)).
5 “SORA aims both to protect members of the public, especially vulnerable
6 populations, from sex offenders by notifying them of the presence of sex
7 offenders in their communities and to enhance law enforcement authorities’
8 ability to investigate and prosecute sex offenses.” *Doe v. Pataki*, 481 F.3d 69,
9 70 (2d Cir. 2007).

10 Under SORA, each registrant must periodically mail in a completed
11 form to verify home-address information and report to a police station to
12 have a photograph taken for the registry. N.Y. CORRECT. L. § 168-f. Failure
13 to provide accurate or timely information is a felony offense. *Id.* § 168-t.

14 Other requirements under SORA depend in part on the registrants’

a sexual assault and murder in New Jersey in 1994” and whose death “sparked enactment of sex offender registration and notification statutes in that state and several others.” *Doe v. Pataki*, 120 F.3d 1263, 1265 n.1 (2d Cir. 1997), *as amended on denial of reh’g* (Sept. 25, 1997).

1 risk of recidivism. An administrative board of examiners assesses that risk
2 and assigns registrants a score of Level One, Two, or Three, with Level-One
3 offenders having the lowest risk of recidivism and Level-Three offenders
4 having the highest risk. *Id.* § 168-l. For Level-Two and -Three offenders,
5 personal identifying information including registrants' names,
6 photographs, home addresses, and employer addresses, as well as
7 information concerning their crimes of conviction and sentences, is publicly
8 available through a state-operated online database. *Id.* § 168-q. The
9 registration statuses and zip codes of Level-One offenders are publicly
10 available through a toll-free telephone hotline maintained by the state, but
11 that information is not available online. *Id.* § 168-p.

12 In January 2013, due to concerns about the accuracy of the Registry,
13 PFML and the Suffolk County Police Department ("SCPD") created and
14 presented a proposal for an in-person address verification program to the
15 Public Safety Committee of the Suffolk County Legislature. The following
16 month, the Legislature adopted the "Community Protection Act,"

1 authorizing SCPD to contract with PFML to verify the home addresses of
2 sex offenders registered under SORA in Suffolk County, monitor
3 registrants' use of social media, develop a system for reporting SORA
4 violations, and provide community education concerning SORA.⁴

5 Pursuant to the Community Protection Act, in April 2013, the County,
6 acting through SCPD, entered into a three-year contract with PFML that,
7 among other things, authorized PFML agents to visit registrants at home to
8 verify their addresses. The contract required PFML to use retired law
9 enforcement officers to conduct the verification visits, whom it calls
10 "Registry Verification Field Representatives" or "RVRs." Any tips SCPD
11 received from PFML that registrants failed to accurately register home-
12 address information could be investigated by SCPD for possible criminal
13 prosecution.

14 Shortly after the contract took effect, PFML began reporting to SCPD

⁴ Prior to the adoption of the Community Protection Act, SCPD detectives periodically conducted home visits to verify SORA information.

1 that registrants were “not being receptive to . . . RVRs.” App’x 1550. Based
2 on those reports, the SCPD Chief of Police directed Detective Lieutenant
3 Stephen Hernandez, who was then the head of the SCPD Special Victims
4 Unit, to draft a letter to notify registrants of the PFML verification visits and
5 to “encourage[] cooperation.” App’x 1550. On July 22, 2013, Detective
6 Lieutenant Hernandez sent a letter to all SORA registrants on SCPD
7 letterhead stating that PFML will visit registrants’ homes and request to see
8 a photographic identification with current address information. It states
9 that registrants are “required to provide” residential and employment
10 address information under SORA. App’x 1767. According to Detective
11 Lieutenant Hernandez, after the letter was sent, the issue with
12 noncompliance “seem[ed] to have gone away.” App’x 1544. At the end of
13 the first year, PFML reported a 99% cooperation rate from registrants.

14 PFML conducted 2,640 home verification visits from May 1, 2013,
15 through April 30, 2014, and found that approximately 13% of registered
16 home addresses conflicted with information collected by RVRs. PFML

1 referred 173 “failures to register home address felony leads” to SCPD during
2 that first year of the program. App’x 1624. While there is no information in
3 the record concerning the number of arrests based on the tips transmitted
4 that year, in the first three years of the program, SCPD arrested nineteen
5 registrants for SORA violations based on PFML tips.

6 **B. Factual Background to this Case**

7 In 1992, Plaintiff-Appellant John Jones, proceeding here by
8 pseudonym, was convicted of crimes for which he was incarcerated for four
9 years. Jones was released in April 1996 and was required to register as a sex
10 offender under SORA. He was initially classified as a Level-Two offender,
11 but was reclassified in 2004 as a Level-One offender.

12 In August 2013, two RVRs rang the doorbell at the Joneses’ home
13 while Jones was showering. Mrs. Jones answered the door and permitted
14 the men to wait for Jones, assuming they were police officers based on their

1 identification cards and apparel.⁵ Approximately fifteen minutes later,
2 Jones met the RVRs who were waiting on the walkway leading to his steps,
3 about five feet from the front door. One of the RVRs asked to see Jones's
4 driver's license, which he kept in his vehicle parked on the street, to verify
5 his address. The men walked to Jones's car, where he produced the driver's
6 license. The RVRs wrote down some information and told Jones that they
7 "may see [him] at [his] job," then left. App'x 204.

8 The following year, in July 2014, RVRs again visited Jones's home to
9 verify his SORA information. Jones again met the RVRs in front of his home
10 and, upon request, Jones retrieved his license from his vehicle parked on the
11 street. The interaction lasted approximately two minutes.

12 During neither interaction did the RVRs threaten, touch, or treat Jones
13 disrespectfully. However, Jones contends that the interactions caused him
14 public embarrassment and, as a result, he stopped going to his children's

⁵ The contract between PFML and SCPD required RVRs to wear photographic identification badges that identified the bearers as PFML agents. However, it prohibited RVRs from wearing badges that resembled law enforcement badges.

1 school and athletic activities, and does not “go out” as much as he used to.⁶
2 App’x 212.

3 On March 16, 2016, Jones was removed from the SORA registry after
4 he completed his required twenty years of registration.⁷

5 **C. Procedural Background**

6 On January 9, 2015, Jones filed the complaint in this action alleging,
7 as relevant here, a claim for damages under 42 U.S.C. § 1983 against both
8 PFML and the County, based on the alleged deprivation of his Fourth
9 Amendment right to be free from unreasonable searches and seizures, and
10 related state-law claims.⁸ The district court granted summary judgment in

⁶ While Jones testified that the home verification visits caused his embarrassment and withdrawal from activities, he also gave arguably conflicting testimony that his distress was caused by an unrelated incident that occurred around the same time as the first visit, in which his daughter’s school district sent a flyer to “[t]he whole town” containing Jones’s photograph and sex-offender status. App’x 196.

⁷ Under SORA, Level-One offenders must fulfill registration requirements for a period of twenty years from the initial date of registration, while Level-Two and -Three offenders must register for life. N.Y. CORRECT. L. § 168-h.

⁸ Jones also alleged due process claims that were dismissed by the district court for failure to state a claim and are not at issue on appeal. In addition to the damages he seeks here, he also sought prospective injunctive relief based on his Fourth Amendment claim, but clarified at oral argument before this Court that he is no longer pursuing that remedy.

1 favor of the defendants on the § 1983 Fourth Amendment claim, concluding
2 that (1) PFML is a state actor for purposes of liability under 42 U.S.C. § 1983;
3 (2) a triable issue of fact precluded summary judgment on the issue of
4 whether Jones was “seized” within the meaning of the Fourth Amendment;
5 but (3) assuming Jones was seized, the seizures were reasonable under the
6 special needs doctrine. Having dismissed all of Jones’s federal-law claims,
7 the court declined to exercise supplemental jurisdiction over his remaining
8 state-law claims and dismissed those claims without prejudice. Jones
9 appealed the grant of summary judgment as to his § 1983 Fourth
10 Amendment claim.

11 **II. STANDARD OF REVIEW**

12 We review the district court’s determination on summary judgment
13 *de novo*. *Summa v. Hofstra Univ.*, 708 F.3d 115, 123 (2d Cir. 2013). In doing
14 so, we apply the same standard that the district court applied, affirming a
15 grant of summary judgment only where “there are no genuine disputes
16 concerning any material facts, and where the moving party is entitled to
17 judgment as a matter of law.” *Id.* (internal quotation marks omitted)

1 Whether undisputed facts rise to the level of a constitutional violation is a
2 question of law that we review *de novo*. See *Muehler v. Mena*, 544 U.S. 93, 98
3 n.1 (2005) (citing *Ornelas v. United States*, 517 U.S. 690, 697–99 (1996)).

4 **III. DISCUSSION**

5 To prevail on his claim under 42 U.S.C. § 1983, Jones must show “the
6 violation of a right secured by the Constitution and laws of the United
7 States” and that “the alleged deprivation was committed by a person acting
8 under color of state law.” *West v. Atkins*, 487 U.S. 42, 48 (1988).⁹ On appeal,
9 Jones contends that the district court erred in finding that the verification
10 visits to his home did not violate the Fourth Amendment because, in the
11 district court’s view, they constituted reasonable seizures under the special
12 needs doctrine.¹⁰ PFML urges us to affirm on that issue or, in the alternative,

⁹ A claim for civil liability under 42 U.S.C. § 1983 can be maintained against a local governmental entity only if it satisfies the requirements articulated by *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658 (1978). Neither PFML nor the County has argued on appeal that it is not a proper party to this action, and we therefore do not address that issue.

¹⁰ While the complaint alleged that defendants deprived Jones of his right to be free from unreasonable searches and seizures, on appeal he argues only that PFML’s alleged seizures of him were unreasonable.

1 to determine that the district court erred in refusing to grant summary
2 judgment on two threshold issues: that (1) PFML was not a state actor
3 against whom a § 1983 claim may be brought; and (2) the RVRs did not
4 “seize” Jones in conducting the two verification visits.¹¹ We need not
5 address PFML’s alternative arguments because we conclude that, even if the
6 state action and seizure questions were to be decided in Jones’s favor, the
7 special needs doctrine warrants the district court’s award of summary
8 judgment to defendants.

9 To explain that conclusion, we begin with the Fourth Amendment,
10 which “does not proscribe all searches and seizures, but only those that are
11 unreasonable.” *Skinner v. Ry. Labor Execs.’ Ass’n*, 489 U.S. 602, 619 (1989).
12 Generally, a seizure amounting to an arrest “is not reasonable unless it is
13 accomplished pursuant to a judicial warrant issued upon probable cause.”
14 *Id.* Similarly, a stop, during which a person is seized only briefly, usually

¹¹ The County does not challenge those threshold conclusions by the district court on appeal.

1 for purposes of crime prevention and investigation, is not reasonable unless
2 supported by facts affording a “particularized and objective basis for
3 suspecting legal wrongdoing.” *United States v. Arvizu*, 534 U.S. 266, 273
4 (2002) (internal quotation marks omitted); see *Terry v. Ohio*, 392 U.S. 1, 21–25
5 (1968). Nonetheless, courts have allowed limited exceptions to these general
6 seizure rules. Under one such exception, the special needs doctrine, courts
7 have “recognize[d] as constitutionally reasonable . . . temporary seizures
8 that serve ‘special needs beyond the normal need for law enforcement,’
9 where ‘the warrant and probable-cause requirement are impracticable.’”
10 *Berg v. Kelly*, 897 F.3d 99, 106 (2d Cir. 2018) (quoting *Skinner*, 489 U.S. at 619)
11 (internal alteration omitted).

12 The special needs doctrine applies only in “exceptional
13 circumstances.” *New Jersey v. T.L.O.*, 469 U.S. 325, 351 (1985) (Blackmun, J.,
14 concurring); see also *Chandler v. Miller*, 520 U.S. 305, 309 (1997) (describing
15 the special needs exception as “closely guarded”).¹² To satisfy the special

¹² Many of the cases on which we rely to determine whether the alleged seizures of Jones served special needs arose in the search context; however, we find those cases applicable

1 needs test, the government must identify a substantial non-law enforcement
2 interest justifying “a Fourth Amendment intrusion.” *Chandler*, 520 U.S. at
3 314. If the government meets that burden, then we “undertake a context-
4 specific inquiry, examining closely the competing private and public
5 interests advanced by the parties.” *Id.* at 306. Where the liberty interests
6 implicated by the seizure are minimal, and “where an important
7 governmental interest furthered by the intrusion would be placed in
8 jeopardy by a requirement of individualized suspicion, a [seizure] may be
9 reasonable despite the absence of such suspicion.” *Id.*

10 **A. Special Need**

11 To qualify as a special need, the governmental interest in the objective
12 must be “substantial”; that is, “sufficiently vital to suppress the Fourth
13 Amendment’s normal requirement of individualized suspicion.” *Chandler*,
14 520 U.S. at 318. In determining whether a search or temporary seizure

in the challenged context of temporary seizures. *See, e.g., Berg v. Kelly*, 897 F.3d at 106 (relying on cases from search context to determine whether temporary seizures of protestors served a special need).

1 served a special need, courts look to whether it “serves as its immediate
2 purpose an objective distinct from the ordinary evidence gathering
3 associated with crime investigation.” *United States v. Amerson*, 483 F.3d 73,
4 81 (2d Cir. 2007) (internal quotation marks and alterations omitted). A
5 policy may have “multiple purposes,” including one “directly related to
6 crime control,” but so long as the “‘primary purpose’ is a government
7 interest other than crime control . . . the mere fact that crime control
8 is *one* purpose . . . does not bar the application of the special needs doctrine.”
9 *Lynch v. City of New York*, 589 F.3d 94, 102 (2d Cir. 2009) (*Lynch I*) (internal
10 quotation marks omitted).

11 The focus of the “primary purpose” inquiry is on the “immediate
12 objective of the challenged . . . program, not its ultimate goal.” *Lynch v. City*
13 *of New York*, 737 F.3d 150, 158 (2d Cir. 2013) (*Lynch II*) (internal quotation
14 marks omitted). “Because law enforcement involvement always serves
15 some broader social purpose or objective,” reliance on a program’s ultimate
16 purpose—rather than immediate objective—risks immunizing “virtually

1 any” warrantless search or seizure. *Ferguson v. City of Charleston*, 532 U.S.
2 67, 84 (2001). Therefore, where a program has an ultimate goal that is
3 unrelated to law enforcement, if it uses the “threat of law enforcement . . .
4 as a means to an end,” the immediate objective does not serve a special need.
5 *Id.* at 83–84. To determine a program’s “immediate objective,” we “conduct
6 a close review” and consider “all the available evidence.” *Lynch II*, 737 F.3d
7 at 157–58 (internal quotation marks omitted).

8 On multiple occasions, we have found that laws affecting convicted
9 sex offenders served special needs as their immediate objectives. In *Doe v.*
10 *Cuomo*, we upheld, under the special needs doctrine, amendments to
11 SORA’s registration requirements that extended the period of registration
12 and eliminated certain forms of relief from those requirements. 755 F.3d 105
13 (2d Cir. 2014). We held that “any searches or seizures required by SORA
14 serve special needs—such as the protection of potential future victims and
15 the solving of crimes in the future—and purport neither to facilitate the
16 investigation of any specific crime nor primarily to serve a ‘general interest

1 in crime control.” *Id.* at 115 (quoting *Nicholas v. Goord*, 430 F.3d. 652, 663
2 (2d Cir. 2005)).¹³ Similarly, in *Roe v. Marcotte*, we upheld, under the special
3 needs doctrine, a Connecticut statute requiring individuals incarcerated for
4 sex offenses to submit DNA samples to a data bank. 193 F.3d 72 (2d Cir.
5 1999). We held that program served the government’s significant interest in
6 solving past and future crimes, and deterring sex offenders from
7 reoffending in the future. *Id.* at 79–80.

8 On a close review of the verification program here, we analyze first
9 the stated purpose of the program and then its implementation. *See Nicholas*
10 *v. Goord*, 430 F.3d at 668 (reviewing public statements and legislative history
11 concerning challenged program to determine whether it served a special
12 need); *Lynch II*, 737 F.3d at 159–62 (reviewing text and implementation of

¹³ Jones argues that the reasoning of *Doe v. Cuomo* does not apply because SORA’s self-reporting requirements “are not at all similar to the invasive intrusions into the home at issue in this case.” Appellant’s Reply 15. While the intrusiveness and location of the visits are relevant to determine whether the alleged seizures were reasonable, those considerations are not relevant to determine whether the primary purpose of the program was law enforcement. We consider the nature and location of the alleged seizures in balancing the government’s need with Jones’s liberty interest *infra*.

1 challenged policy to determine whether it served a special need). We
2 conclude that the verification program serves a special need similar to those
3 identified in *Doe* and *Roe*: reducing sex offender recidivism by improving
4 the accuracy of the registry.

5 As the contract between SCPD and PFML reflects, the stated purpose
6 of the verification program under the Community Protection Act is to
7 “verif[y] . . . residency reporting of all registered sex offenders.” App’x 343.
8 The legislative history for the Act reflects the same goal. When presenting
9 the proposal for the program to County legislators, for example, the County
10 Chief of Police stated that “[i]t’s been proven that [the] sex offender registry
11 reduces sex offender recidivism. However, the registry is only good if it’s
12 accurate.” App’x 1826-27.

13 PFML’s leadership described how an accurate registry reduces
14 recidivism. The organization’s executive director testified that the program
15 arose out of complaints from community members that the registry was
16 inaccurate and that the community relies on the registry as “a tool” to “make

1 good decisions about [with] who[m] they allow[] their children to have
2 relationships.” App’x 355. The director stated that research shows that
3 registrants have lower rates of recidivism when they are listed accurately in
4 the registry, but that the registry “needs to be up to date and accurate for it
5 to have efficacy.” App’x 357. PFML’s controller testified that the registry
6 served the purpose of “provid[ing] accurate information to members of the
7 community so that they can . . . make informed decisions on protecting our
8 most vulnerable.” App’x 408. He further testified that the verification
9 program thus served the purpose to “ensure that information provided on
10 the registry was accurate.” App’x 408.

11 The record of the implementation of the program further supports the
12 conclusion that the program did not serve an immediate objective of law
13 enforcement. Over the first three years the program was in effect PFML
14 conducted thousands of home verification visits and referred hundreds of
15 “failures to register home address felony leads” to SCPD for further
16 investigation. App’x 1624. Despite that large volume, SCPD arrested only

1 nineteen people based on PFML tips.¹⁴ Although the fact that tips led to
2 arrests in nineteen cases supports the conclusion that the program, in part,
3 served a law-enforcement purpose, the record does not support a
4 conclusion that the *immediate* objective of the program was “ordinary
5 evidence gathering associated with crime investigation.” *Amerson*, 483 F.3d
6 at 81.

7 In addition, although not alone dispositive, the information
8 transmitted by PFML did not constitute *per se* evidence of a crime. In *Lynch*
9 *I* and *II*, we reviewed a New York City Police Department policy requiring
10 any officer who discharges his or her weapon and causes death or injury to
11 submit to a breathalyzer test soon after the incident. *Lynch I*, 589 F.3d at 97;
12 *Lynch II*, 737 F.3d at 152. We upheld the policy under the special needs
13 doctrine because it served primarily “personnel management” needs. *Lynch*
14 *II*, 737 F.3d at 159. We determined that while the breathalyzer tests also

¹⁴ The record contains information only concerning the number of referrals made in the first year of the program: 173. App’x 1624. Assuming a constant number of referrals over the next two years, the rate at which referrals were converted to arrests is less than 4%.

1 served a law enforcement purpose because test results might “*ultimately*
2 provide evidence relevant to a criminal prosecution,” the record did not
3 support the conclusion that the “*immediate* object of . . . testing is the
4 procurement of criminal evidence in order to prosecute the police officer in
5 question.” *Id.* We relied in part on the fact that an elevated blood alcohol
6 content was not, itself, evidence of a crime and that the tests had never been
7 used as evidence in a criminal prosecution related to the weapons discharge.
8 *Id.*

9 Similarly here, while PFML worked with SCPD to ensure it collected
10 information in a way that met evidentiary standards, after receiving a tip
11 from PFML that a registrant reported incorrect information, SCPD had to
12 investigate to develop a record of probable cause before making an arrest.
13 For example, a registrant would not be in violation of SORA by having an
14 incorrect address on file if the registrant remained within the ten-day grace
15 period to report change-of-address information under SORA. *See* N.Y.
16 CORRECT. L. § 168-f(4).

1 It is also clear that the verification program did not use the “threat of
2 law enforcement . . . as a means to an end.” *Ferguson*, 532 U.S. at 83–84.
3 Instead, the program promoted the state’s goal of reducing recidivism
4 largely through means unrelated to criminal prosecution. By improving the
5 accuracy of the registry, the program informed community members of
6 potential risks to help them “make informed decisions” and guard against
7 the possibility of reoffending registrants. App’x 408. An accurate registry
8 also deters registrants from reoffending, as is evidenced by the fact that
9 registered offenders have lower rates of recidivism than those who fail to
10 register.

11 In sum, the program advances the government’s substantial interest
12 in reducing sex offender recidivism by improving the accuracy of the
13 registry. Thus, the program serves a special need “beyond the normal need
14 for law enforcement.” *Lynch II*, 737 F.3d at 157 (internal quotation marks
15 omitted).

1 **B. Balancing of Interests**

2 “[T]he fact that the government has a ‘special need’ does not mean
3 the . . . seizure is ‘automatically, or even presumptively’ constitutional.”

4 *Amerson*, 483 F.3d at 83 (quoting *Illinois v. Lidster*, 540 U.S. 419, 425 (2004)).

5 Instead, we must balance the government’s need against the plaintiff’s
6 liberty interest to determine whether the alleged seizures were reasonable.

7 We balance four factors:

- 8 (1) the weight and immediacy of the government interest;
9 (2) the nature of the liberty interest allegedly compromised by
10 the detention; (3) the character of the deprivation imposed by
11 the detention; and (4) the efficacy of the detention in advancing
12 the government interest.

13 *Berg v. Kelly*, 897 F.3d at 108 (internal quotation marks and alterations
14 omitted); *see also Lidster*, 540 U.S. at 427–28.

15 The first and fourth factors weigh heavily in the defendants’ favor.

16 Undoubtedly, the government has a substantial interest in reducing sex-

17 offender recidivism. Sex offenders have an unusually high rate of

18 recidivism. *See Smith v. Doe*, 538 U.S. 84, 103 (2003) (“The risk of recidivism

19 posed by sex offenders is ‘frightening and high.’” (quoting *McKune v.*

1 *Lile*, 536 U.S. 24, 34 (2002)). The verification program aims to reduce
2 recidivism in Suffolk County by providing community members with
3 accurate information to protect themselves and by deterring registrants
4 from reoffending. Indeed, an accurate registry has been shown to reduce
5 sex-offender recidivism. In addition, the use of home visits is a narrowly-
6 tailored method for verifying home-address information, and thus “bears a
7 close and substantial relation” to the state’s special need. *See Nat’l Treasury*
8 *Emps. Union v. Von Raab*, 489 U.S. 656, 676 (1989). The program effectively
9 improved the accuracy of the registry, identifying approximately 13% of
10 registrants whose self-reported home-address information conflicted with
11 their real addresses. Thus, the efficacy of the program and immediacy of
12 the government interest weigh heavily in favor of a finding that the alleged
13 seizures were reasonable.

14 The third factor, concerning the character of the deprivation, also
15 weighs heavily in the defendants’ favor. The detention was brief and
16 unobtrusive. The address verification process lasted mere minutes, and the

1 RVRs did not request information other than Jones's address and did not
2 touch him or treat him in a threatening or rude manner.

3 The second factor, concerning the nature of the liberty interest, also
4 does not provide significant support for Jones. It is well-established that
5 specific groups, because of "the special nature of their situation" and "the
6 fact that they are notified in advance" of the policy, "enjoy a diminished
7 expectation of privacy" in certain information. *United States v. Lifshitz*, 369
8 F.3d 173, 186 (2d Cir. 2004); *see also Vernonia Sch. Dist. 47J v. Acton*, 515 U.S.
9 646, 654 (1995) ("[T]he legitimacy of certain privacy expectations vis-à-vis
10 the State may depend upon the individual's legal relationship with the
11 State."); *cf. MacWade v. Kelly*, 460 F.3d 260, 269 (2d Cir. 2006) (recognizing
12 that "in most special needs cases the relevant privacy interest is somewhat
13 limited," but concluding that such a diminished interest is not "a *sine qua*
14 *non* of special needs analysis" (internal quotation marks and citation
15 omitted)). As a registered sex offender, Jones was obligated by state law to
16 periodically provide his home-address information to the state, and he was

1 given advance notice of that obligation through SORA and the letter from
2 SCPD announcing the verification program. Jones undoubtedly had a
3 diminished expectation of privacy in that information, and by extension
4 lacked a substantial interest in freedom from temporary seizure for the
5 purpose of providing that information to the state.

6 Jones argues that he has a paramount interest in freedom from
7 government intrusion in his home and, by extension, into the curtilage of
8 his home. Without a doubt, “[w]hen it comes to the Fourth Amendment,
9 the home is first among equals.” *United States v. Allen*, 813 F.3d 76, 77 (2d
10 Cir. 2016) (quoting *Florida v. Jardines*, 569 U.S. 1, 6 (2013)). To the extent that
11 the location of the alleged seizures on the curtilage of his home enhances
12 Jones’s liberty interest, that location alone is insufficient to cause this factor
13 to outweigh the other factors.¹⁵

¹⁵ In making this argument, Jones relies on the Supreme Court’s decision in *Jardines*, which arose in the search context, for the proposition that the curtilage of the home “enjoys protection as part of the home itself.” *Jardines*, 569 U.S. at 6. Neither the parties nor the district court addressed whether *Jardines* and its progeny apply equally to the seizure context, in which “the Fourth Amendment has drawn a firm line at the entrance to the house,” affording individuals heightened protection beyond the threshold of their homes. *Payton v. New York*, 445 U.S. 573, 590 (1980). Compare *Allen*, 813 F.3d at 82 (concluding,

1 Balancing those factors, we conclude that the district court correctly
2 determined that the verification visits, which served a special need, were
3 reasonable, even if they constituted seizures. Accordingly, Jones has not
4 asserted a constitutional deprivation for the purposes of his § 1983 claim and
5 it fails as a matter of law.

6 **IV. CONCLUSION**

7 For the foregoing reasons, we **AFFIRM** the judgment of the district
8 court.

without discussion of the curtilage, that “where law enforcement officers have summoned a suspect to the door of his home, and he remains inside the home’s confines, they may not effect a warrantless ‘across the threshold’ arrest in the absence of exigent circumstances”), *with United States v. Alexander*, 888 F.3d 628, 631 (2d Cir. 2018) (concluding that “a search of the curtilage that occurs without a warrant based on probable cause or an exception to the warrant requirement violates the Fourth Amendment”). We need not resolve that issue because we find that any alleged temporary seizures here were reasonable in any event.

**United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007**

ROBERT A. KATZMANN
CHIEF JUDGE

Date: September 04, 2019
Docket #: 18-1602cv
Short Title: Jones v. County of Suffolk

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

DC Docket #: 15-cv-111
DC Court: EDNY (CENTRAL
ISLIP)
DC Judge: Seybert
DC Judge: Lindsay

BILL OF COSTS INSTRUCTIONS

The requirements for filing a bill of costs are set forth in FRAP 39. A form for filing a bill of costs is on the Court's website.

The bill of costs must:

- * be filed within 14 days after the entry of judgment;
- * be verified;
- * be served on all adversaries;
- * not include charges for postage, delivery, service, overtime and the filers edits;
- * identify the number of copies which comprise the printer's unit;
- * include the printer's bills, which must state the minimum charge per printer's unit for a page, a cover, foot lines by the line, and an index and table of cases by the page;
- * state only the number of necessary copies inserted in enclosed form;
- * state actual costs at rates not higher than those generally charged for printing services in New York, New York; excessive charges are subject to reduction;
- * be filed via CM/ECF or if counsel is exempted with the original and two copies.

**United States Court of Appeals for the Second Circuit
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VERIFIED ITEMIZED BILL OF COSTS

Counsel for

respectfully submits, pursuant to FRAP 39 (c) the within bill of costs and requests the Clerk to prepare an itemized statement of costs taxed against the

and in favor of

for insertion in the mandate.

Docketing Fee _____

Costs of printing appendix (necessary copies _____) _____

Costs of printing brief (necessary copies _____) _____

Costs of printing reply brief (necessary copies _____) _____

(VERIFICATION HERE)

Signature