STATE OF MICHIGAN
IN THE SUPREME COURT

LONG LAKE TOWNSHIP,

Plaintiff-Appellant,

Supreme Court No. 162946
Court of Appeal No. 349230
Grand Traverse CC No. 18-034553-CE

-vs-

TODD MAXON AND HEATHER MAXON,

Defendant-Appellees.

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AMICUS CURIAE BRIEF OF THE INSTITUTE FOR JUSTICE IN SUPPORT OF DEFENDANT-APPELLEES

ORAL ARGUMENT REQUESTED

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STATEMENT OF INTEREST OF AMICUS CURIAE[1]

The Institute for Justice ("IJ") is a nonprofit, public-interest law firm dedicated to defending the basic principles of a free society. A central pillar of IJ's mission is the protection of private property rights, both because the ability to control one's property is an essential component of individual liberty and because property rights are inextricably tied to all other civil rights. *See United States v James Daniel Good Real Prop*, 510 US 43, 61 (1993) ("Individual freedom finds tangible expression in property rights.").

To that end, IJ challenges warrantless government surveillance of people and their property. In *Rainwaters v Tennessee Wildlife Resources Agency*, IJ litigated before a three-judge panel that facially invalidated a statute authorizing investigative entries of private property without a warrant, probable cause, or consent. No. 20-CV-6 (Benton County Cir Ct, March 22, 2022); see also *Bennett v Mertz*, No. 2:21-cv-5318 (SD Ohio, filed November 16, 2021) (challenging a similar regulation); *Punxsutawney Hunting Club v Pa Game Comm*, No. 456 MD 2021 (Pa Commw, filed December 16, 2021) (challenging a similar statute). In response to another IJ lawsuit, the City of Zion, Illinois, amended its ordinance that penalized residents who demanded a warrant before letting officials enter their homes. Dan King, *City of Zion Changes Rental Inspection Law Following Lawsuit from Institute for Justice*, Inst. for Justice <https://ij.org/press-release/city-of-zion-changes-rental-inspection-law-following-lawsuit-from-institute-for-justice/> (accessed April 25, 2022). See also *LMP Servs, Inc v City of Chicago*, 2019 IL 123123; 160 NE3d 822; *cert denied*, 140 S Ct 468 (2019) (challenging requirement that food trucks install GPS tracking devices for city to monitor their movements).

[1] No party's counsel authored this brief in whole or in part. No one other than *amicus* Institute for Justice contributed money for this brief's preparation or submission. See MCR 7.312 (H)(4).

IJ files this brief to apprise the Court of the essential role the exclusionary remedy serves in ensuring that the people are secure in their persons, houses, papers, and effects. This brief further examines whether, under precedents from the U.S. Supreme Court and state high courts around the country, the exclusionary remedy is appropriate in a coercive civil enforcement action like this one.

STATEMENT OF THE QUESTION PRESENTED

Whether the exclusionary rule applies to this zoning dispute, such that the Court of Appeals properly remanded for an order suppressing all photographs taken of defendants' property. See *Pa Bd of Prob & Parole v Scott*, 524 US 357, 364 (1998).

The Court of Appeals answered "Yes."

Plaintiff-Appellant answers, "No."

Defendant-Appellees answer, "Yes."

Amicus Institute for Justice answers, "Yes."

SUMMARY OF THE ARGUMENT

Fourth Amendment rights are meaningless if government officials face no consequences for violating them. If there is no incentive for the government to refrain from conducting unreasonable warrantless searches, no one can be secure in their person, their house, their papers, or their effects. That is especially true when the government seeks to punish people using information it learned from its unconstitutional intrusion.

At the Founding, several remedies—including exclusionary remedies—were available to protect against unreasonable searches and seizures. But today, most of those remedies are nearly impossible to obtain, leaving exclusion as the only effective protection the people have to prevent their Fourth Amendment rights from becoming mere parchment guarantees. This state of affairs makes the exclusionary remedy's vitality more critical than ever.

Although the U.S. Supreme Court has refrained from applying the exclusionary remedy to all Fourth Amendment violations, its precedents make clear that exclusion is appropriate in civil enforcement proceedings like this one. And the government's purposeful warrantless surveillance of Appellees' private property triggers none of the cautionary factors the U.S. Supreme Court has identified when refusing to apply the exclusionary remedy in other, dissimilar circumstances. Amicus therefore asks this Court to affirm the Court of Appeals and remand for an order suppressing all photographs taken of defendants' property.

ARGUMENT

I. Exclusion was one among many remedies employed at the Founding to secure the people against unreasonable searches and seizures, but today, it is the only remedy still available.

Courts in early American history recognized that exclusion was an appropriate remedy when government agents violated a criminal defendant's right to be secure from unreasonable

searches and seizures. This exclusionary remedy was routinely available in addition to other remedies for the violation, like money damages. But today, it can be nearly impossible for plaintiffs to obtain money damages when their persons or their property were illegally searched or seized. To ensure a baseline level of protection for the people's Fourth Amendment rights, the exclusionary remedy must be available in cases like this one.

A. Exclusion was among the remedies courts originally applied to safeguard search-and-seizure rights.

Contrary to the exclusionary remedy's modern critics, a plethora of historical evidence confirms that exclusion was one among several of the original remedies buttressing protections against unlawful searches and seizures.

Start with the 1765 English case *Entick v Carrington*, one of the "most revered search and seizure cases known to the Framers of the American Constitution." Roger Roots, *The Originalist Case for the Exclusionary Rule*, 45 Gonz L Rev 1, 38 (2010). John Entick authored and published strong political critiques of the King. In response, the King's representatives ransacked his property, searching for—and eventually seizing—the supposedly seditious papers. When the case came on for trial before Lord Camden, the Chief Justice of the Common Pleas, the King's investigators argued that the warrant was valid because "such a search is a means of detecting offenders by discovering evidence." *Entick*, 19 How St Tr 1029, 1074 (1765). But Lord Camden disagreed and, in holding the warrant invalid,[2] laid the groundwork for the modern exclusionary remedy. To Lord Camden, the improper seizure of evidence like Entick's papers was akin to coercing Entick into providing self-incriminating testimony: "It is very certain that the law obligeth no man to accuse himself," he observed, "and it should seem, that search for evidence is disallowed

[2] At the time, there was *no* lawful authority to issue a warrant for the search and seizure of private papers, no matter how specific the warrant was. Roots, 45 Gonz L Rev at 45-46.

upon the same principle." *Id*. Just as forced incriminating testimony could not be used against the accused, illegally seized physical evidence had to be excluded from the court's consideration and could not be used "to help forward [a] conviction[]." *Id*.

Lord Camden's *Entick* opinion was well-known on this side of the Atlantic, and quickly influenced courts in the new United States to also apply exclusionary remedies in response to search and seizure violations. Consider *Frisbie v Butler*, a Connecticut case decided at the dawn of the Fourth Amendment's adoption. 1 Kirby 213, 213 (Conn, 1787). There, Butler complained to a justice of the peace that someone stole his pork. In response, the justice issued a search-and-arrest warrant that allowed "all persons and places throughout the world to be searched, at the discretion of the complainant." *Id*. at 213-14. Once Frisbie was arrested, he was brought before the justice and found guilty of theft. *Id*. at 214. But on appeal, the court reversed Frisbie's conviction, observing that the warrant was "clearly illegal." *Id*. at 215. And it suggested that such a defective warrant may, if it had to reach the issue, "vitiate[] the proceedings upon the arraignment" entirely. *Id*. In other words, the Court explained that an order dismissing a case entirely was a potential remedy for an illegal search and seizure.

Similar examples from the immediate period following the Fourth Amendment's ratification abound. Connecticut's Supreme Court of Errors faced another case involving a defective general warrant in *Grumon v Raymond*. 1 Conn 40, 40-41 (1814). Using that warrant, the constable found the stolen items, arrested five suspected persons, and brought them before a justice of the peace. *Id*. at 41. But that justice recognized the warrant—which authorized a search for "other suspected places"—as too general and discharged the arrestees entirely. *Id*. This occurred even though the seemingly dispositive physical evidence—the allegedly stolen property—was found in the possession of the discharged arrestees. Other early American courts

provided a similar exclusionary remedy in response to the illegal seizure of criminal defendants. See *Jones v Commonwealth*, 40 Va (1 Rob) 748, 750 (1842); *Miller v Grice*, 31 SCL (2 Rich) 27, 27-28 (SC, 1845).

So history demonstrates that Founding-era courts employed an exclusionary remedy—discharge of criminal defendants entirely—that in fact was far broader than the modern exclusionary remedy, which merely requires suppression of evidence. And as the next subsection shows, courts applied that exclusionary remedy even when aggrieved parties had other means by which to vindicate their rights protected by the Fourth Amendment—other means that do not practically exist today.

B. The exclusionary remedy is all the more important today because remedies complementary to exclusion available at the Founding no longer exist in practice.

1. Exclusionary remedies weren't the only way individuals could secure their search-and-seizure rights in early America. The threat of civil damages payable by government officials who violated those rights also buttressed the peoples' protections. See *Tanzin v Tanvir*, 141 S Ct 486, 491 (2020) ("[T]hrough the 19th century and into the 20th," individuals could "test the legality of government conduct by filing suit against government officials for money damages payable by the officer . . . .") (internal quotation marks omitted); Joseph Story, *Commentaries on the Constitution* § 1671 (1833) (If "any agent of the government shall unjustly invade the property of a citizen under colour of a public authority, he must, like every other violator of the laws, respond in damages.").

Strict liability was the rule. Take Chief Justice Marshall's opinion in *Little v Bareme*, 6 US (2 Cranch) 170 (1804). There, a federal agent was sued for damages after he seized a ship in violation of his statutory authority. *Id*. at 176. The agent argued he should be "excuse[d]" from liability because he was relying on instructions from President Adams. *Id*. at 178. But while the

Court was sympathetic, it found him liable for damages all the same, stating that "the instructions cannot … legalize an act which without those instructions would have been a plain trespass." *Id.* at 179. See also, e.g., *Perrin v Calhoun*, 4 SCL (2 Brev) 248, 250 (SC, 1808) (upholding damages verdict against a magistrate who illegally endorsed a warrant resulting in the plaintiff's arrest, even though the magistrate "had been actuated not by ill design, but by a mistaken sense of [his] duty.").

Indeed, monetary relief was available along with—and not mutually exclusive to—the exclusionary remedies discussed above. Consider *Grumon*, the Connecticut case involving five arrestees suspected of theft who were discharged from prosecution after the arrest warrant was held illegal. One of those arrestees sued both the magistrate who issued the warrant and the officer who executed it. And the court upheld damages verdicts against both, explaining that "if a warrant which is against law be granted … the justice who issues and the officer who executes it are liable in an action of trespass." 1 Conn at 45.

2. Today, by contrast, a spider web of immunity doctrines protects officials from the threat of civil damages actions for search-and-seizure violations. While cases like *Little*, *Perrin*, and *Grumon* demonstrate that strict liability was the rule just after the Founding, today's immunity doctrines would make holding those officers liable for their misconduct nearly impossible.

Judicial officers now enjoy absolute immunity from damages suits for their judicial acts, even if they "act[] in excess of [their] authority." *Mireles v Waco*, 502 US 9, 13 (1991) (per curiam) (summarily ordering dismissal of suit against judge who ordered police officers to "forcibly and *with excessive force* seize and bring [an attorney] into his courtroom.") (emphasis added). Prosecutors, too, are absolutely immune from damages suits for acts within their duties. See *Imbler v Pachtman*, 424 US 409 (1976).

And *all* government officials have qualified immunity from damages suits, designed to insulate them from even having to "stand trial or face the other burdens of litigation." *Ashcroft v Iqbal*, 556 US 662, 672 (2009) (internal quotation marks omitted). Qualified immunity often poses an impossibly high bar for plaintiffs to clear, as officials may be held liable only if they violate a "clearly established" rule of law. *City of Tahlequah v Bond*, 142 S Ct 9, 11 (2021) (per curiam). The Supreme Court has "repeatedly" warned lower courts "not to define clearly established law at too high a level of generality," *id.*, and in practice, to even reach trial, plaintiffs must identify an existing case from their jurisdiction where precisely the same conduct at issue was held unconstitutional. Thus, even obvious Fourth Amendment violations often go unchecked simply because no official had yet faced reprimand for that specific conduct in a published appellate decision. See, e.g., *Jessop v City of Fresno*, 936 F3d 937, 939 (CA 9, 2019) (granting qualified immunity to officers who allegedly stole $225,000 in cash and rare coins because "[a]t the time of the incident, there was no clearly established law holding that officers violate the Fourth or Fourteenth Amendment when they steal property seized pursuant to a warrant."). Rather than strictly "respond[ing] in damages" like "every other violator of the laws," Story, *Commentaries on the Constitution* § 1671, modern investigating officers hardly need worry about facing monetary liability for their wrongful acts.

Today, the threat of civil damages provides individuals with little security against illegal searches and seizures. The exclusionary remedy—whether in criminal or civil enforcement cases like this one—is, in practice, the only reliable incentive modern officials have to take care that Fourth Amendment rights are respected. Without consequences for arbitrary invasions into those rights, no one can be secure in their person, house, papers, or effects. Cf. *Marbury v Madison*, 5 US (1 Cranch) 137, 147 ("[E]very right, when withheld, must have a remedy, and every injury its

proper redress."). To preserve that security, the exclusionary remedy must continue to apply in cases like this one. As the next section shows, the Supreme Court's decisions on the exclusionary remedy reinforces that conclusion.

II. Modern caselaw from the U.S. Supreme Court and state high courts support the exclusionary remedy's applicability in civil enforcement cases like this one.

Caselaw from the U.S. Supreme Court and courts around the country supports applying the exclusionary remedy, not just in "the criminal trial context," see *Pa Bd of Prob & Parole v Scott*, 524 US 357, 364 (1998), but in coercive civil enforcement proceedings like this case, too. Far from being foreclosed "in all civil cases," this Court has explained that whether the federal exclusionary remedy should apply "calls for an analysis of the facts of each case." *Kivela v Dep't of Treasury*, 449 Mich 220, 226 (1995). And an analysis of the facts here supports exclusion.

A. The Supreme Court and lower courts around the country have applied the exclusionary remedy in coercive, quasi-criminal civil enforcement cases.

1. The Supreme Court has articulated a simple, baseline rule: the exclusionary remedy applies in civil proceedings that are "quasi-criminal in character." *One 1958 Plymouth Sedan v Pennsylvania*, 380 US 693, 700 (1965). When the "object" of the proceeding "is to penalize for the commission of an offense against the law," evidence obtained in violation of the Fourth Amendment should be excluded. See *id.* So, the *Plymouth Sedan* court held, evidence obtained from an illegal search of a vehicle (namely, illegal liquors) could not be used to support the government's civil suit to forfeit that vehicle. *Id*. at 702. See also *United States v James Daniel Good Real Prop*, 510 US 43, 49 (1993) (reaffirming that "the exclusionary rule applies to civil forfeiture"); *In re Forfeiture of $180,975*, 478 Mich 444, 451 (2007) (same).

Like the civil-forfeiture proceeding in *Plymouth Sedan*, the Township's civil enforcement action here is designed to penalize. The government alleges the Maxons violated both the Township's Zoning Ordinance and its Nuisance Ordinance. *Long Lake Twp v Maxon*, 336 Mich

App 521, 525; 970 NW2d 893 (2021). (All violations of the Zoning Ordinances are nuisances *per se*. See Long Lake Township Zoning Ordinance § 20.8, Ordinance No. 109, at 195-96 <http://longlaketownship.com/Portals/1040/ordinances/Zoning%20Ordinance%20109%20Updated%20thru%20March%202021%20w%20zoning%20map.pdf> (accessed April 27, 2022).) And the explicit purpose of the Nuisance Ordinance is "to provide penalties for violations." Long Lake Township Nuisance Ordinance, Ordinance No. 155 of 2016, at 1 <http://longlaketownship.com/Portals/1040/ordinances/Nuisance%20Ordinance%20155.pdf> (accessed April 27, 2022). Those penalties, in turn, can include ruinous fines of up to $500 per day—with each day a violation exists constituting a separate offense. *Id*. at 3, § 5. The penalties at stake make clear that this case is "quasi-criminal in character." *Plymouth Sedan*, 380 US at 700. Cf. *People v Earl*, 495 Mich 33, 40; 845 NW2d 721 (2014) ("The Legislature is aware that a fine is generally a criminal punishment. … [Its] decision to use the term 'assess' as opposed to 'fine' or another similar term … implies a nonpunitive intent.").

The connection between civil-forfeiture and nuisance abatement makes good practical sense, too. In each case, the government alleges that otherwise-lawful private property is being used for unlawful ends, and it seeks a court order prohibiting the property's further use for that end.[3] That is exactly what Long Lake Township seeks here: an order that the Maxons remove allegedly offending conditions from their property.

2. A leading Fourth Amendment treatise confirms that cases like this fit neatly within the exclusionary remedy's wheelhouse. "[T]here does not appear to be any doubt but that the *Plymouth Sedan* approach is called for when the government instead brings an action to abate a nuisance that would prove the illegal activity constituting the nuisance by the means of evidence

[3] In fact, civil forfeiture is considered an appropriate remedy under *Michigan's* nuisance abatement statute. See *In re Forfeiture of $180,975*, 478 Mich at 455 & n 18.

come by through an unconstitutional search." Wayne R. LaFave, 1 Search & Seizure § 1.7(a) (6th ed 2021). This is so even where the nuisance action does not carry the potential for punitive, cascading fines, as the Township's ordinances provide.

A survey of caselaw from around the country supports that assessment. In a civil suit against a bookstore to abate and enjoin an alleged obscenity nuisance, for example, the Louisiana Supreme Court ordered suppressed two cartons of allegedly obscene materials that the government had seized without a warrant (plus five more that were seized under a defective warrant). *Jefferson Parish v Bayou Landing Ltd, Inc*, 350 So 2d 158, 161 (La, 1977). The Georgia Supreme Court followed the same course in a civil enforcement action to enjoin the use of a property for gambling where the only evidence to support the government's case was obtained by an illegally issued warrant. *Carson v State ex rel Price*, 221 Ga 299, 304 (1965). And in a similar civil suit to enjoin an alleged nuisance, the Alabama Supreme Court ordered suppressed the testimony of officers who raided the alleged gambling house without a warrant. *Carlisle v State ex rel Trammell*, 276 Ala 436, 438 (1964). As in each of those cases, the Township's civil enforcement action seeks to order the Maxons to remove an alleged nuisance from their property. And as in each of those cases, the Township should not be allowed to support its claim with evidence it obtained by violating the Maxons' Fourth Amendment rights.

Simply, the Court of Appeals' application of the exclusionary remedy here is well-supported in the caselaw. And as the next subsection shows, none of the rationales used for withholding the exclusionary remedy in other cases should bar its application here.

B. None of the factors the Supreme Court has identified in refusing to apply the exclusionary remedy in other contexts caution against its application here.

When the Supreme Court has refused to apply the exclusionary remedy to a particular type of proceeding or kind of Fourth Amendment violation, it has identified specific cautionary factors

for why evidence should not be excluded in that context. Because none of those factors apply here, this Court should hold that the exclusionary remedy is available in civil enforcement proceedings like the one now before the Court.

Type of proceeding. The Supreme Court has been reluctant to apply the exclusionary remedy in some proceedings marked by less formal characteristics than typical criminal or civil cases. In cautioning against the remedy's applicability in parole revocation hearings, for example, the Court cited those proceedings' "traditionally flexible, administrative" nature, the fact that they may not be "entirely adversarial" or governed by "traditional rules of evidence," and that the people who would rule on the admissibility of evidence often "need not be judicial officers or lawyers." *Pa Bd of Prob & Parole*, 524 US at 364, 366. See also *United States v Calandra*, 414 US 338, 343 (1974) (rejecting application of the exclusionary rule to grand jury proceedings, which are "secret" and "unrestrained by [] technical procedural and evidentiary rules."). But no such informality marked this proceeding: the Township seeks to introduce the evidence obtained from the drone search in a standard civil lawsuit, brought before a standard Michigan Circuit Court, and adjudicated under the standard rules of evidence. Accordingly, this enforcement action far more resembles a civil-forfeiture case than a parole revocation hearing or the "grand inquest" of a grand jury proceeding. *Calandra*, 414 US at 617.

Deterrence. The Supreme Court has made clear that "[t]o trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it." *Herring v United States*, 555 US 135, 144 (2009). In *Herring*, a police database indicated that there was an active arrest warrant out for a man who'd just left a police station, so officers followed him out, pulled him over, and arrested him. *Id*. at 137. A search incident to that arrest revealed methamphetamine and an illegally-possessed handgun. *Id*. But there was a problem: the

information in the database was wrong, as the arrest warrant against Herring had actually been recalled five months earlier. *Id*. at 138. Because his arrest was illegal, Herring argued, the officers' search of him incident to the arrest was also illegal, and the guns and drugs therefore had to be suppressed. *Id*. The Court disagreed, holding that the failure to update the warrant database wasn't "sufficiently deliberate" to justify exclusion; the police department's "isolated negligence" just didn't fit the bill. *Id*. at 137, 144. But here, far from being "isolated" or "negligent," the government's drone searches over the Maxons' property were deliberate and repeated over the course of years. See *Maxon*, 336 Mich App at 525 (government "attached aerial photographs taken in 2010, 2016, 2017, and 2018" to its complaint).

Likewise, the Supreme Court explained in *United States v Leon* that the exclusionary remedy would not meaningfully deter investigators who obtained evidence "in objectively reasonable reliance" of a search warrant that was later invalidated. 468 US 897, 922 (1984). In *Leon*, the investigating officers submitted an "extensive" search warrant application in accord with usual procedures, and the magistrate issued the requested warrant. *Id*. at 902. But the District Court later determined (and the Court of Appeals affirmed) that the warrant should not have issued because the application's substance was not sufficient to establish probable cause. *Id*. at 903-05. Rather than contest that conclusion on appeal to the U.S. Supreme Court, the government urged that the officers' "good-faith reliance on a search warrant" counsels against suppressing evidence obtained in executing that warrant. *Id*. at 905. The Court agreed. It observed that it is a "magistrate's responsibility to determine whether the officer's allegations establish probable cause," and an officer who otherwise followed proper procedures in applying for a warrant "cannot be expected to question" that determination. *Id*. at 921. In the Court's view, it wouldn't make sense to "[p]enalize the officer" by excluding evidence because of "the magistrate's error." *Id*.

In that way, *Leon* directly incentivizes officers to seek a warrant before they search. But here, of course, the Township's officers cannot claim to have reasonably relied on an invalid warrant because, over the multiple years they used a drone to search the Maxons' property, they never sought a warrant at all. See *Maxon*, 336 Mich App at 541. Excluding the drone photographs would thus deter the officers' conduct by incentivizing them to seek a warrant for similar searches in the future. Cf. *id*. at 542 ("If a governmental entity has any kind of nontrivial and objective reason to believe there would be value in flying a drone over a person's property … we trust [it] will probably be able to persuade a court to grant a warrant ….").

And finally, the Court has held that *state*-level criminal law enforcement officers would not be deterred by the exclusion of unlawfully obtained evidence in a *federal* civil proceeding. *United States v Janis*, 428 US 433, 459-60 (1976). In other words, the exclusionary remedy should not apply to a proceeding that an officer wouldn't foresee the ill-gotten evidence would be used in. Because the state-level criminal law enforcement officer is already "'punished' by the exclusion of the evidence in the state criminal trial," the *Janis* Court reasoned, exclusion from a different kind of case, outside of the officer's "zone of primary interest" and involving a "different sovereign," is "unlikely to provide significant … additional deterrence." *Id*. at 448, 458, 459. But here, the drone evidence was obtained by the Township, for the Township's use in a civil enforcement action, to enforce the Township's Zoning and Nuisance ordinances. Nothing in the record reflects the involvement of other sovereigns or litigation in other "zone[s] of primary interest." If exclusion wouldn't deter here, it never will.

Costs. The "principal" cost of the exclusionary remedy the Court has identified is in allowing "possibly dangerous defendants go free." *Herring*, 555 US at 141. But nothing remotely like that concern is at play here. Indeed, as the Court of Appeals explained, the allegedly

aesthetically offending condition of the Maxons' backyard cannot even be seen from a public vantage point at ground level. 336 Mich App at 526. In other words, the costs to society of applying the exclusionary remedy here are nil.

On the other hand, the costs of *denying* the exclusionary remedy are huge. There is practically no other remedy available to the Maxons—or any other Americans in the Maxons' shoes—incentivizing officers to respect their Fourth Amendment rights. The Township has brought a civil action, not criminal charges, so there is no way for the Maxons to vindicate their Fourth Amendment rights in "the criminal trial context." Cf. pp. 10-12, above. And obtaining money damages for the intrusion on their rights would be anything but guaranteed, especially considering the unique circumstances under which the Township violated the Maxons' rights; the federal courts have effectively vitiated the common law maxim that government agents "must, like every other violator of the laws, respond in damages." See pp. 7-10, above. Without the exclusionary remedy, government investigators in this state would have little incentive *not* to deliberately conduct warrantless drone surveillance on any Michigander they want. There would be little chance for individuals to otherwise hold those agents to account, and the rights protected by the Fourth Amendment would cease to provide the security to property owners that the Framers intended. Respectfully, this Court should not let that state of affairs take hold.

CONCLUSION

Exclusion was one among many remedies courts employed at the Founding to protect individuals' rights to be secure against unlawful searches and seizures. Today, though, it is practically the only remedy the people can trust to secure the protections the Fourth Amendment affords them. Because exclusion here is an appropriate remedy under the U.S. Supreme Court's precedents and precedents from around the country, Amicus respectfully requests that this Court

affirm the Court of Appeals and remand for an order suppressing all photographs taken of Defendant-appellees' property.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2022, I electronically filed the foregoing Amicus Curiae Brief of the Institute for Justice in Support of Defendant-Appellees, which was served on all Parties by the MiFILE system of the Michigan Supreme Court.

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*Temporary Admission Pending