No. 24-7014

IN THE

Supreme Court of the United States

SCOTT ANTHONY WILLIAMS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

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ARGUMENT IN REPLY

Respondent's brief in opposition (BIO) erroneously contends that neither of the two Questions Presented in the petition are worthy of this Court's review. Respondent's arguments lack merit. Both questions are worthy of this Court's review.

I.
The Fourth Circuit Erroneously Made a Factual Finding that Exigent Circumstances Exist.

Respondent argues that the Fourth Circuit's factual finding made for the first time on appeal – that "exigent circumstances" justified the no-knock entry into petitioner's home – was merely a routine instance of a federal appellate court's affirming a district court's judgment on an alternative ground in the record that was "properly raised below." BIO, at 8-9. The obvious problem with this position is that the district court made no *factual finding* that "exigent circumstances" existed. Whether exigent circumstances existed turns on factual findings. *See Wilson v. Arkansas*, 514 U.S. 927, 937 (1995); *Steagald v. United States*, 451 U.S. 204, 209 (1981). A federal appellate court may not make such a factual finding for the first time on appeal. "[I]t is the function of the District Court rather than the Court of Appeals to determine the facts . . . ." *Murray v. United States*, 487 U.S. 533, 543 (1988).

Respondent's reliance on supposedly "undisputed" facts alleged in the search warrant affidavit of a law enforcement officer[1] is untenable for two reasons. BIO, at 9. First, the allegations in that affidavit were not "undisputed." Petitioner's counsel in the district court generally disputed the allegations and specifically disputed the

[1] That affidavit appears at JA56-64.

allegation that petitioner posed a danger to the officers who executed the warrant. JA120-21. Second, the affidavit did not make any allegations that petitioner would attempt to destroy evidence if the officers knocked and announced. JA56-64.

This is clearly a case in which a federal appellate erroneously made factual findings about a material, disputed matter for the first time on appeal. This Court should vacate the Fourth Circuit's judgment and remand with instructions that the court either further remand to the district court to make the necessary factual findings or, alternatively, address the merits of petitioner's claim that 18 U.S.C. § 3109 requires suppression of evidence when officers unjustifiably failed to knock and announce. Respondent's argument that the § 3109 issue is meritless (BIO, at 11) ignores petitioner's substantial claim that, under this Court's precedent and Fourth Circuit precedent, suppression of evidence is a remedy for a violation of § 3109. *See* Opening Brief of Appellants, Nos. 23-4568 & 23-4595, 2024 WL 1195272, at *11-*25 (filed Mar. 8, 2024); *see also United States v. Ferguson*, 252 Fed. App'x 714, 719 (6th Cir. 2007) ("There is room for disagreement regarding whether the exclusionary rule should remain available as a remedy for violations of § 3109.").

II.
Petitioner's Case Presents an Excellent Vehicle for Deciding Whether a Federal Appellate Court Should Remand to the District Court to Consider Applying a New Sentencing Guideline Amendment that Became Retroactive During the Direct Appeal and that Could Reduce the Defendant's Sentence.

Respondent contends that this Court should deny certiorari concern the petitioner's second Question Presented because (1) each federal court of appeals possesses discretion whether to adopt a "procedural practice" permitting or requiring a remand

for the district court to consider whether to apply a retroactive guideline amendment that went into effect after the defendant's case was pending on direct appeal; and (2) in any event, petitioner is not entitled to remand because he does not qualify for a reduced sentence under USSG § 4C1.1. BIO, at 13-15. Respondent errs.

First, the issue here is not merely one about a federal circuit court's "procedural practice" concerning criminal direct appeals. Instead, the real issue is whether an imprisoned, indigent defendant should get the benefit of an appointed attorney to represent him in the proceeding under 18 U.S.C. § 3582(c)(2) on remand from the direct appeal. Petitioner, like the vast majority of federal defendants, is indigent and has no education or experience that would permit him to adequately represent himself in a sentence-reduction proceeding under § 3582(c)(2). *See* Presentence Report ¶¶124-129. It thus would "be just under the circumstances," 28 U.S.C. § 2106, to remand for the district court to decide whether to apply the retroactive guideline amendment to him (while he still has court-appointed counsel). And, contrary to respondent's statement, it is not merely "some" other circuit courts that follow this practice; it is *eight* others that do so (with only one other circuit court following the Fourth Circuit's contrary position). *See* Pet. 12-14.

Second, respondent errs by contending that petitioner is not entitled to benefit from the new USSG § 4C1.1. Respondent erroneously contends that, because the district court applied USSG § 2D1.1(b)(1),[2] petitioner is foreclosed from a sentencing

[2] Section 2D1.1(b)(1) provides for a two-level enhancement "if dangerous weapon (including a firearm) was possessed." *Id.* However, Application Note 11(A) following that guideline provides that: "The enhancement should be applied if the weapon was present, unless it is clearly improbable that (continued)

reduction under § 4C1.1(a)(7).[3] BIO, at 14-15. Respondent made that same argument in the court below, *see* Response Brief for the United States, Nos. 23-4568, 23-4595, 2024 WL 2300635, at *28-*29 (filed May 15, 2024), but the Fourth Circuit did not resolve petitioner's request for a remand on that basis (which, if the Fourth Circuit had done so, would have foreclosed relief under § 4C1.1).

As petitioner correctly responded in his reply brief in the court below, the district court's application of § 2D1.1(b)(1) merely means that the court believed that petitioner failed to show that it was "clearly improbable" that the firearm in his home was not "connected to the [drug-trafficking] offense." JA2532-2533 (referring to Application Note 11(A) following § 2D1.1(b)(1)). That finding is *not* tantamount to a finding that petitioner failed to prove by a preponderance of the evidence that he did not possess the firearm "in connection with" the drug-trafficking offense. *See United States v. Bolton*, 858 F.3d 905, 914 (4th Cir. 2017) (interpreting a closely analogous provision in USSG § 5C1.2,[4] the court noted "the different standards of proof applicable to, on one hand, overcom[ing] a § 2D1.1(b)(1) firearm enhancement, and on the

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the weapon was connected with the offense." *Id.* This "clearly improbable" test means that a defendant has the burden to *rebut the presumption* that a firearm located in the same general area as illegal drugs were located was "possessed" in "connection with" the drug-trafficking offense. *United States v. Mondragon*, 860 F.3d 227, 231 (4th Cir. 2017). No such presumption exists under § 4C1.1(a)(7).

[3] Section 4C1.1(a)(7) provides that a defendant is ineligible for the reduction under that guideline if he "possess[ed] . . . a firearm or other dangerous weapon (or induce[d] another participant to do so) in connection with the offense." *Id.*

[4] Section 5C1.2(a)(2) is worded almost identically to § 4C1.1(a)(7). Section 5C1.1(a)(2) provides that a defendant is eligible for the "safety value" if he "did not . . . possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense."

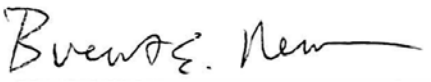
other hand, satisfy[ing] § 5C1.2(a)(2) to obtain a safety valve reduction"); *see also id.* ("Whereas a defendant may be unable to show that any connection between a firearm and an offense is 'clearly improbable,' the same defendant might be able to prove 'by a preponderance of the evidence' that the firearm was not connected with the offense to satisfy § 5C1.2(a)(2)."). Because the district court should have the opportunity to make such a factual finding, this Court should reject respondent's attempt to short-circuit this issue. Therefore, petitioner's case presents this Court with an excellent vehicle to resolve the wide division among the courts of appeals.

CONCLUSION

The Court should grant the petition for a writ of certiorari and address both Questions Presented.

June 26, 2025

Respectfully submitted,



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