



---

Summer 8-1-2020

## Law Enforcement Welfare Checks and the Community Caretaking Exception to the Fourth Amendment Warrant Requirement

Andrea L. Steffan

Follow this and additional works at: <https://digitalcommons.lmu.edu/llr>



Part of the [Constitutional Law Commons](#), [Fourth Amendment Commons](#), [Health Law and Policy Commons](#), and the [Law Enforcement and Corrections Commons](#)

---

### Recommended Citation

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 (2020).

This Notes is brought to you for free and open access by the Law Reviews at Digital Commons @ Loyola Marymount University and Loyola Law School. It has been accepted for inclusion in Loyola of Los Angeles Law Review by an authorized administrator of Digital Commons@Loyola Marymount University and Loyola Law School. For more information, please contact [digitalcommons@lmu.edu](mailto:digitalcommons@lmu.edu).

# LAW ENFORCEMENT WELFARE CHECKS AND THE COMMUNITY CARETAKING EXCEPTION TO THE FOURTH AMENDMENT WARRANT REQUIREMENT

*Andrea L. Steffan\**

## I. INTRODUCTION

“How do you weigh a human life over a door?” Albert Datillo asks after local police did not enter his friend Charles Matlin’s apartment the first time Datillo called for a welfare check after Matlin had not been heard from in a few days.<sup>1</sup> When Matlin was still not responding to phone calls the next day, Datillo called the police again.<sup>2</sup> Police returned, noticed something was pushing the curtains up against the sliding door so they tapped on the door and someone tapped back.<sup>3</sup> The officers broke in and found Matlin in dire need of medical attention.<sup>4</sup> Matlin spent the next month in the hospital before ultimately passing away.<sup>5</sup> Datillo wonders if the delay in receiving medical attention contributed to his friend’s death.<sup>6</sup>

James Allen’s family had an entirely different experience when seeking a welfare check. Allen was fatally shot by police who were

---

\* J.D. Candidate, May 2020, Loyola Law School, Los Angeles; Ed.D., Educational Leadership, Administration, and Policy, 2010, Pepperdine University; M.S., Administration, 2006, Pepperdine University; M.Ed., Education: English Curriculum and Instruction, 2002, University of California, Los Angeles; B.A., English Literature, 2000, University of Miami. Profound thanks to Professors Kevin Lapp and Laurie Levenson for their guidance, time, and expertise and to my fellow students in the Loyola Evening Program who are amazing and without whom I could not have gotten anywhere near as much from law school.

1. Carl Monday, *These People Needed Help. Police Didn’t Enter Their Homes*. *Carl Monday Investigates Why*, 19 NEWS (Feb. 5, 2018, 9:41 PM), <http://www.cleveland19.com/story/37407639/these-people-needed-help-police-didnt-enter-their-homes-carl-monday-investigates-why> (last updated Aug. 14, 2018, 8:55 AM).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

responding to Allen's family's request for a welfare check after Allen had heart surgery.<sup>7</sup> Police say they entered to find Allen holding a gun.<sup>8</sup> Allen did not lower the gun when directed to by police and was shot by an officer.<sup>9</sup> Allen's family says he was hard of hearing.<sup>10</sup>

Charles Matlin and James Allan are two examples of many that show the importance and potential consequences of police welfare checks. It is essential that police respond to community concerns about individuals, and this response is one that the public has come to expect.<sup>11</sup> Police all over the country are regularly called upon to make welfare checks by concerned family and friends. While statistics on this community service are not widely available, at least one suburban police department made around 2,000 welfare checks in 2017,<sup>12</sup> and the internet is rife with anecdotal information about police carrying out welfare checks.<sup>13</sup> The exception to the Fourth Amendment warrant requirement many local governments and police departments rely on to allow police to perform welfare checks is called the community caretaking exception.

Community caretaking has become "a catchall for the wide range of responsibilities that police officers must discharge aside from their

---

7. Elisabeth Arriero, *Gastonia Man, 74, Dead in Officer-Involved Shooting*, CHARLOTTE OBSERVER (Feb. 8, 2015, 2:03 PM), <https://www.charlotteobserver.com/latest-news/article10422236.html> (last updated Feb. 8, 2015, 4:11 PM); Steven W. Thrasher, *Imagine: You Call the Police to Check on Your Grandfather, and They Shoot Him*, THE GUARDIAN (Jun. 5, 2015, 11:45 AM), <https://www.theguardian.com/commentisfree/2015/jun/05/police-check-on-your-grandfather-shoot-him>; *The Counted: People Killed by Police in the US*, THE GUARDIAN, <https://www.theguardian.com/us-news/ng-interactive/2015/jun/01/the-counted-police-killings-us-database#james-allen-107> (last visited Apr. 5, 2020) [hereinafter Guardian Interactive].

8. Arriero, *supra* note 7; Guardian Interactive, *supra* note 7.

9. Arriero, *supra* note 7; Guardian Interactive, *supra* note 7.

10. Guardian Interactive, *supra* note 7.

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

12. Monday, *supra* note 1 (Euclid Police Department response).

13. See, e.g., Cindy Carcamo, *'Welfare Checks' Can Help Save Lives*, THE ORANGE COUNTY REG. (Jun. 6, 2006, 3:00 AM), <https://www.ocregister.com/2006/06/06/welfare-checks-can-help-save-lives>; Rachele Bergstein, *When and How to Request a Police Wellness Check*, N.Y. POST (Dec. 17, 2018, 2:30 PM), <https://nypost.com/2018/12/17/this-is-why-people-are-suddenly-googling-wellness-checks/> (last updated Dec. 17, 2018, 2:47 PM); Rich Kinsey, *Police Have to Make Tough Calls when Checking the Well-Being of a Citizen*, THE ANN ARBOR NEWS (Mar. 17, 2011, 5:45 AM), <http://www.annarbor.com/news/crime/check-the-well-being-calls/>.

criminal enforcement activities.”<sup>14</sup> Community caretaking functions include “helping stranded motorists, returning lost children to anxious parents, [and] assisting and protecting citizens in need,”<sup>15</sup> like Charles Matlin and James Allen. As the examples above demonstrate, problems can arise when police enter homes and residents are not expecting them, or the police encounter and seize evidence of a crime under the plain view doctrine. There are also sometimes dire consequences when people inside need assistance, and police do not enter.<sup>16</sup> Today, your rights under the Fourth Amendment, and law enforcement’s ability to enter your home without a warrant under the community caretaking doctrine, depend on the jurisdiction in which you live.

At first glance, restricting the community caretaking exception to vehicles might seem like a simple solution. However, the importance of community caretaking functions when circumstances do not rise to the level of the reasonable belief needed for the emergency aid doctrine<sup>17</sup> to apply, do not diminish or disappear when an officer must enter a residence.<sup>18</sup> No solution will ever eradicate the public dislike of warrantless entries into homes, but given the existence of other warrant exceptions, warrantless entries into homes are a fact of modern American life. In fact, most policing today happens in the absence of a warrant.<sup>19</sup>

---

14. *MacDonald v. Town of Eastham*, 745 F.3d 8, 12 (1st Cir. 2014) (quoting *United States v. Rodriguez-Morales*, 929 F.2d 780, 785 (1st Cir. 1991)).

15. *People v. Ray*, 981 P.2d 928, 931 (Cal. 1999), *abrogated by* *People v. Ovieda*, 446 P.3d 262 (Cal. 2019). Police are also acting as community caretakers when they engage in activities such as helping a motorist change a tire or shovel snow. *See, e.g., New York Deputies Conducting Welfare Checks Also Shovel Snow for Citizens*, POLICE MAG. (Jan. 23, 2019), <https://www.police-mag.com/502719/new-york-deputies-conducting-welfare-checks-also-shovel-snow-for-citizens>.

16. Monday, *supra* note 1 (reporting that police responded to reports of screaming and gunshots but did not enter the unlocked apartment of Heather Campbell who “was lying on her apartment floor, bleeding from gunshot wounds” while police stood outside minutes after the shots were heard. Campbell bled to death and was found twenty-four hours later by a friend).

17. *Brigham City v. Stuart*, 547 U.S. 398, 400 (2006) (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) (“[T]he test, as we have said, is not what [the officer] believed, but whether there was ‘an objectively reasonable basis for believing’ that medical assistance was needed, or persons were in danger.” (quoting *Stuart*, 547 U.S. at 406)).

18. *Goreczny*, *supra* note 11, at 251.

19. BARRY FRIEDMAN, UNWARRANTED: POLICING WITHOUT PERMISSION 15, 60 (2017).

Any workable solution must balance the government's interest in protecting the public welfare and an individual's interest in being free from unreasonable government intrusion. The most important aspect of any proposed solution is that it be one police can follow when they are at a residence determining whether they should enter without a warrant. Discretion is an "important and unavoidable" aspect of policing, but police need "thoughtful [and] thorough" instructions guiding them in how to exercise their discretion.<sup>20</sup> 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."<sup>21</sup> This is crucially important in situations where human life may be in danger and police need to make quick, informed decisions about how to respond. The test proposed in this Note strikes the required balance and provides law enforcement workable guidelines for when the community caretaking exception allows a warrantless entry into a residence.

After examining the body of case law in which courts have applied the community caretaking exception, this Note proposes a test for courts to use in analyzing community caretaking entries to homes.<sup>22</sup> The test, modeled on the Wisconsin test,<sup>23</sup> strikes a balance between society's interest in having law enforcement act as community caretaker so that police never have to tell citizens who have asked them for help, "Sorry. We can't help you. We need a warrant and can't get one,"<sup>24</sup> and the critically important Fourth Amendment right of an individual to be secure in their home. Finally, this Note applies the proposed test to select cases to demonstrate the effect this rule would have on the current caselaw.

---

20. *Id.* at 60.

21. *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).

22. This Note does not consider entries into businesses, though it discusses *United States v. Pichany*, 687 F.2d 204 (7th Cir. 1982) and *United States v. Bute*, 43 F.3d 531 (10th Cir. 1994), both of which involve searches of warehouses, because they are the current law of their respective circuits.

23. The proposed test is modeled on the test used by the Wisconsin Supreme Court in *State v. Pinkard*, 785 N.W.2d 592, 601, 605 (Wis. 2010).

24. *People v. Ray*, 981 P.2d 928, 939 (Cal. 1999) (quoting *State v. Bridewell*, 759 P.2d 1054, 1068 (Or. 1988)), *abrogated by* *People v. Ovieda*, 446 P.3d 262 (Cal. 2019).

## II. BACKGROUND

### A. Fourth Amendment Warrant Requirement

The Fourth Amendment protects people’s right “to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” and requires that “no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”<sup>25</sup> The Fourth Amendment was made applicable to the states by the Fourteenth Amendment.<sup>26</sup> The Fourth Amendment does not bar all searches and seizures; it bars only unreasonable searches and seizures.<sup>27</sup> Reasonableness, the touchstone<sup>28</sup> of American Fourth Amendment jurisprudence, “depends on all of the circumstances surrounding the search or seizure and the nature of the search or seizure itself.”<sup>29</sup>

Searches conducted without a warrant are per se unreasonable subject to a few specifically established exceptions.<sup>30</sup> The ability of law enforcement to stop and frisk someone based on specific and articulable facts that do not rise to the level of probable cause is one such example.<sup>31</sup> The community caretaking exception, in which police are acting as community caretakers totally divorced from their criminal investigation functions, is another.<sup>32</sup>

### B. *Cady v. Dombrowski*<sup>33</sup> and *Community Caretaking*

In *Cady*, where the Supreme Court first recognized the community caretaking exception to the warrant requirement, Chicago police officer Chester Dombrowski was in a single-vehicle accident while intoxicated.<sup>34</sup> At the scene, officers searched Dombrowski and

---

25. U.S. CONST. amend. IV.

26. See U.S. CONST. amend. XIV; *Camara v. Mun. Court of City & Cty. of San Francisco*, 387 U.S. 523, 528 (1967) (citing *Ker v. California*, 374 U.S. 23, 30 (1963)).

27. *Maryland v. Buie*, 494 U.S. 325, 331 (1990); *Skinner v. Ry. Labor Execs.’ Ass’n*, 489 U.S. 602, 619 (1989).

28. *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006).

29. *Skinner*, 489 U.S. at 619 (quoting *United States v. Montoya de Hernandez*, 473 U.S. 531, 537 (1985)).

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

31. *Terry v. Ohio*, 392 U.S. 1, 20–21 (1968).

32. *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973).

33. 413 U.S. 433 (1973).

34. *Id.* at 435–36, 447.

the interior of his vehicle for Dombrowski's service weapon, but were unable to locate it.<sup>35</sup> The officers had the disabled car towed to a private garage and arrested Dombrowski for driving under the influence.<sup>36</sup> Unable to learn the location of the gun from Dombrowski, one officer went to the garage and, without a warrant, searched Dombrowski's vehicle for the weapon again.<sup>37</sup> When the officer opened the trunk, he found and seized several bloody items which were later used to convict Dombrowski of first-degree murder.<sup>38</sup>

In creating the community caretaking exception to the warrant requirement, the *Cady* Court emphasized “[t]he ultimate standard set forth in the Fourth Amendment is reasonableness.”<sup>39</sup> The Court discussed the existent vehicle exception to the warrant requirement and noted that law enforcement officers frequently investigate disabled vehicles and accidents with no criminal liability claims 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.”<sup>40</sup> The Court also highlighted that the officer's search for the gun was standard procedure in the department “to protect the public from the possibility that a revolver would fall into untrained or perhaps malicious hands.”<sup>41</sup> The *Cady* Court found the police concern for the safety of the general public to be “immediate[ly] and constitutionally reasonable” and held the search was reasonable.<sup>42</sup>

No language in *Cady* explicitly limits community caretaking to actions involving vehicles.<sup>43</sup> The *Cady* Court begins its discussion of vehicles by noting they are already given a partial exception to the warrant requirement because “there is a constitutional difference between houses and cars.”<sup>44</sup> The Court discusses that the original justification for treating vehicles and homes differently was the

---

35. *Id.* at 436.

36. *Id.*

37. *Id.* at 436–37.

38. *Id.* at 434, 437.

39. *Id.* at 439.

40. *Id.* at 441.

41. *Id.* at 443.

42. *Id.* at 447–48.

43. Valerie Moss, Comment, *The Community Caretaking Doctrine: The Necessary Expansion of the New Fourth Amendment Exception*, 85 MISS. L.J. SUPRA 9, 16 (2017).

44. *Cady*, 413 U.S. at 439 (quoting *Chambers v. Maroney*, 399 U.S. 42, 52 (1970)).

“vagrant and mobile nature” of vehicles, but that “warrantless searches of vehicles by state officers have been sustained in cases in which the possibilities of the vehicle’s being removed or evidence in it destroyed were remote, if not nonexistent.”<sup>45</sup>

The *Cady* Court also stated:

[W]hether a search and seizure is unreasonable within the meaning of the Fourth Amendment depends upon the facts and circumstances of each case and [we] pointed out, in particular, that searches of cars that are constantly movable may make the search of a car without a warrant a reasonable one although the result might be the opposite in a search of a home, a store, or other fixed piece of property.<sup>46</sup>

Several courts have relied on the *Cady* Court’s discussion of this distinction to find that the community caretaking exception applies to vehicles only.<sup>47</sup> Other courts have followed *Cady*’s language regarding the reasonableness of the facts and circumstances in each case and found that the community caretaking exception extends to homes.<sup>48</sup>

---

45. *Id.* at 441–42.

46. *Id.* at 440 (quoting *Cooper v. California*, 386 U.S. 58, 59 (1967)).

47. See *infra* discussion of Section III.A; see also *Ray v. Twp. of Warren*, 626 F.3d 170, 175 (3d Cir. 2010) (“The Court expressly distinguished automobile searches from searches of a home, saying that a search of a vehicle may be reasonable ‘although the result might be the opposite in a search of a home.’” (quoting *Cady*, 413 U.S. at 440)); *United States v. Bute*, 43 F.3d 531, 535 (10th Cir. 1994) (“In short, the search was justified because the officers reasonably believed that the car contained a gun, [*Cady*, 413 U.S. at 447–48], and was constitutionally permissible in light of ‘[t]he Court’s previous recognition of the distinction between motor vehicles and dwelling places.’” (quoting *Cady*, 413 U.S. at 447)); *United States v. Erickson*, 991 F.2d 529, 532 (9th Cir. 1993) (“*Cady* clearly turned on the ‘constitutional difference’ between searching a house and searching an automobile.” (quoting *Cady*, 413 U.S. at 439)); *United States v. Pichany*, 687 F.2d 204, 208 (7th Cir. 1982) (“[T]he Court in *Cady* emphasized that ‘[o]ne class of cases which constitutes at least a partial exception to this general rule is automobile searches.’” (quoting *Cady*, 413 U.S. at 439)).

48. See *infra* discussion of Sections III.A & III.D; see also *United States v. Quezada*, 448 F.3d 1005, 1007 (8th Cir. 2006) (“We note at the outset that there is a difference between the standards that apply when an officer makes a warrantless entry when acting as a so-called community caretaker and when he or she makes a warrantless entry to investigate a crime. . . . A police officer may 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.”); *United States v. Rohrig*, 98 F.3d 1506, 1522 (6th Cir. 1996) (“We conclude, therefore, that the governmental interest in immediately abating an ongoing nuisance by quelling loud and disruptive noise in a residential neighborhood is sufficiently compelling to justify warrantless intrusions under some circumstances.”); *People v. Ray*, 981 P.2d 928, 934 (Cal. 1999) (“Under the community caretaking exception, circumstances short of a perceived emergency may justify a warrantless entry.”), *abrogated by People v. Oviedo*, 446 P.3d 262 (Cal. 2019); *People v. Davis*, 497 N.W.2d 910, 920



### 1. Fourth Amendment Balancing Test

The Supreme Court traditionally determines what is reasonable under the Fourth Amendment by balancing the government's interest against the individual's interest.<sup>49</sup> The Court first stated this test in *Camara v. Municipal Court of City and County of San Francisco*<sup>50</sup> in 1967 as, “[u]nfortunately, there can be no ready test for determining reasonableness other than by balancing the need to search against the invasion which the search entails.”<sup>51</sup> In *Camara*, the Court found that the Fourth Amendment applies to homes outside of the context of a criminal search.<sup>52</sup>

The Court used this balancing of public and private interests again the following year to create the stop and frisk exception to the warrant requirement in *Terry v. Ohio*.<sup>53</sup> In creating this exception, the Court stated:

In order to assess the reasonableness of [the officer's] conduct as a general proposition, it is necessary “first to focus upon the governmental interest which allegedly justifies official intrusion upon the constitutionally protected

---

(Mich. 1993) (“The people assert that rendering aid to persons in distress is one of the community caretaking functions of the police. We agree. Indeed, this Court already stated that entries made to render aid to a person in a private dwelling were part of the community caretaking function, [City of Troy v. Ohlinger, 475 N.W.2d 54, 56–57 (Mich. 1991)].”); *State v. Deneui*, 775 N.W.2d 221, 239 (S.D. 2009) (“From our review of the caselaw and scholarship on the community caretaker exception, we conclude that the constitutional difference between homes and automobiles counsels a cautious approach when the exception is invoked to justify law enforcement intrusion into a home. Merely invoking a community caretaking purpose should not legitimize a search in a criminal investigation. Nonetheless, homes cannot be arbitrarily isolated from the community caretaking equation. The need to protect and preserve life or avoid serious injury cannot be limited to automobiles.”); *State v. Pinkard*, 785 N.W.2d 592, 594 (Wis. 2010) (“We conclude that under the circumstances of this case, the officers’ warrantless home entry to ensure the health and safety of the occupants was undertaken as a bona fide community caretaker function, which was reasonably exercised. Accordingly, the officers lawfully seized evidence of a crime that was in plain view.”).

49. *E.g.*, *Maryland v. Buie*, 494 U.S. 325, 331 (1990) (“Our cases show that in determining reasonableness, we have balanced the intrusion on the individual’s Fourth Amendment interests against its promotion of legitimate governmental interests.”).

50. 387 U.S. 523 (1967).

51. *Id.* at 536–37.

52. *Id.* at 530–31, 538 (finding that an administrative search is reasonable and probable cause exists for a warrant if the administrative standards to search are satisfied. “Having concluded that the area inspection is a ‘reasonable’ search of private property within the meaning of the Fourth Amendment, it is obvious that ‘probable cause’ to issue a warrant to inspect must exist if reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling”).

53. 392 U.S. 1 (1968).

interests of the private citizen,” for there is “no ready test for determining reasonableness other than by balancing the need to search (or seize) against the invasion which the search (or seizure) entails.”<sup>54</sup>

After balancing the interests, the Court found the public interest in officer safety outweighed the brief nature of the individual intrusion and created the exception.<sup>55</sup>

This balancing of interests has become the standard for determining reasonableness under the Fourth Amendment, and the Court has continued to use it in creating new Fourth Amendment standards and exceptions. For example, the Court used the balancing test to create the protective sweep exception to the warrant requirement in which after an arrest law enforcement may sweep areas of a home which they reasonably believe may harbor an individual posing a danger.<sup>56</sup> The Court has even used the balancing test to create the good faith exception to the Fourth Amendment exclusionary rule.<sup>57</sup>

In creating the community caretaking exception, the Supreme Court implicitly conducted this same Fourth Amendment balancing in *Cady*. The Court weighed the government’s interest in protecting the public from a loose weapon against Dombrowski’s reasonable

---

54. *Id.* at 20–21 (quoting *Camara*, 387 U.S. at 534–37).

55. *Id.* at 24–25, 30 (noting the intrusion was severe).

56. *See Maryland v. Buie*, 494 U.S. 325, 337 (1990). In creating the exception, the *Buie* Court stated:

It goes without saying that the Fourth Amendment bars only unreasonable searches and seizures, [*Skinner v. Ry. Labor Execs.’ Ass’n*, 489 U.S. 602 (1989)]. Our cases show that in determining reasonableness, we have balanced the intrusion on the individual’s Fourth Amendment interests against its promotion of legitimate governmental interests. [*United States v. Villamonte-Marquez*, 462 U.S. 579, 588 (1983); *Delaware v. Prouse*, 440 U.S. 648, 654 (1979)]. Under this test, a search of the house or office is generally not reasonable without a warrant issued on probable cause. There are other contexts, however, where the public interest is such that neither a warrant nor probable cause is required. [*Skinner*, 489 U.S. at 619–20; *Griffin v. Wisconsin*, 483 U.S. 868, 873 (1987); *New Jersey v. T.L.O.*, 469 U.S. 325, 340–41 (1985); *Terry*, 392 U.S. at 20].

*Id.* at 331.

57. *See United States v. Leon*, 468 U.S. 897, 913 (1984) (“As yet, we have not recognized any form of good-faith exception to the Fourth Amendment exclusionary rule. But the balancing approach that has evolved during the years of experience with the rule provides strong support for the modification currently urged upon us. As we discuss below, our evaluation of the costs and benefits of suppressing reliable physical evidence seized by officers reasonably relying on a warrant issued by a detached and neutral magistrate leads to the conclusion that such evidence should be admissible in the prosecution’s case in chief.”).

expectation of privacy in his vehicle. The *Cady* Court discussed how Dombrowski's reasonable expectation of privacy was reduced at length.<sup>58</sup> When Dombrowski's limited interest was weighed against the government's interest in conducting the search "to protect the public from the possibility that a revolver would fall into untrained or perhaps malicious hands," the Court found the warrantless caretaking search was reasonable.<sup>59</sup>

## 2. Other Supreme Court Usage of "Community Caretaking" or "Welfare Check"

After *Cady*, the Supreme Court has discussed community caretaking only two other times, both about inventory searches for vehicles.<sup>60</sup> If the Supreme Court intended to limit community caretaking to vehicles, it did not do so explicitly in either case.

### a. *South Dakota v. Opperman*<sup>61</sup>

In *Opperman*, the defendant's car was towed after receiving several parking violations.<sup>62</sup> At the city impound lot, an officer saw several items of personal property including a watch on the dashboard.<sup>63</sup> Pursuant to standard police procedures, the officer inventoried the contents of the vehicle including the unlocked glove compartment which contained a bag of marijuana.<sup>64</sup>

The *Opperman* Court began its analysis by discussing the twofold distinction between homes and cars.<sup>65</sup> First, the inherent mobility of automobiles creates an exigency that makes rigorous enforcement of the warrant requirement impossible.<sup>66</sup> But, the Court has upheld warrantless searches of vehicles where there was no immediate danger the vehicle would be removed from the jurisdiction.<sup>67</sup> The second

---

58. *Cady v. Dombrowski*, 413 U.S. 433, 440–42 (1973).

59. *Id.* at 443, 447–48.

60. *See Colorado v. Bertine*, 479 U.S. 367 (1987); *South Dakota v. Opperman*, 428 U.S. 364 (1976).

61. 428 U.S. 364 (1976).

62. *Id.* at 365–66.

63. *Id.* at 366.

64. *Id.*

65. *Id.* at 367.

66. *Id.*

67. *Id.* (citing *Chambers v. Maroney*, 399 U.S. 42, 51–52 (1970) and *Cooper v. California*, 386 U.S. 58, 87 (1967)).

difference between homes and cars is that people have a reduced expectation of privacy in their automobiles, as automobiles are subject to “pervasive and continuing governmental regulation and controls,” and the nature of automobile travel is public.<sup>68</sup>

The *Opperman* Court found that the impounding and removal of vehicles impeding the flow of traffic or jeopardizing public safety is a valid community caretaking activity.<sup>69</sup> The Court then discussed the numerous circumstances in which police remove and take custody of vehicles.<sup>70</sup> After impounding vehicles, police departments typically inventory the contents of the vehicle as part of their standard practice.<sup>71</sup> State courts, which frequently deal with the issue, have almost uniformly upheld “[t]hese caretaking procedures” concluding that under the Fourth Amendment standard of reasonableness such a search is constitutionally permissible.<sup>72</sup>

The nature of a Fourth Amendment inquiry is “whether the search was *reasonable* under the Fourth Amendment”<sup>73</sup> and here, as in all Fourth Amendment cases, whether a search and seizure is reasonable “depends upon the facts and circumstances of each case.”<sup>74</sup> The *Opperman* Court held, “in following standard police procedures, prevailing throughout the country and approved by the overwhelming majority of courts, the conduct of the police was not ‘unreasonable’ under the Fourth Amendment,” without expressly limiting the police procedures to the search of vehicles.<sup>75</sup>

#### b. Colorado v. Bertine<sup>76</sup>

The next and final time the Supreme Court used the term community caretaking was in *Colorado v. Bertine*.<sup>77</sup> In *Bertine*, the contents of Bertine’s vehicle were inventoried after his arrest but

---

68. *Id.* at 367–68.

69. *Id.* at 368–69 (“In the interests of public safety and as part of what the Court has called ‘community caretaking functions,’ [Cady v. Dombrowski, 413 U.S. 433, 441 (1973)], automobiles are frequently taken into police custody.”).

70. *Id.*

71. *Id.* at 369.

72. *Id.* at 369–71 (collecting cases).

73. *Id.* at 372 (emphasis in original) (quoting *Cooper v. California*, 386 U.S. 58, 61 (1967)).

74. *Id.* at 375 (quoting *Cooper*, 386 U.S. at 59).

75. *Id.* at 376.

76. 479 U.S. 367 (1987).

77. *See id.* at 372.

before the tow-truck arrived to impound the vehicle.<sup>78</sup> As part of the inventory, and in accordance with procedure, an officer opened a closed backpack and found controlled substances and paraphernalia.<sup>79</sup>

The Colorado Supreme Court recognized the validity of police inventory searches but felt other precedent regarding the impermissibility of searches of trunks and closed containers meant *Opperman* did not apply.<sup>80</sup> The Supreme Court granted certiorari to determine which line of precedent applies to an inventory search and if the fruits of an inventory search may be admitted as evidence.<sup>81</sup> By 1987, inventory searches were “a well-defined exception to the warrant requirement.”<sup>82</sup> Importantly, inventory searches do not implicate the policies behind the warrant requirement and are not subject to the standard of probable cause, which is “unhelpful when analysis centers upon the reasonableness of routine administrative caretaking functions.”<sup>83</sup> This, and the fact that the cases the Colorado Supreme Court relied on involved criminal searches which relied on the applicability of probable cause, is why the *Bertine* Court held the fruits of routine inventory searches are admissible and *Opperman* controls when the subject search is an inventory search pursuant to standard procedures.<sup>84</sup>

c. *City of Escondido v. Emmons*<sup>85</sup>

The only Supreme Court case to use the term “welfare check” in the context of the police conducting a welfare check at a residence is

---

78. *Id.* at 368–69.

79. *Id.* at 369–70.

80. *See id.* at 370 (“The court recognized that in [*Opperman*], we had held inventory searches of automobiles to be consistent with the Fourth Amendment, and that in [*Illinois v. Lafayette*, 462 U.S. 640 (1983)], we had held that the inventory search of personal effects of an arrestee at a police station was also permissible under that Amendment. The Supreme Court of Colorado felt, however, that our decisions in [*Arkansas v. Sanders*, 442 U.S. 753 (1979)], and [*United States v. Chadwick*, 433 U.S. 1 (1977)], holding searches of closed trunks and suitcases to violate the Fourth Amendment, meant that *Opperman* and *Lafayette* did not govern this case.”). *Illinois v. Lafayette* establishes that an inventory of an arrestee’s personal effects is constitutionally permissible. *Lafayette*, 462 U.S. at 648.

81. *Bertine*, 479 U.S. at 369–71.

82. *Id.* at 371.

83. *Id.*

84. *Id.* at 369, 376.

85. 139 S. Ct. 500 (2019).

*City of Escondido v. Emmons*.<sup>86</sup> The officers responded to a domestic disturbance 911 call at a residence where they had, approximately a month earlier, responded to a domestic disturbance 911 call, taken a report, and arrested the husband of the caller.<sup>87</sup> The officers knocked on the door and spoke through a window with the female resident they had previously taken a report from and asked her to let them in “so that they could conduct a welfare check.”<sup>88</sup> She did not open the door, but a few minutes later, Emmons exited and tried to “brush past” one of the officers who stopped Emmons, took him to the ground, and arrested him.<sup>89</sup> Emmons sued under 42 U.S.C. § 1983 for damages for excessive force.<sup>90</sup> The district court granted the officer qualified immunity and summary judgment, and the Ninth Circuit reversed.<sup>91</sup> The Supreme Court stated the Ninth Circuit’s “formulation of the clearly established right was far too general” and remanded the case for the Ninth Circuit to conduct the analysis required to determine if the officer was entitled to qualified immunity.<sup>92</sup>

While inventory searches, not home searches, were at issue in *Opperman* and *Bertine*, the Court identified inventory searches as a community caretaking function and did not limit this function to vehicles in any express language.<sup>93</sup> To date, *Cady*, *Opperman* and

---

86. *Id.* at 501. *City & Cty. of San Francisco v. Sheehan*, 575 U.S. 600 (2015) uses the term “welfare check” after a social worker attempted a welfare check on a patient in a group home and then completed an application to have Sheehan detained temporarily under California Welfare and Institutions Code section 5150 for evaluation and treatment (commonly referred to as a “psych hold”). Police responded, and Sheehan claims they subdued her in a manner that violated the Americans with Disabilities Act. At issue was whether or not the officers were entitled to qualified immunity.

87. *Id.*

88. *Id.*

89. *Id.* at 502.

90. *Id.* Section 1983 allows for a civil action for the deprivation of a constitutional right. 42 U.S.C. § 1983 (West 2012).

91. *Emmons*, 139 S. Ct. at 502. See *infra* Section III.B.3 for a discussion of the test for qualified immunity.

92. *Emmons*, 139 S. Ct. at 503–04.

93. See *Colorado v. Bertine*, 479 U.S. 367, 371 (1987) (“The probable-cause approach is unhelpful when analysis centers upon the reasonableness of routine administrative caretaking functions.” (quoting *South Dakota v. Opperman*, 428 U.S. 364, 370 n.5 (1976))); *Opperman*, 428 U.S. at 369 (“When vehicles are impounded, local police departments generally follow a routine practice of securing and inventorying the automobiles’ contents. . . . These caretaking procedures have almost uniformly been upheld by the state courts . . . .”). Of note, the *Opperman* Court identifies the impounding of a vehicle as a community caretaking function as well. *Id.* at 368 (“In the interests of public safety and as part of what the Court has called ‘community caretaking

*Bertine* remain the only times the Supreme Court has discussed community caretaking. The lone time the Court discussed welfare checks, no search occurred and the welfare check was not at issue.<sup>94</sup>

### III. CURRENT STATE OF THE LAW

Currently, the circuits are split regarding the applicability of the community caretaking exception to homes, or even beyond vehicles.<sup>95</sup> The circuit split has existed for over thirty years since the Sixth Circuit first explicitly held the community caretaking exception applied to homes in 1996.<sup>96</sup> In addition to the circuit split, state courts are split regarding the applicability of the community caretaking exception to searches of the home, with some states applying the community caretaking exception to homes<sup>97</sup> and others restricting community caretaking searches to vehicles or otherwise excluding homes.<sup>98</sup> In the following sections, the current law in each circuit will be discussed. However, while numerous states have discussed community caretaking or decided cases using the community caretaking exception, only the ones that are frequently cited by circuit courts are discussed here.<sup>99</sup>

---

functions,' [*Cady v. Dombrowski*, 413 U.S. 433, 441 (1973)], automobiles are frequently taken into police custody.'")

94. *Emmons*, 139 S. Ct. at 501.

95. See *supra* notes 47 and 48.

96. See *United States v. Rohrig*, 98 F.3d 1506, 1522 (6th Cir. 1996); 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, 423 (2018).

97. *E.g.*, *Duck v. State*, 518 So. 2d 857, 860 (Ala. Crim. App. 1987); *Terry v. State*, No. 6 Div. 516, 1985 Ala. Crim. App. LEXIS 4825, at \*3 (Crim. App. Jan. 8, 1985); *People v. Davis*, 497 N.W.2d 910, 920 (Mich. 1993); *State v. Deneui*, 775 N.W.2d 221, 239 (S.D. 2009); *Laney v. State*, 117 S.W.3d 854, 861–62 (Tex. Crim. App. 2003) (calling the emergency aid doctrine a subset of community caretaking and the appropriate factors to evaluate entry, not the *Rohrig* factors); *State v. Pinkard*, 785 N.W.2d 592, 608 (Wis. 2010).

98. *E.g.*, *People v. Oviedo*, 446 P.3d 262, 269 (Cal. 2019); *State v. Vargas*, 63 A.3d 175, 189 (N.J. 2013) (suppressing drug evidence found when police entered a home to conduct a welfare check after landlord called due to resident being out of contact for two weeks because warrantless community caretaking searches of homes are impermissible when there is no reasonable basis to believe there is an emergency).

99. Although recent and not frequently cited, *Oviedo* is discussed here because it overturns the relevant portions of *People v. Ray*, 981 P.2d 928 (Cal. 1999), which is very frequently cited and discussed by other courts deciding community caretaking claims.

A. *Circuits Holding the Community Caretaking Exception Does Not Apply to Homes*

1. The Seventh Circuit—*United States v. Pichany*<sup>100</sup>

In 1982, the Seventh Circuit was the first to address the question of whether the community caretaking exception applies beyond vehicles in *United States v. Pichany*.<sup>101</sup> The *Pichany* court held the community caretaking exception does not allow police to make an unwarranted entry into a warehouse during a non-emergent burglary investigation.<sup>102</sup> Two officers were dispatched to a warehouse park to complete a burglary report after the business owner called to report he found his warehouse had been robbed.<sup>103</sup> Upon arriving, the officers inadvertently went to a virtually identical warehouse near the one that had been robbed and knocked and called out for the individual that had reported the burglary.<sup>104</sup> When no one answered, the officers entered the building where they lifted a canvas tarp and discovered two stolen tractors.<sup>105</sup> The government asserted that because the officers were not investigating Pichany's involvement in a crime and had entered to search for someone who had reported he had been robbed, the police were acting as community caretakers.<sup>106</sup>

The *Pichany* court discussed inventory searches of vehicles<sup>107</sup> and the automobile exception and quoted *Cady's* statement “there is a constitutional difference between houses and cars”<sup>108</sup> before concluding, “the plain import from the language of the *Cady* decision is that the Supreme Court did not intend to create a broad exception to the Fourth Amendment warrant requirement to apply whenever the police are acting in an ‘investigative,’ rather than a ‘criminal’ function.”<sup>109</sup> Additionally, the *Pichany* court noted that “[t]he officers

---

100. 687 F.2d 204 (7th Cir. 1982).

101. *Id.* at 209.

102. *Id.* at 205.

103. *Id.*

104. *Id.* at 206.

105. *Id.*

106. *Id.* at 207.

107. *Id.* at 207–08 (citing *South Dakota v. Opperman*, 428 U.S. 364, 368–69 (1976)) (discussing that none of the purposes of an in custody inventory search, “the protection of the owner’s property while it remains in police custody, the protection of police against claims or disputes over lost or stolen property, and the protection of the police from potential danger,” apply).

108. *Id.* at 208 (quoting *Cady v. Dombrowski*, 413 U.S. 433, 439 (1973)).

109. *Id.* at 208–09 (quoting *Cady*, 413 U.S. at 453).



did not claim to have entered the defendant's warehouse to protect themselves or the public from potential danger," impliedly indicating there was no public safety government interest similar to that in *Cady*.<sup>110</sup> However, the *Pichany* court conducted no traditional balancing of interests in concluding the community caretaking exception applied only to vehicles. Instead, the court relied on *Cady's* discussion of the differences between an individual's reasonable expectation of privacy in their home and vehicle as evidencing the Supreme Court's intention to limit the community caretaking exception to searches of vehicles.

## 2. The Ninth Circuit—*United States v. Erickson*<sup>111</sup>

The next circuit to hold the community caretaking exception does not extend beyond vehicles was the Ninth Circuit in 1993 in *United States v. Erickson*.<sup>112</sup> *Erickson*, like *Pichany*, involved police responding to a call to investigate a burglary, but *Erickson* involved the warrantless search of a home.<sup>113</sup> Police were dispatched to a suspected burglary where they spoke to neighbors who reported seeing two men drag a bag that appeared to be full of heavy items across the neighboring lawn before driving away.<sup>114</sup> The investigating officer did not notice any signs of forced entry though he came upon an open basement window that was covered by a black plastic sheet.<sup>115</sup> The officer pulled back the sheet to determine whether the residence had been burglarized.<sup>116</sup> When he looked in, he saw numerous marijuana plants and smelled marijuana.<sup>117</sup> He immediately ceased searching and applied for a search warrant.<sup>118</sup>

The government contended the officer was acting as a community caretaker when he lifted the sheeting and looked into the basement because the search was undertaken to protect the residents rather than to make a criminal case against them, and such caretaking searches are

---

110. *Id.* at 207.

111. 991 F.2d 529 (9th Cir. 1993).

112. *Id.* at 532.

113. *Id.* at 530.

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

“permissible without a warrant or probable cause as long as the officer acted reasonably under the circumstances.”<sup>119</sup> Despite acknowledging the investigation of a reported burglary is a community caretaking function and legitimate government interest, the *Erickson* court merely recited the Fourth Amendment balancing test,<sup>120</sup> then stated, “[a]lthough it involved a community caretaking function, *Cady* clearly turned on the ‘constitutional difference’ between searching a house and searching an automobile.”<sup>121</sup> Stating the reasonable expectation of privacy is lower in a vehicle than in a home, the *Erickson* court agreed with *Pichany* that the *Cady* Court intended to confine its holding to automobiles.<sup>122</sup> It is important to note that this is not the Fourth Amendment balancing test. The *Erickson* court did not weigh the government interest in investigating a reported burglary against the individual’s interest. Instead, the court concluded that because an individual’s interest in the home is greater than in the vehicle, the *Cady* Court intended to limit the exception to vehicles without stating such a limitation.<sup>123</sup>

Lastly, *Erickson* concluded that community caretaking does not need to apply to homes because the exigent circumstances exception to the warrant requirement adequately meets the government need to investigate reported burglaries.<sup>124</sup> The *Erickson* court did not address community caretaking when the government interest is anything other than the investigation of a burglary.

### 3. The Tenth Circuit—*United States v. Bute*<sup>125</sup>

A year after the Ninth Circuit decided *Erickson*, the Tenth Circuit in *Bute* also held that the community caretaking exception only applies to vehicles.<sup>126</sup> Similar to *Pichany* and *Erickson*, the *Bute* court failed

---

119. *Id.* at 531.

120. *Id.* (“In determining whether a search is reasonable within the meaning of the Fourth Amendment, the governmental interest motivating the search must be balanced against the intrusion on the individual’s Fourth Amendment interests.” (quoting *Maryland v. Buie*, 494 U.S. 325, 331 (1990))).

121. *Id.* at 532 (quoting *Cady v. Dombrowski*, 413 U.S. 433, 439 (1973)).

122. *Id.* (citing *United States v. Pichany*, 687 F.2d 204, 209 (7th Cir. 1982)).

123. *Id.*

124. *Id.* at 533. Of note, the home in question in *Erickson* had actually been robbed and an objectively reasonable person would want the police to investigate the burglary of their home. *Id.* at 530.

125. 43 F.3d 531 (10th Cir. 1994).

126. *Id.* at 535.

to conduct any sort of Fourth Amendment balancing test in determining if the community caretaking exception applies beyond vehicles.<sup>127</sup>

In *Bute*, one deputy was driving another deputy home when they noticed an open garage door in a commercial building.<sup>128</sup> The open door aroused the deputy's suspicion because he had never seen anyone around the building or noticed the door routinely left open; nevertheless, the deputy proceeded to drop off his coworker before returning to investigate.<sup>129</sup> When the deputy returned to the building, he suspected the building had been vandalized or burglarized earlier and decided to enter the building to search for indications of burglary or vandalism despite there being no indication anyone was in the building and no signs of forced entry.<sup>130</sup> Inside the building, the deputy noticed a very pungent odor and a wall with three doors that were either closed or slightly ajar.<sup>131</sup> Behind the third door, the deputy found a meth lab.<sup>132</sup>

The magistrate judge admitted the evidence, finding that the search was reasonable under a Fourth Amendment general reasonableness test.<sup>133</sup> The *Bute* court stated that Supreme Court "precedent neither establishes nor condones application of an amorphous 'reasonableness' test to determine the constitutionality of a warrantless search" and that the principle of *Cady* is inapplicable here.<sup>134</sup> Citing *Pichany* and *Erickson*, the Tenth Circuit agreed the community caretaking exception applies only in cases involving searches of automobiles and was inapplicable here.<sup>135</sup>

---

127. See *id.* at 534–35 (reviewing cases and concluding the community caretaking exception applies only to vehicles without conducting any balancing of interests).

128. *Id.* at 532.

129. *Id.* at 533, 539.

130. *Id.* at 533.

131. *Id.*

132. *Id.*

133. *Id.* at 534 ("Nevertheless, the magistrate judge went on to analyze the constitutionality of McConkey's search under a general 'reasonableness' test, taking into account the totality of the circumstances."); see also *United States v. Bute*, No. 92-CR-108 S, 1993 U.S. Dist. LEXIS 8669, at \*20–23, \*38–40 (D. Utah Jan. 27, 1993) (applying the "reasonable under all the circumstances" test to determine that the search of a warehouse was constitutional).

134. *Bute*, 43 F.3d at 534–35; see also *supra* Section II.B.1 (discussing the Supreme Court's use of a balancing of interests test to determine reasonableness and create new warrant exceptions).

135. *Bute*, 43 F.3d at 535.

While the *Bute* court is correct that the Fourth Amendment does not authorize an “amorphous” reasonableness test to determine the constitutionality of a search, the Supreme Court does use a specific balancing of interests test to determine whether a government action was reasonable under the Fourth Amendment.<sup>136</sup> In holding that the community caretaking exception is limited to searches of vehicles, the *Bute* court not only failed to conduct any balancing of interests, it did not even identify the governmental or individual interests at stake.

#### 4. The Third Circuit—*Ray v. Township of Warren*<sup>137</sup>

Several years after the Seventh, Ninth and Tenth Circuits held the community caretaking exception applies only to searches of vehicles, and the Sixth and Eighth Circuits and the states of Michigan, California, South Dakota and Wisconsin held the community caretaking exception applies to homes, the Third Circuit needed to determine the clarity of the law regarding the applicability of the exception to homes in a section 1983 action.<sup>138</sup>

Mr. and Mrs. Ray were in the midst of a contentious divorce when Mrs. Ray went to Mr. Ray’s to pick up their youngest daughter for court-ordered visitation.<sup>139</sup> No one answered the door after repeated knocking, but Mrs. Ray saw a man moving about inside.<sup>140</sup> She continued knocking and ringing the doorbell and, upon receiving no response, she called the police.<sup>141</sup> Some of the responding officers had responded to domestic disturbance calls at the Rays’ before and were familiar with the acrimonious divorce and custody proceedings.<sup>142</sup> The officers shared Mrs. Ray’s concern about the well-being of the child because on the previous occasions in which the police had been called to the residence, Mr. Ray had always turned the daughter over to his wife.<sup>143</sup> In light of the circumstances, one of the officers “contacted a

---

136. *Id.* at 534–35; *see also supra* Section II.B.1 and *supra* note 56 (discussing the Supreme Court’s use of a balancing of interests test to determine reasonableness and create new warrant exceptions).

137. 626 F.3d 170 (3d Cir. 2010).

138. *Id.* 176–77; *see supra* Section III.A; *infra* Section III.D; *see also* 42 U.S.C. § 1983 (West 2012).

139. *Twp. of Warren*, 626 F.3d at 171.

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.* at 172.

municipal court judge for guidance as to whether the officers could ‘go in the house to look’ for the child.’<sup>144</sup> While the content of the call was not clear, the officers then entered Ray’s home through an unlocked door and quickly looked through the home.<sup>145</sup> Ray and the daughter were not home, but Ray’s father was in the house.<sup>146</sup> Ultimately, someone was able to contact Ray, who agreed to bring the daughter to the police station.<sup>147</sup>

Ray filed a section 1983 action alleging an unconstitutional search of his home, and the officers claimed qualified immunity.<sup>148</sup> Whether a government official is entitled to qualified immunity is subject to a two-part *Saucier* test: whether the conduct violated a constitutional or federal right and if the right at issue was “clearly established.”<sup>149</sup> The court noted that the Supreme Court has held the *Saucier* analysis does not need to be conducted in sequence so the court could have analyzed the second factor, whether the officers acted in violation of clearly established law, first.<sup>150</sup> Had they done so, the court’s discussion of the circuit split and lack of decision in the Third Circuit would have been sufficient to show the officers’ conduct did not violate clearly established rights and to find qualified immunity applied, thus obviating the need to determine if Ray’s rights were violated. However, the *Township of Warren* court first analyzed the presence of a violation of Ray’s rights, and in so doing, held the community caretaking exception does not apply to homes.<sup>151</sup>

The *Township of Warren* court began its discussion by noting the officers were not claiming the exigent circumstances exception applied. The court then reviewed the facts of *Cady* and laid out the current circuit split.<sup>152</sup> Opining that in holding the community caretaking exception applies to homes, the Sixth and Eighth Circuits did not “simply rely on the community caretaking doctrine established

---

144. *Id.*

145. *Id.* at 172–73.

146. *Id.* at 173.

147. *Id.*

148. *Id.*

149. *Id.* at 174 (quoting *Saucier v. Katz*, 533 U.S. 194, 201 (2001)). For an example of a court that conducts the analysis in this manner, see *MacDonald v. Town of Eastham*, 745 F.3d 8, 10–11, 13–15 (1st Cir. 2014) and *infra* Section III.C.3.

150. *Twp. of Warren*, 626 F.3d at 174.

151. *Id.* at 174–77.

152. *Id.* at 174–76.

in *Cady*,” the *Township of Warren* court stated the *Quezada* and *Rohrig* courts applied a modified exigent circumstances test with a lower threshold for exigency when officers are acting as community caretakers.<sup>153</sup> The court then went on to state it “agree[d] with the conclusion of the Seventh, Ninth, and Tenth Circuits on this issue, and interpret[ed] the Supreme Court’s decision in *Cady* as being expressly based on the distinction between automobiles and homes.”<sup>154</sup> Accordingly, the court held, “[t]he community caretaking doctrine cannot be used to justify warrantless searches of a home.”<sup>155</sup>

Interestingly, the *Township of Warren* court also failed to conduct any sort of Fourth Amendment balancing of interests test in reaching its conclusion.

### B. Circuits Holding Community Caretaking Exception Applies to Homes

#### 1. The Fifth Circuit—*United States v. York*<sup>156</sup>

The next circuit to address the applicability of the community caretaking exception to homes was the first to hold it applies to homes.<sup>157</sup> Eight years after *Pichany*, the *York* court found that the community caretaking exception applies to homes because when police are acting as community caretakers and the resident has reduced their expectation of privacy, no search occurs.<sup>158</sup>

The *York* court said officers were acting as community caretakers, totally divorced from the investigation of a crime when they entered

---

153. *Id.* at 176 (“Those cases, however, do not simply rely on the community caretaking doctrine established in *Cady*. They instead apply what appears to be a modified exigent circumstances test, with perhaps a lower threshold for exigency if the officer is acting in a community caretaking role. For example, in *Quezada*, the Eighth Circuit held that the officer had to have a ‘reasonable belief that an emergency exists requiring his or her attention’ for the community caretaking doctrine to apply to a warrantless search of a home. . . . And in *Rohrig*, the Sixth Circuit recognized that some situations addressed by officers within their community caretaking functions, though not within the scope of traditional law enforcement, can still present important government interests that may rise to the level of traditionally recognized ‘exigent circumstances.’”) (quoting first *United States v. Quezada*, 448 F.3d 1005, 1007 (8th Cir. 2006), then *United States v. Rohrig*, 98 F.3d 1506, 1521–22 (6th Cir. 1996)); see also *infra* Sections III.B.2 & III.B.3.a (discussing *Rohrig* and *Quezada* respectively).

154. *Twp. of Warren*, 626 F.3d at 177.

155. *Id.*

156. 895 F.2d 1026 (5th Cir. 1990).

157. *Id.* at 1030.

158. *Id.* (finding that “[n]o fourth amendment ‘search’ took place”).

York's residence in response to a call from York's houseguest, Bill.<sup>159</sup> Bill called police and reported that York was intoxicated and belligerent and threatened Bill and his children.<sup>160</sup> Upon Bill's request, the officers followed Bill and his children back inside York's home so they could gather their belongings and leave.<sup>161</sup> While standing in the foyer observing Bill's packing, the officers saw a gun cabinet containing machine guns.<sup>162</sup> York approached and argued with the officers—he was belligerent and appeared drunk—so when York retreated to the rear of the house, an officer followed him and saw a sawed off shotgun.<sup>163</sup> The officers did not touch the guns but reported seeing them to obtain a search warrant.<sup>164</sup>

The *York* court stated its two-step analysis for determining whether government activity activates the Fourth Amendment as, "This court first considers whether the activity intrudes upon a reasonable expectation of privacy in such a significant way to make the activity a 'search.' Then, if we find a 'search' has occurred, we determine whether the governmental intrusion was unreasonable given the particular facts of the case."<sup>165</sup> The court then noted that residents may reduce their reasonable expectation of privacy through their activities or by making an intrusion reasonably foreseeable.<sup>166</sup>

Here, York's threats against someone he allowed to occupy his home reduced his reasonable expectation of privacy by making it foreseeable Bill would seek help to remove his children and possessions.<sup>167</sup> Because the police were acting as community caretakers and had a clear view of the guns in the living room while they remained in the entryway, their actions were reasonable and no Fourth Amendment search took place.<sup>168</sup>

---

159. *Id.* at 1027–28.

160. *Id.* at 1027.

161. *Id.* at 1027–28.

162. *Id.* at 1028.

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.* at 1029 (citing *United States v. Taborda*, 635 F.2d 131, 138–39 (2d Cir. 1980) (discussing that leaving curtains or blinds open exposes the home to the public's scrutiny) and *United States v. Bomengo*, 580 F.2d 173 (5th Cir. 1978) (discussing efforts of landlord to investigate cause of leaking water were reasonably foreseeable and reduced occupant's expectation of privacy)).

167. *Id.* at 1029–30.

168. *Id.* at 1030.

The Fifth Circuit remains the only circuit to find that a home entry while police are acting as community caretakers does not constitute a search under the Fourth Amendment.<sup>169</sup> The other circuits that have held the community caretaking exception applies to home have done so by explicitly or implicitly balancing the governmental interest against that of the private citizen or by determining an emergency or exigent circumstance justified entry.<sup>170</sup>

## 2. The Sixth Circuit—*United States v. Rohrig*<sup>171</sup>

In *Rohrig*, police received noise complaints regarding loud music coming from Rohrig's address.<sup>172</sup> When they arrived at the residence at 1:39 a.m., several neighbors came out of their homes to complain about the noise.<sup>173</sup> One of the officers attempted to obtain a phone number to call the residence while the other knocked repeatedly on the front door and then tapped all of the ground floor windows.<sup>174</sup> Finding the back door was open and the screen door unlocked, the officers entered into a kitchen announcing they were the police.<sup>175</sup> The music was coming from a speaker upstairs, and was so loud the officers had to shout to hear each other.<sup>176</sup> Officers could see light emerging from an open door and, believing the resident might be there, they entered and proceeded down a flight of stairs.<sup>177</sup> In the basement, they found a marijuana growing operation.<sup>178</sup> The officers ignored the plants and proceeded up to the second floor in search of a resident.<sup>179</sup> They found a man lying on the floor of a bedroom that contained stereo equipment.<sup>180</sup> One officer tried to rouse the man while the other turned off the stereo.<sup>181</sup>

---

169. See *supra* Sections III.A–B; *infra* Section III.C.

170. See *supra* Section III.B.

171. 98 F.3d 1506 (6th Cir. 1996).

172. *Id.* at 1509.

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*



The *Rohrig* court began with a lengthy discussion of the Fourth Amendment warrant requirement<sup>182</sup> and the history of the exigent circumstances exception<sup>183</sup> before framing a three-part inquiry:

First, we must ask whether the Government has demonstrated a need for immediate action that would have been defeated if the Canton police officers had taken the time to secure a warrant. Next, we must identify the governmental interest being served by the officers' entry into Defendant's home, and ask whether that interest is sufficiently important to justify a warrantless entry. Finally, we must weigh this governmental interest against Defendant's interest in maintaining the privacy of his home, and ask whether Defendant's conduct somehow diminished the reasonable expectation of privacy he would normally enjoy.<sup>184</sup>

To answer the first portion, whether the police faced a need for immediate action that would have been defeated had the police taken the time to obtain a warrant, the *Rohrig* court first noted none of the "traditionally recognized" exigent circumstances were applicable to the facts of this case.<sup>185</sup> But "[because] the Fourth Amendment's broad language of 'reasonableness' is flatly at odds with any claim of a fixed and immutable list of established exigencies" and each new exigent circumstance "was a product of distinct and independent analysis of the facts of a particular case in light of underlying Fourth Amendment principles," the court is not precluded from fashioning a new exigency.<sup>186</sup> After examining precedent in which warrantless entries were upheld when police entered to remediate breaches of the peace and ongoing nuisances,<sup>187</sup> the court concluded the precedent suggested "a late night disturbance of the peace might well present exigent circumstances that would justify the [police] officers' warrantless

---

182. *Id.* at 1511–15.

183. *Id.* at 1515–18.

184. *Id.* at 1518.

185. *Id.* at 1518–19.

186. *Id.* at 1519 (citing *People v. Lanthier*, 488 P.2d 625, 628 (Cal. 1971) (holding the ongoing nuisance of a noxious smell justified the warrantless intrusion into a student's locker); *United States v. Boyd*, 407 F. Supp. 693, 694 (S.D.N.Y. 1976) (holding that leaking water sufficiently threatened neighboring apartments to justify warrantless intrusion); *State v. Dube*, 655 A.2d 338, 339–40 (Me. 1995) (also holding that leaking water sufficiently threatened neighboring apartments to justify a warrantless intrusion)).

187. *Id.* at 1519–20 (collecting cases).

entry into Defendant's home."<sup>188</sup> Further, the responding officers "undoubtedly confronted a situation in which time was of the essence" and had they delayed to attempt to obtain a warrant, "it is clear that the aural assault emanating from Defendant's home would have continued unabated for a significant period of time."<sup>189</sup> To the suggestion that the loud and disruptive noise in the middle of the night is not urgent enough to warrant an immediate response, the *Rohrig* court doubted the neighbors would agree with that understanding of reasonableness and continued, "[f]urther, because nothing in the Fourth Amendment requires us to set aside our common sense, we decline to read that Amendment's 'reasonableness' and warrant requirements as authorizing timely governmental responses only in cases involving life-threatening danger."<sup>190</sup>

After concluding the officers did face a need for immediate action, the court found "the officers entered Defendant's home in order to vindicate a compelling governmental interest."<sup>191</sup> While a local noise ordinance is not a significant government interest, the *Rohrig* court determined the officers were acting in a community caretaking function to "restore the neighbors' peaceful enjoyment of their homes and neighborhood,"<sup>192</sup> and this government interest was "sufficiently compelling to justify warrantless intrusions under some circumstances."<sup>193</sup>

Lastly, the court found that Rohrig's conduct "undermined his right to be left alone by projecting loud noises into the neighborhood in the wee hours of the morning."<sup>194</sup> The disruption was such that the court could not protect Rohrig's interest in his home without diminishing the neighbors' interests in their homes.<sup>195</sup> When the *Rohrig* court conducted the Fourth Amendment balancing test weighing of the government's interest in "preserving a peaceful

---

188. *Id.* at 1520.

189. *Id.* at 1521.

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.* at 1522.

194. *Id.*

195. *Id.*

community” against Rohrig’s diminished interest in his home, the court found the government’s interest was more compelling.<sup>196</sup>

After completing this analysis, the *Rohrig* court returned to the Fourth Amendment’s warrant requirement. While “not irrelevant to the governmental intrusion” here, the warrant requirement was “implicated to a lesser degree when police officers act in their roles as ‘community caretakers.’”<sup>197</sup> Since the officers “were not engaged in the ‘often competitive enterprise of ferreting out crime,’” there was less risk they might have made an improper decision.<sup>198</sup> Further, it is untenable to insist that the officers develop probable cause despite their community caretaking role.<sup>199</sup> The *Rohrig* court noted that the Supreme Court allows the issuance of administrative warrants based “on something less than traditional probable cause” and at times eliminates the need for administrative warrants altogether, in part due to the difference between criminal investigations and other types of intrusions, when substantial government interests are being served.<sup>200</sup> Here, “[h]aving found that an important ‘community caretaking’ interest motivated the officers’ entry in this case, [the court] conclude[d] that their failure to obtain a warrant [did] not render that entry unlawful.”<sup>201</sup>

Lastly, the *Rohrig* court found the warrantless entry “satisfie[d] the standard of ‘reasonableness’ that is the touchstone of the Fourth Amendment.”<sup>202</sup> Rohrig argued the police could have taken measures other than entering his home, but the court “emphatically reject[ed] the notion that a warrantless entry is permissible only when all conceivable alternatives have been exhausted.”<sup>203</sup> Further, the court, unable to identify any unreasonable conduct on the part of the officers, found the officers acted reasonably under the circumstances, and so held the warrantless entry did not violate the Fourth Amendment.<sup>204</sup>

---

196. *Id.*

197. *Id.* at 1523.

198. *Id.* (quoting *Johnson v. United States*, 333 U.S. 10, 14 (1948)).

199. *Id.*

200. *Id.* (citing *New Jersey v. T.L.O.*, 469 U.S. 325, 340 (1985); *South Dakota v. Opperman*, 428 U.S. 364, 367–69 (1976); *Camara v. Mun. Court of City & Cty. of San Francisco*, 387 U.S. 523, 537–38 (1967)).

201. *Id.*

202. *Id.* at 1524.

203. *Id.*

204. *Id.* at 1524–25.

As the *Township of Warren* court pointed out, the *Rohrig* court analyzed this warrantless entry as if community caretaking is a type of exigent circumstance.<sup>205</sup> Interestingly, after concluding its exigent circumstances analysis, the *Rohrig* court returned its discussion to the warrant requirement and analogized community caretaking to an administrative search.<sup>206</sup> This second discussion seems to be an entirely separate justification for the allowance of the entry. Importantly, the court did not articulate a clear test for when a warrantless entry is permissible when police are acting as community caretakers, in fact the court “wish[ed] to emphasize the fact-specific nature of this holding.”<sup>207</sup> Subsequent cases involving community caretaking entries in the Sixth Circuit have involved similar fact-specific inquiries into the circumstances.<sup>208</sup>

### 3. The Eighth Circuit

The Eighth Circuit has a line of cases holding an officer may make a warrantless community caretaking entry: first, when they have a reasonable belief an emergency exists,<sup>209</sup> and then when the governmental interest in the officer’s exercise of their community caretaking function outweighs the individual interest in being free from governmental interference.<sup>210</sup>

---

205. *Ray v. Twp. of Warren*, 626 F.3d 170, 176 (3d Cir. 2010); *see also supra* discussion of Section III.A.4 and *supra* note 153 (discussing the *Township of Warren* decision).

206. *Rohrig*, 98 F.3d at 1522.

207. *Id.* at 1525 n.11 (“We wish to emphasize the fact-specific nature of this holding. By this decision, we do not mean to fashion a broad ‘nuisance abatement’ exception to the general rule that warrantless entries into private homes are presumptively unreasonable. We simply find that, in some cases, it would serve no Fourth Amendment purpose to require that the police obtain a warrant before taking reasonable steps to abate an immediate, ongoing, and highly objectionable nuisance, and we conclude that this is just such a case.”).

208. *See, e.g., Goodwin v. City of Painesville*, 781 F.3d 314, 331 (6th Cir. 2015) (finding the noise of two people arguing is not the “type of ongoing and overbearing public disturbance that would give rise to the necessity for immediate action”); *United States v. Williams*, 354 F.3d 497, 508 (6th Cir. 2003) (distinguishing *Rohrig* on two grounds: the leak in *Williams* was speculative, whereas the noise in *Rohrig* was certain; and, there was no potential for damage to others in *Williams*, whereas the noise in *Rohrig* was damaging the neighbors).

209. *United States v. Quezada*, 448 F.3d 1005, 1007 (8th Cir. 2006).

210. *United States v. Smith*, 820 F.3d 356, 360 (8th Cir. 2016); *United States v. Harris*, 747 F.3d 1013, 1017 (8th Cir. 2014).

*a. United States v. Quezada*<sup>211</sup>

Deputy Sheriff Ruth was delivering a civil order to an apartment he had been to before, in which he believed a female occupant lived alone.<sup>212</sup> The door appeared closed, but it was not latched properly and opened when Ruth knocked.<sup>213</sup> Through the partially open door, Ruth could see lights and hear a television playing, but he received no response when he announced his presence several times.<sup>214</sup> Ruth radioed dispatch to stop radio traffic so others could hear if Ruth was in trouble, then, drawing his weapon, Ruth entered the apartment.<sup>215</sup> Upon seeing a pair of legs sticking out from a bedroom into the hallway, Ruth shouted and approached but received no reply.<sup>216</sup> As he neared, Ruth saw the man was lying on top of a shotgun.<sup>217</sup> Ruth kicked the man's feet, but the man did not rouse until Ruth removed the gun.<sup>218</sup> The man, Quezada, was charged as a felon in possession of a firearm.<sup>219</sup>

The *Quezada* court rather succinctly walked through its analysis of the applicable standard for making a warrantless community caretaking entry stating:

We note at the outset that there is a difference between the standards that apply when an officer makes a warrantless entry when acting as a so-called community caretaker and when he or she makes a warrantless entry to investigate a crime. Police officers, unlike other public employees, tend to be “jacks of all trades,” who often act in ways totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of criminal law. [*Cady v. Dombrowski*, 413 U.S. 433, 441 (1973)]. These activities, which are undertaken to help those in danger and to protect property, are part of the officer's “community caretaking functions.” *Id.* They are unrelated to the officer's duty to

---

211. 448 F.3d 1005 (8th Cir. 2006).

212. *Id.* at 1006.

213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.* at 1007.

investigate and uncover criminal activity. A police officer may 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. [*Mincey v. Arizona*, 437 U.S. 385, 392–93 (1978); *United States v. Nord*, 586 F.2d 1288, 1291 n.5 (8th Cir. 1978)].<sup>220</sup>

The court then concluded that reasonable belief is the appropriate standard when determining whether an officer may enter as a community caretaker, and it was reasonable for Ruth to conclude someone was inside but unable to respond, and the entry was therefore reasonable.<sup>221</sup>

*b. United States v. Harris*<sup>222</sup>

Eight years after *Quezada*, the Eighth Circuit assessed a community caretaking action not under the standard a reasonable belief an emergency exists, but instead, under the *Terry* balancing of interests test.<sup>223</sup>

Greyhound Bus prohibited all firearms in their terminals, and one afternoon a Greyhound employee called police to report a man at a station, Harris, had fallen asleep with a “handgun falling out of his pants pocket.”<sup>224</sup> When police responded to the station, Harris was lying on a bench and a handgun was sliding out of his right pocket.<sup>225</sup> Citing concerns that Harris might wake up and attempt to use the gun or that it might fall to the floor and accidentally discharge, the officers removed the gun from Harris’s pocket.<sup>226</sup> The officers then woke Harris, handcuffed him, and upon running his name, found he had an outstanding warrant, so they arrested Harris.<sup>227</sup>

---

220. *Id.* Note, the substance of the court’s opinion spans only two pages: 1007 and 1008.

221. *Id.* at 1007–08 (citing *Mincey v. Arizona*, 437 U.S. 385, 392–93 (1978)). The *Quezada* court goes on to state, “Deputy Ruth’s entry into the apartment therefore violated the fourth amendment only if no reasonable officer could have believed that an emergency was at hand.” *Id.* at 1008. And the requirement that the reasonable belief be about the existence of an emergency was overturned in *United States v. Harris*, 747 F.3d 1013, 1017 (8th Cir. 2014).

222. 747 F.3d 1013 (8th Cir. 2014).

223. *Id.* at 1017–18 (citing *Terry v. Ohio*, 392 U.S. 1, 13 (1968)).

224. *Id.* at 1015.

225. *Id.* at 1015–16.

226. *Id.* at 1016.

227. *Id.*

After first noting that the government failed to meet the *Terry* stop and frisk standard because they did not show that the officers had a reasonable suspicion of criminal activity, the *Harris* court discussed *Terry*'s relevance in recognizing that police frequently initiate encounters with individuals for reasons "wholly unrelated to a desire to prosecute for crime."<sup>228</sup> Stating the rule that a search or seizure of a person when an officer is "acting in the officer's noninvestigatory capacity is reasonable if the governmental interest in the police officer's exercise of [the officer's] community caretaking function, based on specific articulable facts, outweighs the individual's interest in being free from arbitrary government interference," the court framed the issue as determining whether the officers here were acting in their community caretaking capacity in order to determine the proper standard of review.<sup>229</sup> The *Harris* court then stated it was satisfied the officers were acting as community caretakers and went on to balance the government interest in resolving this potentially "dangerous, or even deadly" situation against Harris's right to be free from governmental intrusion.<sup>230</sup> The government interest was not that officers suspected, or even knew, that Harris was carrying a firearm but "that the police knew that Harris was carelessly handling a firearm in a dangerous and public location that had forbidden firearms," and the officers' desire was not to enforce criminal statutes but to "ensure the safety of the public."<sup>231</sup> The *Harris* court did not explicitly state its weighing of Harris's interest, but concluded the officers were entitled to remove the firearm from Harris's pocket in light of the risks the "exposed and unguarded firearm posed."<sup>232</sup> Finally, concluding that the scope and duration of the intrusion were reasonable, the *Harris* court held the officers' response was reasonable under the Fourth Amendment.<sup>233</sup>

---

228. *Id.* at 1016–17 (quoting *Terry*, 392 U.S. at 13).

229. *Id.* at 1017–18 (alteration in the original) (internal quotation marks omitted) (quoting *Samuelson v. City of New Ulm*, 455 F.3d. 871, 877 (8th Cir. 2006)).

230. *Id.* at 1018.

231. *Id.*

232. *Id.* at 1018–19.

233. *Id.* at 1019–20.

*c. United States v. Smith*<sup>234</sup>

Two years later, the Eighth Circuit applied the *Harris* balancing test to the warrantless community caretaking entry of a home.<sup>235</sup> In *Smith*, the police were looking for a missing woman, Wallace, and believed her ex-boyfriend, Smith, was armed and holding her against her will.<sup>236</sup> A “no-contact order existed between Smith and Wallace,” and one of the responding officers had recently responded to the same address when a male was discharging firearms.<sup>237</sup>

The responding officers knocked and asked if Wallace was there.<sup>238</sup> Smith told the officers he was alone and refused them entry without a search warrant.<sup>239</sup> When Smith left a short time later, officers arrested him on an outstanding arrest warrant.<sup>240</sup> The officers noticed a face through a window, so they knocked, announced, and, when no one answered, entered calling for Wallace.<sup>241</sup> Wallace was in a bedroom with an AK-47 and stated Smith prevented her from leaving.<sup>242</sup> The officers seized the weapon and Smith was convicted as a felon in possession of a firearm.<sup>243</sup>

The *Smith* court stated the rule as, “[a] search or seizure under the community caretaking function is reasonable if the governmental interest in law enforcement’s exercise of that function, based on specific and articulable facts, outweighs the individual’s interest in freedom from government intrusion.”<sup>244</sup> The court reviewed the facts and concluded there were “multiple reasons” that indicated Wallace might “be at Smith’s residence and held against her will or in danger.”<sup>245</sup> Interestingly, after stating that it “must next weigh the government’s interests in the officers’ entry against Smith’s right to be free from government intrusion,” the *Smith* court then went on to

---

234. 820 F.3d 356 (8th Cir. 2016).

235. *Id.* at 360.

236. *Id.* at 358 (the reporting caller told the police a no contact order existed between Wallace and Smith).

237. *Id.*

238. *Id.*

239. *Id.*

240. *Id.* at 359.

241. *Id.*

242. *Id.*

243. *Id.*

244. *Id.* at 360 (citing *United States v. Harris*, 747 F.3d 1013, 1017 (8th Cir. 2014)).

245. *Id.* at 361.



list factors substantiating the government's interest before it cited *Quezada* and "conclude[d] that the officers reasonably believed an emergency situation existed that required their immediate attention in the form of entering Smith's residence to search for Wallace."<sup>246</sup>

Lastly, the *Smith* court addressed the scope of the entry in addition to its initial validity. The officers entered for the purpose of finding Wallace and, as soon as she responded to their calls, they went directly to her and were thus within the scope of their entry.<sup>247</sup>

### C. Circuits That Have Not Yet Held

#### 1. The Eleventh Circuit—*United States v. McGough*<sup>248</sup>

Recently the Eleventh Circuit mentioned the applicability of the community caretaking exception to dwellings in two cases, but did not reach a ruling in either.<sup>249</sup> In *McGough*, officers responded to an accidental 911 call from a four-year-old girl who had been left home alone.<sup>250</sup> The father and occupant, McGough, arrived home just as the fire department was beginning to break in to rescue the girl.<sup>251</sup> The officers arrested McGough for reckless conduct and called an aunt to care for the girl, and while they were waiting for the aunt to arrive, McGough refused to consent to search of the apartment.<sup>252</sup> One of the officers then noticed the girl was not wearing shoes and took her inside to retrieve them where the officer saw a bag of marijuana and a revolver in the room with the shoes.<sup>253</sup> The *McGough* court assumed *arguendo* that the community caretaking exception applies to homes, and stated that warrants are required "unless the exigencies of the situation make the officers' needs 'so compelling that the warrantless search is *objectively* reasonable'" and, here, it was not objectively

---

246. *Id.* at 361–62 (citing *United States v. Quezada*, 448 F.3d 1005, 1008 (8th Cir. 2006)).

247. *Id.* at 362.

248. 412 F.3d 1232 (11th Cir. 2005).

249. *See id.* at 1239; *United States v. Lawrence*, 205 F. App'x 786, 787 (11th Cir. 2006) (unpublished) (not reaching a ruling on community caretaking exception because under any theory the court would affirm conviction under harmless error doctrine).

250. *McGough*, 412 F.3d at 1233.

251. *Id.* at 1233–34.

252. *Id.* at 1234.

253. *Id.*

reasonable for officers to enter to retrieve the shoes instead of waiting for the aunt to arrive.<sup>254</sup>

## 2. The Fourth Circuit—*Hunsberger v. Wood*<sup>255</sup>

In *Hunsberger*, police responded to a call about suspicious activity.<sup>256</sup> Upon arrival, they noticed interior lights being turned off when they approached and, as they walked back to their vehicle, a side door that had been closed being ajar.<sup>257</sup> The officers had dispatch contact the owners of the numerous vehicles parked in front, and one of the owners arrived and said his stepdaughter was supposed to be spending the night at a friend's and was not answering her cell.<sup>258</sup> An officer and the stepfather knocked again and could hear something being knocked over inside, so they entered the home.<sup>259</sup> The homeowner, who was asleep upstairs, filed a section 1983 action.<sup>260</sup> The *Hunsberger* court discussed the community caretaking doctrine before ultimately concluding that in this section 1983 action, where the officer was not following a standard procedure but responding to an emergency call, the exigent circumstances exception analysis was proper.<sup>261</sup>

Similarly, in *United States v. Taylor*,<sup>262</sup> the Fourth Circuit found the exigent circumstances doctrine applied when an officer was attempting to return a lost four-year-old, and it did not reach the applicability of the community caretaking exception.<sup>263</sup>

---

254. *Id.* at 1239 (emphasis in original) (quoting *Mincey v. Arizona*, 437 U.S. 385, 394 (1978)).

255. 570 F.3d 546 (4th Cir. 2009).

256. *Id.* at 549–50.

257. *Id.* at 550.

258. *Id.* at 550–51.

259. *Id.* at 551.

260. *Id.* at 551–52.

261. *Id.* at 554–55.

262. 624 F.3d 626 (4th Cir. 2010).

263. *Id.* at 634 n.\* (“Because we conclude that exigent circumstances rendered Officer Ratliff’s conduct objectively reasonable, we need not address the question of whether the entry was also permissible under the community caretaking doctrine. It suffices to say that the officer responded reasonably to an emergency, and therefore the Fourth Amendment was not violated.”). The Fourth Circuit also discussed the community caretaking doctrine in the unpublished case *United States v. Marshall*, 747 F. App’x 139, 142, 145–46 (4th Cir. 2018) in the context of police towing a vehicle after arresting the driver for disorderly conduct and learning the driver did not own the vehicle.

### 3. The First Circuit—*MacDonald v. Town of Eastham*<sup>264</sup>

In determining the applicability of qualified immunity in a section 1983 action where officers made a warrantless entry into a residence while responding to a call regarding an open front door, the First Circuit discussed the circuit split as well as the split among several states before concluding the law was too muddled for reasonable officers to know whether officer's conduct violated clearly established statutory or constitutional rights.<sup>265</sup> After finding the officers were protected by qualified immunity, the *MacDonald* court concluded by stating: "Let us be perfectly clear. We do not decide today whether or not the community caretaking exception can be applied so as to render constitutional a warrantless and non-consensual police entry into a residence."<sup>266</sup>

One year later, the First Circuit again did not reach a decision regarding the applicability of the community caretaking exception to homes.<sup>267</sup> In *Matalon v. Hynnes*,<sup>268</sup> an officer made a warrantless entry into a home while pursuing a suspect on foot.<sup>269</sup> Noting that the community caretaking exception is unique because it requires courts to examine the function an officer is performing,<sup>270</sup> the *Matalon* court found the officer was engaging in "a quintessential criminal investigation activity" so her conduct fell "far beyond the borders" of the community caretaking exception, and she was not entitled to qualified immunity.<sup>271</sup>

### 4. The Second Circuit—*Harris v. O'Hare*<sup>272</sup>

In *Harris v. O'Hare*, officers searched the curtilage of a home and shot the family dog in response to an uncorroborated tip from a recently arrested gang member that two guns were being stored under the seat of a car in Harris's backyard.<sup>273</sup> In the subsequent section 1983

---

264. 745 F.3d 8 (1st Cir. 2014).

265. *Id.* at 10–11, 13–15 (discussing relevant case law from California, Maryland, Massachusetts, New Jersey, Oregon, South Dakota, Virginia, and Wisconsin).

266. *Id.* at 15.

267. *See Matalon v. Hynnes*, 806 F.3d 627, 635–36 (1st Cir. 2015).

268. 806 F.3d 627 (1st Cir. 2015).

269. *Id.* at 631–32.

270. *Id.* at 634 (quoting *Hunsberger v. Wood*, 570 F.3d 546, 554 (4th Cir. 2009)).

271. *Id.* at 635–36.

272. 770 F.3d 224 (2d Cir. 2014).

273. *Id.* at 227–28.

action, the officers claimed their entry into the fenced yard was not a Fourth Amendment violation because the exigent circumstances exception applied, and they were entitled to qualified immunity.<sup>274</sup> The *O'Hare* court discussed exigent circumstances at length before stating plainly, “prior doctrine makes it abundantly clear that the mere presence of a firearm does not, on its own, create the urgency necessary for exigent circumstances”<sup>275</sup> and, thus qualified immunity did not apply.<sup>276</sup> The officers requested a community caretaking affirmative defense, but the jury was not given a community caretaking instruction, and the court stated in a footnote that the community caretaking exception would not apply given these facts.<sup>277</sup>

#### D. Selected State Cases

##### 1. Michigan—*People v. Davis*<sup>278</sup>

Two officers responded to a radio call that there were shots fired at a motel in room thirty-three or thirty-four.<sup>279</sup> When they arrived, the officers went directly to the rooms without speaking to the manager.<sup>280</sup> The officers reached room thirty-three first and knocked and announced with their weapons drawn.<sup>281</sup> Davis peeked through the window and saw the officers but did not open the door despite repeated knocking, which made the officers suspicious.<sup>282</sup> After several minutes, Davis opened the door, and the officers stepped inside where they saw a gun and drugs.<sup>283</sup> The police found no injured persons and no indication shots were fired; they did not search room thirty-four.<sup>284</sup>

---

274. *Id.* at 228–29.

275. *Id.* at 239.

276. *Id.* at 233–39.

277. *Id.* at 229–30, 239 n.10 (“Defendants’ argument that the officers could have reasonably believed that their conconduct [sic] was lawful pursuant to the community caretaking doctrine is similarly without merit. While legal ambiguity as to the reach of a doctrine favors qualified immunity, Defendants point us to nothing in the community caretaking jurisprudence that might imply this exception to the warrant requirement would apply to facts at all analogous to the warrantless entry of enclosed residential property at issue here.”).

278. 497 N.W.2d 910 (Mich. 1993).

279. *Id.* at 911.

280. *Id.*

281. *Id.*

282. *Id.*

283. *Id.* at 911–12.

284. *Id.* at 912.

The *Davis* court distinguished the emergency aid and community caretaking exceptions from exigent circumstances, noting when police act pursuant to the exigent circumstances exception they are “searching for evidence or perpetrators of a crime” and must have probable cause to search, but when police are acting as community caretakers they are “not engaged in crime-solving activities.”<sup>285</sup> Noting that “administering emergency aid” is just one of many community caretaking functions, the court held “when the police are investigating a situation in which they reasonably believe someone is in need of immediate aid, their actions should be governed by the emergency aid doctrine, regardless of whether these actions can also be classified as community caretaking activities.”<sup>286</sup>

A warrantless entry for the purposes of rendering aid requires officers to have specific and articulable facts leading them to the conclusion a person within needs immediate aid, and the officers here did not have the requisite specific and articulable facts to justify a warrantless entry.<sup>287</sup> *Davis* is notable because while the court ultimately decides using the emergency aid doctrine, it is often cited by courts deciding community caretaking claims.<sup>288</sup>

## 2. California—*People v. Ray*<sup>289</sup>; *People v. Ovieda*<sup>290</sup>

In 1999, the California Supreme Court determined that the community caretaking exception permitted entry into homes in “circumstances short of a perceived emergency,”<sup>291</sup> a position it reversed twenty years later.<sup>292</sup>

---

285. *Id.* at 920.

286. *Id.* at 920–21. This holding leaves open the question of whether the community caretaking exception applies to residences when the circumstances are not sufficiently immediate for the emergency aid doctrine to apply.

287. *Id.* at 921–22.

288. *E.g.*, *Matalon v. Hynnes*, 806 F.3d 627, 634–35 (1st Cir. 2015); *People v. Ray*, 981 P.2d 928, 933 (Cal. 1999), *abrogated by* *People v. Ovieda*, 446 P.3d 262 (Cal. 2019); *State v. Deneui*, 775 N.W.2d 221, 230 (S.D. 2009); *State v. Pinkard*, 785 N.W.2d 592, 601 (Wis. 2010).

289. 981 P.2d 928 (Cal. 1999), *abrogated by* *People v. Ovieda*, 446 P.3d 262 (Cal. 2019).

290. 446 P.3d 262 (Cal. 2019).

291. *Ray*, 981 P.2d at 934 (“Under the community caretaking exception, circumstances short of a perceived emergency may justify a warrantless entry, including the protection of property, as ‘where the police reasonably believe that the premises have recently been or are being burglarized.’” (quoting WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 6.6(b) (3d ed. 1996))).

292. *See Ovieda*, 446 P.3d at 269 (“We begin our discussion with [*Ray*], where the lead opinion of this court recognized a *nonemergency* community caretaking exception permitting residential

In *Ray*, police responded to a call from a neighbor that a front door had been standing open all day and the interior was in shambles.<sup>293</sup> When no one answered their knocks or calls, the officers entered “to see if anyone inside might be injured, disabled, or unable to obtain help” and to determine if the home had been burglarized.<sup>294</sup> Inside, officers found cocaine and money in plain sight.<sup>295</sup> The officers left without touching anything and obtained a search warrant.<sup>296</sup>

Citing *Davis*, the *Ray* court discussed the differences between exigent circumstances and community caretaking and concluded that the emergency aid doctrine is not a subset of exigent circumstances, but a subset of community caretaking.<sup>297</sup> The *Ray* court then discussed the varied and important community caretaking functions the police engage in, such as checking on the “health, safety or welfare” of friends and loved ones.<sup>298</sup>

After noting that the emergency aid exception did not apply, the *Ray* court concluded, “Under the community caretaking exception, circumstances short of a perceived emergency may justify a warrantless entry, including the protection of property, as ‘where the police reasonably believe that the premises have recently been or are being burglarized.’”<sup>299</sup> Lastly, the court noted that officers entering a residence as community caretakers are limited to “achieving the objective which justified the entry” and may not search the premises for other purposes or act as community caretakers as a pretext for seeking evidence of a crime.<sup>300</sup>

Twenty years later, the California Supreme Court disapproved of *Ray* and held “entry for reasons short of a perceived emergency, or similar exigency” fails to satisfy the Fourth Amendment.<sup>301</sup> In *Ovieda*, when officers arrived in response to a call that Ovieda was suicidal

---

entry. For the reasons discussed below, we conclude no such exception exists and that the *Ray* lead opinion was wrong to create one.”).

293. *Ray*, 981 P.2d at 931.

294. *Id.* at 931–32.

295. *Id.* at 932.

296. *Id.*

297. *Id.* at 933 (citing *People v. Davis*, 497 N.W.2d 910, 920 (Mich. 1993)).

298. *Id.* at 934 (quoting *State v. Bridewell*, 759 P.2d 1054, 1060 n.1 (Or. 1988)).

299. *Id.* (quoting WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 6.6(b) (3d ed. 1996)).

300. *Id.* at 937. This portion of the opinion was not disapproved of by *Ovieda*.

301. *People v. Ovieda*, 446 P.3d 262, 266 (Cal. 2019).

and had a gun, one of the two friends with Ovieda came out and told officers he had disarmed Ovieda and put three guns in the garage.<sup>302</sup> The other friend eventually led Ovieda outside where he was placed in handcuffs and searched, after which two officers entered the home with guns drawn to conduct a protective sweep and make sure no one was inside and in need of aid.<sup>303</sup> Inside, the officers noticed a strong marijuana odor and saw marijuana growing equipment and ammunition.<sup>304</sup> The officers did not take Ovieda into custody for a mental health evaluation, which would have allowed them to obtain a warrant to seize Ovieda's firearms, but they called more officers to the scene and removed marijuana growing equipment, guns, and ammunition in large quantities.<sup>305</sup>

The *Ovieda* court noted that the emergency aid doctrine "is a well-recognized part of the exigent circumstances exception," and found the exigent circumstances exception did not apply here, given that no testimony demonstrated officers reasonably believed unknown persons or victims were in the house.<sup>306</sup> In fact, Ovieda's friend told officers the three had been the only ones in the house, and he disarmed Ovieda before Ovieda came outside and was restrained.<sup>307</sup>

The *Ovieda* court then began its analysis of the community caretaking exception with a lengthy review of *Ray* and other California precedent.<sup>308</sup> Importantly, the court noted that, other than the *Ovieda* opinion, there has been no published California case applying the community caretaking exception in a context other than the search of a vehicle since *Ray*.<sup>309</sup> The court then turned its discussion to U.S. Supreme Court precedent and discussed *Cady* and *Cady's* language regarding the difference between searches of homes and vehicles along with subsequent cases regarding inventory searches before concluding, "*Cady* and the other cases all involved searches of

---

302. *Id.*

303. *Id.*

304. *Id.*

305. *Id.* at 267, 273 (citing CAL. WELF. & INST. CODE § 5150(a) (West 2016); CAL. WELF. & INST. CODE § 5260 (West 2016); CAL. PENAL CODE § 1524(a)(10) (West 2020); CAL. WELF. & INST. CODE § 8102(a) (Deering 2016)).

306. *Id.* at 268–69, 272.

307. *Id.* at 269.

308. *Id.* at 269–73 (discussing *People v. Ray*, 981 P.2d 928, 931 (Cal. 1999); *People v. Hill*, 528 P.2d 1 (Cal. 1974); *People v. Roberts*, 303 P.2d 721 (Cal. 1956)).

309. *Id.* at 272.

vehicles in police custody. The caretaking function entailed only the securing of items in those vehicles.”<sup>310</sup> In overturning *Ray*, the *Ovieda* court did not conduct any Fourth Amendment balancing of interests, but like other courts, relied on *Cady’s* language regarding the difference between homes and vehicles.<sup>311</sup>

### 3. South Dakota—*State v. Deneui*<sup>312</sup>

A gas company worker was investigating reports of a leak when he came upon a house with a broken open gas meter and a strong odor.<sup>313</sup> Suspecting the residents were stealing gas, the worker contacted the police.<sup>314</sup> When police arrived, they noticed the doors were unlocked and “detected a faint odor of ammonia” so they knocked, but no one answered.<sup>315</sup> One of the officers opened the door and shouted inside, causing the odor to become stronger, but again no one answered, so officers decided to enter to ensure no one was incapacitated inside.<sup>316</sup> Inside, the officers saw evidence of a meth lab, but the fumes were so overwhelming the officers were unable to complete their search for incapacitated persons and required medical attention.<sup>317</sup>

The *Deneui* court first determined that the exigent circumstances exception did not apply because officers “did not enter the house in furtherance of a criminal investigation,” and exigent circumstances exception only applies when officers are acting in their crime investigation capacity.<sup>318</sup> The court then examined how other courts have discussed and applied several doctrines when police are not investigating crime: the emergency doctrine, the emergency aid doctrine, and the community caretaking doctrine.<sup>319</sup>

---

310. *Id.* at 273–74 (citing *Colorado v. Bertine*, 479 U.S. 367, 374–76 (1987); *South Dakota v. Opperman*, 428 U.S. 364, 367–76 (1976); *Cady v. Dombrowski*, 413 U.S. 433 (1973); *Cooper v. California*, 386 U.S. 58, 60–62 (1967)).

311. See discussion of *Pichany* and *Erickson* decisions *supra* at Sections III.A.1 and III.A.2.

312. 775 N.W.2d 221 (S.D. 2009).

313. *Id.* at 226–27.

314. *Id.* at 227.

315. *Id.*

316. *Id.* at 227–28.

317. *Id.* at 228.

318. *Id.* at 230–31 (citing *United States v. Quezada*, 448 F.3d 1005, 1007 (8th Cir. 2006)).

319. *Id.* at 232–41.



After reviewing *Cady*, the *Deneui* court noted the only previous community caretaking decision in the jurisdiction involved a vehicle and “the present case pose[d] a significant expansion of the community caretaker doctrine.”<sup>320</sup> Several jurisdictions have relied on *Cady*’s discussion of the differences between vehicles and homes and declined to extend the community caretaking exception to homes.<sup>321</sup> The court then noted the jurisdictions that have extended the community caretaking exception to homes have applied it inconsistently, in ways that include creating various tests or using the test for the emergency aid doctrine.<sup>322</sup>

After its review of the relevant caselaw, the *Deneui* court concluded that although “[m]erely invoking a community caretaking purpose” does not legitimize pretextual criminal searches, “homes cannot be arbitrarily isolated from the community caretaking equation.”<sup>323</sup> Though the constitutional difference between vehicles and homes “counsels a cautious approach,” the government’s “need to protect and preserve life or avoid serious injury cannot be limited to automobiles.”<sup>324</sup> While stating the rule as objectively reasonable under the totality of the circumstances, the *Deneui* court opined “the officer should be able to articulate specific facts that, taken with rational inferences, reasonably warrant the intrusion.”<sup>325</sup>

When the court turned its focus to the application of the exception, it noted a key question in determining if the exception applied—whether or not “the officers would have been derelict in their duty had they acted otherwise,”<sup>326</sup> before finding that given the totality of the circumstances “under the standard of objective reasonableness” the officers’ warrantless entry under the community caretaking exception was valid.<sup>327</sup>

---

320. *Id.* at 235–36.

321. *Id.* at 236 (collecting cases).

322. *Id.* at 236–39.

323. *Id.* at 239.

324. *Id.*

325. *Id.* at 230, 239, 244.

326. *Id.* at 239 (quoting *State v. Hetzko*, 283 So. 2d 49, 52 (Fla. Dist. Ct. App. 1973)).

327. *Id.* at 244.

4. Wisconsin—*State v. Pinkard*<sup>328</sup>

Police responded to an anonymous tip that the door to Pinkard’s residence was open and two people appeared to be sleeping next to cocaine and money.<sup>329</sup> After no one responded to the officers’ knocking and announcing through the open door, the officers entered to make sure the occupants were not victims of a crime or injured, and to safeguard life and property in the residence.<sup>330</sup> Once they had shaken Pinkard awake, the officers arrested him and seized the cocaine and marijuana that was in plain view and a gun that was under the mattress.<sup>331</sup>

The *Pinkard* court acknowledged *Cady*’s statement regarding the constitutional difference between houses and cars, but noting that there was no language in *Cady* or *Opperman* that limited community caretaking to vehicles, concluded that *Cady* counsels “a cautious approach” when applying the community caretaking exception to homes.<sup>332</sup> After a discussion of precedent, the court stated Wisconsin’s three-part test to determine if a search falls within the community caretaking exception:

- (1) whether a search or seizure within the meaning of the Fourth Amendment has occurred;
- (2) if so, whether the police were exercising a bona fide community caretaker function; and
- (3) if so, whether the public interest outweighs the intrusion upon the privacy of the individual such that the community caretaker function was reasonably exercised within the context of a home.<sup>333</sup>

The third step of the test, the balancing of public and private interests, has a four-factor analysis:

- (1) the exigency of the situation and degree of public interest;

---

328. 785 N.W.2d 592 (Wis. 2010).

329. *Id.* at 594–95.

330. *Id.* at 595.

331. *Id.* The Wisconsin circuit court suppressed the gun on the grounds that the search under the mattress exceeded the “reasonable exercise of the officers’ community caretaker function.” *Id.* at 596. The government did not appeal the suppression. *Id.*

332. *Id.* at 598 (quoting *Deneui*, 775 N.W.2d at 239) (discussing *Cady v. Dombrowski*, 413 U.S. 433 (1973) and *South Dakota v. Opperman*, 428 U.S. 364 (1976)).

333. *Id.* at 601. Importantly, the court also noted that the community caretaking exception would not apply in all instances in which officers are executing a community caretaking function. *Id.* at 598.

- (2) the circumstances of the search including the “time, location, the degree of overt authority and force displayed”;
- (3) whether a vehicle was involved; and
- (4) “the availability, feasibility and effectiveness of alternatives to the type of intrusion actually accomplished.”<sup>334</sup>

In analyzing the first two steps, the *Pinkard* court found a search occurred and, although this was a close case, given that officers can have “subjective law enforcement concerns”<sup>335</sup> while engaging in community caretaking functions, and it was reasonable to infer that Pinkard or his companion may have overdosed, the officers engaged in a bona fide community caretaking function when they entered Pinkard’s residence.<sup>336</sup>

The third step determines the reasonableness of the officers’ actions through balancing the government and private interests.<sup>337</sup> In weighing the factors, the court first noted the substantial public interest in ensuring the safety and well-being of citizens and the considerable exigency in situations where someone may have overdosed on drugs or been the victim of a crime.<sup>338</sup> Second, the court found the scope and circumstances of the entry reasonable.<sup>339</sup> It was reasonable for the officers to enter only half a minute after announcing due to the infeasibility of alternatives, such as attempting to telephone the residence, given the urgency of a potential drug overdose.<sup>340</sup> The *Pinkard* court found that three of the four factors in step three—all but factor (3), the search was of a residence, not a vehicle—weighed in favor of reasonable execution so the entry was valid under the community caretaking exception.<sup>341</sup>

---

334. *Id.* at 605 (quoting *State v. Kramer*, 759 N.W.2d 598, 611 (Wis. 2009)).

335. *Id.* at 604.

336. *Id.* at 603–06.

337. *Id.* at 605.

338. *Id.* at 606.

339. *Id.* at 607–08.

340. *Id.* The court also stated the principles of reasonableness demand to ask if the officers would have been derelict had they not entered. *Id.* at 608 (quoting *State v. Deneui*, 775 N.W.2d 221, 239 (S.D. 2009)).

341. *Id.* at 608.

#### IV. POTENTIAL SOLUTIONS

There are four broad possible solutions to the problem of whether or not, or when, police should be able to make a warrantless entry into a residence while acting as community caretakers. There are benefits and drawbacks to each, however the best solution requires balancing our constitutional rights with “the practical necessity of crucial community caretaking functions” in a test that is possible for courts to apply and for law enforcement officers to understand when they are on a scene determining whether they should enter a residence.<sup>342</sup>

##### *A. Restrict the Community Caretaking Exception to Vehicles*

The first possible solution is to restrict the community caretaking exception to vehicles as the Third, Seventh, Ninth, and Tenth Circuits have done.<sup>343</sup> One of the benefits of this solution is maintaining the sanctity of the home against government intrusion. However, such a solution would impact the cases where there is a valid government interest in protecting or aiding a citizen where the circumstances may not rise to the level of an objectively reasonable belief that an occupant is seriously injured or in imminent danger of serious injury.<sup>344</sup> It is reasonable for the public to still expect police to act as community caretakers in these situations, particularly when they have called the police for help.<sup>345</sup> For example, if community caretaking entry is not possible, the police in *York* would not have been able to assist Bill and his children re-enter the residence to gather their belongings and move out because the imminent threat of injury dissipated when all of the children exited the residence uninjured.<sup>346</sup>

##### *B. Suspend Plain View During Community Caretaking Entries*

One author has suggested that the community caretaking exception should extend to homes, but that courts should suspend plain view during community caretaking entries and require officers to obtain a warrant based on separate probable cause before they are

---

342. Goreczny, *supra* note 11, at 246.

343. *See supra* note 47; *supra* discussion of Section III.A.

344. *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006).

345. Goreczny, *supra* note 11, at 253.

346. *See supra* discussion of Section III.B.1.

able to seize items.<sup>347</sup> While this might discourage pretextual entries, there are two major problems with this solution.

The first is that once police believe an individual is guilty of a crime or crimes they will likely follow, monitor, or perhaps even harass, that individual until they are able to develop sufficient probable cause for a warrant. Not only might this be a waste of valuable and scant police resources, this is no better for society than allowing community caretaking entries under specified criteria and allowing for the plain view seizure of contraband or evidence. In fact, the resulting erosion of public trust where police enter a residence to assist the resident(s) and then subsequently investigate the resident(s) in hopes of developing probable cause for a warrant may be even more detrimental to community-police relations.

The second problem is that once residents are aware law enforcement has seen their contraband or incriminating evidence, they will simply remove or destroy it. Then, even if law enforcement returns with a valid warrant, a search will turn up nothing and the contraband is still loose in society. Fox responds to this criticism by noting that courts could allow the evidence or contraband to be seized at the time of the community caretaking entry and require law enforcement to demonstrate separate probable cause in order to admit the evidence at trial.<sup>348</sup> This, unfortunately, has the same drawbacks as the first flaw in this solution; once police believe an individual is guilty of a crime, they will be apt to follow them, or harass them, until they develop separate probable cause for a warrant, deterring citizens from calling the police for help when they need it and breaking down the community's trust in police. Just as society never wants people who have called the police for help to fear the police cannot help because they need a warrant, we also do not want people to be afraid to call for help when they need it because they fear subsequent police investigation.<sup>349</sup>

---

347. Fox, *supra* note 96, at 424, 429.

348. *Id.* at 430.

349. *People v. Ray*, 981 P.2d 928, 933 (Cal. 1999), *abrogated by* *People v. Ovieda*, 446 P.3d 262 (Cal. 2019); *State v. Pinkard*, 785 N.W.2d 592, 603 (Wis. 2010).

*C. Have Fire Departments Conduct  
Welfare Checks Instead of Police*

Another potential solution is to allow warrantless community caretaking entries, but only when performed by fire departments instead of law enforcement agencies. Benefits of this solution include firefighters' lack of authority to arrest or seize evidence or contraband in plain view and firefighters' skill to perform medical treatment, as most modern firefighters are emergency medical technicians or paramedics so individuals who need medical attention will be treated promptly.<sup>350</sup>

Potential drawbacks to this solution include firefighters' inability to defend themselves if there is a crime in progress or in a situation with a potentially violent resident, such as in *York* or *Township of Warren*.<sup>351</sup> In those cases, firefighters may have to call for police to accompany them while making entry which defeats the purpose of this solution. Additionally, sometimes police will already be present when it becomes clear a community caretaking entry should be made. For example, in *Hunsberger*, police were responding to a second call about potential vandalism when they learned a minor was missing and might be in the house.<sup>352</sup> It would not make sense in those circumstances for police to call the fire department and wait for responders before making entry and ascertaining the whereabouts and safety of a minor.

Another drawback is the same as in the suspension of plain view proposal. Fire department personnel may simply report what they witnessed in residences to police, which would provide the probable cause necessary for police to obtain warrants. While this might prevent police from expending resources following an individual in order to develop probable cause, the time delay would allow for the removal or destruction of evidence or contraband, and this would cause citizens not to trust the fire department.

---

350. Steve Prziborowski, *Becoming a Firefighter: 10 Must-Do Things*, FIRE RESCUE 1 (Mar. 14, 2020), <https://www.firerescue1.com/career-1/articles/becoming-a-firefighter-10-must-do-things-wmOqMRqBfrm8Jflg/>; see also Daniel Goldstein, *10 Things Firefighters and Paramedics Won't Tell You*, MARKETWATCH (Dec. 30, 2015, 11:02 AM), <https://www.marketwatch.com/story/10-things-firefighters-and-paramedics-wont-tell-you-2014-08-22> (“Budget pressures are leaving many fire departments and paramedic fleets understaffed. In many cities, some first responders, especially dual-role firefighter-paramedics, have been required to do mandatory overtime as a result of short-staffing.”).

351. See *Ray v. Twp. of Warren*, 626 F.3d 170, 171 (3d Cir. 2010); *United States v. York*, 895 F.2d 1026, 1027–28 (5th Cir. 1990).

352. See *Hunsberger v. Wood*, 570 F.3d 546, 550–51 (4th Cir. 2009).

#### D. Implement a Workable Test Based on Pinkard

A workable test is the best solution because it is able to balance the interests of the government and citizens along with providing clear guidance to law enforcement. A clear standard will allow police to justify both decisions to enter and decisions not to enter in the way communities can understand. This has the benefit of strengthening community-police relations because people expect police both to perform community caretaking functions and not to enter their homes without a warrant. A clear standard will help police actions be consistent across communities and help engender trust that the police will help and will not use their community caretaking functions to run roughshod over citizens' constitutional rights.

Some authors have suggested using or modifying existing tests.<sup>353</sup> For example, Moss recommends a test similar to the modified *Pinkard* test proposed here.<sup>354</sup> Moss proposes adopting the three-step *Pinkard* test without modification and without the inclusion of the factors *Pinkard* includes in step three.<sup>355</sup> Moss's recommendation is on the right track but falls short of a workable solution for two reasons. First, it allows for the determination of a bona fide community caretaking action in *Pinkard* step two to be subjective by failing to specify objective criteria for making the determination.<sup>356</sup> Second, the non-inclusion of the *Pinkard* factors as a subtest in step three leaves courts no formula or guidelines for balancing the interests of the public against those of the private citizen. This Note's proposed modified *Pinkard* test resolves both.

---

353. *E.g.*, Goreczny, *supra* note 11, at 250 (proposing a test modified from *People v. Mitchell*, 347 N.E.2d 607, 609 (N.Y. 1976), *abrogated by* *Brigham City v. Stuart*, 547 U.S. 398 (2006): "(1) The police must have reasonable grounds to believe that there is . . . [a community caretaking situation] at hand and . . . [a] need for their assistance for the protection of life or property. (2) The search must not be primarily motivated by intent to arrest and seize evidence. (3) There must be some reasonable basis, approximating probable cause, to associate the . . . [community caretaking situation] with the area or place to be searched" (alteration in original)). The main problem with this test is the inclusion of an analysis of the officer's subjective intent, which the Supreme Court has stated is irrelevant in Fourth Amendment analysis. *See Stuart*, 547 U.S. at 404–05; *Whren v. United States*, 517 U.S. 806, 813–14 (1996).

354. *See* Moss, *supra* note 43, at 24.

355. *Id.* (citing to earlier Wisconsin precedent, *State v. Anderson*, 417 N.W.2d 411, 412 (Wis. Ct. App. 1987), and noting the factors considered in *Pinkard* step three as "significant considerations which include" the listed factors); *see also* *State v. Pinkard*, 785 N.W.2d 592, 601, 605 (Wis. 2010).

356. *See* Moss, *supra* note 43, at 24.

### 1. Proposed Modified *Pinkard* Test

Under the proposed modified *Pinkard* test, in order for a warrantless entry to properly fall within the scope of the community caretaking exception to the Fourth Amendment's warrant requirement, a court must find:

- (1) law enforcement was executing a bona fide community caretaking function and had an objectively reasonable belief based on specific and articulable facts that performing the function was necessary;
- (2) the public interest outweighs the intrusion upon the privacy of the individual such that the community caretaker function was reasonably exercised within the context of a home given the following:
  - (2)(a) the degree of the public interest and the exigency of the situation;
  - (2)(b) the attendant circumstances surrounding the search, including the time, location, scope, and degree of overt authority and force displayed;
  - (2)(c) the availability, feasibility, and effectiveness of alternatives to the type of intrusion actually accomplished.

This test makes four modifications to the *Pinkard* test. First, this test removes *Pinkard's* first step, the determination that a search took place, because a warrantless law enforcement entry into a residence is a search.<sup>357</sup>

Second, this test includes a requirement that law enforcement have an objectively reasonable belief that the performance of a community caretaking function is necessary. As the Supreme Court has stated numerous times, an officer's subjective motivation has no place in Fourth Amendment analysis.<sup>358</sup> Requiring specific and articulable facts in order for an action to be reasonable has the benefit of being a standard police are already familiar with. For example, it is already the standard for Terry stops and protective sweeps.<sup>359</sup> Further,

---

357. *Pinkard*, 785 N.W.2d at 602; see also *Payton v. New York*, 445 U.S. 573, 585 (1980) (“[The] physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.” (quoting *United States v. U.S. Dist. Court for the E. Dist. of Mich.*, 407 U.S. 297, 313 (1972))).

358. *E.g., Stuart*, 547 U.S. at 404–05; *Whren*, 517 U.S. at 813–14.

359. See *Maryland v. Buie*, 494 U.S. 325, 327 (1990) (protective sweeps); *Terry v. Ohio*, 392 U.S. 1, 21 (1968) (Terry stops). This is the current requirement in the Eighth Circuit. See *United*



this requirement precludes officers from making subjective pretextual claims, such as that in *Matalon*.<sup>360</sup>

Third, this test specifically adds the scope of the search to factor (2)(b). While the time, location, and show of force are important factors and should all be considered, the scope of the search is equally important.<sup>361</sup> The scope of every search “must be ‘strictly tied to and justified by’ the circumstances which rendered its initiation permissible.”<sup>362</sup> If officers exceed the scope of their community caretaking function, such as by opening drawers or cupboards while looking for incapacitated persons, their search is no longer reasonable and the individual’s constitutional interests will outweigh the public interest.

Fourth, this test eliminates one of the step three factors: the involvement of a vehicle. The test applies to homes so the consideration of the involvement of a vehicle is unnecessary.<sup>363</sup>

In short, the modified *Pinkard* test first determines that police were acting as community caretakers and then conducts the usual Fourth Amendment balancing in order to find that police actions were reasonable because under the circumstances the public interest outweighed the private interest. The primary benefits of the proposed test include allowing police to act as community caretakers in the way the public desires, standardizing community caretaking across jurisdictions, creating a standard police can understand and follow,

---

States v. Smith, 820 F.3d 356, 360 (8th Cir. 2016). Additionally, this requirement was discussed by several state courts in the community caretaking context. *E.g.*, *People v. Ovieda*, 446 P.3d 262, 269 (Cal. 2019); *People v. Ray*, 981 P.2d 928, 937 (Cal. 1999), *abrogated by* *People v. Ovieda*, 446 P.3d 262 (Cal. 2019); *Wilson v. State*, 975 A.2d 877, 891 (Md. 2009); *People v. Davis*, 497 N.W.2d 910, 921 (Mich. 1993); *State v. Deneui*, 775 N.W.2d 221, 235 (S.D. 2009).

360. *See Matalon v. Hynes*, 806 F.3d 627, 631–32, 636 (1st Cir. 2015). In *Matalon* an officer chasing a suspect was not performing a bona fide community caretaking activity, as she had no reasonable belief community caretaking was necessary. *Id.*

361. *Terry*, 392 U.S. at 28–29 (“The manner in which the seizure and search were conducted is, of course, as vital a part of the inquiry as whether they were warranted at all.”).

362. *Id.* at 19 (quoting *Warden, Md. Penitentiary v. Hayden*, 387 U.S. 294, 310 (1967)).

363. The modified *Pinkard* test leaves in the final factor which considers the availability, feasibility, and effectiveness of alternatives to the type of searches performed. Though several courts have expressed the opinion that alternatives do not have to be exhausted for police action to be reasonable, *e.g.*, *United States v. Rohrig*, 98 F.3d 1506, 1524 (6th Cir. 1996) (“we emphatically reject the notion that a warrantless entry is permissible only when all conceivable alternatives have been exhausted”), these are factors, not elements, and the presence of viable alternatives bears considerably on the reasonableness of the officers’ actions and should remain a part of the balancing.

and preserving the Fourth Amendment guarantee of security in one's home.

## 2. The Proposed Modified *Pinkard* Test and Law Enforcement

One of the most important benefits of the modified *Pinkard* test is that it provides a standard police can follow on the scene when determining if making a warrantless entry while acting as community caretakers is reasonable. Not only are police already familiar with the specific and articulable facts standard,<sup>364</sup> but police are also already familiar with the other factors involved in the step two determination that their actions were reasonable because under the circumstances the public interest outweighed the private one. Police regularly determine the exigencies of a situation and have already determined there is a community caretaking interest in step one. Further, police are already familiar with the rules regarding the timing of searches, use of force, and the ways in which the scope of a search is restricted.<sup>365</sup> Lastly, police are already familiar with alternatives to a warrantless search and with methods for locating persons short of entering when possible. Because the modified *Pinkard* test provides guidelines police can follow—would a reasonable officer believe the community caretaking action is necessary? to what extent is the situation exigent? what is a reasonable scope for any entry? are there feasible alternatives to a warrantless entry?—the test is the best solution that allows police to act as community caretakers in the ways the public expects them to and protects people “without overburdening the police” as well as “preserv[ing] and protect[ing] the guarantees of the Fourth Amendment.”<sup>366</sup>

## V. APPLICATION OF PROPOSED MODIFIED *PINKARD* TEST

It is important to note, the modified *Pinkard* test does not substantively change the results of many of the cases that comprise the current case law. In several cases, the courts performed balancing tests

---

364. See *supra* note 327.

365. E.g., *Maryland v. Buie*, 494 U.S. 325, 327 (1990) (restricting scope of protective sweeps to places a person could hide); *Chimel v. California*, 395 U.S. 752, 762–63 (1969) (limiting area police can search incident to arrest); *Terry*, 392 U.S. at 29 (restricting scope of pat down to intrusion reasonably designed to discover sealed weapons).

366. *Coolidge v. New Hampshire*, 403 U.S. 443, 484 (1971).

and came to the same results the modified *Pinkard* test would.<sup>367</sup> In others, even though the courts applied different logic, or relied entirely on the language in *Cady* discussing the constitutional difference between vehicles and homes, the police action was such that the same outcome results.<sup>368</sup>

#### A. Modified Pinkard Test Outcomes Chart

The chart below compares the original holding with the likely outcomes of each of the cases considered in this Note under the modified *Pinkard* test.

	<b>Original Holding</b>	<b>Result Under Proposed Modified <i>Pinkard</i> Test</b>
1982 – 7th Cir. (Pichany) <sup>369</sup>	Home Entry Unconstitutional	Home Entry Unconstitutional
1993 – 9th Cir. (Erickson)	Home Entry Unconstitutional	Home Entry Unconstitutional
1994 – 10th Cir. (Bute)	Home Entry Unconstitutional	Home Entry Unconstitutional
2010 – 3d Cir. (Township of Warren)	Home Entry Unconstitutional	Home Entry Constitutional
1990 – 5th Cir. (York)	Home Entry Constitutional	Home Entry Constitutional
1996 – 6th Cir. (Rohrig)	Home Entry Constitutional	Home Entry Constitutional
2006 – 8th Cir. (Quezada)	Home Entry Constitutional	Home Entry Constitutional
2016 – 8th Cir. (Smith)	Home Entry Constitutional	Home Entry Constitutional

367. *E.g.*, United States v. Harris, 747 F.3d 1013, 1017 (8th Cir. 2014); *Rohrig*, 98 F.3d at 1518; State v. Pinkard, 785 N.W.2d 592, 601 (Wis. 2010).

368. *E.g.*, United States v. Bute, 43 F.3d 531, 534–35 (10th Cir. 1994); United States v. Erickson, 991 F.2d 529, 532 (9th Cir. 1993); United States v. Pichany, 687 F.2d 204, 205 (7th Cir. 1982); People v. Ovieda, 446 P.3d 262, 265 (Cal. 2019).

369. *Pichany* and *Bute* both involve warrantless entries into warehouses, and although both fail step two of the modified *Pinkard* test, they will not be discussed further. See *Bute*, 43 F.3d at 531; *Pichany*, 687 F.2d at 204.

2005 – 11th Cir. (McGough)	No Decision	Home Entry Unconstitutional
2009 – 4th Cir. (Hunsberger)	No Decision	Home Entry Constitutional
2014 – 1st Cir. (McDonald)	No Decision	Home Entry Unconstitutional
2014 – 2d Cir. (O’Hare)	No Decision	Home Entry Unconstitutional
1993 – MI (Davis)	No Decision	Home Entry Unconstitutional
1999 – CA (Ray)	Home Entry Constitutional	Home Entry Unconstitutional
2019 – CA (Ovieda)	Home Entry Unconstitutional	Home Entry Unconstitutional
2009 – SD (Deneui)	Home Entry Constitutional	Home Entry Constitutional
2010 – WI (Pinkard)	Home Entry Constitutional	Home Entry Constitutional

### B. Relevant Case Law Analysis Using Modified Pinkard Test

The following section explores the three cases where the application of the modified *Pinkard* test instead of the test used by the deciding court changes the outcome (*Ray*, *Township of Warren*, *Hunsberger*<sup>370</sup>), the case in which the outcome is the same but the logic is substantially different (*York*), and the outcomes of the cases where the original court did not decide on the basis of the community caretaking exception, but the modified *Pinkard* test would prohibit warrantless entry.

#### 1. Warrantless Entry Improper Under the Modified *Pinkard* Test: *Ray*

*Ray* is the only case considered where application of the modified *Pinkard* test in lieu of the test the court used would reverse a holding to find that warrantless entry under the community caretaking exception was barred. This is of particular importance because the

---

370. The *Hunsberger* court decided using exigent circumstances, not community caretaking, exception, however the case is included in the first group because under the modified *Pinkard* test entry was proper. See *Hunsberger v. Wood*, 570 F.3d 546, 554 (4th Cir. 2009).

California Supreme Court recently abrogated *Ray*'s finding that circumstances short of an emergency justify a warrantless entry.<sup>371</sup>

In *Ray*, the police were undertaking a bona fide community caretaking activity,<sup>372</sup> so step one of the modified *Pinkard* test is satisfied.<sup>373</sup> However, the public interest did not outweigh the private interest, so the officer's actions do not meet step two, and the entry was not reasonable. First, while investigating a burglary is a valid community caretaking interest, it is not as strong as the interest in protecting human life or well-being. Additionally, there was no apparent exigency: the neighbor who made the report stated the door had been standing open all day, so the actions were unreasonable under factor (2)(a).<sup>374</sup> Second, the officers knocked and announced, waited before entering, and did not open, touch, or seize anything, which is reasonable.<sup>375</sup> However, some courts may find the fact that it took seven-eight minutes to search an apartment for potential victims without opening interior doors to be an unreasonably long search.<sup>376</sup> Lastly, the officers had several feasible alternatives available to them, such as calling the residence, calling the occupants' cell phones, and speaking to other neighbors to attempt to determine if occupants were home before making entry. Although the *Ray* court found the officer's actions reasonable, under the modified *Pinkard* test, warrantless entry of the police as community caretakers would not be proper unless the police exhausted their reasonable alternatives or had more information that made it reasonable for them to believe an occupant was inside in need of aid.

---

371. See *Ovieda*, 446 P.3d at 265; *People v. Ray*, 981 P.2d 928, 931 (Cal. 1999), abrogated by *People v. Ovieda*, 446 P.3d 262 (Cal. 2019). See *supra* discussion of Section III.D.2.

372. See *Erickson*, 991 F.2d at 531 (discussing the investigation of a potential burglary is a valid community caretaking interest).

373. See *id.* ("Investigating reports of burglaries undoubtedly qualifies as one of these community caretaking functions."); *Ray*, 981 P.2d at 931–32 (discussing police's belief the house had been burglarized once they saw the mess inside).

374. *Ray*, 981 P.2d at 931.

375. *Id.* at 938.

376. *Id.*

## 2. Warrantless Entry Proper Under Modified *Pinkard* Test

### a. *Ray v. Township of Warren*

In *Township of Warren*, the Third Circuit held that the community caretaking exception did not extend to homes; however, under the modified *Pinkard* test, the entry in *Township of Warren* was reasonable.<sup>377</sup> The officers were engaged in a bona fide community caretaking function, ensuring the safety and well-being of a minor, and had specific and articulable facts demonstrating that community caretaking was necessary, including a prior history with Mr. Ray.<sup>378</sup> The government has a high degree of interest in ensuring the safety of minors, and it was reasonable for the officers to infer the situation was exigent given that Mr. Ray had previously always turned over the child when police responded, so the officers' actions were reasonable under the factor two of the first step.<sup>379</sup> The timing and scope of the officers' search was also reasonable. The officers knocked and announced multiple times, circled the house to knock on all of the windows, called the home telephone and called and spoke with a judge before entering through an unlocked door and "quickly looking through" the home to locate the child.<sup>380</sup> The officers also exhausted all of the feasible alternatives such as calling and waiting several minutes before making entry.<sup>381</sup> The officers' actions were reasonable under all three of the modified *Pinkard* step two factors, therefore the public interest in ensuring the safety of the minor outweighed Mr. Ray's individual interest and the entry was reasonable.

### b. *Hunsberger v. Wood*

The Fourth Circuit declined to rule on the applicability of the community caretaking exception to homes, deciding instead that the entry was valid under the exigent circumstances exception.<sup>382</sup> However, exigent circumstances apply when officers are engaged in their criminal capacity, not their community caretaking capacity.<sup>383</sup>

---

377. See *Ray v. Twp. of Warren*, 626 F.3d 170, 176 (3d Cir. 2010).

378. *Id.* at 172–73.

379. *Id.* at 172.

380. *Id.* at 172–73.

381. *Id.* at 172.

382. *Hunsberger v. Wood*, 570 F.3d 546, 554 (4th Cir. 2009).

383. *People v. Davis*, 497 N.W.2d 910, 920 (Mich. 1993).

Under the modified *Pinkard* test, the officer's entry to search for the missing minor, NW, was reasonable. First, the officer had an objectively reasonable belief based on specific and articulable facts that he needed to perform a community caretaking function by attempting to locate NW.<sup>384</sup>

Second, all three balancing factors tend to indicate the officer's actions were reasonable, and the public interest in ascertaining the location and well-being of a minor outweighed the private interest in being free from unreasonable government intrusion. The public has a strong interest in locating a missing minor and while there is always exigency involved when searching for minors, in this case that exigency was increased by the appearance of NW's car at the Hunsberger's home between the officer's first and second response to the home.<sup>385</sup> Also adding to the need for exigency was the fact that the officer knocked and announced and rang the doorbell numerous times and no one responded, though the officer could see and hear that someone was inside.<sup>386</sup> While the officer made entry after midnight, before entering, he knocked and announced numerous times, returned to his vehicle, contacted dispatch and had the owners of the three vehicles partially blocking the road contacted, and waited.<sup>387</sup> After NW's stepfather arrived and told officers NW was missing, the officer knocked and announced several times again and called NW's cell phone before hearing a door shut and lock and items knocked over inside and deciding to make entry.<sup>388</sup> Inside, the officer announced himself again and then swept through the house looking for NW.<sup>389</sup> For the reasons discussed above, the officer exhausted all reasonable and feasible alternatives prior to entering the Hunsberger's residence to search for NW.

---

384. *Hunsberger*, 570 F.3d at 555.

385. *Id.* at 549–50.

386. *Id.* at 550–51.

387. *Id.* at 550.

388. *Id.* at 550–51.

389. *Id.* at 551. Of note, it is evident that the officer did not open interior and closet doors because though he swept the basement, he did not find NW who was, in fact, hiding in the basement. *Id.* at 552.

### 3. Warrantless Entry Proper Under Modified *Pinkard* Test but Reasoning Substantively Different: *York*

The *York* court found that no search occurred; however, an unwarranted entry into a home is a search.<sup>390</sup> However, under the modified *Pinkard* test, the warrantless community caretaking entry into York's residence was reasonable. First, the officers were performing a bona fide community caretaking function and had specific and articulable facts (that Bill reported threats, and he and two of his children were waiting upset outside) for them to reasonably believe performing the function of allowing Bill and his children to gather their belongings so they could vacate the premises was necessary.<sup>391</sup>

Second, applying the balancing factors, the government interest outweighed York's private interest such that the community caretaking function was reasonable. There is a valid government interest in protecting citizens from harm when they have been threatened. However, factor (2)(a) leans towards the private interest because there is no exigency in the retrieval of belongings. The circumstances and scope of the search were reasonable. The officers entered with Bill and waited in the foyer, without touching anything, until York came and engaged in belligerent shouting with the officers, then one officer followed York into the house to ensure York did not harm Bill or the children.<sup>392</sup> Lastly, the third factor also leans towards the government interest because there were no feasible alternatives that protected the interests of the potential victims. The police could have called York and requested he come outside but, given his drunken and belligerent state, his cooperation was unlikely and police would not have been able to get a warrant to remove York, so accompanying Bill and the children into the residence was the most reasonable and feasible action under the circumstances.<sup>393</sup>

---

390. See, e.g., *Payton v. New York*, 445 U.S. 573, 585 (1980) ("The physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed."); *United States v. York*, 895 F.2d 1026, 1030 (5th Cir. 1990); *State v. Pinkard*, 785 N.W.2d 592, 602 (Wis. 2010).

391. *York*, 895 F.2d at 1027–28.

392. *Id.*

393. *Id.*



#### 4. No Decision Cases Where Entry Is Unreasonable Under the Modified *Pinkard* Test

*McDonald*, *O'Hare*, *McGough*, and *Davis* have several things in common: the emergency aid doctrine did not apply, there was a relatively low degree of public interest and absence of exigency (factor (2)(a)), and there were feasible and effective alternatives (factor (2)(c)) the police did not avail themselves of before making entry.<sup>394</sup> For example, in *McGough*, there was little, if any, public interest and no exigency in ensuring a child had shoes before her aunt arrived to take custody of her.<sup>395</sup> All four of these cases fail step two of the modified *Pinkard* test because the low degree of public interest, lack of exigency, and availability of feasible alternatives lean so strongly in the favor of the private interest that the government interest did not outweigh the private interest and thus a warrantless community caretaking entry was unreasonable. Additionally, in *O'Hare*, there was arguably no bona fide community caretaking function, and the circumstances and scope of the search were patently unreasonable.<sup>396</sup>

### VI. CONCLUSION

In today's impersonal and fast paced modern society, people count on police to perform numerous and varied community caretaking functions. Because this expectation is reasonable and in tension with the Fourth Amendment guarantee to be secure from unreasonable government intrusion in our homes, a solution that balances those interests is needed. A legal standard, the modified *Pinkard* test, is the most practicable solution, as it provides clear guidelines for police that allow them to act as community caretakers when reasonable, especially when there may be a need to protect

---

394. See *Harris v. O'Hare*, 770 F.3d 224, 227–28 (2d Cir. 2014); *MacDonald v. Town of Eastham*, 745 F.3d 8, 10–11, 13–15 (1st Cir. 2014); *United States v. McGough*, 412 F.3d 1232, 1233–43, 1239 (11th Cir. 2005); *People v. Davis*, 497 N.W.2d 910, 911–12 (Mich. 1993). *Davis* is considered a no decision case because it was decided using the emergency aid doctrine. *Davis*, 497 N.W.2d at 920–22; see *supra* discussion of Sections III.C and III.D.1.

395. *McGough*, 412 F.3d at 1234.

396. *O'Hare*, 770 F.3d at 227–28. The officers in *O'Hare* did not knock or announce before going directly into the curtilage of a home with weapons drawn. An unverified tip there is a weapon does not create a public safety interest, as there may be no weapon or the weapon may be legal, nor does it create an exigency. The officers' only claim was that they were performing the same function as the officers in *Cady*; however, the officers in *Cady* had actual knowledge a weapon would be left in an unguarded tow yard if not recovered. See *Cady v. Dombrowski*, 413 U.S. 433, 436–37 (1973); see also *supra* discussion of Section III.C.4.

human life, but when the circumstances do not rise to the imminence required by the emergency aid doctrine, and simultaneously protects our Fourth Amendment guarantees.

