No. 04-1360

In The
Supreme Court of the United States

BOOKER T. HUDSON, JR.,

Petitioner,

v.

MICHIGAN,

Respondent.

On Writ Of Certiorari To The Michigan Court Of Appeals

REPLY BRIEF FOR PETITIONER

DAVID A. MORAN
Counsel of Record
WAYNE STATE UNIVERSITY LAW SCHOOL
471 W. Palmer Street
Detroit, Michigan 48202
(313) 577-4829

TIMOTHY O'TOOLE
633 Indiana Avenue, N.W.
Washington, DC 20004
(202) 628-1200

STEVEN R. SHAPIRO
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, 18th Floor
New York, New York 10004
(212) 549-2611

MICHAEL J. STEINBERG
KARY L. MOSS
AMERICAN CIVIL LIBERTIES UNION FUND OF MICHIGAN
60 West Hancock Street
Detroit, Michigan 48201
(313) 578-6814

RICHARD D. KORN
645 Griswold Street
Suite 1717
Detroit, Michigan 48226
(313) 223-1000

Counsel for Petitioner

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

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REPLY BRIEF

I. The Evidence Found Inside a Home Following a Knock and Announce Violation Is the Suppressible Fruit of an Illegal Entry.

Respondent's argument consists almost entirely of an effort to recast the issue in this case. Apparently realizing that the Michigan Supreme Court's *per se* rule of admitting evidence seized after knock and announce violations is inconsistent with the inevitable discovery and independent source doctrines, Respondent reframes the issue as one of causation. According to Respondent, a knock and announce violation does not *cause* the evidence found in the home to be seized; it is the warrant that authorizes the search that causes the seizure. Therefore, Respondent reasons, the evidence should not be suppressed because the violation is not the but-for cause of the seizure.

Respondent's new argument is nothing more than a name change. The argument boils down to the claim that the police presumably would have found the evidence had they knocked and announced; that is, that the evidence was derived not from the violation but from an independent source or that it would have been inevitably discovered without the violation. But as Petitioner established in his principal brief, such arguments do violence to the independent source and inevitable discovery doctrines because both doctrines depend on the existence of an independent and untainted process to recover the evidence. By contrast, Respondent's "causation" argument simply assumes away the violation.

Respondent's "but-for causation" test would apparently swallow much of the exclusionary rule. For example, if the police have probable cause for a search but elect to

enter and search a home without obtaining a warrant, Respondent never explains how it can be said that the failure to obtain the warrant *caused* the seizure of the evidence any more than the failure to knock and announce *caused* that seizure. In both cases, the evidence still would have been found had the police acted constitutionally, but Respondent never explains how one violation "causes" the evidence to be found while the other does not. While Respondent and the United States disclaim any such result, both agree that their sweeping "causation" doctrine would exempt, at the very least, all Fourth Amendment violations relating to the manner of entry or arrest from the exclusionary rule.

Neither Respondent nor its *amici* have suggested any plausible way in which the knock and announce rule can be enforced without the exclusionary sanction. Without an effective enforcement mechanism, an ancient and important privacy safeguard will be lost.

A. A Knock and Announce Violation Renders the Entry Illegal and Therefore "Causes" the Evidence Inside To Be Illegally Seized.

1. As *Miller*, *Sabbath*, and *Wilson* Confirm, a Knock and Announce Violation Renders the Entry Illegal and the Search Inside Unreasonable.

The simplest answer to Respondent's argument that a knock and announce violation does not "cause" any evidence to be illegally seized is that it is contrary to precedent. This Court has repeatedly rejected the view that a knock and announce violation is merely a minor technical error that is somehow disconnected from the police activity

that occurs inside the home immediately following the violation. Thus, the Court plainly held in both *Miller v. United States*, 357 U.S. 301, 313-314 (1958), and *Sabbath v. United States*, 391 U.S. 585, 587 (1968), that the knock and announce violations in those cases required suppression of evidence found inside.

Faced with the undeniable fact that the Court has suppressed evidence seized inside homes following knock and announce violations, Respondent and the United States strain to distinguish and discredit *Miller* and *Sabbath*. According to the United States, the evidence in *Miller* and *Sabbath* was actually suppressed not because of the knock and announce violations but because the officers did not have arrest warrants and, therefore, the arrests were illegal. Brief of United States at 22. The United States is simply mistaken. In both *Miller* and *Sabbath*, the Court unmistakably suppressed the evidence because of the knock and announce violations, not because the officers lacked warrants. *See Miller*, 357 U.S. at 313-314 ("Because the petitioner did not receive that notice before the officers broke the door to invade his home, the arrest was unlawful, and the evidence seized should have been suppressed."); *Sabbath*, 391 U.S. at 586 ("We hold that the method of entry vitiated the arrest and therefore that evidence seized in the subsequent search incident thereto should not have been admitted at petitioner's trial."). Contrary to the argument of the United States, there is no indication in either *Miller* or *Sabbath* that this Court would have reached a different result if the officers had warrants.

Respondent and the United States also point out, correctly, that *Miller* and *Sabbath* were statutory decisions, but ignore the fact that this Court has repeatedly

confirmed that the federal statute at issue in those cases codified the same common law that informed the Fourth Amendment. *See United States v. Banks*, 540 U.S. 31, 42-43 (2003); *United States v. Ramirez*, 523 U.S. 65, 73 (1998).

Finally, the United States asserts that "*Miller* and *Sabbath* were rendered at a time when the Court assumed that all federal violations of the law governing search and seizure required the suppression of all evidence seized." Brief of United States at 21. Nothing could be further from the truth. Almost forty years before *Miller*, the Court held that evidence obtained through a source independent of the illegality was admissible, *see Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920), and almost twenty years earlier the Court recognized that evidence attenuated from the violation was not suppressible either, *see Nardone v. United States*, 308 U.S. 338, 341 (1941). Indeed, in between the time of the decisions in *Miller* and *Sabbath*, this Court applied these doctrines in *Wong Sun v. United States*, 371 U.S. 471, 487-493 (1963), to conclude that some of the evidence obtained after an illegal entry and several illegal arrests was admissible, while other evidence was not.

It is, therefore, a distortion of history to argue that *Miller* and *Sabbath* come from an era in which this Court unthinkingly suppressed evidence upon finding a violation. It is true that this Court did not discuss at length its holding suppressing the evidence in those cases, but that is because it was obvious that a knock and announce violation rendered illegal both the entry and the subsequent police activity inside the home. Indeed, there can be no doubt about the continuing vitality of that proposition after *Wilson v. Arkansas*, 514 U.S. 927, 934 (1995), where

the Court wrote, "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." *See also id.* at 931 ("An examination of the common law of search and seizure leaves no doubt that the reasonableness of a search of a dwelling may depend in part on whether law enforcement officers announced their presence and authority prior to entering.").

The point, then, is that the evidence found inside a home following a knock and announce violation is the fruit of that violation because the violation renders the police entry illegal, just as the failure of the police to obtain a search warrant renders an entry to search illegal absent an exigency. But for the illegal entry, the police would not be inside the home to find the evidence, so the evidence is the suppressible fruit of the illegality.

2. Respondent's "Causation" Argument Is Ill-Defined and Contrary to Precedent.

Respondent, apparently persuaded that the inevitable discovery doctrine cannot justify the result it desires, disclaims any reliance on that doctrine. Respondent's Brief at 27.[1] Instead, Respondent continues, the issue is one of causation.

[1] Respondent also criticizes Petitioner for knocking down a "straw-man" inevitable discovery argument that the evidence should be admissible if the police would have found the evidence acting lawfully. Petitioner can only respond by pointing out that this "straw-man" inevitable discovery theory was precisely the one on which the Michigan Supreme Court relied. *See People v. Stevens*, 597 N.W.2d 53, 62 (Mich. 1999) (holding evidence admissible because it "would have been

(Continued on following page)

Respondent's abandonment of the inevitable discovery theory is appropriate for the reasons set forth in Petitioner's brief. The inevitable discovery doctrine, like the independent source doctrine, requires the existence of an independent source or process that resulted, or inevitably would have resulted, in the discovery of the evidence. The absence of any such independent process distinguishes this case from *Murray v. United States*, 487 U.S. 533 (1988), and *Segura v. United States*, 468 U.S. 796 (1984), in which the police initially entered illegally but then later performed searches and seizures that were, or were claimed to be, wholly independent from the initial illegal entries. The absence of an independent process also distinguishes this case from *Nix v. Williams*, 467 U.S. 431 (1984), in which search parties with no connection to the constitutional violation inevitably would have discovered the evidence.

Unlike the independent source and inevitable discovery doctrines that it now disclaims, Respondent's "causation" theory is never precisely defined, but it appears to be an inevitable discovery or independent source argument without the crucial requirement of an independent source or process. According to Respondent, the knock and announce violation should not result in suppression of the evidence found inside because "but-for causation is necessary to the sanction of suppression" and the evidence found inside a home following a knock and announce violation is actually "the fruit of [the] judicial command" to search the home. Respondent's Brief at 2, 3. In other words, it appears that Respondent's argument boils down

inevitably discovered . . . had the police adhered to the knock-and-announce requirement").

to the claim that the same evidence would have been found by virtue of the warrant even if the police had properly knocked and announced. But this is exactly the "if we hadn't done it wrong, we would have done it right" inevitable discovery argument that Respondent purports to reject.

It is difficult, however, to be certain whether Respondent's causation theory is distinguishable from an inevitable discovery argument because Respondent never explicitly spells out its theory. Thus, Respondent fails to explain how its theory is compatible with the raft of precedent, discussed at length in Petitioner's Brief at 30-33, in which this Court suppressed evidence even while recognizing that the police could have obtained that same evidence lawfully. Respondent never explains, for example, how, under its theory, the unlawful search of the car in *Knowles v. Iowa*, 525 U.S. 113 (1998), is the but-for cause of the seizure of the evidence since the officer could have lawfully obtained the same evidence from the car by first arresting Knowles. Nor does Respondent explain how, under its theory, the agents' failure to obtain a warrant in *Katz v. United States*, 389 U.S. 347 (1967), was the but-for cause of Katz's conversation being intercepted given that the Court observed that the agents easily could have obtained a warrant to place a listening device on the phone booth.

Perhaps Respondent believes that the evidence should not have been suppressed in *Knowles*, *Katz*, and the many other cases in which this Court has suppressed evidence while noting that the same evidence could have been obtained legally. That is, perhaps Respondent believes that its test of "but-for causation" is not met in any of those

cases. If that is Respondent's position, it would work a radical restructuring of the exclusionary rule.

Respondent's failure to explain its causation theory is most stark in its treatment of home searches. Respondent agrees that evidence should be suppressed if the police search a home without a warrant, even if they have ample probable cause. But Respondent never explains how that concession is consistent with its "but-for causation" test. If the police have probable cause to obtain a search warrant but choose to act without one, Respondent does not explain how that failure to obtain a warrant is the "but-for cause" of the subsequent discovery of the evidence while the failure to knock and announce is not. In both cases, the police do not need to act unlawfully to obtain the evidence. In both cases, however, the police do act unlawfully and thereby perform an illegal entry into a home. Respondent's theory of "causation" cannot differentiate the two types of illegal entries.

While Respondent's theory of causation is not well-defined, it apparently would result in the conclusion that the *manner of entry* is, as a *per se* matter, beyond the reach of the exclusionary rule. Respondent's Brief at 33; *see also* Brief of United States at 13. That is, Respondent would divorce the entry performed under a warrant from the warrant itself. Respondent believes that the existence of a warrant makes an officer's presence inside a home lawful regardless of how the officer got inside.

This view of the significance of a warrant is wrong. A warrant is not independent of the entry it authorizes. The warrant permits an officer to make a *lawful entry* in order to perform a search inside a dwelling.

Therefore, American courts have long recognized that the presence of an officer inside a dwelling is unlawful if he or she entered the dwelling in an illegal manner even if he or she had legal authority. *See, e.g., Ilsley v. Nichols*, 29 Mass. 270, 281 (1831) ("An officer, having a valid writ, if he does not pursue the authority given him by his writ, and the rules of law in the execution of his duty under it, is a trespasser, in the same manner as if he had no writ"); *State v. Armfield*, 9 N.C. 246 (1822) (holding that an officer who illegally breaks open a door to serve a civil process "is a trespasser"); *Curtis v. Hubbard*, 4 Hill 437 (N.Y. Sup. Ct. 1842) ("The . . . question is whether a sheriff, who has entered the house of another in direct violation of the law, for the purpose of arresting the owner or seizing his goods, can be justified in consummating the wrong by arresting his person or removing the goods, where it is all one continuous act. I think, upon authority as well as upon principle, he cannot."). This Court, of course, reached the same conclusion in suppressing the evidence seized inside the homes in *Miller* and *Sabbath*, since the officers in those cases had, or were assumed to have, lawful authority to perform the entries.

Respondent, however, argues that the manner of entry is irrelevant to the Fourth Amendment reasonableness of the police activity inside the dwelling. Once the officer is inside, Respondent maintains, it no longer matters if he unreasonably breached the door because that illegality is now over. It follows from Respondent's argument that it would not matter if the officer used dynamite to make the unannounced entry or if he sneaked in through the bedroom window. Yet, as this Court has squarely recognized, "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." *Wilson*, 514 U.S. at 931.

In short, if an officer violates the knock and announce requirement, the warrant in his hand does not change the fact that his presence inside the home is both illegal and unreasonable. The evidence the officer finds inside the home is the fruit of that unlawful entry because that illegal entry is used to accomplish the search of the dwelling. In this case, then, Officer Good would not have been in a position to arrest and search Petitioner had Officer Good not entered the home. As the entry was concededly illegal, the arrest and search of Petitioner inside his home was the fruit of that illegal entry.[2]

In this regard, Respondent's heavy reliance on *New York v. Harris*, 495 U.S. 14 (1990), is puzzling. *See* Respondent's Brief at 22-25. In *Harris*, this Court held that since the rule of *Payton v. New York*, 445 U.S. 573 (1980), was designed to reflect the "overriding respect for the sanctity of the home that has been embedded in our traditions since the origins of the Republic," 495 U.S. at 17, no purpose would be served in excluding the statements Harris made after he was removed from the home.

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[2] At pages 16-18 of its brief, the United States points to the dicta in *Ramirez*, 523 U.S. at 71, suggesting that evidence might not have been suppressed even if the Court had concluded that the officers had engaged in excessive or unnecessary property destruction. But *Ramirez* plainly states that this suggestion might apply only so long as "the entry itself is lawful." *Id.* While it is not at all clear whether an entry becomes illegal if the police performing that entry also engage in unnecessary property destruction, *see id.* at 72 n.3 (declining to decide whether the evidence would have been suppressed had a violation occurred), it is beyond reasonable dispute from centuries of precedent that a knock and announce violation does make the entry illegal.

In relying on *Harris*, Respondent overlooks this key passage:

> [S]uppressing the statement taken outside the house would not serve the purpose of the rule that made Harris' in-house arrest illegal. *The warrant requirement for an arrest in the home is imposed to protect the home, and anything incriminating the police gathered from arresting Harris in his home, rather than elsewhere, has been excluded, as it should have been*; the purpose of the rule has thereby been vindicated.

Id. at 20 (emphasis added).

The point from *Harris*, then, is that a violation of the *Payton* rule, which is meant to protect the integrity of the home, should not result in the suppression of evidence obtained elsewhere. Petitioner therefore agrees that the knock and announce rule, which is also intended to protect the home, likewise should not result in the suppression of evidence obtained elsewhere. But *Harris* reaffirms that it is necessary to suppress evidence obtained from a home to vindicate a rule designed to protect the integrity of the home. *Harris* thus supports Petitioner's position.

3. Respondent's Rule Would Remove Much Police Activity from the Exclusionary Rule on a *Per Se* Basis.

This Court has unanimously rejected a *per se* rule that would have excised the entire class of felony drug investigations from the knock and announce rule. *Richards v. Wisconsin*, 520 U.S. 385 (1997). Respondent's proposed rule would go much further than the rule rejected in *Richards.*

Respondent's argument, if accepted, would completely exempt the knock and announce doctrine from the exclusionary rule.[3] It would also remove from the exclusionary rule, on a *per se* basis, all other claims that an entry was performed in an unconstitutional manner. *See* Respondent's Brief at 33.

Respondent makes clear, however, that it would not stop there. Respondent claims that if this Court accepts Petitioner's position, a variety of Fourth Amendment violations would result in automatic suppression of all evidence. Respondent's Brief at 24-27. In particular, Respondent maintains that Petitioner's argument would necessarily result in the suppression of all evidence found after: (1) a search that exceeds the scope of the warrant but produces evidence within the scope of the warrant; (2) an arrest achieved with excessive force; and (3) a search in which the officers permit the media to observe in violation of *Wilson v. Layne*, 526 U.S. 603 (1999).

Petitioner does not argue that all evidence obtained after such violations must necessarily be suppressed. On the contrary, Petitioner rejects such *per se* rules and agrees that the exclusionary rule must be applied only

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[3] Taking a slightly different tack, the United States concludes that exclusion would be appropriate for a knock and announce violation only for evidence "acquired as a direct consequence of the prematurity of the entry." Brief of United States at 19. The only example of such evidence is "excited utterances prompted by an unannounced, premature, or forceful entry." *Id*. at 20. Not surprisingly, the United States cites no cases in which defendants have sought to exclude such utterances prompted solely by the manner of entry, and Petitioner is aware of none. In practice, then, the rule advocated by the United States would also result in the *per se* admission of all evidence found after knock and announce violations.

when its deterrent purpose is served. While Respondent assumes that evidence found after such violations must always be admissible, this Court has never issued such a holding for any of these three types of violations. In fact, the lower courts have sometimes suppressed evidence found after such violations.[4]

Respondent's conclusion that the evidence the police find after these types of violations must always be admissible is consistent with Respondent's view that whole categories of Fourth Amendment activity are entirely beyond the reach of the exclusionary rule. Petitioner, by contrast, does not take the opposite position that all evidence found after all types of violations must be suppressed. In Petitioner's view, the test for determining whether evidence should generally be suppressed for each category of violation is the one the Court has used for many years: whether suppression is appropriate in light of the deterrence policies that underlie the exclusionary rule.

In the case of knock and announce violations, suppression of evidence found inside following such a violation is appropriate because it is necessary to deter officers from routinely violating the rule. Suppression of evidence found outside the home is not appropriate for the reasons set forth in *Harris*, and suppression of evidence found inside the home may be inappropriate if the evidence was the

[4] *See, e.g., United States v. Foster*, 100 F.3d 846, 851-853 (10th Cir. 1996) (suppressing all evidence seized under warrant where officers grossly exceeded scope of warrant); *State v. Hodson*, 907 P.2d 1155, 1159 (Utah 1995) (suppressing evidence seized after officer used excessive force to perform arrest); *Thompson v. State*, 824 N.E.2d 1265, 1269-1271 (Ind. Ct. App. 2005) (suppressing evidence found by police during strip search which police permitted media to observe).

product of a source independent of the illegal entry or if the evidence inevitably would have been discovered through such an independent source.[5]

In short, Petitioner does not advocate a *per se* rule of exclusion even for knock and announce violations, much less a *per se* rule that would apply in other contexts. It is Respondent that advocates a *per se* rule that would remove much of the Fourth Amendment (and presumably many other constitutional protections as well) from the reach of the exclusionary rule.

In sum, Respondent's argument is impossible to square with *Miller*, *Sabbath*, and *Wilson*, each of which stands for the proposition that knock and announce violations produce illegal entries and, therefore, unreasonable searches and seizures inside the home. Respondent's arguments are not only inconsistent with this Court's knock and announce precedents but would also foreclose the possibility of evidentiary exclusion for a host of other Fourth Amendment and criminal procedure doctrines.

[5] Thus, Petitioner does not maintain that evidence found through an overbroad search of a vehicle incident to arrest must be suppressed even if the prosecution can show that the car inevitably would have been impounded and subjected to an inventory search. *See* Respondent's Brief at 27-28. In such a situation, a reviewing court might well conclude that the inventory constitutes a process wholly independent of the illegal search that occurred. The reviewing court would still have to consider, as this Court did in *Nix*, whether failure to suppress would undermine the deterrence rationale if the officer who committed the violation knew that the evidence would always be regarded as inevitably discovered through inventory. But this example illustrates the difference between a defensible inevitable discovery argument where there actually is an independent source or process and an indefensible inevitable discovery argument, such as in the present case, where there is no independent source or process of any kind.

B. Application of the Exclusionary Rule Is Necessary To Deter Knock and Announce Violations.

Petitioner certainly agrees with Respondent that the "purpose of the exclusionary rule is to deter improper police conduct by denying the Government the fruit of that conduct." Respondent's Brief at 6.[6] It is surprising, therefore, that Respondent makes almost no effort to explain how police officers would be deterred from committing knock and announce violations in the absence of an exclusionary sanction. Respondent notes the possibility of civil litigation, *see* Respondent's Brief at 34 & n.66, while ignoring Petitioner's argument that such litigation is certain to be ineffective for an ordinary knock and announce violation because of the absence of tangible damages. It is telling that Respondent and its *amici* do not cite a single case where anyone has recovered actual damages solely for a knock and announce violation. If such cases exist, they must be exceedingly rare.

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[6] Respondent follows this statement with a historical review suggesting that the exclusionary rule is illegitimate. Respondent's Brief at 6-11. One of Respondent's *amici* questions whether the exclusionary rule deters police misconduct at all. *See* Brief of Criminal Justice Legal Foundation at 5 ("proving that the exclusionary rule actually does deter police misconduct may be impossible"). The exclusionary rule is a well-established feature of American law and there is substantial empirical research demonstrating that the exclusionary rule does deter police misconduct. *See, e.g.,* Myron W. Orfield, *Deterrence, Perjury, and the Heater Factor: An Exclusionary Rule in the Chicago Criminal Courts*, 63 U.Colo.L.Rev. 75 (1992); Craig Uchida & Timothy S. Bynum, *Search Warrants, Motions to Suppress and "Lost Cases:" The Effects of the Exclusionary Rule in Seven Jurisdictions*, 81 J.Crim.L. & Criminology 1034 (1991); L. Paul Sutton, "*Getting Around the Fourth Amendment*," *in* Thinking About Police (Contemporary Readings) 433 (Carl B. Kockars & Stephen D. Mastrofski eds., 1991).

Indeed, Respondent concedes that in cases such as this one where officers violated the knock and announce rule without destroying the door, "damages may be virtually nonexistent." *Id*. at 35 n.66. *See also* Brief of Criminal Justice Legal Foundation at 10 (conceding that governmental immunities and the lack of alternative remedies "prevent substituting tort law for the exclusionary rule at this time").

The United States, by contrast, does argue the deterrence point. First, the United States claims that the possibility that someone might make an excited utterance solely because of the "prematurity of the entry" is enough to deter officers from violating the rule. Brief of United States at 23. The fact that the United States cannot cite one case where such an utterance has been made is sufficient to defeat a claim that such an unlikely eventuality is enough to deter violations of the rule.

Second, the United States claims that police will comply with the rule to protect themselves from being shot by residents who would not otherwise realize that it is the police coming through the door. Brief of United States at 24. But as the United States later observes, the officers in this case protected themselves "from being mistaken as unlawful intruders" by announcing their purpose and identity and then immediately barging in. *Id.* at 28. In other words, the United States is correct that in the absence of an exclusionary sanction officers might still announce before executing a search warrant in order to avoid being shot by mistake, *but they will not wait a reasonable time for a resident to open the door.* Thus, the police might observe that part of the rule that helps protect themselves, but the primary purpose of the rule is to affirm "the reverence of the law for the *individual*'s

right of privacy in his house." *Miller*, 357 U.S. at 313 (emphasis added). That primary purpose will not be served without an exclusionary sanction.

This case proves that point. Officer Good testified that he and the other officers announced their presence and then immediately proceeded to go through the door. When asked why he did not wait for anyone to answer the door, he responded, "It's a safety factor. I've been shot at numerous times going into drug houses. So it's a safety factor." J.A. 20. Officer Good was thus following precisely the type of *per se* rule excluding drug searches from the knock and announce rule that this Court had rejected one year earlier in *Richards*. There should be no serious question that police officers nationwide will routinely violate the knock and announce rule, just as Officer Good did, if this Court accepts Respondent's argument.

Finally, the United States claims that application of the exclusionary rule to knock and announce violations risks overdeterrence. *See* Brief of United States at 24. Yet the United States presents no support for the proposition that officers are overdeterred in the vast majority of jurisdictions that currently suppress evidence seized after knock and announce violations. *See* Petitioner's Brief at 16-17 (collecting cases from twenty-four jurisdictions). If officers have reasonable suspicion that complying with the knock and announce rule will endanger them or risk destruction of evidence, they may seek a no-knock warrant or simply dispense with the requirement at the scene. *Richards*, 520 U.S. at 394-396. But as this Court recognized in *Richards*, it is not too much to ask the officers to have such a reasonable suspicion before violating a venerable rule central to a citizen's right to privacy in his or her home. *See id.* at 394 (concluding that the reasonable

suspicion standard "strikes the appropriate balance between the legitimate law enforcement concerns at issue in the execution of search warrants and individual privacy interests affected by no-knock entries").

The availability of the exclusionary sanction is also necessary to assure compliance with the knock and announce rule because the rule will become a dead letter without it. If this Court adopts the *per se* rule currently in place in Michigan, criminal defendants nationwide will stop filing motions to suppress evidence seized after knock and announce violations, and the courts will almost never have occasion to decide whether knock and announce violations have occurred.[7]

At bottom, the arguments of Respondent and its *amici* betray a sharp disdain for the knock and announce rule itself. Respondent repeatedly argues that the only justification for suppression would be if the rule were intended to give defendants an opportunity to destroy evidence. Respondent's Brief at 3, 35-36. The United States attempts to downplay the importance of the knock and

[7] The United States argues, with a citation to *United States v. Leon*, 468 U.S. 897 (1984), that courts in criminal cases might continue to decide whether knock and announce violations occurred before rejecting suppression motions because of the unavailability of the exclusionary sanction. Brief of United States at 27-28 n.10. The United States thus misses the point that, unlike motions to suppress because of an alleged lack of probable cause in the warrant (which are still frequently filed after *Leon* because such motions can still succeed), motions to suppress because of knock and announce violations will *never* be filed if there is no possibility of excluding evidence seized after such violations. Therefore, even if trial judges in criminal cases were inclined to waste their time by deciding purely academic knock and announce questions, they will never have any occasion to do so if Respondent prevails.

announce rule by ubiquitously referring to violations of the rule as mere "premature entries." *See, e.g.,* Brief of United States at 6, 7, 12, 19; *see also id.* at 19 (arguing evidence should not be suppressed when "the only illegality that occurs during the execution of the warrant is the police's failure to wait a few additional moments after knocking and announcing before entering the premises"); *id.* at 29 ("violation consists solely of their having entered the residence a few seconds early").

Contrary to the suggestions of Respondent and the United States, the knock and announce rule is not a minor technicality designed to assist criminals in disposing of their incriminating evidence. The rule, which dates back to the era of the Magna Carta, is based on "the reverence of the law for the individual's right of privacy in his house." *Miller*, 357 U.S. at 313. The rule is intended to protect residents from the shock and embarrassment that often follows a precipitous police entry and to allow residents a chance to prevent destruction of their property. *See Richards*, 520 U.S. at 393 n.5.

If this Court accepts Respondent's invitation to remove the knock and announce rule from the reach of the exclusionary rule, it is a certainty that police officers nationwide will routinely do as Officer Good and his fellow officers did in this case. They will flagrantly disregard a venerable doctrine that is a core part of the right of the people to be secure in their homes. This Court has already recognized that the *per se* exemption of certain categories of criminal investigation would have made the knock and announce requirement "meaningless." *Id.* at 394. If all violations of the knock and announce rule are to be categorically exempted from the exclusionary sanction, it

"might as well be stricken from the Constitution." *Weeks v. United States*, 232 U.S. 383, 393 (1914).

CONCLUSION

The judgment of the Michigan Court of Appeals should be reversed, and the case should be remanded to that court with instructions to reverse Petitioner's conviction.

Respectfully submitted,

DAVID A. MORAN
Counsel of Record
WAYNE STATE UNIVERSITY
LAW SCHOOL
471 W. Palmer Street
Detroit, Michigan 48202
(313) 577-4829

TIMOTHY O'TOOLE
633 Indiana Avenue, N.W.
Washington, DC 20004
(202) 628-1200

STEVEN R. SHAPIRO
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
125 Broad Street, 18th Floor
New York, New York, 10004
(212) 549-2611

MICHAEL J. STEINBERG
KARY L. MOSS
AMERICAN CIVIL LIBERTIES
UNION FUND OF MICHIGAN
60 West Hancock Street
Detroit, Michigan 48201
(313) 578-6814

RICHARD D. KORN
645 Griswold Street
Suite 1717
Detroit, Michigan 48226
(313) 223-1000

Counsel for Petitioner

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