No. 24-

In the Supreme Court of the United States

LEONARDO TERRAZAS, *PETITIONER*,

V.

UNITED STATES OF AMERICA, *RESPONDENT*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Fifth Circuit's application of the inevitable-discovery doctrine—based on its assumption that officers would have discovered the same evidence they found by violating the Fourth Amendment even if they had acted lawfully—directly conflicts with this Court's precedent.

RELATED PROCEEDINGS

United States District Court for the Western District of Texas:

United States v. Terrazas, No. 5:19-cr-609 (Mar. 16, 2023)

United States Court of Appeals for the Fifth Circuit:

United States v. Terrazas, No. 23-50225 (Mar. 27, 2024)

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LEONARDO TERRAZAS, *PETITIONER*,

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Leonardo Terrazas respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINION BELOW

The Fifth Circuit's opinion is unpublished but is available at 2024 WL 1299979 and is reproduced at App. 1a–3a. The Fifth Circuit's order denying rehearing en banc, App. 4a, is unpublished.

JURISDICTION

The Fifth Circuit entered its judgment on March 27, 2024, and denied rehearing en banc on August 28, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV.

INTRODUCTION

As Justice Holmes explained over a century ago, "the rights … against unlawful search and seizure are to be protected even if the same result might have been achieved in a lawful way." *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920). In other words, police officers cannot justify a Fourth Amendment violation by claiming: "If we hadn't done it wrong, we would have done it right." 6 W. LaFave, SEARCH & SEIZURE § 11.4(a) (6th ed. 2020).

The inevitable-discovery exception to the exclusionary rule reflects this fundamental principle. That doctrine applies only when evidence "ultimately or inevitably would have been discovered by *lawful* means"—that is, if "no misconduct had taken place." *Nix v. Williams*, 467 U.S. 431, 444 (1984) (emphasis added). So the inevitable-discovery exception requires an "untainted" investigation that establishes a "genuinely independent source of the information and tangible evidence at issue." *Murray v. United States*, 487 U.S. 533, 538, 542 (1988). And inevitable discovery must be based not on speculation but on "demonstrated historical

facts capable of ready verification or impeachment." *Nix*, 467 U.S. at 444 n.5.

The Fifth Circuit's decision below conflicts with these well-established guardrails on the inevitable-discovery doctrine. Officers violated Leonardo Terrazas's Fourth Amendment rights by failing to knock and announce before breaking down his door to execute an arrest warrant. Still, the Fifth Circuit held that the fruits of their illegal entry were admissible because a "protective sweep would have been justified"—and the challenged evidence discovered—"*even if* police had knocked." App. 3a (emphasis added). But the government never showed any lawful investigation or independent source that would have uncovered the fruits of the illegal search. Instead, the Fifth Circuit applied the inevitable-discovery doctrine based on an assumption that officers would have found the challenged evidence if they had chosen to act lawfully rather than violating the knock-and-announce rule. And that assumption is based on speculation, not verified facts.

The Fifth Circuit's decision is obviously wrong and squarely foreclosed by this Court's precedent. This Court should grant certiorari and summarily reverse.

STATEMENT

A. Legal background.

1. The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. The Founders intended the Fourth Amendment to "secure the citizen in person and property against unlawful invasion of the sanctity of his home by officers of the law." *Weeks v. United States*, 232 U.S. 383, 394 (1914). So the Fourth Amendment draws "a firm line at the entrance to the house." *Payton v. New York*, 445 U.S. 573, 590 (1980). "At the very core of the Fourth Amendment stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Kyllo v. United States*, 533 U.S. 27, 31 (2001) (cleaned up).

2. Breaking down the door of a person's house "invades the precious interest of privacy summed up in the ancient adage that a man's house is his castle." *Miller v. United States*, 357 U.S. 301, 306–07 (1958). So even when officers have the authority to enter a home (such as a warrant), "the method of an officer's entry into a dwelling [is] among the factors to be considered in assessing the reasonableness of a search or seizure." *Wilson v. Arkansas*, 514 U.S. 927, 934 (1995). The Supreme Court has explained that "the Fourth Amendment incorporates the common law requirement

that police officers entering a dwelling must knock on the door and announce their identity and purpose before attempting forcible entry." *Richards v. Wisconsin*, 520 U.S. 385, 387 (1997). And after knocking and announcing, police must wait a "reasonable" time—depending on the circumstances—before forcibly entering the home. *United States v. Banks*, 540 U.S. 31, 35–36, 41–42 (2003).

B. Proceedings below.

1. Early one morning, officers arrived at Terrazas's house to execute a three-year-old arrest warrant related to assault allegations made by Terrazas's then-girlfriend. C.A. ROA 181–84, 618–19. The officers did not have a search warrant for the home. *Id.* at 632–33. Security cameras captured the officers' entry. *See* Terrazas Mot. to Supp. Ex. D. Six officers pulled up to Terrazas's house, removed the gate to his yard, and immediately broke down his door with a battering ram. *Id.* No officer knocked or announced their presence before breaking down the door. *Id.*

Given the early hour, the home's occupants were all in bed. C.A. ROA 543. After jumping out of bed, Terrazas was arrested quickly without incident and taken outside, where he cooperated. *Id.* at 539, 682, 746. Meanwhile, back inside the house, several officers were milling around and coming in and out. *Id.* at 748. Some officers were questioning Terrazas's companion, who was still in

bed, undressed, holding her baby. *Id.* at 723–25. An officer standing nearby noticed her looking toward a nearby dresser. *Id.* at 741–42. The officer saw that the top drawer was open three or four inches, and he glimpsed a pistol grip inside. *Id.* at 742. Officers then obtained a search warrant, returned to the house, and found several more guns. *Id.* at 234–35, 622, 700.

2. An indictment charged Terrazas with one count of being a felon in possession of firearms in violation of 18 U.S.C. § 922(g)(1). C.A. ROA 18–20. Terrazas moved to suppress the evidence seized from his house, including the guns. *Id.* at 176–79, 292–96. He argued that officers violated the Fourth Amendment by failing to knock and announce while executing the arrest warrant and that excluding the evidence they found was the proper remedy for that violation. *Id.* at 292–96. In response, the government conceded that officers violated the knock-and-announce rule. *Id.* at 246. But the government argued that "even in a counterfactual scenario in which deputies had knocked and announced their presence, … law enforcement officers were entitled to enter his home to conduct a protective sweep." *Id.* at 311. The government claimed that officers would have seen the gun in plain view during this protective sweep. *Id.* at 309.

The district court denied Terrazas's motion to suppress. C.A. ROA 489–502, 564. The court assumed that, even if there had been a Fourth Amendment violation and exclusion was the proper remedy, the "inevitable-discovery doctrine applies" because a protective sweep "would inevitably have led to the discovery of contraband," including the gun in plain view. *Id.* at 496–500.

3. The Fifth Circuit affirmed. Although the court acknowledged that officers did not knock and announce before entering Terrazas's home, it held that "[t]he fact that the means of entry may have been illegal does not necessarily require the exclusion of evidence." App. 2a. The court then held that the protective sweep that led to officers finding the gun was justified and that the "same protective sweep would have been justified even if police had knocked and Terrazas had surrendered outside the exterior door of his bedroom." *Id.* at 3a. The Fifth Circuit denied Terrazas's petition for rehearing en banc. *Id.* at 4a.

REASONS FOR GRANTING THE PETITION

I. The Fifth Circuit's application of the inevitable-discovery doctrine was obviously wrong and directly conflicts with this Court's precedent.

The inevitable-discovery doctrine is a well-established exception to the exclusionary rule that allows evidence to be admitted—despite a Fourth Amendment violation—if that

evidence "inevitably would have been discovered by *lawful* means." *Nix v. Williams*, 467 U.S. 431, 444 (1984) (emphasis added). The Fifth Circuit, however, turned the doctrine on its head and violated this Court's precedent in three ways. *First*, the court allowed the admission of evidence discovered when officers violated Terrazas's Fourth Amendment rights just because they may have discovered the same evidence had they complied with the Fourth Amendment. *Second*, the court applied the inevitable-discovery doctrine even though the government never showed an independent source of the evidence. *Third*, the court relied on a speculative counterfactual scenario—not demonstrated historical facts—when it determined that the evidence would inevitably have been discovered.

A. The Fifth Circuit violated this Court's precedent by allowing the admission of tainted evidence just because it may have been discovered had officers complied with the Fourth Amendment.

1. This Court has repeatedly recognized that "the rights … against unlawful search and seizure are to be protected even if the same result might have been achieved in a lawful way." *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920). In other words, "[t]he fact that equivalent information could sometimes be obtained by other means does not make lawful the use of means that violate the Fourth Amendment." *Kyllo v. United*

States, 533 U.S. 27, 35 n.2 (2001); *see also Mancusi v. DeForte*, 392 U.S. 364, 372 n.12 (1968) ("It is, of course, immaterial that the State might have been able to obtain the same papers by means which did not violate the Fourth Amendment.").

2. The Fifth Circuit disregarded this fundamental principle. Instead, the court allowed admission of tainted evidence simply because officers may have discovered that evidence "*even if*" they had complied with the Fourth Amendment by knocking and announcing. App. 3a (emphasis added). But the fact that officers may have discovered the evidence by lawful means cannot, under this Court's precedent, justify the Fourth Amendment violation. And the Fifth Circuit's conclusion has troubling implications. Allowing tainted evidence to be admitted merely because the police could have chosen to act lawfully would encourage officers to engage in unconstitutional conduct. In other words, the exclusionary rule would no longer serve its purpose—"deter[ring] future Fourth Amendment violations," *Davis v. United States*, 564 U.S. 229, 236–

37 (2011)—because courts would still admit the evidence even when, as here, officers violate the Fourth Amendment.[1]

B. The Fifth Circuit violated this Court's precedent by applying the inevitable-discovery doctrine without any independent, lawful source.

1. This Court also requires that the challenged evidence "inevitably would have been discovered by *lawful* means." *Nix*, 467 U.S. at 444 (emphasis added). After all, the inevitable-discovery doctrine "is in reality an extrapolation from the independent source doctrine: Since the tainted evidence would be admissible if in fact discovered through an independent source, it should be admissible if it inevitably would have been discovered." *Murray v. United States*, 487 U.S. 533, 539 (1988). So both doctrines require an "untainted" and "genuinely independent source" for the evidence. *Id.* at 538, 542.

2. The Fifth Circuit's application of the inevitable-discovery doctrine ignored this independent-source requirement. The court

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[1] The courts of appeal are divided over whether the exclusionary rule is the proper remedy when law enforcement officers violate the Fourth Amendment's knock-and-announce rule while executing an arrest warrant. *Compare United States v. Weaver*, 808 F.3d 26 (D.C. Cir. 2015) (applying exclusionary rule), *with United States v. Pelletier*, 469 F.3d 194 (1st Cir. 2006) (no exclusion). Because of its incorrect application of the inevitable-discovery doctrine, the Fifth Circuit did not reach whether exclusion is the proper remedy here.

never cited any lawful means of discovering the gun in Terrazas's home independent of the officers' constitutional violation. And the government never tried to establish any investigation that would have inevitably led to officers lawfully discovering the gun. Instead, the court and the government both relied on the same conduct that violated Terrazas's constitutional rights—officers illegally entering his home to execute an arrest warrant.

C. The Fifth Circuit violated this Court's precedent by relying on speculation to invoke the inevitable-discovery doctrine.

1. Finally, this Court has long held that "inevitable discovery involves no speculative elements but focuses on demonstrated historical facts capable of ready verification or impeachment." *Nix*, 467 U.S. at 444 n.5.

2. The Fifth Circuit's application of the inevitable-discovery doctrine, however, was based entirely on speculation. The court accepted what the government admitted (C.A. ROA 311) was a "counterfactual scenario": that officers would have seen a gun in plain view "*even if* police had knocked." App. 3a (emphasis added). That conclusion assumes that the gun would have been in plain view had the officers knocked, announced, and waited for Terrazas to answer the door. But the knock-and-announce rule gives occupants the "opportunity to prepare themselves" for the police.

Richards v. Wisconsin, 520 U.S. 385, 393 n.5 (1997). And until a search warrant has issued—and officers did not have a search warrant here—"citizens are entitled to shield their persons, houses, papers, and effects from the government's scrutiny." *Hudson v. Michigan*, 547 U.S. 586, 593 (2006) (cleaned up). Terrazas would have been well within his Fourth Amendment rights to shut the dresser drawer where officers saw the gun before letting them into his home. So it is hardly a "demonstrated historical fact[ ] capable of ready verification or impeachment" that officers would have seen a gun if they had knocked. *See Nix*, 467 U.S. at 444 n.5.

***

The Fifth Circuit's application of the inevitable-discovery doctrine conflicts with this Court's precedent at every turn. The Court should grant certiorari to correct those errors.

II. The Fifth Circuit's decision should be summarily reversed.

Summary reversal is appropriate where "the law is settled and stable, the facts are not in dispute, and the decision below is clearly in error." *Schweiker v. Hansen*, 450 U.S. 785, 791 (1981) (Marshall, J., dissenting); *Pavan v. Smith*, 582 U.S. 563, 567–68 (2017) (Gorsuch, J., dissenting); *Kisela v. Hughes*, 584 U.S. 100, 120 (2018) (Sotomayor, J., dissenting). This case presents just that rare combination of circumstances.

First, the law is settled and stable. This Court has recognized for more than a century that a Fourth Amendment violation cannot be justified simply because the same evidence could have been obtained by lawful means. *See*, *e.g.*, *Silverthorne Lumber*, 251 U.S. at 392. And this Court laid out the requirements for the inevitable-discovery doctrine four decades ago. *See generally Nix*, 467 U.S. 431.

Second, the facts are not in dispute. The government concedes that officers did not knock and announce before breaking down Terrazas's door. C.A. ROA 246. The government has never pointed to any independent investigation that would have inevitably led to officers lawfully discovering the challenged evidence in Terrazas's home. And the government admits that its inevitable-discovery theory is not a fact but rather a "counterfactual scenario." *Id.* at 311.

Finally, as discussed above, the Fifth Circuit's decision is clearly wrong because it conflicts with this Court's longstanding precedent in three ways: it allows admission of tainted evidence just because officers could have obtained the evidence without violating the Constitution, it applies the inevitable-discovery doctrine without any independent source, and it invokes that doctrine based on speculation. *See supra* 8–12.

This Court should summarily reverse the Fifth Circuit's plainly erroneous decision.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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November 20, 2024