

2024

## Community Caretaking Exception Saves Lives . . . the Supreme Court Disagrees

Gabriella Lorenzo  
*Touro Law Center*

Follow this and additional works at: <https://digitalcommons.tourolaw.edu/lawreview>



Part of the [Criminal Procedure Commons](#), and the [Fourth Amendment Commons](#)

---

### Recommended Citation

Lorenzo, Gabriella (2024) "Community Caretaking Exception Saves Lives . . . the Supreme Court Disagrees," *Touro Law Review*. Vol. 39: No. 1, Article 10.

Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol39/iss1/10>

This Note is brought to you for free and open access by Digital Commons @ Touro Law Center. It has been accepted for inclusion in Touro Law Review by an authorized editor of Digital Commons @ Touro Law Center. For more information, please contact [lross@tourolaw.edu](mailto:lross@tourolaw.edu).

**COMMUNITY CARETAKING EXCEPTION SAVES LIVES . . .  
THE SUPREME COURT DISAGREES**

*Gabriella Lorenzo\**

**ABSTRACT**

As many are aware, the Fourth Amendment protects the people against unreasonable searches and seizures. A warrant is necessary for said activities. While there are a few exceptions to the warrant requirement, the Supreme Court recently held that the community caretaking exception does not extend to the home. Extending this exception to the home would allow police officers to enter and engage in functions that are unrelated to the investigation of a crime. Essentially, this exception would allow police to aid individuals and prevent serious, dangerous situations to protect the community.

This Note discusses why the Supreme Court erred in its decision to deny the extension of the community caretaking exception to the home. Further, it argues how denying the extension of this exception to the home could prevent police from being able to intervene and help individuals in need in situations that do not rise to the criteria of an “emergency” which would fall under the exigent circumstances exception.

---

\* J.D. Touro University Jacob D. Fuchsberg Law Center; B.A. in Sociology-Criminology and Political Science Pre-Law, Ohio University, 2020. I would like to thank the *Touro Law Review* Staff, Professor Levine and Professor Sepowitz for all of their help and guidance throughout this process. I would also like to thank Erik, my Dad, and the rest of my family for always believing in me and encouraging me to pursue my dreams. Lastly, I want to thank my late mother, Lynda A. Lorenzo, for being my rock throughout my academic journey. I know she would be so proud.

## I. INTRODUCTION

The Fourth Amendment of the United States Constitution protects “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures”<sup>1</sup> “. . . and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”<sup>2</sup> This creates the warrant requirement, making a warrant necessary for any searches and seizures.<sup>3</sup> A police officer must establish there is probable cause, and a judge will decide whether to issue a warrant.<sup>4</sup> There is probable cause where “the facts and circumstances within . . . [the officers’] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that’ evidence of a crime will be found in the place to be searched.”<sup>5</sup> Therefore, if the police officer can demonstrate there is a reasonable belief that evidence of a crime will be found, the judge will likely grant the search warrant.

There are exceptions to the warrant requirement, including: searches incident to lawful arrests, automobile searches and seizures, the plain view doctrine, consent, stop and frisk type searches, and exigent circumstances.<sup>6</sup> This Note will focus on another exception to the warrant requirement, the community caretaking exception, and explain why the Supreme Court erred in ruling that the exception does not apply to the home.<sup>7</sup> Part II will introduce the community caretaking exception, and the milestone case, *Cady v. Dombrowski*,<sup>8</sup> which established this exception. Part III will elaborate on the split amongst the circuits regarding the application of the community caretaking exception to the home. Finally, Part IV will discuss the judicial history of the leading case, which made its way to the Supreme Court. Courts look at various factors in evaluating exigent circumstances, such as the legitimate concern for the safety of

---

<sup>1</sup> U.S. CONST. amend. IV.

<sup>2</sup> *Id.*

<sup>3</sup> *Groh v. Ramirez*, 540 U.S. 551, 559 (2004).

<sup>4</sup> *United States v. Gaskin*, 364 F.3d 438, 456 (2d Cir. 2004).

<sup>5</sup> *Id.*

<sup>6</sup> *People v. Blasius*, 435 Mich. 573, 582 (1990).

<sup>7</sup> *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973).

<sup>8</sup> *Id.*

individuals, “to protect from imminent injury,” and if the police reasonably believe a person needs immediate assistance.<sup>9</sup> A need for law enforcement intervention to protect or preserve life, or avoid serious injury, constitutes exigent circumstances, an exception to the warrant requirement.<sup>10</sup> The exigent circumstances exception is comparable to the community caretaking exception, both allowing for police intervention without a warrant in particular circumstances. However, the community caretaking doctrine looks at the functions performed by a police officer, while the exigent circumstances exception requires an analysis of the circumstances to determine whether there was an actual emergency warranting immediate action.<sup>11</sup> Under the exigent circumstances exception, police officers are using their own discretion to determine whether they suspect that an individual is in need or that the threat of safety is legitimate enough to justify entry into the home without a warrant.<sup>12</sup> If these other exceptions to the warrant requirement are recognized and can extend to the home, why would it not be feasible for the community caretaking exception to extend to the home?

The community caretaking exception is one that is broad and unusual. *Cady v. Dombrowski*<sup>13</sup> was the first decision to acknowledge this exception, and this case established that community caretaking functions are separate from the detection, investigation, or gathering of evidence relating to a crime.<sup>14</sup> Police are expected to “aid those in distress, combat actual hazards, prevent potential hazards from materializing, and provide an infinite variety of services to preserve and protect community safety.”<sup>15</sup> *Dombrowski* brought this exception to light, since there are several interactions between police and citizens involving automobiles, many of which are for reasons other than violating a criminal statute or committing a crime.<sup>16</sup>

---

<sup>9</sup> *United States v. Janis*, 387 F.3d 682, 687 (8th Cir. 1989); *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006); *Collins v. Bellinghausen*, 153 F.3d 591, 596 (8th Cir. 1998).

<sup>10</sup> *Id.*

<sup>11</sup> *Hunsberger v. Wood*, 570 F.3d 546, 554 (4th Cir. 2009).

<sup>12</sup> *Id.*

<sup>13</sup> *Dombrowski*, 413 U.S. at 441.

<sup>14</sup> *Id.*

<sup>15</sup> *United States v. Rodriguez-Morales*, 929 F.2d 780, 784 (1st Cir. 1991).

<sup>16</sup> *See Dombrowski*, 413 U.S. at 441.

In *Caniglia v. Strom*,<sup>17</sup> the Supreme Court held that the community caretaking exception should not extend to the home.<sup>18</sup> This Note argues that these warrantless searches should be allowed to save and protect potential victims. Police take part in work including community services, public safety, and non-investigative work. The Court erred in its decision in *Caniglia* and should have held that the exception should extend to the home in certain situations. The community caretaking exception to the warrant requirement should extend past the motor vehicle into the home, as it may help save many potential victims. Protecting the public is the job of the police and being concerned for the safety and harm prevention of individuals should be considered valid reasoning to enter without a warrant.

## II. *DOMBROWSKI*: THE COMMUNITY CARETAKING EXCEPTION IS ESTABLISHED

*Dombrowski* established the community caretaking exception, which was first applied to warrantless searches of automobiles.<sup>19</sup> In *Dombrowski*, the defendant (a Chicago policeman) was arrested following a drunk driving accident that resulted in his car being towed to an unguarded garage.<sup>20</sup> Because the defendant was a police officer, the police suspected that the defendant was in possession of a firearm and searched the car the next day without a warrant.<sup>21</sup> The search for the firearm was considered “standard procedure” for the police “to protect the public from the possibility that a revolver would fall into untrained or perhaps malicious hands.”<sup>22</sup> The officers were reasonable in their concern for the gun being left in the car. Regardless of reasonableness, is this sufficient enough to justify a search without a warrant? The Court looked at two facts to make its decision.<sup>23</sup> First, the police took custody of the car and therefore were exercising control over it.<sup>24</sup> This was done because the defendant was intoxicated and comatose, which made him unable to move the car himself, nor make

---

<sup>17</sup> 141 S. Ct. 1596 (2021).

<sup>18</sup> *Id.*

<sup>19</sup> *Dombrowski*, 413 U.S. at 433.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 443.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

arrangements for someone else to move it for him.<sup>25</sup> The vehicle caused an obstruction on the highway and police had no choice but to tow it for safety purposes.<sup>26</sup> Second, the Court noted that the search and seizure of the revolver was standard procedure.<sup>27</sup> The Court held that after seizing a vehicle, it would be unreasonable for the police to not have the right, “even for their own protection,” to search it.<sup>28</sup> Therefore, the warrantless search was justified by the community caretaking exception.<sup>29</sup>

*Dombrowski* acknowledged the need for the community caretaking exception as police perform functions outside of their investigative work.<sup>30</sup> The Court explained how police officers often have to deal with vehicle accidents, and these functions, known as community caretaking functions, are separate from investigation or gathering evidence related to the violation of a criminal statute.<sup>31</sup> Hypothetically, had the gun not been seized by the police, it could have been stolen by someone else and perhaps even used to commit a crime. Numerous cases, discussed below, were heard by the circuits involving the community caretaking exception following *Dombrowski*. Though *Dombrowski* did establish the exception, not all the circuits agreed with and followed this decision.

### III. THE CIRCUIT SPLIT

Prior to the Supreme Court deciding *Caniglia*, there was a circuit split regarding the community caretaking exception. The split comes from either broadly or narrowly interpreting the community caretaking exception established in *Dombrowski*.<sup>32</sup> The Third,<sup>33</sup> Seventh,<sup>34</sup> and Tenth<sup>35</sup> Circuit courts have held that the exception does not apply to homes. These circuits narrowly apply the exception

---

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 446.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 441.

<sup>32</sup> *Id.* at 433.

<sup>33</sup> *Ray v. Twp. of Warren*, 626 F.3d 170 (3d Cir. 2010).

<sup>34</sup> *Sutterfield v. City of Milwaukee*, 751 F.3d 542 (7th Cir. 2014); *United States v. Pichany*, 687 F.2d 204 (7th Cir. 1982).

<sup>35</sup> *United States v. Bute*, 43 F.3d 531 (10th Cir. 1994).

because its language does not explicitly grant this privilege in the context of the home.<sup>36</sup> On the other side of the circuit split, the First,<sup>37</sup> Fifth,<sup>38</sup> Eighth,<sup>39</sup> and Ninth<sup>40</sup> Circuits held that the exception does extend to the home under the proper circumstances and these circuits more broadly applied it when police interactions and the need for police assistance extend well beyond the motor vehicle.<sup>41</sup>

### A. Circuits Rejecting the Application of *Dombrowski* to the Home

#### 1. *The Third Circuit*

Until 2010, the Third Circuit had not addressed the community caretaking exception to enter the home without a warrant.<sup>42</sup> In *Ray v. Township of Warren*,<sup>43</sup> the court held that the community caretaking exception does not override the warrant requirement for a search of a home.<sup>44</sup> In June 2005, Theresa Ray went to her husband's home to pick up their daughter for court-ordered visitation.<sup>45</sup> After ringing the doorbell and knocking for a few minutes, Ms. Ray called the police while observing a man she believed to be her husband moving around the home.<sup>46</sup> Because of the Rays' history of domestic issues and child custody problems, the officers were concerned for the well-being of the daughter.<sup>47</sup> The officers contacted a municipal court judge to ask for guidance on entering the house.<sup>48</sup> Based on the phone call, the judge issued an arrest warrant for Ray, which was later voided.<sup>49</sup> The

---

<sup>36</sup> *Id.*

<sup>37</sup> *Castagna v. Jean*, 955 F.3d 211 (1st Cir. 2020); *Caniglia v. Strom*, 953 F.3d 112 (1st Cir. 2020); *Matalon v. Hynnes*, 806 F.3d 627 (1st Cir. 2015).

<sup>38</sup> *United States v. York*, 895 F.2d 1026 (5th Cir. 1990).

<sup>39</sup> *United States v. Smith*, 820 F.3d 356 (8th Cir. 2016).

<sup>40</sup> *Rodriguez v. City of San Jose*, 930 F.3d 1123 (9th Cir. 2019).

<sup>41</sup> *Id.*; see also *Hynnes*, 806 F.3d 627; *Castagna*, 955 F.3d 211; *Caniglia*, 953 F.3d 112; *York*, 895 F.2d 1026; *Smith*, 820 F.3d 356.

<sup>42</sup> *Ray v. Twp. of Warren*, 626 F.3d 170, 177 (3d Cir. 2010).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 171.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 172.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

concerned officers entered the home without a search warrant.<sup>50</sup> On appeal, the Third Circuit held that the community caretaking exception cannot justify warrantless searches of the home.<sup>51</sup> This circuit only allowed the exception to extend to the automobile, stating “we need not now decide” when considering the issue of whether the exception can ever apply to other areas outside of the automobile.<sup>52</sup> This leaves this inquiry open to further judiciary review in the future.

The community caretaking exception should have been applied. The welfare of the child was at stake, which should have satisfied one of the functions of the community caretaking exception.<sup>53</sup> Again, functions of the community caretaking exception include community services and non-investigative activities such as aiding individuals in distress, combatting hazards, and preserving and protecting community safety.<sup>54</sup> Specifically, since there was already a history of domestic violence and child custody issues, this furthered the need for this exception.<sup>55</sup> The officers also contacted a judge in an attempt to get a warrant, as the potential danger to the child gave the officers probable cause.<sup>56</sup> The community caretaking exception should have been applied here to ensure the child’s safety was not at risk.

## 2. *The Seventh Circuit*

In *United States v. Pichany*,<sup>57</sup> the Seventh Circuit refused to expand the community caretaking exception to a private warehouse, holding that doing so would require the court to ignore express language in *Dombrowski*,<sup>58</sup> which confined the community caretaking exception to searches of vehicles.<sup>59</sup> Police were investigating a burglary and went to meet the victim and investigate.<sup>60</sup> The police

---

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 177.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *United States v. Rodriguez-Morales*, 929 F.2d 780, 784 (1st Cir. 1991).

<sup>55</sup> *Warren*, 626 F.3d 170, 177.

<sup>56</sup> *Id.*

<sup>57</sup> 687 F.2d 204, 208 (7th Cir. 1982).

<sup>58</sup> *Dombrowski*, 413 U.S. at 433.

<sup>59</sup> *Id.*

<sup>60</sup> *Pichany*, 687 F.2d 204, 207.



entered the wrong warehouse building, which happened to be owned by the defendant, where they found stolen tractors (unrelated to the burglary).<sup>61</sup> There were no functions of the community caretaking exception here, as the police were involved in an investigation, and therefore it could not apply.<sup>62</sup> Investigative activities are not considered community caretaking functions.<sup>63</sup> When police are taking part in these investigative activities, the community caretaking exception will not apply because this exception protects other functions of police work, aside from their normal, investigative duties.

In *Sutterfield v. City of Milwaukee*,<sup>64</sup> the Seventh Circuit acknowledged that it holds a narrow view and restricted the community caretaking exception to automobile searches.<sup>65</sup> After receiving no response at the door, police forcibly entered the defendant's home to detain her for a mental health evaluation after her psychiatrist called to report her being suicidal.<sup>66</sup> They also accessed a locked container and seized the defendant's gun.<sup>67</sup> The court held that the community caretaking exception did not justify the entry here and they rejected the effort to apply the exception beyond the automobile.<sup>68</sup> Instead, the court justified warrantless entry into the home based on the exigent circumstances exception because the defendant was believed to be in need of immediate help to avoid suicide.<sup>69</sup>

### 3. *The Tenth Circuit*

In *United States v. Bute*,<sup>70</sup> the Tenth Circuit held that the community caretaking exception only applies to cases involving searches of the automobile, refusing to apply the exception to a

---

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 208.

<sup>64</sup> 751 F.3d 542, 554 (7th Cir. 2014).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 545.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 548.

<sup>69</sup> *Id.* at 557.

<sup>70</sup> 43 F.3d 531 (10th Cir. 1994).

commercial building owned by the defendant.<sup>71</sup> The police officers entered the defendant's building after noticing the garage door was open, because they suspected a possible vandalization or burglary.<sup>72</sup> The officers entered without a warrant or permission from the owner, and conducted a search of the house, during which they discovered a methamphetamine lab.<sup>73</sup> The court held that the "degree of suspicion or concern the open door may have reasonably aroused" fell short of what was necessary to justify a warrantless entry.<sup>74</sup> This court clarified that regardless of the facts of the case, this exception will only apply in cases involving automobile searches.<sup>75</sup> In a dissenting opinion, Judge Anderson expressed that this search was done to protect the owner's property and the community, not search for evidence against the owner.<sup>76</sup> The court erred in this decision, and the community caretaking exception should have applied here as there was no criminal investigation. The function of the police officers was only to protect the community to ensure nothing had happened when they found the garage door open.

## **B. Circuits Accepting the Application of *Dombrowski* to the Home**

### **1. *The First Circuit***

In *Matalon v. Hynnes*,<sup>77</sup> the First Circuit acknowledged that the community caretaking exception may apply to warrantless searches in the home.<sup>78</sup> Despite acknowledging the application to the home exists, the facts of this case did not satisfy this exception.<sup>79</sup> Police officers were searching for a suspect of a reported robbery, who allegedly ran in the direction of the defendant's home.<sup>80</sup> One of the officers looked through the glass door of the defendant's home, and after knocking and

---

<sup>71</sup> *Id.* at 535.

<sup>72</sup> *Id.* at 533.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 539.

<sup>75</sup> *Id.* at 535.

<sup>76</sup> *Id.* at 541.

<sup>77</sup> 806 F.3d 627 (1st Cir. 2015).

<sup>78</sup> *Id.* at 634.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 631.

receiving no answer, the officers entered and searched the home.<sup>81</sup> The defendant was sleeping at the time of their entry, and after awaking and exchanging words with the officers, he was arrested.<sup>82</sup> The community caretaking exception applies to functions of officers “totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute,” yet here the officers were in pursuit of a criminal, which is an active investigation.<sup>83</sup> The officers believed the suspect was inside the home and therefore continued their criminal investigation, meaning their actions were “far beyond the borders of the heartland of the community caretaking exception.”<sup>84</sup> The court emphasized that the community caretaking exception has blurred lines as far as what police activities precisely fall under the exception.<sup>85</sup> However, in this case it was extremely clear that the conduct of the officers was well beyond this exception.<sup>86</sup>

In *Castagna v. Jean*,<sup>87</sup> the First Circuit allowed the community caretaking exception to extend to the home when the police officers entered a home after witnessing a loud party with intoxicated guests, who appeared to be underage.<sup>88</sup> The officers walked in and observed a guest stumble outside and then throw up.<sup>89</sup> The officers took action to have the music lowered and to make sure that the underage guests were safe.<sup>90</sup> One officer testified that his reasons for entering the home were “strictly just . . . the well-being check . . . doing community caretaker work, and to speak to the owner . . . to locate him, speak to him what’s going on . . . because it was spilling onto the sidewalk.”<sup>91</sup> These actions constituted community caretaking functions as “they were aiding people who were potentially in distress, preventing hazards from materializing, and protecting community safety.”<sup>92</sup> The court noted that the police officers were not taking part in an investigation of a crime, and therefore their concern satisfied the

---

<sup>81</sup> *Id.* at 632.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 634.

<sup>84</sup> *Id.* at 635.

<sup>85</sup> *Id.* at 635-36.

<sup>86</sup> *Id.*

<sup>87</sup> 955 F.3d 211 (1st Cir. 2020).

<sup>88</sup> *Id.* at 215.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 221.

community caretaking exception.<sup>93</sup> The officers' actions were reasonable, as underage drinking is a big risk for the minors' health and safety.<sup>94</sup> In its analysis, the court recognized that the officers' actions are protected by the community caretaking doctrine because their actions did not demonstrate that they were working to investigate a crime.<sup>95</sup> The court went further to say that even if the officers were potentially partly motivated to enforce the underage drinking laws, this possibility would "not defeat the officer's...entitlement to the exception."<sup>96</sup> Therefore, the officers' observations and concerns for safety justified their actions.

In this case, the concern about underage drinking should be enough to satisfy the exception, especially after seeing one individual stumble out and throw up outside.<sup>97</sup> One of the biggest concerns of the officers was likely the potential for alcohol poisoning. The potential risk to someone's life in this situation justifies the entry into the home. The officers were likely also concerned about potential drinking and driving, which would put not only the drunk driver at risk, but also anyone out on the roads. The court similarly held that the exception applied to the home in *Caniglia*,<sup>98</sup> which will be further discussed.

## 2. *The Fifth Circuit*

In *United States v. York*,<sup>99</sup> the Fifth Circuit allowed the community caretaking exception to extend to the home and therefore held that the warrantless entry was justified based on the exception.<sup>100</sup> Here, police officers arrived on the scene, where a man stated that the defendant had threatened him and his children earlier that night.<sup>101</sup> The police officers accompanied the man and his children into the defendant's home (where they were living as guests) so they could remove their belongings and leave without an issue.<sup>102</sup> While standing

---

<sup>93</sup> *Id.* at 222.

<sup>94</sup> *Id.* at 221.

<sup>95</sup> *Id.* at 222.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 215.

<sup>98</sup> *Caniglia v. Strom*, 953 F.3d 112 (1st Cir. 2020).

<sup>99</sup> 895 F.2d 1026 (5th Cir. 1990).

<sup>100</sup> *Id.* at 1030.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* at 1027.

in the entrance foyer of the house, the police could see a glass cabinet with guns.<sup>103</sup> The defendant then came out from the back of the house, appearing drunk, and was arguing with the officers to leave.<sup>104</sup> Then, the defendant wanted to call his attorney, and an officer followed him to his room to do so, leading the officer to see a pistol and sawed-off shotgun in the room.<sup>105</sup> The officer believed some of the guns in the glass case were illegal and contacted the Federal Bureau of Alcohol, Tobacco and Firearms (ATF) to report this, which led to ATF investigating and charging the defendant.<sup>106</sup> These guns were in plain view, making that report and seizure justified. The court held that the defendant's threats and the man's living accommodations at the time made it foreseeable and reasonable for the man to need help moving his possessions.<sup>107</sup> The actions of these officers in the home were covered under the community caretaking exception.<sup>108</sup> The court was correct in holding that the community caretaking exception applied because the situation could have quickly turned violent had the officers not been there to escort the man into the house to remove his possessions. Especially since threats had already been made, the man needed the police escort to protect his children. This was certainly a community caretaking function, which justified the warrantless entry.

### 3. *The Eighth Circuit*

In *United States v. Smith*,<sup>109</sup> the Eighth Circuit applied the community caretaking exception to the warrant requirement to an entry into the home.<sup>110</sup> The court held that the officers were acting within the scope of the community caretaking exception because they reasonably believed that the defendant's former girlfriend may have been incapacitated inside the home, which would have prevented her from coming out of the home after the defendant was arrested.<sup>111</sup> The police were reasonable in thinking this because the 911 caller asked

---

<sup>103</sup> *Id.* at 1028.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* at 1030.

<sup>108</sup> *Id.*

<sup>109</sup> 820 F.3d 356 (8th Cir. 2016).

<sup>110</sup> *Id.* at 361.

<sup>111</sup> *Id.*

for a welfare check on the girlfriend, believing she was being held against her will by the defendant and that he likely had weapons.<sup>112</sup> “A search or seizure under the community caretaking function is reasonable if the governmental interest in law enforcement’s exercise of that function, based on specific and articulable facts, outweighs the individual’s interest in freedom from government intrusion.”<sup>113</sup> Here, the well-being of the girlfriend outweighed the defendant’s individual interest in freedom from a warrantless search. The girlfriend had not responded to any calls or text messages.<sup>114</sup> When the officers arrived at the home, they saw a face in the window, which contradicted the defendant’s claim that he was home alone.<sup>115</sup> The court applied the community caretaking exception because a reasonable officer may conclude that someone was inside but unable to respond.<sup>116</sup> Therefore, the warrantless entry was justified by the officer’s “obligation to help those in danger and ensure the safety of the public.”<sup>117</sup>

#### 4. *The Ninth Circuit*

In *Rodriguez v. City of San Jose*,<sup>118</sup> the Ninth Circuit held that the warrantless seizure of guns was not a violation of the defendant’s Fourth Amendment rights.<sup>119</sup> The court reasoned that the community caretaking exception applied because the police officers had probable cause to detain the husband and send him for a mental health evaluation.<sup>120</sup> The defendant’s wife called the police to perform a welfare check on her husband, which had occurred multiple times.<sup>121</sup> When the officers arrived, they witnessed the defendant ranting about the CIA, the army, being watched, shooting up schools, and having a safe full of guns.<sup>122</sup> When asked if he wanted to hurt himself, the defendant tried to break his own thumb.<sup>123</sup> After sending the defendant

---

<sup>112</sup> *Id.* at 358

<sup>113</sup> *Id.* at 360.

<sup>114</sup> *Id.* at 361.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> 930 F.3d 1123 (9th Cir. 2019).

<sup>119</sup> *Id.* at 1127.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

to a medical facility, the officers confirmed the existence of the firearms in the home with the wife.<sup>124</sup> The officers felt that if the defendant obtained access to the firearms immediately after returning home, it could pose a serious public safety threat.<sup>125</sup>

The Ninth Circuit recognized two scenarios in which a police officer could conduct a warrantless search within the community caretaking exception: (1) entries into the home for safety or medical emergencies, and (2) hazardous vehicles being impounded.<sup>126</sup> Previously, the community caretaking exception had related solely to the second scenario, but *Rodriguez* extended these factors to apply to entry into a home.<sup>127</sup> The court must balance the public safety interest, the urgency of that interest, and the individual property, liberty, and privacy interests when determining whether the search and seizure in the home falls under the exception.<sup>128</sup> When balancing all the factors involved in this case, the court held that the community caretaking exception applied to the search and seizure in the home.<sup>129</sup> The welfare of an individual is a priority, especially when the possibility of weapon use is involved.

Although the facts of the case are very similar to *Caniglia*, the court ruled the opposite way.<sup>130</sup> The biggest difference between *Rodriguez* and *Caniglia* is the defendant in *Rodriguez* did not voluntarily go to the hospital,<sup>131</sup> but *Caniglia* willingly went in the hope that the police would not take his guns.<sup>132</sup> However, both defendants made a threat involving their guns.<sup>133</sup> The striking similarities of these cases make the opposite holdings odd. The holding in *Rodriguez* demonstrates the correct use of the community caretaking exception. A mental health risk involving guns poses a danger to the community. The actions of the officers were a correct use of the community caretaking exception, as they were outside of an investigation.

---

<sup>124</sup> *Id.* at 1128.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at 1137.

<sup>127</sup> *Id.* at 1138.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Rodriguez v. City of San Jose*, 930 F.3d 1123, 1128 (9th Cir. 2019).

<sup>132</sup> *Caniglia v. Strom*, 953 F.3d 112 (1st Cir. 2020).

<sup>133</sup> *See id.*; *see also Rodriguez*, 930 F.3d at 1138.

#### IV. *CANIGLIA V. STROM*

In August 2015, Mr. Caniglia and his wife had an argument, during which he threw his handgun on the table and told his wife to put him out of his misery.<sup>134</sup> Mrs. Caniglia spent the night in a hotel and could not reach her husband the next morning.<sup>135</sup> She became worried and called the police to do a welfare check and escort her to the home.<sup>136</sup> The police were concerned that Mr. Caniglia was suicidal and told him they were taking him to the hospital, which Mr. Caniglia agreed to on the belief that the police would not take his guns.<sup>137</sup> Although there was no evidence Mr. Caniglia was taken to the hospital involuntarily, he argued that he did not go voluntarily but only so they would not take his guns.<sup>138</sup> The officers seized the guns after Mrs. Caniglia showed them where they were kept.<sup>139</sup> The officers felt this was reasonable based on Mr. Caniglia's state of mind and the belief that, if the guns were not seized, then Mr. Caniglia, his wife, or others could be in danger.<sup>140</sup> Mr. Caniglia alleged that his Fourth Amendment rights were violated when the police seized his guns without a warrant, while the State argued this was necessary and the police's behavior was "reasonable and consistent with [their] duty to protect the public."<sup>141</sup> Granting the State's motion for summary judgment, the district court held that there was an ambiguity with whether the community caretaking function applies to searches and seizures in homes and that it was not explicitly established that the exception does not apply to police in the home.<sup>142</sup> This court broadly interpreted the exception, allowing it to extend to the home.<sup>143</sup> Though Mr. Caniglia believed that the warrantless search of his home and seizure of his guns was not justified, the district court allowed the community caretaking exception to extend to the home because there

---

<sup>134</sup> *Caniglia*, 396 F. Supp. 3d at 230.

<sup>135</sup> *Id.* at 231.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.* at 233.

<sup>142</sup> *Id.* at 236.

<sup>143</sup> *Id.*



was no dispute that the police officers knew the guns were legally owned.<sup>144</sup> The police officers were not trying to uncover evidence of a crime, and therefore were acting solely in their roles as “community caretakers.”<sup>145</sup>

On appeal, the First Circuit affirmed the district court’s decision and held that the community caretaking exception extends to police performing these functions on private premises, including homes.<sup>146</sup> Threats to individuals and the community are not confined to the highways, and therefore the court held that under the correct circumstances, this exception should extend beyond the motor vehicle.<sup>147</sup> The court was correct to reason that there are threats to communities beyond vehicles and driving.<sup>148</sup> For example, a gun can pose just as much of a risk to the community whether it is in a vehicle or in a home. Therefore, since the exception was extended to motor vehicles and highways, the exception should also extend to the home and other private entities.<sup>149</sup> Limiting the exception to only vehicles conflicts with the functional needs of the community.<sup>150</sup> Police are sometimes tasked with conducting well check visits or even noise complaints in the home. Also, waiting for exigent circumstances to engage in the caretaking function potentially means waiting for a serious injury or even death.<sup>151</sup> The court’s reasoning strongly supports the argument that the Supreme Court erred in *Caniglia*. The community caretaking exception offers a potential remedy before the emergency occurs to prevent the emergency and target the best interests of the people in the community.

The First Circuit developed a three-part test to determine whether the community caretaking exception should extend to the search and seizure in this case.<sup>152</sup> This test considers (1) “involuntary seizure of an individual whom officers have an objectively reasonable

---

<sup>144</sup> *Id.* at 233-35.

<sup>145</sup> *Id.*

<sup>146</sup> *Caniglia v. Strom*, 953 F.3d 112, 118 (1st Cir. 2020).

<sup>147</sup> *Id.* at 124.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> Abdel-Rahman Hamed, SUPREME COURT TO ADDRESS LIMITS OF POLICE POWER IN THE NAME OF PUBLIC SAFETY, SUBSCRIPT L. (May 18, 2021), <https://subscript-law.com/caniglia-v-strom/>.

<sup>151</sup> *Id.*

<sup>152</sup> *Caniglia v. Strom*, 953 F.3d 112, 124 (1st Cir. 2020).

basis for believing is suicidal or otherwise poses an imminent risk of harm to himself or others”; (2) “temporary seizure of firearms and associated paraphernalia that police officers have an objectively reasonable basis for thinking such an individual may use in the immediate future to harm himself or others”; and (3) “appropriateness of a warrantless entry into an individual’s home when that entry is tailored to the seizure of firearms in furtherance of police officers’ community caretaking responsibilities.”<sup>153</sup> The court held that these types of activities fit the community caretaking exception because they are not part of “the normal work of criminal investigation.”<sup>154</sup> The First Circuit previously applied the community caretaking exception where the initial arrival at the home was related to a potential investigation, because the actual entry into the home was reasonable when the police were entering “not as part of a criminal investigation, but in pursuance of their community caretaking function.”<sup>155</sup> To exemplify, in *State v. Deneui*, a South Dakota officer responded to investigate the possible theft of gas, but entered the home after smelling a strong ammonia odor “to check to make sure nobody was incapacitated inside.”<sup>156</sup>

The court also discussed the need to apply a balancing test, weighing the need for the caretaking activity and the involved individual’s interest in freedom and right to protection from government intrusions.<sup>157</sup> When individuals with mental illness, or individuals at risk of imminent dangers are involved, the community caretaking side of the balancing test weighs more heavily because such individuals may require a quick response to avoid serious consequences, including injury or death to themselves or others.<sup>158</sup> Scenarios involving mental illness may include an acute mental health crisis or risk of suicide.<sup>159</sup>

These scenarios involving mental health crises “frequently confront police with precisely the sort of damned-if-you-do, damned-if-you-don’t conundrum that the community caretaking doctrine can

---

<sup>153</sup> *Id.* at 124-25.

<sup>154</sup> *Id.* at 125 (citing *Matalon v. Hynnes*, 806 F.3d 627, 634-35 (1st Cir. 2015)).

<sup>155</sup> *Hynnes*, 806 F.3d at 635 (citing *State v. Deneui*, 775 N.W.2d 221, 241 (S.D. 2009)).

<sup>156</sup> *Deneui*, 775 N.W.2d 221 at 227.

<sup>157</sup> *Hynnes*, 806 F.3d at 635.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

help to alleviate.”<sup>160</sup> Using the facts of the *Caniglia* case, hypothetically, if the police had not seized his guns, Mr. Caniglia could have returned home after being released from the hospital and shot himself or his wife. This is the type of scenario the community caretaking exception would aim to prevent. However, if the exception was not applied and the police did not take Mr. Caniglia’s guns, who would bear the blame if he shot himself or his wife? At least some blame is likely to fall on the officers if they had knowledge of the guns and did not retrieve them. Balancing all the interests should allow the police to temporarily confiscate the guns under the community caretaking exception.

Finally, on Caniglia’s second appeal, the Supreme Court held that police community caretaking duties do not justify warrantless searches and seizures in the home.<sup>161</sup> Since the circuits were split on whether or not to apply the community caretaking exception to the home, it is not surprising that the *Caniglia* case made its way to the Supreme Court. The Supreme Court reversed the decision of the lower courts, holding that the community caretaking exception does not extend to the home and “what is reasonable for vehicles is different from what is reasonable for homes.”<sup>162</sup> The Supreme Court erred in its decision to reverse because while homes are different from vehicles, police still have a duty to protect the public using community caretaking functions which are outside of investigative activity.

The Court held that the Fourth Amendment protected “the very core of this right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.”<sup>163</sup> The Court also acknowledged that although the existence of community caretaking tasks is recognized, this does not mean it is open-ended for police to perform them anywhere.<sup>164</sup> The Court believed very strongly that expanding this exception to the home was a complete violation of rights granted by the Fourth Amendment.<sup>165</sup> Procedures that are reasonable for dealing with automobiles are not the same as what is reasonable for homes.<sup>166</sup>

---

<sup>160</sup> *Id.*

<sup>161</sup> *Caniglia v. Strom*, 141 S. Ct. 1596, 1600 (2021).

<sup>162</sup> *Id.*

<sup>163</sup> *Id.* at 1597.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.* at 1599.

In his concurrence, Justice Alito explained that this case falls within the category of community caretaking because the police were carrying out the search and seizure for the purpose of preventing a suicide.<sup>167</sup> Preventing a suicide would fall under one of the functions of the exception, as this is aiding individuals in distress, as well as preserving and preventing community safety.<sup>168</sup> However, he explained that the Court has yet to address “Fourth Amendment restrictions on seizures like the one that we must assume occurred here, i.e., a short-term seizure conducted for the purpose of ascertaining whether a person presents an imminent risk of suicide.”<sup>169</sup> Justice Alito addressed how there are still potential cases and issues that may arise regarding searches without warrants, including welfare checks or checking on an elderly person’s medical condition.<sup>170</sup> These Fourth Amendment issues may arise down the road but as of now “the Court properly rejects the broad ‘community caretaking’ theory on which the decision below was based.”<sup>171</sup> This decision, and Justice Alito’s concurrence, has likely not put an end to this issue.<sup>172</sup> It may find its way back to the Court in the future, and unfortunately may be because of a tragedy that could have been prevented had police been allowed to enter the home without a warrant.

## V. DISCUSSION

While this topic is very controversial due to the potential infringement of people’s constitutional rights, the balancing test in *Caniglia* is important in understanding why the Supreme Court erred in reversing the First Circuit’s decision.<sup>173</sup> The balancing test weighs both the need for the caretaking activity and the involved individual’s interest in freedom and protection from government intrusions.<sup>174</sup> When the safety of an individual is at risk, the need to protect the safety and/or life of that individual should have a much greater weight than the fear of governmental intrusions. Particularly, when firearms and

---

<sup>167</sup> *Id.* at 1601 (Alito, J., concurring).

<sup>168</sup> *United States v. Rodriguez-Morales*, 929 F.2d 780, 784 (1st Cir. 1991).

<sup>169</sup> *Caniglia v. Strom*, 141 S. Ct. 1596, 1601 (2021).

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Caniglia v. Strom*, 953 F.3d 112, 124 (1st Cir. 2020).

<sup>174</sup> *Id.* at 118.

mental illness or mental instability are involved, the community caretaking exception should certainly apply to subdue dangerous situations and minimize the risk of danger.

Several states have implemented “Red Flag laws,” which are “risk-based, temporary, and preemptive protective order[s] that authorize[] the removal of firearms without due process.”<sup>175</sup> These laws allow law enforcement to seize firearms from someone who is deemed mentally ill.<sup>176</sup> For example, pursuant to California law, officers are permitted to take individuals into custody and place them in a mental health facility if the officers have probable cause to believe they are suffering from a mental health disorder and are a danger to themselves or others.<sup>177</sup> Further, a person detained for this mental health reason must have his/her firearms (or other deadly weapons) confiscated.<sup>178</sup> The law enforcement agency that confiscated the weapons has thirty days following the release of the person to petition for a hearing to determine whether the return of the weapon would result in endangering that individual or others.<sup>179</sup>

When a firearm owner is admitted for psychological evaluation, whether forcefully or voluntarily, leaving the firearms at the home poses a significant risk. The police do not know how soon that person will be released, and the situation could potentially turn violent when the individual returns home to the firearm. When the dispute involves spouses/children/family members, there are multiple people that could potentially be at risk for violence, including the individual as well. Suicide is also the leading cause of unnatural death in individuals suffering from mental illnesses.<sup>180</sup> In her empirical assessment, Rachel Dalafave found that in the United States, the overall firearm-suicide rate is about 34% lower when there is a red flag law in effect.<sup>181</sup> She urges policymakers to consider implementing red

---

<sup>175</sup> Preventing Unjust Red Flag Laws Act of 2021, H.R. 5417, 117th Cong. (2021).

<sup>176</sup> *Id.*

<sup>177</sup> CAL. WELF. & INST. § 5150 (2019).

<sup>178</sup> CAL. WELF. & INST. § 8102 (2014).

<sup>179</sup> *Id.*

<sup>180</sup> *Id.* at 152.

<sup>181</sup> Rachel Dalafave, *An Empirical Assessment of Homicide and Suicide Outcomes with Red Flag Laws*, 52 LOY. U. CHI. L.J. 867, 889 (2021). Rachel Dalafave extensively researched homicide and suicide outcomes in relation to red flag laws in existence between 1990 and 2018. *Id.* Her article argues that, because of the data, red flag laws should be more successful in the political atmosphere than other gun

flag laws as “an effective method to prevent firearm-related suicide, one of the most deadly and prevalent potential causes of death in the United States.”<sup>182</sup> Dalafave also argues that red flag laws should be more “politically palatable” than other gun legislation because these laws tend to better balance the interests of gun owners with the need to end gun violence.<sup>183</sup>

Similar to *Caniglia*, situations may arise where police will use their judgment to make sure the individuals involved are protected. It is reasonable for police officers to seize firearms from their owner if they reasonably believe the owner or others could be in danger if the firearms are left in the home.<sup>184</sup>

A police officer—over and above his weighty responsibilities for enforcing the criminal law—must act as a master of all emergencies, who is “expected to aid those in distress, combat actual hazards, prevent potential hazards from materializing, and provide an infinite variety of services to preserve and protect community safety.”<sup>185</sup>

Police have an extremely broad and infinite range of duties, responsibilities, and expectations, and the community caretaking exception is something that assists them in carrying out their job. Police should not typically be allowed to enter a home without a warrant, but when scenarios arise where police are preventing a hazard, helping people in distress, and aiding the community, this exception should be available to use for the welfare of those involved.

## VI. OPPONENTS OF THE COMMUNITY CARETAKING EXCEPTION

Opponents of the community caretaking exception may argue that this exception allows police officers to use “false concern for citizens’ welfare as a subterfuge to enter their homes at will to

---

control measures. *Id.* This is because red flag laws tend to balance the interests of gun owners well while still combating the negative side of gun violence. *Id.*

<sup>182</sup> *Id.* at 900.

<sup>183</sup> *Id.*

<sup>184</sup> See Abdel-Rahman Hamed, *Supreme Court To Address Limits of Police Power in the Name of Public Safety*, SUBSCRIPT L. (Mar. 20, 2021), <https://subscript-law.com/caniglia-v-strom/>.

<sup>185</sup> *Caniglia*, 953 F.3d at 124.

investigate crime.”<sup>186</sup> Opponents believe that non-emergency circumstances cannot overcome the protection guaranteed to the home by the Fourth Amendment.<sup>187</sup> They also make the distinction that people have a greater expectation of privacy in the home than in the automobile, though jurisdictions that apply the community caretaking exception disregard this distinction with respect to expectation of privacy.<sup>188</sup> A narrow reading of the rights granted under the Fourth Amendment can result in “a slow and steady erosion of those rights.”<sup>189</sup> Yet, it can also be argued that reading the Fourth Amendment rights too broadly may lead to overprotection of the people, allowing for more crime. The line must be drawn somewhere in the middle, though both sides of this argument may never reach a resolution.

Challengers to the exception also assert that the exception is not necessary because of the “emergency doctrine,” which allows police to enter a home without a warrant in some situations or to “protect or preserve life or avoid serious injury.”<sup>190</sup> *People v. Mitchell*<sup>191</sup> created the Mitchell Test for the emergency doctrine which states,

(1) the police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property, (2) the search must not be primarily motivated by intent to arrest and seize evidence, and (3) there must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched.<sup>192</sup>

An article in Cardozo School of Law’s Public Law, Policy and Ethics Journal offers the idea that modifying the community caretaking exception with the Mitchell Test is a practical solution for the

---

<sup>186</sup> Gregory T. Holding, *Stop Hammering Fourth Amendment Rights: Reshaping the Community Caretaking Exception with the Physical Intrusion Standard*, 97 MARQ. L. REV. 123, 124 (2013).

<sup>187</sup> *Id.* at 153.

<sup>188</sup> *Id.*

<sup>189</sup> *Id.* at 159.

<sup>190</sup> *Id.* at 150.

<sup>191</sup> *People v. Mitchell*, 39 N.Y.2d 173 (1976).

<sup>192</sup> *Id.* at 177.

debate.<sup>193</sup> The modifications would be to the first and third prongs, stating that:

(1) the police must have reasonable grounds to believe that there is . . . [a community caretaking situation] at hand and . . . [a] need for their assistance for the protection of life or liberty, and (3) there must be some reasonable basis, approximating probable cause, to associate the . . . [community caretaking situation] with the area or place to be searched.<sup>194</sup>

This solution takes away the emergency requirement but ensures that the searches for community caretaking are only done to protect life or property.<sup>195</sup> This test provides for a narrower interpretation of the community caretaking exception. Applying the Mitchell Test to the community caretaking exception offers protection from law enforcement abusing the exception, while still allowing it to be used when necessary.<sup>196</sup>

In a Wayne Law Review article, author David Fox argues that police should be allowed to enter the home, using the community caretaking exception, as long as their actions are reasonable.<sup>197</sup> However, there is a catch to this argument. Fox recommends the suspension of the plain view exception, requiring police to then obtain a warrant to seize any evidence.<sup>198</sup> The plain view exception allows police to seize evidence in plain view, provided that they are lawfully in the area and have “probable cause to believe that the evidence is illegal contraband.”<sup>199</sup> Though, on its face, this argument sounds reasonable, it is extremely problematic. For example, looking back at *York*, where police observed firearms in plain view, leaving the scene and waiting to obtain a warrant creates multiple problems.<sup>200</sup> This

---

<sup>193</sup> Mark Goreczny, *Taking Care While Doing Right by the Fourth Amendment: A Pragmatic Approach to the Community Caretaker Exception*, 14 CARDOZO PUB. L. POL’Y & ETHICS J. 229, 250 (2015).

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> *Id.* at 257.

<sup>197</sup> David Fox, *The Community Caretaking Exception: How the Courts Can Allow the Police to Keep Us Safe Without Opening the Floodgates to Abuse*, 63 WAYNE L. REV. 407, 408 (2018).

<sup>198</sup> *Id.*

<sup>199</sup> *Id.* at 411.

<sup>200</sup> *United States v. York*, 895 F.2d 1026, 1029 (5th Cir. 1990).



would have given the defendant time to hide or dispose of the guns, or even worse, use them wrongfully and violently. Fox expressed that suspending the plain view exception would reduce the likelihood that police will use the community caretaking exception to enter homes in hopes of finding evidence of illegal activity or wrongdoing;<sup>201</sup> however, this likely will lead to further problems discussed above.

## VII. CONCLUSION

This Note argues that there are situations that are not covered under the emergency doctrine, which the community caretaking exception does cover. During oral arguments in *Caniglia*, Chief Justice Roberts presented a hypothetical scenario in which an elderly woman was supposed to go to her neighbor's home for dinner, never came, and was not answering the phone.<sup>202</sup> He asked when it would be acceptable for police to enter without a warrant: a few hours, 24 hours, a couple days?<sup>203</sup> The petitioner argued that he did not think the police should have license to enter that woman's home until a few days of not hearing from her.<sup>204</sup> This is an explicit example of why the Court erred in its decision. As Chief Justice Roberts was alluding to, if this woman was having a medical emergency, she potentially could have been found and taken to the hospital and survived if the police had entered her home without a warrant that night.<sup>205</sup> However, waiting until the woman has not been heard from for multiple days could lead to potentially finding her dead. Now, applying the balancing test used by the First Circuit here: the need for community caretaking to check on the welfare of this woman would likely weigh much more than the potential intrusion on her freedoms and rights by entering her home without a warrant. The police would not be entering to search the house for items or carry out any investigative activity. A simple welfare check to make sure someone is alive and well should be allowed without a warrant under the community caretaking exception and should not be found to be a violation of the Fourth Amendment.

---

<sup>201</sup> Fox, *supra* note 197.

<sup>202</sup> Transcript of Oral Argument at 6-10, *Caniglia v. Strom*, 141 S. Ct. 1596 (2021) (No. 20-157).

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

In the example in the above paragraph, applying the modified Mitchell Test to the community caretaking exception would likely result in the police being allowed to enter the home without a warrant to check for the elderly woman. This would qualify as a search done to protect life and still fall under the community caretaking exception.<sup>206</sup> This would allow for the potential to save the woman's life while also not encroaching unreasonably on protections given by the Fourth Amendment.

In his concurrence, Justice Kavanaugh noted that a welfare check on an elderly individual “uncharacteristically absent from Sunday church” would be allowed to be performed by police without a warrant because of the exigent circumstances doctrine.<sup>207</sup> This declaration leaves for too much interpretation and creates a gray area, leaving law enforcement unsure of where the boundaries should be drawn and what situations fall into that exception. To reiterate, to qualify for an exigent circumstances exception to the warrant requirement there must be probable cause that a crime has been or is being committed, and an emergency that makes police intervention necessary.<sup>208</sup> Therefore, Justice Kavanaugh's example of an elderly individual missing from church would likely not qualify for the exigent circumstances exception, absent a specific reason to believe there was a risk to this person's life. Simply missing from church would not qualify as an emergency. Perhaps an elderly individual suffering from a disease would qualify if this individual was uncharacteristically absent; however, aside from a few specific examples, failing to allow the community caretaking exception to extend to the home will greatly limit the ability of law enforcement to provide service and aid in non-emergency and non-investigative situations. Ultimately, the community caretaking exception to the warrant requirement should be extended to the home, to allow police to carry out duties outside of the

---

<sup>206</sup> Mark Goreczny, *Taking Care While Doing Right by the Fourth Amendment: A Pragmatic Approach to the Community Caretaker Exception*, 14 *CARDOZO PUB. L. POL'Y & ETHICS J.* 229, 250 (2015).

<sup>207</sup> *Caniglia*, 141 S. Ct. 1596, 1605.

<sup>208</sup> Megan Pauline Marinos, *Breaking and Entering or Community Caretaking? A Solution to the Overbroad Expansion of the Inventory Search*, 22 *GEO. MASON U. CIV. RTS. L.J.* 249, 250 (2012). An actual exigency that required immediate police action would be a “risk to life and limb; a fleeing felon; or risk of the destruction of evidence.”

scope of investigation, in order to best serve and protect their communities.