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I. INTRODUCTION

The scene is a familiar one—gathering members of S.W.A.T. place themselves around a home where a dangerous and villainous individual hides. While inside waiting, the criminal loads his weapons, makes threats to members of law enforcement, and in many situations, holds hostages. What happens once law enforcement officers strategically place themselves in the surrounding area is often tragic. Someone fires a shot, the criminal fails to drop his weapon, a hostage is killed, or a host of other events occur, leading to officers charging into the home to stop the individual.

Citizens view this scenario almost nightly on prime time television and weekly on the big screen, and occasionally as the topic of breaking local news. The end result in these situations is often swift and decisive. The point of this scenario is to get the law enforcement officers into the criminal’s premises to take control of the situation and apprehend the criminal. In situations where S.W.A.T is involved, it is more evident that the governmental intrusion is necessary and critical. However, in less severe situations, the need for governmental intrusion into the home is less clear-cut; for example, entering unannounced into an individual’s home in an attempt to discover incriminating evidence or to apprehend a criminal. If law enforcement officials are not careful, these intrusions into private homes, while inspiring a very heroic image of law enforcement officers in the media, can neglect basic and fundamental constitutional rights individuals enjoy against unreasonable searches and seizures. This is exactly what happened in Hudson v. Michigan\(^1\) where law enforcement officers made an unlawful entry into Booker T. Hudson’s home to search for narcotics and guns.

This Note examines the “knock-and-announce” requirement, which requires law enforcement officers to both knock and announce their entry before entering an individual’s home. This examination takes place in light of Hudson v. Michigan holding that evidence obtained in violation of the “knock-and-announce” requirement is nonetheless admissible. Additionally, this Note will examine the potential negative ramifications

of the Court’s holding, including its sterilization of the “knock-and-announce” rule for excluding evidence. This Note concludes that where Hudson strips the “knock-and-announce” of its Fourth Amendment bite, it stands for more than not requiring evidence suppression, but also sidesteps the applicability and future of the “knock-and-announce” requirement.

Accordingly, section II of this Note deals with background of the “knock-and-announce” rule, the reasons for the rule, and its application to Fourth Amendment violations including for the suppression of evidence. Section III examines the particular facts of Hudson v. Michigan, including the methods the court uses in its analysis of the issues. Section IV states the Court’s reasoning in Hudson including policy arguments and reasons for the majority’s position. Section V analyzes the Court’s holding and ultimate determination, identifying weaknesses with the majority’s position and suggesting areas of appropriate change. Finally, section VI concludes with a summary and discussion of the benefits in adopting the approach articulated by the dissent in Hudson.

II. BACKGROUND

The Fourth Amendment protects person and property from unreasonable searches and seizures. The Supreme Court has declared that the “knock-and-announce” requirement forms part of the inquiry in determining whether a search or seizure is reasonable. One reason for requiring this standard is to protect the safety and security of individuals from intrusion in their places of residence and other safe havens.

However, the debate has raged on the appropriateness of such a standard because law enforcement objectives are disadvantaged when agents are required to “knock-and-announce” before entering. Advantages of the “knock-and-announce” requirement are that it helps people avoid compromising situations that can arise upon unannounced entry, and it gives individuals the time necessary to gather themselves for visitors. A disadvantage of the requirement is that it leads to inefficiency
because individuals are given time following a warning to hide incriminating evidence from law enforcement officers. This can lead both figuratively and literally to evidence being flushed down the toilet. Additionally, such opponents argue that by knocking and announcing, law enforcement officers face dangerous situations by allowing criminals the time to marshal firearms or other weapons.

The Supreme Court has primarily dealt with these risks by granting law enforcement a broad window of interpretation in the “knock-and-announce” rule. As part of this broad window, the Supreme Court, while giving credence to the “knock-and-announce” standard, indicated awareness of the very real threat of criminals turning on law enforcement after law enforcement officers have knocked and announced by stating that “a mere ‘reasonable suspicion’ that knocking and announcing ‘under [certain] circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime,’ will cause the requirement to yield.” Thus, in situations where there exists a “reasonable suspicion” of danger or futility from knocking and announcing, law enforcement officers can ignore the requirement and enter.

In addition to the myriad of cases involving “knock-and-announce” violations, the legislative branch has foreseen and accounted for circumstances where a “reasonable suspicion” may arise. The main legislative solution is the issuance of the “no knock” warrant, which allows for immediate entry. This demonstrates that both the judicial and legislative branches have tried to accommodate law enforcement by granting wider leeway to the strict obedience of the “knock-and-announce” requirement.

However, for those situations where the “knock and announce” rule is applied, one controversy remains: the extent to which, if a Fourth Amendment violation occurs, the exclusionary rule suppresses any evidence or information found during the search and seizure from being used in court.

6. Id. at 2166.
7. Id.
10. Id. at 2166 (quoting Richards v. Wisconsin, 520 U.S. 385, 394 (1997)).
11. Id. at 2163.
12. Id. at 2182.
13. Id.
III. FACTS OF HUDSON V. MICHIGAN

The *Hudson* decision gave the Supreme Court the opportunity to further comment on the “knock–and-announce” requirement and its ability to trigger the application of the exclusionary rule that suppresses evidence obtained in an unlawful search and seizure.

The decision in *Hudson* arose after almost a decade of silence from the Supreme Court on Fourth Amendment search and seizure inquiries. In *U.S. v. Ramirez*, the most recent Supreme Court articulation of the Fourth Amendment search and seizure inquiry, the Court stated that if the manner of entry was unreasonable, implying illegality, then “it would have been necessary to determine whether there had been a ‘sufficient causal relationship between the [unlawful entry] and the discovery of the guns to warrant suppression of the evidence.’”\(^\text{15}\) Since *Ramirez*, circuits have been in disagreement on what the “sufficient causal relationship” would be in relation to inevitable discovery.\(^\text{16}\) If there was a sufficient causal relationship between the manner of entry and the inevitable discovery, then courts generally excluded the evidence from use against the individual. It was under this framework that *Hudson* occurred.

On the afternoon of August 27, 1998, approximately seven Detroit police officers arrived at Booker T. Hudson’s home to execute a search warrant for narcotics. There was no indication that anyone in the home would destroy or attempt to destroy evidence, escape, or resist the execution of the warrant.\(^\text{17}\) The import of this being that there was an absence of the reasonable suspicion necessary to supersede the “knock-and-announce” requirement. Upon arriving at the home, some of the officers shouted, “Police, search warrant.”\(^\text{18}\) However, the officers did not knock,\(^\text{19}\) and they waited only three to five seconds\(^\text{20}\) before opening the door and entering. One officer characterized the wait as the amount of time it took to open the door and describing the entry as “real fast.”\(^\text{21}\) Once law enforcement officers entered the home, they immediately found Hudson seated in a chair where they ordered him to stay still.\(^\text{22}\)

\(^\text{14}\) This Part is derived primarily from the direct examination of police officer Jamal Good. Joint Appendix, *Hudson*, 126 S. Ct. 2159 (No. 04-1360), 2005 WL 2083644, at *17–20 [hereinafter Joint Appendix].
\(^\text{15}\) *Hudson*, 126 S. Ct. at 2170 (quoting United States v. Ramirez, 523 U.S. 65, 72 (1998)).
\(^\text{16}\) See infra note 111 and accompanying text.
\(^\text{17}\) Joint Appendix, supra note 14, at *15.
\(^\text{18}\) Id. at *19.
\(^\text{19}\) Id. at *8.
\(^\text{20}\) Id. at *15.
\(^\text{21}\) Id. at *19.
\(^\text{22}\) Id. at *6.
While searching the home, the officers found five rocks of crack cocaine in Hudson’s pants pocket. Hudson moved to suppress the evidence found in his home on the ground that the police had violated the Fourth Amendment and Michigan law by failing to knock-and-announce before entering his home.\textsuperscript{23}

The Michigan trial court granted a motion for suppressing the evidence based on a Fourth Amendment violation.\textsuperscript{24} However, “on interlocutory review, the Michigan Court of Appeals reversed.”\textsuperscript{25} The Michigan Supreme Court “denied leave to appeal,” and Hudson was subsequently convicted of possession of drugs.\textsuperscript{26} After a renewed claim, rejection by the Court of Appeals, and the Michigan Supreme Court declining review, the Supreme Court granted certiorari.\textsuperscript{27} In its majority opinion, the Supreme Court held that “a violation of [the “knock-and-announce” rule] is not sufficiently related to the later discovery of evidence to justify suppression.”\textsuperscript{28}

IV. REASONING

The Court began its reasoning by recognizing that the principle of announcing one’s presence and providing residents with the opportunity to open the door is ancient, with origins linked to our English legal heritage.\textsuperscript{29} Additionally, the Court recognized that this rule “was also a command of the Fourth Amendment.”\textsuperscript{30} However, the Court made a point of mentioning that this standard has exceptions.

For example, exception may be found “[i]f circumstances present a threat of physical violence,” or if there is “reason to believe that evidence would likely be destroyed if advance notice of entry were given,” or if knocking and announcing would be “futile.”\textsuperscript{31} In these situations the Court only requires that police “have a reasonable suspicion . . . under the particular circumstances” that one of these exceptions to the knock-and-announce rule exists.\textsuperscript{32} The Court, however,

\begin{itemize}
\item \textsuperscript{23} Id. at *9.
\item \textsuperscript{24} Hudson v. Michigan, 126 S. Ct. 2159, 2162 (2006).
\item \textsuperscript{25} Id.
\item \textsuperscript{26} Id.
\item \textsuperscript{27} Id.
\item \textsuperscript{28} Id.
\item \textsuperscript{29} Id. at 2170.
\item \textsuperscript{30} Id. at 2162.
\item \textsuperscript{31} Id. at 2162–63 (quoting Wilson v. Arkansas, 514 U.S. 927, 936 (1995)) (internal citations omitted).
\item \textsuperscript{32} Id. at 2163 (quoting Richards v. Wisconsin, 520 U.S. 385, 394 (1997)) (internal quotes omitted).
\end{itemize}
expressed that these issues were irrelevant to this inquiry because Michigan conceded a “knock-and-announce” violation.  

\section*{A. Whether Suppression Is the Necessary Remedy}

The Court, however, stated that the main issue of the case was whether the exclusionary rule is appropriate for “knock-and-announce” violations; thus the majority set out to make this determination. The Court stated that “[s]uppression of evidence . . . has always been [the court’s] last resort, not [the court’s] first impulse” because “[t]he exclusionary rule generates ‘substantial social costs’” including the occasional situation of “setting the guilty free and the dangerous at large.”

\section*{B. But-For Causation}

The Court found that the illegal entry in this case was not the but-for cause of obtaining evidence, and further found that even if it was, that but-for causation is not enough to justify exclusion. The Court reasoned that “exclusion may not be premised on the mere fact that a constitutional violation was a ‘but-for’ cause of obtaining evidence,” noting “that but-for causality is only a necessary, not a sufficient, condition for suppression of evidence.” The court stated that in this case the constitutional violation in the illegal manner of entry was not a but-for cause of obtaining the evidence because whether the misstep of ignoring the “knock-and-announce” rule had occurred or not, “the police would have executed the warrant they had obtained, and would have discovered the gun and drugs inside the house.” The Court further reasoned that “even if the illegal entry [is] characterized as a but-for cause of discovering [the evidence], . . . [the] evidence is [not] ‘fruit of the poisonous tree.’” Rather the Court asks “whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.” Additionally, the Court sets forth an argument that under but-for

\footnotesize{33. Id.  
34. Id.  
35. Id. (quoting United States v. Leon, 468 U.S. 897, 907 (1984)).  
36. Id. at 2164.  
37. Id. at 2164.  
38. Id.  
39. Id. (quoting Segura v. United States, 468 U.S. 796, 815 (1984)).  
40. Id. (quoting Wong Sun v. United States, 371 U.S. 471, 487–88 (1963)) (internal quotes
causation, attenuation is generally too remote.\footnote{Id.}

\section*{C. Interests Protected by “Knock-and-Announce” Requirement}

Furthermore, the Court identifies the interests protected under the “knock-and-announce” rule as the protection of human life and limb, property, and “those elements of privacy and dignity that can be destroyed by a sudden entrance.”\footnote{Id. at 2165.} As the Court states, however, the “knock-and-announce” rule has never protected an individual from the government’s interest in seeing or taking evidence pursuant to a valid warrant.\footnote{Id.} The Court applies this reasoning to mean that a violation of the “knock-and-announce” rule should not result in suppression of evidence. Allowing for the suppression of evidence in situations where there is a “knock-and-announce violation” is the equivalent of winning the lottery, where the cost is small but the jackpot is enormous.\footnote{Id. at 2166.} For such a small violation to result in the suppression of evidence would, in some cases, be like issuing “get-out-of-jail-free card[s].”\footnote{Id.}

\section*{D. Reasonable Wait Time Under “Knock-and-Announce” Requirement}

Additionally, for a violation under the knock-and-announce rule, the Court reasons that a “reasonable wait time” in a particular case is difficult for the trial court or appellate court to determine.\footnote{Id.} The Court extends this reasoning to the facts in Hudson’s situation of officers yelling and then simply waiting as long as it takes to open the door. Defining a “reasonable wait time” can be a matter of splitting hairs, especially when determined on a case-by-case basis, and can have the consequence of sending “incongruent” messages to law enforcement on the appropriate wait time required under the Fourth Amendment. As such, this could lead to the severe consequence where “officers [are] inclined to wait longer than the law requires[,] thereby] producing preventable violence against officers” and in some cases destruction of evidence.\footnote{Id.}

\begin{footnotes}
\footnotetext[41]{Id.}
\footnotetext[42]{Id. at 2165.}
\footnotetext[43]{Id.}
\footnotetext[44]{Id. at 2166.}
\footnotetext[45]{Id.}
\footnotetext[46]{Id.}
\footnotetext[47]{Id.}
\end{footnotes}
E. Deterrence Benefits

The Court reasoned that it should not use extreme measures like evidence suppression to ensure compliance with the “knock-and-announce” requirement because “the value of deterrence depends upon the strength of the incentive to commit the forbidden act.” The Court applied this language to the case of Hudson and determined that the value of deterring violations is low because of the potential dangers to law enforcement officers from following the “knock-and-announce” requirement. In fact, violating the “knock and announce” requirement often leads to the discovery of more incriminating evidence than would otherwise be available. From the standpoint of the Court, “ignoring knock-and-announce can realistically be expected to achieve absolutely nothing except the prevention of destruction of evidence and the avoidance of life-threatening resistance by occupants of the premises . . . .” Because of such dangers, the Court dismisses the “knock-and-announce” requirement where such circumstances give law enforcement “reasonable suspicion.”

F. Better Training Means Increased Awareness

The Court cites as another reason for not suppressing evidence “the increasing professionalism of police forces, including . . . [the] emphasis on internal police discipline [prevalent in police forces].” According to the Court, these new disciplinary procedures by law enforcement indicate the increasing awareness and ability of law enforcement officers to “take the constitutional rights of citizens seriously.”

In the end, the Court concluded that “the social costs of applying the exclusionary rule to knock-and-announce violations are considerable,” and where the “incentive[s] to such violations [are] minimal to begin with, and the extant deterrences against [violations] are substantial, . . . [then] resort[ing] to the massive remedy of suppressing evidence of guilt is unjustified.”

48. Id.
49. Id.
50. Id.
51. Id.
52. Id. at 2168.
53. Id.
54. Id.
G. Why Evidence Inclusion Is Appropriate: Supporting Case Law

In making its next argument, the Court turned to and relied on three separate cases: Segura v. United States,55 New York v. Harris,56 and United States v. Ramirez.57 The Court used these cases to illustrate why evidence inclusion is appropriate though a “knock-and-announce” violation has occurred.

1. Segura v. United States

Like Hudson, Segura also involved an illegal entry. In Segura, the police waited for Segura outside an apartment building and upon his arrival, Segura denied living there.58 The police then brought Segura up to the apartment, an officer knocked, and when someone answered the door, the police entered.59 In this case the officers had “neither a warrant nor consent to enter, and they [failed to] announce themselves as police,” a situation that the Court describes as “illegal as can be.”60 The police, while still inside, were informed that a warrant had been obtained, and the Court refused to exclude the resulting evidence.61 The court recognized that “only the evidence gained from the particular violation could be excluded” and therefore carved a distinction stating, “[n]one of the information on which the warrant was secured was derived from or related in any way to the initial entry into petitioners’ apartment.”62 The Court drew the conclusion that treating Hudson differently would be “bizarre,” especially where the officers gained entry in Segura without the use of a warrant, and the officers in Hudson had a warrant prepared for execution.63

58. Hudson, 126 S. Ct. at 2168.
59. Id.
60. Id.
61. Id. at 2169.
63. Id.
2. New York v. Harris

In Harris, a Fourth Amendment violation occurred when the police arrested the defendant in his home without a warrant. The court refused to exclude an incriminating statement the defendant gave once he was at the police station. The Supreme Court in Hudson makes the comparison that “[l]ike the illegal entry [for Hudson], the illegal entry in Harris began a process that culminated in acquisition of the evidence sought to be excluded,” and that while the statement provided was “the product of an arrest and being in custody,” it is distinguished by not being the fruit of the arrest being made at the house rather than someplace else. The Court concludes the comparison by stating that “[w]hile acquisition of the gun and drugs was the product of a search pursuant to warrant,” albeit illegal because of the knock-and-announce violation, “it was not the fruit of the fact that the entry was not preceded by [following the] knock and announce [rule].”

3. United States v. Ramirez

As its final example supporting the inclusion of the evidence obtained by the illegal entry, the Court cites to United States v. Ramirez. In Ramirez, the Court found that police violated the Fourth Amendment by breaking a window to enter the premises. The Court ultimately concluded that “the property destruction was . . . reasonable,” but said that “destruction of property in the course of a search may violate the Fourth Amendment, even [if] the entry itself is lawful and the fruits of the search are not subject to suppression.” What was important to the Court was determining whether the breaking of the window and discovery of evidence had a “sufficient causal relationship.” The Court applied the Ramirez reasoning when it determined that the few seconds gained by not knocking and announcing, when compared with the evidence later discovered, did not create such a sufficient causal

64. Id.
65. Id.
66. Id. (quoting New York v. Harris, 495 U.S. 14, 20 (1990)) (emphasis added) (internal quotes omitted).
67. Id. (emphasis added).
68. Id. at 2170.
70. Hudson, 126 S. Ct. at 2170.
71. Ramirez, 523 U.S. at 71.
72. Id. at 72 n.3.
relationship to warrant excluding the evidence.\footnote{Id.}

\textit{H. The Hudson Holding and Its Implications}

Based on the majority’s reasoning, the decision in \textit{Hudson} “determines only that in the specific context of the “knock-and-announce” requirement, a violation is not sufficiently related to the later discovery of evidence to justify suppression.”\footnote{Id. at 2165.} Tangential questions follow on what the practical effect of the “knock-and-announce” rule is if one can skirt the rule, but courts still hold any evidence obtained admissible. The majority argues that in addition to protecting “human life and limb,” the rule functions to prevent embarrassing defendants by stopping law enforcement officers from entering and finding defendants during compromising situations.\footnote{Id.} Additionally, the Court argues that the purpose of the requirement partially rests with providing protection for law enforcement from dangerous and compromising situations where the startled defendant may resort to violence by the surprise of the intrusion.\footnote{Id.}

\textbf{V. ANALYSIS}

Rather than adopt the approach articulated by the majority for future “knock-and-announce” jurisprudence, the dissent articulated the more appropriate standard, and properly deals with “knock-and-announce” violations. Led by Justice Breyer, Justices Stevens, Souter, and Ginsburg argue that evidence exclusion is the appropriate remedy in “knock-and-announce” violations. The dissent discusses the context of the Fourth Amendment “knock-and-announce” requirement, including important Supreme Court jurisprudence on the issue, and the protections afforded by evidence exclusion under the “knock-and-announce” requirement. According to the dissent, the majority’s use of the reasonable suspicion requirement leads to a slippery slope resulting in the sterilization of the “knock-and-announce” requirement. The dissent also looks at the existing legislative and judicial protections law enforcement has been granted.
A. Previous Supreme Court Jurisprudence

1. Wilson v. Arkansas: What does it stand for?

Prior to the decision in Hudson, one of the most recent Supreme Court decisions dealing with Fourth Amendment questions was Wilson v. Arkansas.77 The result of Wilson was a victory for defendants’ rights,78 as it held that the common law “knock-and-announce” principle formed a part of the Fourth Amendment reasonableness inquiry.79 One author described the result of Wilson as a decision that “should have an immediate practical impact [on defendants’ rights] by forcing police departments and law enforcement agencies at all levels to re-examine their ‘no-knock’ and ‘dynamic entry’ search and seizure policies.”80

One of the unresolved issues of the Wilson decision was whether it would uphold the Weeks exclusionary rule doctrine.81 The Court in Hudson pointed out that “Wilson specifically declined to decide whether the exclusionary rule is appropriate for violation of the knock-and-announce requirement.”82 However, one commentator posited that the result of Wilson would “render the exclusionary rule ineffective.”83 The result of Wilson was not an evaporation of the exclusionary rule, but a declaration that the “knock-and-announce” requirement formed part of the Fourth Amendment reasonableness inquiry.84 Thus, while Wilson remained silent surrounding the application of the exclusionary rule, years of precedent held that evidence obtained through a “knock-and-announce” violation was inadmissible.85 In Weeks v. United States,86 the Supreme Court initially held “that evidence obtained in violation of an individual’s Fourth Amendment rights cannot be used against that individual in a criminal prosecution.”87 The initial exclusionary rule was

79. The Fourth Amendment protects people’s rights “to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures.” U.S. CONST. amend. IV. As a result of Wilson, the knock-and-announce rule helps determine what is reasonable, as is described in the language “against unreasonable searches and seizures.” Id. (emphasis added).
81. Hudson, 126 S. Ct. at 2163.
82. Id.
83. Reilly, supra note 78, at 697.
84. Hudson, 126 S. Ct. at 2163.
86. 232 U.S. 383 (1914).
87. Reilly, supra note 78, at 670.
limited in its reach as it applied only to “federal government and its agencies”—meaning that evidence suppression was unnecessary and inappropriate for government officials acting in an individual capacity.\footnote{Id. (quoting \textit{Weeks}, 232 U.S. at 398) (internal quotes omitted).} Not only was this a limit to its reach, but state courts also were not required to follow the exclusionary rule.\footnote{Id. supra note 78, at 670.}

The Supreme Court, however, “broadened the applicability of the exclusionary rule”\footnote{Id.} in \textit{Mapp v. Ohio},\footnote{367 U.S. 643 (1961).} where it held that “all evidence obtained by searches and seizures in violation of the Constitution is . . . inadmissible in a state court.”\footnote{Reilly, supra note 69, at 670 (quoting \textit{Mapp}, 367 U.S. at 655) (internal quotes omitted).} The \textit{Mapp} holding “eliminated the distinction in \textit{Weeks}.”\footnote{Id.}

Therefore, while the Supreme Court evidence exclusion jurisprudence was initially limited, its role was eventually expanded. Not only did the Supreme Court give the exclusionary rule more expansive power, but it solidified the importance of deterring law enforcement officers from making unreasonable searches or seizures by excluding evidence obtained on a “knock-and-announce” violation.

However, with the decision in \textit{Hudson}, the court drastically sterilized the power of evidence exclusion. The Court’s determination that the purpose of “knock-and-announce” is its ability for individuals to maintain dignity and gain composure limits the Court’s ability to exclude evidence. Accordingly, some individuals find that what lies at the heart of the requirement is individual dignity, or “the ability to prepare your property and your mind for governmental intrusion of the most invasive sort.”\footnote{E. Martin Estrada, \textit{A Toothless Tiger in the Constitutional Jungle: The “Knock-and-Announce Rule” and the Sacred Castle Door}, 16 U. FLA. J.L. & PUB. POL’Y 77, 79 (2005).} The opportunity to gather oneself before intrusion “arises [only] when officers announce their presence and wait for the occupant of the home to grant them entry.”\footnote{Id.} Perhaps a problem with the rule is that the public perception of the need to “knock-and-announce” is hampered by the public’s desire to expedite the criminal process, meaning that the public as a whole would rather see individual rights trampled so long as it is not their own individually, and so long as the criminal is apprehended.
B. Traditional Remedies Under the “Knock-and-Announce” Rule are Inadequate

Although the “knock-and-announce” requirement mandates the announcement prior to entry so as to provide protection for individuals, when the requirement is not met, individuals are too often left without recourse. Under a violation, any remedy the court imposes fails to compensate for the privacy intrusion. “Although the ‘knock-and-announce’ rule provides important theoretical safeguards to the occupant of a home, in practical terms, it is a largely unenforceable constitutional right.” 96 This has never been more evident than in Hudson. The majority opinion assumes that rather than excluding evidence taken under an illegal search or seizure, other remedies, including damages, provide protection for the wronged individual. Martin Estrada notes that “[i]n the criminal context, it is doubtful that evidence can be suppressed for a pure ‘knock and announce’ rule violation.” 97 This statement acquires meaning when coupled with the vast public perception and sentiment of apprehending criminals at whatever cost, regardless of the individual damages and wrongs inflicted upon them. Among such wrongs is the taking of evidence obtained through an improper search of a dwelling place. If courts no longer exclude evidence because of the Hudson holding, then the only remedies left are civil. However, “[a]s for a civil action, various legal hurdles and limitations make lodging a sustainable claim for breach of the ‘knock and announce’ rule an arduous proposition.” 98

C. Reasonable Suspicion: Flourishing Judicial Remedy Or Withered Exception?

With the announcement under Hudson that not all evidence obtained through an illegal search must be excluded, the general requirement that police officers “knock-and-announce” before entering takes a large if not overwhelming hit. Such a hit occurs because without the “bite” that evidence exclusion provides, law enforcement officers have little incentive to conform to the “knock-and-announce” requirement. Both the wronged individuals and the law enforcement officers involved have countervailing interests that the judicial and legislative branches have provided for. Law enforcement officers want the protection and safety of not being thrust into harm’s way by being required to follow the “knock-

96. Id.
97. Id.
98. Id.
and-announce” rule, whereas individuals want a guarantee against intrusion from government officials without proper notification. The Hudson interpretation of the “knock and announce” rule caters to law enforcement’s needs while neglecting the needs of the individual. If the purpose of the rule is to protect individuals, not law enforcement officers, then the “knock-and-announce” requirement provides for an appropriate remedy for wronged individuals.

Law enforcement officers already have protections that provide them with greater safety and freedom to act. Officers in most state jurisdictions have the ability to seek a no-knock warrant, to protect them from the compromising situation of knocking and allowing the individuals inside to muster either weapons or other articles that can prove dangerous to the officers.\footnote{99} In addition to this legislative remedy, the judiciary has given a window of error to officers, under the doctrine of “reasonable suspicion” which allows them to bypass knocking and announcing when circumstances dictate it is either futile or will cause undue harm or danger.\footnote{100} Because of Hudson’s holding that not all evidence discovered through a “knock-and-announce” violation needs to be excluded, safeguards such as “reasonable suspicion” have the potential of becoming dormant. By admitting evidence when the “knock-and-announce” rule is violated, both the legislative and judicial remedies provided for safeguarding law enforcement are crippled.

With the decision in Hudson, the status quo guiding the “reasonable suspicion” exception has evolved. Prior to the decision in Hudson, law enforcement officers were required to knock and announce unless there was a threat of physical violence, fear of evidence destruction, or if complying with the “knock-and-announce” requirement would be futile.\footnote{101} These exceptions formed the “reasonable suspicion” governing law enforcement officers “knock-and-announce” violations. However, to the extent that Hudson has taken evidence exclusion off the table of remedies available to wronged individuals, the further function of the “reasonable suspicion” exception is uncertain. Whether or not the “reasonable suspicion” exception has withered into dormancy will depend on whether courts can redefine the scope of its applicability. However, without further judicial pronouncement on the exception’s applicability to “knock-and-announce” violations, the use of “reasonable suspicion” grants law enforcement officers full-scale protection against claims of unlawful entry. Hudson grants law enforcement officers protection against evidence exclusion, and when the “reasonable

\footnote{100} Id. at 2182.
\footnote{101} Id. at 2162-63.
suspicion” exception is used it protects law enforcement from any further liability from the unlawful entry. While an individual’s right to recover from an unlawful entry is already slight, when law enforcement buttresses the “reasonable suspicion” exception with the ability to admit evidence obtained unlawfully, the result effectively seals off incentives to comply with the “knock-and-announce” rule because law enforcement officers can avoid liability under civil remedies as well as the threat of evidence exclusion. Such a situation can lead to a severe handicap on individual rights. Thus two possible long-term alternatives to the “reasonable suspicion” exception include either redefining its scope and applicability to consider the broad protections granted to law enforcement in *Hudson*, or withering its usefulness into dormancy. Additionally, the redefinition of the “reasonable suspicion” exception should take into consideration factors such as whether the jurisdiction offers “no knock” warrants, which further empowers a law enforcement to side-step the “knock-and-announce” requirement. What is certain regarding the “reasonable suspicion” exception is that the status quo has changed, leaving an even stronger protection for law enforcement officers.

Individuals, unlike law enforcement officers, do not have similar protections. Prior to *Hudson*, the remedy available to individuals in most cases was evidence exclusion, regardless of when law enforcement seized the evidence.102 The doctrine of inevitable discovery further defined this exclusion.103 However, the holding in *Hudson* limits individuals’ rights upon improper searches and seizures.

Because of *Hudson*, officers can either completely disregard “knock-and-announce” rules, knowing that there is no fear of evidence suppression, or they can lump the action of entering without first announcing into the reasonable suspicion classification, as a protection against liability in situations where individuals attempt to enforce their rights through civil remedies. What results is a two-pronged situation: either ignoring the knock-and-announce rule and its reasonableness inquiry because the incentive to comply has evaporated with the majority’s holding, or lumping the unlawful entry into the breadth of the reasonable suspicion exception.

102. *Id.* at 2173 (quoting Mapp v. Ohio, 367 U.S. 643, 655 (1961)).
103. See infra note 111 and accompanying text.
D. Use and Understanding of “Inevitable Discovery”

The majority in Hudson used the doctrine of inevitable discovery in the reasoning it relied upon to reach its holding that a violation of the “knock-and-announce” rule does not warrant evidence suppression.104 This doctrine was expressed by Justice Kennedy, writing a concurring opinion, when he stated that “[t]oday’s decision determines only that in the specific context of the knock-and-announce requirement, a violation is not sufficiently related to the later discovery of evidence to justify suppression.”105 The doctrine of inevitable discovery creeps in when discussing the causal relationship between the evidence discovered and the inappropriate search and seizure. Justice Kennedy further stated that “[c]ivil remedies apply to all violations, including, of course, exceptional cases in which unannounced entries cause severe fright and humiliation.”106 However, Justice Kennedy further stated that “[s]uppression is another matter. Under our precedents the causal link between a violation of the knock-and-announce requirement and a later search is too attenuated to allow suppression.”107 Leading up to the inevitable discovery doctrine, Justice Kennedy cites to United States v. Ramirez108 that states, “application of the exclusionary rule depends on the existence of a ‘sufficient causal relationship’ between the unlawful conduct and the discovery of evidence.”109 What troubled Justice Kennedy, the deciding justice, was the causal link necessary to have evidence exclusion. In fact, Justice Kennedy later states that “[i]n this case the relevant evidence was discovered not because of a failure to knock-and-announce, but because of a subsequent search pursuant to a lawful warrant.”110

The majority deals with the doctrine of inevitable discovery through discussing both ‘but-for’ causation and attenuation, to differing levels of success. However, the writ for certiorari addressed the issue of inevitable discovery. The writ states:

The issue that Wilson left open has divided the federal circuits and state courts of last resort. The Seventh Circuit and the Michigan Supreme Court have held the inevitable discovery doctrine creates a per se

104. Id. at 2173.
105. Id. at 2170 (Kennedy, J., concurring).
106. Id.
107. Id. at 2170–71.
110. Id.
exception to the exclusionary rule for evidence found after a “knock-and-announce” violation because the police presumably would have found the same evidence if they had knocked and announced.\footnote{111}

The issue with the inevitable discovery doctrine is that “[b]y contrast, the Sixth and Eighth Circuits and the courts of last resort in Arkansas and Maryland have squarely rejected claims that the inevitable discovery doctrine should insulate ‘knock-and-announce’ violations from the exclusionary rule.”\footnote{112} The misunderstanding of the inevitable discovery doctrine announced in \textit{Nix v. Williams}\footnote{113} “would eviscerate not only the ‘knock-and-announce’ but many other Fourth Amendment doctrines as well.”\footnote{114} Other approaches to the inevitable discovery rule include that found in \textit{United States v. Langford}\footnote{115} a Seventh Circuit decision that stated that “[t]he fruits of an unlawful search are not excludible if it is clear that the police would have discovered those fruits had they obeyed the law.”\footnote{116}

In \textit{United State v. Dice}\footnote{117} the Sixth Circuit gives a different definition. There the court stated that “the inevitable discovery doctrine properly applies only when the evidence would have inevitably been found by means of an independent and untainted investigation.”\footnote{118} The inevitable discovery doctrine thus, “does not apply when the very same officers who have violated the Fourth Amendment ‘knock-and-announce’ requirement simply barge into a home and discover the evidence.”\footnote{119}

As stated by the Petitioners in the Petition for Writ of Certiorari, the concern over the differing definitions of the inevitable discovery doctrine is that “[t]he version of inevitable discovery followed by the Seventh Circuit and the Michigan Supreme Court would destroy any incentive the police may have to comply with the ‘knock and announce’ requirement.”\footnote{120} In fact, the argument went so far as to state:

\begin{itemize}
  \item Id.
  \item Id.
  \item 467 U.S. 431 (1984).
  \item Petition for Certiorari, \textit{supra} note 111, at *8.
  \item 314 F.3d 892 (7th Cir. 2002).
  \item Id. at 895.
  \item 200 F.3d 978 (6th Cir. 2000).
  \item Petition for Certiorari, \textit{supra} note 111, at *8.
  \item Id.
  \item Id.
  \item Id.
To remove the exclusionary bar from this type of knock-and-announce violation whenever officers possess a valid warrant would in one swift move gut the constitution’s regulation of how officers execute such warrants. . . . [T]he knock-and-announce rule “would be meaningless since an officer could obviate illegal entry in every instance simply by looking to the information used to obtain the warrant. [O]fficers, in executing a valid search warrant, could break in doors of private homes without sanction.”121

The same argument could “potentially be used to deny suppression of evidence even when the police proceed without a warrant at all.”122 As stated in the writ, in these cases, “police would only have to show that they could have obtained a warrant and that they would have found the same evidence if they had bothered to do so.”123

Based on the holding in Hudson, the inevitable discovery doctrine allows law enforcement much greater power in both obtaining evidence and also in using that evidence against individuals in criminal proceedings.

E. Protective Mechanisms Provided by the Legislative and Judicial Branches

The Supreme Court in Hudson stated that in the absence of evidence exclusion protection, other mechanisms are available to compensate individuals for improper searches and seizures. In Bivens v. Six Agents of the Federal Bureau of Narcotics,124 the Court stated that “the Fourth Amendment does not specifically ‘provide for its enforcement by an award of money damages for the consequences of its violation.’”125 However, the Court continued that “a monetary award of damages is nonetheless appropriate in the absence of an “explicit congressional declaration that . . . they may not recover damages.”126 It was under this backdrop that individuals have become entitled to personal redress for injuries in the event a Fourth Amendment violation.

What is difficult in the application of this rule, however, is the actual
ability to recover. While Congress in 1979\textsuperscript{128} codified the right of an individual to recover monetary damages from government officials who violated the individual’s constitutional rights, there remains a limit on the ability to recover. The Supreme Court “has limited the statutory right of individuals to recover money damages under the [F]ederal [C]ivil [A]ction for [D]eprivation of [R]ights Law.”\textsuperscript{129} As part of the law, a number of officials performing discretionary functions receive qualified immunity.\textsuperscript{130} Despite the \textit{Hudson} majority’s assumption that damage remedies are adequate, what appears to be the result is that in many circumstances, damages are not available to the individual, or if they are, officers have an affirmative defense that provides them with qualified immunity thereby avoiding responsibility for the intrusion, improper search and seizure.\textsuperscript{131}

In essence, \textit{Hudson} takes years of precedent of authority that gave more expansive reach to the exclusionary rule, and severely bridles its use in criminal proceedings. The entire deterrent effect that the exclusionary rule seemed to have is crippled, if not entirely destroyed, by allowing evidence to be used in proceedings after “knock-and-announce” violations. While exigent circumstances are an issue when dealing with the “knock-and-announce rule,” the court seems to handle them through the reasonable suspicion exception available to law enforcement officers.\textsuperscript{132} The problem that again surfaces, however, is that without a deterrent effect, the “reasonable suspicion” exception either needs to be redefined in its scope and applicability to accommodate the possible change in its effect resulting from the \textit{Hudson} holding. Alternatively, it can have no effect at all if the consequence of violating the “knock-and-announce” rule evaporate. If the “knock-and-announce” rule has been stripped of its Fourth Amendment bite, then perhaps \textit{Hudson} stands for more than not requiring evidence suppression; it also sidesteps the applicability and undermines the future of the “knock-and-announce” requirement.

\begin{footnotes}
\footnote{128. See 42 U.S.C. § 1983 (2000) (“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or of the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other property proceeding for redress.”).}
\footnote{129. Reilly, supra note 78, at 672.}
\footnote{130. \textit{Id.} at 673.}
\footnote{131. Reilly, supra note 78, at 672-73.}
\footnote{132. \textit{Hudson v. Michigan,} 126 S. Ct. 2159, 2166 (2006).}
\end{footnotes}
VI. CONCLUSION: AFTERMATH OF HUDSON AND FUTURE OF KNOCK-AND-ANNOUNCE

The majority opinion in Hudson has weakened the efficacy of the "knock-and-announce" rule. Hudson was incorrectly decided because it weakens an individual’s ability to enforce their Fourth Amendment rights. This weakening has perpetuated several problems. First, violating the "knock-and-announce" rule does not demand the exclusion of evidence seized during the violation. However, evidence exclusion is the only effective remedy for such violations contrary to the majority’s assumption that other remedies are more effective in providing a deterrent, including damages against officers. Second, the limitation of the exclusionary rule weakens the deterrent effect of the "knock-and-announce" rule, especially in light of the reasonable suspicion exception. Officers now have the ability to expand the umbrella of protection afforded by the "reasonable suspicion" exception. Under the pre-Hudson doctrine, officers were not required to “knock-and-announce” their presence if there was a reasonable suspicion of danger or harm resulting from conforming to the requirement. Taken to its logical conclusion, Hudson abolishes the deterrent effect of the exclusionary rule. Officers are granted wide latitude to determine whether danger or harm was present, thus sidestepping the “knock-and-announce” requirement without any punishment.

While the present state of the law does not require evidence exclusion in “knock-and-announce” cases, the dissenting opinion articulates the more realistic impact of the Hudson case. Justice Breyer, leading the dissent, stated that “[t]oday’s opinion holds that evidence seized from a home following a violation of [the knock-and-announce] requirement need not be suppressed.”134 Justice Breyer continued by stating that “[a]s a result [of today’s decision], the Court destroys the strongest legal incentive to comply with the Constitution’s knock-and-announce requirement.”135 Additionally, “[i]t represents a significant departure from the Court’s precedents. And it weakens, perhaps destroy[ing], much of the practical value of the Constitution’s knock-and-announce protection.”136 The “knock-and-announce” requirement was effective because of its deterrent effect on law enforcement officers

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133. This statement does not include situations where law enforcement officers have been issued a “no-knock” warrant or where law enforcement officers have a reasonable suspicion of danger exemplified in situations where the search is for guns (as was the case in Hudson before the violation occurred).
135. Id.
136. Id.
from unreasonable searches and seizures. The requirement that officers
knock before entering was posited and analyzed in *Wilson v. Arkansas* 137
where the court “trac[ed] the lineage of the [rule] back to the 13th
century,” and where the court wrote that “[a]n examination of the
common law of search and seizure leaves no doubt that the
reasonableness of a search of a dwelling may depend in part on whether
law enforcement officers announced their presence and authority prior to
entering.” 138

The dissent argued for evidence exclusion. Relying on past
precedent, the dissent stated that “a court must ‘conside[r]’ whether
officers complied with the knock-and-announce requirement ‘in
assessing the reasonableness of a search or seizure.’ The Fourth
Amendment insists that an unreasonable search or seizure is,
constitutionally speaking, an illegal search or seizure.” 139 After *Weeks*
and *Mapp*, “the use of evidence secured through an illegal search and
seizure” is ‘barred’ in criminal trials. 140

Next, the dissent declared that the “driving legal purpose underlying
the exclusionary rule, namely, the deterrence of unlawful government
behavior, argues strongly for suppression.” 141 The result of the majority’s
decision was predicted by the dissent when they stated that “[w]ithout
the exclusionary rule . . . police know that they can ignore the
Constitution’s requirements without risking suppression of evidence
discovered after an unreasonable entry.” 142 The dissent also said that
“some government officers will find it easier, or believe it less risky, to
proceed with what they consider a necessary search immediately and
without the requisite constitutional . . . compliance.” 143

Of more importance to the dissent is what is likely to occur in the
future with Fourth Amendment questions. First, the “State or the Federal
government may provide alternative remedies for knock-and-announce
violations.” 144 What is important though is that evidence exclusion is the
default remedy for improper searches based on “knock-and-announce”
violations. The dissent noted that the Court has declined to apply the
exclusionary rule in only two situations. First, “where there is a specific
reason to believe that application of the rule would ‘not result in

(internal quotations omitted).
139. *Id.* at 2173 (quoting *Wilson*, 514 U.S. at 934).
140. *Id.* (quoting *Wolf v. Colorado*, 338 U.S. 25, 28 (1949)).
141. *Id.*
142. *Id.* at 2174.
143. *Id.*
144. *Id.*
appreciable deterrence,“ and second, “where admissibility in proceedings other than criminal trials [is] at issue.”\textsuperscript{145} Neither exception applied in \textit{Hudson} here, and the dissent was unwilling to craft a third exception that would undermine the usefulness of a “knock-and-announce” requirement.

Furthermore, the dissent points out the misapplication of the “inevitable discovery” rule the majority relies on:\textsuperscript{146}

That rule does not refer to discovery that would have taken place if the police behavior in question had . . . been lawful. The doctrine does not treat as critical what hypothetically could have happened had the police acted lawfully in the first place. Rather, “independent” or “inevitable” discovery refers to discovery that did occur or that would have occurred (1) \textit{despite} (not simply in the absence of) the unlawful behavior and (2) \textit{independently} of that unlawful behavior. The government cannot . . . avoid suppression of evidence seized without a warrant (or pursuant to a defective warrant) simply by showing that it could have obtained a valid warrant had it sought one. Instead, it must show that the same evidence “inevitably would have been discovered by lawful means.”\textsuperscript{147}

The dissent was saying that “[t]he inevitable discovery exception rests upon the principle that the remedial purposes of the exclusionary rule are not served by suppressing evidence discovered through a ‘later, lawful seizure’ that is ‘genuinely independent of an earlier, tainted one.”\textsuperscript{148} The inevitable discovery doctrine applied by the majority is inapplicable in this instance. There was no lawful second entry, and though the officers held a valid warrant, they failed to execute it properly. In the course of this failed execution, they performed an unlawful search and seizure of the premises. Additionally, whether the officers may have discovered the evidence independent of the unlawful search is beside the point where the issued warrant was not a “no-knock” warrant, which many states issue to assure police that prior announcement is not necessary.\textsuperscript{149}

Also, the dissent appears to more appropriately consider the policy behind the adoption of a “knock-and-announce” requirement. The majority “set[s] forth a policy-related variant of the causal connection” in stating that “the law should suppress evidence only insofar as a Fourth

\textsuperscript{145} Id. at 2175 (quoting United States v. Janis, 428 U.S. 433, 454 (1976)).
\textsuperscript{146} Id. at 2178.
\textsuperscript{147} Id. (quoting Nix v. Williams, 467 U.S. 431, 444 (1984)) (internal citations omitted).
\textsuperscript{148} Id. (quoting Murray v. United States, 487 U.S. 533, 542 (1988)).
\textsuperscript{149} Id. at 2178.
Amendment violation causes the kind of harm that the particular Fourth Amendment rule seeks to protect against.\textsuperscript{150} Under the majority opinion, the “constitutional purpose of the knock-and-announce rule [was] to prevent needless destruction of property . . . and to avoid unpleasant surprise,” and thus exclusion of evidence should be limited to these types of situations.\textsuperscript{151} The dissent however, points out that such an argument “does not fully describe the constitutional values, purposes, and objectives underlying the knock-and-announce requirement.”\textsuperscript{152} Rather, the dissent adopts the language in Boyd, stating that “it is not the breaking of [an individual’s] doors that is the ‘essence of the offense,’ but the ‘invasions on his part of the government . . . of the sanctity of a man’s home and the privacies of life.’”\textsuperscript{153} Additionally, the dissent states that “failure to comply with the knock-and-announce rule renders the related search unlawful. And where a search is unlawful, the law insists upon suppression of the evidence consequently discovered, even if that evidence or its possession has little or nothing to do with the reasons underlying the unconstitutionality of a search.”\textsuperscript{154}

Furthermore, the interest-based approach advanced by the majority departs from prior law.\textsuperscript{155} Hudson serves to protect law enforcement officers who are already protected sufficiently. The dissent states that “[t]o argue that police efforts to assure compliance with the rule may prove dangerous . . . is not to argue against evidence suppression. It is to argue against the validity of the rule itself.”\textsuperscript{156} The dissent points out that the proper answer in these situations is the granting of the “reasonable suspicion” exception, and “no-knock” search warrants.\textsuperscript{157} In the absence of either, the dissent points out, police “maintain the backup ‘authority to exercise independent judgment concerning the wisdom of a no-knock entry at the time the warrant is being executed.’”\textsuperscript{158} Indeed, the dissent points out that if the manner of entry is a matter of interest to the law enforcement officers, the appropriate approach is to get a “no-knock” warrant: “[i]f probable cause justified a search for guns, why would it not also have justified a no-knock warrant, thereby diminishing any danger to the officers?” The dissent argues that “[t]he very process of arguing the merits of the violation would help to clarify the contours of the

\textsuperscript{150} Id. at 2179.
\textsuperscript{151} Id. at 2179–80.
\textsuperscript{152} Id. at 2180.
\textsuperscript{153} Id. (quoting Boyd v. United States, 116 U.S. 616, 630 (1886)).
\textsuperscript{154} Id. at 2181 (internal citations omitted).
\textsuperscript{155} Id.
\textsuperscript{156} Id. at 2182.
\textsuperscript{157} Id.
\textsuperscript{158} Id. (quoting Richards v. Wisconsin, 520 U.S. 385, 396 n.7 (1997)).
knock-and-announce rule,” rather than clouding them up as the majority believes.\textsuperscript{159} According to the dissent, the law in the future should be:

That procedural fact, along with no-knock warrants, back up authority to enter without knocking regardless, and use of the “reasonable suspicion” standard for doing so should resolve the government’s problems with the knock-and-announce rule while reducing the “uncertain\[ty\]” that the majority discusses to levels beneath that found elsewhere in Fourth Amendment law.\textsuperscript{160}

The long-term implications of the \textit{Hudson} decision remain to be seen, though over time courts will likely shift to the views posited by the dissenting opinion. Despite the uncertainty arising from the decision in \textit{Hudson}, the “knock-and-announce” rule is still viable, although significantly impaired. The rule thus continues to shape the duties of law enforcement, adds contours to the Fourth Amendment reasonableness inquiry, and stands as a minor protection to citizens in the safety and sanctity of their homes.

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\textsuperscript{159} Id.
\textsuperscript{160} Id.

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