DRUG POLICY ALLIANCE.

END NO-KNOCK WARRANTS AND MILITARIZED QUICK-KNOCK RAIDS

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The racially-motivated war on drugs has gutted one of the most fundamental American notions of individual freedom from government oppression – the Fourth Amendment protection against unreasonable searches in the home.

In the name of the drug war, government law enforcement agents have escalated their use of violent and unreasonable tactics. In recent decades it has become far too common for police to enter homes in rapid military-style raids using explosive devices, chemical agents, high-powered assault rifles, often wearing military-style body armor, with such raids often occurring late at night or in early morning.[1] Sometimes police enter with warrants specifically allowing police to break into the location without knocking ("no-knock warrants"), while at other times officers enter virtually immediately after giving a brief, pretextual knock ("quick-knock raids").[2] Such raids have become routine by narcotics teams pursuing drug evidence.

All of these tactics would likely have shocked the founders of the American republic, who had fought the British in large part because of anger over at-will government searches of private homes and businesses. The right to be free from unreasonable searches and seizures, was among the bedrock principles built into the Bill of Rights. Nonetheless, unreasonable searches have become a norm of drug war policing.[3]

The killing of Breonna Taylor by police in March 2020 heightened awareness of the lengthy history of police killing Black and Brown people in their own homes as a result of unreasonably aggressive tactics, frequently just to pursue drug evidence.

Ms. Taylor, a 26-year-old Black emergency room technician who was in her Louisville home just before 1:00 a.m., was fatally shot eight times by police when police entered with enormous military force while executing a "no-knock warrant" purportedly to locate two other individuals suspected of selling drugs.

THE RIGHT TO BE FREE FROM UNREASONABLE SEARCHES AND SEIZURES, WAS AMONG THE BEDROCK PRINCIPLES BUILT INTO THE BILL OF RIGHTS.

CASE LAW

Over 60 years ago the Supreme Court recognized that the Fourth Amendment mandates a "knock and announce rule" – that police executing a warrant must generally knock, identify themselves as law enforcement agents, and announce their purpose to carry out a search pursuant to a warrant prior to entering a residence.[4]

Yet, driven by years of overzealous drug war policing and propaganda, the Supreme Court has allowed a steady erosion of protections afforded by the Bill of Rights, including the knock and announce rule. In 1963 the Supreme Court decided that forcible entry without a warrant and the eventual discovery of marijuana was permissible to prevent the possible "destruction of evidence."[5]

In 1995, the Court, while acknowledging that the common-law principle of announcement is "embedded in Anglo-American law," unanimously made clear that the Fourth Amendment "should not

be read to mandate a rigid rule of announcement that ignores countervailing law enforcement interests."[6] Two years later the Court unanimously agreed that the knock and announce rule can be sidestepped when police

> **"HAVE A REASONABLE SUSPICION THAT KNOCKING AND ANNOUNCING THEIR PRESENCE, UNDER THE PARTICULAR CIRCUMSTANCES, WOULD BE DANGEROUS OR FUTILE, OR THAT IT WOULD INHIBIT THE EFFECTIVE INVESTIGATION OF THE CRIME BY, FOR EXAMPLE, ALLOWING THE DESTRUCTION OF EVIDENCE.[7] "**

In 2003, the Court held that police could forcibly enter an apartment after knocking and waiting only 15 to 20 seconds after knocking. In another unanimous decision, the Court agreed that "after 15 or 20 seconds without a response, police could fairly suspect that cocaine would be gone if they were reticent any longer."[8] Just a few years later a majority ruled that when a Court does find a knock and announce violation, the illegal entry does not automatically require throwing out the evidence, thus removing any deterrence effect for police and encouraging no- knock raids.[9]

The Supreme Court's reticence to establish clear limits or government consequences for home invasions by police has rendered the knock and announce rule virtually meaningless, particularly for people of color.

> **OVERLY AGGRESSIVE DRUG RAIDS ARE COMMONPLACE,[10] TOO OFTEN LEAD TO INJURIES OR DEATH TO CIVILIANS AND POLICE,[11] AND RARELY RESULT IN ACCOUNTABILITY FOR POLICE MISCONDUCT AND MISTAKES.[12]**

STATE LAWS

Most states allow some form of entry without knocking and announcing, particularly when "exigent circumstances" arise purportedly creating concerns for officer safety or the potential destruction of evidence inside the location. However, many states have explicitly authorized courts to issue "no-knock" warrants in state statutes, granting authority in advance for officers to enter without announcing the presence. Only a select few states prohibit such a practice. The state of Oregon's statutes explicitly require an officer serving a search warrant to "give appropriate notice of the identity, authority and purpose of the officer to the person to be searched"[13], effectively prohibiting no-knock warrants. Florida's Supreme Court found the issuance of such warrants unlawful in 1994 in the absence of an explicit statute.[14]

Since 2020, Tennessee[15] and Virginia[16] have prohibited no-knock warrants, while Maryland[17] and Maine[18] have significantly limited their use, and Utah legislation has been passed and sent to the Governor.[19] Other states, such as Kansas, have rejected efforts to ban no-knock warrants.[20]

The widespread continued use of no-knock warrants and vast discretion given to police to use aggressive tactics have been costly – in lives lost, property destroyed, and shattering trust in communities. To protect lives and restore the fundamental guarantee of the Fourth Amendment, governments at all levels must clearly prohibit no-knock warrants and strengthen protections against "quick-knock raids." Paramilitary searches in the name of the drug war are not worth the risks.

POLICY CHANGES TO RESTORE FOURTH AMENDMENT PROTECTIONS

To protect people in their homes and give meaning to the founders' intent to protect against government overreach, Congress, states and local governments must enact comprehensive limits to how police execute search warrants. Such legislation must significantly limit the authorization of no-knock warrants, particularly prohibiting the issuance and use of no-knock warrants for raids simply seeking drug evidence. However, the legislation must also codify and strengthen the knock and announce rule, ensuring that law enforcement officers identify take affirmative steps to reduce risks of injury and death, reduce the use of military-style equipment, and give occupants of properties adequate notice when they seek to enter a home.

DPA has proposed amendments to federal and state legislation that would:

- Ban the issuance and use of no-knock search warrants in all drug cases.
- Require federal law enforcement officers to take precautions prior to executing search warrants, including identifying vulnerable people and those with conditions that might affect their ability to respond to a knock at the door who are likely to be present at the location to be searched, and verifying the accuracy of the location to be searched.
- Ensure that officers executing a search warrant be uniformed in a manner that would allow them to be clearly identified as law enforcement.
- Limit the size of teams executing search warrants and restrict execution to daytime hours.
- Prohibit the use of explosive devices and chemical agents, and military style equipment during the execution of search warrants.
- Clearly mandate that officers serving search warrants

    i. Give sufficient notice to the occupants by requiring that officers knock or give notice in a manner likely to be heard and/or understood by the occupants.

    ii. Clearly identify themselves as law enforcement agents.

    iii. Announce their purpose to carry out a search pursuant to a warrant prior to entering.

- Explicitly require that occupants be given a meaningful opportunity to respond to the police announcement given the nature of the occupants, as well as the size and configuration of the location to be searched, while giving clear guidance to police that such wait times must be no less than a definitive amount of time (i.e. 30 seconds, 45 seconds, etc.)
- Ensure that occupants be given a copy of the warrant and an opportunity to review it prior to the search.
- Require the collection of data on the requests for no-knock warrants, their issuance, the incidence of injuries and fatalities sustained during raids, and the success rate for obtaining evidence sought pursuant to warrants.

Additionally, DPA has urged local governments to prohibit the use of local police funds for seeking or executing no-knock warrants and local officers engaged in the execution of search warrants. DPA has also pushed to end specific federal funding for law enforcement entities that do not ban no-knock warrants in drug investigations and establish protections to prevent quick-knock tactics.

END NOTES

1. Kraska, P. B., & Kappeler, V. E. (1997). Militarizing American Police: The Rise and Normalization of Paramilitary Units. Social Problems, 44(1), 1–18.
2. Balko R., Overkill: The Rise of Paramilitary police raids in America. Washington DC: Cata Institute; 2006; Cooper H. L. (2015). War on Drugs Policing and Police Brutality. Substance use & misuse, 50(8-9), 1188–1194.
3. 3 WAR COMES HOME: The Excessive Militarization of American Policing, ACLU (2014); Cops do 20,000 no-knock raids a year. Civilians often pay the price when they go wrong. Dara Lind (2015.)
4. Miller v. United States, 357 U.S. 301, 313 (1958) ("petitioner could not be lawfully arrested in his home by officers breaking in without first giving him notice of their authority and purpose"); Hudson v. Michigan, 547 U.S. 586 (2006) (Breyer, J., dissenting); The requirement is codified at 18 U.S.C. § 3109 (2012).
5. Ker v. California, 374 U.S. 23 (1963)
6. Wilson v. Arkansas, 514 U.S. 927, 929 (1995) (holding in an opinion authored by Justice Thomas that the principle of announcement is an element of the reasonableness inquiry under the Fourth Amendment)
7. Richards v. Wisconsin, 520 U.S. 385, 394 (1997) (Although the Court rejected a blanket rule that would have allowed no- knock entries in all felony drug investigations, it effectively rendered the knock and announce rule meaningless by allowing no-knock entry anytime officers suspected destruction of evidence)
8. United States v. Banks,540 U.S. 31 (2003) (The opinion, authored by Justice Souter, emphasizes the potential for destruction of evidence as justification for the quick forcible entry: "what matters is the opportunity to get rid of cocaine, which a prudent dealer will keep near a commode or kitchen sink. The significant circumstances include the arrival of the police during the day, when anyone inside would probably have been up and around, and the sufficiency of 15 to 20 seconds for getting to the bathroom or the kitchen to start flushing cocaine")
9. Hudson v. Michigan, 547 U.S. 586 (2006)
10. "The war on drugs gave rise to 'no-knock' warrants. Breonna Taylor's death could end them". PBS NewsHour (June 12, 2020)
11. Door-Busting Drug Raids Leave a Trail of Blood, Kevin Sack, New York Times (March 18, 2017)
12. See Drug Raids, The Marshall Project: https://www.themarshallproject.org/records/1824-drug-raids
13. Oregon Rev. Stat. § 133.575 (2020).
14. State v. Bamber, 630 So. 2d 1048 (Florida 1994); Fla. Stat. § 933.09
15. Tennessee S.B. 1380, Pub. Ch. 489 (Enacted May 21, 2021)
16. Virginia House Bill 5099 (Chaptered Oct. 28, 2020)
17. Maryland Senate Bill 178 (Enacted, April 9, 2021)
18. Maine LD 1171 (Public Law, signed June 17, 2021)
19. Utah House Bill 124 (Enrolled Feb. 16, 2022; pending Gubernatorial action as of March 4, 2022)
20. Amendment to Kansas House Bill 2299 not agreed to (Feb 22, 2022)