NO. _____

In the

Supreme Court of the United States

Antoine Bryant, Sr.,

Petitioner,

v.

United States of America,

Respondent.

On Petition for a Writ of Certiorari
from the United States Court of
Appeals for the Fifth Circuit
Fifth Circuit Case No. 21-60960

PETITION FOR A WRIT OF CERTIORARI

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INTRODUCTION

This petition presents a straightforward case for certiorari review. No-knock search warrants are only to be issued under extremely limited circumstances.

In 1997, this Court issued *Richards v. Wisconsin*, holding that in those circumstances when police have good reason to suspect that announcing their presence and intentions may be dangerous, futile, or result in the destruction of evidence, a "no-knock" entry is justified.

Less than ten years later, this Court in *Hudson v. Michigan* held that the exclusionary rule does not apply as a remedy for a no-knock search warrant violation.

The Fifth Circuit has reaffirmed this fundamentally unfair principle. The exclusionary rule should apply when officers cannot provide sufficient exigent circumstances as required under *Richards*. To allow a civil action as the only appropriate remedy, *Richards* has no teeth left and is obsolete.

The issue before the Court has national significance. Since *Hudson*, no-knock search warrants have increased ten-fold. These warrants are dangerous, and many times are deadly. When a deadly raid occurs in a community, state and local governments are reactionary in passing laws banning and/or limiting no-knock search warrants. We find ourselves with a patchwork of laws across the country concerning the utilization of no-knock warrants. Many states grant broader protections against the execution of no-knock search warrants than federal law.

This Court should accordingly grant review to reaffirm *Richards* and to reevaluate the exclusionary rule as a remedy for violations of the Fourth Amendment.

QUESTIONS PRESENTED

Whether a no-knock search warrant issued, without any evidence of an exigent circumstance, should result in the evidence being suppressed under the Fourth Amendment?

PARTIES TO THE PROCEEDING

Petitioner is Antoine Bryant, Sr., who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

COURT PROCEEDINGS

United States v. Antoine Bryant, 4:20-CR-071-NBB-JMV Northern District of Mississippi; Order Denying Motion to Suppress entered on August 10, 2021.

United States v. Antoine Bryant, 4:20-CR-071-NBB-JMV Northern District of Mississippi; Judgment entered on December 17, 2021.

United States v. Antoine Bryant, Fifth Circuit Case Number 21-60960, 2023 WL 119634 (5th Cir. Jan. 6, 2023); Order affirming district court entered on January 6, 2023.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Antoine Bryant, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The Fifth Circuit's opinion can be found in an unpublished opinion at *United States v. Bryant*, 21-60960, 2023 WL 119634 (5th Cir. Jan. 6, 2023). *See* Appendix A.

The district court denied Mr. Bryant's Motion to Suppress on August 10, 2021. The Order denying the Motion to Suppress is attached as Appendix B. The district court entered the Judgment sentencing Mr. Bryant to 15 months' imprisonment on December 13, 2021. *See* Appendix C.

JURISDICTION

This Petition for Writ of Certiorari is filed within 90 days after entry of the Fifth Circuit Judgment. *See* Rule 13.1 of the Supreme Court Rules. The jurisdiction of this Court to review the judgment of the Fifth Circuit is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

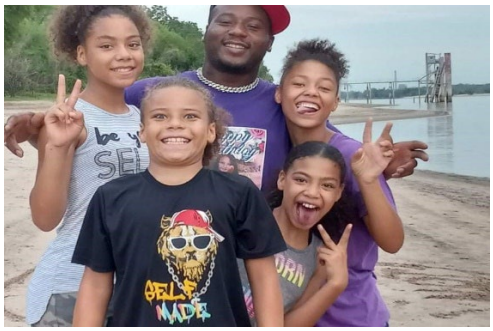
This petition involves the Fourth Amendment:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

In the early morning hours of June 17, 2019, Mr. Bryant, his girlfriend, and his minor children were either sleeping or just waking up to prepare for the day. Five Greenville Police Department officers converged upon his home, used a battering ram to break through his front door, entered his home, and brandished their firearms. All of this due to their possession of a no-knock search warrant.

Glass from the door shattered and shards of glass cut Mr. Bryant's girlfriend; Mr. Bryant's four minor children were screaming and crying. During this incident, Mr. Bryant was compliant and cooperative. When the officers asked if there were any guns in the house, Mr. Bryant said there was a firearm under the couch cushion. Officers did not find any drugs except three empty pill bottle containers containing marijuana residue and a marijuana glass pipe. The officers arrested Mr. Bryant for being a felon in possession of a firearm. As the police left with Mr. Bryant in handcuffs, all that was left in their wake was a busted front door, an injured girlfriend, and four terrified children.



Seven days before the raid, on June 10, 2019, Mr. Bryant sold less than a gram of marijuana for $10.00 to a confidential informant (hereinafter "CI"). Based largely on this sale, Investigator Jonathan West with the Greenville Police Department applied for a "no-knock" search warrant. Investigator West testified at the suppression hearing that the Greenville Police Department never intended to prosecute Mr. Bryant for the marijuana sale. Mr. West stated that the sale was to be used for the probable cause necessary to obtain a search warrant for Bryant's house.

On June 11, 2019, Investigator West drafted an affidavit requesting a no-knock search warrant for Mr. Bryant's residence. In addition to the controlled buy, the affidavit signed by Investigator West stated that the CI told him the following information about Mr. Bryant:

- He/she could purchase illegal drugs and guns from Mr. Bryant,[1]
- Mr. Bryant is affiliated with Willie Diggins, a person who allegedly sells drugs on Fourth Street,
- Mr. Bryant sells marijuana, cocaine, and firearms from his residence,
- He/she has seen Mr. Bryant in possession of handguns that were allegedly for sale, and

[1] Investigator West testified at the suppression hearing that he does not remember the CI telling him he could purchase a firearm from Mr. Bryant.

- Mr. Bryant is a convicted felon.

Municipal Court Judge Michael Prewitt issued the "no-knock" search warrant on Mr. Bryant's house. On June 17, 2019, six days after its issuance, Greenville police officers executed the warrant.

Mr. Bryant filed a motion to suppress the search warrant claiming it was an unreasonable search because the warrant lacked sufficient evidence for the issuance of a no-knock. At the suppression hearing, Investigator West and Judge Prewitt testified. Investigator West agreed that an officer could only request a no-knock search warrant if there was a risk to the safety of the officers or if there was a risk of destruction of evidence. Investigator West testified that he asked for a no-knock provision to the search warrant because of possible narcotics and guns being in the house.

As to dangerousness, Investigator West admitted that he never asked the CI to make a purchase of a firearm. West stated that from "his memory" the CI told him that he could not purchase a gun from Bryant. Investigator West also admitted that he nor any other officer engaged in any independent investigation into the CI's allegation that guns were present in Mr. Bryant's home. Investigator West admitted that he never asked the CI the following questions: 1) When was the last time the CI saw firearms in Bryant's residence? 2) Did the CI ever see Mr. Bryant carrying a firearm on his person? 3) Did Mr. Bryant ever threaten the CI? Additionally, Investigator West admitted that Mr. Bryant did not have any prior felony convictions of a crime of violence.

As to the destruction factor, after breaking down Mr. Bryant's door and entering his home, officers only found three empty pill bottles that had marijuana residue and a glass pipe. Officers did not find cocaine, marijuana (other than residue), baggies, scales, ledgers, or currency. The drugs were not found in the bathroom or near a drain disposal.

Finally, and most importantly, Investigator West confessed that he usually asks for a "no-knock" search warrant any time drugs are alleged.

Judge Prewitt testified that most of the search warrants the Greenville Police Department apply for are no-knock search warrants and that request is made because most no-knock search warrants involve drugs and/or guns. Judge Prewitt believed that a no-knock search warrant was justified in this case because of the references to the sale of firearms and drug trafficking. He agreed that knowing as many facts as possible would be both relevant and important in his decision to grant or deny a warrant. Judge Prewitt agreed with defense counsel that 0.87 grams is not a lot of marijuana, and that this information was never disclosed to him. Judge Prewitt testified that Investigator West failed to include in his application anything regarding Mr. Bryant's history of violence, threats to the CI, whether Bryant was known to carry guns on his person, or information about when was the last time the CI had seen guns in the home. Judge Prewitt also admitted that he never sought this information prior to signing off on the warrant.

Judge Prewitt was asked about whether he is in the practice of rubber-stamping no-knock search warrants. Judge Prewitt denied such behavior but

admitted that he could not remember the last time he denied a request for a no-knock search warrant. Judge Prewitt admitted that most of the search warrants of homes that he signs off on contain a no-knock provision. Judge Prewitt stated that the threshold is not high for issuing a no-knock provision to a search warrant and he has the legal authority to issue such a provision even when the contraband sought is a "sweater". Judge Prewitt testified that the mere accusation that firearms may have been in the house at some point in time is enough to warrant a no-knock search warrant.

The district court denied defendant's motion to suppress stating that the "good faith exception" applied to the search warrant. Furthermore, regarding the no-knock provision, that pursuant to *Hudson v. Michigan* the exclusionary rule is not the appropriate remedy for a violation of the knock and announce rule.

Mr. Bryant conditionally pled guilty allowing him to appeal the district court's denial of his motion to suppress. Following his sentencing, Mr. Bryant filed an appeal to the Fifth Circuit essentially reiterating the argument that there was no reasonable suspicion asserted to invoke a no-knock search warrant. *See United States v. Bryant*, 2023 WL 119634 (5th Cir. Jan. 6, 2023).

The Fifth Circuit affirmed the lower court's ruling and stated that this Court in *Hudson* held that the appropriate remedy for a violation of the knock and announce rule was civil monetary damages, not suppression. *Id*. at *3 (5th Cir. Jan. 6, 2023) (*citing Hudson*, 547 U.S. at 593–94 (explaining suppression inapplicable when there is an alleged knock-and-announce violation). The Court

went on to state that the "good faith exception" is not applicable because that deals with the probable cause of the search warrant and not to the reasonableness of the no-knock provision of the warrant.

Neither the lower district court judge nor the Fifth Circuit has performed an analysis as to whether the facts presented to Judge Prewitt met the reasonable suspicion standard to justify a no-knock provision within the search warrant as required in *Richards v. Wisconsin*.

REASONS FOR GRANTING THIS PETITION

The Fourth Amendment to the United States Constitution provides 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, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV.

To justify a "no-knock" entry, the police must have a reasonable suspicion that knocking and announcing their presence would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence. *Richards v. Wisconsin*, 520 U.S. 385, 394–95 (1997).

In this case, the Fifth Circuit, like the lower court, did not perform any analysis regarding whether the facts warranted the issuance of a no-knock provision within the search warrant. The court's ruling appears to find *Richards v. Wisconsin* obsolete. The Fifth Circuit simply stated that defendant's request for suppression is not a

proper remedy for a violation of the constitutional knock-and-announce requirement. The court went on to say that the only proper recourse for such a constitutional violation is civil in nature. *United States v. Bruno,* 487 F.3d 304, 305-06 (5th Cir. 2007) (citing *Hudson*, 547 U.S. at 593-94).

The evidence seized in a home following the execution of a no-knock search warrant lacking reasonable suspicion of dangerousness or destruction of evidence should be suppressed because the evidence is the fruit of an illegal entry. Petitioner is requesting the Court reevaluate its ruling in *Hudson v. Michigan*, wherein this Court held that the exclusionary rule should not apply to the reasonableness of a warrant as it relates to violations of the knock and announce doctrine. In *Hudson*, Justice Scalia speaking for the majority, stated that the exclusionary rule has never been applied "except where its deterrence benefits outweigh its substantial social costs." *Hudson*, at 591.

Considering recent events involving the use of these highly dangerous and intrusive policing tactics, it is time for the Court to reconsider its position on the exclusionary rule and its application to knock-and-announce violations. By gutting the exclusionary rule in such contexts, the Court removed the only real insurance of law enforcement compliance.

Justice Breyer in his lengthy dissent, joined by four other justices, in *Hudson* stated, "without such a rule police know that they can ignore the Constitution's requirements without risking suppression of evidence discovered after an unreasonable entry." *Id.* at 609.

I. This Court should grant review because suppression should be an appropriate remedy for *Richards v. Wisconsin* violations.

The common-law principle that law enforcement officers must announce their presence and provide residents an opportunity to open the door is an ancient one. *See Wilson v. Arkansas*, 514 U.S. 927, 931–932, (1995). The origins of the knock-and-announce rule can be traced to a 1604 English court decision known as *Semayne's Case*. *Wilson*, 514 U.S. at 931 (citing *Semayne's Case*, 5 Co. Rep.91a, 91b, 77 Eng.Rep. 194, 195 (K.B.1603). The "knock-notice" or 'knock-and-announce' rule originates from the Fourth Amendment's protection against unreasonable searches and seizures. However, there are exceptions to this knock-notice rule.

Three major cases from this Court primarily compose the search warrant entry into a residence landscape: *Wilson v. Arkansas*, *Richards v. Wisconsin*, and *Hudson v. Michigan*.

Wilson v. Arkansas

In *Wilson*, officers applied for a search warrant for Ms. Wilson's home claiming they had probable cause to believe Ms. Wilson had narcotics in the residence. *Wilson*, 514 U.S. 927, 929 (1995). When officers arrived, they found Ms. Wilson's front door unlocked. *Id.* Officers opened the door and announced themselves as police and that they had a search warrant. *Id.* The officers then walked into the house where they found inside several different narcotics and a gun. *Id.*

Ms. Wilson was subsequently arrested for possession of narcotics. *Id.* at 929-930. Ms. Wilson filed a motion to suppress which was summarily denied by the state court judge and affirmed by the Arkansas Supreme Court. *Id.*

The United States Supreme Court granted certiorari and unanimously ruled to reverse and remand the Arkansas decision. *Id.* Justice Thomas writing for the Court went into a lengthy history lesson of how the knock-and-announce principle is intricately woven into the fabric of the reasonableness clause of the Fourth Amendment to the Constitution. *Id.* at 933. The Court held that the common-law knock-and-announce principle originates from the Fourth Amendment's protection against unreasonable searches and seizures. *Id.* at 930. The Court stated, "we have little doubt that the Framers of the Fourth Amendment thought that the method of an officer's entry into a dwelling was among the factors to be considered in assessing the reasonableness of a search or seizure." *Id.* at 934.

The Court did point out that circumstances may exist that would lead an officer to obviate from the rule and perform a no-knock entry. *Id.* Justice Thomas stated "[w]e need not attempt a comprehensive catalog of the relevant countervailing factors here. For now, we leave to the lower courts the task of determining the circumstances under which an unannounced entry is reasonable under the Fourth Amendment." *Id.* at 936. This dicta led to *Richards v. Wisconsin*.

Richards v. Wisconsin

Two years after the *Wilson* case, in another unanimous decision, this Court decided *Richards v. Wisconsin*, 520 U.S. 385 (1997). A CI told officers that Mr. Richards was selling narcotics out of the hotel room. *Id.* at 388. Officers applied for a no-knock search warrant for the hotel room. *Id.* The magistrate judge issued the search warrant but specifically denied the officer's request for a no-knock provision

within the warrant. *Id.* Officers arrived at the hotel room with one of the officers dressed as a maintenance man who knocked on the hotel door and announced that he was with hotel maintenance. *Id.* Mr. Richards opened the door and slammed the door shut, the officers kicked and rammed through the door, ultimately finding cocaine.

The trial court denied Mr. Richards' motion to suppress based on the claim that officers had failed to properly knock-and-announce before gaining entry. *Id.* The Wisconsin Supreme Court held that whenever drugs are alleged there is always reasonable cause to believe that exigent circumstances exist for a no-knock. *Id.*

The Wisconsin Supreme Court reached this conclusion after "considering criminal conduct surveys, newspaper articles, and other judicial opinions-to assume that all felony drug crimes will involve 'an extremely high risk of serious if not deadly injury to the police as well as the potential for the disposal of drugs by the occupants prior to entry by the police.'" *Id.* at 390 (*citing State v. Richards*, 201 Wis. 2d 845 (1996).

While affirming the Wisconsin Supreme Court's decision, this Court stated that it did not accept the blanket exception of no-knock practice with felony drug cases. *Richards,* at 395. Instead, the Court established a balancing test for issuing judges where it attempted to seek a balance between the legitimate law enforcement concerns at issue in the execution of search warrants and the individual privacy interests affected by no-knock entries." *Id.* at 394. Justice Stevens wrote that officers could enter without knocking if the officers could prove by reasonable suspicion that one of three circumstances existed: danger to the officers, potential for destruction of

evidence, or if knocking would be futile. *Id.* at 394–95. The showing required is "not high, but the police should be required to make it whenever the reasonableness of a no-knock entry is challenged." *Id.* at 394-95.

Hudson v. Michigan

Finally, in a 5-4 decision, nine years after the *Richards* decision, this Court decided *Hudson v. Michigan*, 547 U.S. 586 (2006). In *Hudson*, state law enforcement applied for and obtained a search warrant for Mr. Hudson's home where they had probable cause to believe Mr. Hudson had drugs and guns. *Hudson*, 547 U.S. at 588. The officers knocked and announced their presence, but opened the door only after 3-5 seconds. *Id.* Once inside Hudson's home, officers found drugs and a gun. *Id.*

Mr. Hudson moved to suppress the evidence claiming the premature entry by the officers violated his Fourth Amendment rights, and thus, the exclusionary rule should preclude the government from using the evidence seized in his case. *Id.*

The attorney for the state of Michigan conceded that the officers had violated the knock-and-announce obligation because they did not wait a sufficient period of time before opening Mr. Hudson's door and entering his home. *Id.* at 590. Due to this concession that the officers did violate the knock-and-announce obligation, the only issue that remained was what, if any, remedy should apply. *Id.*

The split 5-4 decision (with the 5th vote being a concurring opinion by Justice Kennedy), the Court held that the exclusionary rule is not the remedy for such a violation. *Id.* at 594. The Court held that the proper recourse for such behavior is civil in nature or by internal disciplinary measures within the police department. *Id.*

at 596-97. Justice Scalia stated that the rationalization for removing the exclusionary rule as a remedy was because the "deterrence benefits" of suppression were minimal and were outweighed by the "substantial social costs" of excluding evidence. *Id.* at 591. The substantial social costs being that guilty people would go free and dangerous criminals would be at large. *Id.*

The Fifth Circuit extended the *Hudson* holding of non-exclusion to evidence seized by police following knock-and-announce violations under federal statutory law. *Bruno,* 487 F.3d 304. "The common law principle 'that law enforcement officers must announce their presence and provide residents an opportunity to open the door has been part of federal statutory law since 1917 and is codified at 18 U.S.C. § 3109." *Id.* at 305.

The Fifth Circuit held that the Court's decision in *Hudson* compelled the conclusion that suppression is not the remedy for a violation of § 3109. *Id.* at 306. The court went on to say that "even if the conduct in this case violated the statute" suppression was not available as a remedy. *Id.* In a footnote, the Court stated that because of its conclusion that the remedy was not suppression, then no analysis was necessary to determine whether a § 3109 violation occurred. *Id.* at FN 2.

It is important to distinguish Mr. Bryant's case from these precedent cases. In *Wilson*, *Richards*, *Hudson,* and *Bruno* the officers were armed with a general search warrant. Here, however, officers had a warrant with a no-knock provision. The question in both *Wilson* and *Richards* became whether the actions of the officers at

the threshold of the defendant's home were **reasonable**. In *Hudson*, the government had already conceded that the actions of the police were not reasonable.

In the case at bar, the prosecution has not conceded whether the officers' actions were unreasonable. In fact, it is the government's position that the officers had reasonable suspicion to request a no-knock warrant because of the mere possibility of drugs and guns being inside the home. Unlike in *Wilson, Richards, and Hudson*, the issue regarding whether or not the warrant contained sufficient information to withstand a challenge to the knock and announce doctrine has never been decided. The Fifth Circuit simply leap frogged over this analysis and held that the balancing test in *Richards* is obsolete because the remedy that Mr. Bryant is requesting is no longer applicable pursuant to *Hudson*.

No-knock search warrants are not the default search warrant – no-knock search warrants are the exception. In Greenville, Mississippi, officers were requesting no-knock search warrants in any and all cases that concerned drugs, guns or a combination of both, without regard to a *Richards* analysis. Allowing officers to request a no-knock search warrant in *any* case that involves guns, drugs, or a combination of both, without any allegation of dangerousness or destructive behavior goes against Supreme Court precedent and can lead to deadly consequences.

As stated in *Richards*, creating exceptions to the knock-and-announce rule based on the "culture" surrounding a general category of criminal behavior presents at least two serious concerns. *Richards*, 520 U.S. at 392–94. First, the exception contains considerable overgeneralization. Not every drug investigation poses special

risks to officer safety and the preservation of evidence, nor does every drug investigation pose these risks to a substantial degree. *Id*. at 393. This case is a prime example of overgeneralization as Mr. Bryant (and Breonna Taylor) was not a threat. He had minor children and his girlfriend living in the house. Couple that with having zero violent criminal history, there was no reason to break down his door, with guns raised and obscenities screamed as the family slept in their beds.

The *Richards'* Court noted a second difficulty with permitting a criminal-category exception to the knock-and-announce requirement: creating an exception in one category can, relatively easily, be applied to others. *Id*. at 394. Armed bank robbers, for example, are, by definition, likely to have weapons, and the fruits of their crime may be destroyed without too much difficulty. If a *per se* exception were allowed for each category of criminal investigation that included a considerable-albeit hypothetical-risk of danger to officers or destruction of evidence, the knock-and-announce element of the Fourth Amendment's reasonableness requirement would be meaningless.

Pursuant to *Richards*, Mr. Bryant contends that no-knock search warrants are only allowable in situations where officers can specify an exigent circumstance. Otherwise, only a traditional search warrant should issue.

II. This Court should grant review because the "deterrence benefits" of the exclusionary rule outweigh the "substantial social cost" of excluding evidence.

Justice Scalia opined in *Hudson* that the deterrence benefits of the exclusionary rule do not outweigh the substantial social costs of excluding evidence.

Hudson, 547 U.S. at 594-595. The irony of this statement is that no-knock warrants are oftentimes the catalyst to creating substantial social costs, i.e., at minimum property destruction and at most death.

Although law enforcement agencies are not required to report fatalities that result from no-knock search warrants to any state or federal agency, the Washington Post reports from its own investigation that at least 22 people have been killed since 2015 during the service of no-knock search warrants.[2] The New York Times reports that between 2010 and 2016, 94 people died during the execution of no-knock search warrants.[3]

As seen above, this Court has ruled that the knock and announce doctrine is engrained in our Fourth Amendment. However, with the Court's ruling in *Hudson*, it has removed any real teeth to deter law enforcement from violating the knock and announce doctrine. Justice Breyer warned that without the exclusionary rule "police know that they can ignore the Constitution's requirements without risking suppression of evidence discovered after an unreasonable entry." *Hudson*, 547 U.S. at 609.

Justice Scalia posited that other methods of deterrence are available such as civil lawsuits or internal police department disciplinary procedures. *Id.* at 598-599.

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[2] Nicole Dungca and Jenn Abelson, *No-Knock Raids Have Led to Fatal Encounters and Small Drug Seizures*, WASHINGTON POST (April 15, 2022) https://www.washingtonpost.com/investigations/interactive/2022/no-knock-warrants-judges/

[3] Stephen Hiltner, *How a Grenade in a Playpen Led to an Investigative Project*, N.Y. TIMES (March 18, 2017) https://www.nytimes.com/2017/03/18/insider/kevin-sack-no-knock-baby-bou.html?searchResultPosition=1

However, civil lawsuits are generally thwarted by qualified immunity.[4] In Mr. Bryant's case it would be highly unlikely that a civil rights attorney and/or a plaintiff's attorney would sue the City of Greenville over a broken door, a cut on a girlfriend's leg, and four terrorized children; not to mention that Mr. Bryant would be unable to afford a lawsuit of such nature.

A 2013 study surveyed police chiefs across the country who indicated that excluding evidence is a helpful deterrent in preventing police misconduct.[5] The survey found that a majority (64.6%) of the police chiefs agreed that the "exclusion of evidence in court is helpful in preventing police misconduct during arrests implicating the knock and announce rule." Based on this empirical data, Mr. Bryant

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[4] Dr. Christopher Totten and Dr. Sutham Cobkit, *The Knock-and-Announce Rule and Police Arrests: Evaluating Alternative Deterrents to Exclusion for Rule Violations*, 48 UNIV.OF S.F. L. REV. 71, 102 (2013), footnote 221. The writers state the following:

"Additional remedies that the judiciary may have control over are civil rights lawsuits or torts lawsuits. However, scholars have consistently pointed out various deficiencies in civil suits as a mechanism to deter police misconduct. *See The Supreme Court*, *2006 Term— Leading Cases,* 120 HARV. L. REV. 173, 180–183 (2006) [hereinafter *Leading Cases*]. Civil suits by inmates grounded in Fourth Amendment police violations typically lead to small monetary awards. *Id.* at 182. Since lawyers are permitted to recover only a portion of these awards as fees, many lawyers will be hesitant to take on such suits. *See id.* at 181–82. . . ."[T]he monetary damages awarded [in civil rights lawsuits] for Fourth Amendment violations are usually quite small. The plaintiffs are seen as unworthy victims by the fact finders, who recoil at awarding these unworthy victims any significant monetary amount."). . . . . [O]fficers and law enforcement departments have numerous immunities against civil rights lawsuits, that these suits are costly to pursue, and that though such a suit could theoretically be successful, the officer may lack the means to pay any monetary award. . . .Torts suits encounter similar problems. *See id.* at 737–39 (noting that these suits are costly, that police possess various immunities, and that juries lack sympathy toward plaintiffs). . ."

[5] Dr. Christopher Totten and Dr. Sutham Cobkit, *The Knock-and-Announce Rule and Police Arrests: Evaluating Alternative Deterrents to Exclusion for Rule Violations*, 48 UNIV.OF S.F. L. REV. 71, 102 (2013).

submits that the Court should reconsider the role that exclusion can serve in deterring knock and announce violations.

Further, this Court has held that the Second Amendment affords individuals the right to possess arms for traditionally lawful purposes, including self-defense within the home. *District of Columbia v. Heller,* 544 U.S. 570, 635 (2009). Approximately 40% of Americans either currently own a gun or live with someone who does.[6] In Mississippi, that number is even higher with almost 56% of its adult citizens owning a gun.[7] "Two-thirds of gun owners cite personal protection as a major reason for owning a gun."[8] The clash between no-knock warrants, the castle doctrine and the rate of gun ownership is a dangerous cocktail mixed at the threshold of a person's home.

The whole point of allowing officers to proceed with no-knock warrants was to prevent danger to officers or to prevent the destruction of evidence. The purpose of the no-knock is to get compliance quickly by booting down doors, moving quickly, sometimes with distraction devices like flash bang grenades,[9] and getting more

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[6] Katherine Schaeffer, *Key Facts About Americans and Guns,* PEW RESEARCH CENTER (September 13, 2021) https://www.pewresearch.org/fact-tank/2021/09/13/key-facts-about-americans-and-guns/

[7] Jessica Learish and Elisha Fielstadt, *Gun Map: Ownership by State,* CBS NEWS (April 14, 2022) https://www.cbsnews.com/pictures/gun-ownership-rates-by-state/2/

[8] Kim Parker et al., *The Demographics of Gun Ownership*, PEW RESEARCH CENTER (June 22, 2017), http://www.pewsocialtrends.org/2017/06/22/the-demographics-of-gun-ownership/.

[9] The use of these military style grenades has been known to burn small children, set fire to houses, and cause fatal heart attacks.

officers into a space quickly.[10] Of the 94 casualties resulting from no-knock raids, 13 were law enforcement officers.[11] Officers represented 10% of fatalities while executing standard "knock-and-announce" search warrants and 20% of fatalities associated with no-knock warrants.[12]

III. This case presents an ideal vehicle for deciding whether exclusion of evidence should be a remedy for no-knock warrant violations

No-knock search warrants have been steadily on the rise. Data collected by Peter Kraska, a professor with the School of Justice Studies at Eastern Kentucky University, found that "municipal police and sheriffs' departments used no-knock or quick-knock warrants about 1,500 times in the early 1980s, but that number rose to about 40,000 times per year by 2000.[13] In 2010, Professor Kraska estimated 60,000-70,000 no-knock or quick-knock raids were conducted by local police annually.[14]

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[10] Peter Nickeas, *There's a Growing Consensus in Law Enforcement Over No-Knock Warrants: The Risks Outweigh the Rewards*, CNN, (Feb. 12, 2022) https://www.cnn.com/2022/02/12/us/no-knock-warrants-policy-bans-states/index.html

[11] *Id*. at footnote 4.

[12] Nino Marchese, *Examining the Risks of No-Knock Raids*, AMERICAN LEGISLATIVE EXCHANGE COUNCIL (April 14, 2022) https://alec.org/article/examining-the-risks-of-no-knock-raids/

[13] Candice Norwood, *The War on Drugs Gave Rise to "No-Knock Warrants. Breonna Taylor's Death Could End Them*, PBS POLITICS, https://www.pbs.org/newshour/politics/the-war-on-drugs-gave-rise-to-no-knock-warrants-breonna-taylors-death-could-end-them (June 12, 2020) (*citing* Peter B. Kraska, *Militarization and Policing – Its Relevance to 21st Century Police*, POLICING ADVANCE ACCESS (Dec. 13, 2007).https://cjmasters.eku.edu/sites/cjmasters.eku.edu/files/21stmilitarization.pdf

[14] *Id*. at footnote 10.

No-knock search warrants have peppered the news in recent years, including the cases of Amir Locke,[15] Breonna Taylor,[16] seven-year-old Aiyana Stanley-Jones, and 92-year-old Kathryn Johnston.[17] According to a study completed by the ACLU in 2014, out of more than 800 SWAT raids nationally, 42% of those targeted African Americans, and 12% were Latinos.[18] Additionally, nearly two-thirds of the raids were for drug searches, and Black and Latino people accounted for 61% of drug targets. *Id*. Importantly, SWAT teams found contraband in only about one third of the drug cases, meaning even if one believes a raid necessary for a drug search, innocent people were placed in life-threatening situations in roughly two out of every three drug raids. *Id*. Mr. Bryant would have been one of these cases involving a black male where drugs were not found during the execution.

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[15] Police officers searching for another suspected executed a no-knock search warrant on an apartment and shot and killed Amir Locke. Amy Forliti, *Amir Locke Cousin Pleads Guilty in Killing That Led To Raid*, AP NEWS, (May 13, 2022). https://apnews.com/article/amir-locke-shootings-minnesota-police-robbery-1afff3b36867b402ba64cf8cd136dba7

[16] Police officers executed a no-knock search warrant in search of Breonna Taylor's ex-boyfriend in the early morning, causing her current boyfriend to fire shots towards the door. The officers returned fire and killed Ms. Taylor. McLaughlin, Eliott, Sonia Moghe, Hannah Rabinowitz, and Theresa Waldrop, *Breonna Taylor Killing: A Timeline of the Police Raid and Its Aftermath*, CNN, (Aug. 4, 2022) https://www.cnn.com/2022/08/04/us/no-knock-raid-breonna-taylor-timeline/index.html.

[17] Police officers raided the wrong addressed and killed Aiyana Stanley-Jones. Police officers in plainclothes entered Kathryn Johnston's house and shot her 39 times. John Guzman, *Breonna Taylor, Amir Locke, and the Dangers of Warrant Executions*, LEGAL DEFENSE FUND, (March 18, 2022) https://www.naacpldf.org/end-no-knock-warrants/ ; *see also* Nick Sibilla, *Cop Who Wrongly Led No-Knock Raid Against 78-Year-Old Grandfather Can't be Sued, Court Rules*, FORBES, (June 8, 2021) https://www.forbes.com/sites/nicksibilla/2021/06/08/cop-who-led-accidental-no-knock-raid-against-78-year-old-grandfather-cant-be-sued-court-rules/?sh=3e9b9b1b68b3; *see also* Ernie Suggs, *City to Pay Slain Woman's Family $4.9 Million*, THE ATLANTA JOURNAL CONSTITUTION, (August 10, 2010) https://www.ajc.com/news/local/city-pay-slain-woman-family-million/GWqsgDArzmOhvpb7iPY6FI/.

[18] Keturah Herron, *No-Knock Warrants and the Castle Doctrine*, AMERICAN CIVIL LIBERTIES UNION-KENTUCKY (December 18, 2020), https://www.aclu-ky.org/en/news/no-knock-warrants-and-castle-doctrine .

Certain state courts allow exclusion or provide it as a remedy for a violation of the knock-and-announce doctrine. For example, Florida,[19] Oregon,[20] Tennessee,[21] Connecticut,[22] and Virginia[23] have all banned no-knock search warrants. At least 25 cities and 29 states have done "something" to restrict the issuance of no-knock search warrants.[24] For example, in Kentucky, the legislature limited no-knock warrants to investigations of violent crimes and required officers seeking such warrants to have supervisory approval and to consult with a prosecutor.[25] It also required such warrants to be executed by SWAT teams or other specially trained personnel, with body cameras or other recording equipment active.[26] Utah prohibited the use of no-knock warrants in misdemeanor investigations and required that an officer seek

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[19] *State v. Bamber*, 630 So. 2d 1048 (Fla. 1994). (in the absence of express statutory authorization, no-knock search warrants are without legal effect in Florida).

[20] Or. Rev. Stat. Ann. § 133.575(2): The executing officer shall, before entering the premises, give appropriate notice of the identity, authority and purpose of the officer to the person to be searched, or to the person in apparent control of the premises to be searched, as the case may be.

[21] Tenn. Code § 40-6-105(b): A magistrate shall not issue a "no knock" search warrant, which expressly authorizes a peace officer to dispense with the requirement to knock and announce the peace officer's presence prior to execution of the warrant.

[22] Conn. Gen. Stat. Ann. § 54-33a(e): No police officer of a regularly organized police department or any state police officer, an inspector in the Division of Criminal Justice, a conservation officer, special conservation officer or patrolman acting pursuant to section 26-6 or a sworn motor vehicle inspector acting under the authority of section 14-8, shall seek, execute or participate in the execution of a no-knock warrant.

[23] Va. Code Ann. § 19.2-56: No law-enforcement officer shall seek, execute, or participate in the execution of a no-knock search warrant.

[24] End All No Knocks, *Interactive Map*, (last visited March 21, 2023), https://endallnoknocks.org/.

[25] *See* S.B. 4, § 1, 2021 Gen. Assembly., Reg. Sess. (Ky. 2021), adding Ky. Rev. Stat. § 455.180, https://apps. legislature.ky.gov/recorddocuments/bill/21RS/sb4/bill.pdf

[26] *Id*. at footnote 22.

supervisory review before applying for a no-knock warrant in a felony case.[27] The supervisor is required to "ensure reasonable intelligence gathering efforts have been made" and "ensure a threat assessment was completed on the person or building to be searched" before approving the submission of an application for a no-knock warrant.[28] Maine has required officers to wear body cameras if they are executing no-knock search warrants.[29]

Further, there is a split of authority among state courts[30] that do not have no-knock warrant statutes as to whether judicial officers may, nevertheless, authorize no-knock entries when they issue a search and seizure warrant; and "com[ing] out on the side of those courts that, in the absence of valid statutory authority, refuse to authorize a judicial officer to make an advance determination of exigency," instead leaving the decision to the officer on scene).[31] Some Courts that allow the issuance of no-knock warrants despite a lack of clear statutory authorization include Wisconsin and Georgia.[32]

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[27] H.B. 124, § 3, 2022 State Leg., Gen. Sess. (Utah 2022), adding Utah Code § 77-7-78.1, https://le.utah.gov/~2022/bills/static/HB0124.html.

[28] *Id.* at footnote 24.

[29] Me. Rev. Stat. tit. 15, § 57: Notwithstanding any provision of law to the contrary, a state, county or local law enforcement officer may not execute a no-knock warrant except as provided in subsection 3 or 4. Subsections 3 and 4 codify the exigent circumstances set forth in *Richards v. Wisconsin*.

[30] Jeffrey B. Welty, *The Law and Practice of No-Knock Search Warrants in North Carolina*, ADMINISTRATION OF JUSTICE BULLETIN, UNC SCHOOL OF GOVERNMENT (January 2023).

[31] *Davis v. State*, 859 A.2d 1112, 1121, 1124, 1132 (Md. 2004) (noting that "Maryland does not statutorily authorize its judicial officers to issue 'no-knock' warrants.")

[32] *State v. Henderson*, 629 N.W.2d 613, 622 (Wis. 2001) (citing *State v. Cleveland*, 348 N.W.2d 512 (Wis. 1984)) (the court stated that "[i]n Wisconsin, judicial officers are authorized to issue no-knock warrants," despite the lack of statutory authorization, and indicated that both citizens and officers

Since the passage of *Hudson*, there has been an increase in the execution of no-knock search warrants. With an increase in the utilization of this dangerous police tactical approach comes an increase in potential injury and death. State and local governing bodies across the country have passed laws to limit the usage of no-knock warrants. Many times, these laws are reactionary: someone dies, community outraged, a law is passed. As a result, there is a patchwork of different laws across this country attempting to limit the use of no-knocks. Many of these laws may not be considering the exceptions to the knock-and-announce doctrine that *Richards v. Wisconsin* made.

This Court is in the best posture to make the determination of what is reasonable and what is not reasonable when it comes to analyzing the Fourth Amendment and its application to the knock-and-announce doctrine. Further, this Court is in the best posture of creating an appropriate remedy for deterrence of police treading on individual's civil rights. Without the exclusionary rule being applicable to knock-and-announce violations, the Court is removing the one big stick that maintains police compliance.

Because the law surrounding no-knock search warrants should be revisited, Mr. Bryant asks this Court to grant certiorari to review *Richards v. Wisconsin*, *Hudson v. Michigan* and the exclusionary rule.

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may benefit from judicial review of the need for entry without notice; the court also noted that judicial approval is not required and that officers always may enter without notice if circumstances support doing so); *see also State v. Smith*, 467 S.E.2d 221, 222 (Ga. Ct. App. 1996) (citing *Jones v. State*, 193 S.E.2d 38 (Ga. Ct. App. 1972)) (stating that "[a] search warrant with a no-knock provision may be issued where the facts set out in the affidavit demonstrate exigent circumstances").

CONCLUSION

For the foregoing reasons, Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit and allow him to proceed with briefing on the merits and oral argument.

Dated: April 3, 2023

Respectfully submitted,

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