No. 18-48

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**In the**
**SUPREME COURT OF THE UNITED STATES**

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State of Minnesota,
*Petitioner,*

*v.*

Quentin Todd Chute,
*Respondent.*

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On Petition for a Writ of Certiorari to the
Minnesota Supreme Court of the State of Minnesota

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# BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

The Minnesota Supreme Court, in accord with this Court's recent decisions in *Florida v. Jardines*, 569 U.S. 1 (2013) and *Collins v. Virginia*, 138 S.Ct. 1663 (2018), determined that police violated the Fourth Amendment by intruding on Chute's private property to "snoop" in a camper parked on the curtilage of Chute's home. Petitioner, the State of Minnesota, has filed an untimely petition for a writ of certiorari asking this Court to:

(1) overrule *Jardines* and *Collins* and approve of police intrusions on the curtilage of a home for the purpose of searching and seizing objects they can see from a public roadway; and

(2) despite the state supreme court's factual finding that the officer entered Chute's private property for the purpose of conducting a search, address whether police can search objects they find in "plain view" while conducting a lawful knock-and-talk.

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No. 18-48

IN THE
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STATE OF MINNESOTA,
PETITIONER,

V.

QUENTIN TODD CHUTE,
RESPONDENT.

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Respondent, Quentin Todd Chute, respectfully prays that this Court deny the State of Minnesota's petition for a writ of certiorari to review the judgment of the Minnesota Supreme Court.

## JURISDICTION

The Minnesota Supreme Court rendered its decision on March 14, 2018. The petition for a writ of certiorari was filed on July 3, 2018, more than 90 days after the decision. Petitioner has invoked this Court's jurisdiction under 28 U.S.C. § 1257(a).

## CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES INVOLVED

**U.S. Const. amend. IV:** "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or

affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

**U.S. Sup. Ct. Rule 13:** "Unless otherwise provided by law, a petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort * * * is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment. * * * . The time to file a petition for a writ of certiorari runs from the date of entry of the judgment or order sought to be reviewed, and not from the issuance date of the mandate (or its equivalent under local practice). But if a petition for rehearing is timely filed * * * the time to file the petition * * * runs from the date of the denial of rehearing or, if rehearing is granted, the subsequent entry of judgment."

**Fed. R. App. P. 41:** "Unless the court directs that a formal mandate issue, the mandate consists of a certified copy of the judgment, a copy of the court's opinion, if any, and any direction about costs. * * * . The court's mandate must issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. * * * . The mandate is effective when issued."

**Minn. R. Civ. App. P. 136.02:** "Unless the parties stipulate to an immediate entry of judgment, the clerk of the appellate courts shall enter judgment pursuant to the decision or order not less than 30 days after the filing of the decision or order. The service and filing of a petition for review to, or rehearing in, the Supreme Court shall stay the entry of the judgment. Judgment shall be entered immediately upon the denial of a petition for review or rehearing."

**Minn. R. Civ. App. P. 140.03**: "The filing of a petition for rehearing shall stay the entry of judgment until disposition of the petition. It does not stay the taxation of costs. * * * .

## STATEMENT OF THE CASE

On October 30, 2014, B.F. called police after seeing what he thought was his stolen pop-up camper "sitting in the backyard" of a home on County Road D in Maplewood, Minnesota. Pet. App. 3. The camper was parked at the end of a dirt driveway that ran along the home's east side, and looped around in the backyard. Pet. App. 3. A second, paved driveway on the opposite side of the house led to a detached garage. Pet. App. 3. B.F. testified he recognized the camper from County Road D because of a unique set of bolts he had installed when making repairs to the camper. Pet. App. 3.

The responding officer observed the camper from County Road D and verified it was the same make and model as the camper B.F. had reported stolen. Pet. App. 4. The officer then drove onto the dirt driveway and parked his squad halfway down the driveway, about 200 feet from County Road D. Pet. App. 4. The officer and B.F. got out of the squad and walked directly to the camper. Pet. App. 4. On the way to the camper, B.F. told the officer about the unique bolt configuration. Pet. App. 4.

Upon reaching the camper, the officer inspected the exterior of the camper and discovered its license plate and vehicle identification number (VIN) had been removed. Pet. App. 4. The officer then called the camper's manufacturer and learned that a partial

VIN was stamped on the camper's frame. Pet. App. 4. The officer located the partial VIN and confirmed it was consistent with the VIN for B.F.'s stolen camper. Pet. App. 4. "The officer then entered the camper and located an item of B.F.'s personal property." Pet. App. 4.

"The officer testified that, once he verified that the camper was the one stolen from B.F., 'he tried to make contact with the homeowner.'" Pet. App. 4.[1] While walking to the back of the home to knock on the back door, the officer heard voices from a garage in the backyard and knocked there instead. Pet. App. 4. Quentin Chute answered, and identified himself as the homeowner. Pet. App. 4. After a discussion,[2] Chute consented to the officer searching the garage and his home. Pet. App. 4. The officer found more of B.F.'s personal property from the camper in the garage and house. Pet. App. 4-5.

The state charged Chute with possession of stolen property. Pet. App. 5. Chute moved to suppress "all evidence found by police pursuant to a warrantless search" of his property. Pet. App. 5. The district court concluded that the camper was properly seized under the plain-view doctrine. Pet. App. 5. The court found that the unique bolts on the camper were visible "from the driveway"; that upon seeing the bolts it would have been immediately apparent that the camper belonged to B.F.; and because the driveway was "impliedly open to the public to access [Chute's] home" the officer "had a lawful right of

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[1] B.F. likewise testified that it was at this point that the officer "said he was going to go up and go into the house. Tr. of 9/20/13 suppression hearing, at 15.

[2] Chute told the officer he was storing the camper for a friend. Tr. of 9/20/13 suppression hearing, at 53.

access to the camper." Pet. App. 5. The court denied the suppression motion, and a jury found Chute guilty. Pet. App. 5-6.

Chute appealed, and the Minnesota Court of Appeals reversed the district court's suppression ruling and remanded for further proceedings. Pet. App. 6. The court of appeals held that the plain-view doctrine did not justify the officer's search of the camper because the camper was parked on the curtilage of Chute's home, and he did not have a lawful right of access to it. Pet. App. 6. The court also concluded that the officer exceeded the scope of any implied license to enter the driveway because he "entered the property for the purpose of conducting a search." Pet. App. 6.

The Minnesota Supreme Court granted the state's petition for further review. Pet. App. 7. The court found the camper was parked on the curtilage to Chute's home and "within the protections of the Fourth Amendment." Pet. App. 9-13. The court accepted the district court's finding that Chute had granted the public license to "to seek 'a back door entrance to the house and garage'" but found the officer exceeded the scope of that license because "viewed objectively, the evidence demonstrates that the officer's purpose for entering the curtilage was to conduct a search." Pet. App. 15-16. The court also found that the officer violated the spatial and temporal limitations of the implied license. Pet. App. 16-19. The court concluded that the warrantless physical intrusion on the curtilage of Chute's home violated Chute's Fourth Amendment rights, and affirmed the decision of the court of appeals. Pet. App. 19-20.

## REASONS FOR DENYING THE PETITION

The State of Minnesota seeks review of the Minnesota Supreme Court's March 14, 2018, decision reversing the district court's suppression order. The state argues that review is necessary for this Court to clarify that an officer's purpose for entering the curtilage of a home is irrelevant when determining if a Fourth Amendment violation has occurred, and to address the scope of the plain-view doctrine once an officer is lawfully on the curtilage. This Court should deny the state's petition because the petition is untimely and meritless.

**1. The petition is untimely.** A petition for a writ of certiorari seeking review of the decision of a state court of last resort "is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment." U.S. Sup. Ct. Rule 13(1). "The time to file a petition for a writ of certiorari runs from the date of entry of the judgment or order sought to be reviewed, and not from the issuance date of the mandate (or its equivalent under local practice)." U.S. Sup. Ct. Rule 13(3).

In federal court, the filing of the Court of Appeal's decision constitutes the entry of judgment. *See, e.g.*, *Clay v. United States*, 537 U.S. 522, 525 (2003) (calculating time to petition for certiorari from date federal court of appeals filed its decision). Assuming no petition for rehearing is filed the "mandate" is usually issued 21 days later by the clerk of appellate courts, and "consists of a certified copy of the judgment, a copy of the court's opinion, if any, and any direction about costs." *See* Fed. R. App. P. 41.

The Minnesota Supreme Court also treats the filing date of its decision as the entry date of the judgment for purposes of calculating the time for petitioning this Court for

certiorari. *See, e.g.*, *Moua v. State*, 778 N.W.2d 286, 288 (Minn. 2010) (holding defendant's time to petition for certiorari expired 90 days from date court filed its decision). And the filing of that judgment by the clerk of appellate courts appears to be the equivalent of what constitutes the mandate under federal law. *See* Minn. Rs. Civ. App. P. 136.02 and 140.03 (directing clerk of appellate courts to, if no petition for rehearing is filed, enter judgment "pursuant to the decision" not less than 30 days after filing of decision).

The Minnesota Supreme Court entered its judgment when it rendered its decision in this case on March 14, 2018. *See* Pet. App. 1. The state filed its certiorari petition 111 days later on July 3, 2018. The state's petition was filed more than 90 days after the state supreme court's decision and should be denied as untimely. *See, e.g., County of Sonoma v. Eva Isbell*, 439 U.S. 996 (1978) (denying petition for certiorari as untimely).

2. **The petition has no merit.** The United States Constitution guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. A search occurs for Fourth Amendment purposes when police physically intrude on private property for a purpose beyond that authorized by the homeowner. *Florida v. Jardines*, 569 U.S. 1, 7-12 (2013); *see also United States v. Jones*, 565 U.S. 400, 404-13 (2012) (reaffirming that government's physical intrusion on private property is a Fourth Amendment search). A search conducted without a warrant is presumed to be unreasonable, unless it falls within a specific exception to the warrant requirement. *Carpenter v. United States*, 138 S. Ct. 2206, 2221 (2018).

In *Jardines*, this Court held that a police officer's entry onto the front porch of Jardines' home with a drug-sniffing dog to investigate the home and its immediate surroundings violated the Fourth Amendment. 569 U.S. at 11-12. The Court found the porch was part of the home's curtilage, and that the physical intrusion on the curtilage was a search because it exceeded the scope of the implied license granted by the homeowner. *Id.* at 6-10. The Court explained that homeowners impliedly consent to police approaching their home for the purpose of knocking on the front door, but the officer's behavior "objectively reveal[ed] a purpose to conduct a search, which is not what anyone would think he had license to do." *Id.*

Less than four months ago, this Court affirmed the principles underlying the *Jardines* decision. *See Collins v. Virginia*, 138 S.Ct. 1663 (2018). There, the Court held that police committed a Fourth Amendment search by physically intruding on the curtilage of a home without a warrant to inspect a motorcycle that was visible from the street and believed to have been stolen and used to commit traffic infractions. *Id.* at 1675. The Court rejected the state's argument that the physical intrusion was justified by the automobile exception, and remanded for the lower court to determine if some other exception to the warrant requirement applied. *Id.* at 1675.

Here, the Minnesota Supreme Court held that the police violated the Fourth Amendment by intruding on the curtilage of Chute's home to inspect and search a suspected stolen camper that was visible from the street. Pet. App. 19. In reaching this conclusion, the court rejected the state's assertion that the officer entered the curtilage to conduct a knock-and-talk, and found that "viewed objectively, the evidence demonstrates

that the officer's purpose for entering the curtilage was to conduct a search." Pet. App. 16. This decision is in complete accord with this Court's decisions in *Jardines* and *Collins*, and the state provides no persuasive reason to grant certiorari.

The state in its petition does not take issue with the Minnesota Supreme Court's factual determination that the camper was located on the curtilage of Chute's home. Nor does the state dispute the court's factual finding that the evidence, when "viewed objectively," showed that the officer entered the curtilage to conduct a search. The state instead argues, in effect, that this Court should overrule *Jardines* because it wrongly held that an officer's "subjective intent" when entering the curtilage is relevant when determining if a Fourth Amendment search occurred. Pet. i, 9 (referencing *Whren v. United States*, 517 U.S. 806 (1996)).

This Court requires "special justification" for overruling a prior decision. *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984). Far from special, the state's argument is based on a misreading of the *Jardines* decision. *Jardines* does not instruct lower courts to determine an officer's "subjective intent." The decision directs courts to determine whether the officer's "behavior objectively reveals a purpose to conduct a search." 569 U.S. at 10. The distinction is substantial, and important. *See, e.g., Michigan v. Bryant*, 562 U.S. 344, 360 (2011) (explaining the difference between discerning an officer's "primary purpose" and the officer's "subjective intent" for conducting an interrogation).

This Court, moreover, recognized even prior to *Jardines* that an officer's "purpose" for trespassing on private property was relevant when determining whether a Fourth Amendment search occurred. *See Jones*, 565 U.S. at 404 (holding that search

occurred when "[t]he Government physically occupied private property for the purpose of obtaining information"). The Court also directly addressed the concern raised by the state in *Jardines*:

> The State points to our decisions holding that the subjective intent of the officer is irrelevant. *See Ashcroft v. al–Kidd*, 563 U.S. ----, 131 S.Ct. 2074, 179 L.Ed.2d 1149 (2011); *Whren v. United States*, 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996). But those cases merely hold that a stop or search that is objectively reasonable is not vitiated by the fact that the officer's real reason for making the stop or search has nothing to do with the validating reason. Thus, the defendant will not be heard to complain that although he was speeding the officer's real reason for the stop was racial harassment. *See id.*, at 810, 813, 116 S.Ct. 1769. Here, however, the question before the court is precisely whether the officer's conduct was an objectively reasonable search. As we have described, that depends upon whether the officers had an implied license to enter the porch, which in turn depends upon the purpose for which they entered. Here, their behavior objectively reveals a purpose to conduct a search, which is not what anyone would think he had license to do.

569 U.S. at 10. And the Court implicitly rejected the state's argument in *Collins*, when it reiterated that intruding onto the curtilage "to gather evidence of a crime" is a search within the meaning of the Fourth Amendment. 138 S.Ct. at 1670. There is no need for the Court to reject the state's argument yet again.

The state also argues that this Court should revisit *Jardines* and *Collins* because asking courts to determine the purpose for which an officer intrudes on a home's curtilage is "unworkable in practice," especially when, as here, the officer ultimately contacts the homeowner. Pet. 12-13. The state supreme court had no difficulty discerning the officer's purpose in this case:

> Viewed objectively, the evidence demonstrates that the officer's purpose for entering the curtilage was to conduct a search. Photographs in the record show that the camper was parked at the end of Chute's driveway,

> past the house, in the back corner of Chute's backyard. To inspect the camper, the officer had to deviate substantially from the route that would take him to the back door of the house or to the garage. The officer walked directly to the camper, inspected it thoroughly, both inside and out, and only turned back toward the house when he was satisfied that the camper was stolen. Anyone observing the officer's actions objectively would conclude that his purpose was not to question the resident of the house, but to inspect the camper, "which is not what anyone would think he had license to do." *Jardines*, 569 U.S. at 10, 133 S.Ct. 1409[.]

Pet. App. 16-17.[3] And courts are more than capable of "objectively evaluat[ing] the circumstances" to determine an officer's purpose. *Bryant*, 562 U.S. at 359.

The state further argues that this Court should revisit *Jardines* and *Collins* because the reasoning of those cases renders all knock-and-talks "presumptively unreasonable absent a warrant." Pet. 11-12. The state's hyperbolic assertion is unwarranted. *Jardines* creates no such presumption. *Jardines*, indeed, makes clear that homeowners provide an implied license for anyone

> to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent an invitation to linger longer) leave. * * * . *Thus, a police officer not armed with a warrant may approach a home and knock, precisely because that is "no more than any private citizen might do." Kentucky v. King*, 563 U.S. ----, ----, 131 S.Ct. 1849, 1862, 179 L.Ed.2d 865 (2011).

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[3] The state takes issue with the state supreme court's factual determinations that the officer deviated from the route that would have taken him to the back door and that he entered the camper. *See* Pet. at 15, 19. The photographs referred to by the supreme court establish that the officer would have had to walk off the driveway and away from the back door to access the camper. *See* suppression hearing Exhibits 3, 4, 7, 8. And when asked at the suppression hearing whether the officer went into the camper, B.F. testified "yeah, I think he walked up in it[.]" Tr. of 9/20/13 suppression hearing, at 34. The state supreme court's factual findings are supported by the record and the state's attempt to dispute those findings should not "concern" this Court. *Payne v. State of Arkansas*, 356 U.S. 560, 562 (1958); *see also Hernandez v. New York*, 500 U.S. 352, 366 (1991) (observing that absent exceptional circumstances this Court defers to state-court factual findings relating to constitutional issues).

*Jardines*, 569 U.S. at 8 (emphasis added). What the police do not have a right to do, *Jardines* and *Collins* explain, is to exceed the scope of the homeowner's licensure by intruding on the curtilage not for the purpose of contacting the homeowner but for the purpose of gathering evidence. *Id.* at 9, 11; 138 S.Ct. at 1670. The Minnesota Supreme Court had no difficulty understanding the distinction, and any feigned confusion by the state, or other courts, is not a valid reason to grant certiorari in this case.

The state next argues that, short of overruling *Jardines*, this Court should limit its application to cases where police use drug-sniffing dogs or "specialized equipment to detect otherwise-undetectable contraband." Pet. 8, 13. The Court also addressed and expressly rejected this very argument in *Jardines*:

> It is not the dog that is the problem, but the behavior that here involved use of the dog. We think a typical person would find it "'a cause for great alarm'" (the kind of reaction the dissent quite rightly relies upon to justify its no-night-visits rule, post, at 1422) to find a stranger snooping about his front porch with or without a dog.

569 U.S. at 9, n. 3. And in *Collins*, the Court found a Fourth Amendment search occurred even though the officer had no dog or "specialized equipment." 138 S.Ct. at 1675. There is no need for this Court to again explain to the government that "it is not the dog that is the problem" but the intrusion on a home's curtilage for a purpose exceeding the scope of the homeowner's implied consent.

The state further argues this Court should grant review to clarify the scope of a knock-and-talk and the applicability of the plain-view doctrine when police are lawfully on a home's curtilage to conduct a knock-and-talk. Pet. i, 14-20. As this Court explained in *Collins*, to invoke the plain-view doctrine the state must first establish that the officer

lawfully intruded upon the curtilage. 138 S.Ct. at 1672. Because the state supreme court found that the officer in this case trespassed on the curtilage of Chute's home for the purpose of searching the camper – not for the purpose of knocking and talking to the homeowner – the intrusion was unlawful and the plain-view doctrine simply does not apply. *Id.* If this Court feels the need to discuss the scope of a lawful knock-and-talk or the interplay between a lawful knock-and-talk and the plain-view doctrine it should wait for a case where the officer actually enters the curtilage of a home for the purpose of conducting a knock-and-talk.

Finally, the state argues that the touchstone for determining whether a search violates the Fourth Amendment is "reasonableness" and that there is nothing unreasonable about police trespassing on the curtilage of a home to search a camper visible from a public street. Pet. 22-23. The state's argument is the product of its stubborn refusal to accept that the unlawful trespass on a home's curtilage is itself a search for purposes of the Fourth Amendment, and that

> [t]he ability to observe inside curtilage from a lawful vantage point is not the same as the right to enter curtilage without a warrant for the purpose of conducting a search to obtain information not otherwise accessible. * * * . So long as it is curtilage, a parking patio or carport into which an officer can see from the street is no less entitled to protection from trespass and a warrantless search than a fully enclosed garage.

*Collins*, 138 S.Ct. at 1675; *see also Jones*, 565 U.S. at 406 (holding that placing GPS on jeep constituted a search even though it was on a public road and "visible to all"). The search here was "unreasonable," in other words, because the officer had neither a warrant nor Chute's consent to "snoop" in a camper parked on the curtilage of his home. Pet.

App. 19; *Jardines*, 569 U.S. at 9, n.3.

This Court should recognize the state's petition for what it is, an expression of the state's disagreement with this Court's decisions in *Jones*, *Jardines,* and *Collins,* and an ill-conceived attempt to obtain review of issues that have already been decided by this Court or that are simply not presented by this case. Because the decision rendered by the Minnesota Supreme Court is dictated by, and in full accord with, this Court's prior decisions, and because the decision raises no new issues meriting this Court's consideration, the Court should deny the state's petition, even if it was timely filed.

## CONCLUSION

The petition for writ of certiorari should be denied because it is untimely and without merit.

Respectfully submitted,

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