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Student Comment

***213 EXPANDING THE EMERGENCY AID DOCTRINE IN STATE V. FRANKEL: WARRANTLESS SEIZURE OF PRIVACY INTERESTS OR JUSTIFIABLE ASSURANCES OF PROTECTION?** [\[FNd1\]](#)

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I. Introduction

In *State v. Frankel*, a police officer made a warrantless search of the defendant's residence after responding to an open-line 9-1-1 call. [\[FN1\]](#) The Supreme Court of New Jersey addressed whether, under the "totality of the circumstances," such a warrantless search violated the defendant's rights under the Fourth Amendment. [\[FN2\]](#) The court established that, under the Emergency Aid Doctrine, a warrantless search of a home in response to an open-line 9-1-1 call did not (necessarily) violate the homeowner's Fourth Amendment right to freedom from government intrusion, absent a search warrant. [\[FN3\]](#) The court concluded that, despite the fact that there is no verbal indication of the nature of the emergency, an open-line 9-1-1 call "may fairly be" considered a "presumptive emergency." [\[FN4\]](#) Furthermore, the court held that, as long as the officer entered the residence for the primary purpose of rendering aid and restricted his search to areas where a person or body could be located, the warrantless entry into the house would not constitute a violation of the homeowner's Fourth Amendment rights. [\[FN5\]](#)

This Comment lays a framework for exploring the court's decision in *Frankel* by examining the development of the Emergency Aid Doctrine as an exception to the Fourth Amendment, within the context of Fourth ***214** Amendment jurisprudence. The Comment further discusses the New Jersey Supreme Court's application of the Emergency Aid Doctrine in *Frankel*, with a particular focus on how the court expanded the preexisting doctrine. Finally, the Comment examines how the doctrine has been interpreted and applied in other jurisdictions, noting briefly how the expansion of the doctrine by *Frankel* could impact the protection of the constitutional right to privacy.

II. Statement of the Case

On June 21, 1999, the police dispatch of Freehold, New Jersey received an emergency 9-1-1 call from the defendant's residence, but no one was on the other end of the line. [\[FN6\]](#) The operator called the defendant's number, but the line was busy. [\[FN7\]](#) In response, the operator dispatched Officer Gelber to the defendant's house, notifying him that she had received a 9-1-1 call from that address but was unable to make contact with the resident. [\[FN8\]](#)

When Gelber arrived at the defendant's residence, the defendant responded to the officer's knock by exposing his head from behind a sheet in the window, appearing "surprised and nervous." [\[FN9\]](#) When the defendant told Gelber that he did not call 9-1-1, the officer suggested that perhaps someone in the house dialed the number. [\[FN10\]](#) The officer requested permission to check in the house to ensure that there was not "a domestic violence victim or

an injured person in need of assistance.” [\[FN11\]](#) The defendant became exceedingly nervous at the request and “displayed a look of shock and panic . . . ask(ing) the officer whether he had a search warrant.” [\[FN12\]](#) When he learned that Gelber had no search warrant, the defendant asked the officer if he needed to contact an attorney. [\[FN13\]](#)

*215 While Gelber waited for backup to arrive, the defendant suggested “that the computer may have ‘inadvertently dialed 911.’” [\[FN14\]](#) The officer requested that the dispatch operator dial the number again. [\[FN15\]](#) According to Gelber, this confirmed to him that someone else could be in the house. [\[FN16\]](#) When Officer Smith arrived, “Gelber decided to enter the house ‘to make sure that (defendant) was alone and that there was nobody else that really needed help in there.’” [\[FN17\]](#) Gelber conducted a searched of the house in areas where a person or a body might be hidden. [\[FN18\]](#) Inside the house Gelber saw, in plain view, marijuana on a tray in a closet; marijuana plants and ultraviolet lights in the bathroom; and marijuana plants, ultraviolet lights, and a watering system in the basement. [\[FN19\]](#) After Gelber concluded that no one else was in the house, he placed the defendant under arrest and obtained a warrant to search the house. [\[FN20\]](#) The defendant was charged with “possession of marijuana” and “operation of a premise, place, or facility used for the manufacture of marijuana.” [\[FN21\]](#)

The trial court rejected the application of the Emergency Aid Doctrine and granted the defendant's motion to suppress evidence related to the discovery of marijuana, holding that because the defendant did not call 9-1-1, there was no objectively reasonable basis to believe that an emergency existed. [\[FN22\]](#) The court maintained that a “subjective belief that an emergency existed (was) not sufficient to establish probable cause to search the house.” [\[FN23\]](#) The state appellate court reversed the order, holding “that given the totality of the circumstances Officer Gelber had an objectively reasonable basis under the Emergency Aid Doctrine to conduct a warrantless search of defendant's home.” [\[FN24\]](#) After entering into a plea *216 bargain with the state that allowed defendant to retain the suppression issue for appeal, the defendant appealed the issue again to the appellate court. [\[FN25\]](#) The appellate court summarily affirmed, “based on the law of the case doctrine.” [\[FN26\]](#) The Supreme Court of New Jersey granted the defendant's petition for certiorari. [\[FN27\]](#)

III. The Emergency Aid Doctrine

A. Background

The Emergency Aid Doctrine developed out of the “common sense” notion that public safety officials may need to enter a residence without a search warrant for the purpose of protecting or preserving life, or preventing serious injury. [\[FN28\]](#) Because the “need to protect or preserve life” creates a “justification for (a warrantless entry that) would be otherwise illegal,” the Emergency Aid Doctrine serves as an exception to the warrant requirement under the Fourth Amendment. [\[FN29\]](#)

1. The Fourth Amendment

The Fourth Amendment to the United States Constitution specifies that “(t)he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause.” [\[FN30\]](#) Though courts are careful not to interpret the Fourth Amendment as a “general *217 constitutional ‘right to privacy,’” it is clear that the Amendment “protects individual privacy against certain kinds of governmental intrusion,” usually those intrusions that involve some manner of interference with the sanctity of one's home. [\[FN31\]](#) The very core of the Fourth Amendment establishes that searches conducted without a warrant are “per se unreasonable,” unless the search falls within one of the “few specifically established and well-delineated exceptions.” [\[FN32\]](#)

2. Fourth Amendment Jurisprudence in the Supreme Court

Precedent set by the United States Supreme Court has indicated that the scope of protection offered by the Fourth Amendment is limited to situations where a person has manifested an expectation of privacy, such as in a home, and that the expectation is one that society would accept as reasonable. [FN33] The exceptions to the Fourth Amendment fall within the second half of that scope of protection. The Court has recognized that an expectation of protection under the Fourth Amendment is not objectively reasonable in the context of exigent circumstances. [FN34] Instead, the Supreme Court has suggested that in some “exigent circumstances” a warrantless search is considered both necessary and reasonable. [FN35]

However, the Supreme Court has not left the scope of such warrantless searches open to ambiguity and interpretation. [FN36] Instead, the Court mandated*218 that a warrantless search, conducted under the necessity of an exigent circumstance, must be “strictly circumscribed by the exigencies which justify its initiation.” [FN37] Because the Supreme Court so carefully delineated the rationale behind an exception for exigent circumstances and confined the scope of that exception to concrete boundaries, the Emergency Aid Doctrine developed easily as an exception to the Fourth Amendment within the framework of the Court's reasoning.

3. Developing the Exception in Federal Courts

Though the Supreme Court has yet to specifically address the Emergency Aid Doctrine as an exception to the Fourth Amendment, the Court's analysis in many Fourth Amendment cases provided a clear basis within which the federal appellate courts have developed the doctrine. [FN38] In *Bloom v. City of Scottsdale*, an unpublished decision, the Ninth Circuit Court of Appeals addressed the Emergency Aid Exception, establishing it as a constitutional exception to the Fourth Amendment. [FN39]

In *Bloom*, the police received a 9-1-1 call regarding a shirtless man that was staggering down the street and waving a gun in his hand. [FN40] The police responded to the call and saw the plaintiff [FN41] standing in the driveway near the location described by the police dispatch. [FN42] The plaintiff entered his house, and when he emerged again, one officer drew his gun and ordered the plaintiff to put his hands up. [FN43] After securing the plaintiff's cooperation, the officers informed him that they were going to search his house in order to check the welfare of the residents. [FN44] The *219 plaintiff became agitated and denied the officers permission to enter. [FN45] The officers searched the house anyway and observed several guns, but they filed no charges against the plaintiff. [FN46] However, the plaintiff was on parole for a federal narcotics conviction, so he informed his parole officer of the incident. [FN47] The parole officer immediately called the police station regarding the incident. [FN48] After the parole officer learned of the weapons in the plaintiff's home, the plaintiff's parole was promptly revoked. [FN49]

At the beginning of its analysis, the court noted that the Fourth Amendment prohibits warrantless searches, subject to certain exceptions. [FN50] One such exception, the court declared, was the “‘exigent circumstances’ exception . . . a variant of . . . which can be called the ‘emergency aid’ exception.” [FN51] Citing the Supreme Court, the *Bloom* court stated that the “need to aid or protect potential victims constitutes an exigent circumstance.” [FN52] However, the court went a step further and delineated a three-prong test for determining whether a warrantless search falls within the Emergency Aid Exception. [FN53] The court listed the three factors that must be satisfied to apply the exception:

- (1) The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property;
- (2) The search must not be primarily motivated by intent to arrest and seize evidence;
- (3) There must be some reasonable *220 basis, approximating probable cause, to associate the emergency with the area or place to be searched. [FN54]

In the few cases that deal directly with the application of the Emergency Aid Doctrine, other courts have employed the same three-prong test that *Bloom* cited to determine whether a warrantless search falls within the Emergency Aid Exception. [FN55] In *Bloom*, the court applied the three-prong test to the facts of the case and concluded that the plaintiff was entitled to a directed verdict, because no reasonable jury could find exigent

circumstances or emergency justified the officer's search of Bloom's home. [\[FN56\]](#)

Although the Ninth Circuit has applied the three-prong test to reach consistent results, [\[FN57\]](#) not all Circuits have reached the same conclusions when applying the three-prong test to comparable facts. [\[FN58\]](#) However, *221 regardless of the outcome, federal courts have consistently recognized the Emergency Aid Doctrine as a variant of the Exigent Circumstances Exception and an exception to the warrant requirements of the Fourth Amendment. [\[FN59\]](#) Furthermore, whether the courts referred to the exception as the Emergency Aid Exception or the Exigent Circumstances Exception, sometimes using the terms interchangeably, [\[FN60\]](#) federal courts have recognized that the Emergency Aid Exception and other similar exceptions to the Fourth Amendment [\[FN61\]](#) serve to justify warrantless searches within the context of objectively reasonable circumstances. [\[FN62\]](#)

B. State v. Frankel

1. Applying the Exception

In Frankel, the New Jersey Supreme Court found that such objectively reasonable circumstances existed. [\[FN63\]](#) Citing the United States Supreme Court, the Frankel court acknowledged that warrantless searches are “presumptively invalid,” under the Fourth Amendment, and that the State has the burden of proving that the search falls within one of the “few specifically established and well-delineated exceptions.” [\[FN64\]](#) The court reasoned that under Supreme Court precedent these exceptions were based on the idea that in certain emergency situations “a search without a warrant is both reasonable and necessary.” [\[FN65\]](#) However, the Frankel court *222 limited the scope of such warrantless entries to those emergency circumstances that necessitate an entry for the purpose of “protecting or preserving life, or preventing serious injury.” [\[FN66\]](#) This delineation of permissible warrantless entries invited an application of the Emergency Aid Doctrine.

Having established a foundation of Supreme Court precedent, the Frankel court turned to state law to establish the framework of the Emergency Aid Exception. Citing State v. Cassidy, [\[FN67\]](#) the court denoted a three-prong test to determine whether a warrantless entry satisfies the Emergency Aid Exception. [\[FN68\]](#) Frankel's test for the Emergency Aid Exception was virtually identical to the test in Bloom. [\[FN69\]](#) Furthermore, the Frankel court's three-prong test mirrors the test adopted by federal circuit courts when applying the Emergency Aid Doctrine. [\[FN70\]](#) The court cited prior cases that had employed the Emergency Aid Exception to establish a foundation of substantive law for the application of the exception. [\[FN71\]](#) However, the court was careful to distinguish Frankel from a prior decision in which it declined to apply the Emergency Aid Exception because the totality of the circumstances there indicated that there was no immediate danger. [\[FN72\]](#)

*223 2. Expanding the Exception

There was a factual variation in Frankel that the federal courts had not yet addressed: the emergency circumstances were conveyed by an open-line 9-1-1 call. [\[FN73\]](#) The New Jersey Supreme Court did not let this factual distinction deter the application of the Emergency Aid Doctrine. Instead, the court relied on United States v. Richardson [\[FN74\]](#) and United States v. Holloway [\[FN75\]](#) to support the proposition that a 9-1-1 call inherently conveys an emergency, regardless of how it is received. [\[FN76\]](#) The Frankel court stated that a 9-1-1 call is “tantamount to a distress call even when there is no verbal communication over the telephone to describe the nature of the emergency.” [\[FN77\]](#) The court further indicated that a police officer has no duty to give credence to the explanation of the resident at the door but must discern the degree of emergency based upon the “totality of the circumstances.” [\[FN78\]](#)

*224 However, Frankel did not cite any state or federal precedent to indicate that an open-line 9-1-1 call is sufficient to provide an objectively reasonable belief that someone is in need of assistance. Although cited precedent had merely held that a hang-up 9-1-1 call could establish an objectively reasonable belief that there was an

emergency, [\[FN79\]](#) the court inferred that any 9-1-1 call, hang-up, open-line, or otherwise inherently conveys an emergency sufficient to satisfy the objectively reasonable belief requirement of the Emergency Aid Exception. [\[FN80\]](#) The one dissenting judge in Frankel suggested that the majority decision in Frankel expanded the Emergency Aid Exception beyond its intended scope. [\[FN81\]](#) As Justice Wallace indicated, the expansion of the Emergency Aid Exception to include open-line 9-1-1 calls as indicative of inherent emergencies, despite the defendant's "reasonable explanation of the call," undermined the "very core of the Fourth Amendment." [\[FN82\]](#) According to Wallace, it is the core of the "Fourth Amendment (which protects) the right of a man to retreat into his own home and there be free from unreasonable government intrusion," and an expansion of the Emergency Aid Exception undermines that right. [\[FN83\]](#)

3. The Limiting Factor

Perhaps in light of Wallace's dissent, the majority in Frankel did not leave the Emergency Aid Exception open to over-extension. The court was careful to note that the facts of Frankel are "unique . . . (and) should *225 not be over read." [\[FN84\]](#) The fact that the emergency was conveyed by an open-line 9-1-1 call made the case singular among Fourth Amendment jurisprudence. [\[FN85\]](#) The Frankel court insisted that its holding, though expanding the Emergency Aid Exception, would not obscure the privacy rights ensured by the Fourth Amendment. [\[FN86\]](#) Accordingly the court significantly limited the scope of its expanded Emergency Aid Exception, stating that it declined to "find as a matter of law that the receipt of a 9-1-1 open-line, abandoned, or hang-up call alone gives the police the 'reasonable belief grounds necessary'" to justify a warrantless entry under the Emergency Aid Exception. [\[FN87\]](#) The court rejected the "absolute . . . (application of the exception) for a more nuanced approach that properly weighs the competing interests under a totality of the circumstances." [\[FN88\]](#)

In reaching its decision, the court reiterated that the "sanctity of one's home is among our most cherished rights." [\[FN89\]](#) Nonetheless, as the majority suggested, courts must strike some balance between the "right of people to be safe within their homes, free from government intrusion" and the ability of police to freely render assistance to those who are in immediate need of it. [\[FN90\]](#) The court made clear that the privacy interest of the home, as upheld by the Fourth Amendment, is "entitled to the highest degree of respect and protection within (the) constitutional framework." [\[FN91\]](#) However, it maintained that such privacy interests could not obscure a police officer's duty as a community caretaker. [\[FN92\]](#) Instead, "the duty to *226 preserve and protect life and the need to act decisively and promptly . . . (when delivering emergency aid) outweigh(s) the privacy interest of an individual." [\[FN93\]](#)

C. Interpretation and Application

The balance between an individual's privacy interest and the government's ability to efficiently deliver emergency assistance is an issue that all courts face when analyzing a warrantless search under the Fourth Amendment. [\[FN94\]](#) Though courts find varying ways to balance the two interests, [\[FN95\]](#) the public interest of allowing a police officer to deliver aid quickly and efficiently to persons in need of help is not to be discounted, [\[FN96\]](#) as many courts have recognized. [\[FN97\]](#) Many different jurisdictions have employed the Emergency Aid Exception to justify warrantless searches, where the nature of the emergency has been specifically articulated by an identified or anonymous 9-1-1 call. [\[FN98\]](#) However, only a handful of jurisdictions have expanded the Emergency Aid Exception to include 9-1-1 calls that are ambiguous as to the nature of the emergency. [\[FN99\]](#)

*227 1. Traditional Application

Of the jurisdictions that recognize the Emergency Aid Exception, Minnesota, [\[FN100\]](#) New Hampshire, [\[FN101\]](#) Arizona, [\[FN102\]](#) and Kansas [\[FN103\]](#) have all applied the exception in cases that involved a 9-1-1 call that described the nature of the emergency. While not all of the 9-1-1 callers in these cases were identified, [\[FN104\]](#) the courts in these jurisdictions have indicated that a 9-1-1 call, describing the nature of the emergency, creates an

objectively reasonable belief that there is an emergency, sufficient for the application of the Emergency Aid Exception. [\[FN105\]](#)

In *State v. Clark*, an unpublished opinion, the Minnesota Court of Appeals implemented the Emergency Aid Exception when the police were contacted by a doctor and were told that the defendant was planning to commit suicide. [\[FN106\]](#) Earlier that day, the defendant had assaulted his girlfriend, and hospitalized her. [\[FN107\]](#) The defendant repeatedly called his girlfriend's room, attempting to speak with her, but was only able to speak with her doctor. [\[FN108\]](#) During one conversation, the defendant informed the doctor that if he did not speak with his girlfriend, he would commit suicide. [\[FN109\]](#) The doctor called the police, recommending that they “check (the defendant's) welfare because of all the phone calls and suicidal messages.” [\[FN110\]](#) When the officers were preparing to enter the defendant's *228 home, they were informed that the defendant was also being investigated for drug activity. [\[FN111\]](#) When the officers entered the defendant's home to ensure his safety, they found a hypodermic needle and later a laboratory for methamphetamines. [\[FN112\]](#) The defendant was convicted of a second-degree controlled-substance offense. [\[FN113\]](#)

In *Clark*, the court of appeals began its analysis by recognizing the protection the Fourth Amendment offered the defendant. The court acknowledged that warrantless searches and seizures are “per se unreasonable under both the United States and Minnesota Constitutions.” [\[FN114\]](#) The court further noted that the “Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid.” [\[FN115\]](#) Under Minnesota law, as long as the officer had objectively reasonable basis for believing that an emergency existed, the officer could make a warrantless entry and seizure, “even when (they had) other motives for their actions.” [\[FN116\]](#) Accordingly, the court found that the Emergency Aid Exception did justify the officers' warrantless search and seizure, even though the defendant was being investigated for drug activity, because “(the officers) had an objectively reasonable basis for entering the residence based on the (defendant's) suicidal threats to (the doctor).” [\[FN117\]](#)

Unlike the *Clark* court, the court in *State v. Macelman* applied the Emergency Aid Exception to an anonymous 9-1-1 call. [\[FN118\]](#) In *Macelman*, the police received an anonymous call, reporting that a vehicle appeared as if it were about to fall over an embankment onto Highway 89. [\[FN119\]](#) The police went to the defendant's house to investigate, and upon arrival, the *229 officers noticed that the car was near the embankment. [\[FN120\]](#) Someone appeared to be in the car, but the officer could not determine whether the occupants were in any danger, so the officer approached the car to “find out if there was anyone . . . that needed some assistance.” [\[FN121\]](#) However, when he reached the vehicle, the officer realized that there were people inside the vehicle smoking a “pipe commonly used for smoking marijuana.” [\[FN122\]](#) The officer arrested the defendant, who was later convicted of possession of marijuana and underage possession of cigarettes. [\[FN123\]](#) The trial court found that the officer's warrantless search was justified under the “‘exigent circumstances' exception” to the Fourth Amendment. [\[FN124\]](#)

The New Hampshire Supreme Court, like the *Clark* court, first acknowledged that warrantless searches are “per se unreasonable unless (they) fall() within a narrowly drawn exception to the warrant requirement.” [\[FN125\]](#) The court then analyzed the requirements for the Exigent Circumstances Exception, noting that the State must show “probable cause and exigent circumstances.” [\[FN126\]](#) The court turned to the Emergency Aid Exception and held that the State must meet the same three-prong test used in *Bloom v. City of Scottsdale* [\[FN127\]](#) and *New Jersey v. Frankel*. [\[FN128\]](#) In addressing the presumed unreliability of an anonymous 9-1-1 call, the court stated that “(t)he officer's observation of a car poised . . . at an unusual location right by . . . the embankment . . . corroborated at least the general reliability of this tip.” [\[FN129\]](#) Accordingly, the court determined “that under the ‘emergency aid’ exception to the warrant requirement the police *230 were entitled to enter the property and to approach the car to . . . (verify) their reasonable belief that an emergency existed.” [\[FN130\]](#) Therefore, despite the trial court's application of the Exigent Circumstances Exception, the court of appeals “conclude(d) that the ‘emergency aid’ exception (was) a better fit.” [\[FN131\]](#)

Like the *Clark* court, the Arizona Supreme Court has also applied the Emergency Aid Exception to a

warrantless entry based upon an identified 9-1-1 call. In *State v. Sharp*, a ten-year-old boy called the police and stated that his stepmother, a motel employee, was missing. [FN132] The boy told the operator that he heard screams coming from room 204. [FN133] The operator dispatched an officer, who, upon arriving, went immediately to room 204. [FN134] When no one answered his repeated knocks, the officer obtained a key and entered the room. [FN135] The officer found the defendant passed out on the bed and a woman lying naked in the bathroom with numerous bodily injuries. [FN136] The woman was pronounced dead upon arrival at the hospital, and an autopsy revealed that she had been sodomized and strangled. [FN137] The officers found a pornographic magazine under the mattress of the bed, which was used at trial to establish the theory that the defendant had a sexual motive for calling the victim to his room. [FN138] The defendant was convicted of kidnapping, sexual assault, and first-degree murder. [FN139]

In *Sharp*, the Arizona Supreme Court, like the courts in *Clark* [FN140] and *State v. Macelman*, [FN141] turned to the Emergency Aid Exception as a justification*231 of the officers' warrantless entry and search. [FN142] The court stated that the Emergency Aid Exception is applicable if the officer "reasonably believe(s) someone inside (a dwelling) needs immediate aid if assistance . . . (and the) search is motivated primarily by safety concerns, not the desire to seize evidence." [FN143] At the suppression hearing, the officer testified that "they grew concerned because (the victim) was missing, screams were heard from Room 204, and no one would answer the door or the telephone." [FN144] Considering that testimony, the court concluded that the officer "acted properly (under the Emergency Aid Exception) when he reasonably believed an emergency existed to justify a warrantless entry into Room 204." [FN145]

Like both the *Clark* [FN146] and *Sharp* courts, [FN147] the Kansas Supreme Court has used the Emergency Aid Exception to justify a warrantless entry when that entry was in response to an identified 9-1-1 call. [FN148] In *State v. Horn*, the defendant moved in with his grandmother, Ms. Weaver. [FN149] On May 17, 2002, a week or two after the defendant moved in, neighbors noticed some unusual activities at the Weaver residence. [FN150] One neighbor heard a "man's loud, angry voice coming from inside the house, but did not see Weaver react in any way." [FN151] That same day, another neighbor took a bag of fruit and vegetables to Ms. Weaver, but she didn't answer the door. [FN152] That neighbor left the bag at Ms. Weaver's backdoor, but she never brought the bag inside. [FN153] The next day, a third neighbor called 9-1-1 to *232 have the police check on Ms. Weaver, explaining her concerns to the police. [FN154] When the officers arrived at the residence, a voice from inside the house asked who was at the door, and the officers identified themselves as the police. [FN155] No one came to the door, so the officers tried to open the door. [FN156] A chain on the door prevented it from being opened more than a few inches, but the officers viewed through the door "what appeared to be the shape of a body nearby under a blanket." [FN157] The defendant eventually came to the door, and told the officers that he and Ms. Weaver were asleep. [FN158] The officers asked the defendant to open the door so they could check on Ms. Weaver, and the defendant stated, "she's dead. I killed her." [FN159] The defendant eventually unchained the door, and he was arrested. [FN160]

In *Horn*, the Kansas Supreme Court employed the Emergency Aid Exception as the justification to the officer's entry into the residence. [FN161] The court stated that

(t)he emergency (aid) doctrine reflects a recognition that the police perform a community caretaking function which goes beyond fighting crime . . . Under this function, the community looks to the police to render aid and assistance to protect lives and property on an emergency basis regardless of whether a crime is involved. [FN162]

Like the decisions in *New Jersey v. Frankel* [FN163] and *Bloom v. City of Scottsdale*, [FN164] the *Horn* court acknowledged three elements of the Emergency *233 Aid Exception that constitute a three-prong test. [FN165] As the *Horn* court noted, "(the defendant) disputes only the first element," that the "police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property." [FN166] The court concluded that while the "district court's findings" that the activities at the Weaver home constituted an emergency, were "by no means copious, (they) are supported by substantial competent evidence," and that, given "(t)he information known to (the officers) before (they) partially pushed open the door . . .

(the) ‘officers would have been derelict in their duty had they acted otherwise.’” [\[FN167\]](#) Accordingly, the court concluded that the Emergency Aid Exception justified the officers' entry into the residence. [\[FN168\]](#)

2. Expanded Application

Though Minnesota, New Hampshire, Arizona, and Kansas courts have all applied the Emergency Aid Exception in circumstances involving emergencies that are verbally communicated over a 9-1-1 call, [\[FN169\]](#) the exception is not limited only to 9-1-1 calls that articulate the nature of the emergency. [\[FN170\]](#) Jurisdictions have been slow, however, to apply the exception as the Frankel court did when the nature of the emergency was not verbally expressed in the 9-1-1 call. [\[FN171\]](#)

Precedent from the Second Circuit provided the basis for the notion that a call for help, without further description of the nature of the emergency, is sufficient to form an objectively reasonable belief that there is *234 an emergency. [\[FN172\]](#) In *United States v. Barone*, some New York City police officers heard some screams coming from a boarding house. [\[FN173\]](#) The officers went up to the room and knocked on the door. [\[FN174\]](#) Two women answered the door and claimed that they did not know where the screams came from. [\[FN175\]](#) One of the women suggested that she might have screamed during a nightmare. [\[FN176\]](#) The officers then saw the defendant emerge from the bathroom and heard a toilet flush. [\[FN177\]](#) The officers entered the bathroom without the consent of the defendant and found counterfeit currency in plain view. [\[FN178\]](#) The court found that if the police had been denied entry into the apartment, they would have “had the right, if not the duty,” under the Emergency Aid Doctrine “to gain entry forcibly” to investigate the cause of the screaming. [\[FN179\]](#) The Second Circuit held that the police officers' investigation into the cause of the screaming “would have been incomplete without finding out who might (have been) in the bathroom and whether anyone there might (have been) in need of assistance.” [\[FN180\]](#)

In *Barone*, the court suggested that a call for help need not be specific to indicate that there is an emergency. [\[FN181\]](#) The call does not have to indicate the nature of the emergency to be considered an emergency; it need only be an indication that assistance is needed immediately, such as the scream in *Barone*. [\[FN182\]](#) Accordingly, when police officers receive a call for help, no matter how specific or ambiguous, that call serves as grounds for an objectively reasonable belief that there is an emergency. [\[FN183\]](#) Some jurisdictions have concluded, as did Frankel, that a 9-1-1 call is necessarily*235 a call for help. As *Barone* suggests, the 9-1-1 call conveys an inherent emergency, whether or not the nature of the emergency is communicated. [\[FN184\]](#)

Some courts have not taken *Barone* to its logical conclusion, as did the New Jersey Supreme Court in *Frankel*. [\[FN185\]](#) Of the handful of courts that have even addressed open-line or hang-up 9-1-1 calls, few have dared extend the Emergency Aid Exception to such cases. [\[FN186\]](#) However, some jurisdictions have attempted to apply the Emergency Aid Exception to cases involving an open-line or hang-up 9-1-1 call, but have been unsuccessful in doing so because the facts of the cases failed to support all of the factors in the three-prong test. [\[FN187\]](#) Of the few jurisdictions that have justified a warrantless entry and seizure in cases where the emergency was indicated by an open-line or hang-up 9-1-1 call, only a small number have applied the Emergency Aid Exception per se as the justification to the Fourth Amendment. [\[FN188\]](#)

In *State v. Pearson-Anderson*, the Idaho Court of Appeals applied a Fourth Amendment exception to justify a warrantless entry in response to a hang-up 9-1-1 call. [\[FN189\]](#) When the operator called the residence to confirm or deny an emergency, someone picked up the phone and hung it up again. [\[FN190\]](#) The operator then dispatched two police officers to the defendant's*236 residence, where they encountered the defendant fighting with her boyfriend at the backdoor. [\[FN191\]](#) The officers separated them, whereupon the defendant admitted calling 9-1-1. [\[FN192\]](#) When she called 9-1-1, her boyfriend hung up the phone, and when the operator called back, he again hung up the phone. [\[FN193\]](#) The officers entered the residence to ensure that no one else was inside that needed assistance, but once inside they smelled a strong chemical odor and saw chemicals and equipment in plain view. [\[FN194\]](#) The officers left the home and applied for a search warrant to search the home for methamphetamine. [\[FN195\]](#) When the officers returned with the warrant, they discovered a methamphetamine laboratory and a large quantity of drugs.

[FN196] The defendant was charged and convicted of trafficking in methamphetamine.

The Idaho Court of Appeals began its analysis by stating that because the Fourth Amendment “prohibits the government from engaging in warrantless searches and seizures . . . an officer's warrantless entry into a home is presumed unlawful, unless it falls within a well-recognized exception.” [FN197] The State suggested that the court apply the Exigent Circumstances Exception, which required a “compelling need for official action and no time to secure a search warrant.” [FN198] The court recited the test for applying the exception: “(W)hether the facts as then known to the police, together with reasonable inferences drawn there from, warrant a man of reasonable caution in the belief that the action taken was appropriate.” [FN199] The court then stated that a “9-1-1 hang-up call . . . (and) a return call by the operator (that) was similarly terminated . . . suggested *237 that someone in the home who was in need of help was prevented . . . from communicating with the operator.” [FN200] When the officers arrived, the “violent situation” they encountered reasonably corroborated the presumed emergency. [FN201] Accordingly, the court held that the “exigent circumstances requirement applied to (the officers' entry of (the defendant') home.”

Like the court in Pearson-Anderson, the Illinois Court of Appeals in *People v. Greene* held that a 9-1-1 hang-up call created an objectively reasonable basis for believing that an emergency exists, justifying a warrantless search by the Exigent Circumstances Exception. [FN202] In *Greene*, a police dispatch operator received a hang-up 9-1-1 call and, when she redialed the number, was connected with an answering machine. [FN203] The operator then sent an officer to the residence, and he entered the screened-in porch to knock on the door. [FN204] The officer looked in the window and saw the defendant sitting on the couch, watching television. [FN205] The officer knocked on the door, and he observed the defendant slip something underneath a cushion on the couch prior to opening the door. [FN206] The officer explained that he was responding to a 9-1-1 hang-up call, but the defendant denied making the call. [FN207] The officer asked whether there was anyone else in the house who might have called 9-1-1, but the defendant claimed to be the only one in the house and let the officer in to verify. [FN208] The officer smelled marijuana when looking through the house, and after finding no one else in the house, he looked under the cushion of the couch and found a bag of marijuana. [FN209] The trial court held that the officer's entry into the house was a warrantless search and was invalid. [FN210]

*238 The Illinois Court of Appeals reversed, holding that a hang-up 9-1-1 call creates an objectively reasonable basis for believing that an emergency existed, and when the circumstances at the residence corroborate that belief, a warrantless entry is justified. [FN211] Like *Pearson-Anderson*, the *Greene* court noted that “in the context of exigent circumstances” an officer may make a warrantless entry into a residence “where the officer() reasonably believe an emergency exists that mandates immediate action to aid person or property within the home.” Quoting then-Judge Burger in *Wayne v. United States*, [FN212] the court stated that the “business of policemen . . . is to act, not to speculate or meditate on whether the report is correct. People could well die in emergencies if police tried to act with the calm deliberation associated with the judicial process.” [FN213] When weighing the principles articulated by Judge Burger against the facts of the case, the court found that it was “reasonable for the police to believe that someone within the house was attempting to call 9-1-1 for help but was prevented from completing the call.” [FN214] Accordingly, the court held that “the officers' entrance was justified by the exigent circumstances presented to them,” and fell under the Exigent Circumstances Exception to the Fourth Amendment. [FN215]

Although neither the *Pearson-Anderson* court nor the *Greene* court applied the Emergency Aid Exception to justify warrantless entries initiated by a hang-up 9-1-1 call, both courts stated that a hang-up 9-1-1 call creates a basis for an objectively reasonable belief that an emergency exists. [FN216] In expanding the Emergency Aid Exception, Frankel made an identical assertion regarding an open-line 9-1-1 call. [FN217] Because both hang-up and open-line 9-1-1 calls fail to describe the nature of the emergency, they are for all practical purposes interchangeable. Furthermore, as the Ninth Circuit stated in *Bloom v. City of Scottsdale*, “(o)ne of the() exceptions (to the Fourth Amendment) is the ‘exigent circumstances’ *239 exception . . . a variant of . . . which can be called the ‘emergency aid’ exception.” [FN218] Even though *Pearson-Anderson* and *Greene* did not apply the Emergency Aid Exception per se, they applied a closely related exception, the Exigent Circumstances Exception, to establish that hang-up, and inferably open-line, 9-1-1 calls create a basis for an objectively reasonable belief that an

emergency exists. [\[FN219\]](#) The courts' holdings invite the inference that the Emergency Aid Exception, like the Exigent Circumstances Exception, may be applied to situations involving either a hang-up or an open-line 9-1-1 call.

IV. Conclusion

Although Frankel is one of the few courts to have applied the Emergency Aid Exception in a warrantless search initiated by an open-line 9-1-1 call, it is not the only court to have recognized that a 9-1-1 call inherently conveys an emergency, whether or not the nature of that emergency is articulated. Under the precedent of *United States v. Barone*, [\[FN220\]](#) it seems likely that other courts will follow Frankel's lead. Furthermore, with federal precedent such as *United States v. Holloway* [\[FN221\]](#) and *United States v. Richardson*, [\[FN222\]](#) the very nature of a 9-1-1 call as an inherent emergency is firmly established. It will be up to the courts to take the next step to apply such federal precedent in their application of the Emergency Aid Exception.

Although few jurisdictions have had the opportunity to address the application of the Emergency Aid Exception to an open-line 9-1-1 call, it is clear that the Emergency Aid Exception is a widely recognized justification for a warrantless search. However, as Frankel recognizes, the application of the exception will always entail a balancing of interests. In applying the exception, the courts must weigh the public interest of having quick, efficient emergency assistance against the private interest *240 of being free from unreasonable government intrusions. Though the courts will always balance these interests in the context of the facts of each case, they will probably conclude, consistent with precedent, that an expectation of privacy during an emergency is not an expectation that society is prepared to recognize as reasonable. [\[FN223\]](#)

Judge Wallace's dissent in Frankel correctly suggests that the expansion of the Emergency Aid Doctrine to include responses to open-line or hang-up 9-1-1 calls could obscure the very privacy rights that the Fourth Amendment purports to uphold. Judge Wallace does not discount the validity of the Emergency Aid Exception itself; he merely disagrees with its expansion. The dissenting judge recognized that when determining whether the Emergency Aid Exception applies to a warrantless entry, the court must ask whether "the officers would have been derelict in their duty had they acted otherwise." [\[FN224\]](#) However, in determining that the officer in Frankel would not have been derelict in accepting the defendant's explanation of the open-line 9-1-1 call without further verification, Judge Wallace overlooked the fact that the Supreme Court affirmed Barone's holding that an officer has an affirmative duty to respond. [\[FN225\]](#) Barone concluded that, when responding to a call for help, a police officer "(has) the right, if not the duty . . . (to) determine whether anyone . . . might be in need of assistance." [\[FN226\]](#)

It is this simple distinction that will determine whether Frankel's expansion of the Emergency Aid Exception becomes the rule, rather than the exception. However, in light of the federal and state precedent that supports Frankel's application, it is unlikely that the court's expansion of the Emergency Aid Exception will ultimately be viewed as an isolated abuse of judicial discretion, found in a remote, activist court. [\[FN227\]](#) Instead, *241 the precedent indicates that Frankel's expansion of the Emergency Aid Exception to include responses to open-line 9-1-1 calls, which do not articulate the nature of the emergency at hand, will become a standard application of the exception.

[\[FNd1\]](#). This paper earned the 2004 Vulcan Materials Company Scholarship Award for Outstanding Candidate's Paper. This winning paper was selected by a committee of Cumberland School of Law faculty from the top scoring papers submitted in the summer writing program for membership on the American Journal of Trial Advocacy.

[\[FN1\]](#). 847 A.2d 561, 179 N.J. 586 (2004).

[\[FN2\]](#). Frankel, 847 A.2d at 564.

[\[FN3\]](#). *Id.* at 572.

[\[FN4\]. Id. at 571.](#)

[\[FN5\]. Id. at 575.](#)

[\[FN6\]. Id. at 564.](#)

[\[FN7\]. Id. at 564-65.](#)

[\[FN8\]. Id. at 565.](#)

[\[FN9\]. Id.](#)

[\[FN10\]. Id.](#)

[\[FN11\]. Id.](#)

[\[FN12\]. Frankel, 847 A.2d at 565.](#)

[\[FN13\]. Id.](#)

[\[FN14\]. Id.](#)

[\[FN15\]. Id. at 565-66.](#)

[\[FN16\]. Id. at 566.](#)

[\[FN17\]. Id.](#)

[\[FN18\]. Id.](#)

[\[FN19\]. Id.](#)

[\[FN20\]. Id.](#)

[\[FN21\]. Id.](#)

[\[FN22\]. Frankel, 847 A.2d at 567.](#)

[\[FN23\]. Id.](#)

[\[FN24\]. Id.](#)

[\[FN25\]. Id.](#)

[\[FN26\]. Id.](#)

[FN27]. [176 N.J. 430, 824 A.2d 159 \(2003\)](#).

[FN28]. [Frankel, 847 A.2d at 568](#) (citing [Mincey v. Arizona, 437 U.S. 385, 392, 98 S. Ct. 2408, 2412-13, 57 L. Ed. 2d 290, 298-99 \(1978\)](#) (stating that “the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid,” but holding such an exception to the Fourth Amendment inapplicable when the entry and search lasted for four days after the homicide had occurred)).

[FN29]. [Mincey, 437 U.S. at 392-93](#) (quoting [Wayne v. United States, 318 F.2d 205, 212, 115 U.S. App. D.C. 234, 241 \(D.C. Cir. 1963\)](#)).

[FN30]. [U.S. Const. amend. IV](#).

[FN31]. [Katz v. United States, 389 U.S. 347, 350, 357, 88 S. Ct. 507, 510, 514, 19 L. Ed. 2d 576, 581 \(1967\)](#) (holding that a warrantless tapping of a phone booth, which the defendant used to conduct gambling activities, was “per se unreasonable under the Fourth Amendment,” even though it was a public booth, because “(w)herever a man may be, he is entitled to know that he will remain free from unreasonable searches and seizures”).

[FN32]. [Katz, 389 U.S. at 357](#) (citing [Jones v. United States, 357 U.S. 493, 497-99, 78 S. Ct. 1253, 1256-57, 2 L. Ed. 2d 1514 \(1958\)](#); [Rios v. United States, 364 U.S. 253, 261, 80 S. Ct. 1431, 1436, 4 L. Ed. 2d 1688 \(1960\)](#); [Chapman v. United States, 365 U.S. 610, 613-15, 81 S. Ct. 776, 778, 779, 5 L. Ed. 2d 828 \(1961\)](#); [Stoner v. Cal., 376 U.S. 483, 486-87, 84 S. Ct. 889, 891-92, 11 L. Ed. 2d 856 \(1964\)](#)).

[FN33]. [Id.](#) at 361 (Harlan, J., concurring).

[FN34]. [Mincey, 437 U.S. at 393-94](#).

[FN35]. [Terry v. Ohio, 392 U.S. 1, 20-22, 88 S. Ct. 1868, 1879-80, 20 L. Ed. 2d 889, 904-06 \(1968\)](#) (stating that “failure to comply with the warrant requirement can only be excused by exigent circumstances” and that exception must objectively “warrant a man of reasonable caution in the belief that the (search) was appropriate”).

[FN36]. See [Mincey, 437 U.S. at 393](#).

[FN37]. [Id.](#) (quoting [Terry, 392 U.S. at 25-26](#)).

[FN38]. See generally [Mincey, 437 U.S. 385; Katz, 389 U.S. 347; Terry, 392 U.S. 1](#).

[FN39]. [977 F.2d 587](#), No. 91-15472, [1992 WL 258883, at *1 \(9th Cir. Oct. 2, 1992\)](#) (unpublished table opinion).

[FN40]. [Bloom, 1992 WL 258883, at *1](#).

[FN41]. [Id.](#) At the trial there was significant dispute regarding whether the plaintiff matched the caller's description of the shirtless man waiving a gun. [Id.](#)

[FN42]. [Id.](#)

[FN43]. [Id.](#)

[\[FN44\]](#). Id.

[\[FN45\]](#). Id.

[\[FN46\]](#). Id. at **1-2.

[\[FN47\]](#). Id. at *2.

[\[FN48\]](#). Id.

[\[FN49\]](#). Id. A condition of the plaintiff's parole was that he could not maintain weapons in his residence. Id.

[\[FN50\]](#). [Bloom, 1992 WL 258883, at *3](#) (quoting [Mincey v. Arizona, 437 U.S. 385, 390, 98 S. Ct. 2408, 2412, 57 L. Ed. 2d 290, 299 \(1978\)](#)).

[\[FN51\]](#). Id.

[\[FN52\]](#). Id. (citing [Mincey, 437 U.S. at 392](#)).

[\[FN53\]](#). Id. at *4 (citing [State v. Fisher, 141 Ariz. 227, 236, 686 P.2d 750, 760](#), cert. denied, 468 U.S. 1066 (1984)).

[\[FN54\]](#). Id. (quoting [Fisher, 686 P.2d at 760](#)).

[\[FN55\]](#). See [Martin v. City of Oceanside, 360 F.3d 1078, 1081 \(9th Cir. 2004\)](#) (holding that when the officers reasonably believed that an occupant of a house was possibly in danger and they entered the house for the sole purpose of ensuring her safety, only searching within areas of the house where she might have been located, the warrantless search satisfied the three-prong test of the Emergency Aid Doctrine and did not violate the homeowner's Fourth Amendment rights); see also [People v. Allison, 86 P.3d 421, 426-27 \(Colo. 2004\)](#) (applying an identical Emergency Aid Exception test, but finding that not all of the elements were met when the officer reentered the residence after all possibility of danger had dissipated); [State v. MacElman, 149 N.H. 795, 798, 834 A.2d 322, 326 \(2003\)](#) (applying an identical test to determine whether the Emergency Aid Exception applies as did the Bloom court); [State v. Rynhart, 81 P.3d 814 \(Utah Ct. App. 2003\)](#) (applying an identical test, but holding that the Emergency Aid Doctrine does not justify a warrantless search of an abandoned vehicle).

[\[FN56\]](#). [Bloom, 1992 WL 258883, at *4](#).

[\[FN57\]](#). Compare [Bloom, 1992 WL 258883](#), with [Martin, 360 F.3d 1078](#) (in both cases the Ninth Circuit applies the three-prong test consistently to determine whether the Emergency Aid Doctrine justified a warrantless entry).

[\[FN58\]](#). Compare [Kerman v. City of New York, 261 F.3d 229 \(2d Cir. 2001\)](#) (holding that an anonymous 9-1-1 call that presented an imminent threat of danger did not satisfy the exigent circumstance exception, because there was not sufficient corroborating evidence to establish the reliability of the call), with [United States v. Holloway, 290 F.3d 1331 \(11th Cir. 2002\)](#) (holding that, under the exigent circumstances exception, a warrantless search of a private residence is justified, where an emergency situation was reported by an anonymous 9-1-1 caller, because “the fact that a 9-1-1 caller chooses-or is forced-to remain anonymous (has) very little bearing on the veracity of the caller;” furthermore, if police did not “rely on the information conveyed by anonymous 9-1-1 callers, their ability to respond to emergency situations would be significantly curtailed”).

[\[FN59\]](#). [Bloom, 1992 WL 258883](#).

[FN60]. [Holloway, 290 F.3d at 1334-40;United States v. Richardson, 208 F.3d 626, 629-30 \(7th Cir. 2000\)](#) (holding that a 9-1-1 call reporting a rape and murder at the defendant's residence justified a warrantless search of his residence, even when a false report had been made regarding the same residence earlier that week).

[FN61]. See Alison Sanders, [Constitutional Law: State v. Nemeth-The Community Caretaker Exception to the Fourth Amendment, 32 N.M. L. Rev. 291 \(2002\)](#) (discussing the Community Caretaker Exception, within the context of the Exigent Circumstances Exception and the Emergency Aid Exception, as a justification for warrantless searches in New Mexico).

[FN62]. See Martin, 360 F.3d at 1081-02; [Holloway, 290 F.3d at 1335-39;Richardson, 208 F.3d at 629-31;Bloom, 1992 WL 258883.](#)

[FN63]. [847 A.2d 561.](#)

[FN64]. [Frankel, 847 A.2d at 567-68](#) (quoting [Mincey v. Ariz., 437 U.S. 385 \(1978\)](#)).

[FN65]. [Id. at 568](#) (citing [Terry v. Ohio, 392 U.S. 1, 29-31 \(1968\)](#)).

[FN66]. [Id.](#) (citing [Mincey, 437 U.S. at 392](#)).

[FN67]. [1843 A.2d 1132, 1138 79 N.J. 150, 161, \(2004\)](#).

[FN68]. [Frankel, 847 A.2d at 569.](#) According to Frankel, in order for the Emergency Aid Exception to apply, “(P)ublic safety official(s) must have an objectively reasonable basis to believe that an emergency requires (him to) provide immediate assistance to protect or preserve life, or prevent serious injury; his primary motivation for entry . . . must be to render assistance . . . and there must be a reasonable nexus between the emergency and the area or place(s) to be searched.” [Id.](#) (citing [Cassidy, 843 A.2d at 1138](#)).

[FN69]. [Id. at 568](#); see also [Bloom, 1992 WL 258883, at *4](#) (quoting [State v. Fisher, 686 P.2d 750, 760, 141 Ariz. 227, 236, cert. denied, 468 U.S. 1066 \(1984\)](#)).

[FN70]. See [Bloom, 1992 WL 258883;Martin, 360 F.3d at 1081-82.](#)

[FN71]. [Frankel, 847 A.2d 561](#) (citing [State v. Garbin, 739 A.2d 1016, 325 N.J. Super. 521 \(App. Div. 1999\)](#), cert. denied, 735 A.2d 1153 (2000) (holding that a warrantless entry into a home based on a report of fire was justified under the Emergency Aid Exception, when the officer saw smoke coming out of the garage); [State v. Garland, 270 N.J. Super. 31, 636 A.2d 541 \(App. Div.\), cert. denied, 642 A.2d 1005 \(1994\)](#) (holding that a warrantless entry into a hotel room based on the knowledge that two young children had been left alone there was justified under the Emergency Aid Exception, when the officers were aware of the hotel's reputation for prostitution)).

[FN72]. [Cassidy, 843 A.2d at 1139](#) (holding that a call to the police regarding a past incident of domestic abuse with the defendant did not justify a warrantless search under the Emergency Aid Exception because there was no immediate danger when “the (defendant's) home was not the scene of domestic violence th(e) night (of the call) . . . (and) no active altercation with defendant (was) underway when the police arrived”).

[FN73]. Compare [Mincey, 437 U.S. at 387-88](#) (where the emergency circumstances developed out of a undercover sting operation), with [Martin, 360 F.3d at 1080-81](#) (where the emergency circumstances arose out of an identified father's 9-1-1 call), and [United States v. Holloway, 290 F.3d 1331, 1332-33 \(11th Cir. 2002\)](#) (where the emergency

circumstances arose from an anonymous 9-1-1 call), and [Kerman v. City of New York](#), 261 F.3d 229, 232-33 (2d Cir. 2001) (where an anonymous 9-1-1 call initiated the emergency circumstances), and [United States v. Richardson](#), 208 F.3d 626, 627-28 (7th Cir. 2000) (where a 9-1-1 call from an identified person that lived in defendant's building initiated the emergency circumstances), and [Bloom 1992 WL 258883](#) (where an identified 9-1-1 call initiated the emergency circumstances), and [Frankel](#), 847 A.2d 561 (where the emergency situation arose out of an open-line 9-1-1 call).

[FN74]. [208 F.3d 626, 630 \(7th Cir. 2000\)](#) (asserting that “(a) 9-1-1 call is one of the most common-and universally recognized-means through which police . . . learn that there is someone in a dangerous situation who urgently needs help . . . fit(ing) neatly with a central purpose of the exigent circumstances (or emergency (aid)) exception to the warrant requirement”).

[FN75]. [290 F.3d 1331, 1339 \(11th Cir. 2002\)](#) (stating that “9-1-1 calls are the predominant means of communicating emergency situations . . . (and) are distinctive in that they concern contemporary emergency events, not general criminal behavior”).

[FN76]. [Frankel](#), 847 A.2d at 570-71.

[FN77]. [Id.](#) at 574.

[FN78]. [Id.](#) at 572. The court's determination, in this respect, is consistent with prior state and federal precedent from other jurisdictions. See [State v. Pearson-Anderson](#), 41 P.2d 275, 278, 136 Idaho 847, 851 (Ct. App. 2001) (finding that when responding to a hang-up 9-1-1 call, officers may reasonably be cautious about concluding that the need for help has dissipated based solely upon a explanation from the person who answers the door, because they have no background knowledge of the nature of the emergency or who made the call in the first place); [United States v. Barone](#), 330 F.2d 543, 545 (2d Cir.), cert. denied, 377 U.S. 1004 (1964) (holding that officers responding to screams coming from a residence did not have to accept the residents' explanations for the screams, but “had . . . a duty() to gain entry forcibly . . . (to) find() out . . . whether anyone there might be in need of aid.”

[FN79]. [Barone](#), 330 F.2d 543; [Pearson-Anderson](#), 41 P.2d 275.

[FN80]. [Frankel](#), 847 A.2d at 574.

[FN81]. [Id.](#) (Wallace, J., dissenting).

[FN82]. [Id.](#) at 576 (Wallace, J., dissenting) (quoting [Kyllo v. United States](#), 533 U.S. 27, 31 (2001)).

[FN83]. [Id.](#) at 577 (Wallace, J., dissenting) (quoting [Kyllo](#), 533 U.S. at 31).

[FN84]. [Id.](#) at 576.

[FN85]. See [Mincey v. Ariz.](#), 437 U.S. 385, 387-88, 98 S. Ct. 2408, 2410-11, 57 L. Ed. 2d 290, 304 (1978); [Martin v. City of Oceanside](#), 360 F.3d 1078, 1080-81 (9th Cir. 2004); [United States v. Holloway](#), 290 F.3d 1331, 1332-33 (11th Cir. 2002); [Kerman v. City of New York](#), 261 F.3d 229, 232-33 (2d Cir. 2001); [United States v. Richardson](#), 208 F.3d 626, 627-28 (7th Cir. 2000); [Bloom v. City of Scottsdale](#), 977 F.2d 587, No. 91-15472, 1992 WL 258883 (9th Cir. Oct. 2, 1992) (unpublished table opinion)

[FN86]. [Frankel](#), 847 A.2d 561.

[FN87]. [Id. at 572.](#)

[FN88]. [Id.](#)

[FN89]. [Id. at 576 \(citing State v. Bruzzese, 463 A.2d 320, 324, 94 N.J. 210, 217, cert. denied, 465 U.S. 1030 \(1984\)\).](#)

[FN90]. [Id. \(quoting Kyllo, 533 U.S. at 31\).](#)

[FN91]. [Id.](#)

[FN92]. [Id.](#)

[FN93]. [Id.](#)

[FN94]. See generally [Mincey v. Ariz.](#), 437 U.S. 385, 392, 98 S. Ct. 2408, 2413, 57 L. Ed. 2d 290 (1978); [Katz v. United States](#), 389 U.S. 347, 357, 88 S. Ct. 507, 514, 19 L. Ed. 2d 576 (1967); [Holloway](#), 290 F.3d at 1335; [Richardson](#), 208 F.3d at 629-30; [Bloom](#), 1992 WL 258883, at *3.

[FN95]. See [Sanders](#), supra note 61, at 297.

[FN96]. [Mincey](#), 437 U.S. 390.

[FN97]. See [Richardson](#), 208 F.3d at 629 (citing [Mincey](#), 437 U.S. at 392); [Bloom](#), 1992 WL 258883, at *3 (citing [Mincey](#), 437 U.S. at 392); [Frankel](#), 847 A.2d at 568 (citing [Mincey](#), 437 U.S. at 392).

[FN98]. [State v. Sharp](#), 973 P.2d 1171, 193 [Ariz.](#) 414 (1999) (holding that a 9-1-1 call from a young boy is sufficient to satisfy the first prong of the Emergency Aid Exception, when the boy described the nature of the emergency); [State v. Clark](#), No. C8-02-1812, 2003 WL 21789648 (Minn. Ct. App. Aug. 5, 2003) (unpublished opinion) (holding that a phone call from a domestic violence victim's doctor is sufficient to create a objectively reasonable belief of emergency); [State v. Macelman](#), 834 A.2d 322, 149 [N.H.](#) 795 (2003) (holding that an anonymous 9-1-1 call is sufficient to satisfy the first element of the Emergency Aid Exception, the objectively reasonable belief that there is an emergency).

[FN99]. See [State v. Pearson-Anderson](#), 41 P.2d 275, 136 [Idaho](#) 847 (Ct. App. 2001); [People v. Greene](#), 682 N.E.2d 354, 289 [Ill. App.](#) 796, 224 [Ill. Dec.](#) 793 (App. Ct. 1997) (holding that a hang-up 9-1-1 call was sufficient to create an objectively reasonable belief that there was an emergency, and to satisfy the first prong of the Emergency Aid Exception); [Frankel](#), 847 A.2d 561, 179 [N.J.](#) 586.

[FN100]. [Clark](#), 2003 WL 21789648.

[FN101]. [Macelman](#), 834 A.2d 322.

[FN102]. [Sharp](#), 973 P.2d 1171.

[FN103]. [State v. Horn](#), 91 P.3d 517, 278 [Kan.](#) 24 (2004) (holding that a 9-1-1 call from a neighbor, concerning the welfare of the Defendant's grandmother, was sufficient to justify a warrantless entry of the residence, when Defendant did not respond to the officer's knocks on the door)).

[FN104]. [Macelman, 834 A.2d 322.](#)

[FN105]. [Clark, 2003 WL 21789648;Macelman, 834 A.2d 322;Sharp, 973 P.2d 1171.](#)

[FN106]. [2003 WL 21789648 \(Minn. Ct. App. Aug. 5, 2003\)](#) (unpublished opinion).

[FN107]. [Clark, 2003 WL 21789648, at *1.](#)

[FN108]. Id.

[FN109]. Id.

[FN110]. Id.

[FN111]. Id.

[FN112]. Id.

[FN113]. Id.

[FN114]. Id. at *2 (citing [State v. Othoudt, 482 N.W.2d 218, 221-22 \(Minn. 1992\)](#)).

[FN115]. Id. (quoting [Mincey v. Ariz., 437 U.S. 385, 392, 98 S. Ct. 2408, 2413, 57 L. Ed. 2d 290 \(1978\)](#)).

[FN116]. Id. (citing [State v. Battleson, 567 N.W.2d 69, 71 \(Minn. Ct. App. 1997\)](#)).

[FN117]. [Clark, 2003 WL 21789648 at *3.](#)

[FN118]. [834 A.2d 322, 149 N.H. 795 \(2003\).](#)

[FN119]. [Macelman, 834 A.2d at 324.](#)

[FN120]. Id.

[FN121]. Id.

[FN122]. Id. at 324-25.

[FN123]. Id.

[FN124]. Id. at 326.

[FN125]. Id. at 325 (citing [State v. Ball, 471 A.2d 347, 124 N.H. 226, 231 \(1983\)](#)).

[FN126]. Id. (citing [State v. Seavey, 789 A.2d 621, 147 N.H. 304, 306 \(2001\)](#)).

[FN127]. [977 F.2d 587](#), No. 91-15472, [1992 WL 258883 \(9th Cir. Oct. 2, 1992\)](#) (unpublished table opinion) (quoting [State v. Fisher](#), 686 P.2d 750, 760, 141 Ariz. 227, 236, cert. denied, 468 U.S. 1066 (1984)).

[FN128]. [847 A.561](#), 179 N.J. 586 (2004) (citing [State v. Cassidy](#), 843 A.2d 1132, 1138, 179 N.J. 150, 161 (2004)).

[FN129]. [Macelman](#), 834 A.2d at 326.

[FN130]. [Id.](#) at 328.

[FN131]. [Id.](#) at 326.

[FN132]. [973 P.2d 1171](#), 193 Ariz. 414 (1999).

[FN133]. [Sharp](#), 973 P.2d at 1175.

[FN134]. [Id.](#)

[FN135]. [Id.](#)

[FN136]. [Id.](#)

[FN137]. [Id.](#)

[FN138]. [Id.](#)

[FN139]. [Id.](#)

[FN140]. [Clark](#), 2003 WL 21789648, at *3.

[FN141]. [834 A.2d 322](#), 328, 149 N.H. 795, 800-01 (2003).

[FN142]. [Sharp](#), 973 P.2d at 1176.

[FN143]. [Id.](#) at 1176 (citing [State v. Fisher](#), 686 P.2d 750, 759, 141 Ariz. 227, 236, cert. denied, 468 U.S. 1066 (1984)).

[FN144]. [Id.](#) at 1176.

[FN145]. [Id.](#)

[FN146]. [2003 WL 21789648](#).

[FN147]. [973 P.2d 1171](#).

[FN148]. [State v. Horn](#), 278 Kan. 24, 91 P.3d 517 (2004).

[FN149]. [Horn](#), 91 P.3d at 520.

[\[FN150\]](#). Id.

[\[FN151\]](#). Id. at 521.

[\[FN152\]](#). Id.

[\[FN153\]](#). Id.

[\[FN154\]](#). Id.

[\[FN155\]](#). Id.

[\[FN156\]](#). Id.

[\[FN157\]](#). Id.

[\[FN158\]](#). Id.

[\[FN159\]](#). [Horn, 91 P.3d at 521.](#)

[\[FN160\]](#). Id.

[\[FN161\]](#). Id. at 523-24.

[\[FN162\]](#). Id. at 524 (citing [State v. Jones, 947 P.2d 1030, 24 Kan. App. 2d 405 \(1997\)](#)).

[\[FN163\]](#). [847 A.2d 561, 569 \(2004\).](#)

[\[FN164\]](#). [977 F.2d 587](#), No. 91-15472, [1992 WL 258883 \(9th Cir. Oct. 2, 1992\)](#) (unpublished table opinion) (quoting [State v. Fisher, 686 P.2d 750, 760, 141 Ariz. 227, 236](#), cert. denied, 468 U.S. 1066 (1984)).

[\[FN165\]](#). [Horn, 91 P.3d at 524.](#)

[\[FN166\]](#). Id.

[\[FN167\]](#). Id. at 525-26 (cited in [United States v. Barone, 330 F.2d 543, 535 \(2d Cir.\)](#), cert. denied, [377 U.S. 1004 \(1964\)](#)).

[\[FN168\]](#). Id.

[\[FN169\]](#). [State v. Sharp, 973 P.2d 1171, 193 Ariz. 414 \(1999\)](#); [Horn, 91 P.3d 517](#); [State v. Clark, No. C8-02-1812, 2003 WL 21789648 \(Minn. Ct. App. Aug. 5, 2003\)](#) (unpublished opinion); [State v. Macelman, 834 A.2d 322, 149 N.H. 795 \(2003\)](#).

[\[FN170\]](#). [Frankel, 847 A.2d 561](#); [People v. Greene, 682 N.E.2d 354, 289 Ill. App. 796, 224 Ill. Dec. 793 \(App. Ct. 1997\)](#).

[FN171]. [Greene, 682 N.E.2d 354.](#)

[FN172]. See [Barone, 330 F.2d 543.](#)

[FN173]. [330 F.2d 543 \(2d Cir.\)](#), cert. denied, [377 U.S. 1004 \(1964\)](#).

[FN174]. [Barone, 330 F.2d at 544.](#)

[FN175]. Id.

[FN176]. Id.

[FN177]. Id.

[FN178]. Id.

[FN179]. Id.

[FN180]. Id.

[FN181]. Id.

[FN182]. Id.

[FN183]. Id.

[FN184]. [State v. Pearson-Anderson, 41 P.2d 275, 136 Idaho 847 \(Ct. App. 2001\)](#); [People v. Greene, 682 N.E.2d 354, 289 Ill. App. 796, 224 Ill. Dec. 793 \(App. Ct. 1997\)](#); see also [United States v. Holloway, 290 F.3d 1331, 1338-39 \(11th Cir. 2002\)](#) (applying Alabama law); [United States v. Richardson, 208 F.3d 626, 630 \(7th Cir. 2000\)](#) (applying Wisconsin law).

[FN185]. See [Kerman v. City of New York, 261 F.3d 229, 236 \(2d Cir. 2001\)](#) (finding that an anonymous 9-1-1 call lacks “sufficient() reliab(ility) and (was not) corroborated” enough to justify a warrantless entry).

[FN186]. [Frankel, 847 A.2d 561;Pearson-Anderson, 41 P.3d 275;Greene, 682 N.E.2d 354.](#)

[FN187]. See, e.g., [People v. Allison, 86 P.3d 421 \(Colo. 2004\)](#) (suggesting that the Emergency Aid Exception would have applied to the officers' warrantless entry in response to a hang-up 9-1-1 call, had he not been given consent to enter; however, the court ultimately held that because the officers removed the domestic combatants from the premises and no evidence suggested the involvement of a third party, the officers' reentry into the residence was not justified under the Emergency Aid Exception).

[FN188]. [Pearson-Anderson, 41 P.3d 275;Greene, 682 N.E.2d 354;Frankel, 847 A.2d 561.](#)

[FN189]. [41 P.3d 275, 278, 136 Idaho 847, 851 \(Ct. App. 2001\)](#).

[FN190]. [Pearson-Anderson, 41 P.3d at 276.](#)

[\[FN191\]](#). Id.

[\[FN192\]](#). Id.

[\[FN193\]](#). Id.

[\[FN194\]](#). Id.

[\[FN195\]](#). Id.

[\[FN196\]](#). Id.

[\[FN197\]](#). Id. at 277 (citing [Cal. v. Acevedo](#), 500 U.S. 565, 580, 111 S. Ct. 1982, 1991, 114 L. Ed. 2d 619, 634 (1991)).

[\[FN198\]](#). Id. (citing [Mich. v. Tyler](#), 436 U.S. 499, 509, 98 S. Ct. 1942, 1949, 56 L. Ed. 2d 486, 498 (1978)).

[\[FN199\]](#). Id. at 278 (quoting [State v. Monroe](#), 611 P.2d 1036, 1039, 101 Idaho 251, 254 (1980)).

[\[FN200\]](#). [Pearson-Anderson](#), 41 P.3d at 278.

[\[FN201\]](#). Id.

[\[FN202\]](#). [682 N.E.2d 354](#), 289 Ill. App. 796, 224 Ill. Dec. 793 (App. Ct. 1997).

[\[FN203\]](#). [Greene](#), 682 N.E.2d at 356.

[\[FN204\]](#). Id.

[\[FN205\]](#). Id.

[\[FN206\]](#). Id.

[\[FN207\]](#). Id.

[\[FN208\]](#). Id.

[\[FN209\]](#). Id.

[\[FN210\]](#). Id.

[\[FN211\]](#). Id.

[\[FN212\]](#). [318 F.2d 205](#), 115 U.S. App. D.C. 234 (D.C. Cir. 1963).

[\[FN213\]](#). [Greene](#), 682 N.E.2d at 358 (quoting [Wayne](#), 318 F.2d at 212).

[FN214]. [Id. at 358-59.](#)

[FN215]. [Id. at 359.](#)

[FN216]. [Pearson-Anderson, 41 P.3d at 278-79;Greene, 682 N.E.2d at 358-59.](#)

[FN217]. [Frankel, 847 A.2d 561.](#)

[FN218]. [977 F.2d 587](#), No. 91-15472, [1992 WL 258883](#), (9th Cir. Oct. 2, 1992) (unpublished table opinion).

[FN219]. [Pearson-Anderson, 41 P.3d at 278-79;Greene, 682 N.E.2d at 357-59.](#)

[FN220]. [330 F.2d 543 \(2d Cir.\)](#), cert. denied, [377 U.S. 1004 \(1964\)](#).

[FN221]. [290 F.3d 1331 \(11th Cir. 2002\)](#).

[FN222]. [208 F.3d 626, 636 \(7th Cir. 2000\)](#).

[FN223]. See [Katz v. United States, 389 U.S. 347, 361, 88 S. Ct. 507, 516, 19 L. Ed. 2d 576 \(1967\)](#) (Harlan, J., concurring).

[FN224]. [Frankel, 847 A.2d 561](#) (quoting [State v. Cassidy, 843 A.2d 1132, 1132, 179 N.J. 150, 150 \(2004\)](#)).

[FN225]. [Barone, 330 F.2d at 543.](#)

[FN226]. [Id. at 544](#) (emphasis added).

[FN227]. Frankel's expansion of the Emergency Aid Doctrine as an exception to the Fourth Amendment warrant requirement for search and seizures is not affected by a Second Circuit's recent decision in [Doe v. Ashcroft, No. 04 Civ 2614 \(VM\), 2004 WL 2185571, at *1, *16 \(S.D.N.Y., 2004\)](#) (holding that insofar as the Patriot Act enables the government "unilaterally seiz(e) documents," it has the practical effect of violating the Fourth Amendment, as applied, because "it effectively bars or substantially deters any judicial challenge to the propriety of an NSL request," and the "ready availability of judicial process to pursue such a challenge is necessary to vindicate important rights guaranteed by the Constitution"). The court found that the NSL (National Security Letter), issues by the FBI under the Patriot Act, "essentially coerces the reasonable recipient into immediate compliance," without regard his or her Fourth Amendment rights. *Id.* at *21. However, the Government never tried to argue that the Act's abrogation of the Fourth Amendment necessarily fell within a well-delineated exception to the Fourth Amendment warrant requirement, such as the Emergency Aid Exception. Instead, the Government merely argued that the Act furthered an "enhancement of the Government's preparedness for some possible future crisis or emergency." *Id.* at 38. Because the Government did not argue, and the district court did not find, that the Act fell within the scope of the Emergency Aid Exception, or any other well-delineated exception to the Fourth Amendment warrant requirement for search and seizures, the Doe holding has no bearing upon the expansion of the Emergency Aid Exception to open-line 9-1-1 calls.

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