No. 13-765

IN THE
Supreme Court of the United States

JOHN GERARD QUINN, *Petitioner*,
v.
STATE OF TEXAS, *Respondent*.

On Petition for Writ of Certiorari
to the Texas Court of Criminal Appeals

Brief *Amicus Curiae* of U.S. Justice Foundation, Gun Owners Foundation, Gun Owners of America, Inc., Lincoln Institute for Research and Education, Abraham Lincoln Foundation, Institute on the Constitution, Conservative Legal Defense and Education Fund, U.S. Border Control Foundation, Policy Analysis Center, Downsize DC Foundation, and DownsizeDC.org. in Support of Petitioner

MICHAEL CONNELLY
U.S. JUSTICE FOUNDATION
932 D Street, Ste. 2
Ramona, CA 92065
Attorney for Amicus U.S. Justice Foundation

ROBERT J. OLSON
WILLIAM J. OLSON*
HERBERT W. TITUS
JOHN S. MILES
JEREMIAH L. MORGAN
WILLIAM J. OLSON, P.C.
370 Maple Ave. W., Ste. 4
Vienna, VA 22180-5615
(703) 356-5070
wjo@mindspring.com
Attorneys for Amici Curiae

**Counsel of Record*

January 27, 2014

TABLE OF CONTENTS

TABLE OF AUTHORITIES

INTEREST OF *AMICI CURIAE*[1]

U.S. Justice Foundation, Gun Owners Foundation, Lincoln Institute for Research and Education, Conservative Legal Defense and Education Fund, U.S. Border Control Foundation, Policy Analysis Center, and Downsize DC Foundation are nonprofit educational organizations, exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code ("IRC"). Gun Owners of America, Inc., Abraham Lincoln Foundation for Public Policy Research, Inc., and DownsizeDC.org are nonprofit social welfare organizations, exempt from federal income tax under IRC section 501(c)(4). Institute on the Constitution is an educational organization.

These organizations were established, *inter alia*, for educational purposes related to participation in the public policy process, which purposes include programs to conduct research and to inform and educate the public on important issues of national concern, the construction of state and federal constitutions and statutes, and questions related to human and civil rights secured by law, including the defense of the rights of crime victims, the Second Amendment and individual right to acquire, own, and use firearms, and related issues. Each organization has filed many *amicus curiae* briefs in this Court and other federal

---

[1] It is hereby certified that counsel for the parties have consented to the filing of this brief; that counsel of record for all parties received notice of the intention to file this brief at least 10 days prior to the filing of it; that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

courts. Many of these *amici curiae* filed an *amicus curiae* brief on the merits in United States v. Jones, 565 U.S. ___, 132 S.Ct. 945 (2012).[2]

SUMMARY OF ARGUMENT

John Quinn lawfully kept firearms in his home for self-defense, exercising a freedom which this Court has recognized to be a "core" and "fundamental" right protected by the Second Amendment. Yet based on the presence of firearms alone, the police conducted a no-knock raid, smashing down Quinn's front door in the middle of the night, leading to his being shot. The police knew that Quinn's son, Brian, the target of the raid, was not at home, and they knew that Quinn was a law abiding man. Indeed, the State of Texas had certified him as such by licensing him to carry a concealed weapon. Yet the Texas court embraced the prosecution's theory that the police were in such grave danger from a sleeping man and an inanimate object that they were permitted to dispense with Fourth Amendment requirement to knock on the door and announce themselves. The only way for Quinn to have preserved his Fourth Amendment rights would have been for him to forego his Second Amendment rights, a constitutionally "intolerable" choice.

The Texas court held that there was no "causal connection" between the no-knock raid of Quinn's home and the discovery of drugs on the premises, and thus any Fourth Amendment violation was irrelevant.

---

[2] http://lawandfreedom.com/site/constitutional/UsvJones_Amicus_Merits.pdf (Oct. 3, 2011).

Contrary to Supreme Court precedent, that ruling establishes a *per se* rule that, every time the police have a valid warrant, they can execute it without knocking, violating the Fourth Amendment at will, later arguing that they "would have found the evidence anyway." The court's finding violates the Supreme Court's rule that courts must balance the interests at stake in every case before admitting seized evidence. The Texas court undertook no analysis of Quinn's important interests in his life, property, and personal dignity.

Finally, the Supreme Court should grant certiorari in this case, because it has yet to evaluate no-knock raids after having announced a revitalization of the private property principles undergirding the Fourth Amendment. Prior to 2012, no-knock cases were based on privacy — not property — considerations and thus should be reconsidered.

At common law, a person was presumed a trespasser if he was present on the property of another without permission, as the police were in this case. Thus, the police needed to justify their presence in Quinn's home. Although they had a warrant to search the home, they did not have any valid legal justification for using a battering ram to get through the door, making them nothing more than trespassers.

No-knock raids are supposed to be the exception to the rule. But in the last several decades, because of the drug war and corresponding militarization of law enforcement, no-knock raids have become the norm. Often times, this results in innocent people and their

pets becoming the casualties of modern policing. If the police are now permitted to justify no-knock raids any time there is a firearm in a residence, no American home is safe from a terrifying, middle of the night, home invasion.

ARGUMENT

I. THE TEXAS COURT'S DECISION PENALIZES QUINN FOR THE SOLE REASON THAT HE EXERCISED HIS "CORE" SECOND AMENDMENT RIGHT.

A. The Police Conducted a No-Knock Raid Solely because Firearms Were Present in Quinn's Home.

The police knew in advance that the Quinn home contained firearms, and even said so in their warrant application. Yet it appears that the police never sought a no-knock warrant, even though they likely planned to — and in fact did — conduct a no-knock raid. *See* Affidavit for Search Warrant, Petition at 21a, *et seq*. Petition for Writ of Certiorari ("Pet.") at 4. Typically, police seek permission to conduct a no-knock raid in their warrant application.[3] However, if the

---

[3] For example, the Texas District & County Attorneys Association recommends that "the affidavit or application for the warrant should request entry without knocking or announcing, and the warrant should show on its face whether the magistrate approves such entry at the time the warrant is issued." "Knock and announce," 2009, TDCAA, http://www.tdcaa.com/node/4796.

See also, e.g., another recent Texas case where police applied for a no-knock warrant "based on information that [the suspect] had

police do not have a no-knock warrant, they may proceed on a no-knock basis based on additional information on-site that establishes exigent circumstances (such as looking through a window and seeing the suspects flushing drugs). U.S. v. Banks, 540 U.S. 31, 36-37 (2003). In such cases, there is no time or ability to obtain an amended warrant. But in this case, there were no new facts discovered on-site that justified the no-knock raid. Quinn did not, for example, appear in the window brandishing his AK-47. He was asleep in his bed at the time of the raid. 2013 Tex. App. LEXIS 6167 at 1.

Quinn's son, Brian — the target of the raid — was not at home at the time of the raid, and it appears that law enforcement was aware of this important fact. The warrant affidavit stated that: (i) Brian had sent a text message to a friend stating that he would "hit you up when I get home;" (ii) Brian "has not responded to Wilkerson stating [he, Brian] was home;" and (iii) "two McKinney Police Department Detectives [were] conducting surveillance at Quinn's residence awaiting his [Brian's] arrival." Pet. at 27a. The Petition states further that Quinn "was not mentioned in the search warrant or supporting affidavit as either suspected of drug possession or as being dangerous in any way...." Pet. at 5. Thus, the police could not have

---

weapons inside," and where the first Sheriff's Deputy through the door was shot and killed by the homeowner who believed him to be an intruder. M. Kiely, "Attorney: Man was acting in self-defense when he killed sheriff's deputy," theeagle.com, Dec. 24, 2013, http://www.theeagle.com/news/local/article_549b0586-cefc-53a2-bd34-80a8f07816b4.html.

justified the no-knock raid on the belief that Brian was dangerous, because they had information that Brian was not present. Moreover, they could not justify the raid on the belief that evidence might be destroyed, because Brian was the person allegedly associated with drugs.

In this case, defense counsel asked the lead detective if there was anything other than the alleged presence of an AK-47 that justified the no-knock raid, to which the detective answered categorically "no, nothing."[4] Pet. at 18. But can it be true that the existence of a firearm, legally kept inside a home is — by itself — so inherently dangerous, so as to justify a forfeiture of Fourth Amendment rights? Clearly, no one would argue that the presence of an AK-47 inside a home is itself dangerous if no human being were inside the home — as if the firearm could somehow load itself, disengage its own safety, open the door, and begin to fire at the police. The only legitimate inquiry

[4] The Texas court's opinion appears to be at odds with this Court's holding in U.S.v. Ramirez, 523 U.S. 65 (1998). There, the Court found that exigent circumstances existed not only because the suspect "reportedly had access to a large supply of weapons," but **also** because he was "a prison escapee with a violent past," such as "tortur[ing] people with a hammer," and had "vowed that he would 'not do federal time.'" *Id.* at 68, 71. The Court determined that those factors — relating to the suspect inside the home — amounted to exigent circumstances. While the Court did not directly say so, the implication was that the presence of weapons alone could not have justified the no-knock entry in that case.

would relate to the persons in the house. *See* Pet. at 11-12.[5]

However, the unspoken premise on which the Texas court's opinion rests is that, because a firearm was in Quinn's home, Quinn himself was therefore dangerous. On the contrary, this Court has held that "'it is to be presumed that [Quinn] would obey'" the process of the warrant. Wilson v. Arkansas, 514 U.S. 927, 931-32 (1995) (quoting Semayne's Case, 77 Eng. Rep. 194 (K.B. 1603). No one has expressly made the claim that Quinn himself was dangerous. Pet. at 5. If any such evidence existed, the Texas court would have relied on it to justify the raid.

Moreover, there was ample evidence that Quinn was not dangerous. Indeed, as the Petitioner points out, Quinn held a Texas concealed handgun license (Pet. at 16-17), meaning that the State of Texas had officially certified him to be a mentally-competent, law-abiding citizen — giving him the state's stamp of approval not only to keep, but also to bear, arms. Indeed, one of the qualifications of eligibility for such a license is that the individual be "capable of exercising sound judgment with respect to the proper use and storage of a handgun...." Tex. Gov't Code § 411.172. Moreover, even after the raid, the jury acquitted Quinn of aggravated assault on a peace officer (2013 Tex. App. LEXIS 6167 at 2), apparently believing that Quinn acted reasonably in self-defense

---

[5] While the adage is overused, it is nevertheless true, that "guns don't kill people, people kill people."

when he accessed his firearm in response to a late-night home invasion.

B. Keeping Functional Firearms in the Home Is a "Core" Second Amendment Right.

In District of Columbia v. Heller, the Court held that the "core lawful purpose" of the Second Amendment is the keeping of "'functional firearms within the home' [for] self-defense." 554 U.S. 570, 576-77, 630 (2008). In McDonald v. City of Chicago, this Court determined that the Second Amendment applies to the states, and stated that "it is clear that ... the right to keep and bear arms [is] fundamental...." 561 U.S. ___, 130 S. Ct. 3020, 3042 (2010).

The police singled out Quinn and intentionally targeted his home with a no-knock raid solely because they believed that there was a firearm inside. In permitting such activity, the Texas court essentially held that the exercise of a fundamental, constitutionally protected right is — in and of itself — inherently dangerous to agents of the government. And, by admitting that the mere presence of a firearm was the only justification for the no-knock raid (Pet. at 18), the police revealed that, if Quinn had not exercised his Second Amendment right to keep a firearm in his home, the police would not have broken down his front door in the middle of the night without warning.

C. The Exercise of One Constitutional Right May Not Be Conditioned upon the Forfeiture of Another.

The exercise of one constitutional right may not permissibly be conditioned on the forfeiture of another constitutional right. In Simmons v. U.S., 390 U.S. 377 (1968), in order for a criminal defendant to claim a Fourth Amendment violation, he was forced to testify that an object belonged to him, and that testimony was later used against him at trial. In essence, he was forced to forfeit his Fifth Amendment right to keep silent in order to assert his Fourth Amendment right. The Court called such a situation a "condition of a kind to which this Court has always been peculiarly sensitive." *Id.* at 393. The Court denounced such a Catch-22, stating that it is "intolerable that one constitutional right should have to be surrendered in order to assert another." *Id.* at 394. Yet that is precisely what happened to Quinn. In order to preserve his Fourth Amendment right to have the police "knock and announce" their presence before breaking down his door, Quinn was required to forego his Second Amendment right to keep a firearm in his home.

Similarly, in Perry v. Sindermann, 408 U.S. 593 (1972), the Court held that the government may not deny a person a benefit "on a basis that infringes his constitutionally protected interests.... For if the government could deny a benefit to a person because of his constitutionally protected [rights], his exercise of those freedoms would in effect be penalized and inhibited. This would allow the government to 'produce

a result which [it] could not command directly.' ... Such interference with constitutional rights is impermissible." *Id*. at 597.

Again, that is exactly what happened to Quinn. Quinn lost his Fourth Amendment right to be "secure in [his] house ... against unreasonable searches and seizures" for no other reason than he exercised his Second Amendment right to "keep ... arms...." After Heller, the State of Texas could not directly prohibit Quinn from exercising his core Second Amendment right to keep a firearm in his home for self-defense. Yet, in denying him as a gun owner the "benefit" of the "knock-and-announce" rule, Texas has taken a large step towards indirectly accomplishing the same end.

II. THE TEXAS COURT BELOW VIOLATED THE RULE IN HUDSON V. MICHIGAN.

The Texas court's opinion states that "even if" the Fourth Amendment had been violated, that is immaterial, since Texas law requires a "causal connection" between the violation and the discovery of the evidence. 2013 Tex. App. LEXIS 6167 at 8. The court goes on to claim that "[i]n this case the police were permitted to search the residence pursuant to a valid warrant. Regardless of how they entered the house, they would have legally found the cocaine in Quinn's safe." *Id*. at 9. While couched as a factual finding, the Texas court in reality makes a legal ruling that is applicable whenever a valid warrant exists.

Under the rule established below, every time the police are in possession of a valid warrant for a

residence, they are "permitted to search the residence," and every time they "would have ... found" the challenged evidence. This means that police, armed with a warrant, are free to disregard the Fourth Amendment. They are free to employ a no-knock raid in every single case, assured that the court will later rationalize that the police "would have found the evidence anyway." The police would never need to apply for a no-knock warrant, and would never be obliged to assert that Quinn's mere possession of a firearm created exceptional circumstances. Thus, the Texas court essentially has created a *per se* exception to the knock-and-announce rule in every case where the police have a valid warrant.

Also, conspicuously missing from the Texas opinion is any specific consideration of the Quinn's interests as weighed against the societal costs of suppression, as required by Hudson v. Michigan, 547 U.S. 586 (2006). In Hudson, this Court held that "the interests [of the defendant] that *were* violated **in this case** have nothing to do with the seizure of the evidence." *Id.*, 547 U.S. at 594 (emphasis added). Yet the Court reached this conclusion only after careful review of the particular interests that the defendant had in protecting his life, his property, and his personal dignity. *Id.* Hudson requires a review — in every case — of the defendant's interests that are protected by the knock-and-announce rule.

The Texas court failed to comply with this case-by-case rule, rejecting Quinn's causality claim without any analysis whatsoever of the facts. The court below paid no attention to the fact that the warrant was

based on allegations that Brian, not Quinn, was involved in the drug trade. Unlike Brian, Quinn would have had no reason to believe that police were breaking into his house, since he, Quinn, was not engaging in any illegal behavior. Additionally, the Texas court failed to acknowledge that the warrant authorized entry into Quinn's home, not Brian's, giving the police officers no reason to expect that Quinn would not open the door if given the opportunity. *See* Entick v. Carrington, 95 Eng. Rep. 807 (C.P. 1765). Thus, Quinn had a very significant life interest in not being surprised by a police invasion, as demonstrated by his justifiable response (according to the Texas jury) to reach for his handgun in self-defense.

Finally, the sudden entrance and search that followed adversely affected Quinn's personal dignity, because the officers searched the whole house, including Quinn's private bedroom and safe, where the police discovered Brian's cocaine locked away from him in a safe. *See* Pet. p. 4. By conducting a no-knock raid, the police avoided having to inform Quinn of the purpose of their entry, robbing Quinn of the opportunity to direct them to the portions of the house that Brian occupied and frequented. Instead, by their surprise entry, the police actually drew Quinn into a confrontation that encouraged the police to search his entire home, including his bedroom and safe that might well have not been searched otherwise had Quinn been given the opportunity to assist the police. *See* Pet. at 20-21.

Only by skipping over consideration of these enumerated Hudson interests (547 U.S. at 594) was

the Texas court able to conclude that there was no "causal connection" between "the no-knock entry and the discovery of the cocaine." That finding was not only clearly erroneous but, if left to stand, will serve as a subterfuge to avoid this Court's ruling in Hudson in every case.

III. THE NO-KNOCK WARRANT SHOULD BE EVALUATED UNDER THE PRIVATE PROPERTY PRINCIPLES REVITALIZED IN United States v. JONES.

A. After United States v. Jones, No-Knock Raids Must Be Analyzed from a Property, rather than a Privacy, Perspective.

In Richards v. Wisconsin, 520 U.S. 385 (1997), this Court analyzed a no-knock raid from the perspective of individual privacy interests, not the property interests recognized as being primary in United States v. Jones, 565 U.S. ___, 132 S.Ct. 945 (2012). In Richards, Wisconsin had blithely argued that the "intrusion on individual interests effectuated by **a no-knock entry is minimal** because the execution of the **warrant itself constitutes the primary intrusion** on individual privacy...." *Id.* at 393 n.5 (emphasis added).

Wisconsin essentially had asserted in Richards that, as illustrated in the following hypothetical, the **major** privacy intrusion is the police rifling through a woman's underwear drawer while she waits downstairs, while the **minor** intrusion was having her door splintered open at 3:00 AM, her eardrums perforated by a flash-bang grenade, being dragged

from her bed, and being zip-tied and roughly handled by a dozen masked men, all while her young children watched, sobbing in the background.

Not surprisingly, this Court rejected Wisconsin's position, and placed different emphasis on the privacy interests at stake, stating that "forcible entry should not be unduly minimized," and that "[t]he brief interlude between announcement and entry with a warrant may be the opportunity that an individual has to pull on clothes or get out of bed." *Id.* However, even though the Court reached the correct result, it used privacy rather than property principles to analyze the intrusion.

In United States v. Jones, the Court considered whether the warrantless use of a GPS tracking device on a vehicle violated the Fourth Amendment. 132 S.Ct. 945, 949. However, the Court did not use the "reasonable expectation of privacy" analysis that had become embedded in Fourth Amendment law since Katz v. United States, 389 U.S. 347 (1967). The Court stated that "we need not address the Government's [privacy argument], because Jones's Fourth Amendment rights do not rise or fall with the *Katz* formulation." *Id.* at 950. Rather, the Court announced a return to the property rights foundation of the Fourth Amendment which the Court stated had been for a time displaced — but not replaced — by privacy considerations. *Id.* at 952 ("[T]he Katz reasonable-expectation-of-privacy test has been *added to*, not *substituted for*, the common-law trespassory test") (italics original).

In Jones, the Court returned to the foundational principle that "no man can set his foot upon his neighbour's close without his leave [unless] he ... justify it by law." Entick v. Carrington, 95 Eng. Rep. 807 (C.P. 1765). This was considered an especially important protection when it came to government action, and the Fourth Amendment "was understood to embody a particular concern for government trespass...." Jones, 132 S. Ct. at 950.

The intrusion by government agents upon Jones' property, by placing the GPS tracking device, constituted a common-law trespass. The Court deemed irrelevant the government's pleas that the trespass was minor, and that Jones had no expectation of privacy in his vehicle, which he parked and drove in public. *Id.* at 950. Obviously, the surreptitious intrusion to place a GPS tracking device on a vehicle when the occupant is absent is far less significant than the unlawful forcible intrusion into an occupied home without consent. Richards should be reconsidered in light of United States v. Jones.

B. Florida v. Jardines Applied Jones to Real Property.

At common law, a trespass to real property occurred whenever a person is physically present on the property of another without his consent. *See* Entick v. Carrington. The burden is on the alleged trespasser to demonstrate as a defense that he had a legal justification for being there. *Id.* No different rule should apply to agents of the state.

In Florida v. Jardines, 569 U.S. ___, 133 S. Ct. 1409 (2013), this Court continued Jones' return to the property principles underlying the Fourth Amendment. There, the police trespassed onto the defendant's porch without a warrant, using a drug-sniffing dog to search his home from the porch. First and foremost, the Court applied the trespass principle, stating that the first question was whether the police "physically enter[ed] and occup[ied] the [constitutionally protected] area to engage in conduct not explicitly or implicitly permitted by the homeowner." *Id.* at 1414. They found that "it is undisputed that the detectives had all four of their feet and all four of their companion's firmly planted on the constitutionally protected extension of Jardines' home," and thus "the only question is whether he had given his leave (even implicitly) for them to do so. He had not." *Id.* at 1415.

The Court noted that "when it comes to the Fourth Amendment, the home is first among equals. At the Amendment's 'very core' stands 'the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.'" *Id.* Determining that "the officers' investigation took place in a constitutionally protected area, [the Court] turn[ed] to the question of whether it was accomplished through an unlicensed physical intrusion." *Id.* at 1415.

As Jardines makes clear, it is no defense, as the government has argued in no-knock cases, that a person has no "reasonable expectation of privacy" in not having a police battering ram knock down his door.

See Richards v. Wisconsin, 520 U.S. 385, 393 n.5 (1997). It is simply enough that the police trespassed when they broke down Quinn's door without legal justification. As the Jardines Court held, "we need not decide whether the officers' investigation of Jardines' home violated his expectation of privacy under *Katz*. One virtue of the Fourth Amendments property-rights baseline is that it keeps easy cases easy." *Id.* at 1417 (emphasis original).

C. Application of the Jones Doctrine to this Case Requires Reversal.

Although the State of Texas believes that it did not trespass in gaining access to Quinn's home, because it had a search warrant granting the state legal authority to search a part of the home, it matters a great deal how the search warrant was executed. Clearly, the police can violate an individual's constitutional rights even though they are in possession of a valid warrant for his arrest — for example, by mercilessly beating a compliant person. So, too, the police can violate a person's Fourth Amendment rights even though they have a search warrant for his home, by breaking down his front door without justification.

Under the common law, which was incorporated into the Fourth Amendment (Wilson v. Arkansas, 514 U.S. 927, 929 (1995)), even though executing a search warrant, state agents were still required to knock-and-announce their presence, identity, and justification for being there. The occupant of the place to be searched was then given a reasonable opportunity to present

himself and grant access, it being presumed that he would comply. Semayne's Case, 77 Eng. Rep. 194 (K.B. 1603). Only if he refused entry were the officers permitted to use force to execute the warrant.

While the warrant in this case may have given the police the legal authority to search a part of Quinn's home, that did not mean the government gained full legal access to the property. Indeed, the government was required to demonstrate not only that it had authority to search Quinn's home, but that it had the authority to enter the home in the manner it did.

Without authority to enter Quinn's home in the manner they did, the police became trespassers. To establish a Fourth Amendment violation under Jones, all that is required is to show that the government physically invaded and occupied a protected space without Quinn's permission and without legal justification.

D. Application of Katz Privacy Principles to No-Knock Raids Has Created an Absurd Situation where the Exception Has Swallowed the Rule.

"No-knock" raids are supposed to be the "exception" to the ancient, common-law rule that the sheriff, when executing a warrant, must "knock and announce" himself, and wait a reasonable time for the homeowner to come to the door and let him in. *See* Wilson v. Arkansas, 514 U.S. 927 (1995). This is based on the private property principle that a man's home is his castle. *See* 4 Blackstone's Commentaries on the Laws

of England, Chapter 16: Of Offenses Against the Habitations of Individuals.

Over the last several decades, however, that Fourth Amendment principle has been eroded, based on the shifting sands of "reasonable expectations of privacy." The rules governing the execution of search warrants have not been spared. In Wilson v. Arkansas, the Court announced at least two exceptions to knock-and-announce rule (officer safety and destruction of evidence), and left it to the lower courts to determine the circumstances when a no-knock entry would be permissible. *Id.* In Richards v. Wisconsin, 520 U.S. 385 (1997), the Court refused to permit a *per se* exception to knock-and-announce for all drug warrants,[6] but stated that any time the police have reasonable suspicion that drugs could be destroyed, it would be permissible to use a no-knock warrant. 520 U.S. at 394-95.

Citing Richards v. Wisconsin, the lower court announced that "[t]he Fourth Amendment **does not require** the police to knock and announce in all cases." *Id.* at 6 (emphasis added). In doing so, the Texas court framed the constitutional issue by first stating the exceptions, rather than the rule, as if the exceptions were more important to the court than the rule itself. In a very different manner, in Richards

---

[6] It is unclear why the State of Texas believes this Court, in Richards, would refuse a blanket no-knock exception any time drugs (which are illegal) are present, but would permit a blanket no-knock exception anytime firearms (which are legal) are present.

this Court began with the statement that "the Fourth Amendment **require**[s] that police officers entering a dwelling must knock on the door and announce their identity and purpose before attempting forcible entry." *Id.* at 387 (emphasis added).

The lower court began with a statement of what the Fourth Amendment does not require, instead of returning to first principles and stating what the Fourth Amendment does require. Although this could be viewed as simply a technicality in choice of words, it is consistent with the hostility with which lower courts treat the knock-and-announce rule. The implication is that Quinn has the burden to demonstrate that the police officers were required to knock-and-announce themselves, when under the property principle the burden is on the police to justify their no-knock raid.

While the Court in Richards rejected a blanket drug exception, requiring a case-by-case analysis, nearly all drug warrants can be served as no-knock warrants because of the inherent possibility that drugs can be flushed down the toilet. All the police need to do is pull from a generic, laundry-list in order to manufacture a "specific set of facts" to justify no-knock entry in each drug case.[7]

---

[7] One of the go-to "particularized facts" that police often use is the alleged presence of a "small quantity" of narcotics (*see, e.g.*, Doran v. Eckold, 409 F.3d 958, 965 (8th Cir. 2005)), which ironically means that in cases of less serious drug crimes, no-knock warrants are easier to justify than in cases with larger quantities that are not as easily disposed of.

In United States v. Banks, 540 U.S. 31 (2003), this Court held that officers may use force to enter at the moment an exigent circumstance arises and, in that case, it was reasonable to suspect drugs could be flushed after "15 to 20 seconds." *Id.* at 40. However, in some circuits, Banks has come to stand for the proposition that "15 to 20 seconds" is more than enough time to wait in every drug case. *See, e.g.*, Bishop v. Arcuri, 674 F.3d 456, 462-63 (5th Cir. 2012) ("Also instructive is the Supreme Court's **analysis of the length of time** police must wait *between* knocking-and-announcing and forcibly entering a residence.") (emphasis added, italics original).[8] Then, in Hudson v. Michigan, 547 U.S. 586 (2006), the Court eliminated the government's main incentive to obey the Fourth Amendment by limiting use of the exclusionary for knock-and-announce violations — reversing a principle with roots deep in the common law, and which had been strongly protected by the Court nearly a century before in Weeks v. United

[8] Few Americans are protected by armed guards around the clock. Common sense tells us that, if a dozen men dressed in black thump on the front door in the middle of the night, and shout a muffled "Police! Search Warrant!" through their face masks, it will take the average person many multiples of "15-to-20-seconds" to rouse from sleep, retrieve a firearm (not knowing who is outside), guardedly walk down a flight or two of stairs, peer through the peephole, recognize that the police (and not intruders) are outside, stow the firearm (so as not to be shot on sight), put the family dog in the basement (so it too will not be shot on sight), and **finally** open the door — all while adrenaline is coursing through the blood and the heart is racing. Even Justice Souter, who wrote the majority opinion in Banks, recognized that it might take "several minutes to move through a townhouse." *Id.*, 540 U.S. at 40.

States, 232 U.S. 383 (1914) and Mapp v. Ohio, 367 U.S. 643 (1961).

Since the majority of search warrants in the United States relate to drug offenses, no-knock warrants have become more the norm than the exception. The Court of Appeals of Georgia has stated that no-knock warrants have "simply become customary ... in drug cases." Adams v. State, 201 Ga. App. 12, 14 (Ga. Ct. App. 1991). *See also* Bishop v. Arcuri, 674 F.3d 456, 468 (5th Cir. 2012) (expressing concern over "a policy of treating no-knock entries as the default procedure in drug cases").

No-knock warrants are part and parcel of an evolution of law enforcement culture, to a point where police activities resemble military operations.[9] In the last few decades, no-knock raids have increased in number from as few as 300 per year in the 1970's,[10] to as many as 80,000 per year today.[11] And the number of botched raids — such as where police get the wrong address — has grown, oftentimes this results in innocent casualties to law-abiding gun owners, and frequently family dogs.[12] The problem has literally

---

[9] *See* R. Balko, Rise of the Warrior Cop: The Militarization of America's Police Forces, Public Affairs (2013).

[10] http://www.newsmax.com/stossel/swat-drugs-police-raids/2013/08/22/id/521869.

[11] http://usatoday30.usatoday.com/news/nation/2011-02-14-noknock14_ST_N.htm.

[12] http://www.cato.org/raidmap.

grown to the point where law abiding Americans possessing a firearm can no longer feel secure in their own homes.

If the mere presence of firearms[13] automatically justifies the police engaging in no-knock raids, the Fourth Amendment's knock-and-announce principle will become the exception, rather than the rule.

CONCLUSION

For the foregoing reasons, this Court should grant the Petition for Writ of Certiorari.

Respectfully submitted,

MICHAEL CONNELLY
U.S. JUSTICE FOUNDATION
932 D STREET, STE. 2
Ramona, CA 92065
Attorney for Amicus U.S. Justice Foundation

ROBERT J. OLSON
WILLIAM J. OLSON*
HERBERT W. TITUS
JOHN S. MILES
JEREMIAH L. MORGAN
WILLIAM J. OLSON, P.C.
370 Maple Ave. W., Ste. 4
Vienna, VA 22180-5615
(703) 356-5070
wjo@mindspring.com
Attorneys for Amici Curiae

**Counsel of Record*
January 27, 2014

[13] 47 percent of Americans report that they keep at least one firearm at home. http://www.gallup.com/poll/150353/self-reported-gun-ownership-highest-1993.aspx.