No. 23-10062

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

CURTRINA MARTIN, ET AL.,

Plaintiffs-Appellants,

vs.

UNITED STATES OF AMERICA, ET AL.,

Defendants-Appellees.

On Appeal From the United States District Court
For the Northern District of Georgia, No. 1:19-cv-04106-JPB
(Honorable Jean-Paul Boulee)

BRIEF OF THE NATIONAL POLICE ACCOUNTABILITY PROJECT AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLANTS' PETITION FOR REVERSAL OF THE DISTRICT COURT'S ORDER

Heather Burke
California Bar No. 284100
Dara Brown
District of Columbia Bar No. 1686213
Helin Akcam
Massachusetts Bar No. 711963

WHITE & CASE LLP
3000 El Camino Real
2 Palo Alto Square, Suite 900
Palo Alto, CA 94306
Telephone: (650) 213-0300
Facsimile: (650) 213-8158

Counsel for Amicus Curiae
National Police Accountability Project, Inc.

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCOSURE STATEMENT

No. 23-10062

Martin v. United States of America

Pursuant to Federal Rules of Appellate Procedure ("FRAP") and Eleventh Circuit Rules 26.1, counsel for *amicus curiae* the National Police Accountability Project ("NPAP"), certifies that the nonprofit organization does not have any interest in this case.

/s/ *Heather Burke*
Heather Burke
White & Case LLP
Counsel for Amicus Curiae

TABLE OF CONTENTS

Page

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCOSURE STATEMENT C-1

TABLE OF AUTHORITIES ii

INTEREST OF *AMICUS CURIAE* 1

INTRODUCTION 1

ARGUMENT 3

I. It is Presumptively Unconstitutional for Officers to Raid a Home that is Not the Subject of a Warrant 3

A. Historic Fourth Amendment Principles Support Liability for the Careless Execution of a Warrant 3

B. Executing a Warrant at the Incorrect Home Amounts to a Warrantless Search and Presumptively Violates the Fourth Amendment 8

C. Any Exception to the General Prohibition Against Erroneously Executed Warrants Does Not Apply Here 10

II. Because Incorrect Home Raids are Exceedingly Common and Extremely Dangerous, Public Policy Favors Law Enforcement Liability to Deter Careless Warrant Execution Practices 16

A. The Extensive Catalogue of Paramilitary Police Raids Highlights a Pattern of Abuse From Mistaken Raids 16

B. High-Profile Cases Illuminate the Injustice From Wrong Address Warrant Executions 21

C. Improper Warrant Executions Disproportionately Harm Black and Brown Communities 28

CONCLUSION 30

CERTIFICATE OF COMPLIANCE 31

CERTIFICATE OF SERVICE 31

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

Bashir v. Rockdale County,
445 F.3d 1323 (11th Cir. 2006) 8

Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics,
403 U.S. 388 (1971) 2

Boyd v. United States, 166 U.S. 616 (1886) 6, 7

Brinegar v. United States,
338 U.S. 160 (1949) 8, 9

Brower v. Country of Inyo, 489 U.S. 565 (1989) 6

Carpenter v. United States,
138 U.S. 2206 (2018) (Gorsuch, J. dissenting) 7

Entick v. Carrington,
19 How. St. Tr. 1029 (K.B. 1765) 4, 5, 6, 7

Groh v. Ramirez,
540 U.S. 551 (2004) 7, 8

Hartsfield v. Lemacks,
50 F.3d 950 (11th Cir. 1995) .... passim

Hunt v. Tomplait,
301 Fed. App'x 355 (5th Cir. 2008) 9

Jacobs v. City of Chicago,
215 F.3d 758 (7th Cir. 2008) 16

Jones v. Wilhelm,
425 F.3d 455 (7th Cir. 2005) .... passim

Kordash v. United States,
51 4th 1289 (11th Cir. 2022) 2, 3

Maryland v. Garrison,
480 U.S. 79 (1987) .... passim

Payton v. New York,
445 U.S. 573 (1980)........8

Pounds v. Griepenstroh,
970 F.2d 338 (7th Cir. 1992)........13

Semayne's Case,
5 Co. Rep. 91[a], 77 Eng. Rep. 194 (K.B. 1604)........4, 7

Silverman v. United States,
138 U.S. 1663 (2018)........8

Stanford v. Texas,
379 U.S. 476 (1965)........5

Treat v. Lowe,
668 F. App'x 870 (11th Cir. 2016)........15

United States v. Johnson,
290 Fed. App'x 214 (11th Cir. 2008)........12

United States v. Jones,
565 U.S. 400 (2012)........6

United States v. Schwinn,
376 Fed. App'x 974 (11th Cir. 2010)........9

United States v. United States District Court,
407 U.S. 297 (1972)........8

Wilkes v. Wood,
19 How. St. Tr. 1153 (K.B. 1763)........5

Wilson v. Arkansas,
514 U.S. 927 (1995)........4, 5

MISCELLANEOUS

U.S. Const. Amend. IV........passim

Federal Tort Claims Act ("FTCA")........2, 3, 30

Bob Herbert, *In America, Reprise of Terror,* NY TIMES (Mar. 12, 1998)........26

Charlie Leduff, *What Killed Aiyana Stanley-Jones*, MOTHER JONES (Nov./Dec. 2010) 23, 24, 27

CITY OF CHICAGO, OFFICE OF INSPECTOR GENERAL, SECOND INTERIM REPORT: SEARCH WARRANTS EXECUTED BY THE CHICAGO POLICE DEPARTMENT, 2017-2020, 6 (May 2021).................... 29

Cong. Rsch. Serv., Passage of Orders, Resolutions, or Votes, CONSTITUTION ANNOTATED 5

Dara Lind, *Cops do 20,000 no-knock raids a year. Civilians often pay the price when they go wrong*, VOX (May 15, 2015) 21

Dave Savini, Samah Assad & Michele Youngerman, *'They Had The Guns Pointed At Me;' Another Chicago Family Wrongly Raided, Just 1 Month After Police Created Policy To Stop Bad Raids*, CBS NEWS (June 10, 2020) 30

Department of Justice, *Current and Former Louisville, Kentucky Police Officers Charged with Federal Crimes Related to Death of Breonna Taylor* (Aug. 4, 2022) 19, 20

Elizabeth Nolan Brown, *A SWAT Team Wrongfully Raided Her Home. Now Cops Say Footage From the Raid Is Private Since No One Was Killed*, REASON (Feb. 3, 2022) 25

Heather Cherone, *Chicaco to Pay $2.9M to Anjanette Young To Settle Botched Raid Lawsuit*, WTTW NEWS (Dec. 15, 2021) 23

Heather Cherone, *Probe of Anjanette Young Raid Results in Nearly 100 Allegations of Misconduct*, WTTW NEWS (Apr. 29, 2021) 23

Jasmine Gollup, *Trauma and Lawsuits: Questions Linger in the Wake of Raleigh Police's 'No-Knock' Warrant Debacle*, Indy Week (Dec. 15, 2022) 25

John Guzman, *Breonna Taylor, Amir Locke, and the Dangers of Warrant Executions*, NAACP LEGAL DEFENSE FUND (Mar. 18, 2022) 16, 17, 20, 21

Kevin Sack, *Door-Busting Drug Raids Leave a Trail of Blood*, N.Y. TIMES (Mar. 18, 2017) 17, 21, 28

Maria Cramer, *Chicago Woman Who Was Handcuffed Naked Receives $2.9 Million Settlement*, N.Y. TIMES (Dec. 15, 2021) 22, 27

Nicole Dungca and Jenn Abelson, *No-knock raids have led to fatal encounters and small drug seizures*, WASHINGTON POST (Apr. 15, 2022) .... passim

Oralander Brand-Williams, *$8.25M settlement reached in Aiyana Stanley-Jones suit*, DETROIT NEWS (Apr. 4, 2019) 24

Radley Balko, *Overkill: The Rise of Paramilitary Police Raids in America*, CATO INSTITUTE 11 (July 1, 2006) 17, 22

Richard Oppel Jr., Derrick Taylor, and Nicholas Bogel-Burroughs, *What to Know About Breonna Taylor's Death*, N.Y. Times (Mar. 9, 2023) 18, 19

Sean Campbell, *This Cop Unleashed a Reign of Terror, Say the Wrongfully Accused*, ROLLINGSTONE (Apr. 9, 2023) 24, 25, 26

Victim of botched Chicago police raid says settlement money doesn't bring her peace: "I lost a lot of my life that night," CBS NEWS (Jan. 21, 2022 12:04 PM) 20, 22

Walker Orenstein and Greta Kaul, *Minnesota no-knock searches decline, disparities remain following Locke killing*, MINNPOST (Sept. 1, 2022).. 28, 29, 30

War Comes Home: The Excessive Militarization of American Policing, ACLU FOUNDATION 3 (June 2014).. passim

INTEREST OF *AMICUS CURIAE*[1]

NPAP is a non-profit organization created to secure and protect civil rights for individuals in their encounters with law enforcement and detention facility personnel. NPAP currently has nearly five hundred and fifty attorney-members practicing across the United States, including a number of attorneys who have represented clients in Federal Tort Claim Act related claims. NPAP strives to promote the accountability of both state and federal law enforcement officers and their employers for violations of the Constitution and United States' laws. Accordingly, each year NPAP members litigate thousands of cases to promote police accountability and remove the procedural roadblocks restricting individuals from obtaining redress in the civil court system. *Martin v. United States of America* is of interest to NPAP because of the Fourth Amendment concerns it raises. In particular, the inherent Fourth Amendment implications where an officer executes a warrant at the incorrect home.

INTRODUCTION

Appellants allege that on October 18, 2017, Federal Bureau of Investigation ("FBI") agents executed a no-knock warrant at their home. The agents rammed in Appellants' door and immediately deployed flash bang grenades awaking the family of

[1] Counsel for *amicus curiae* contacted the parties' counsel, and all counsel responded that they do not oppose the filing of this brief. Accordingly, pursuant to Federal Rule of Appellate Procedure 29(a)(2), a motion for leave to file this brief is not required. Furthermore, pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), counsel for *amicus curiae* affirm that no counsel for a party authored this brief in whole or in part, and no person other than *amicus curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

three. It was around 5:00 am and the family was sound asleep. Traumatized, the seven-year-old boy pulled sheets over his head in attempt to hide from the home invaders. He was so afraid that he thought he would die. His parents, shocked and unaware as to who was raiding their home, attempted to protect their son but were soon held at gunpoint. Following this violent attack, the FBI agents realized that they had made a severe error. They had raided the wrong home. While Appellants' home bore the address of 3756 Denville Trace, the intended target for the warrant was 3741 Landau Lane, as indicated on the face of the warrant. Prior to entering, the officers failed to verify the Appellants' home number, color, shape, street, intersection, landscaping, facades, windows, shutters or roof, **all** of which bore distinctions from the target's home.

The officers' violent raid gravely infringed upon Appellants' Fourth Amendment rights to be secure from unreasonable searches and seizures. Accordingly, Appellants argued that the appellee (United States) should be liable under the Federal Tort Claims Act ("FTCA") and further, that individual appellees should be held liable under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971) ("*Bivens*"). The trial court granted summary judgment on the *Bivens* claim and the bulk of the FTCA claims prior to ordering mediation and staying the case. During the stay, the Eleventh Circuit decided *Kordash v. United States*, 51 4th 1289 (11th Cir. 2022), which found that FTCA claims were barred under the Supremacy Clause and collateral estoppel when prior *Bivens* claims had been dismissed with prejudice. After mediation failed,

Appellees moved for reconsideration, arguing that *Kordash* required dismissal of the remaining FTCA claims. The district court judge agreed, leading Appellants to appeal to the Eleventh Circuit.

Fourth Amendment principles dating back centuries support liability for an officer's mistaken execution of a warrant. These principles emphasize the importance of a person's right to safety in her home; a well-specified warrant; and notice prior to entry. Along these lines, several circuits have held that executing a warrant at the incorrect home amounts to a warrantless search and presumptively violates the Fourth Amendment. In the present case, Appellants' Fourth Amendment rights were blatantly violated when the officers failed to conduct a reasonable investigation and made egregious mistakes in their wrongful warrant execution. Prior to their violent raid, the officers failed to verify the most basic warrant details, such as the home's address numbers and street sign. Public policy favors law enforcement liability to deter such careless warrant execution practices, which largely impact minority communities.

ARGUMENT

I. It is Presumptively Unconstitutional for Officers to Raid a Home that is Not the Subject of a Warrant

A. Historic Fourth Amendment Principles Support Liability for the Careless Execution of a Warrant

The Fourth Amendment safeguards a person's right to be secure in their home and shields them against unreasonable searches and seizures. U.S. Const. amend.

IV. These constitutional protections are grounded in historic principles that obligate government officials to provide notice prior to forcibly entering a person's home, and prohibit government officials from entering a home without a well-specific warrant. *See Semayne's Case,* 5 Co. Rep. 91[a], 77 Eng. Rep. 194 (K.B. 1604); *Entick v. Carrington*, 19 How. St. Tr. 1029 (K.B. 1765). This first principle dating back to the seventeenth century derives from *Semayne's Case*. *See Semayne's Case*, 77 Eng. Rep. at 195-196. In *Semayne's Case*, a government officer forcibly broke into a person's home to recover debts owed to another individual. *Id*. at 198. At question was whether the officer's actions were legally justified or whether they breached the home occupant's right to privacy in his home. *Id*. at 197-198. The King's Bench held that "in all cases when the King is party, the sheriff (if the doors be not open) may break [into] the party's house, either to arrest him or to do other execution of the King's process, if otherwise he cannot enter. *But before he breaks [into] it, he ought to signify the cause of his coming and to make request to open the doors*." *Id.* at 195-196 (emphasis added).

This foundational "knock and announce" principle underlies the protections enumerated in the Fourth Amendment and is inherently at odds with an officer's reckless execution of a warrant. *See id.* at 194-198; *see also Wilson v. Arkansas*, 514 U.S. 927, 932 n. 2 (1995) (observing that "[t]his 'knock and announce' principle appears to predate even *Semayne's Case*" and "may be traced to a statute enacted in

1275"); *id.* at 929 (Thomas, J.) (describing the "knock and announce" principle as "a part of the Fourth Amendment reasonableness inquiry").

Cases that followed in the eighteenth century not only solidified the strict notice requirement but also inspired a second key principle invalidating the use of general warrants. *See, e.g., Wilkes v. Wood*, 19 How. St. Tr. 1153 (K.B. 1763); *Entick*, 19 How. St. Tr. at 1029. Using general warrants, government officials forcibly raided, searched, and seized materials from citizens' homes without any proof — much less probable cause — that any crime had been committed.[2]

This practice triggered a series of actions against government officials, and another decision that remains the cornerstone of Fourth Amendment rights today, *Entick v. Carrington*. *See, e.g.*, *Stanford v. Texas*, 379 U.S. 476, 484 (1965) (characterizing *Entick* as the "wellspring of the rights now protected by the Fourth Amendment").

In *Entick*, under the guise of a general warrant from Lord Halifax, government officials entered John Entick's home "with force and arms," searched every room for libelous information, and seized materials without recordation. *See Entick*, 19 How. St. Tr. at 1030-1032. The King's Bench declared the officers' behavior

[2] *See* Cong. Rsch. Serv., Passage of Orders, Resolutions, or Votes, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/amdt4-2/ALDE_00013706/ (last visited Mar, 30, 2023).

subversive to "all comforts of society" and in turn, outlawed the issuance of general warrants. *Id*. at 1066. The court reasoned that:

> The great end, for which men entered into society, was to secure their property. That right is preserved sacred and incommunicable in all instance. . . . *By the laws of England, every invasion of private property, be it ever so minute, is a trespass. No man can set his foot upon my ground without my license, but he is liable to an action, though the damage be nothing; which is proved by every declaration in trespass*, where the defendant is called upon to answer for bruising the grass and even treading upon the soil.

Id. at 1066 (emphasis added).

The principles enumerated in *Entick* and *Semayne's Case* have laid the groundwork for Fourth Amendment prohibitions against unreasonable searches and seizures. *See, e.g., United States v. Jones*, 565 U.S. 400, 405 (2012) (citing *Brower v. Country of Inyo*, 489 U.S. 565, 593(1989)) (observing that *Entick* "is a case we have described as a monument of English freedom undoubtedly familiar to every American statesman at the time the Constitution was adopted, and considered to be the true and ultimate expression of constitutional law with regard to search and seizure"); *Boyd v. United States*, (describing how "[t]he principles laid down in [*Entick*] affect the very essence of constitutional liberty and security. . . . It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offence; but it is the invasion of his indefeasible right of personal security, personal liberty and private property, where that right has never been forfeited by

his conviction of some public offence."); *see also Carpenter v. United States*, 138 U.S. 2206, 2264 (2018) (Gorsuch, J. dissenting) (observing that "[n]o doubt the colonial outrage engendered by these cases rested in part on the government's intrusion upon privacy. But the framers chose not to protect privacy in some ethereal way dependent on judicial intuitions. They chose instead to protect privacy in particular places and things—'persons, houses, papers, and effects'—and against particular threats—'unreasonable' governmental 'searches and seizures'").

Under the foundational principles, an officer's forcible entry into a home without a valid warrant was considered trespassing and resulted in liability. *See Semayne's Case*, 77 Eng. Rep. at 198 (observing that an officer who "break[s] the defendant's house by force . . . is a trespasser by the breaking"); *Entick, 19 How. St. Tr. at 1066-1073; see also Boyd*, 166 U.S. at 628-631. This finding remains true today[3] and should be equally applied to this case where officers mistakenly raided the Appellants' home pursuant to an invalid warrant; brazenly awoke a seven-year-old child and his family at 5:00 am; detonated flash grenades that inflicted lasting trauma on the child; and erroneously held the family at gunpoint.

[3] *See, e.g., Groh v. Ramirez*, 540 U.S. 551, 563 (2004) (finding that where a federal agent executed an invalid warrant that was incompatible with the Fourth Amendment's specificity requirements, the officer was barred from qualified immunity).

B. Executing a Warrant at the Incorrect Home Amounts to a Warrantless Search and Presumptively Violates the Fourth Amendment

The Fourth Amendment presumptively prohibits an officer from searching a home without a warrant. *See Payton v. New York*, 445 U.S. 573, 586-590 (1980); *Groh v. Ramirez*, 540 U.S. 551, 559 (2004); *see also Bashir v. Rockdale County*, 445 F.3d 1323, 1327 (11th Cir. 2006) (observing "it is a basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable").

The prohibition against warrantless searches is founded on "the very core of the Fourth Amendment: the right of a man to retreat into his own home and there be free from unreasonable government intrusion." *See Bashir*, 445 F.3d at 1327; *see also United States v. United States District Court*, 407 U.S. 297, 313 (1972) ("[T]he physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed."); *Silverman v. United States,* 138 U.S. 1663, 1672 (2018) ("[A]bsent another exception such as exigent circumstances, officers may not enter a home to make an arrest without a warrant, even when they have probable cause. That is because being arrested in the home involves not only the invasion attendant to all arrests but also an invasion of the sanctity of the home.").

Execution of a warrant at the *incorrect* home amounts to a warrantless search and thus presumptively violates the Fourth Amendment. *See Brinegar v. United*

States, 338 U.S. 160, 175-176 (1949). In *Brinegar*, the Court observed that an officer's issuance of a warrant at the incorrect home violated the "long-prevailing standards" of "probable cause" which "seek to safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime." *See Brinegar*, 338 U.S. at 175-176; *see also United States v. Schwinn*, 376 Fed. App'x 974, 980 (11th Cir. 2010) (observing that "[a] warrant may not issue except upon a showing of probable cause.").

Along these lines, Justice Blackmun explained that while "[i]t may make some sense to excuse a reasonable mistake by police that produces evidence against the intended target of an investigation or warrant if the officers had probable cause for arresting that individual or searching his residence. Similar reasoning does *not* apply with respect to one whom probable cause has not singled out and who is the victim of the officers' error." *Maryland v. Garrison*, 480 U.S. 79, 95 (1987) (Blackmun Dissent) (emphasis in original).

In *Garrison*, the Supreme Court also recognized that an officer's accidental execution of a warrant was inherently unlawful. *See id*. at 84 ("[T]he scope of a lawful search is defined by the object of the search and the places in which there is probable cause to believe that it may be found."); *see also Hunt v. Tomplait*, 301 Fed. App'x 355, 359 (5th Cir. 2008) (explaining that "[w]arrantless searches of a

person's home are presumptively unreasonable unless the person consents, or unless probable cause and exigent circumstances justify the search").

C. Any Exception to the General Prohibition Against Erroneously Executed Warrants Does Not Apply Here

An officer's accidental execution of a warrant may only be justified where the officer undertakes a "reasonable effort to ascertain and identify the place intended to be searched." *Garrison*, 480 U.S. at 87-88. No such exception exists here.

In *Garrison*, officers executed a warrant at an apartment complex for "the premises known as 2036 Park Avenue third floor apartment." *Id*. at 82. Upon executing the warrant, the officers discovered that there were two apartments on the third floor and that they had broken into the wrong one. *Id*. at 82. Before executing the warrant, the officers: (1) verified information from a reliable informant that only one apartment existed on that floor; (2) drove to and thoroughly examined the exterior of the apartment complex; (3) contacted the utility company serving that address, who confirmed that the third floor was "only listed" to the suspect; and (4) met with the target at the entrance of the third floor where they were escorted inside without being told that another apartment existed on the floor. *See Id*. at 81.

The officers thus made a specific inquiry and had multiple indications that there was only one apartment on the floor to be searched. Based on the officers' "reasonable investigation," the Court found that the "objective facts available to the

officers at the time of the search suggest[ed] no distinction" between the home listed on the warrant and the property that was mistakenly raided. *Id*. at 81, 88. Thus, the Court found that the warrantless search was justified.

However, there are no grounds for accepting that the federal officers in this case *could not* have distinguished the Appellants' home from that of the target. The officers broke in the *wrong home; at the wrong address; on the wrong street; at the wrong intersection*.

While the federal officers claim to have undertaken a pre-execution investigation of the Appellants' address, it is clear from officers' egregious mistakes in executing the warrant that they failed to conduct a "reasonable" survey of the target's site. Prior to forcibly entering Appellants' home, the officers failed to check the home address — though the address was prominently displayed on the mailbox. The officers also failed to check the street signs — and in turn, issued the no-knock warrant on *Denville Trace*, a block away from the intended target's location on *Landau Lane*.[4]

Distinct from the facts in *Garrison*, here the "objective facts available to the officers at the time of the search" revealed several clear "distinction[s]" between the home listed on the warrant and the Appellants' home. *See Garrison*, 480 U.S. at 88.

[4] The lead officer destroyed his GPS unit after the erroneous raid.

The officers failed to notice that the color and shape of the Appellants' home differed from the target's home; the landscaping and facades were dissimilar; the homes were located on opposite sides of the street at completely different intersections; the windows, shutters, and roofs all differed in style; and the cars parked in the Appellants' driveway were different from those owned by the target. The officers' mistaken raid was neither objectively understandable nor reasonable and thus invaded Appellants' privacy and violated their inherent Fourth Amendment rights. *See Garrison*, 480 U.S. at 87-88.[5]

Several courts have highlighted the importance of pre-execution investigations. *See Hartsfield v. Lemacks*, 50 F.3d 950, 955 (11th Cir. 1995) (finding warrant executed on wrong address was illegal where the officer's actions were "not consistent with a reasonable effort to ascertain and identify the place intended to be searched"); *Jones v. Wilhelm*, 425 F.3d 455, 459 (7th Cir. 2005) (finding warrant execution violated defendant's Fourth Amendment rights where officer "recognized the warrant as ambiguous before the execution of the warrant, but failed to immediately stop execution and seek the necessary clarification"); *cf. United States v. Johnson*, 290 Fed. App'x 214, 222 (11th Cir. 2008) (finding a wrong address

[5] Any finding that the officers took "significant precautionary measures to avoid mistakes" is at odds with reality. No court could reasonably find that significant precautionary measures were taken by officers that arrived at the incorrect target address, on the wrong street and failed to check the mailbox number, or to look at the very address expressed in the warrant itself - prior to breaking into an innocent family's home.

warrant execution valid where the officer specifically confirmed the address with the informant, the facts at the scene did not indicate informant was lying, and the officer searched the property website in order to determine the correct address).

The investigations must not only be meaningful but undertaken in an objectively reasonable manner. For example, in *Jones v. Wilhelm*, an officer was conducting surveillance of an apartment building when he received a tip related to alleged drug activity at the upstairs apartment "on the right." *Jones v. Wilhelm*, 425 F.3d at 458. Based on the foot traffic that he witnessed during his surveillance, the officer assumed that he knew exactly which apartment the illicit activity derived from. *Id.* at 459. The officer ignored the fact that there were two stairways pointing in opposite directions of the building, such that "on the right" could be interpreted in two distinct manners. *Id*. at 459. The officer also disregarded the fact that the target's name was clearly labeled next to their apartment number at the building entrance. *Id*. at 459. Relying on his assumptions, the officer led his team to the incorrect apartment where they executed an erroneous warrant. *Id*.

The court observed that to determine whether the officer's "alleged actions violated a clearly established right, courts may properly take into account any information the defendant *ought reasonably* to have obtained." *Id.* at 461 (citing *Pounds v. Griepenstroh*, 970 F.2d 338, 340 (7th Cir. 1992)) (emphasis added).

The court found that the officer's mistaken execution of the warrant violated the plaintiffs' Fourth Amendment rights because "based on [the officer's] prior knowledge" the officer knew or should have known distinct factors regarding the searched premises that were objectively distinct from or ambiguous to the wording of the warrant. *Id*. at 463. For example, the officer's surveillance informed him that there were two apartments on the target's floor and that two stairways led to them. *Id*. To clarify these ambiguities, the officer was obligated to undertake additional pre-execution investigations of the premises to better ensure that he could execute the warrant at the correct home based the wording of the warrant. *See id*. at 464; *see also Garrison*, 480 U.S. at 86.

This Court has found that an officer's mistaken execution, following his failure to undertake a reasonable investigation, necessarily violates the Fourth Amendment of those wrongfully impacted. *See Hartsfield*, 50 F.3d at 955. In *Hartsfield*, the lead officer had previously investigated the correct target's residence, and possessed a copy of the warrant listing the correct address. *Id*. However, upon executing the warrant, the officer ignored distinguishable features between the target's home and the home that he unjustifiably invaded. Not only did the homes possess distinct appearances; but they were also located on different parts of the street, separated by at least one other residence. *Id*. Furthermore, the lead officer "did not check" that the home he led fellow officers to, matched the home listed on

the warrant in hand. *Id*. Though the officer had previously been to the target's home, this Court held that he failed to take sufficient "precautionary measures" to avoid the mistaken execution that irreversibly violated innocent civilians' Fourth Amendment rights. *See id*.[6]

Before their mistaken execution, the officers in *Hartsfield* held a duty to *verify* the Appellants' address on the basis of the warrant. *Id*. The federal officers in this case held the same duty to undertake sufficient precautionary measures prior to breaking into the Appellants' home.

Furthermore, the officers should have meaningfully surveyed the targeted premises to determine whether similarities existed such as to create ambiguities between the home listed on the warrant and homes nearby. *See Treat v. Lowe*, 668 F. App'x 870, 871 (11th Cir. 2016) (reaffirming that an officer must put forth "well-intentioned attempts" to ascertain that they are executing a warrant at the correct address). The federal officers in this case held a photo of the target's home that they could have easily used to clear up any ambiguities and that would have alerted them to the distinct color, location, landscaping, facades and cars located at the Appellants' home.

[6] Though this Court said that the officer did "nothing" to make sure that he was searching the house described in the warrant, the officer did in fact visit the correct target's home prior to executing the warrant and procured a search warrant based on his own observations at the correct address. The contention that the officer did "nothing" does not relate to these precursory undertakings but rather describes an officer's duty to undertake efforts to confirm that he and his fellow officers are at the correct address prior to raiding a home. *See Hartsfield*, 50 F.3d. at 955.

As the court in *Jones v. Wilhelm* observed, "if an officer obtains information while executing a warrant that puts him on notice of a risk that he could be targeting the wrong location, then the officer must terminate his search." *See Jones v. Wilhelm*, 425 F.3d at 464 (citing *Jacobs v. City of Chicago*, 215 F.3d 758 (7th Cir. 2008)). The fact that the target's home and the Appellants' home were on distinct streets; held differing appearances; and were separated by several houses should have alerted officers that they were targeting the wrong home and prompted them to call off their search. Despite these obvious differences, the officers failed to take steps to confirm that they were at the correct home and thus violated Appellants' Fourth Amendment rights by raiding their home.

II. Because Incorrect Home Raids are Exceedingly Common and Extremely Dangerous, Public Policy Favors Law Enforcement Liability to Deter Careless Warrant Execution Practices

A. The Extensive Catalogue of Paramilitary Police Raids Highlights a Pattern of Abuse From Mistaken Raids

The link between no-knock warrant executions and unjustified casualties is both real and pervasive. Indeed, officers' executions of no-knock warrants have resulted in "horrifying consequences" for decades.[7]

[7] John Guzman, *Breonna Taylor, Amir Locke, and the Dangers of Warrant Executions*, NAACP LEGAL DEFENSE FUND (Mar. 18, 2022), https://www.naacpldf.org/end-no-knock-warrants.

A New York Times investigation reported that just between 2010 and 2016, eighty-one civilians and thirteen police officers were killed as a result of no-knock and barely-knock raids.[8] These figures are exacerbated by the fact that many such raids are carried out by paramilitary police units (commonly referred to as SWAT teams), whose excessive militarization and sophisticated weaponry were initially created for more extreme scenarios, including kidnappings and active shootings.[9]

In fact, a 2014 American Civil Liberties ("ACLU") report observed that the use of SWAT teams to carry out routine drug-search warrants has become commonplace.[10] The report explained that while "paramilitary policing in the form of SWAT teams was created to deal with emergency scenarios such as hostage or barricade situations," between 2011 and 2012, 79 percent of executed SWAT team warrants involved the invasion of one's home, and 60 percent of these invasions involved drug searches.[11] The ACLU concluded that the use of paramilitary tactics

[8] Kevin Sack, *Door-Busting Drug Raids Leave a Trail of Blood*, N.Y. TIMES (Mar. 18, 2017), https://www.nytimes.com/interactive/2017/03/18/us/forced-entry-warrant-drug-raid.html?itid=lk_inline_enhanced-template; *see also* Guzman, *Breonna Taylor, Amir Locke, and the Dangers of Warrant Executions*.

[9] *War Comes Home: The Excessive Militarization of American Policing*, ACLU FOUNDATION 3 (June 2014), https://www.aclu.org/sites/default/files/assets/jus14-warcomeshome-report-web-rel1.pdf.

[10] *Id.*; *see also* Radley Balko, *Overkill: The Rise of Paramilitary Police Raids in America*, CATO INSTITUTE 11 (July 1, 2006) (observing that in 2001 alone, the CATO Institute estimated that paramilitary police units undertook 40,000 raids per year, most of which involved forced entry, often into the wrong home).

[11] *War Comes Home*, ACLU FOUNDATION 3.

only heightened the violence, and often *created* the danger that no-knock warrants were designed to avoid.[12]

A 2022 Washington Post investigation further explained that while judges and magistrates are expected to review requests for no-knock warrants to ensure citizens are protected from unreasonable searches, they instead typically rely on the word of police officers and rarely question the merits of those officers' requests.[13] The investigation describes how this process has become even easier in recent years, with software systems allowing judges to approve warrants remotely, without ever having to speak to the officers requesting them.[14]

The unconscionable consequences of this trend blatantly manifested in the death of Breonna Taylor, a twenty-six year old Black woman who worked as an emergency room technician.[15] Shortly after midnight, on March 13, 2020, Louisville, Kentucky police officers forcibly entered Ms. Taylor's home with a battering ram while she lay asleep.[16] The officers were investigating two men they

[12] *Id*.
[13] Nicole Dungca and Jenn Abelson, *No-knock raids have led to fatal encounters and small drug seizures*, WASHINGTON POST (Apr. 15, 2022), https://www.washingtonpost.com/investigations/interactive/2022/no-knock-warrants-judges/.
[14] *Id*.
[15] *See* Richard Oppel Jr., Derrick Taylor, and Nicholas Bogel-Burroughs, *What to Know About Breonna Taylor's Death*, N.Y. Times (Mar. 9, 2023), https://www.nytimes.com/article/breonna-taylor-police.html.
[16] *Id*.

believed were selling drugs out of a house "far from" Ms. Taylor's home.[17] However, a judge had signed a warrant (based on the lies of several officers) allowing the police to search Ms. Taylor's residence.[18] The police justified their warrant request upon the belief that one of the alleged drug dealers had used Ms. Taylor's apartment to receive packages. Ms. Taylor had severed ties with the alleged drug dealer, who she had previously dated, and when she and her then-boyfriend awoke to the police ramming through their door, her boyfriend's instinctive reaction to defend them was met with ten rounds, blindly discharged into the apartment that resulted in Ms. Taylor's murder.[19]

In 2022, the U.S. Department of Justice charged four current and former Louisville Metro Police Department officers with federal crimes related to Ms. Taylor's death, including obstruction of justice, conspiring to mislead the judge who approved the search warrant, and excessive use of force.[20] Assistant Attorney General Kristen Clarke observed, "Since the founding of our nation, the Bill of Rights to the United States Constitution has guaranteed that all people have a right

[17] *Id*.
[18] *See* Department of Justice, *Current and Former Louisville, Kentucky Police Officers Charged with Federal Crimes Related to Death of Breonna Taylor* (Aug. 4, 2022), https://www.justice.gov/opa/pr/current-and-former-louisville-kentucky-police-officers-charged-federal-crimes-related-death.
[19] *See* Richard Oppel Jr., Derrick Taylor, and Nicholas Bogel-Burroughs, *What to Know About Breonna Taylor's Death*, N.Y. Times (Mar. 9, 2023), https://www.nytimes.com/article/breonna-taylor-police.html.
[20] *See* Department of Justice, *Current and Former Louisville, Kentucky Police Officers Charged with Federal Crimes Related to Death of Breonna Taylor*.

to be secure in their homes, free from false warrants, unreasonable searches and the use of unjustifiable and excessive force by the police."[21] She explained that "[t]hese indictments reflect the Justice Department's commitment to preserving the integrity of the criminal justice system and to protecting the constitutional rights of every American."[22]

With little resistance provided to police officers' often boilerplate reasoning, no-knock warrants have become commonplace for SWAT teams, resulting in wholly preventable, unjustified deaths.[23] Many of these no-knock warrants have unduly resulted in raids at the incorrect homes.[24] These mistaken raids have caused avoidable deaths; gruesome injuries; demolished property; and enduring trauma for innocent civilians and communities.[25]

In 2003, the New York Police Department commissioner estimated that of the more than 450 no-knock raids conducted in New York City every month, 10 percent

[21] *See id*.
[22] *See id*.
[23] Dungca and Abelson, *No-knock raids have led to fatal encounters and small drug seizures*.
[24] Guzman, *Breonna Taylor, Amir Locke, and the Dangers of Warrant Executions*.
[25] *Id.*; *see also, e.g.*, *Victim of botched Chicago police raid says settlement money doesn't bring her peace: "I lost a lot of my life that night*," CBS NEWS (Jan. 21, 2022 12:04 PM), https://www.cbsnews.com/news/anjanette-young-chicago-police-department-raid/.

were executed at the incorrect homes.[26] This estimate only came to the forefront after a mistaken raid resulted in an elderly homeowner's death.[27]

Aside from a few independent investigations, there is shockingly little monitoring in the area of warrant executions, and thus the exact number of mistaken raids remains unknown.[28] Not a single court system tracks the use of no-knock warrants, nor do any federal or state government agencies keep tabs on the number of people killed or wounded in erroneous raids.[29] As the ACLU observed, this follows general trends in police oversight: while evidence of the militarization of the U.S. police forces across the country is well documented, agencies that monitor warrant executions are virtually nonexistent.[30]

B. High-Profile Cases Illuminate the Injustice From Wrong Address Warrant Executions

The combination of low levels of monitoring of warrant executions, the militarization of the police force, and the low threshold for obtaining warrants has caused unnecessary violence and provocation to nonviolent offenders and innocent

[26] Dara Lind, *Cops do 20,000 no-knock raids a year. Civilians often pay the price when they go wrong.*, VOX (May 15, 2015 12:12 PM), https://www.vox.com/2014/10/29/7083371/swat-no-knock-raids-police-killed-civilians-dangerous-work-drugs.
[27] *Id*.
[28] *See* Guzman, *Breonna Taylor, Amir Locke, and the Dangers of Warrant Execution*; Dungca and Abelson, *No-knock raids have led to fatal encounters and small drug seizures*; Sack, *Door-Busting Drug Raids Leave a Trail of Blood*.
[29] *See* Dungca and Abelson, *No-knock raids have led to fatal encounters and small drug seizures*.
[30] *See War Comes Home*, ACLU FOUNDATION 2.

civilians.[31] The consequences of this are compounded when police and SWAT teams execute warrants based on inaccurate information and mistaken addresses. While the lack of meaningful oversight or monitoring obscures any attempt to measure incidents numerically, prominent examples from news reports illuminate the injustices experienced from wrong address warrant executions across the country.

On February 21, 2019, police officers stormed the home of a young medical social worker, Anjanette Young, using a battering ram.[32] Ms. Young was in the middle of changing her clothes when officers barged in and handcuffed her naked, leaving her in that state for forty minutes while searching her home for a man with a gun.[33] Yet the man they were searching for lived next door.[34] The nearly hour-long incident resulted in a violation of Ms. Young's home, privacy, and dignity.[35] In fact, a probe of the raid by the Civilian Office of Police Accountability found evidence that approximately a dozen officers committed nearly 100 acts of

[31] Balko, *Overkill: The Rise of Paramilitary Police Raids in America*, at 1.
[32] Maria Cramer, *Chicago Woman Who Was Handcuffed Naked Receives $2.9 Million Settlement*, N.Y. TIMES (Dec. 15, 2021), https://www.nytimes.com/2021/12/15/us/anjanette-young-chicago-police-settlement.html.
[33] *Id.*; *see also Victim of botched Chicago police raid says settlement money doesn't bring her peace: "I lost a lot of my life that night*," CBS NEWS.
[34] Cramer, *Chicago Woman Who Was Handcuffed Naked Receives $2.9 Million Settlement*.
[35] *See id.*

misconduct during the search of Ms. Young's home.[36] In light of the officers' misconduct, the Chicago City Council approved a 2.9 million dollar settlement in Ms. Young's favor.[37]

Wrong address warrant executions also have led to tragic violence. On May 16, 2010, police shot and killed sleeping seven-year-old Aiyana Stanley-Jones while executing a warrant on the wrong apartment.[38] Officers stormed in just after midnight, in search of a homicide suspect, with their guns drawn.[39] They first threw in a flash grenade, which landed near the far side of the sofa, where Aiyana was sleeping, and burned her blanket.[40] Seconds after, an officer fired the fatal shot, which entered Aiyana's head and exited through her neck.[41] Meanwhile, neither the sleeping Aiyana nor her grandmother, who was watching television, presented a threat to the officers.[42]

[36] Heather Cherone, *Chicaco to Pay $2.9M to Anjanette Young To Settle Botched Raid Lawsuit*, WTTW NEWS (Dec. 15, 2021), https://news.wttw.com/2021/12/15/chicago-pay-29m-anjanette-young-settle-botched-raid-lawsuit

[37] Heather Cherone, *Probe of Anjanette Young Raid Results in Nearly 100 Allegations of Misconduct*, WTTW NEWS (Apr. 29, 2021), https://news.wttw.com/2021/04/29/probe-anjanette-young-raid-results-nearly-100-allegations-misconduct

[38] Charlie Leduff, *What Killed Aiyana Stanley-Jones*, MOTHER JONES (Nov./Dec. 2010), https://www.motherjones.com/politics/2010/09/aiyana-stanley-jones-detroit/.

[39] *Id*.

[40] *Id*.

[41] *Id*.

[42] *Id*.

The officers' warrant execution was riddled with mistakes. The suspect they were targeting lived in the upstairs apartment from Aiyana.[43] The neighborhood informant who led homicide detectives to the address had told them that children lived there, and there were toys visibly strewn on the lawn.[44] Yet the officers conducting the raid failed to investigate the address or adjust their tactics despite the ambiguity. The result was a dead seven-year-old child.[45]

Indeed, many mistaken warrant executions are characterized by a failure of police to properly investigate ambiguities in search warrants — a requirement of the Fourth Amendment.[46] This is as true in the present case as it was for Yolanda Irving and her three children, whose home was wrongfully raided by police in May 2020.[47] At the time of the raid, Ms. Irving was relaxing in her bedroom across from her teenage daughter, Cydneea.[48] Her twenty-year-old son, Juwan, was in his wheelchair playing video games while her twelve-year-old son, Jalen, was outside playing with his friends.[49] Within seconds, more than a dozen SWAT officers ran

[43] *Id*.
[44] *Id*.
[45] See Oralander Brand-Williams, *$8.25M settlement reached in Aiyana Stanley-Jones suit*, DETROIT NEWS (Apr. 4, 2019), https://www.detroitnews.com/story/news/local/detroit-city/2019/04/04/8-25-m-settlement-reached-aiyana-stanley-jones-suit/3340174002/ (describing how the settlement reached for Aiyana's family would not provide full justice.
[46] *See supra*, § 1(c).
[47] Sean Campbell, *This Cop Unleashed a Reign of Terror, Say the Wrongfully Accused*, ROLLINGSTONE (Apr. 9, 2023), https://www.rollingstone.com/politics/politics-features/reign-of-terror-wrongful-arrests-raleigh-1234711651/
[48] *Id*.
[49] *Id*.

towards the boys with assault rifles.[50] Other officers burst through Ms. Irving's door, charged in with their guns drawn, and proceeded to yell at her handicapped son to get on the floor.[51] Officers also pursued Jalen's friends into a neighbor, Kenya Walton's, home where they held Ms. Walton's autistic fifteen-year-old-son and pregnant twenty-year-old daughter at gunpoint.[52]

The officers held both families hostage for more than an hour before determining that they had raided the wrong homes.[53] Despite several indicia that, under the Fourth Amendment, would require them to perform adequate precautionary measures to ensure the search warrant was properly executed, the officers failed to verify that they were at the correct homes.[54] For example, while the warrant listed Ms. Irving's address, it included a photo that reflected a completely different house.[55] The officers ignored these clear discrepancies.[56] As such, just like in the present case, officers entered the wrong home despite it

[50] *Id*.
[51] *Id*.
[52] *Id*.
[53] *Id*.
[54] *See Hartsfield*, 50 F.3d at 955.
[55] Elizabeth Nolan Brown, *A SWAT Team Wrongfully Raided Her Home. Now Cops Say Footage From the Raid Is Private Since No One Was Killed*, REASON (Feb. 3, 2022), https://reason.com/2022/02/03/a-swat-team-wrongfully-raided-her-home-now-cops-say-footage-from-the-raid-is-private-since-no-one-was-killed/.
[56] Jasmine Gollup, *Trauma and Lawsuits: Questions Linger in the Wake of Raleigh Police's 'No-Knock' Warrant Debacle*, Indy Week (Dec. 15, 2022), https://indyweek.com/news/wake/rpd-no-knock-raleigh-lawsuit/.

having visible differences from the one described in the warrant without taking reasonable precautionary measures to minimize such risk.[57]

Ms. Irving's case is just one of several recently exposed cases of mistaken warrant executions in Raleigh, NC.[58] Months after officers wrongfully raided Ms. Irving's home, they committed the same injustice at the home of Amir Abboud.[59] In April 2021, the officers broke into Mr. Abboud's home with rifles drawn while his wife and eleven-month-old son played on the living room floor.[60] The officers had the wrong address and failed to verify their location based on photos or videos within their possession.[61]

Mistaken warrant executions are not a new phenomenon.[62] In 1998, the Bronx police department issued two wrong address warrants in just one day.[63] In February 1998, the police wrongfully raided Shaunsia Patterson's apartment while her two children were sleeping.[64] Ms. Patterson shared the apartment with her fifteen-year-old sister.[65] The officers spent two hours unlawfully raiding Ms.

[57] *See Hartsfield*, 50 F.3d at 955; *Jones v. Wilhelm*, 425 F.3d at 464
[58] Campbell, *This Cop Unleashed a Reign of Terror, Say the Wrongfully Accused*.
[59] *Id*.
[60] *Id*.
[61] *Id*.
[62] *See* Bob Herbert*, In America, Reprise of Terror,* NY TIMES (Mar. 12, 1998) at 1-2.
[63] *Id*.
[64] *Id*.
[65] *Id*.

Patterson's possessions and tearing through her home while she lay on the ground barely clothed, handcuffed, and sobbing.[66] For two whole hours the officers failed to confirm the targeted address; check the warrant; review mailings or the victim's identification.[67] Through their persistent intent on locating drugs in the victims' home, the officers grossly violated their Fourth Amendment rights.[68] The very same day, another contingent of officers in the Bronx committed the same unconscionable crime, this time dragging an innocent man, handcuffed and naked, from his home after the erroneous pursuit.[69] The close proximity in time of such incidents indicates a clear pattern of misconduct that has persisted to this day.[70]

The lack of legal requirements for officers to report mistaken warrant executions leaves uncertain just how often this injustice occurs.[71] Without accountability, it remains hard to imagine an end to this unconstitutional practice and violence imposed on innocent individuals.

[66] *Id*.
[67] *Id*.
[68] *Id*.
[69] *Id*.
[70] *See* Cramer, *Chicago Woman Who Was Handcuffed Naked Receives $2.9 Million Settlement*; Leduff, *What Killed Aiyana Stanley-Jones*; Campbell, *This Cop Unleashed a Reign of Terror, Say the Wrongfully Accused*.
[71] *See* Dungca and Abelson, *No-knock raids have led to fatal encounters and small drug seizures*.

C. Improper Warrant Executions Disproportionately Harm Black and Brown Communities

It is undisputed that SWAT warrant executions disproportionately harm Black and Brown communities.[72]

In 2014, the ACLU examined the impact of SWAT raids in twenty U.S. cities.[73] The ACLU found that out of all of the civilians subjected to these frequently forceful and devastating raids across the nation, 42 percent were Black while 12 percent were Hispanic.[74] Along these lines, the New York Times reported that people of color comprised more than half of the eighty-one civilians killed as a result of SWAT warrant executions between 2010 and 2016.[75]

The civilians needlessly murdered as a result of no-knock warrants are disproportionately Black and Brown. A Washington Post study found that of the twenty-two people killed from no-knock warrants since just 2015, more than half have been Black or Hispanic.[76] These numbers align with others, which have for decades demonstrated the disproportionate impact of policing on communities of

[72] *See id.*; Sack, *Door-Busting Drug Raids Leave a Trail of Blood*.
[73] *See generally*, *War Comes Home*, ACLU FOUNDATION.
[74] *Id.* at 5.
[75] Sack, *Door-Busting Drug Raids Leave a Trail of Blood*.
[76] Dungca and Abelson, *No-knock raids have led to fatal encounters and small drug seizures*; Sack, *Door-Busting Drug Raids Leave a Trail of Blood*.

color.[77] For instance, a 2021 report by Chicago's Office of Inspector General, found that 72 percent of all search warrants served in Chicago homes, between 2017 and 2020, targeted Black men.[78] Furthermore, Black men were 25.3 times more likely than White men to be the subject of search warrants served by the Chicago Police Department.[79]

Following the needless killing of April Wright, [80] the Minnesota state legislature passed a law requiring police to report information regarding no-knock warrants to local officials.[81] However, in the months to follow, state data revealed that Black residents remained the subject of the vast majority of no-knock raids, at a level far disproportionate to state demographics.[82] For example, out of 178 people subjected to no-knock warrants, 64 percent were Black, whereas Black people make

[77] *War Comes Home*, ACLU FOUNDATION at 5; *see also* Walker Orenstein and Greta Kaul, *Minnesota no-knock searches decline, disparities remain following Locke killing*, MINNPOST (Sept. 1, 2022), https://www.minnpost.com/metro/2022/09/minnesota-no-knock-searches-decline-disparities-remain-following-locke-killing/ (describing how in Minnesota, Black residents were subjects in the vast majority of no-knock raids, at a level far disproportionate compared to state demographics).

[78] CITY OF CHICAGO, OFFICE OF INSPECTOR GENERAL, SECOND INTERIM REPORT: SEARCH WARRANTS EXECUTED BY THE CHICAGO POLICE DEPARTMENT, 2017-2020, 6 (May 2021), https://news.wttw.com/sites/default/files/article/file-attachments/OIG-Second-Interim-Report_CPD-Search-Warrants.pdf.

[79] *Id*. at 6-7.

[80] On February 2, 2022, the Minneapolis Police Department's (MPD) SWAT team executed a no-knock warrant at a residential address in Minneapolis, Minnesota, during which Officer Mark Hanneman fatally shot a 22-year-old Black man, Amir Locke, seconds after entering the home where he lay sleeping. Mr. Locke was not named in the search warrant. *See* https://www.naacpldf.org/press-release/ldf-issues-statement-on-minneapolis-police-departments-fatal-shooting-of-amir-locke/?gclid=Cj0KCQjwt_qgBhDFARIsABcDjOdefRGZ33NHa5VPQn_iCGJA3rF5eln0bDTsNDZE-D94EU1_ajsjLo8aAmcGEALw_wcB.

[81] Orenstein and Kaul, *Minnesota no-knock searches decline, disparities remain following Locke killing*.

[82] *Id*.

up only 7 percent of the state's population.[83] The impacts on the Black and Brown communities from mistaken raids are no different.[84]

CONCLUSION

For the foregoing reasons, this Court should reverse the district court's decision and hold that the Supremacy Clause does not bar Appellants' FTCA claims where the officers' unreasonable issuance of a wrong address, no-knock warrant violated Appellants' inherent Fourth Amendment rights.

Dated: May 15, 2023

Respectfully submitted,

By: */s/ Heather Burke*
Heather Burke
California Bar No. 284100
Dara Brown
District of Columbia Bar No. 1686213
Helin Akcam
Massachusetts Bar No. 711963

WHITE & CASE LLP
3000 El Camino Real
2 Palo Alto Square, Suite 900
Palo Alto, CA 94306
Telephone: (650) 213-0300
Facsimile: (650) 213-8158

Counsel for Amicus Curiae
National Police Accountability Project, Inc.

[83] *Id*.
[84] *See e.g.*, Dave Savini, Samah Assad & Michele Youngerman, *'They Had The Guns Pointed At Me;' Another Chicago Family Wrongly Raided, Just 1 Month After Police Created Policy To Stop Bad Raids*, CBS NEWS (June 10, 2020), https://www.cbsnews.com/chicago/news/they-had-the-guns-pointed-at-me-another-chicago-family-wrongly-raided-just-1-month-after-police-created-policy-to-stop-bad-raids/ (A 2020 study of Chicago police data found that Black and Latino neighborhoods were disproportionately impacted by wrong address raids).

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of FRAP 29(a)(5) and 32(a)(7)(B) because it contains 7,040 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and Eleventh Circuit Rule 32-4. This brief also complies with the typeface requirement of Federal Rule of Appellate Procedure 32(a)(5) and with the type style requirement of Federal Rule of Appellate Procedure 32(a)(6) because it was prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

/s/ Heather Burke
Heather Burke

CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Appellate Procedure 25(c)(2) and Eleventh Circuit Rule 25-3(a), I hereby certify that on this 15th day of May 2023, I electronically filed the foregoing Brief using the Court's CM-ECF system, and thus also served the foregoing on all counsel of record.

/s/ Heather Burke
Heather Burke