Public Assistance for the Price of Privacy: Leaving the Door Open on Welfare Home Searches

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It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England cannot enter—all his forces dare not cross the threshold of the ruined tenement!

I. INTRODUCTION

In 1997, San Diego County commenced “Project 100%,” a program that conditioned the receipt of welfare benefits on the recipient’s consent to a “home visit” or “walk-through” of his or her home by an investigator from the District Attorney’s Office. Law enforcement sought to “‘redouble’ its efforts to combat fraud and ‘assure program integrity.’” Proponents of the program called it eligibility verification; opponents called it a warrantless search in violation of welfare recipients’ Fourth Amendment rights. Even late-night comedian Stephen Colbert got involved in the debate. He compared one’s constitutional rights to the amenities of a new car and noted that welfare recipients had rights, just not the “premium package.” Other communities took notice and created programs similar to the one in San Diego. The program even garnered the attention of members of the California legislature.

In Sanchez v. County of San Diego, the Ninth Circuit Court of Appeals held that conditioning the receipt of welfare assistance on mandatory home visits did not violate welfare recipients’ constitutional rights. According to the court, San Diego investigators’ home visits did not qualify as “searches” within the meaning

2. Sanchez v. County of San Diego, 464 F.3d 916, 918-19 (9th Cir. 2006).
3. Opening Brief for Plaintiffs-Appellants at 10, Sanchez, 483 F.3d 965 (No. 04-55122).
4. Compare Brief for Appellee at 1, Sanchez, 483 F.3d 965 (No. 04-55122) (“The investigators are not trying to get an applicant to confess to a crime, but are trying to confirm the applicant’s eligibility for CalWORKs benefits.”) with Opening Brief for Petitioner-Appellant, supra note 3, at 4 (stating that the program is a “systematic invasion[] of the homes of the poor—with free-wheeling inspections of their bedroom closets and medicine cabinets”).
6. Colbert Report: Season 3, Episode 3 (Comedy Central television broadcast July 23, 2007) (on file with the McGeorge Law Review) (“The poor get the basic option package, the right to bear arms . . . . The middle class gets a fully loaded Bill of Rights, right to a fair trial, right against self incrimination, even habeas corpus . . . . And the wealthiest among us get the premium package, options that aren’t even in the Constitution.”).
7. Two years after the San Diego program started, the Los Angeles County Board of Supervisors instituted a pilot program based on Project 100%. The Los Angeles program faced legal challenges when plaintiffs sued in California state court alleging that the home visits were violations of state statutes, regulations, and the state constitution. See Smith v. L.A. County, 104 Cal. App. 4th 1104, 1110 (2d Dist. 2002) (indicating that a Los Angeles County Grand Jury investigation examined the San Diego program and recommended that the Los Angeles County Board of Supervisors implement a similar program).
8. California State Senator Tom McClintock authored two bills (SB 786 in the 2005-2006 term as well as SB 269 in the 2006-2007 term), both of which failed passage in the Senate Human Services Committee. See SENATE HUMAN SERVICES COMMITTEE, COMMITTEE ANALYSIS OF SB 269, at 3 (Apr. 24, 2007) (noting that San Diego’s program would serve as the “prototype” for the bill).
9. Sanchez v. County of San Diego, 464 F.3d 916, 922-23 (9th Cir. 2006).
of the Fourth Amendment. Thus, Fourth Amendment protections would extend to suspected criminals but not to the rights of law-abiding citizens applying for public assistance. The appellate court further held that the home visits, had they in fact been “searches,” would have been reasonable under the Fourth Amendment.

The case sparked passionate points of view on both sides of the issue. When a majority of the judges from the Ninth Circuit voted to deny rehearing the case en banc, Judge Pregerson dissented and called the program an “[a]ssault on the [p]oor.” He further added:

This is especially atrocious in light of the fact that we do not require similar intrusions into the homes and lives of others who receive government entitlements. The government does not search through the closets and medicine cabinets of farmers receiving subsidies. They do not dig through the laundry baskets and garbage pails of real estate developers or radio broadcasters. The overwhelming majority of recipients of government benefits are not the poor, and yet this is the group we require to sacrifice their dignity and their right to privacy.

The plaintiffs petitioned the Supreme Court for certiorari, but the Supreme Court denied review.

This Comment argues that such home visits constitute an unreasonable search within the meaning of the Fourth Amendment. Proponents of San Diego’s program claim that it serves several important functions: it curbs welfare fraud, saves limited public funds for the truly needy, and assures integrity in the system. While these measures arguably serve such purposes, the program does

10. Id. at 931. “[The Supreme Court case of] Wyman . . . addresses this very concern and reaches the opposite conclusion that even though the consequence of refusing a home visit is the denial of benefits, ‘the choice is entirely the applicant’s, and nothing of constitutional magnitude is involved.’” Id. at 927 n.15 (quoting Wyman v. James, 400 U.S. 309, 325 (1971) (emphasis in original)).
11. Id. at 931.
12. Compare Editorial, A Loss for Privacy Rights, N.Y. TIMES, Nov. 28, 2007, at 30 (“It is a fun-house mirrors version of constitutional analysis for a court to say that government agents are not conducting a search when they show up unannounced in a person’s home and rifle through her bedroom dresser.”) with Cully Stimson, San Diego Prosecutors Devise Welfare Fraud Strategy, Jan. 3, 2008, http://www.foxnews.com/story/0,2933,320049,00.html (on file with the McGeorge Law Review) (“These days, you hear lots of folks talk about the ‘right’ to this, and the ‘right’ to that. In most of these cases, there is no constitutional right involved at all—merely a desire by the speaker to make something a right, usually out of whole cloth.”).
13. Sanchez, 483 F.3d at 968 (Pregerson, J., dissenting).
14. Id. at 969.
16. See Mortimer B. Zuckerman, Editorial, Showing the Way on Welfare, U.S. NEWS & WORLD REP., May 22, 1995, at 72 (“Anytime you can reduce the number of people on any public program who aren’t qualified to be on it, [you] bring a sense of integrity, and taxpayers don’t feel they are being ripped off.” (quoting President Bill Clinton)).
so by intruding on the recipients’ privacy.\textsuperscript{17} The government’s purpose of preserving taxpayer funds for the needy is a laudable goal. However, as Justice Brandeis noted, “Experience should teach us to be most on our guard to protect liberty when the Government’s purposes are beneficent.”\textsuperscript{18}

Part II of this Comment reviews the history and legal background of home visits in public assistance, from last century’s “friendly visitor” to the modern-day “walk through” of District Attorney investigators. Part III analyzes the reasoning of recent decisions where courts have upheld the validity of welfare home visits. Part IV argues that home visits qualify as “searches” within the meaning of the Fourth Amendment. Part IV further argues that the searches are unreasonable because no recognized exceptions to the Fourth Amendment’s warrant requirements apply. Part V offers possible solutions that would allow the agencies and courts to adapt to the particular needs involved in the administration of public assistance. Specifically, this Comment recommends an approach that requires more individualized suspicion. Such an approach would ensure the receipt of benefits by those who are eligible and eliminate fraud while respecting the privacy interests of all welfare recipients.

II. HISTORICAL PRACTICE OF HOME VISITS

A review of the origins of home visits offers context which aids in further analysis of San Diego’s program. Home visits have been part of public assistance for over a century, but only in the last half of the twentieth century have they entered the judicial spotlight.\textsuperscript{19} Historically, close contact with aid recipients was a regular aspect not only of care but also supervision of the poor.\textsuperscript{20}

A. The “Friendly Visitor” and “Mothers’ Pensions”

Scientific charity movements of the nineteenth century played an influential role in the origins of welfare home visits.\textsuperscript{21} A volunteer from the movement, what

\textsuperscript{17}. See Sanchez, 483 F.3d at 968 (Pregerson, J., dissenting) (“The government’s general interest in preventing fraud cannot justify such highly intrusive searches of homes where no grounds for suspicion exist.”).

\textsuperscript{18}. Parrish v. Civil Serv. Comm’n, 66 Cal. 2d 260, 274 n.18 (1967) (citing Olmstead v. United States, 277 U.S. 438, 479 (1928) (Brandeis, J., dissenting)).

\textsuperscript{19}. See Michael B. Katz, In the Shadow of the Poorhouse: A Social History of Welfare in America 58 (10th ed. 1996) (reviewing several charity groups that relied on home visits to distribute aid); Charles A. Reich, Individual Rights and Social Welfare: The Emerging Legal Issues, 74 YALE L.J. 1245, 1246-51 (1965) (urging lawyers to take an interest in social welfare including such issues as “morals” and “independence”).

\textsuperscript{20}. See Katz, supra note 19, at 76 (noting that home visits were an institutional mechanism for transmitting the values of the city’s middle and upper strata downward into the ranks of the poor).

\textsuperscript{21}. John Gilliom, Overseers of the Poor: Surveillance, Resistance, and the Limits of Poverty 24 (2001); see Katz, supra note 19, at 19 (noting that the goals of scientific charity were to abolish charity known as “outdoor relief” from public view).
one today might consider a “social worker,” visited the recipients’ homes. The “friendly visitor” served not only as an adviser but as an investigator as well. As advisers, charity workers provided assistance to the poor. As investigators, charity workers determined whether recipients were worthy of aid. Distinguishing potential recipients into the “deserving” or “undeserving” was commonplace in such programs. Despite the intrusiveness of home visits, many recipients preferred the practice because meeting with investigators behind closed doors shielded residents from neighbors’ eyes.

The initial purpose behind public assistance was to save society from the increasing cost of indigent children. In 1911, Illinois became the first state to institute such a system. Known as “Mothers’ Pensions,” the program distributed public funds to care for dependent children. It relieved orphanages, foster homes, or other institutions of the costs associated with caring for these children. By 1935, all but two states had enacted “Mothers’ Pensions” laws. Although the system assisted indigent women to care for their children, the focus for those distributing aid was less on relief of poverty and more on exclusion of those deemed undeserving of the aid.

Many charitable organizations found poverty to be a direct consequence of individual depravity. Moral assumptions have influenced views of the poor, and those assumptions manifested themselves in conditions placed on aid. For example, laws insisted that the mother provide a “suitable home” for the children. Massachusetts and Michigan provided that a “suitable home” was one

22. GILLIOM, supra note 21, at 24.
23. KATZ, supra note 19, at 76 (explaining the dual relationship of the friendly visitor as “spy” and “friend”).
24. Id.
25. Id.
26. See GILLIOM, supra note 21, at 26 (“[M]any social workers argue that clients preferred home visits, to protect their privacy against meeting others or being seen by others.”).
27. Theda Skocpol et al., Women’s Associations and the Enactment of Mothers’ Pensions in the United States, 87 AM. POL. SCI. REV. 686, 686 (1993).
29. Id.
30. Skocpol et al., supra note 27, at 686.
31. Id.
32. See generally LINDA GORDON, PITIED BUT NOT ENTITLED: SINGLE MOTHERS AND THE HISTORY OF WELFARE 1890-1935, at 47-48 (1994) (noting that largely white widows were the only ones deemed to be “worthy” of aid while other ethnic and minority groups were excluded).
33. See KATZ, supra note 19, at 76 (noting that visitors would point out to the poor “the degrading tendency of a life of dependence and the real dignity of honest work”).
34. See Thomas Ross, The Rhetoric of Poverty: Their Immorality, Our Helplessness, 79 GEO. L.J. 1499, 1503 (1990) (“In one fashion or another the poor have always been separated by class distinctions and labels. They have been labeled, ‘paupers,’ ‘peasants,’ and ‘strangers.’ They have been cast as different, deviant, and morally weak. These assumptions make coherent the physical separation of the poor from the affluent.”).
35. GILLIOM, supra note 21, at 25 (noting that both Massachusetts and Michigan prohibited male boarders while other states mandated that the religious upbringing of the child be protected).
without male boarders and one that protected the religious upbringing of the child.\textsuperscript{36} Home visits and personal interaction served to distinguish the suitable homes from the non-suitable.\textsuperscript{37} The “friendly visitor,” serving as investigator, was an invaluable tool in that determination.

B. The Social Security Act of 1935 and Beyond

As the demand for public assistance grew during the Great Depression, program administrators continued to rely on home visits to ensure that aid was going only to those who were eligible.\textsuperscript{38} The federal government responded to increased poverty by passing the Social Security Act of 1935.\textsuperscript{39} The legislation created programs designed to address social welfare.\textsuperscript{40} The Social Security Act of 1935 included the Aid to Dependent Children (ADC) program, which adopted most of the provisions previously enumerated in the “Mothers’ Pensions” laws.\textsuperscript{41} Thus, local practices largely remained in place; chief among them was the assumption that “a public assistance client was in need of counseling and rehabilitation and had fewer privacy rights than others.”\textsuperscript{42}

Home visits continued to serve as the chief investigative tool—the most effective way to determine whether the home was “suitable.”\textsuperscript{43} “Man in the house” or “substitute father” rules prohibited any payment to “children of a mother who ‘cohabitat[ed]’ in or outside her home with any single or married able-bodied man.”\textsuperscript{44} Vague definitions of “substitute fathers” encouraged caseworkers to conduct invasive interviews in which they probed the most intimate details of recipients’ personal lives, making the welfare process “‘a humiliating and dehumanizing ordeal.’”\textsuperscript{45} The private life of the recipient was

\begin{thebibliography}{9}
\bibitem{36} Id.
\bibitem{37} KATZ, supra note 19, at 76.
\bibitem{38} GILLIOM, supra note 21, at 25; see Joel F. Handler, “Ending Welfare As We Know It, “: The Win/Win Spin or the Stench of Victory, 5 J. GENDER RACE & JUST. 131, 134 (2001) (explaining that eligibility for benefits centered on distinguishing between those who were “unable to care for themselves” and the “able-bodied”).
\bibitem{39} See Social Security Act, ch. 531, 49 Stat. 620 (1935) (codified as 42 U.S.C. ch. 7) (setting aside funds to enable states to furnish financial assistance to needy children).
\bibitem{40} GILLIOM, supra note 21, at 25.
\bibitem{41} Id. at 26.
\bibitem{42} GORDON, supra note 32, at 296.
\bibitem{43} Jonathan L. Hafetz, A Man’s Home Is His Castle: Reflections on the Home, the Family, and Privacy During the Late Nineteenth and Early Twentieth Centuries, 8 WM. & MARY J. WOMEN & L. 175, 220-21 (2001).
\bibitem{44} King v. Smith, 392 U.S. 309, 311 (1968); see also Hafetz, supra note 43, at 224-25. Contra id. at 333 (holding a state’s substitute father regulation inconsistent with the meaning of “parent” under the Social Security Act).
\bibitem{45} Hafetz, supra note 43, at 225 (quoting Susan B. Bennett, “No Relief But Upon the Terms of Coming into the House”—Controlled Spaces, Invisible Disenitlements, and Homelessness in an Urban Shelter System, 104 YALE L.J. 2157, 2186 (1995)).
\end{thebibliography}
always under scrutiny; mothers routinely had to answer questions regarding sexual behavior or witness investigators interrogate their children.46

C. Legal Background

In the last half of the twentieth century, as participation in public assistance grew and government expenditures increased, demands to enforce the distribution of aid increased as well.47 Legal scholars created a national movement that sought to represent the interests of the poor.48 A broader spectrum of citizens started to receive public assistance: divorced women, deserted women, never-married women, and people of color all took a share of assistance.49 One commentator argues that this broader base of participation led to the proclaimed “crisis” in welfare.50 During the 1960s and 1970s, the federal government took a firmer stance, seeking to stem the increasing costs in the system.51

1. Midnight Raids and Parrish

States stepped up the intrusiveness of the home visits; investigators conducted unannounced home searches, frequently at night.52 In 1967, the California Supreme Court ruled that such searches were an unconstitutional infringement of the recipients’ Fourth Amendment rights.53 In Parrish v. Civil Service Commission, the Alameda County Board of Supervisors directed a series

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47. Hafetz, supra note 43, at 225; see Timothy J. Casey & Mary R. Mannix, Quality Control in Public Assistance: Victimizing the Poor Through One-Sided Accountability, 22 CLEARINGHOUSE REV. 1381, 1382 (1989) (“The average monthly number of families receiving AFDC more than tripled, from one million in 1965 to three and one-half million in 1975.”). Cf. Ross, supra note 34, at 1504-05 (“Many American communities in the late eighteenth and early nineteenth centuries concluded that even the burden of providing assistance to members of the community had become too great . . . . The solution was to purge the undeserving poor from the system of public assistance.”).
48. See generally Goldberg v. Kelly, 397 U.S. 254, 270-71 (1970) (granting procedural due process rights to welfare recipient faced with termination of benefits); Charles A. Reich, The New Property, 73 YALE L.J. 733 (1964) (proposing that government-created entitlements, such as welfare assistance, amount to property, not charity).
49. In fact, ADC only furnished support for the needs of the children; it was not until 1962 that caretakers were included and the name of the program changed to Aid to Families with Dependent Children (AFDC). See Handler, supra note 38, at 135-36 (“In streamed the previously excluded—African-Americans, the divorced, the separated, the deserted, and the never-married.”).
50. Handler, supra note 38, at 135-36.
51. Id.; see also Casey & Mannix, supra note 47, at 1382 (noting that the Nixon administration’s stringent “Quality Control” measures attempted, albeit unsuccessfully, to sanction states that made overpayments greater than the federal government’s “tolerance” level).
52. See generally Charles A. Reich, Midnight Searches and the Social Security Act, 72 YALE L.J. 1347 (1962) (a major voice in welfare advocacy, Reich analyzed the growing trend of unannounced searches at night designed to apprehend unaccounted-for males residing in the applicant’s home).
of early dawn raids on the homes of welfare recipients in hopes of finding “unauthorized males.” Welfare officials began the raids, known as “Operation Bedcheck,” at 6:30 in the morning. Parrish, a welfare agency employee, refused to participate, and the agency fired him. He sought to be reinstated, claiming that he acted reasonably in not following the unconstitutional demands of his superiors. The Parrish court addressed the constitutionality of the searches to determine whether Parrish had reasonable grounds for his refusal. The California Supreme Court held that the suspicionless searches and the manner in which they were conducted violated the welfare recipients’ Fourth Amendment right to be secure in their homes.

2. The Supreme Court Approves of Welfare Home Visits

*Wyman v. James* was the seminal decision in validating home visits as a condition of receiving welfare benefits. Mrs. James and her infant son resided in New York City. Shortly before her son’s birth, Mrs. James applied for public assistance. New York’s Aid to Families with Dependent Children (AFDC) program required home visits to determine applicant eligibility. When she first applied for the aid, a caseworker entered Mrs. James’ home, conducted a visit, and confirmed her eligibility. Two years later, Mrs. James refused the caseworker’s request to enter the home. The agency terminated Mrs. James’ public assistance. She challenged the program and argued that the mandatory home visit violated her Fourth Amendment rights.

Justice Blackmun’s majority opinion for the Court delivered to welfare advocates what one scholar termed a “double-barrel” blow. First, the Court ruled that the agency’s home visit did not constitute a “search” under the Fourth Amendment. The applicant’s unfettered choice to deny consent with no criminal consequences played a role in whether to apply Fourth Amendment

54. Id. at 263, n.2 (describing an “unauthorized male” as any “adult male ‘assuming the role of spouse’ to the child’s mother, whether married to her or not”).
55. Id. at 263.
56. Id. at 274 (“Even if we were to assume that a public demonstration of the contemplated type might tend to further the purposes of the welfare program, any such speculative benefit must yield before the far more immediate and substantial right of innocent persons to be secure in their homes.”).
60. Id.
61. Id. at 313, 320.
62. Id. at 313.
63. Id.
64. Id. at 309.
safeguards.\textsuperscript{67} Since the applicant’s denial of a caseworker’s visit would result in nothing more than denial of aid, there was no criminal context in which to find a “search.”\textsuperscript{68} The caseworker would not force his or her way into the home, nor would the caseworker seek a warrant to mandate entry.\textsuperscript{69} In the Court’s view, “[t]here is no entry of the home and there is no search.”\textsuperscript{70} Therefore, removed from any criminal context, the government action lay outside the scope of the Fourth Amendment.\textsuperscript{71}

Second, the Court ruled that had the visits been considered searches, they would not be “unreasonable” within the meaning of the Fourth Amendment.\textsuperscript{72} The Court enumerated eleven reasons why it believed the searches “did not descend to the level of unreasonableness.”\textsuperscript{73} Following the analysis in \textit{Terry v. Ohio},\textsuperscript{74} the Court mentioned, “‘the specific content and incidents of [the Fourth Amendment] right must be shaped by the context in which it is asserted.’”\textsuperscript{75} The Court then listed the factors it used to find that the visits were not unreasonable: (1) the state’s paramount interest in the welfare and protection of the child;\textsuperscript{76} (2) the state’s assurance that the beneficiaries of aid are the intended objects; (3) the public’s interest in knowing how its funds are utilized; (4) the caseworker’s close contact with the beneficiary that leads to “strengthening family life” and “maxim[izing] self-support”; (5) the history of the home visit as the “heart” of welfare administration; (6) the minimal “burden” on the recipient; (7) Mrs. James’ lack of specific allegations of intrusion; (8) the welfare agency’s lack of alternative practical means to obtain eligibility information; (9) the characteristics of the actor conducting the search as a “caseworker of some training”; (10) the fact that the visit did not constitute a criminal investigation; and (11) the inapplicability and adversarial nature of the warrant procedure.\textsuperscript{77} The Court did not indicate which factors it weighted most heavily, but peppered the factors with language referring to the “gentle means” of the visitation as well as its “personal, rehabilitative orientation.”\textsuperscript{78}

\begin{itemize}
\item \textsuperscript{67} \textit{Id.} at 317-18 (“If consent to the visitation is withheld, no visitation takes place. The aid then never begins or merely ceases, as the case may be. There is no entry of the home and there is no search.”).
\item \textsuperscript{68} \textit{Id.}
\item \textsuperscript{69} \textit{Id.}
\item \textsuperscript{70} \textit{Id.}
\item \textsuperscript{71} \textit{Id.} at 317.
\item \textsuperscript{72} \textit{Id.} at 318.
\item \textsuperscript{73} \textit{Id.}
\item \textsuperscript{74} 392 U.S. 1, 21-22 (1968).
\item \textsuperscript{75} \textit{Wyman}, 400 U.S. at 318 (quoting \textit{Terry v. Ohio}, 392 U.S. 1, 9 (1968)).
\item \textsuperscript{76} \textit{Id. But see} Ross, \textit{supra} note 34, at 1524-25 (arguing that such an assumption that the mother would act contrary to the interests of her child “would offend any mother and would be an unlikely premise in the societal rhetoric outside the context of welfare and poverty”).
\item \textsuperscript{77} \textit{Wyman}, 400 U.S. at 318-24.
\item \textsuperscript{78} \textit{Id.} at 319-20.
\end{itemize}
The Court’s holding narrowly addressed the visits under New York statutes, and distinguished the early morning raids of Parrish. The Court noted, “Our holding today does not mean, of course, that a termination of benefits upon refusal of a home visit is to be upheld against constitutional challenge under all conceivable circumstances.”

3. Post-Wyman Decisions

Courts have relied on Wyman to determine the legality of home visits. Two decisions from lower courts illustrate how courts distinguish and follow Wyman. In Reyes v. Edmunds, a Minnesota district court invalidated a mobile fraud enforcement unit that conducted surprise investigations at the homes of public assistance recipients. The government contended that the searches were valid because the recipients had consented, and the searches were in a “social,” not “criminal,” context. The district court further added, “[n]o one will contend that the duty and trust imposed upon the Welfare Department to assure that public funds are expended properly is not of great significance and fraught with practical difficulties. But the integrity of financial assistance programs must be preserved only by utilizing reasonable administrative procedures.”

On the other hand, S.L. v. Whitburn followed Wyman’s holding that home visits were not “searches” and thus did not constitute a violation of Fourth Amendment rights. In Whitburn, aid recipients challenged a Milwaukee program’s procedures authorizing welfare home visits. The Whitburn court used Wyman to question the plaintiffs’ grievances and quoted the opinion to ask whether the recipients were seeking “to utilize the Fourth Amendment as a wedge . . . to avoid questions of any kind.” The Seventh Circuit Court of Appeals referred to Wyman as “nothing more than a concrete application of the well established principle that ‘the legitimacy of certain privacy expectations vis-a-vis the State may depend upon the individual’s relationship with the State.’” This reasoning echoed justifications for

79. Id. at 325 (“Facts of that kind present another case for another day.”).
80. Id. at 326 (emphasis added).
81. See Sanchez v. County of San Diego, 464 F.3d 916, 921 (9th Cir. 2006) (“Wyman directly controls the instant case.”); Smith v. L.A. County, 104 Cal. App. 4th 1104, 1122 (2d Dist. 2002) (noting that its conclusion was consistent with Wyman); S.L. v. Whitburn, 67 F.3d 1299, 1307 (7th Cir. 1995) (“We are bound by Wyman.”); Reyes v. Edmunds, 472 F. Supp. 1218, 1223 (D. Minn. 1979) (referring to Wyman as the “definitive word” on the administration of welfare home visits).
83. Id. at 1230.
84. Id. at 1225.
85. Id. at 1226 (emphasis added).
86. 67 F.3d 1299.
87. Id. at 1307.
88. Id. at 1301.
89. Id. at 1309-10.
90. Id. at 1310 (quoting Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 654 (1995)) (analogizing the
the “friendly visitor” from the earliest era of public assistance, where the need for “rehabilitation” of the poor necessitated a diminished expectation of privacy.  

D. The Modern Era: Federal and State Welfare Reforms

In 1996, the age of welfare entitlement came to an end. Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), ending the cash assistance program, AFDC, and creating the Temporary Assistance to Needy Families Act (TANF). State authority over welfare increased with TANF’s block grants from the federal government to the states. However, the federal government placed a five-year limit on the receipt of welfare.

The California legislature created the California Work Opportunity and Responsibility to Kids Act (CalWORKs), a cash assistance as well as job-training program. The counties administer CalWORKs under the supervision of the California Department of Social Services (DSS), and DSS policies and procedures control the administration of welfare programs. Policies and procedures of the DSS do allow for home visits, but such visits must be made “during reasonable hours of normal family activity,” and cannot “infringe upon [the applicant’s] constitutional rights.” These constitutional rights have been the subject of two class action lawsuits in California.

III. SMITH AND SANCHEZ: REINVIGORATING WYMAN AND TURNING TO “SPECIAL NEEDS”

California has served as the backdrop for this era’s litigation regarding the constitutionality of home visits. While San Diego’s Project 100% originated in 1997, a similar program in Los Angeles County spawned the first litigation.

“relationship” that welfare recipients have with the state to that of student athletes in Vernonia Sch. Dist. 47J v. Acton, 515 U.S. at 658).

91. See Gordon, supra note 32, at 296 (“[A] public assistance client was in need of counseling and rehabilitation and had fewer privacy rights that others.”).

92. See Handler, supra note 38, at 131-32 (noting the work requirements and time limits established by TANF and PRWORA).


94. Id.

95. See Handler, supra note 38, at 135-36.


This Part reviews the decisions in both the California state courts and federal courts. *Smith* mirrors *Sanchez* in its use of the “special needs” exception to the requirements of the Fourth Amendment.

A. Smith v. Los Angeles County Board of Supervisors

The Los Angeles County Board of Supervisors changed its welfare program after a television broadcast about welfare fraud.102 Following an investigation, a Los Angeles grand jury recommended a plan that would serve to combat welfare fraud.103 The Board of Supervisors instituted a pilot plan that included a home visitation program modeled after that of Project 100%.104 By Los Angeles County’s estimates, the home visits saved 4.3 million dollars.105 Despite the fact that only 2.5 percent of the visits resulted in ineligibility, the savings were said to be “significant.”106 The plaintiffs sued the Board of Supervisors in California state court to halt the program as a violation of their state and federal constitutional rights.107

The *Smith* court held that the Los Angeles County program was constitutional.108 The court questioned whether the Los Angeles County welfare agency visits were “searches” within the meaning of the Fourth Amendment.109 It further argued that the “special needs” doctrine, “a rapidly expanding area of Fourth Amendment jurisprudence,” applied as well.110 The administration of welfare benefits presented a “special need” beyond that of mere law enforcement.111 The court held that the government’s interest in reducing welfare fraud balanced against the minimal intrusion of the home did not render the search “unreasonable” within the meaning of the Fourth Amendment.112

101. *Id.*

102. *Id* at 1110. *But see* FRANKLIN D. GILLIAM, THE “WELFARE QUEEN” EXPERIMENT: HOW VIEWERS REACT TO IMAGES OF AFRICAN AMERICAN MOTHERS ON WELFARE 2 (1999), available at http://repositories.cdlib.org/cc/medial/007 (conducting an experiment to demonstrate that the public’s perceptions of and hostility toward welfare are often misshaped by the images they see on news broadcasts).


104. *Id.*

105. *Id.* at 1113.

106. *Id.* *But cf.* LOS ANGELES COUNTY CHILDREN AND FAMILIES BUDGET, FISCAL YEAR 2002-03, at 6, available at http://lacounty.info/LAC_ChildrenAndFamBudget_2002-03.pdf (noting that the Los Angeles County Department of Social Services budget is over $1.96 billion).

107. *Smith*, 104 Cal. App. 4th at 1109 (the plaintiffs also raised alleged violations of DSS policies and procedures).

108. *Id.* at 1123.

109. *Id.* at 1120.

110. *Id.* at 1120-21.

111. *See id.* at 1121 (“[T]he government has a substantial interest in assuring that the aid goes to those truly eligible for the benefit.”).

112. *Id.* at 1122-23.
B. Sanchez v. County of San Diego\textsuperscript{113}

By the time the California Court of Appeal decided \textit{Smith}, litigation in \textit{Sanchez} was already under way.\textsuperscript{114} The three-judge panel of the Ninth Circuit Court of Appeals divided; the dissent distinguished \textit{Wyman}, while the majority held that \textit{Wyman} controlled the outcome.\textsuperscript{115} Like the \textit{Smith} court, the \textit{Sanchez} court analyzed the welfare home visit program by looking at how the program was conducted.\textsuperscript{116} The plaintiffs argued that the program resembled the dawn raids in \textit{Parrish} and that these were not the rehabilitative visits seen in \textit{Wyman}.\textsuperscript{117} The Board of Supervisors insisted that the program was merely a “walk through,” conducted with the proper notice to the aid recipient and operated during regular daytime hours.\textsuperscript{118} The Board stressed that recipients consented to the visits and that no single person had been brought forward on criminal charges based on evidence uncovered in any home visits.\textsuperscript{119} The majority followed \textit{Wyman}, thus precluding any Fourth Amendment analysis; it held that welfare home visits do not qualify as “searches” within the meaning of the Fourth Amendment.\textsuperscript{120}

C. Turning to “Special Needs”

\textit{Sanchez}, like \textit{Smith}, did not end its analysis with reliance on \textit{Wyman}. In dicta, the court employed the “special needs” doctrine, a recognized exception to the Fourth Amendment, to substantiate the validity of the visits.\textsuperscript{121}

1. Origins of “Special Needs”: T.L.O. and Griffin

The “special needs” doctrine has presented considerable challenges for the Supreme Court, and scholars approach the exception cautiously.\textsuperscript{122} The “special needs” doctrine first appeared in Justice Blackmun’s concurring opinion in \textit{New

\begin{flushright}
113. 464 F.3d 916 (9th Cir. 2006), \textit{reh’g denied}, 483 F.3d 965 (9th Cir. 2007), \textit{cert. denied}, 128 S. Ct. 649 (2007).

114. \textit{See} Opening Brief for Plaintiffs-Appellants at 7, \textit{Sanchez}, 483 F.3d 965 (explaining that plaintiffs sought an injunction against the program in late 2001).


116. \textit{Id.} at 919.

117. \textit{See id.} at 929 (noting that broader protection is provided under \textit{Parrish}).

118. \textit{Id.} at 930.

119. \textit{Id.} at 924 n.12, 925.

120. \textit{Id.} at 925-28.


122. See Jennifer Y. Buffaloe, “Special Needs” and the Fourth Amendment: An Exception Posed to Swallow the Warrant Preference Rule, 32 Harvard C.R.-C.L. Rev. 529, 531-32 (1997) (arguing that the assumption that only peripheral values to the Fourth Amendment are implicated in searches outside the traditional criminal context is wrong); Steven R. Probst, Case Comment, Ferguson v. City of Charleston: Slowly Returning the “Special Needs” Doctrine to Its Roots, 36 Val. U. L. Rev. 285 (2001) (analyzing the Supreme Court’s changing analysis).\end{flushright}
In *T.L.O.*, a school teacher walked into the girls’ restroom and witnessed two girls smoking, a violation of school rules. The teacher brought the girls to the principal’s office. There, T.L.O. denied smoking at all, at which time the principal searched her bag and discovered a bag of marijuana. The majority opinion turned to the reasonableness of the search under the circumstances, balancing the interests at stake; it determined that the school’s interest in maintaining order outweighed the student’s expectation of privacy. Justice Blackmun concurred that the “special needs” of the school justified a departure from the typical Fourth Amendment warrant requirement. He only sought to add school searches to the growing list of Fourth Amendment exceptions; however, “*T.L.O.* has come to be cited for the proposition that the warrant and probable cause requirements are excused anytime special needs exist.”

Two years later, the Supreme Court formally adopted the “special needs” doctrine in *Griffin v. Wisconsin*. In *Griffin*, the authorities searched a probationer’s home, where they uncovered an illegally possessed weapon. The probationer challenged the search as a violation of the Fourth Amendment. The Court ruled that the county had a “special need” in the supervision of the persons in its probation system, and that there were circumstances other than mere law enforcement where obtaining a search warrant would be impracticable. The Court justified the intrusion into the probationer’s home on the basis that a probationer’s “relationship” with the state results in a reduced expectation of privacy. Justice Scalia explained that the probationer is under certain “restrictions” that are “meant to assure that the probation serves as a period of genuine rehabilitation.”

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123. New Jersey v. T.L.O., 469 U.S. 325, 351 (1985) (“Only in those exceptional circumstances in which special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable, is a court entitled to substitute its balancing of interests for that of the Framers.”).

124. Id. at 328.

125. Id.

126. Id.

127. Id. at 339-40.

128. Id. at 353 (Blackmun, J., concurring) (“The special need for an immediate response to behavior that threatens either the safety of schoolchildren and teachers or the educational process itself justifies the Court in excepting school searches from the warrant and probable-cause requirement, and in applying a standard determined by balancing the relevant interests.”).

129. Buffaloe, supra note 122, at 538.


131. Id. at 868.

132. Id. at 872.

133. Id. at 875-76.

134. Id.

135. Id. at 875.
Sanchez found that the relationship a probationer has with the state is similar to that of a welfare recipient.\textsuperscript{136} The court extended the “special needs” doctrine to other areas, but Smith and Sanchez are arguably the first courts to find that the wholesale administration of public assistance presents a “special need.”

IV. ANALYSIS

The Fourth Amendment provides for the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”\textsuperscript{137} Searches conducted without a warrant are per se unreasonable unless a recognized exception applies.\textsuperscript{138} In Sanchez, welfare home “walk throughs” were not considered “searches” within the meaning of the Fourth Amendment; therefore, the court was not required to employ a recognized exception.\textsuperscript{139}

Section A of this Part analyzes whether “walk through” home visits should be viewed as “searches” within the meaning of the Fourth Amendment. Assuming that they are “searches,” one must determine whether any recognized exceptions apply.\textsuperscript{140} The subsequent three sections of this Part address possible exceptions and argue that such exceptions are insufficient to overcome the warrant requirement.\textsuperscript{141}

A. The Meaning of Search

The Supreme Court has held that privacy interests in the home are “at the very core” of the Fourth Amendment.\textsuperscript{142} Such protection afforded to the interests

\textsuperscript{136} See Sanchez v. County of San Diego, 464 F.3d 916, 927 (9th Cir. 2006) (using Griffin to illustrate that “a person’s relationship with the state can reduce that person’s expectation of privacy even within the sanctity of the home”).
\textsuperscript{137} U.S. CONST. amend. IV.
\textsuperscript{138} 68 AM. JUR. 2D Searches & Seizures § 12 (2000); see Minnesota v. Dickerson, 508 U.S. 366, 372 (1993) (“Time and again, this Court has observed that searches and seizures “‘conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment-subject only to a few specifically established and well delineated exceptions.’” (quoting Thompson v. Louisiana, 469 U.S. 19-20 (1984))); Brigham City v. Stuart, 547 U.S. 398, 403 (2006) (“It is a ‘basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable.’” (quoting Groh v. Ramirez, 540 U.S. 551, 559 (2004))); Brigham, 547 U.S. at 403 (“[B]ecause the ultimate touchstone of the Fourth Amendment is ‘reasonableness,’ the warrant requirement is subject to certain exceptions.” (quoting Flippo v. West Virginia, 528 U.S. 11, 13 (1999))).
\textsuperscript{139} See Sanchez, 464 F.3d at 922-23 (stating that because the home visits do not constitute searches, the court need not resolve the Fourth Amendment issue).
\textsuperscript{140} See infra Part IV.A.1-3.
\textsuperscript{141} See infra Part IV.B.1-3.
of the individual in the home should apply to welfare home visits as well. Of the individual in the home should apply to welfare home visits as well. However, the visits do not qualify as “searches” because courts have followed the precedent in Wyman and precluded Fourth Amendment issues raised in the context of welfare administration. Yet welfare home visits, as seen in Sanchez, are fundamentally different from the home visits of the 1970s seen in Wyman. Home visits have become less “rehabilitative” and unlike the “gentle means” or “personal” aspects of the visits in Wyman, today’s investigators conducting the welfare home visit do not offer services or assistance to the recipient. Not only has the character of welfare home visits changed, but also the character of home privacy interests has changed. While this Comment does not address substantive due process, the Court has extended Fourteenth Amendment protection into home life. Given these changes, the judicial view toward modern welfare investigation should adjust accordingly.

Here, the Fourth Amendment analysis must initially address whether welfare home visits constitute a “search” within the scope of the Fourth Amendment. The plain meaning of a search is defined as “[a]n examination of a person’s body, property or other area that the person would reasonably be expected to consider as private, conducted by a law-enforcement officer for the purpose of finding evidence of a crime.”

143. Sanchez v. County of San Diego, 483 F.3d 965, 969 (9th Cir. 2007) (mem.) (Pregerson, J., dissenting).
144. See Wyman v. James, 400 U.S. 309, 318 (1971) (explaining that in the event of the recipient’s refusal, there is “no entry of the home and there is no search”); Sanchez, 464 F.3d at 922-23 (“[B]ecause we are bound by Wyman, we conclude that the Project 100% home visits do not qualify as searches within the meaning of the Fourth Amendment.”); see also S.L. v. Whitburn, 67 F.3d 1299, 1307 (7th Cir. 1995) (applying the Wyman decision to hold that the home visits are not searches); Smith v. L.A. County, 104 Cal. App. 4th 1104, 1120 (2002) (giving “great weight” to a Department of Social Services determination that home visits were not fraud investigations and thus holding that the visits were not searches).
145. Sanchez, 464 F.3d at 934 (Fishel, J., dissenting).
146. Opening Brief for Plaintiffs-Appellants at 15-16, Sanchez, 464 F.3d 916 (No. 04-55122).
147. See Sanchez, 464 F.3d at 936 (Fishel, J., dissenting) (noting how the character of the visits is solely to provide for eligibility requirements).
148. See generally Lawrence v. Texas, 539 U.S. 558, 578 (2003) (holding that the right of intimate association is protected under the Constitution); Moore v. City of E. Cleveland, 431 U.S. 494, 499 (1977) (“This Court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment.” (quoting Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632, 639-40 (1974))); Eisenstadt v. Baird, 405 U.S. 438, 453 (1972) (holding that individuals have a right of privacy in decisions to have a child).
149. The court in Sanchez acknowledged that changes in Fourth Amendment jurisprudence since Wyman v. James might call into question the reasoning from Wyman, that home visits were not searches. However, the court followed Angostini v. Felton, 521 U.S. 203, 237 (1997), which required appellate courts to follow precedent if “direct application” was necessary. Sanchez, 464 F.3d at 920.
150. BLACK’S LAW DICTIONARY 1377 (8th ed. 2004); see Kyllo v. United States, 533 U.S. 27, 33 (2001) (“[A] Fourth Amendment search does not occur . . . unless ‘the individual manifested a subjective expectation of privacy in the object of the challenged search,’ and ‘society [is] willing to recognize that expectation as reasonable.’” (citing California v. Ciraolo, 476 U.S. 207, 221 (1986))).
151. BLACK’S LAW DICTIONARY 1377 (8th ed. 2004); see also 68 AM. JUR. 2D Searches & Seizures §
need not exclusively, be a “law enforcement officer.”

Third, the purpose of a search must be to find “evidence of a crime.” Analysis of these three aspects of the government action in Sanchez reveals that welfare home visits qualify as searches within the meaning of the Fourth Amendment.

1. Location of the Search: The Sanctity of the Home

Common-law history, Constitutional history, and Supreme Court precedent all respect the heightened protection of the home from government intrusion. The maxim dictates that a “man’s home is his castle,” and the plain language of the Fourth Amendment protects the rights of people in their “houses, papers, and effects.” Further evidence of the framers’ intent to protect the home may be found in the Third Amendment, which prohibits the quartering of any soldier in a “house” without the owner’s consent. “The common-law felony of burglary also demonstrates the unique status of the house.” Most recently, in Kyllo v. United States, the Court held that the government conducted a search where federal agents used a thermal imaging device to detect heat emanating from a garage housing marijuana plants. Reversing the judgment of the Ninth Circuit Court of Appeals, Justice Scalia took what he called the “long view” of the Fourth Amendment in stating that it “draws a firm line at the entrance to the house.” The Court noted that “in the home, our cases show, all details are intimate details, because the entire area is held safe from prying government intrusion.”

16 (2000) ("[I]f an inspection by the police does not intrude upon a legitimate expectation of privacy, there is no 'search' subject to the warrant clause of the Fourth Amendment."); Katz v. United States, 389 U.S. 347, 351 (1967) ("[T]he Fourth Amendment protects people, not places. What a person knowingly exposes to the public . . . is not a subject of Fourth Amendment protection. But what he seeks to preserve as private . . . may be constitutionally protected."); Illinois v. Andreas, 463 U.S. 765, 771 (1983) ("If the inspection by police does not intrude upon a legitimate expectation of privacy, there is no 'search' subject to the Warrant Clause.").

152. BLACK’S LAW DICTIONARY 1377 (8th ed. 2004); see New Jersey v. T.L.O., 469 U.S. 325, 335 (1985) (acknowledging that while Fourth Amendment has focused on police action, other government officials have been subject to Fourth Amendment restraints as well).

153. BLACK’S LAW DICTIONARY 1377 (8th ed. 2004); see Kyllo v. United States, 533 U.S. 325, 335 (2001) (noting that the Fourth Amendment originally meant "to look over and through for the purpose of finding something"). But see New Jersey v. T.L.O., 469 U.S. 325, 335 (1985) ("Because the individual’s interest in privacy and personal security 'suffers whether the government's motivation is to investigate violations of criminal laws or breaches of other statutory or regulatory standards,' it would be 'anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior.’” (quoting Marshall v. Barlow’s, Inc., 436 U.S. 307, 312-13 (1978) and Camara v. Mun. Cl., 387 U.S 523, 530 (1967) respectively)).


155. U.S. CONST. amend. IV.

156. See Thomas Y. Davies, Recovering the Original Fourth Amendment, 98 MICH. L. REV. 547, 642 n.259 (1999) (noting that the Third Amendment was based on a provision in the English Bill of Rights).

157. Id.


159. Id. at 40 (quoting Payton, 445 U.S. at 590).
eyes.”  

The mere location of the government action in *Sanchez* should increase the judicial inquiry on these visits. However, *Sanchez* denied this protection. Investigators searched through the most intimate areas of the recipient’s home looking for signs of fraud. Officers searched medicine cabinets, laundry baskets, and closets. However, the Court’s rationale in *Kyllo* that the home deserves maximum protection from even the most minimal intrusion, suggests that even the most reserved “walk through” would surely trigger Fourth Amendment safeguards.  

Therefore, the location of the government action in *Sanchez* suggests that the action is a “search” within the meaning of the Fourth Amendment.

2. The Government Actor: Rehabilitative Caseworker vs. Investigative Law-Enforcement Officer

The second criterion in determining whether a “search” has occurred is examining the type of actor conducting the government action. In *Wyman*, social workers conducted the interview in the recipients’ home. The Court gave these caseworkers the opportunity to conduct “rehabilitative” visits. In describing the phrase “assistance and rehabilitation,” the Court noted that federal statutes did not differ from the state statutes. Those statutes emphasized the “close contact” with the recipient in order to “restore[e] the aid recipient ‘to a condition of self-support’ . . . .” The focus was on the “relief of [the recipient’s] distress.”  

In *Sanchez*, trained law enforcement officials from the District Attorney’s office, as opposed to an agency caseworker with social work training, conducted the home visits. This is a critical difference because it changed the nature of the visit—transforming welfare home visits into a mere means to verify

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160. Id. at 37.

161. See Hafetz, supra note 43, at 180 n.23 (“So great moreover is the regard of the law for private property that it will not authorize the least violation of it; no, not even for the general good of the community.” (quoting 2 WILLIAM BLACKSTONE, COMMENTARIES 139)).

162. *Sanchez* v. County of San Diego, 464 F.3d 916, 919 (9th Cir. 2006).

163. Id. at 936 (Fisher, J., dissenting).

164. *Kyllo*, 533 U.S. at 40 (explaining that while the defendant might not have had any “significant” compromise of privacy, the court relied on the original meaning of the Fourth Amendment—a bright-line rule barring entry of the house).


166. Id. at 322-23 (“[The visit] is made by a caseworker of some training whose primary objective is, or should be, the welfare, not the prosecution, of the aid recipient for whom the worker has profound responsibility.”).

167. Id. at 319.

168. Id.

169. Id.

170. *Sanchez* v. County of San Diego, 464 F.3d 916, 925 (9th Cir. 2006) (Fisher, J., dissenting).
eligibility. Unlike *Wyman*, the visits no longer serve the welfare recipient but rather the program itself. The court equated the role of law enforcement investigators with social caseworkers thereby undercutting the importance of rehabilitation, a hallmark of social work.

Social workers, unlike fraud investigators, bring value to the recipient of any home visit. *Wyman* underscored the potential benefit of a caseworker’s home visit in its ability to recognize troublesome issues and to help the recipient achieve a self-supporting lifestyle. Social work is its own profession, and it plays a vital role for recipients of welfare. The ability of trained caseworkers to recognize their duty to serve the client has allowed judicial deference to their role in home visits. At the district court level in *Wyman*, the dissenting judge argued for the validity of home visits and referred to the relationship between recipient and caseworker as one “based upon mutual confidence and trust.”

To replace the caseworkers’ rehabilitative function with law enforcement officers who ensure legal compliance denies caseworkers the opportunity to serve their function. The behavior of the investigators in *Sanchez* shows that the recipients of assistance receive little value from the visits. When the plaintiffs’ counsel asked one of the investigators about his duties, the investigator responded that the duties of the investigation team specifically excluded rehabilitation. In his deposition, he said, “[a]nd I’m trying to envision what rehabilitation would be under those circumstances. Get off the couch. Get a job. I don’t know. . . . I don’t envision

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171. See id. at 924.
173. See Sanchez, 464 F.3d at 935-36 (Fisher, J., dissenting) (“[T]he county’s program requires fraud investigators with no expertise in social work and no object of rehabilitating the applicant to detect and report evidence of welfare fraud and other crimes.”); Ehrenreich, supra note 172, at 9 (noting that social work involves closely working with clients to assess and improve impediments to progress).
174. Note, Rehabilitation, Investigation and the Welfare Home Visit, 79 YALE L.J. 746, 751-52 (1970) (“If there is no evidence of fraud or ineligibility during a home visit, however, the caseworker has nevertheless provided needed services for her client.”).
175. See Wyman v. James, 400 U.S. 318, 319-20 (1971) (“But it has been noted that the visit is the ‘heart of welfare administration’; that it affords ‘a personal rehabilitative orientation, unlike that of most federal programs’ . . . .” (quoting Rehabilitation, Investigation and the Welfare Home Visit, supra note 174, at 748)).
176. See Ehrenreich, supra note 172, at 9 (“Social work serves as a key mediator between virtually all other professions and their clients and between a wide variety of bureaucratic institutions and the people they serve.”).
177. See Rehabilitation, Investigation and the Welfare Home Visit, supra note 174, at 752 (“The entire rationale for judicial deference depends upon the initial assumption that the caseworker is acting in the best interests of her client.”). But see James L. Payne, Overcoming Welfare: Expecting More from the Poor and from Ourselves 78-81 (1998) (indicating that caseworkers are often aware of fraud but hesitate to report it because agency goals conflict with service goals).
179. See Ehrenreich, supra note 172, at 55 (describing how the role of caseworker visitation was a means of developing the trust of the poor).
rehabilitation as part of that. I can’t even imagine what that would look like.”

On the other hand, proponents of welfare home visits point to the professionalism of the investigators as a safeguard of the recipients’ constitutional rights. In an article published one year after the program’s inception, the author, then a San Diego Deputy District Attorney, described an investigator: “[H]e loves his job and does it with a personable, courteous demeanor. . . . But [the investigator] and his colleagues understand the bounds of their duties—to vigorously investigate welfare fraud while assiduously respecting the rights of the recipients.” Apart from legal compliance, there is no mention of serving the interests of the recipient. As agents of the government who seek recipient compliance, investigators should be subject to the Fourth Amendment.

In Sanchez, the majority and the dissent criticized one another for mischaracterizing the importance of the identity of the officials conducting the search. The dissent pointed to the California law defining District Attorney officials as “law enforcement.” The majority found the dissent’s analysis misplaced; it pointed to New York v. Burger where even uniformed police officers were found to have conducted a valid search. However, as discussed below in section C of this Part, that precedent is readily distinguishable.

In sum, the identity of the government actor plays a role in determining whether an action should be viewed as a search.

3. Purpose of Visits: Eligibility Verification vs. Criminal Investigation

The third criterion in determining whether a particular action constitutes a search is to examine the purpose of the intrusion. In general, the purpose of a

182. Luna, supra note 181, at 1252-53.
183. Compare Sanchez v. County of San Diego, 464 F.3d 916, 924 n.11 (9th Cir. 2006) (“This conclusion [that visits conducted by peace officers need not be searches in the criminal context] is further supported by . . . Burger, [where] the Court upheld warrantless inspection of a vehicle dismantling business by uniformed police officers.”), with id. at 934 n.2 (Fisher, J., dissenting) (“The majority’s reliance on New York v. Burger to dismiss this differentiating aspect is misguided.” (citations omitted)).
184. Id. at 934 n.2 (Fisher, J., dissenting).
186. Sanchez, 464 F.3d at 924 n.11.
187. In New York v. Burger, uniformed police officers searched a commercial auto dismantling shop. Under the Colonnade-Biswell doctrine, the Supreme Court held that there were situations in “closely regulated industries” where uniformed and armed police officers were not required to obtain a search warrant to conduct a search. Burger, 482 U.S. at 691, 700-01.
“search” is to obtain evidence of a crime. But proponents of welfare “walk through” home visits claimed that the purpose of the visits was not to search for criminal activity. Yet, as peace officers, these investigators have a duty to report any criminal activity. What the investigators see, including the interior of closets and medicine cabinets, may reveal that the applicant has made a false representation on the welfare application. The investigators also check the applicant’s assets to determine whether there was any falsification on the application.

But the potential for criminal liability remains. Regardless of investigators’ hesitancy or unwillingness to prosecute, their ability to report evidence of misrepresentations could lead to criminal sanctions. California law makes it a crime to knowingly make misrepresentations on a welfare application. Any false statement or “failure to disclose a material fact to obtain aid” is a misdemeanor. To allow law enforcement officials to circumvent the recipient’s Fourth Amendment rights on the basis that they were not purposely looking for evidence of a crime would render Fourth Amendment protection toothless.

Welfare home visits as seen in Sanchez are “searches” within the meaning of the Fourth Amendment. They intrude on the sanctity of the home, a privacy interest protected not only in the text of our Constitution but also by Supreme Court decisions. The government actors who conduct the home visits are charged with law enforcement capabilities and should be held to a stricter standard than that applied to a welfare caseworker. Despite the proffered purpose of the welfare home visit, the officials nevertheless have the potential to recover evidence leading to an applicant’s prosecution.

B. Fourth Amendment Exceptions

Once a government action is considered a “search,” the analysis focuses on whether the search is reasonable. Warrantless searches are presumptively

188. See Wyman v. James, 400 U.S. 309, 317-18 (1971) (explaining why the visits are not searches).
189. Brief for Appellee at 14, Sanchez, 464 F.3d 916 (No. 04-55122).
190. Sanchez, 464 F.3d at 934 (9th Cir. 2006) (Fisher, J., dissenting); see CAL. PEN. CODE § 830.1(a) (West 1985 & Supp. 2008) (defining a “peace officer” as “any inspector or investigator employed in that capacity in the office of a district attorney”); CAL. PEN. CODE § 830.35(a) (West Supp. 2008) (noting that any welfare fraud investigator whose duty is to enforce the Welfare and Institutions Code is a peace officer).
191. Sanchez, 464 F.3d at 919 (9th Cir. 2006).
192. Reply Brief for Plaintiff-Appellants at 7, Sanchez, 464 F.3d 916 (No. 04-55122).
193. But see Sanchez, 464 F.3d at 919 (“While the investigators are required to report evidence of potential criminal wrongdoing for further investigation and prosecution, there is no evidence that any criminal prosecutions for welfare fraud have stemmed from inconsistencies uncovered during a Project 100% home visit.”).
195. Id.
196. Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 652-53 (1995) (“[W]here there was no clear practice, either approving or disapproving the type of search at issue, at the time the constitutional provision
unreasonable unless a recognized judicial exception applies. One commentator has characterized Fourth Amendment jurisprudence as “not only complex and contradictory, but often perverse.”

This section examines and analyzes the application of three exceptions in the context of welfare home visits. First, this section concludes that the “special needs” exception is inapplicable to welfare administration. Second, it notes that consent is insufficient given the circumstances under which the recipient offers consent. Third, administrative searches that operate outside the confines of the Fourth Amendment are distinguishable from the searches in Sanchez.

1. “Special Needs” Exception

The Sanchez decision misapplied the “special needs” exception to validate welfare home visits. Originally formulated in the context of warrantless searches, the evolution of Fourth Amendment jurisprudence suggests that the exception has increasingly become the test employed in suspicionless search cases. The Supreme Court has held “special needs” to include the government’s interest in maintaining order in public schools, deterring drug use by schoolchildren, ensuring the integrity of Customs employees, ensuring the safety of the traveling public on railroads, and ensuring safety on public highways.
Application of the exception should not extend to the validation of welfare home visits. Under the exception, the government may justify a search where “special needs, beyond the need of law enforcement, make the warrant and probable-cause requirement impracticable.” Once the Court defines the “ultimate purpose” of the search, it balances the government interests against the privacy interests of the individual to “assess the practicality of the warrant and probable-cause requirements in the particular context.” A search can be valid “where privacy interests implicated by the search are minimal, and where an important governmental interest furthered by the intrusion would be placed in jeopardy by a requirement of individualized suspicion.”

Another Ninth Circuit Court of Appeals case illustrates why the “special needs” exception should not have been applied in Sanchez. Three months prior to the Sanchez decision, the Ninth Circuit Court of Appeals decision in United States v. Scott rejected a proffered “special need” in the home search of an individual awaiting trial. In Scott, after an arrest for drug possession, the defendant agreed to conditions that forced him to submit to warrantless searches, including drug testing. Days later, the police entered the defendant’s home and administered a drug test. The government argued that drug testing of persons awaiting trial served “special needs,” but the court rejected such a claim. The court held that the privacy interest of an individual awaiting trial surpassed the government’s “special need.” Writing for the majority, Judge Alex Kozinski reasoned that the government search of the defendant’s home intruded upon the defendant’s privacy interest:

Unlike public school students, who have limited privacy interests because of the state’s special custodial role, Customs employees, who occupy sensitive government positions, or drivers and railway employees, whose activities impose safety risks on others, pre-trial releasees are ordinary people who have been accused of a crime but are
presumed innocent.\textsuperscript{214}

According to the court, while the defendant’s assent did decrease his expectation of privacy, the court held that such assent was “insufficient to eliminate his expectation of privacy in his home.”\textsuperscript{215} However, it held that the county had articulated a “special need” in eligibility verification of recipients.\textsuperscript{216} Turning away from the protection inside the home that \textit{Scott} afforded to persons awaiting trial, the \textit{Sanchez} court noted, “a person’s relationship with the state can reduce that person’s expectation of privacy even within the sanctity of the home.”\textsuperscript{217} The majority turned to \textit{Griffin}, where the Court found that a probationer’s relationship with the state lowered his legitimate expectation of privacy. Namely, the court noted that the probationer’s relationship with the state centered on the intensive supervision and rehabilitation of a state’s probation program, similar to the relationship a welfare recipient has with the distributors of aid.\textsuperscript{218}

Reacting to the majority’s “relationship with the state” reasoning, the dissent noted that the government provides many benefits, like welfare, that affect the recipient’s relationship with the state.\textsuperscript{219} The court noted:

If the majority is correct that a person’s expectation of privacy in the home is reduced any time he or she has a relationship with the state that requires an eligibility determination, then there seems little to prevent the government from implementing a home visit program similar to Project 100% with respect to those beneficiaries as well.\textsuperscript{220}

Moreover, the probationer’s relationship with the state, unlike that of the welfare recipient, is “criminal.”\textsuperscript{221} The dissent noted that \textit{Griffin} was the only

\begin{itemize}
  \item \textsuperscript{214} Id. at 871 (citations omitted).
  \item \textsuperscript{215} Id. at 871-72 (“We are especially reluctant to indulge the claimed special need here because Scott’s privacy interest in his home, where the officers came to demand the urine sample, is at its zenith.”).
  \item \textsuperscript{216} Sanchez v. County of San Diego, 464 F.3d 916, 927 (9th Cir. 2006).
  \item \textsuperscript{217} Id. at 926.
  \item \textsuperscript{218} Id. at 927 (emphasis omitted and added).
  \item \textsuperscript{219} Id. at 925.
  \item \textsuperscript{220} Id. at 941 n.12 (Fisher, J., dissenting).
  \item \textsuperscript{221} Id. (noting that other government programs could be implicated as well, such as Medicare, Medicaid, disability benefits, student financial aid, and lunch subsidies).
  \item \textsuperscript{222} See Griffin v. Wisconsin, 483 U.S. 868, 874 (1987) (“Probation is simply one point (or, more accurately, one set of points) on a continuum of possible punishments ranging from solitary confinement in a maximum-security facility to a few hours of mandatory community service.”).
\end{itemize}
case where a “special need” permitted the search of anyone’s home.223 In fact, the “special needs” analysis reveals that “[w]ith the exception of convicted felons, neither we nor the Supreme Court has ever held that an individual’s privacy expectation in the home was reduced to a level of unreasonableness as a result of their relationship with the state.”224

Comparing the welfare home visit to other similarly situated benefit-conferring programs, the government appears hesitant to go to the same lengths that they do in Sanchez.225 The Ninth Circuit denied en banc to rehear Sanchez. Judge Pregerson’s dissent echoed Judge Fisher’s earlier comments when he explained that the government does not perform similar searches on farmers receiving subsidies.226 Indeed, the field of farm subsidies poses similar problems in fraud that arise in welfare context. Take, for example, a recent report by the Government Accounting Office (GAO) that showed the U.S. Department of Agriculture had distributed over a billion dollars in the past seven years to deceased farmers.227 In another example, the report cited payments to an Illinois corn farm that collected benefits on behalf of its owner who lived in Florida.228 In total, the GAO report found that 38% of cases had ‘‘weaknesses,’’ including ‘‘nonexistent or vague’’ documentation.229 The absence of home visits or similar intrusions on the recipients of other benefit-conferring programs underscores why the program in Sanchez should be subjected to greater scrutiny.230

Also, one might ask whether the need for “eligibility verification” defies conventional wisdom. The public accepts the idea that welfare fraud is rampant and that cheaters outnumber eligible applicants.231 However, the truth may not comport with the commonly held belief.232 For example, New York City began a plan in 1995 to root out welfare fraud by fingerprinting welfare recipients.233

223. Sanchez, 464 F.3d at 939 n.11 (Fisher, J., dissenting).
224. Id. at 941 (emphasis added).
225. See id. (asking why society does not insist upon the same of others whose relationship with the state is that of a recipient as well).
226. Sanchez v. County of San Diego, 483 F.3d 965, 969 (9th Cir. 2007) (mem.) (Pregerson, J., dissenting).
228. Id.; cf. Luna, supra note 181, at 1238 (noting that a welfare recipient in California had collected welfare on behalf of her children living in Virginia).
230. See Sanchez, 483 F.3d at 969 (Pregerson, J., dissenting) (describing the situation as “shameful”).
231. See Luna, supra note 181, at 1235. (“Welfare fraud is an epidemic.”)
232. While campaigning for President, Ronald Reagan invoked the image of the “welfare queen,” a figure who collected benefits under different names, drove a Cadillac from welfare office to welfare office, and wore designer jeans. Years later, David Gergen, Reagan’s director of communications, when questioned about the basis of such claims, said that “the public did not demand literal authenticity ‘so long as the symbolic truth [was] defensible.’” Evelyn Z. Brodkin, Book Review, The Making of an Enemy: How Welfare Policies Construct the Poor, 18 LAW & SOC’Y INQUIRY 647, 647 (1993).
Over 148,000 recipients were fingerprinted, but the city found only forty-three cases of double dipping. Other counties in the state fingerprinted over 24,000 recipients and turned up only seventeen cases of fraud. If these numbers are indicative of the amount of fraud, the need for eligibility verification may not be as great as the Sanchez court had surmised.

In conclusion, the “special needs” exception illustrates that the privacy interest of an individual in the home outweighs the “need” for eligibility verification. Therefore, the program does not meet the necessary requirements of “reasonableness.”

2. Consent

The majority in Sanchez points to the welfare recipients’ consent to the home visit to show that the search fits a recognized exception to the Fourth Amendment. An individual’s immunity from an unreasonable search may be waived by consent, which is a valid exception to the Fourth’s Amendment’s prohibition on unreasonable searches. Consent must be unequivocal, and it must be given freely and voluntarily. Voluntariness is measured by the totality of the circumstances.

Welfare home visits raise two concerns. The first concern is whether the consent is free and voluntary. If such consent is valid, the second issue is whether conditioning the receipt of welfare benefits on the waiver of a constitutional right triggers the “Unconstitutional Conditions” doctrine.

A welfare recipient’s “consent” to a home visit does not justify the search because of the consequences surrounding a refusal. In Sanchez, proponents of home visits pointed to two occasions where the applicant agrees to the visit. First, the applicant acknowledges on the application that a home visit will occur. Second, the investigators ask to enter the recipient’s home at the time of the search and enter only if the owner permits. However, applicants are aware that the agency will deny aid if met with refusal. The parent is placed in an

234. Id.
235. Id.
236. See Sanchez v. County of San Diego, 464 F.3d 916, 924 (9th Cir. 2006) (noting that the San Diego program contained the same “procedural safeguards” as Wyman in that recipients consented to any search).
238. Id.
239. Id.
240. See Charles R. Bogle, “Unconscionable” Conditions: A Contractual Analysis of Conditions on Public Assistance Benefits, 94 Colum. L. Rev. 193, 233 (1994) (“Where the assistance is offered, it is extremely unlikely that a poor person would feel herself entirely ‘free’ to refuse the offer even if she did not like the conditions under which it was made.”).
241. Sanchez, 464 F.3d at 924.
242. Id.
243. Id.
244. Opening Brief for Plaintiffs-Appellants at 12, Sanchez, 464 F.3d 916 (No. 04-55122).
untenable moral situation where they must balance the right to privacy against the needs of their children. Failure to provide necessities for one’s child is not only a crime, but parents may be stripped of their parental rights as well. Yet the Sanchez court overlooked these concerns and noted that the recipients’ consent acted as a procedural safeguard.

United States Supreme Court decisions have pointed to the importance of welfare benefits as necessities for sustaining life. Commentator Charles Bogle recognized that the doctrine of unconscionability in the law of contracts provided a more suitable model by which to analyze the conditions placed on welfare: “Given that disparity in bargaining power . . . the position of public assistance recipients, as powerless and essentially at the mercy of the government dispensing the benefits, lends itself particularly well to unconscionability principles.” Bogle then recommended that conditions placed on the receipt of welfare benefits should be subjected to a modified analysis to determine whether the transaction is substantively unconscionable. Here, the pressure on the welfare recipient leaves no choice in accepting the condition, and any “consent” cannot be considered free and voluntary.

In addition, conditioning the receipt of public assistance benefits on waiving Fourth Amendment rights raises the doctrine of Unconstitutional Conditions. According to the Unconstitutional Conditions doctrine, “[G]overnment may not grant a benefit on the condition that the beneficiary surrender a constitutional right.” The results of this analysis would be clear: the program grants benefits on the recipient’s waiver of Fourth Amendment protection. Sanchez avoided this problem by reverting to the facts that home visits are not “searches” and thus do not implicate any constitutional right. The court again refused to invoke the doctrine because it found that home visits were not “searches.”

In sum, the recipients’ consent to the welfare home searches does not suffice

245. See Reyes v. Edmunds, 472 F. Supp. 1218, 1226 (D. Minn. 1979) ("What greater inhibition to freedom can there be than that which a welfare recipient faces when subjected to a threat by the authorities to eliminate her sole means of providing food, shelter and clothing for her family?"). The number of children in poverty is staggering. See U.S. DEPT OF HEALTH & HUM. SERVS., OFFICE OF FAMILY ASSISTANCE, STATE ESTIMATES FOR CHILDREN UNDER 18 IN POVERTY FOR U.S., available at http://www.acf.hhs.gov/programs/ofa/annualreport5/0904.htm (listing the California child poverty rate at 24.6% of children under 18).
246. See CAL. PEN. CODE § 270 (West 2008) (punishing willful omission to furnish necessaries as a misdemeanor).
247. Sanchez, 464 F.3d at 924.
249. Bogle, supra note 240, at 229.
250. Id. at 230.
252. Id.
253. Sanchez v. County of San Diego, 464 F.3d 916, 920 (9th Cir. 2006).
254. Id. at 930-31.
to validate the search.

3. Administrative Needs: The “Closely Regulated” Industry

Another justification for welfare home visits is that they lie outside the Fourth Amendment because they are part of a regulated welfare administration program. In a “closely regulated” industry, a search that furthers the regulatory scheme may be valid without any warrant even when uniformed police officers search in a criminal context. In *Burger*, police officers entered Burger’s auto dismantling shop and asked for records that state law required Burger to possess. He was unable to produce such records, and so officers then conducted their search and copied down Vehicle Identification Numbers. Comparing those numbers with those in government records, officers found that the parts were from stolen automobiles.

In *Burger*, the Court extended what was known as the “Colonnade-Biswell” doctrine where “the reduced expectation of privacy by an owner of commercial premises in a ‘closely regulated’ industry” may justify a warrantless intrusion. The Court held that warrantless administrative searches are valid if they meet three criteria. First, the regulatory scheme must advance a “substantial” government interest. Second, “the inspections must be ‘necessary to further [the] regulatory scheme.’” Third, the inspection program “in terms of the certainty and regularity of its application [must] provid[e] a constitutionally adequate substitute for a warrant.”

The District Attorney’s home visits in *Sanchez* differ from the administrative search at issue in *Burger*. *Burger* centered on a “closely regulated” industry where the statutes govern commercial operations. Receiving welfare benefits

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255. See id. at 924 nn.11-12 (noting that the distinction between peace officers in *Sanchez* and the social workers in *Wyman* should not control the outcome as long as the regulatory scheme is properly administrative).
257. Id. at 694-95. The Court cited 38 other states with similar statutes that regulated auto-dismantling businesses. Id. at 698-99 n.11.
258. Id. at 695.
259. Id.
260. Id. at 701; see also Colonnade Corp. v. United States, 397 U.S. 72, 74-75 (1970) (defining liquor distribution as a “closely regulated” business due to its long history of supervision); United States v. Biswell, 406 U.S. 311, 313-15 (1972) (extending the Colonnade holding to the distribution of firearms in pawn shops); Donovan v. Dewey, 452 U.S. 594, 605-06 (1981) (concluding that inspections of mines under federal safety law fall within Colonnade-Biswell doctrine because mining was a “closely regulated” industry). But see Marshall v. Barlow’s, Inc., 436 U.S. 307, 324 (1978) (concluding that inspections made under occupational safety statutes are not to fall under the doctrine).
262. Id. (quoting Donovan, 452 U.S. at 602).
263. Id. (quoting Donovan, 452 U.S. at 600).
264. Id. at 703. (quoting Donovan, 452 U.S. at 603).
265. See generally KATZ, supra note 19 (noting that the origination of home visits was originally welcomed by recipients because of its private nature).
to provide necessaries to one’s family is not the same as participating in a business in a “closely regulated” industry. The recipient of welfare benefits does not exercise a choice in whether to turn to life-saving benefits, whereas the auto-dismantling owner has more freedom to choose his occupation.

Applying the administrative search analysis found in Burger to the searches in Sanchez yields no valid exception. Undoubtedly, the first criterion is met because the government does have a substantial interest in curbing welfare fraud, and home visits effectively combat instances of fraud such as out-of-state claimants or income-producing parents not listed on the application. Burger’s second criterion insists that the searches be necessary to further a necessary regulatory scheme. In Burger, inspections were “crucial . . . at remedying this major social problem [of car theft].” The third criterion in Burger turns on the time, scope, and place of the search and whether the application of the inspection program provides a “constitutionally adequate substitute for a warrant.”

The location and scope of the searches in Sanchez differ from the search in Burger. The Burger search took place in an auto-dismantling business where state commercial statutes “narrowly defined” the scope of the search. Investigators entered the premises for the sole purpose of recording the Vehicle Identification Numbers. In Sanchez, officials entered the home of the recipient and asked to search the recipient’s bedrooms, closets, and medicine cabinets. Moreover, in Sanchez, investigators sought to verify a recipient’s “assets,” a task that could provide far more latitude to the investigator’s search. In addition, Burger noted that the business owner’s choice to enter a “closely regulated” business such as auto-dismantling comes with full knowledge of the lower expectation of privacy. The same cannot be said of those seeking public assistance because recipients rarely have the choice to enter welfare.

In sum, home visits do not fall under the administrative exception to the Fourth Amendment.

V. SOLUTIONS: INSTITUTING A SHOWING OF CAUSE

Welfare fraud exists. However, the means to combat such fraud is the
point of great debate. This Part examines the action needed to untangle the convoluted constitutional analysis that accompanies welfare home searches and proposes a solution that addresses both the government’s interest in maintaining integrity in the system and the weighty privacy interest at stake.

First, the Supreme Court should overturn Wyman or at least clarify its holding. Applying Wyman to any so-called “welfare home search” leads to questionable standards for the future. Moreover, Wyman’s Fourth Amendment reasoning was even called into question by Sanchez, where the court acknowledged that Wyman’s Fourth Amendment reasoning, as it stands today, is not sound:

We note that Wyman’s reasoning on the question of whether the home visits are searches under the Fourth Amendment arguably has been called into question by the Supreme Court’s subsequent Fourth Amendment jurisprudence. The Court has since repeatedly held that consensual administrative searches qualify as searches under the Fourth Amendment, even though refusal to consent carried no criminal penalty and the searches were not part of a criminal investigation.

The court cited Agostini v. Felton, holding that if a precedent directly controls a case before a Court of Appeals, then the Court of Appeals should follow that precedent in spite of the reasoning in other lines of decisions that may point to the contrary. Thus, only the Supreme Court has the power to take the proper step.

If the Court held that welfare visits were indeed “searches” within the meaning of the Fourth Amendment, then the next step in meeting the government’s interest as well as the recipient’s interest would be to examine probable cause requirements. Section A of this Part examines the probable cause requirement under the Fourth Amendment and asks whether the searches should be justified accordingly. Section B discusses the standard of probable cause used in administrative cases and argues that it may present a solution acceptable to both sides of the debate.

275. Id.
276. See Sanchez v. County of San Diego, 483 F.3d 965, 969 (9th Cir. 2007) (Pregerson, J., dissenting) (“It is fair to expect that counties throughout the Ninth Circuit may change their programs to take advantage of the legal latitude the ruling in Sanchez affords them.”).
277. Sanchez v. County of San Diego, 464 F.3d 916, 922 fn.8 (9th Cir. 2006).
278. Id. (“If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.” (citing Rodriguez de Quijas v. Shearson/American Express Inc., 490 U.S. 477 (1989))).
279. Id.
A. Probable Cause Requirement

Under the Fourth Amendment, a valid search warrant requires a showing of probable cause. The question is whether a showing of probable cause is infeasible. The fundamental reasoning behind circumventing the traditional probable cause requirement is that certain circumstances exist where seeking a warrant is impractical. As noted earlier, the “special needs” exception requires the court to balance the privacy interests of the individual, the character of the intrusion, and the state’s interest. Analysis of these factors illustrates whether a showing of probable cause can and should be required.

The privacy interests of the individual are substantial because of the location of the search. Privacy in the home is a fundamental right. "An individual’s home lies at the zenith of privacy interests." Indeed, Supreme Court decisions have upheld the sanctity of the home as an area of privacy.

The character of the intrusion is invasive. In Vernonia School District 47J v. Acton, the Court found that a urine test represented a minor intrusion. It reasoned that the degree of intrusion was negligible because the action consisted of conditions nearly identical to those typically encountered in public restrooms on a daily basis. The Court also found that urinalysis tests looked only for drugs—nothing more. Here, the state discounted the intrusiveness of the government action by asserting that the investigators merely “walk through,” which includes searches of medicine cabinets and closets, can hardly qualify as something so mundane as going to the toilet. And while in Vernonia urinalysis tests were specifically limited to detecting drugs, here investigators have much wider discretion—they look in medicine cabinets, closets, and laundry baskets.

The state’s interest in verifying that only the eligible receive funds is substantial. Taxpayers have a right to expect that the intended beneficiaries of

280. U.S. CONST. amend. IV.
284. United States v. Martinez-Fuerte, 428 U.S. 543 (1976) (noting that the “sanctity of private dwellings” is typically afforded the “most stringent” Fourth Amendment protection).
286. Id. at 658.
287. Id.
288. Id.
289. Id.
290. Brief for Appellee at 11, Sanchez v. County of S.D., 464 F.3d 916 (9th Cir. 2006) (No. 04-55122).
291. Opening Brief for Plaintiffs-Appellants at 2, Sanchez, 464 F.3d 916 (No. 04-55122).
292. Sanchez, 464 F.3d 916 at 923.
aid are eligible for that aid. However, the state employs other means to assess the eligibility of applicants. Applicants must provide documentation under the threat of criminal sanction and the state examines database records. Investigators even contact third parties about the applicant.

But to what extent do home visits advance the state’s interest beyond what the state already accomplishes by other fraud-fighting methods? The answer lies in the numbers. The Sanchez court pointed to a seven percent increase in the “denial” rate and a four to five percent increase in application withdrawals since the program’s inception as evidence that the home search program was combating fraud. What the court failed to mention is that under the program, a “denial” occurs whenever an investigator does not conduct a “walk through.” Therefore, if seven percent of aid applicants exercised their refusal to consent to an investigator’s request to search the home, the County would record that as an increase in the denial rate. The court also failed to mention that increased personnel may have increased the denial rate. While caseloads have dramatically decreased since the inception of the home search program, the amount of investigators in the District Attorney’s office has remained constant. Yet, with no analysis beyond simply pointing to what it called a “logical assumption,” the court overstated the effectiveness of the program.

Measured against these factors is the impracticality of requiring a warrant. In Griffin, the Court found that the interjection of a magistrate’s decision to determine whether a warrant should issue would defeat the purpose of a probation program—to “counsel” the probationer. Looking at welfare home visits in Sanchez, one can see that no such relationship between the investigator and the recipient exists. In the absence of such a relationship, the warrant requirement should not be viewed as impractical.

In conclusion, the privacy interests of the recipient in his or her home outweigh the government’s interest in confirming eligibility, and the character of

293. Id.
295. But see Opening Brief for Plaintiffs-Appellants at 8, Sanchez, 464 F.3d 916 (No. 04-55122) (noting that investigators’ “unlimited” collateral contacts with third parties were enjoined as violating of DSS policies).
296. Sanchez, 464 F.3d at 928.
297. See id. at 919 n.1 (“The County has conceded that an applicant’s failure to allow a home visit will generally result in the denial of benefits because the [eligibility technician] is unable to adequately verify the applicant’s eligibility without the information included in the D.A. investigator’s report.”).
298. Opening Brief for Plaintiffs-Appellants at 10, Sanchez, 464 F.3d 916 (No. 04-55122).
299. Id. at 10.
300. Sanchez, 464 F.3d at 928.
301. Griffin v. Wisconsin, 483 U.S. 868 (1987) (analogizing to a parent who would need to seek a warrant to search the room of his or her child).
302. See supra Part IV.A.2 (where investigator in Sanchez mentioned that home visits were not rehabilitative).
the intrusion is traditionally invasive. Therefore, Fourth Amendment safeguards would require the government to obtain a search warrant upon probable cause.

B. Administrative Probable Cause

Administrative search warrants, normally used in the context of building or workplace safety inspections, might serve as a model for search warrants used in welfare administration. Using the state’s existing statutes for administrative warrants in the context of welfare administration would enable welfare agencies to combat fraud by more particularized suspicion—as opposed to blanket suspicionless searches.

While probable cause offers the most Fourth Amendment protection to welfare recipients, other means exist which may safeguard recipient privacy and give the government the means to ensure eligibility. A magistrate issues administrative inspection warrants under “probable cause.” Administrative probable cause exists if reasonable legislative or administrative standards for conducting an inspection are satisfied. The Supreme Court determined that unlike criminal investigative searches, the need for an administrative search is “weighed in terms of these reasonable goals of code enforcement.” California already has standards that, if amended to apply to welfare administration, could satisfy the needs of welfare investigators. The warrant would require a threshold showing of “cause.” As described below, a showing of cause could issue based on facts gathered by or made known to authorities, but the judge issuing the warrant serves as a gatekeeper and referee. The judge limits the scope of the search so as to give law enforcement the tools it needs without unduly burdening the rights of the person searched. The warrant is valid until

303. See Luna, supra note 181, at 1287-88 (noting that administrative search warrants do apply to building, labor, health, and safety codes, but until legislative action, the warrant remains only a “theoretical possibility”).
305. Id.
307. CAL. CIV. PROC. CODE § 1822.50-1822.59 (West 2007); Luna, supra note 181, at 1287-88.
308. CAL. CIV. PROC. CODE § 1822.51 (“An inspection warrant shall be issued upon cause, unless some other provision of state or federal law makes another standard applicable. An inspection warrant shall be supported by an affidavit, particularly describing the place, dwelling, structure, premises, or vehicle to be inspected and the purpose for which the inspection is made. In addition, the affidavit shall contain either a statement that consent to inspect has been sought and refused or facts or circumstances reasonably justifying the failure to seek such consent.”); id. § 1822.52 (“Cause shall be deemed to exist if either reasonable legislative or administrative standards for conducting a routine or area inspection are satisfied with respect to the particular place, dwelling, structure, premises, or vehicle, or there is reason to believe that a condition of nonconformity exists with respect to the particular place, dwelling, structure, premises, or vehicle.”).
309. Id. § 1822.52.
310. Id. § 1822.53.
the time specified but for no more than fourteen days and may only be executed during regular business hours without forcible entry.\textsuperscript{311} A search warrant similar to that employed in home inspections would give the government the power it needs to ensure the integrity of a welfare administration program without forcing recipients to surrender their privacy. For example, a simple phone call to the welfare agency that a recipient has an “absent” parent or that there are no children in the household would be enough to result in such a search warrant.\textsuperscript{312} Moreover, limiting the number of searches to only those suspected of fraud might reduce the cost of law enforcement and thereby save funds.

Allowing searches of welfare recipients’ homes to occur only upon a showing of cause, whether “probable” or “administrative,” would bring integrity to the system from all sides. It would ensure that recipients comply with the law and allow them the same constitutional protections of other citizens.

VI. CONCLUSION

Intruding into the homes of the poor has existed since the scientific charity movements of the nineteenth century.\textsuperscript{313} As the face of welfare has changed, so have the methods and goals for its distribution.\textsuperscript{314} The growth of the program gave many people access to the aid they so desperately needed. But the symbolic truth that there are two types of poor, the deserving and undeserving, continues to inform our views regarding public assistance.

As Judge Pregerson noted, thousands of persons are the recipients of government benefits; however, the poor are the ones subjected to intrusions of the home—a home that has been afforded special protection not only in the Constitution but also in many Supreme Court decisions.\textsuperscript{315} The Fourth Amendment declares “the right of the people to be secure in their persons, houses and effects . . . .”\textsuperscript{316} While Fourth Amendment jurisprudence has carved out numerous exceptions for various circumstances, demanding that the poorest of society give up their privacy for the basic necessities of life truly seems “shameful” and “ perverse.”\textsuperscript{317}

\textsuperscript{311} Id. § 1822.55.
\textsuperscript{313} See Katz, supra note 19.
\textsuperscript{314} See Handler, supra note 38, at 133-37 (describing the changes in welfare distribution pre-PRWORA).
\textsuperscript{315} Sanchez v. County of San Diego, 483 F.3d 965, 969 (9th Cir. 2007) (Pregerson, J., dissenting); see discussion supra Part IV.A.1.
\textsuperscript{316} U.S. CONST. amend. IV.
\textsuperscript{317} See Sanchez, 483 F.3d at 969 (“This situation is shameful.”); Amar, supra note 198, at 758 (“The result is a vast jumble of judicial pronouncements that is not merely complex and contradictory, but often perverse.”).