

REVISING THE SCOPE OF THE FOURTH AMENDMENT COMMUNITY CARETAKING EXCEPTION ON BEHALF OF OLDER ADULTS

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INTRODUCTION

Consider the following scenario:

[L]et's say the police get a call, it's 8:00 at night, the person says their . . . elderly neighbor, they invited her to dinner at 6, it's 8:00, she's never late for anything, she's not answering the phone, they haven't seen her leave the house. They're worried. They ask the police if they can come over and check it out. The police do that. They go on to the property. They can't see much through the windows, but the back door is open. . . . Assume . . . the family members aren't answering the phone either. . . . [T]he neighbors are saying she's an elderly woman, . . . she's never late. She's late. They're not able to reach her by phone. They don't know who else to call. [T]he police are violating the Constitution because they walk in the back door to make sure . . . she's not . . . lying on the floor.¹

The above hypothetical was raised by Chief Justice Roberts of the United States Supreme Court during oral argument in *Caniglia v. Strom*.² The legal issue in the case was whether the Community Caretaking Exception to the Fourth Amendment³ warrant requirement extends to allowing peace officers entry to a home.⁴ This exception was established in *Cady v. Dombrowski* in 1973.⁵ There, the Court held that the police had the caretaking power to seize and search a vehicle for a weapon to protect the public from a potential intruder breaking into the vehicle and finding the weapon.⁶ Justice Alito's concurring opinion in *Caniglia* explained that the above hypothetical scenario addresses "an important real-world problem"

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¹ Transcript of Oral Argument at 6-8, *Caniglia v. Strom*, 141 S. Ct. 1596 (2021) (No. 20-157) [hereinafter *Oral Argument*].

² *Id.* at 6-8; *see also Caniglia*, 141 S. Ct. 1596.

³ U.S. CONST. amend. IV.

⁴ *Caniglia*, 141 S. Ct. 1596.

⁵ *Cady v. Dombrowski*, 413 U.S. 433 (1973).

⁶ *Cady*, 413 U.S. at 447-48.

concerning how far the Community Caretaking Exception extends and its overall effects on the older adult community.⁷

The older adult community generally includes individuals ages sixty-five and older.⁸ As of 2019, roughly twenty-eight percent of the older adult community lives alone.⁹ This percentage amounts to approximately 14.7 million older persons—5 million male and 9.7 million female.¹⁰ The number of older adults living alone increases with age for both men and women.¹¹ An additional fifty-seven percent of adults ages sixty-five or older lived with their partner;¹² however, this does not necessarily mean that they are in any less need of caretaking than individuals living alone.¹³ For example, if one individual falls, the other may attempt to assist them in an effort to maintain a sense of independence and prevent the need for emergency services.¹⁴ This could ultimately result in both individuals falling and getting injured.¹⁵

Falling can result in broken bones, fractures, and traumatic brain injuries.¹⁶ It is more difficult for the person to call for emergency assistance with injuries like these, especially when living alone.¹⁷ Falls may also lead to psychological trauma. Unfortunately, psychological trauma continues to grow as the older adult population grows, with larger generations beginning to reach old age.¹⁸ “In 2002, the annual suicide rate for persons over the age of 65 was over 15 per 100,000 individuals; this number increases for those aged 75 to 84, with over 17 suicide deaths per every 100,000. . . . Further, elder suicide may be under-reported by 40% or more.”¹⁹ Not included in these statistics are the “silent suicides” committed by older adults.²⁰ Silent suicides include deaths from overdoses and self-starvation.²¹ In his concurring opinion in *Caniglia*, Justice Alito addressed another possible situation that could bring problems under the exception—conducting a

⁷ *Caniglia*, 141 S. Ct. at 1602 (Alito, J., concurring).

⁸ *2019 Profile of Older Americans*, ADMIN. FOR CMTY. LIVING (May 2020), <https://acl.gov/sites/default/files/Aging%20and%20Disability%20in%20America/2019ProfileOlderAmericans508.pdf>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ The following hypothetical is based on the author’s experience of working with older adults in a care facility.

¹⁴ This hypothetical is based on the author’s experience of working with older adults in a care facility.

¹⁵ This hypothetical is based on the author’s experience of working with older adults in a care facility.

¹⁶ *Important Facts about Falls*, CDC, <https://www.cdc.gov/homeandrecreationalafety/falls/adultfalls.html> (last visited Aug. 19, 2022).

¹⁷ *Id.*

¹⁸ *Suicide in the Elderly*, AM. ASS’N FOR MARRIAGE & FAM. THERAPY, https://www.aamft.org/AAMFT/Consumer_Updates/Suicide_in_the_Elderly.aspx (last visited Aug. 19, 2022).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

search or seizure to prevent a suicide.²² High suicide rates are accompanied by a high rate of attempted suicides. As a result, older adults are more likely to need emergency aid rendered when one calls the police believing an older adult needs assistance.²³ On the contrary, there is a belief that if an individual chooses to end their life, then that is their right, and the government should not interrupt their right to make those decisions.²⁴ The statistics addressing fall rates, the number of older adults residing alone, and older adult suicide demonstrate the relevance of the Chief Justice's hypothetical question as well as the importance of the Court remedying the gaps of the Community Caretaking Exception.

The gaps within this exception and the Court's holding in *Caniglia* are especially prevalent for the community of older adults that live alone. Older adults often choose to live alone because they want to keep their autonomy and privacy. These are not always present in care facilities despite the facilities providing social engagement and other resources.²⁵ Commonly, the community caretaking function in care facilities is 24/7, which reduces a person's freedom and privacy.²⁶ Many older adults living alone want to maintain their independence, fearing becoming too dependent on others.²⁷ Studies have shown that older adults' increasing use of technology platforms

²² *Caniglia*, 141 S. Ct. at 1601 (Alito, J., concurring) “This case falls within one important category of cases that could be viewed as involving community caretaking: conducting a search or seizure for the purpose of preventing a person from committing suicide. Assuming that petitioner [in the *Caniglia* case] did not voluntarily consent to go with the officers for a psychological assessment, he was seized and thus subjected to a serious deprivation of liberty. But was this warrantless seizure ‘reasonable’? . . . [W]e have not addressed 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.” *Id.*

²³ *Oral Argument*, *supra* note 1, at 6-8 (raising a hypothetical situation involving an older adult potentially needing emergency assistance); *see also Suicide in the Elderly*, *supra* note 18 (listing warning signs of older adult suicide, which could result in an emergency situation of attempted suicide and aid needing to be rendered).

²⁴ *See generally* S. B. Chetwynd, *The Right to Life, Right to Die and Assisted Suicide*, 21 J. APPLIED PHIL. 173 (2004); *see also* Nate Levy, Note, *Death with Dignity: Terminally Ill(inois)*, 46 S. ILL. U. L.J. 321 (2022).

²⁵ Carol Pardue-Spears, *5 Disadvantages of Nursing Homes for Seniors*, FAM. MATTERS (June 28, 2017), <https://familymattershc.com/disadvantages-of-nursing-homes/> (discussing loss of freedom and independence being one of the top disadvantages of living in a nursing home including set meals at specific times, change of schedule and routine, and loss of control resulting in reduced self-esteem).

²⁶ *See generally* Residents Rights, 42 C.F.R. § 483.10 (2017) (explaining a resident's rights including privacy rights in a long-term care facility); *see also* Charles Ornstein, *The Crisis of Patient Privacy in Nursing Homes*, PAC. STANDARD (June 26, 2017), <https://psmag.com/social-justice/crisis-of-patient-privacy-in-nursing-homes> (discussing situations in which facilities have violated patient privacy).

²⁷ Daniel B. Kaplan & Barbara J. Berkman, *Older Adults Living Alone*, MERCK MANUAL, <https://www.merckmanuals.com/professional/geriatrics/social-issues-in-older-adults/older-adults-living-alone> (last modified Sept. 2022).

now makes it easier for them to live alone and continue to maintain a sense of privacy.²⁸

Part I of this note reviews the history and purpose of the Community Caretaking Exception of the Fourth Amendment. Part II will define the desired and intended purpose of the exception. Part III will explore the legal arguments and policy for extending the Community Caretaking Exception, while Part IV will consider the legal arguments and policy for keeping it limited. Finally, in Part V, this note will conclude by surveying potential revisions and making a proposal to broaden the Community Caretaking Exception's scope and application through refinement of the federal case law.

I. THE HISTORY OF THE COMMUNITY CARETAKING EXCEPTION

The Fourth Amendment of the United States Constitution protects an individual's right to privacy from unreasonable searches and seizures by the government.²⁹ The Fourth Amendment reads:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, 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.³⁰

A warrantless search or entry into the home is *per se* unreasonable.³¹ However, there are some exceptions to this general rule.³² One exception, which is the focus of this note, is the Community Caretaking Exception.³³ The United States Supreme Court created this exception in *Cady v. Dombrowski*.³⁴ The Court determined that officers acting under the duty of a caretaker do not need a warrant to enter and search a car.³⁵ “[T]he . . . search was standard police procedure to protect the public from a weapon’s possibly

²⁸ Studies using a specially designed information and communication computer system called Personal Reminder Information and Social Management (“PRISM”) system have found that the system provided support and reduced isolation for older adults living alone. Sara J Czaja et al., *Improving Social Support for Older Adults Through Technology: Findings From the PRISM Randomized Controlled Trial*, 58 GERONTOLOGIST 467 (2017). The focus group reported a reduction in feelings of loneliness as well as increased perceived social support and connectivity with the use of the PRISM system. *Id.*

²⁹ U.S. CONST. amend. IV.

³⁰ *Id.*

³¹ See *Coolidge v. New Hampshire*, 403 U.S. 443 (1971); see also *Horton v. California*, 492 U.S. 128 (1990).

³² *Katz v. United States*, 389 U.S. 347, 357 (1967).

³³ See *Cady*, 413 U.S. 433.

³⁴ See *id.*

³⁵ *Id.* at 447-48.

falling into improper hands.”³⁶ Since *Cady*, there has been a divide by state and federal courts on their interpretations of the scope of the exception and its use and application.³⁷ The Court in *Cady* does use the explicit term of *exception* when addressing that individuals have a diminished expectation of privacy in automobiles compared to within a dwelling, but fails to use the term when explaining the community caretaking function of the police.³⁸ Justice Brennan’s dissenting opinion in *Cady* walks through several pre-existing exceptions to the warrant requirement yet refuses to recognize that the Court had created a new exception through its holding.³⁹ Several states argue that “*Cady* did not create a caretaking ‘exception’ but merely recognized the government’s community caretaking interests and applied traditional Fourth Amendment standards to the unique facts of the case in deciding that the warrantless car search was reasonable.”⁴⁰ The Court in *Caniglia* did not follow this idea, recognizing that there is indeed a Community Caretaking Exception, but holding that it is limited in its scope.⁴¹

A. *Cady v. Dombrowski* (1973)

In *Cady*, Chester Dombrowski was in a car accident while drinking and driving.⁴² He lied and told the officers that he was a Chicago policeman.⁴³ Presuming that Chicago officers had to carry their service revolvers with them at all times, the officers searched the vehicle for the firearm.⁴⁴ When they could not find the revolver at the scene, they went to the impounded vehicle that evening and continued their search for the firearm. Ultimately, the firearm was found in the vehicle and seized by police.⁴⁵ While searching, they also found several blood-covered items, which eventually resulted in Dombrowski’s arrest and first-degree murder conviction.⁴⁶ He challenged the warrantless search of the vehicle and seizure of the firearm, claiming that it was unconstitutional under the Fourth Amendment.⁴⁷ However, the Court

³⁶ *Id.* at 433.

³⁷ See, e.g., *Caniglia v. Strom*, 953 F.3d 112, 126 (1st Cir.), *cert. granted*, 141 S. Ct. 870 (2020), *vacated and remanded*, 141 S. Ct. 1596 (2021); *Clemons v. Couch* 3 F.4th 897 (6th Cir. 2021); *State v. Deneui*, 2009 S.D. 99, 775 N.W.2d 211; *State v. Utsch*, 793 N.W.2d 505 (Wis. Ct. App. 2010); *United States v. Rohrig*, 98 F.3d 1506 (6th Cir. 1996).

³⁸ *Cady*, 413 U.S. at 439 (“One class of cases which constitutes at least a partial exception to this general rule is automobile searches.”).

³⁹ *Id.* at 450-54 (1973) (Brennan, J., dissenting).

⁴⁰ Brief of Iowa, Louisiana, Minnesota, Montana, Oklahoma, South Carolina, South Dakota, Texas, and Utah as Amici Curiae in Support of Respondents, *Caniglia*, 141 S. Ct. 1596 (No. 20-157). *Caniglia*, 141 S. Ct. 1600.

⁴² *Cady*, 413 U.S. at 436.

⁴³ *Id.* at 436.

⁴⁴ *Id.* at 436.

⁴⁵ *Id.* at 437.

⁴⁶ *Id.* at 437.

⁴⁷ *Id.* at 434.

held that the search was reasonable because the officers were searching for the revolver with the motivation to protect the general public should an intruder find the gun, thus implicitly creating the Community Caretaking Exception.⁴⁸ The Court refused to extend this exception beyond cars, explaining:

Because of the extensive regulation of motor vehicles and traffic, and also because of the frequency with which a vehicle can become disabled or involved in an accident on public highways, the extent of police-citizen contact involving automobiles will be substantially greater than police-citizen contact in a home or office. Some such contacts will occur because the officer may believe the operator has violated a criminal statute, but many more will not be of that nature. Local police officers, unlike federal officers, frequently investigate vehicle accidents in which there is no claim of criminal liability and engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.⁴⁹

The police, on these facts, had the car towed to a private garage because it was a nuisance to the public when left disabled along the highway.⁵⁰ The police did not search the vehicle with an investigatory purpose.⁵¹ Instead, to follow the police department's procedures for protecting the public, they searched with the purpose of finding the service revolver.⁵² The Court in *Cady* consistently recognized throughout the opinion that there is a Fourth Amendment distinction between searches of motor vehicles and homes.⁵³ Since the 1973 decision in *Cady*, state and federal courts have continued to address what they believe to be gaps within the scope of the Community Caretaking Exception. *Brigham City v. Stuart* is one example of this.

B. *Brigham City v. Stuart* (2006)

Despite the Court in *Cady v. Dombrowski*⁵⁴ stating that a peace officer rendering emergency aid only applies to cars, the United States Supreme

⁴⁸ *Cady*, 413 U.S. at 447.

⁴⁹ *Id.* at 441.

⁵⁰ *Id.* at 447.

⁵¹ *Id.* at 443.

⁵² *Id.* at 443.

⁵³ *Id.* at 447-48 (“The Court’s previous recognition of the distinction between motor vehicles and dwelling places leads us to conclude that the type of caretaking “search” conducted here of a vehicle that was neither in the custody nor on the premises of its owner, and that had been placed where it was by virtue of lawful police action, was not unreasonable solely because a warrant had not been obtained.”).

⁵⁴ *Cady*, 413 U.S. 433.

Court has ruled that it is acceptable for police to enter a home to render aid.⁵⁵ In *Brigham City*, the United States Supreme Court set the standard for warrantless home searches to further the government's community caretaking interests in public safety.⁵⁶ The Court determined that the police may enter the home without a warrant when they have "an objectively reasonable basis for believing" that prompt entry is necessary to provide aid and assistance to a person who is "seriously injured or imminently threatened with such injury."⁵⁷

In this case, the police saw an altercation between four people through the window of a home.⁵⁸ A juvenile punched an adult, and the adult started spitting blood into the sink.⁵⁹ Without violating the Fourth Amendment's knock-and-announce requirement,⁶⁰ an officer announced his presence and then entered the home.⁶¹ The Court determined that the officer's entry here was reasonable because he had an "objectively reasonable basis" in thinking that a person was injured.⁶² Allowing the brawl to continue could have resulted in more injuries or further endangerment.⁶³ Nothing in the Fourth Amendment requires the officers to wait for a person to become "unconscious or semi-unconscious" before entering to render aid.⁶⁴

C. *Caniglia v. Strom* (2021)

The United States Supreme Court explicitly rejected broadening the Community Caretaking Exception to include warrantless entry into homes.⁶⁵ Justice Thomas, writing for the majority opinion in *Caniglia*, cites the decision in *Brigham City* to demonstrate that the Court previously "held that law enforcement officers may enter private property without a warrant when certain exigent circumstances exist, including the need to 'render emergency assistance to an injured occupant or to protect an occupant from imminent injury.'"⁶⁶ In *Caniglia*, the police arrived at Mr. Caniglia's home to perform a welfare check after his wife called emergency services expressing concern

⁵⁵ See *Brigham City v. Stuart*, 547 U.S. 398 (2006).

⁵⁶ See *id.*

⁵⁷ *Id.* at 400.

⁵⁸ *Id.* at 401.

⁵⁹ *Id.* at 401.

⁶⁰ See *Wilson v. Arkansas*, 514 U.S. 927 (1995) (holding whether officers knock and announce their presence and authority before entering a dwelling will be a factor in determining the reasonableness of entry and search).

⁶¹ *Brigham City*, 547 U.S. at 401.

⁶² *Id.* at 406.

⁶³ *Id.* at 406.

⁶⁴ *Id.* at 406.

⁶⁵ *Caniglia*, 141 S. Ct. 1596.

⁶⁶ *Id.* at 1599 (citing *Brigham*, 547 U.S. at 406).

for her husband's safety.⁶⁷ Officers encountered Mr. Caniglia on the porch, determined that he posed a risk to himself, and convinced him to agree to go to the hospital and get a psychiatric evaluation.⁶⁸ He asked that the officers not take his guns, which they confiscated upon entering his home.⁶⁹

The Court, in this case, unanimously held that there is no “standalone [community caretaking] doctrine that justifies warrantless searches and seizures in the home.”⁷⁰ The idea of not having a “standalone doctrine” means that it needs to be coupled with other circumstances, like in the case of *Cady*.⁷¹ There, a vehicle was involved in creating a diminished expectation of privacy.⁷² Justice Thomas wrote, “recognition that [local] police officers perform many civic tasks in modern society [is] not an open-ended license to perform them anywhere.”⁷³ The “civic tasks” to which Justice Thomas is referring are those that are “totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.”⁷⁴

There were four concurring opinions to this decision.⁷⁵ These opinions addressed concerns regarding inconsistencies in the holding's application to other hypothetical scenarios.⁷⁶ Justice Alito suggested that “[p]erhaps States should institute procedures for the issuance of such [community caretaking] warrants, but in the meantime, courts may be required to grapple with the basic Fourth Amendment question of reasonableness.”⁷⁷

Justice Kavanaugh provided an affirmative answer to a hypothetical question raised in the opinion:

Suppose that an elderly man is uncharacteristically absent from Sunday church services and repeatedly fails to answer his phone throughout the day and night. A concerned relative calls the police and asks the officers to perform a wellness check. Two officers drive to the man's home. They knock but receive no response. May the officers enter the home? Of course.⁷⁸

There are many gray lines with a hypothetical like this. What if the man was simply out of town for a Sunday visit with a friend? What if his

⁶⁷ *Id.* at 1598.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *See generally Cady*, 413 U.S. 433.

⁷² *Caniglia*, 141 S. Ct. at 1597 (“But searches of vehicles and homes are constitutionally different, as the *Cady* opinion repeatedly stressed.” (citing *Cady*, 413 U.S. 433)).

⁷³ *Id.* at 1600.

⁷⁴ *Cady*, 413 U.S. at 441; *Caniglia*, 141 S. Ct. at 1600.

⁷⁵ *Caniglia*, 141 S. Ct. at 1600-05.

⁷⁶ *Id.* at 1600-05.

⁷⁷ *Id.* at 1602.

⁷⁸ *Id.* at 1605.

cellphone's battery had died, and due to lack of use, he had yet to charge it? Would the man be comfortable with the police breaking down his door to enter his home, where he may not even be? What if the man was injured from a fall, could not get up on his own, and had been hoping that someone would find him and help? The police would not know whether the man is comfortable with it until they enter his home and the man claims his privacy rights have been violated. This, and other similar hypotheticals raised by the Court, demonstrate the gaps in this exception and the current concern regarding the well-being of older adults.⁷⁹

D. *Sanders v. United States* (2021)

The United States Supreme Court has explicitly recognized the gaps in the Community Caretaking Exception, yet it continues to leave many questions unanswered.⁸⁰ Since the *Caniglia* decision, the Court has vacated the judgment in *Sanders v. United States*, in which the Circuit Court concluded that the warrantless entry into a home under the Community Caretaking Exception was reasonable.⁸¹ It then remanded the case to be decided by the Circuit Court, with *Caniglia* in mind, rejecting the idea that there is a standalone community caretaking doctrine.⁸²

In *Sanders*, during a domestic disturbance, an eleven-year-old child in the home called his grandmother to tell her that he needed help.⁸³ The grandmother then called 911 to relay the message to the operator and informed the operator that two small children were in the house.⁸⁴ The police arrived at the scene and questioned a resident with visible injuries outside of the home.⁸⁵ Upon opening the door to the home to call the individuals involved in the disturbance outside for questioning, the police heard a child crying.⁸⁶ Based on the distressed child inside, the police entered the house.⁸⁷ In his concurring opinion to the decision to vacate and remand, Justice Kavanaugh explained that the Circuit Court will be able to rely on prior precedents like *Brigham City*, which allowed the warrantless entry into a home when police officers have an “objectively reasonable basis for

⁷⁹ See *Oral Argument*, *supra* note 1, at 6 (discussing an additional hypothetical situation involving an older adult).

⁸⁰ See, e.g., *Caniglia*, 141 S. Ct. at 1601-02 (Alito, J., concurring).

⁸¹ *Sanders v. United States*, 141 S. Ct. 1646 (2021).

⁸² See *id.*

⁸³ *Id.* at 1647.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Sanders*, 141 S. Ct. at 1647.

believing that an occupant is seriously injured or threatened with such injury.”⁸⁸

The Eighth Circuit in *Sanders* initially relied on its previous interpretation of *Cady*.⁸⁹ The previous interpretation explained that the community caretaking function exists, and it allows for an officer to “enter a residence without a warrant as a community caretaker where the officer has a reasonable belief that an emergency exists requiring his or her attention.”⁹⁰ To determine whether a reasonable belief exists, the court applied a balancing test to find whether “the government interest in law enforcement’s exercise of that function, based on specific and articulable facts [at the time of entry], outweighs the individual’s interest in freedom from government intrusion.”⁹¹ The Circuit Court found that the facts at the time of entry made the warrantless entry reasonable under the Community Caretaking Exception.⁹² The facts considered by officers included the information received from dispatch, the officers’ observations made at the scene, and the information they received when talking to parties.⁹³

Over the forty-eight-year span between the holdings in *Cady* and *Caniglia*, the police have used their powers under the Community Caretaking Exception to respond to various instances within the home.⁹⁴ These include responding to noise complaints,⁹⁵ gas leaks,⁹⁶ loud parties,⁹⁷ helping overdose victims,⁹⁸ and serving court papers.⁹⁹ The Supreme Court has continuously denied an extension of other warrant exceptions to the home and its curtilage.¹⁰⁰ The denial of an extension of the Community Caretaking Exception raises inconsistencies in its application as identified by the Justices in oral argument and Justice Alito’s concurring opinion.¹⁰¹

The overall purpose of the exception, to allow peace officers to render aid in emergencies, is lost when the Court places limitations on the exception

⁸⁸ *Id.* at 1648 (citing *Brigham City*, 547 U.S. 400-03).

⁸⁹ *Sanders v. United States*, 956 F.3d 534, 538-39 (quoting *United States v. Quezada*, 448 F.3d 1005, 1007 (8th Cir. 2006)).

⁹⁰ *Id.* at 538-39 (quoting *Quezada*, 448 F.3d at 1007).

⁹¹ *Id.* at 539 (citing *United States v. Harris*, 747 F.3d 1013, 1017 (8th Cir. 2014)).

⁹² *Id.* at 539-40.

⁹³ *Id.* at 539.

⁹⁴ *See, e.g.*, *Castagna v. Jean*, 955 F.3d 211 (1st Cir. 2020); *State v. Pinkard*, 2010, WI 81, 327 Wis. 2d 346, 785 N.W.2d 592; *Deneui*, 2009 S.D. 99, 775 N.W.2d 211; *Quezada*, 448 F.3d 1005; *Rohrig*, 98 F.3d 1506.

⁹⁵ *Rohrig*, 98 F.3d 1506.

⁹⁶ *Deneui*, 2009 S.D. 99, 775 N.W.2d 211.

⁹⁷ *Castagna*, 955 F.3d 211.

⁹⁸ *Pinkard*, 2010, WI 81, 327 Wis. 2d 346, 785 N.W.2d 592.

⁹⁹ *Quezada*, 448 F.3d 1005.

¹⁰⁰ *See, e.g.*, *Collins v. Virginia*, 138 S. Ct. 1663 (2018) (holding the automobile exception to warrant requirement for searches did not justify police officer’s invasion of the curtilage of the home).

¹⁰¹ *See Oral Argument, supra* note 1, at 6-8; *see also Caniglia*, 141 S. Ct. at 1601-02 (Alito, J., concurring).

despite knowing that it will have detrimental effects on the public welfare and the performance of an officer's civic duty.¹⁰² These effects include various health concerns amongst the older adult community, such as the need for potential assistance resulting from falls, attempted suicide, dementia, and an increased likelihood of injury due to increased vulnerabilities. As mentioned, these concerns have proven to be especially prevalent among those who live alone.¹⁰³

II. THE PURPOSE OF THE COMMUNITY CARETAKING EXCEPTION

The holding in *Caniglia* was unanimous.¹⁰⁴ Chief Justice Roberts filed a concurring opinion to the decision in which Justice Breyer joined, while Justice Alito and Justice Kavanaugh filed separate concurring opinions.¹⁰⁵ The holding that the police did not have the right to enter Caniglia's home to retrieve his firearms is logical.¹⁰⁶ Mr. Caniglia was already away from the premises, and the officers agreed not to confiscate the firearms as long as he went to the hospital for a psychiatric evaluation.¹⁰⁷ Caniglia was not in the home, and he was not on the property when the firearms were confiscated.¹⁰⁸ The emergency was no longer present, so the police did not have the right to enter and seize the guns.¹⁰⁹ Therefore, the holding explaining that the entry into the home for firearm confiscation did not fit into a warrant exception, was appropriate, and all Supreme Court Justices agreed.¹¹⁰

Neither the holding nor logic of *Cady* justifies such warrantless searches and seizures in the home. *Cady* held that a warrantless search of an impounded vehicle for an unsecured firearm did not violate the Fourth Amendment. In reaching this conclusion, the Court noted that the officers who patrol the 'public highways' are often called to discharge noncriminal 'community caretaking functions,' such as responding to disabled vehicles

¹⁰² See *Cady*, 413 U.S. at 441; see also Jorge E. Galva, *Public Health Strategy and the Police Powers of the State*, 120 PUB. HEALTH REP. 20, 20 (2005).

¹⁰³ See generally *Important Facts about Falls*, *supra* note 16; see also *Suicide in the Elderly*, *supra* note 18; see also *2019 Profile of Older Americans*, *supra* note 8.

¹⁰⁴ See *Caniglia*, 141 S. Ct. at 1598-1600 (including the majority opinion of the unanimous Court).

¹⁰⁵ See *id.* at 1600-05 (including the three concurring opinions, which recognize the gaps of not allowing an open-ended license to perform community caretaking functions anywhere).

¹⁰⁶ *Id.* at 1597.

¹⁰⁷ *Id.* at 1597.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ See *Caniglia*, 141 S. Ct. 1596.

or investigating accidents. But searches of vehicles and homes are constitutionally different, as the *Cady* opinion repeatedly stressed.¹¹¹

However, the Court's reliance on the specific facts of *Cady*, reasoning that the search of a vehicle is constitutionally different from the search of a home, is not reasonable under all circumstances and locations where this exception may be relevant.¹¹² For example, it is likely that an older adult, based on their heightened risk of injury, will need caretaking or aid in their home just as much as they might need it within a vehicle.¹¹³

When delivering the majority opinion for a unanimous Court, Justice Thomas reasoned that just because the police can act in the role of a community caretaker does not mean they have the ability to act in any situation or setting.¹¹⁴ The concurring opinions in the *Caniglia* decision identify that denying the police an open-ended license could ultimately lead to confusion on when and where they should act as peace officers under the exception.¹¹⁵ The concurring opinions illustrate, through hypothetical scenarios, the need to allow peace officers to use their community caretaking powers to protect the public and render aid no matter the location of the emergency.¹¹⁶

The purpose behind the concurring opinions is to demonstrate that the application of the *Caniglia* holding—denying police action under their community caretaking powers depending on the location of the potential emergency—is not logical in some instances.¹¹⁷ The suggested hypothetical, posed by Chief Justice Roberts in oral argument and restated by Justice Alito in his concurring opinion concerning individuals who are unable to contact their older adult neighbor who never came to scheduled dinner, is a pressing issue that needs to be addressed by the Court.¹¹⁸ Not allowing police to use their caretaking powers in emergency situations within the home can lead to

¹¹¹ *Id.* at 1597.

¹¹² *See id.*; *see also* Florida v. Jardines, 569 U.S. 1, 6 (2013) (quoting Silverman v. United States, 365 U.S. 505, 511 (1961)) (“At the Amendment’s ‘very core’ stands ‘the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.’”).

¹¹³ *See generally Important Facts about Falls*, *supra* note 16; *see also 2019 Profile of Older Americans*, *supra* note 8.

¹¹⁴ *Caniglia*, 141 S. Ct. at 1597.

¹¹⁵ *Id.* at 1600-05.

¹¹⁶ *See id.* (explaining throughout the three concurring opinions that there are gaps in not allowing police to have an open-ended license to enter anywhere to perform their community caretaking functions in their role as peace officers); *see also Oral Argument*, *supra* note 1, at 6-8 (discussing additional hypotheticals including older adults that were not addressed in the Court’s opinion and where there are gaps when applying the holding of the *Caniglia* decision).

¹¹⁷ *See Caniglia*, 141 S. Ct. at 1600-05 (containing the concurring opinions discussing situations where the application of the *Caniglia* holding could lead to potential issue).

¹¹⁸ *See Oral Argument*, *supra* note 1, at 6; *see also Caniglia*, 141 S. Ct. at 1601-02 (Alito, J., concurring).

more dangers that will outweigh an individual's privacy rights protected by the Fourth Amendment of the Constitution.¹¹⁹

III. ARGUMENTS FOR BROADENING THE SCOPE OF THE COMMUNITY CARETAKING EXCEPTION

It is a local police officer's duty to engage in what is described as community caretaking functions.¹²⁰ Outside of their investigatory duties, 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 public safety."¹²¹

There are widely varied circumstances, ranging from helping little children to cross busy streets to navigating the sometimes stormy seas of neighborhood disturbances, in which police officers demonstrate, over and over again, the importance of the roles that they play in preserving and protecting communities.¹²²

To determine the "importance of [their] role" in every situation, it is logical for the police to apply the "objectively reasonable basis" test from *Brigham City*.¹²³ One of the arguments supporting a broad Community Caretaking Exception is that the Court never overruled the *Brigham City* test and, therefore, it is still a valid test for officers to apply, especially when considering factors such as an older adult's heightened risk of injury.

Police must have a "solid, noninvestigatory" reason for acting under their community caretaking functions and establish that specific and articulable facts objectively justified their reasoning for taking action.¹²⁴ "As long as [the action] pursuant to the community caretaking function is not a mere subterfuge for investigation, the coexistence of investigatory and caretaking motives will not invalidate the [search or] seizure."¹²⁵ However, they cannot abuse their caretaking powers by using the powers as their reason to gain entry and investigate.¹²⁶ This can ultimately lead to police fearing that

¹¹⁹ See, e.g., *Caniglia*, 141 S. Ct. at 1601-02 (Alito, J., concurring).

¹²⁰ *United States v. Gemma*, 818 F.3d 23, 32 (1st Cir. 2016) (quoting *Cady*, 413 U.S. at 441).

¹²¹ *Id.* at 32 (quoting *United States v. Rodriguez-Morales*, 929 F.2d 780, 784-85 (1st Cir. 1991)); see, e.g., *Triad Program Manual*, NAT'L ASS'N TRIADS, INC. (2018), https://www.sheriffs.org/videos/2018_NATI_Manual.pdf.

¹²² *Caniglia*, 953 F.3d at 118.

¹²³ See *Brigham City*, 547 U.S. at 400; see also Brief of American Civil Liberties Union, American Civil Liberties Union of Rhode Island, The Cato Institute, And the American Conservative Union Foundation as Amici Curiae in Support of Petitioner, *Caniglia*, 141 S. Ct. 1596 (No. 20-157).

¹²⁴ *Rodriguez-Morales*, 929 F.2d at 787.

¹²⁵ *Id.* at 787.

¹²⁶ See *id.* at 787; see also *United States v. King*, 990 F.2d 1552, 1560 (10th Cir. 1993).

they will be accused of investigating outside of the scope of their caretaking function.¹²⁷

A. Police Fear of Entering Without the Presence of Imminent Circumstances

Although many people are suspicious of law enforcement action and over-policing, under-policing can also be harmful to society.¹²⁸ The police often fear violating an individual's Fourth Amendment protections and, in some situations where it may be in a person's best interest for police to act, often choose not to act to prevent a potential violation.¹²⁹

An officer "less willing" to discharge community caretaking functions implicates seriously undesirable consequences for society at large: In that event we might reasonably anticipate "the assistance role of law enforcement in this society will go downhill. The police cannot obtain a warrant for entry. [W]ithout a warrant the police are powerless. In the future police will tell concerned citizens, 'Sorry. We can't help you. We need a warrant and can't get one.'"¹³⁰

Police officers are expected to suppress certain emotions when dispatched and responding to calls, and arguably one of those emotions is their fear of acting in emergency situations.¹³¹

In *Caniglia*, Mr. Caniglia argued that the acts that the police were considering when legitimizing entry occurred the day before, and the firearms they seized were never loaded.¹³² He concluded that the lack of exigency in the situation made the seizure of the guns unreasonable;

¹²⁷ See, e.g., *Caniglia*, 141 S. Ct. 1596; see, e.g., Carl Monday, *These People Needed Help. Police Didn't Enter Their Homes. Carl Monday Investigates Why.*, 19 NEWS (Feb. 5, 2018, 9:41 PM), <https://www.cleveland19.com/story/37407639/these-people-needed-help-police-didnt-enter-their-homes-carl-monday-investigates-why/>.

¹²⁸ See generally Rod K. Brunson, *Protests Focus on Over-Policing. But Under-Policing is also Deadly.*, WASH. POST (June 12, 2020), https://www.washingtonpost.com/outlook/underpolicing-cities-violent-crime/2020/06/12/b5d1fd26-ac0c-11ea-9063-e69bd6520940_story.html.

¹²⁹ See generally Frank Carrington, *Avoiding Liability for Failure to Protect*, 56 POLICE CHIEF 22 (1989); see also Mark H. Moore et al., *Crime and Policing*, PERSP.'S ON POLICING (U.S. Dep't of Just., Washington, D.C.), June 1988.

¹³⁰ *People v. Ray*, 981 P.2d 928, 939 (Cal. 1999) (quoting *State v. Bridewell*, 759 P.2d 1054, 1068 (Or. 1988) (Peterson, J., concurring)).

¹³¹ See *Law Enforcement Code of Ethics*, INT'L ASS'N CHIEFS POLICE (Oct. 1957), <https://www.theiacp.org/resources/law-enforcement-code-of-ethics> ("I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities."); see also Konstantinos Papazoglou & Brooke McQuerry Tuttle, *Fighting Police Trauma: Practical Approaches to Addressing Psychological Needs of Officers*, J. POLICE EMERGENCY RESPONSE, July-Sept. 2018.

¹³² *Caniglia v. Strom*, 396 F. Supp. 3d 227, 235 (D.R.I. 2019) *aff'd*, 953 F.3d 112 (1st Cir. 2020), *vacated and remanded*, 141 S. Ct. 1596 (2021).

however, the officers reasonably justified that the Caniglias were in a crisis.¹³³ Nevertheless, exigency may not always be present when the police enter a home to act under their community caretaking powers.¹³⁴ Police often make wellness checks on individuals, but the extent of when they should continue a check, based on the exigency of a situation, is where the police struggle when making judgment calls.¹³⁵ One example includes a seventy-six-year-old man who was a daily customer for fifteen years.¹³⁶ He called a business owner and informed him that he would not be coming to the business that day due the illness.¹³⁷ The business owner attempted to call the man over the next several days to check in, but the phone line was always busy.¹³⁸ The owner then called the police, requesting a wellness check.¹³⁹ The police arrived at the man's apartment, and it did not appear that anyone was inside.¹⁴⁰ The apartment complex staff would not grant the police entry, so they left.¹⁴¹ The business owner called the police again the following day, asking that they enter the man's home.¹⁴²

The police made another visit to the apartment, and this time they noticed something strange near the sliding door.¹⁴³ An officer then climbed onto the apartment's balcony and tapped the window.¹⁴⁴ There was a tap back, and the officer saw a hand come through the curtain.¹⁴⁵ It was then that the officer realized that the curtain was being pressed up against the door's glass from the man's body.¹⁴⁶ The officer yelled, asking the man if he needed help, and the man responded, "yes."¹⁴⁷ After a rescue squad arrived at the scene, the police made the ultimate decision to force entry and break down the door.¹⁴⁸ The man was found next to his recliner, without clothing, and confused.¹⁴⁹ He then spent the next month in the hospital and, upon being released, later died in his apartment.¹⁵⁰

The business owner continues to question whether the delay of entry into the man's apartment and the delay in medical attention contributed to his

¹³³ *Id.* at 235.

¹³⁴ *See, e.g.,* Monday, *supra* note 127.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Monday, *supra* note 127.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ Monday, *supra* note 127.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

death shortly after being found.¹⁵¹ The police department stated that they typically look for signs such as mail or newspaper piling up and lights turned on without anybody answering the door.¹⁵² Before the holding in *Caniglia*, the Community Caretaking Exception typically gave officers more leeway when performing welfare checks because the purpose behind the exception is to enter to protect life.¹⁵³ However, the holding in *Caniglia* could result in reluctance when making judgment calls regarding whether there appears to be an imminent threat allowing police to enter a home.¹⁵⁴ Police may now second guess whether a neighbor or friend not hearing from a person for days or mail and newspapers piling up is enough to amount to an objectively reasonable basis for entry when, instead, they should be more concerned about protecting and caretaking.

Critics have discussed the discrepancies police might face when deciding whether they have the right to enter based on an imminent threat.¹⁵⁵

If [the police] have a reason to believe that there's an imminent threat to the health or safety of somebody inside [of a home], then they're allowed to enter without getting a warrant . . . There's not really a bright line set of rules that the police can say, 'I can go in if this is happening. I can't go in if that is happening.' It's a general standard . . . When do police have reason to believe based on all the facts and circumstances, whatever they're aware of, that there's a reasonable chance that somebody's facing an imminent threat of death or serious bodily harm? Ultimately, they have to make that judgment based on what they know.¹⁵⁶

What police know, however, may result in the belief that they do not have enough facts to enter, and entry may violate a person's Fourth Amendment rights.¹⁵⁷

"The community caretaking doctrine has a more expansive temporal reach, in that its primary focus is on the purpose of police action rather than on its urgency."¹⁵⁸ With this being the case, police should not be apprehensive about entering a home when they reasonably believe that a person could potentially be in danger.¹⁵⁹ However, it would be beneficial to

¹⁵¹ *Id.*

¹⁵² Monday, *supra* note 127.

¹⁵³ *Id.* "They're not going in there looking for drugs. They're not there looking for contraband. They're going in there to try and protect life. I think all of us would want the police to do that." *Id.*

¹⁵⁴ See *Caniglia*, 141 S. Ct. 1596 (holding that police officers' community caretaking duties do not justify warrantless searches and seizures in the home).

¹⁵⁵ Monday, *supra* note 127.

¹⁵⁶ *Id.*

¹⁵⁷ See, e.g., *id.* (explaining how the police justify entry from circumstantial evidence such as newspapers piling up).

¹⁵⁸ *Sutterfield v. City of Milwaukee*, 751 F.3d 542, 561 (7th Cir. 2014).

¹⁵⁹ See, e.g., Monday, *supra* note 127.

give officers more precise guidance on which they can depend.¹⁶⁰ As the Supreme Court has said, “[a] single, familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront.”¹⁶¹ This would allow them to act immediately and potentially save a life or get to an injured person sooner instead of debating whether they should enter. “Discretion is an ‘important and unavoidable’ aspect of policing, but police need ‘thoughtful [and] thorough’ instructions guiding them in how to exercise their discretion.”¹⁶² Several states, through amicus brief in *Caniglia*, have agreed on the importance of ensuring that their peace officers have clear and consistent guidance on what the Fourth Amendment requires when they are fulfilling their duties.¹⁶³ However, clear and consistent guidance is not a feasible solution based on the inconsistency and unpredictability of human situational factors concerning reasonableness standards and the Fourth Amendment.¹⁶⁴

It is argued that *Brigham City* covers whether the warrantless entry of homes is allowed under the Community Caretaking Exception.¹⁶⁵ Additionally,

¹⁶⁰ See generally *Community Relations Services Toolkit for Policing*, U.S. DEP’T JUST., <https://www.justice.gov/file/1376626/download> (last visited Sept. 5, 2022); see also Moore et al., *supra* note 129; see, e.g., Devallis Rutledge, *Constitutional Home Entry*, POLICE MAG. (Feb. 10, 2014), <https://www.policemag.com/341095/constitutional-home-entry> (guiding the police before the *Caniglia* holding to enter homes under the Community Caretaking Exception if the lower courts in their jurisdiction allowed it).

¹⁶¹ Andrea L. Steffan, Note, *Law Enforcement Welfare Checks and the Community Caretaking Exception to the Fourth Amendment Warrant Requirement*, 53 LOY. L.A. L. REV. 1071, 1074 (2020) (citing *New York v. Belton*, 453 U.S. 454, 458 (1981) (alteration in original) (quoting *Dunaway v. New York*, 442 U.S. 200, 213–14 (1979)), *abrogated by Arizona v. Gant*, 556 U.S. 332 (2009)).

¹⁶² *Id.* at 1074.

¹⁶³ See Brief of Iowa, et al., *supra* note 40, at 1. “Amici states have a substantial interest in ensuring that their peace officers have clear and consistent guidance on what the Fourth Amendment requires of them when fulfilling their duties to further legitimate government interests. What is clear is that this case implicates a state’s legitimate community caretaking interest to protect the public from serious harm. And there is no dispute that under the Fourth Amendment that interest may—and in this case did—justify a search and seizure. What is left is whether the circumstances here justified a warrantless search.” *Id.*

¹⁶⁴ See *Graham v. Connor*, 490 U.S. 386, 396–97 (1989) (“The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving . . .”); see also *Sierra Club v. Secretary of the Army*, 820 F.2d 513, 517 (1st Cir. 1987) (reasonableness is “a mutable cloud, which is always and never the same.”).

¹⁶⁵ See *Brigham City*, 547 U.S. at 400 (holding “police may enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury”); see also *Michigan v. Fisher*, 558 U.S. 45, 49 (2009) (quoting *Brigham City*, 547 U.S. at 406) (holding that an officer’s warrantless entry is permitted under the Fourth Amendment so long as “there [is] ‘an objectively reasonable basis for believing’ that medical assistance [is] needed, or persons [are] in danger.”); see also *Sanders*, 141 S. Ct. at 1648 (citing *Brigham City*, 547 U.S. at 400–03).

the rule ignores the tremendous rise since 1973 of calls for help in the home. Wellness checks, the availability of 911 service, an aging population, the opioid crisis, the mental health crisis, and the increase in suicidal individuals have combined to make home visits an essential service provided by the police and other first responders. Expecting them always to obtain a warrant or other court order before entering a home, when they have been asked to protect someone there, is unreasonable.¹⁶⁶

With the rise of calls for help in the home over the past several decades, the holding in *Caniglia* can potentially lead to more harm to individuals than intended because the police and other emergency services will have reservations or refuse entry to aid even if they believe they have an objectively reasonable basis for doing so.¹⁶⁷

B. “Objectively Reasonable Basis” Test in *Brigham City*

The Court in *Brigham City* held that the police may enter a home without a warrant when they have “an objectively reasonable basis for believing” that prompt entry is necessary to provide aid and assistance to a person who is “seriously injured or imminently threatened with such injury.”¹⁶⁸ In *Caniglia*, the police arguably had an objectively reasonable basis for entering.¹⁶⁹ The officers argued that they did not violate Mr. Caniglia’s constitutional rights because they neither stopped nor arrested him for law enforcement purposes but, rather, detained him and seized his guns in furtherance of their duties under their community caretaking function.¹⁷⁰ The lower courts agreed with the officers by concluding that no conduct by the officers would have been unreasonable based on the reasonableness standard, which follows a totality-of-the-circumstances test.¹⁷¹

The officers were not partaking in a criminal investigation, nor did they have any investigatory purposes because they reasonably believed that the

¹⁶⁶ Brief of the National Association of Counties, the National League of Cities, the U.S. Conference of Mayors, the International City/County Management Association, and the International Municipal Lawyers Association as Amici Curiae in Support of Respondents, *Caniglia*, 141 S. Ct. 1596 (No. 20-157).

¹⁶⁷ See, e.g., *People v. Slaughter*, 803 N.W.2d 171, 181 (Mich. 2011) (holding that “the community caretaking exception applies to firefighters”); see also Jane Perkins, *Ask a Firefighter. Why do firetrucks and police respond to 911 medical calls?*, WESTERLY SUN (May 4, 2019), <https://www.thewesterlysun.com/opinion/guest-columns/ask-a-firefighter-why-do-firetrucks-and-police-respond-to-911-medical-calls/> (concluding that sixty-five percent of fire department responses are medical calls and “fire departments have become all-hazards departments, with staff trained to respond to fires, emergency medical incidents, hazardous materials, and much more”).

¹⁶⁸ See *Brigham City*, 547 U.S. at 400.

¹⁶⁹ See *Caniglia*, 396 F. Supp. 3d at 234-35 (discussing the reasonableness of the police action).

¹⁷⁰ *Id.* at 234-35.

¹⁷¹ *Id.* at 234.

guns they seized were legally owned.¹⁷² Therefore, the seizure of the firearms would not be, in any form, part of an investigatory function.¹⁷³ The officers acted solely under their community caretaking powers and were not trying to uncover evidence.¹⁷⁴ They were at the Caniglia home based on Mrs. Caniglia's concerns regarding her husband's health and mental well-being.¹⁷⁵ The officer's actions were reasonable based on their belief that Mr. Caniglia was a danger to himself, namely that his statement to his wife was a suicidal statement.¹⁷⁶

Now, the question is, why did the Supreme Court find that the officers' justifications did not pass the "objectively reasonable basis" test established in *Brigham City*.¹⁷⁷ The answer may have been simple in the *Caniglia* case but will likely not be as simple in other cases. Although the majority focused on the decision in *Cady* to justify that the police could not enter a home under the exception, Chief Justice Roberts considered *Brigham City* and said that he agreed that the police should not have entered the Caniglia home based on there being no medical assistance needed or persons in immediate danger.¹⁷⁸ The entry was not objectively reasonable based on an injury or an imminent threat of injury.¹⁷⁹ The officers could have received a warrant to enter and search the home and seize the guns if they had reasonably believed that there were firearms inside the home, which could put the Caniglias in danger.¹⁸⁰ Mr. Caniglia had left for the hospital after being persuaded to get an examination for his mental well-being, which would have allowed the police to obtain the warrant.¹⁸¹ It normally can take up to a few hours to obtain a judicial warrant as the police must show that they have probable cause to justify their entry into the home.¹⁸² However, if the police received consent to enter from Mrs. Caniglia while Mr. Caniglia was absent from the premises, they could have lawfully entered.¹⁸³ Although lawful entry was possible in

¹⁷² *Id.* at 235.

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 235.

¹⁷⁵ *Caniglia*, 396 F. Supp. 3d at 235.

¹⁷⁶ *Id.* at 235.

¹⁷⁷ *Brigham City*, 547 U.S. at 400 (holding "police may enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury").

¹⁷⁸ *Caniglia*, 141 S. Ct. at 1600 (Roberts, J., concurring).

¹⁷⁹ *Id.* at 1600 (Roberts, J., concurring) (joining the majority holding based on there being no need for medical assistance and no danger).

¹⁸⁰ *Riley v. California*, 573 U.S. 373, 382 (2014) (holding that the Fourth Amendment generally requires an officer to obtain a warrant prior to entering a home without permission).

¹⁸¹ *Caniglia*, 141 S. Ct. at 1597.

¹⁸² See generally *How Long Does It Take to Get a Search Warrant?*, LAW.'S INC. (Mar. 21, 2020) <https://www.lawyersincorporated.com/how-long-does-it-take-to-get-a-search-warrant/>.

¹⁸³ See *United States v. Matlock*, 14 U.S. 164, 177 (1974) (holding that a woman had common authority to consent to a warrantless search by police when her husband was absent and unable to object to the search); see also *Caniglia*, 141 S. Ct. 1596.

the *Caniglia* facts, this may not be the case for every situation that the police should act under the Community Caretaking Exception.

“Objectively reasonable” could be considered an ambiguous phrase, potentially making it hard for police to interpret and apply during an emergency.¹⁸⁴ The test also requires a serious injury or imminent threat of injury.¹⁸⁵ As seen in the situation discussed above involving a welfare check on a daily customer due to his absence from the business, the situation may not always appear to involve injury or a threat of injury.¹⁸⁶ Older adults are at a higher risk of injury, especially when living alone.¹⁸⁷ The only facts the police might have when they are called about an older adult in danger could be the fact that they have not been in recent contact with family or friends.¹⁸⁸ When the police receive a call about an older adult potentially being in danger in their home, they should be able to justify an objectively reasonable entry into the home based on the specific fact that an older adult may be involved and have a heightened risk of injury.¹⁸⁹

However, with this consideration comes concerns. What happens when the police get it wrong and enter a home with no problems? Communities of color remain afraid of the police and have proven to be more vulnerable to police engagement and brutality.¹⁹⁰ When applying an “objectively reasonable basis test” in an emergency and justifying an entry based on limited facts, the potential of entering when there is no emergency increases.

For example, consider the case of Kenneth Chamberlain.¹⁹¹ During the early hours of five in the morning, the sixty-five-year-old, mentally-ill man was at his home when he accidentally alerted his LifeAid medical alert necklace.¹⁹² Acting in response, police and other emergency responders

¹⁸⁴ See generally *Brigham City*, 547 U.S. 398.

¹⁸⁵ *Id.* at 400.

¹⁸⁶ Monday, *supra* note 127.

¹⁸⁷ See 2019 *Profile of Older Americans*, *supra* note 8; see also *Important Facts about Falls*, *supra* note 16.

¹⁸⁸ See, e.g., Monday, *supra* note 127 (demonstrating that the only facts that the police had during the business owner’s first call requesting the welfare check was that the man has not been seen or heard from over the past few days).

¹⁸⁹ See 2019 *Profile of Older Americans*, *supra* note 8; see also *Important Facts about Falls*, *supra* note 16.

¹⁹⁰ See Dennis P. Rosenbaum et al., *Attitudes Toward The Police: The Effects of Direct and Vicarious Experience*, 8 POLICE Q. 343 (Sept. 2005); see also Jocelyn R. Smith Lee & Michael A. Robinson, “That’s My Number One Fear in Life. It’s the Police”: Examining Young Black Men’s Exposures to Trauma and Loss Resulting From Police Violence and Police Killings, 45 J. BLACK PSYCH. 143 (Apr. 1, 2019) (“For Black males, the chronic risk of exposure to police violence and police killings is situated in a long history of racial violence perpetrated and permitted by law enforcement”); see also Harold Stolper, *New Neighbors and the Over-Policing of Communities of Color*, CMTY. SERV. SOC’Y (Jan. 6, 2019), <https://www.cssny.org/news/entry/New-Neighbors>.

¹⁹¹ *Seven Lives: Kenneth Chamberlain*, SEVEN LAST WORDS OF THE UNARMED, <https://sevenlastwords.org/seven-lives/kenneth-chamberlain/> (last visited Oct. 11, 2022).

¹⁹² *Id.*

arrived at Chamberlain's home.¹⁹³ Through the door, Chamberlain informed the officers that the alert was an accident and that he did not require their assistance.¹⁹⁴ He asked that they leave.¹⁹⁵ The officers, however, continued to knock on the door and try to force their way into Chamberlain's home for approximately one hour.¹⁹⁶ Chamberlain called the LifeAid operator and asked for their help, claiming that the police were trying to enter his home and kill him.¹⁹⁷ The police proceeded to break down the door and enter the home.¹⁹⁸ There is debate over whether Chamberlain was armed and whether he resisted the police.¹⁹⁹ The entry into the home, despite Chamberlain's requests against it, ultimately resulted in Chamberlain being shot and later dying in the hospital.²⁰⁰

The mayor of the town in which Chamberlain resided called for a review of the police department's policy but "found the police shooting justifiable because, according to [the political science professor and academic coordinator leading the review], it took place 'after negotiations and when all non-lethal means were unsuccessful.'"²⁰¹ Regardless, when the police enter a home on what they believe is an objectively reasonable basis under their community caretaking authority, a person may still fear that the officers are intruders and could be entering their home to kill them, as Chamberlain did.²⁰² This could result in the person resisting the officers or acting in self-defense.²⁰³ Nonetheless, what may seem like an objectively reasonable basis to break down a door to potentially save the life of an older adult with a heightened risk of injury, may result in greater harm if the police weigh the facts and information wrong and enter when no problems are present.

C. Older Adults are at Higher Risk of Injury

As mentioned by Justice Alito in his concurring opinion in *Caniglia*, "[a person in harm or danger] may have regarded her house as her castle, but

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Seven Lives: Kenneth Chamberlain*, *supra* note 191.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ See, e.g., *Walker v. Louisville/Jefferson Cty. Metro Gov't*, No. 3:21-CV-161-DJH-LLK, 2022 WL 301687, at *2 (W.D. Ky. Feb. 1, 2022); see also *Breonna Taylor Is Killed By Police In Botched Raid*, HISTORY, <https://www.history.com/this-day-in-history/breonna-taylor-is-killed-by-police> (last visited Mar. 1, 2022).

it is doubtful that she would have wanted it to be the place where she died alone and in agony.”²⁰⁴

Today, more than ever, many people, including many elderly persons, live alone. Many elderly men and women fall in their homes, or become incapacitated for other reasons, and unfortunately, there are many cases in which such persons cannot call for assistance. In those cases, the chances for a good recovery may fade with each passing hour. [. . .] If [an] elderly woman was seriously hurt or sick and the police [didn’t enter the woman’s home based on her Fourth Amendment protections and fear of violating the Fourth Amendment], there is a fair chance she would not be found alive.²⁰⁵

It is unreasonable to ask the police to obtain a warrant in moments of crisis and imminent threat simply because the threat or danger is occurring within a home. Based on the holding of *Caniglia*, the Community Caretaking Exception does not apply to a home.²⁰⁶

The concerns are exacerbated in major public health crises, such as the COVID-19 pandemic. With the pandemic, older adults had more concerns than just contracting the virus.²⁰⁷ Many older adults reported changes in their physical health and an increased fear of falling based on the changes in their physical activity, conditioning, and mobility from quarantine.²⁰⁸ Within the first ten months of the pandemic, more than one-third of adults aged fifty to eighty reported decreased physical activity.²⁰⁹ With new variants of the virus becoming increasingly contagious, older adults are more prone to stay in quarantine due to their high risk of experiencing severe effects if they contract the virus.²¹⁰ This is just one of the reasons the older adult community needs the Community Caretaking Exception to apply to them in all places, not just their vehicles.²¹¹ “[H]omes cannot be arbitrarily isolated from the

²⁰⁴ *Caniglia*, 141 S. Ct. at 1602 (Alito, J., concurring).

²⁰⁵ *Id.* (Alito, J., concurring); see also B. Moreland et al., *Trends in Nonfatal Falls and Fall-Related Injuries Among Adults Aged ≥65 Years—United States, 2012–2018*, 69 MORBIDITY & MORTALITY WKLY. REP. 875 (2020); see also Dept. of Commerce, Bureau of Census, *The Rise of Living Alone*, FIG. HH-4 (2020), <https://www.census.gov/content/dam/Census/library/visualizations/time-series/demo/families-and-households/hh-4.pdf>.

²⁰⁶ Brief of the National Association of Counties et al., *supra* note 166 (“Petitioner argues that ‘police officers may be able to seek a warrant in jurisdictions that consider suicide a crime[,]’ but e]xpecting police to take the time to go to court for a warrant makes no sense when they are trying to prevent a suicide”); *Caniglia*, 141 S. Ct. at 1600.

²⁰⁷ Kara Gavin, *The Pandemic May Have Increased Older Adults’ Fall Risk*, MICH. HEALTH (Aug. 2, 2021), <https://healthblog.uofmhealth.org/wellness-prevention/pandemic-may-have-increased-older-adults-fall-risk>.

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ See generally *COVID-19 Risks and Vaccine Information for Older Adults*, CDC (Aug. 4, 2021), <https://www.cdc.gov/aging/covid19/covid19-older-adults.html>.

²¹¹ See *Caniglia*, 141 S. Ct. 1596 (holding “that police officers’ community caretaking duties do not justify warrantless searches and seizures in the home”).

community caretaking equation. The need to protect and preserve life or avoid serious injury cannot be limited to automobiles.”²¹²

As the United States argued in their brief supporting respondents in the *Caniglia* case, in cases of a warrantless entry to ensure public health and safety, the question is one of whether the government’s actions in a non-investigatory situation are reasonable.²¹³

When government officials enter private spaces to ensure public safety or health, rather than to investigate wrongdoing, the question is not whether “probable cause” exists--whatever that might mean in the context of a health or safety crisis--but instead whether their actions are objectively reasonable. Whenever this Court has assessed the constitutionality of a non-investigatory search or seizure, it has therefore applied reasonableness review rather than requiring a warrant. . . . The core lesson from [this Court’s precedent] is that, for noninvestigatory searches and seizures . . . , the Fourth Amendment’s reasonableness standard requires not a warrant, but instead a circumstance specific balancing of the degree of privacy intrusion against the need for government intervention to address important public interests other than the enforcement of the criminal laws. Because the home enjoys the highest protections under the Fourth Amendment, the government must have a sufficiently important interest to support the reasonableness of a warrantless entry. But “ensuring public safety” is “the paramount governmental interest,” . . . and can therefore qualify.²¹⁴

The timing and information that are often made available to officers in an emergency are scarce.²¹⁵ As Justice Alito mentioned, the timing and available information could ultimately decide whether an individual has a “fair chance” of being found alive.²¹⁶ The chances of injuries and falls being fatal in older adults rise with age and are even more significant when the

²¹² *Deneui*, 2009 S.D. 99, ¶ 41, 775 N.W.2d 221, 239.

²¹³ Brief for the United States as Amicus Curiae Supporting Respondents, *Caniglia*, 141 S. Ct. 1596 (No. 20-157); see *Riley*, 573 U.S. at 381-82 (quoting *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 653 (1995)) (“where a search is undertaken by law enforcement officials to *discover evidence of criminal wrongdoing*, reasonableness generally requires the obtaining of a judicial warrant”) (emphasis added); see also 4 WILLIAM BLACKSTONE, COMMENTS. *287 (1772) (explaining that the party seeking a warrant must demonstrate “that there is a felony or other crime actually committed” and “prove the cause and probability of suspecting the party, against whom the warrant is prayed”).

²¹⁴ Brief for the United States, *supra* note 213.

²¹⁵ See generally John F. Decker, *Emergency Circumstances, Police Responses, and Fourth Amendment Restrictions*, J. CRIM. L & CRIMINOLOGY 433 (1999); see also Brief of the National Association of Counties et al., *supra* note 166 (“Police and others often have insufficient information, and certainly insufficient time, to obtain a warrant when responding to reports of overdoses, suicidal individuals, or other needs for care.”)

²¹⁶ *Caniglia*, 141 S. Ct. at 1602 (Alito, J., concurring).

adult lives alone.²¹⁷ Limiting the scope of the Community Caretaking Exception can be detrimental to the older adult community.²¹⁸

IV. ARGUMENTS FOR KEEPING THE COMMUNITY CARETAKING EXCEPTION LIMITED IN ITS SCOPE

To a layperson, the Community Caretaking Exception may provide a feeling of comfort, safety, and peace.²¹⁹ However, the Court has consistently held that a person has a heightened expectation of privacy in their home.²²⁰ Further, those educated about legal concepts, such as this exception, as well as other individuals and communities who fear the police, may view the exception as a way for officers to infringe on one's Fourth Amendment rights and protections.²²¹

Community Caretaking. To non-lawyers the concept, in and of itself, seems to evoke warm, safe, peaceful thoughts. The words sound therapeutic and roll off the tongue in a paternalistic patter that makes one think of good neighbors and sanctuary from harsh realities. As a constitutional doctrine it means an executive branch government employee is making an ad hoc decision to abrogate someone's FOURTH AMENDMENT rights.²²²

²¹⁷ Each year millions of older adults (age 65+), one out of every four to be exact, fall. *See Important Facts about Falls*, *supra* note 16. If a person falls once, their chances of falling again doubles. *Id.* Injuries from these falls can lead to hospitalization and can vary from broken bones, fractures, traumatic brain injuries. *Id.* With an injury like this, especially when not reported to a doctor, it is hard to call for emergency assistance, especially when residing alone. *Id.* “[As of 2019, a]bout 28% (14.7 million) of older persons lived alone (5 million men, 9.7 million women). They represented 21% of older men and 34% of older women. The proportion living alone increases with age for both men and women. Among women aged 75 and older, 44% lived alone.” *2019 Profile of Older Americans*, *supra* note 8.

²¹⁸ *See, e.g., Monday*, *supra* note 127 (explaining a situation in which a 76-year-old man was in his apartment in need of assistance and the police did not enter to perform a full welfare check because it did not appear any person was home and the apartment complex staff would not grant the officers entry).

²¹⁹ Amicus Curie Brief of Second Amendment Foundation in Support of Petitioner for Reversal, *Caniglia*, 141 S. Ct. 1596 (No. 20-157); *see generally* Joel Miller et al., *Public Opinions of the Police: The Influence of Friends, Family, and News Media*, VERA INST. JUST. (Dec. 2003), <https://www.ojp.gov/pdffiles1/nij/grants/205619.pdf>.

²²⁰ *See California v. Ciraolo*, 476 U.S. 207, 213 (1986); *see also* 2 LEGAL PAPERS OF JOHN ADAMS 142-44 (Wroth & Zobel eds. 1965).

²²¹ *See generally* Barry Friedman, *Disaggregating the Police Function*, 169 U. PA. L. REV. 925 (2021); *see also* Brief of Constitutional Accountability Center as Amicus Curiae in Support of Petitioner at 22-23, *Caniglia*, 141 S. Ct. 1596 (No. 20-157); *see generally* Monica C. Bell, *Anti-Segregation Policing*, 95 N.Y.U. L. REV. 650, 687-729 (2020).

²²² Amicus Curie Brief of Second Amendment Foundation, *supra* note 219, at 2.

The Fourth Amendment is meant as a “fundamental safeguard” to protect individuals from the unrestricted discretion of police officers.²²³

A. Fear of Abusive Conduct by Police Officers

Police officers play many roles and carry out various duties within their respective communities.²²⁴ In addition to upholding the law, they act as social workers, therapists, doctors, nurses, clergy, or teachers.²²⁵ There is fear that broadening the scope of the Community Caretaking Exception will lead to abusive conduct by police officers.²²⁶ This distrust centers on the idea that police officers will use inappropriate reasoning to bypass the Fourth Amendment and enter a home for “community caretaking” purposes.²²⁷

The increased presence of the police in people’s daily lives, combined with a broader “community caretaking” exception to the warrant requirement, would result in a massive expansion of opportunities for the police to search people’s homes without a warrant and without any individualized suspicion of criminal wrongdoing, in violation of the text and history of the Fourth Amendment.²²⁸

Arguably, this decision-making of warrantless entry with no probable cause by police could have a significant negative impact on low-income and marginalized communities.²²⁹ Police officers respond to more calls in “poorer” and “marginalized communities,” including those of color, because the residents and communities lack the resources to deal with complications and issues in other ways.²³⁰ This could lead to a disproportionate effect in

²²³ “The right of the people to be secure in their persons, *houses*, papers, and effects, against unreasonable searches and seizures, shall not be violated, 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.” U.S. CONST. amend. IV (emphasis added); *see also Gemma*, 818 F.3d at 32; *see also State v. Gill*, 699 N.W.2d 253 (Wis. Ct. App. 2005) (“A fundamental safeguard against unnecessary invasions into private homes is the Fourth Amendment’s warrant requirement, imposed on all governmental agents who seek to enter the home for purposes of search or arrest.”).

²²⁴ *See, e.g., Policing 101*, DEPT. JUST., <https://www.justice.gov/file/1376626/download> (last visited Aug. 19, 2022); *see also Friedman*, *supra* note 221; *see also Gemma*, 818 F.3d at 32.

²²⁵ *See generally Friedman*, *supra* note 221.

²²⁶ *See Mary Elisabeth Naumann*, Note, *The Community Caretaker Doctrine: Yet Another Fourth Amendment Exception*, 26 AM. J. CRIM. L. 325, 357-64 (1999) (discussing the potential dangers posed by the Community Caretaking Exception).

²²⁷ Edwin J. Butterfoss, *Bright Line Seizures: The Need for Clarity in Determining When Fourth Amendment Activity Begins*, 79 J. CRIM. L. & CRIMINOLOGY 437, 471 (1988) (noting the dangers of police using the Community Caretaking Exception as a pretext to investigate crime).

²²⁸ Brief of Constitutional Accountability Center, *supra* note 221, at 22.

²²⁹ *See Friedman*, *supra* note 221; *see generally Bell*, *supra* note 221, at 687-729.

²³⁰ *See Friedman*, *supra* note 221; *see also* Brief of Constitutional Accountability Center, *supra* note 221, at 22-23.

these communities.²³¹ An expansion on the scope of the Community Caretaking Exception, coupled with the racial bias already prevalent in American policing, could result in a greater invasion of privacy in these communities, making the community feel increasingly susceptible to abuse by officers and leading to greater fears of policing.²³² This could ultimately harm the communities in situations where they need police but are too scared to call for assistance.

Victims of police abuse have a greater chance of being denied their day in court based on the doctrine of qualified immunity.²³³ This judicially-created doctrine establishes that government officials cannot be sued in court for their discretionary duties unless victims of their abuse can show that their rights were “clearly established.”²³⁴ This “clearly established” standard requires that the victims of government abuse be able to point to a court decision or law that demonstrates that the officer’s conduct is illegal.²³⁵ “[A] constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question, even though the very action in question has [not] previously been held unlawful.”²³⁶ To determine if police actions were reasonable for qualified immunity purposes, the court must determine what information the officer knew at the time of entry.²³⁷

Further, Section 1983 of the United States Code provides a legal monetary remedy for individuals claiming that police officers violated their constitutional rights.²³⁸ The idea behind Section 1983 is to deter wrongful action and protect an individual’s constitutionally guaranteed rights.²³⁹ However, as it becomes increasingly difficult to satisfy the “clearly established” standard, scholars are beginning to fear that the purpose of Section 1983—a tool for allowing individuals to recover damages for constitutional violations—is being jeopardized.²⁴⁰

Consequently, additional fear may arise concerning the abuse of community caretaking powers if the Court permits officers to enter homes

²³¹ See sources cited *supra* note 230.

²³² See generally Bell, *supra* note 221, at 687-729.

²³³ Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982); see, e.g., Walker, 2022 WL 301687, at *8-14 (arguing that claims against officers regarding the violation of constitutional rights in the case of Breonna Taylor should be dismissed based on qualified immunity); see e.g., Edward C. Dawson, *Qualified Immunity for Officers’ Reasonable Reliance on Lawyers’ Advice*, 110 NW. U. L. REV. 525 (2016).

²³⁴ Harlow, 457 U.S. 818; see e.g., Dawson, *supra* note 233.

²³⁵ See sources cited *supra* note 234.

²³⁶ Hope v. Pelzer, 536 U.S. 730, 740 (2002) (quoting Anderson v. Creighton, 483 U.S. 635, 640 (1987)).

²³⁷ Anderson, 483 U.S. at 639.

²³⁸ 42 U.S.C. §1983; see also Parsons v. Velasquez, 551 F. Supp. 3d 1085 (D.N.M. 2021).

²³⁹ See Parsons, 551 F. Supp. 3d 1085.

²⁴⁰ See generally WHITNEY K. NOVAK, CONG. RSCH. SERV., LSB10492, POLICING THE POLICE: QUALIFIED IMMUNITY AND CONSIDERATIONS FOR CONGRESS (2020).

under the exception.²⁴¹ This will ultimately violate an individual's privacy, liberty, and property rights protected under the Fourth Amendment.²⁴² If the entry of homes is allowed under the Community Caretaking Exception, then qualified immunity may be used to shield the officers from liability based on their conduct. Specifically, the officers will be able to point to the Court's decision allowing them to enter the home.²⁴³ They could then argue that other legal doctrines justified their conduct after their entry. For example, the plain view doctrine gave police probable cause to seize items.²⁴⁴ Police entry under the Community Caretaking Exception leading to the use of these other legal doctrines can cause individuals to feel that their privacy rights are being violated in their home, where their rights are most heightened.²⁴⁵

B. A Person Has Heightened Privacy Rights in Their Home

The home is the “only place single[d] out” in the text of the Fourth Amendment. The history of the Fourth Amendment also makes it clear that the home is a person's sacred “castle” where an individual's privacy rights are “most heightened.”²⁴⁶ The property “owner's right to exclude others” is “perhaps the most fundamental of all property interests.”²⁴⁷ Therefore, it is continuously argued that the Community Caretaking Exception should not be extended to the home and the Court should, instead, “recommit itself to the specific warrant requirement enshrined in the Fourth Amendment,” which is what the Court held in *Caniglia*.²⁴⁸

²⁴¹ See Brief for Petitioner at 26-27, *Caniglia*, 141 S. Ct. 1596 (No. 20-157); see also *Steagald v. United States*, 451 U.S. 204, 215 (1981).

²⁴² See sources cited *supra* note 241.

²⁴³ Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit at 15-17, *Graham v. Barnette*, 970 F.3d 1075 (8th Cir. 2020) (No. 20-896).

²⁴⁴ See, e.g., *Rohrig*, 98 F.3d 1506 (concluding that the officers' warrantless entry into the home was justified by their community caretaking powers to turn down loud music and the subsequent discovery of marijuana plants in the basement was justified under the “plain view” doctrine); see also *Horton*, 496 U.S. at 136-37.

²⁴⁵ See 2 LEGAL PAPERS OF JOHN ADAMS, *supra* note 220, at 142-44.

²⁴⁶ See *Ciraolo*, 476 U.S. at 213; see also 2 LEGAL PAPERS OF JOHN ADAMS, *supra* note 220, at 142-44 (“A man's house is his castle; and while he is quiet, he is as well guarded as a prince in his castle.”); see also Brief of Amici Curiae Firearms Policy Coalition, Firearms Policy Foundation, And Independence Institute in Support of Petitioner at 3, *Caniglia*, 141 S. Ct. 1596 (No. 20-157). “The sanctity of the home is central to American freedom. It has been central to the idea of freedom since the Roman Republic, and it was cherished by Englishmen for centuries leading up to the American Revolution. Embodied in the Castle Doctrine, the inviolability of the home was celebrated by leading English legal authorities, including Edward Coke, William Hawkins, and William Blackstone. As William Pitt the Elder famously declared, even the poorest soul in the country had the right to defy the king in his own home.” *Id.*

²⁴⁷ *Lingle v. Chevron*, 544 U.S. 528, 539 (2005).

²⁴⁸ See Brief of Constitutional Accountability Center, *supra* note 221, at 5; see also U.S. CONST. amend. IV; see also *Caniglia*, 141 S. Ct. 1596.

The First Circuit has discussed the “damned-if-you-do, damned-if-you-don’t conundrum” with respect to this exception.²⁴⁹ This means that if the police enter when they believe that there is an objectively reasonable basis, but the court finds that there, in fact, was not, they might have to face the consequences of entering a home without a warrant and violating the Fourth Amendment.²⁵⁰ If they do not enter when there could be a justified entry, they might have to face the consequences of knowing they could have helped a person who was injured or in need of assistance.²⁵¹ The First Circuit in *Caniglia* held that this was the sort of situation that the Community Caretaking Exception is meant to alleviate.²⁵² However, the Supreme Court disagreed and held that the exception is meant to be limited in its scope and “not an open-ended license to perform them anywhere.”²⁵³

There is much debate over whether the meaning of *Cady* was meant to extend a community caretaking function beyond inventory searches of automobiles, and critics argue that lower courts are misinterpreting and extending the exception beyond its intended purpose.²⁵⁴ The Supreme Court has held that the expectation of privacy in a motor vehicle is reduced based on the car’s mobility and how it can quickly be moved.²⁵⁵ It further held that the Community Caretaking Exception should be limited to motorists and vehicles.²⁵⁶ The Court in *Cady* never extended their holding that the seizure of a firearm from an impounded vehicle falls under the Community Caretaking Exception to be applicable within the home.²⁵⁷ One of Mr. Caniglia’s arguments was that the exception established in *Cady* was never intended to apply to homes in which the Supreme Court agreed, despite the lower courts’ disagreements.²⁵⁸

Police actions that have been determined to fall under the scope of the Community Caretaking Exception range in their variety when applied to the

²⁴⁹ *Caniglia*, 953 F.3d at 125.

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ *Caniglia*, 141 S. Ct. at 1597.

²⁵⁴ *Cady*, 413 U.S. at 441; *see, e.g., Caniglia*, 953 F.3d at 125; *Sutterfield*, 751 F.3d 542; *Ray v. Twp. of Warren*, 626 F.3d 170 (3d Cir. 2010); *Quezada*, 448 F.3d 1005; *United States v. Williams*, 354 F.3d 497 (6th Cir. 2003); *Rohrig*, 98 F.3d 1506; *United States v. Erickson*, 75 F.3d 470 (9th Cir. 1996); *United States v. Bute*, 43 F.3d 531 (10th Cir. 1994); *United States v. York*, 895 F.2d 1026 (5th Cir. 1990).

²⁵⁵ *See United States v. Martinez-Fuerte*, 428 U.S. 543, 561 (1976) (“[O]ne’s expectation of privacy in an automobile and of freedom in its operation are significantly different from the traditional expectation of privacy and freedom in one’s residence.”).

²⁵⁶ *See Caniglia*, 141 S. Ct. at 1600 (holding that the Community Caretaking Exception does not extend to the home); *see also Cady*, 413 U.S. at 433.

²⁵⁷ *See Caniglia*, 141 S. Ct. at 1597; *see also Cady*, 413 U.S. at 433.

²⁵⁸ *See generally Reply in Support of Certiorari, Caniglia*, 141 S. Ct. 1596 (No. 20-157).

home.²⁵⁹ Police have used this exception to justify their entry into a private home after hearing loud music and suspecting underage drinking.²⁶⁰ They have accompanied fired live-in nannies to collect their belongings from a home,²⁶¹ entered a home to investigate ammonia fumes,²⁶² and even entered an individual's bedroom after tracing a vehicle accident back to the home.²⁶³ These state and district court decisions are all argued to go beyond the Supreme Court's intended purpose and scope of the Community Caretaking Exception created in *Cady*.²⁶⁴ Police officers could abuse their community caretaking power if it is expanded to a more open-ended license, including the home.²⁶⁵ For example, if the police received a call that brought them to an address for a mental health crisis, they could then search for any criminal evidence without a warrant or probable cause.²⁶⁶ This is because the warrant exceptions, such as the Community Caretaking Exception and the Plain View Doctrine, can intersect.²⁶⁷ If the police were capable of validly entering a home without a warrant under their community caretaking authority and saw an illegal substance in plain view, they would have the right to seize that item under the Plain View Doctrine.²⁶⁸ Before *Caniglia*, which held that the Community Caretaking Exception does not apply to the home, if law enforcement's warrantless entry and search ended with no evidence or resulting charges, then they could escape the liability of performing the search by claiming that they were acting under their "community caretaking powers."²⁶⁹ This is similar to the case of *Caniglia*, where the police entered the home after Mr. Caniglia had already left and seized his guns under what they claimed to be their role's community caretaking function.²⁷⁰

²⁵⁹ See *Castagna*, 955 F.3d at 214-15; see also *State v. Wilson*, 350 P.3d 800, 801-02 (Ariz. 2015); see also *State v. Vargas*, 63 A.3d 175,177 (N.J. 2013); see also *State v. Gracia*, 826 N.W.2d 87, 94-95 (Wis. 2013); see also *Ray*, 626 F.3d at 172; see also *Deneui*, 2009 S.D. 99, ¶ 7, 775 N.W.2d 221, 227; see also *Commonwealth v. Baumgardner*, 1997 WL 727726, at *4 (Va. Ct. App. Nov. 21, 1997); see also *State v. Dube*, 655 A.2d 338, 339 (Me. 1995).

²⁶⁰ See *Castagna*, 955 F.3d at 214-15.

²⁶¹ See *Baumgardner*, 1997 WL 727726, at *4.

²⁶² See *Deneui*, 2009 S.D. 99, ¶ 7, 775 N.W.2d 221, 226-27.

²⁶³ See *Gracia*, 826 N.W.2d at 94-95.

²⁶⁴ See generally Brief of American Civil Liberties Union et al., *supra* note 123.

²⁶⁵ See generally Michael R. Dimino, Sr., *Police Paternalism: Community Caretaking, Assistance Searches, and Fourth Amendment Reasonableness*, 66 WASH. & LEE L. REV. 1485 (2009).

²⁶⁶ Brief of Constitutional Accountability Center, *supra* note 221, at 24-25.

²⁶⁷ See, e.g., *Maryland v. Buie*, 494 U.S. 325 (1990) (showing an intersection between a protective sweep and the plain view doctrine).

²⁶⁸ See *Collins*, 138 S. Ct. at 1672 (explaining that the plain view doctrine alone is never enough to justify entry into a home); see also *Arizona v. Hicks*, 480 U.S. 321 (1987) (upholding the "plain view" doctrine which allows police officers under some circumstances to seize evidence in plain view without a warrant).

²⁶⁹ Brief of Constitutional Accountability Center, *supra* note 221, at 24-25.

²⁷⁰ See, e.g., *Caniglia*, 141 S. Ct. 1596.

V. A PROPOSAL TO BROADEN THE SCOPE OF THE COMMUNITY CARETAKING EXCEPTION FOR THE OLDER ADULT COMMUNITY

Despite the Court denying an open-ended license for police to use their community caretaking powers to enter a home, many questions are left unanswered.²⁷¹ The purpose of this exception is to allow the police to render aid in emergencies and to protect the public.²⁷² Although there is fear that broadening the exception will lead to diminished protections under the Fourth Amendment, there is also fear that human life might be lost due to the police not entering a home to avoid violating a person's Fourth Amendment rights.²⁷³

As mentioned, Justice Alito explained that a person may view their home as their "castle," but it is not likely that they would want it to be the place where they "die[] alone and in agony."²⁷⁴ While this may be true for most people, it is not true for all.²⁷⁵ For example, in *Sutterfield v. City of Milwaukee*,

Sutterfield sued the City of Milwaukee and several of its police officers after the officers forcibly entered her home to effectuate an emergency detention for purposes of a mental health evaluation, opened a locked container, and seized for safekeeping the gun and concealed-carry licenses they found inside. . . . [The court] conclude[d] that the warrantless entry into Sutterfield's home was justified . . . as the officers had a reasonable basis to believe that Sutterfield posed an imminent danger of harm to herself.²⁷⁶

While police can enter a home during exigent circumstances, situations where they should enter under their community caretaking functions are not always exigent.²⁷⁷ In these situations, when the police should be responding

²⁷¹ See *Caniglia*, 141 S. Ct. at 1600-05; see also *Oral Argument*, *supra* note 1, at 6-8.

²⁷² See Samuel Moore, *Fourth Amendment: The Community Caretaker Exception*, LAW OFF. SAMUEL MOORE (Oct. 7, 2018), <https://scmoorelaw.com/fourth-amendment-community-caretaker-exception/>.

²⁷³ See *Oral Argument*, *supra* note 1, at 102-05 (demonstrating that by officers waiting and not entering a residence when suicide is of issue, then it could result in unnecessary death); see, e.g., Monday, *supra* note 127.

²⁷⁴ *Caniglia*, 141 S. Ct. at 1602 (Alito, J., concurring).

²⁷⁵ See, e.g., *Sutterfield*, 751 F.3d 542.

²⁷⁶ *Id.* at 545.

²⁷⁷ *Caniglia*, 141 S. Ct. at 1602 (Alito, J., concurring) ("We have held that the police may enter a home without a warrant when there are "exigent circumstances" [. . . but] circumstances are exigent only when there is not enough time to get a warrant . . . and warrants are not typically granted for the purpose of checking on a person's medical condition.").

and checking on an individual, there is usually little information about the situation and the emergency itself to create an exigency.²⁷⁸

Proposals are being made regarding when the police can and should enter a home if there is a reasonable belief that somebody may need caretaking.²⁷⁹ There are also ideas about dispatching other agencies that do not have the same criminal investigatory knowledge as law enforcement.²⁸⁰ This would allow the public to have less repulse regarding an exception giving authority for entry if a discretionary test is met.²⁸¹ However, a refinement of the federal case law to not add such strict limits restricting the Community Caretaking Exception from applying in the home would allow for the well-founded application of discretionary tests.²⁸² The Court should encourage reliance on the “objectively reasonable basis” test defined in *Brigham City* and guide officers to consider factors such as age and vulnerability to injury when determining whether they have an objectively reasonable basis to enter and act under their community caretaking powers.²⁸³

A. A Father's Proposal for a Law to “Clear the Area”

Although the concurring Justices in *Caniglia* raised issues that the current holding does not provide a clear and logical application, they did not provide any suggestions on how to resolve them other than the idea that states could implement procedures where warrants can be issued for checking on a person's medical condition.²⁸⁴ Although this could be logical and prevent police from entering a home for pretextual reasons, it still does not fix the problem of an individual potentially needing immediate aid.²⁸⁵ The father of a woman who was found shot and killed in her apartment has an idea of how to remedy the gaps within the Community Caretaking Exception.²⁸⁶ In this case, the police failed to enter the daughter's residence when responding to a

²⁷⁸ See generally Decker, *supra* note 215; see also Brief of the National Association of Counties et al., *supra* note 166.

²⁷⁹ See, e.g., Monday, *supra* note 127.

²⁸⁰ See generally *How APS Helps*, NAT'L ADULT PROTECTIVE SERV'S. ASS'N, <https://www.napsa-now.org/help-in-your-area/> (last visited Aug. 19, 2022).

²⁸¹ See Friedman, *supra* note 225; see also sources cited *supra* note 190.

²⁸² See *Caniglia*, 141 S. Ct. 1596.

²⁸³ See *Brigham City*, 547 U.S. 398.

²⁸⁴ *Caniglia*, 141 S. Ct. at 1602 (Alito, J., concurring) (“Perhaps States should institute procedures for the issuance of such warrants, but in the meantime, courts may be required to grapple with the basic Fourth Amendment question of reasonableness.”).

²⁸⁵ See *id.* at 1602; see also *How Long Does It Take to Get a Search Warrant?*, *supra* note 182. “How long it takes to obtain a search warrant depends on how quick an officer gets to a judge and convinces them that a warrant is necessary. This can take minutes in special cases where time is of the essence and an officer can expedite their case, but it normally takes a few hours.” *Id.*

²⁸⁶ Monday, *supra* note 127.

call reporting the sound of gunshots.²⁸⁷ He suggested a law²⁸⁸ be made in his daughter's name, requiring police to enter a residence after certain emergency calls and "clear" the area.²⁸⁹

"Heather's Law. Something that says if there's [sic] any 911 calls, a 911 call with domestic violence, shots fired, lethal weapon, a gun, a knife, and somebody says they heard three shots come out of that door, I'd like to see them have a policy requirement in place that says police officers have to clear that scene," said Bronczyk. "Something to say, 'There's shot fired, you enter that place. You have to clear it. You can't leave until that area is cleared. Just real simple.'"²⁹⁰

Critics, however, do not view this idea to be as "simple" as the father believes it to be and have expressed that a law like this would be a grave violation of a person's privacy rights protected by the Fourth Amendment.²⁹¹

His idea is logical, especially when considered from his point of view—losing a daughter who could have potentially been saved if the police acted under their caretaking functions when initially called.²⁹² If a law such as this were to be enacted, the law could save older adults, especially those living alone, from the injuries to which they are more susceptible.²⁹³ With older adults being at greater risk of death and more serious injury after a fall, police officers' community caretaking functions should be at their maximum when an older adult is presumed to be involved.²⁹⁴

However, implementing a law like this in each state would not be feasible. Police powers are left to the state under the Tenth Amendment of the Constitution,²⁹⁵ and, according to the Public Duty Doctrine,²⁹⁶ the police

²⁸⁷ *Id.*

²⁸⁸ Although this proposed law was never introduced to Ohio legislatures, there has been legislation regarding police reform and law enforcement in the state of Ohio that includes mandatory standards and psychological testing, creating a disciplinary database for violent officers, and more money and training for law-enforcement. See H.R. 703, 133rd Gen. Assemb., Reg. Sess. (Ohio 2020).

²⁸⁹ Monday, *supra* note 127.

²⁹⁰ *Id.*

²⁹¹ See generally Jennifer Fink, Note, *People v. Ray: The Fourth Amendment and The Community Caretaking Exception*, 35 UNIV. SAN FRANCISCO L. REV. 135 (2000).

²⁹² Monday, *supra* note 127.

²⁹³ See, e.g., Emily Boynton, *For Elderly, Even Short Falls can be Deadly*, UNIV. ROCHESTER MED. CTR. (Nov. 1, 2010), <https://www.urmc.rochester.edu/news/story/for-elderly-even-short-falls-can-be-deadly> (explaining the higher risks to older adults when they fall, even if only ground-level).

²⁹⁴ See *id.*; see also *Important Facts about Falls*, *supra* note 16.

²⁹⁵ U.S. CONST. amend. X ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.").

²⁹⁶ See J M Pellicciotti, *Police Civil Liability for Failure to Protect: The Public Duty Doctrine Revisited*, 8 AM. J. POLICE 37 (1989); see also Jayme S. Walker, *Insulating Negligent Police Behavior in Indiana: Why Victims of a Drunk Driver Negligently Released by a Police Officer Have No Remedy*, 23 VAL. U. L. REV. 665, 674 n.60 (1989); see also John C. McMillan, Jr., *Government Liability and the Public Duty Doctrine*, 32 VILL. L. REV. 505 (1987); see also THOMAS M. COOLEY,

do not need to be there to protect citizens in every situation for which they call.²⁹⁷ “Police protection is a duty owed to the general public, not to a particular individual.”²⁹⁸ The police can decide when to intervene to protect the lives of others—even when a threat is apparent.²⁹⁹ With the Community Caretaking Exception applying to local officers, it would be challenging and complicated to propose a change to every state’s law and procedure.³⁰⁰ Further, with cries for police reform to end brutality in instances of police entering homes without knocking and announcing, a law requiring police to always enter and “clear the area” would likely receive tremendous backlash from the community.³⁰¹ It would ultimately result in even more distrust towards the law enforcement community.³⁰²

B. The Idea of Dispatching Adult Protective Services

The police are not the only safety net for the public but work in tandem with other support safety networks such as Adult Protective Services (“APS”). APS is a nationwide program provided by state and local governments.³⁰³ APS works with adults aged sixty and older to resolve elder abuse, neglect, and financial exploitation.³⁰⁴ It works closely with professionals, such as police officers, to investigate these situations.³⁰⁵

To report concerns to APS, a person will contact their local program to provide information regarding the situation.³⁰⁶ That information will then be put into a detailed report that professionals will review to determine if the statutory requirements for APS services in that state are met.³⁰⁷ If the situation meets the statutory criteria, an APS worker will meet with the adult to assess their safety and need for assistance to maintain health and

A TREATISE ON THE LAW OF TORTS OF WRONGS WHICH ARISE INDEPENDENT OF CONTRACT 379 (1879).

²⁹⁷ See generally *DeShaney v. Winnebago Cnty. Dept. of Soc. Services*, 489 U.S. 189 (1989); see also *Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005).

²⁹⁸ See Pellicciotti, *supra* note 296.

²⁹⁹ See sources cited *supra* note 297.

³⁰⁰ See *Gemma*, 818 F.3d at 32 (quoting *Cady*, 413 U.S. at 441) (“Local police officers, unlike federal officers, frequently . . . engage in what, for want of a better term, may be described as community caretaking functions.”)

³⁰¹ See, e.g., H.R. 7120, 116th Cong. (2020); see, e.g., SAFE-T Act, Pub. Act 101-0652, § 110-1.5 (Feb. 22, 2021) (amending 730 ILCS 5/3-14-1); see, e.g., *The Breathe Act*, MOVEMENT FOR BLACK LIVES, <https://breatheact.org> (last visited Aug. 27, 2022).

³⁰² See Wesley G. Skogan, *Citizen Satisfaction with Police Encounters*, 8 POLICE Q. 298 (2005); see also *Race, Trust and Police Legitimacy*, NAT’L INST. JUST. (Jan. 9, 2013), <https://nij.ojp.gov/topics/articles/race-trust-and-police-legitimacy>.

³⁰³ *Get Help*, *supra* note 280.

³⁰⁴ *Id.*

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ *Id.*

independence; however, individuals always have the right to deny services.³⁰⁸

APS could be used as an avenue for allowing the Community Caretaking Exception to continue assisting older adults while eliminating many of the fears people may have about the police entering their homes.³⁰⁹ Although APS is still a government program, they do not have the same knowledge and criminal investigatory powers as law enforcement, making their warrantless entry more accepted.³¹⁰ With roughly twenty-eight percent of the older adult community living alone and older adults being more prone to falls, their community may need police assistance and check-ins more than any other.³¹¹

Some adults may find this to be an intrusion on their independence and will turn down any assistance because they do not need it at the moment.³¹² However, as Justice Alito explained, a person likely would not want to be without help and in agony in their home, even if they view it as a source of their independence.³¹³ Keeping this idea in mind, having APS more involved in community caretaking situations with older adults could be beneficial. Allowing APS to be dispatched when a person calls with community caretaking concerns involving an older adult in their home could resolve many of the issues that arise with allowing police to enter a home under their caretaking powers.

APS is underfunded, and this would be a big task to fit within their already critical duties.³¹⁴ This would mean that all local law enforcement departments would need an APS worker on call to be dispatched any time a person calls concerned about the safety of an older adult within their home. Also, the standard process of filing a report with APS can be extensive, meaning that their processes and the state's statutory criteria for APS would have to be amended.³¹⁵

³⁰⁸ *Id.*

³⁰⁹ *Get Help*, *supra* note 280.

³¹⁰ See generally David Fox, Note, *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 (2018).

³¹¹ See 2019 *Profile of Older Americans*, *supra* note 8; see also *Important Facts about Falls*, *supra* note 16.

³¹² See *Get Help*, *supra* note 280.

³¹³ *Caniglia*, 141 S. Ct. at 1602 (Alito, J., concurring).

³¹⁴ See Shannon Flasch, *NCCD Now: Challenges in Adult Protective Services*, EVIDENT CHANGE: BLOG (Oct. 7, 2013) <https://www.evidentchange.org/newsroom/nccd-blog/nccd-now-challenges-adult-protective-services>. “[T]he number of reports being made to APS agencies has increased dramatically in recent years, but funding has not. In contrast to child protective services, there are very limited federal funds available for adult protective services, and Congress has not appropriated funds for the most promising funding stream.” *Id.*

³¹⁵ See, e.g., 320 ILL. COMP. STAT. 20 (2013) (showing an example of statutory criteria based on the Illinois Adult Protective Services Act); see generally *Get Help*, *supra* note 280.

Just as the AARP sends out literature to people when they reach a certain age, APS or local law enforcement could consider something similar, including the idea of sending out a survey to gain the approval of entry for wellness checks or any concerns regarding older adults' health and safety.³¹⁶ However, this is not feasible due to the tracking of information and the added time it could take to respond to a potential emergency.

In sum, due to the underfunding of APS and the need to have an APS worker on call to dispatch for any call regarding an older adult, a proposal with APS involved would not likely be practicable. It would call for an amendment to each state's APS statute. Similarly, proposing a change for all states to change their laws and procedures—like proposed in “Heather’s Law” concerning clearing the area³¹⁷—is not realistic due to the Tenth Amendment,³¹⁸ the Public Duty Doctrine,³¹⁹ and an anticipated rise in community backlash towards the laws and the police action happening under them.³²⁰ Therefore, a refinement of the federal case law would be the best option when resolving the gaps within the Community Caretaking Exception.

C. Refinement of the Federal Case Law

Unlike the challenges that arise with a proposal to amend state laws and procedures, a refinement of federal case law, including the Court’s holding in *Caniglia*,³²¹ is attainable. The Fourth Amendment relies on a reasonableness standard, which should consistently apply throughout its warrant exceptions through consideration of similar factors and circumstantial evidence.³²² Based on the statistics regarding increased vulnerability in older adults, the holding in *Caniglia* is not reasonable in certain situations,³²³ making the application of the holding inconsistent with the idea of reasonableness that is relied upon by the Fourth Amendment.³²⁴

The First Circuit in *Caniglia* relied on a reasonableness test when determining what fits within the bounds of the Community Caretaking Exception.³²⁵ It first decided whether the officers’ seizure of Mr. Caniglia

³¹⁶ Eric Nagourney, *Who Told AARP About My Birthday?* N.Y. TIMES (Nov. 9, 2012), <https://www.nytimes.com/2012/11/09/booming/how-aarp-learns-peoples-birthdays.html>.

³¹⁷ Monday, *supra* note 127.

³¹⁸ See U.S. CONST. amend. X.

³¹⁹ See Pellicciotti, *supra* note 296.

³²⁰ See, e.g., sources cited *supra* note 301; see also sources cited *supra* note 302.

³²¹ *Caniglia*, 141 S. Ct. 1596.

³²² U.S. CONST. amend. IV; see also *Cady*, 413 U.S. at 439 (“The ultimate standard set forth in the Fourth Amendment is reasonableness.”).

³²³ See *Caniglia*, 141 S. Ct. 1602 (Alito, J., concurring) (explaining hypothetical situations where the majority’s holding may see issues).

³²⁴ See *id.* at 1602 (Alito, J., concurring); see also U.S. CONST. amend. IV; see also *Cady*, 413 U.S. 439.

³²⁵ *Caniglia*, 953 F.3d at 124-25.

himself was reasonable and then ascertained the reasonableness of the seizure of his firearms.³²⁶ After concluding that the police seizures were reasonable, the court then assessed the appropriateness of the warrantless entry into the Caniglia home when it was tailored to seize the firearms in furtherance of their community caretaking responsibilities.³²⁷ The First Circuit concluded that the actions were distinct from “the normal work of criminal investigation,” placing them within the “heartland” of the Community Caretaking Exception.³²⁸ A test like this or the objectively reasonable basis test in *Brigham City*, which assesses the reasonableness of the police action given the totality of the circumstances, would allow for a more sound application in all situations, including those involving older adults.³²⁹ “Reasonableness does not depend on any particular factor; the court must take into account the various facts of the case at hand.”³³⁰

[A]ny assessment of the reasonableness of caretaking functions requires the construction of a balance between the need for the caretaking activity and the affected individual’s interest in freedom from government intrusions.³³¹ This balancing test must, of course, be performed anew in each individual case....Although an individual has robust interests in preserving his bodily autonomy, the sanctity of his home, and his right to keep firearms within the home for self-protection, these interests will sometimes have to yield to the public’s powerful interest “in ensuring that . . . persons [do] not harm themselves or others.”³³²

After doing a reasonableness assessment, a case-specific balance of the government’s interest and the individual’s interest allows for consideration that the reasonable actions taken by police are necessary for furthering the public’s health and safety.³³³ The application of state and local common law police power

has traditionally implied a capacity to (1) promote the public health, morals, or safety, and the general well-being of the community; (2) enact and enforce laws for the promotion of the general welfare; (3) regulate private rights in the public interest; and (4) extend measures to all great public needs.³³⁴

³²⁶ *Id.*

³²⁷ *Id.*

³²⁸ *Id.* at 125.

³²⁹ See *Brigham City*, 547 U.S. at 400; see also *Caniglia*, 953 F.3d 112.

³³⁰ *Lockhart-Bembery v. Sauro*, 498 F.3d 69, 75 (1st Cir. 2007).

³³¹ *Caniglia*, 953 F.3d at 125 (citing *King*, 990 F.2d 1560; *Rodriguez-Morales*, 929 F.2d at 786).

³³² *Id.* at 125 (quoting *McCabe v. Life-Line Ambulance Serv., Inc.*, 77 F.3d 540, 547 (1st Cir. 1996)).

³³³ *Id.* at 125.

³³⁴ Galva, *supra* note 102, at 20.

The Community Caretaking Exception should not be limited in its scope or where it can be applied.³³⁵ It is an exception to the warrant requirement that promotes public health and safety, as well as general welfare.³³⁶ With the purpose of the exception being to protect citizens from potential harm, limitations of the law that demote public health, safety, and well-being, such as where caretaking powers apply, would be unreasonable.³³⁷

As discussed, “objectively reasonable” can be considered an ambiguous phrase. However, ambiguity can be beneficial when the police deal with human situational factors that vary with every emergency.³³⁸ This ambiguity allows police to act under their role as peace officers and protect the public after considering a multitude of reasonableness factors. When deciding whether entry to a home or police action is reasonable under the Community Caretaking Exception, courts need to phrase “objectively reasonable” to specifically consider whether the person at risk belongs to a particularly vulnerable population.³³⁹ If age were a factor within the test, then the “objectively reasonable” standard would have less potential of being applied too generically. Although the courts have not necessarily considered old age as a factor under community caretaking, there has been consideration of factors of young age and infancy.³⁴⁰ Due to the increasing vulnerability of older adults, especially during public health crises like the COVID-19 pandemic,³⁴¹ considering age would allow for solid reasoning, giving police an objectively reasonable basis to enter the home.

Further, in order to better consider age as a factor in an objectively reasonable basis test, police departments should be required to engage in training concerning age-related health conditions to better serve the older adult community.³⁴² Knowledge of older adults, their vulnerabilities, and

³³⁵ See *Caniglia*, 141 S. Ct. 1596 (holding that the Community Caretaking Exception does not extend to the home).

³³⁶ See generally Debra Livingston, *Police, Community Caretaking, and the Fourth Amendment*, 1998 U. CHI. LEGAL F. 261 (1998); see also Dimino, *supra* note 265; see also Steffan, *supra* note 161; see also Fox, *supra* note 310.

³³⁷ See sources cited *supra* note 336; see also *Caniglia*, 141 S. Ct. 1596 (placing a limitation on where and how the Community Caretaking Exception applies).

³³⁸ See *Sierra Club*, 820 F.2d 517 (“... reasonableness is ‘a mutable cloud, which is always and never the same.’” (quoting R.W. EMERSON, *ESSAYS: FIRST SERIES* (1841))).

³³⁹ See generally *United Way Seniors Vulnerability Report*, UNITED WAY LOWER MAINLAND (2011), http://www.theprovince.com/pdf/uw_2011_seniors_vulnerability_report_low-rez_final.pdf.

³⁴⁰ See, e.g., *State v. Angelos*, 936 P.2d 52 (Wash. Ct. App. 1997), *review denied*, 133 Wash. 2d 1034 (Wash. 1998) (allowing entry into a defendant’s bathroom without a warrant to search for drugs that might present a safety hazard to children).

³⁴¹ See generally Gavin, *supra* note 207; see also *COVID-19 Risks and Vaccine Information for Older Adults*, *supra* note 210.

³⁴² See generally Rebecca T. Brown et al., *Good Cop, Better Cop: Evaluation of a Geriatrics Training Program for Police*, 65 J. AM. GERIATRICS SOC’Y 1842, 1843 (2017) (“A brief training in aging-related health significantly increased police officers’ self-reported knowledge and skills [giving

general health would allow for the police assessment of an entry under the exception to be supported by more justifiable factors. This training would not only help them with determining entry under the Community Caretaking Exception, but it will aid them in all areas of their work.³⁴³

Another additional issue when applying the *Caniglia* holding to situations involving older adults is the potential lack of imminency in situations where police should enter a home.³⁴⁴ This is why the second part of the objectively reasonable basis test as defined in *Brigham City*—that the basis must rely on the officer’s belief “that an occupant is seriously injured or imminently threatened with such injury”—should not be a strict part of the test.³⁴⁵ Rather, imminency should remain only a factor of the analysis. Further, the overall analysis and considerations of age and vulnerability should be able to outweigh the lack of imminency.³⁴⁶ If there is what appears to be a lack of imminency as officers assess whether a potential entry is reasonable under the exception, then they should practice the knock-and-announce requirement to avoid problems like those discussed in the case of *Kenneth Chamberlain*³⁴⁷ or those in the case of *Breonna Taylor*, where her boyfriend shot at officers in self-defense after believing the plain-clothed officers were intruders.³⁴⁸

When creating the exception in *Cady*, the Court justified its holding with the reasonableness standard. It concluded that “the justification . . . was . . . immediate and constitutionally reasonable. . . . [It was a] concern for the safety of the general public who might be endangered if an intruder removed a revolver from the trunk of the vehicle.”³⁴⁹ Appropriately applying this reasonableness test to cases within the home would have a beneficial effect when there is a “concern for the safety of the general public,” like there was in *Cady*.³⁵⁰

Although the lower court in *Caniglia* used the appropriate test of reasonableness when analyzing the circumstances, its conclusion may not

c]linicians . . . an important opportunity to help enhance safe and effective community policing for older adults.”).

³⁴³ See D W Goodwin, *Police Services and the Elderly*, 40 L. & ORD. 68 (1992) (“The increasing percentage of the population that is age 65 and older will affect police policies and procedures and require police to understand some major characteristics of the elderly.”).

³⁴⁴ See *State v. Smathers*, 753 S.E.2d 380, 386 (N.C. Ct. App. 2014) (recognizing exception and rejecting imminent harm requirement “[b]ecause such a requirement may prevent aid in situations where danger to life and limb may not be imminent, but could be prevented by swift action. . .”).

³⁴⁵ See *Brigham City*, 547 U.S. at 400.

³⁴⁶ See *id.* (reasoning that there needs to be a serious injury or imminent threat of injury in order to have an “objectively reasonable basis” for entry).

³⁴⁷ *Seven Lives: Kenneth Chamberlain*, *supra* note 191.

³⁴⁸ See sources cited *supra* note 203.

³⁴⁹ *Cady*, 413 U.S. at 447.

³⁵⁰ See *id.*

have been sound.³⁵¹ Mr. Caniglia had already left for a psychiatric evaluation, and the police should have obtained a warrant to enter the home and seize the firearms if they reasonably believed that the Caniglias were in a crisis based on the totality of the circumstances.³⁵² The court did explore whether the police could have left the guns in the home pending Mr. Caniglia's clearance from the hospital.³⁵³ On this issue, it concluded that there is "no requirement that officers must select the least intrusive means of fulfilling community caretaking responsibilities."³⁵⁴ This is logical in the sense that the least intrusive methods may not be apparent at the time of the emergency, and their interest in protecting public health and safety through their community caretaking powers generally outweighs an individual's privacy interests. Privacy interests, however, vary in given situations, which could make violations for intrusion plain and clear to officers.³⁵⁵

Further, when the Supreme Court vacated the lower court's judgment in *Caniglia* and held that the Community Caretaking Exception does not apply within a home, they disregarded what the lower courts found to be the sole justification for the exception—"the caretaking function of the local police to protect the community's safety."³⁵⁶ The Supreme Court's examples of community caretaking functions performed by police included rendering aid to motorists, investigating accidents, and responding to disabled vehicles.³⁵⁷ While the Court rightly recognized that there is a diminished expectation of privacy in a vehicle and a heightened expectation in a home, it failed to consider the overall purpose of the creation of the exception and the incidents within the home in which community caretaking may be necessary, disregarding the idea of reasonableness.³⁵⁸ Although the hypothetical instances raised by the concurring opinions and oral argument did not arise in the facts of *Caniglia*, the Court should have explained why the exception was implemented and what could be the potential result in future case law based on their restrictive holding.³⁵⁹

In sum, a refinement of the federal case law would be the best path for allowing a more reliable and effective application of the exception. The

³⁵¹ *Caniglia*, 953 F.3d at 124-25.

³⁵² *Id.* at 120-21.

³⁵³ *Id.* at 126.

³⁵⁴ *Id.* (quoting *Lockhart-Bembery*, 498 F.3d at 75).

³⁵⁵ See, e.g., *No Trespassing Signs Laws – What a Sign Can & Can't Do In All 50 States*, BEST SIGNS (Nov. 3, 2018), <https://www.bestofsigns.com/blog/no-trespassing-signs-laws-what-a-sign-can-cant-do-in-all-50-states/> (providing a summary of how no trespassing laws work and vary throughout the fifty states).

³⁵⁶ See *Caniglia*, 141 S. Ct. 1596; see also *South Dakota v. Opperman*, 428 U.S. 364, 374 (1976).

³⁵⁷ *Caniglia*, 141 S. Ct. at 1598.

³⁵⁸ See *id.* at 1602 (Alito, J., concurring).

³⁵⁹ See *id.* (Roberts, Breyer, Alito & Kavanaugh, JJ., concurring); see also *Oral Argument, supra* note 1, at 6-8; see generally Michael B. Abramowicz, *Defining Dicta*, 57 STAN. L. REV. 953 (2005).

Fourth Amendment's ultimate standard is reasonableness.³⁶⁰ Application of the Court's holding in *Caniglia*—that the Community Caretaking Exception does not apply within the home—is not reasonable based on many caretaking functions being needed within the home, especially when it comes to situations involving older adults.³⁶¹ Considering a person's age when weighing the facts to determine whether caretaking is necessary would allow for more objectively reasonable outcomes.

CONCLUSION

Prior to the Supreme Court's holding in *Caniglia v. Strom*, courts have recognized that the Community Caretaking Exception is “nebulous,” claiming that the Court had never defined the scope and boundaries of the exception.³⁶² As the concurring opinions in *Caniglia* recognized, the scope and boundaries set by the majority in the opinion are ill-defined and do not allow for easy application to all situations that peace officers may face.³⁶³ After *Caniglia*, striking a balance between protecting public health and safety and respecting an individual's privacy has arguably never been more difficult for officers.³⁶⁴ What officers have been able to justify as objectively reasonable based on facts and circumstances in the past are being challenged and treated as Fourth Amendment violations.³⁶⁵ This can lead to great reluctance in providing aid and protection under the Community Caretaking Exception. Ultimately this reluctance can undermine the intended purpose of the warrant exception—to allow officers to act in protecting and aiding when their actions are “totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.”³⁶⁶

Many Americans fear that broadening the Community Caretaking Exception's scope will lead to the destruction of an individual's privacy protected by the Fourth Amendment and diminish the sanctity and privacy of the home.³⁶⁷ The holding in *Caniglia* does not allow police to enter a home to carry out their community caretaking functions.³⁶⁸ However, past situations have proven that people have required immediate aid when police

³⁶⁰ U.S. CONST. amend. IV.

³⁶¹ See *Caniglia*, 141 S. Ct. at 1602 (Alito, J., concurring).

³⁶² *Caniglia*, 396 F. Supp. 3d at 236 (citing *MacDonald v. Town of Eastham*, 745 F.3d 8, 13-14 (1st Cir. 2014)).

³⁶³ See *Caniglia*, 141 S. Ct. at 1602 (Roberts, Breyer, Alito & Kavanaugh, JJ., concurring).

³⁶⁴ *Caniglia*, 396 F. Supp. 3d at 242.

³⁶⁵ See *Caniglia*, 953 F.3d 112; see also *Caniglia*, 141 S. Ct. 1596.

³⁶⁶ *Cady*, 413 U.S. at 441.

³⁶⁷ See generally Brief of American Civil Liberties Union et al., *supra* note 123; see also *Ciraolo*, 476 U.S. at 213; see also 2 LEGAL PAPERS OF JOHN ADAMS, *supra* note 220, at 142-44; see also Fox, *supra* note 310.

³⁶⁸ See *Caniglia*, 141 S. Ct. 1596.

have delayed entry or decided that entry is inappropriate due to a lack of information and knowledge.³⁶⁹

Requiring police officers to get a warrant to enter a home when aid may be necessary could cause a delay which could be detrimental, especially in situations involving older adults.³⁷⁰ Older adults are more prone to falls, and the falls have a greater chance of being fatal or leading to a more severe injury.³⁷¹ This is why a refinement of the federal case law would be appropriate to fit all hypothetical situations, like the scenario raised by Chief Justice Roberts in the oral argument for *Caniglia*.³⁷² In that hypothetical scenario, an older adult's neighbors were concerned and wanted the police to enter her home for a wellness check after not showing up to a scheduled dinner and not answering her phone.³⁷³ Police should not have to second-guess whether their discretion is reasonable in an emergency where a person's life could potentially be in danger.³⁷⁴ The gaps in the application of the Community Caretaking Exception regarding prohibited entry into homes without a warrant need to be addressed through a refinement of the case law before more people are severely injured or lose their lives based on delay. This refinement should focus on the "objectively reasonable basis" test established in *Brigham City*³⁷⁵ and should allow officers to consider the potential vulnerabilities of the person involved as a factor within the test. Vulnerabilities would include consideration of the individual's age based on the heightened risk of injury and mobility in older adults.³⁷⁶ This would allow law enforcement to enter an older adult's home under their community caretaking powers if, under a totality of the circumstances, the individual needs caretaking, considering the age and potential vulnerability of the person involved.³⁷⁷ The police should not have to make a life-or-death decision when acting as peace officers based solely on the fact that aid *may* be needed in a home.

³⁶⁹ See, e.g., Monday, *supra* note 127 (explaining a situation in which a 76-year-old man was in his apartment in need of assistance and the police did not enter to perform a full welfare check because it did not appear any person was home and the apartment complex staff would not grant the officers entry).

³⁷⁰ See *Important Facts about Falls*, *supra* note 16; see also Boynton, *supra* note 293.

³⁷¹ See sources cited *supra* note 370.

³⁷² Oral Argument, *supra* note 1, at 6-8.

³⁷³ *Id.*

³⁷⁴ See, e.g., Monday, *supra* note 127 (describing two situations where the police used discretion to not enter residences despite an individual being inside and needing assistance).

³⁷⁵ *Brigham City*, 547 U.S. at 400.

³⁷⁶ See generally sources cited *supra* note 103.

³⁷⁷ *Brigham City*, 547 U.S. at 400; see generally sources cited *supra* note 103.

