No. 19-____

IN THE
Supreme Court of the United States

CLYDE S. BOVAT,
Petitioner,

v.

STATE OF VERMONT,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Vermont

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a police officer can access "semiprivate" areas within a home's curtilage to conduct an investigation without a warrant.

PARTIES TO THE PROCEEDING

Clyde S. Bovat, petitioner on review, was the defendant-appellant below.

The State of Vermont, respondent on review, was the plaintiff-appellee below.

RELATED PROCEEDINGS

Counsel is not aware of any related proceedings.

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Clyde S. Bovat respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Vermont in this case.

INTRODUCTION

This Court has held that, "when it comes to the Fourth Amendment, the home is first among equals," and that "the curtilage * * * enjoys protection as part of the home itself." *Florida* v. *Jardines*, 569 U.S. 1, 6 (2013). If a law enforcement officer enters the curtilage to approach the home, knock at the door, and talk to its residents, he does not intrude upon those fundamental protections. That is because he is "do[ing] no more than any private citizen might do." *Kentucky* v. *King*, 563 U.S. 452, 469 (2011).

The Vermont Supreme Court has now placed officers on a different footing than private citizens. It set out a categorical rule that permits officers to access so-called "semiprivate" areas within the curtilage—driveways, walkways, and steps that a visitor trying to reach the home might use—"to conduct an investigation." Pet. App. 10a–11a. This rule renders the home's protections "of little practical value." *Jardines*, 569 U.S. at 6. It is not about officers' activity in the woods or far from a person's home; it is about officers' activity squarely within the curtilage. Under this rule, officers may "freely wander and observe while on a person's driveway, without reference to the particular circumstances of the search." Pet. App. 14a (Reiber, C.J., dissenting). This means that an officer now has license to do what no homeowner has licensed a private visitor to do: "enter the protected premises of the home * * * to do nothing but conduct a search." *Jardines*, 569 U.S. at 9 n.4.

The Vermont Supreme Court's "bright-line" rule is wrong. Pet. App. 14a (Reiber, C.J., dissenting). The so-called knock-and-talk license is a narrow one: It "typically" permits an officer "to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave." *Jardines*, 569 U.S. at 8. This invitation to approach the home is not a license for officers to "do whatever they want by way of gathering evidence * * * so long as they stick to the path * * * typically used to approach a front door." *Id.* at 9 n.3 (internal quotation marks omitted). "That is not the law * * * ." *Id.* By making it law in Vermont, the

Vermont Supreme Court "untether[ed] the" knock-and-talk exception "from the justifications underlying" it. *Riley* v. *California*, 573 U.S. 373, 386 (2014) (internal quotation marks omitted).

Unsurprisingly, the Vermont Supreme Court's decision splits with the federal courts of appeals and state courts of last resort that have addressed the scope of the implied knock-and-talk license. The majority of courts hold that, to remain within the scope of the license, an officer must attempt to approach the primary entrance of the home upon entering the curtilage. A minority of courts hold that an officer may approach another location upon entering the curtilage, but only if he has reason to believe he will find the resident there. Only the Vermont Supreme Court allows officers to nose around along any path a person might hypothetically take when visiting the home to conduct an investigation, rather than to contact a resident.

This Court should grant the petition for a writ of certiorari and reverse the judgment of the Supreme Court of Vermont.

OPINIONS BELOW

The Supreme Court of Vermont's decision is reported at 224 A.3d 103. Pet. App. 3a–29a. The Supreme Court of Vermont's order denying reargument is not reported. *Id.* at 50a–51a. The Superior Court's decision denying the motion to suppress is not reported. *Id.* at 30a–49a.

JURISDICTION

The Supreme Court of Vermont entered judgment on November 8, 2019. Pet. App. 1a, 3a. It denied

reargument on December 19, 2019. *Id.* at 50a. Justice Ginsburg granted a 60-day extension of the period for filing this petition to May 18, 2020. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment, U.S. Const. amend. IV, provides:

> 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.

STATEMENT

This case arose after Vermont game wardens traveled to Clyde Bovat's home to search for his truck. Early Thanksgiving Day in 2017, a resident reported a possible deer jacking—an unlawful killing of a deer at night. Pet. App. 4a. During the investigation, the wardens spoke to a man who had been implicated in the shooting that morning. *Id.* The man eventually told the wardens that he had not shot the deer, that Bovat had sold him the deer, and that Bovat had left for an out-of-state hunting trip. *Id.* at 4a–5a, 65a.

The wardens went to Bovat's home "to investigate further." *Id.* at 4a–5a. They were "interested in the * * * black truck" that they believed Bovat owned. *Id.* at 65a. From "prior knowledge," one warden "was essentially one hundred percent sure" Bovat owned a

truck like the one reportedly used in the deer jacking. *Id.* at 58a. By the time the wardens arrived at Bovat's residence, they "were pretty much on the lines of seizing a scene to apply for a warrant." *Id.*

But the wardens did not secure a warrant; instead, they entered Bovat's property.

Bovat's home is like many others. A person who visits his home will see a driveway, wide enough for at least two cars. *Id.* at 53a–54a. The house sits to the right of the driveway, accessed by a path that branches off from the right side of the driveway. *Id*. The driveway continues past that path, for a short distance. *Id*. A detached two-door garage sits to the left of the driveway, set back further than the path to the house, with a large paved area in front of the garage adjacent to the main driveway. *Id*. Each garage door has a small, rectangular glass window. *Id.* at 53a, 69a (warden's testimony that the window was "[a]bout * * * eight inches vertically and twelve inches horizontally").

When the wardens arrived at Bovat's residence, they did not see Bovat's black truck "in the drive[way]." *Id.* at 60a. They did see Bovat's wife's vehicle there. *Id.* They "proceeded up [Bovat's] driveway * * * to the two-bay detached garage." *Id.* at 5a; *see id.* at 60a (warden's testimony that they "went * * * up to the window of one of the garage bays so we could look in"). Standing there, looking inside, they saw a parked truck facing away from them, the truck's license plate number, and what appeared to be animal hair and blood on the closed rear tailgate. *Id.* at 5a.

After about fifteen minutes, the wardens went to the front door to obtain Mrs. Bovat's consent to enter the garage. *Id.* at 5a, 32a; *see id.* at 27a (Reiber, C.J., dissenting). She declined to allow the search, and the wardens then applied electronically for a search warrant. *Id.* at 63a. The wardens supported the application with what they had seen inside of Bovat's garage through the small window. *Id.* at 5a, 61a–63a.

Based on evidence obtained under that warrant, Bovat was charged with violating Vermont's hunting laws. He moved to suppress the evidence obtained after the wardens entered his property, arguing that the warrantless entry into the curtilage of his home violated the Fourth Amendment. *Id.* at 33a.

The trial court denied the motion. It first held that the garage was outside the curtilage and not entitled to heightened Fourth Amendment protection. *Id.* at 36a–37a. The trial court then held that, even if the garage were within the curtilage, the plain-view exception applied: The driveway was a "semiprivate area," "the wardens entered the driveway to conduct legitimate police business," and the truck was "in plain view through the window in the garage door." *Id.* at 37a–39a.

The Supreme Court of Vermont affirmed in a 3-2 decision. The Justices unanimously disagreed with the trial court's curtilage holding, ruling instead that Bovat's "garage is properly considered to be within the curtilage of the home." *Id.* at 9a; *see id.* at 16a (Reiber, C.J., dissenting).

The majority "nonetheless conclude[d] that" no Fourth Amendment violation occurred because "[t]he

plain-view exception applies here." *Id.* at 9a–10a. It held that the wardens had looked into the garage from a legal vantage point—standing on the driveway in front of the window in the garage door—because "[p]ortions of the curtilage like driveways or walkways, which are normal access routes for anyone visiting the premises, are considered semiprivate places." *Id.* at 10a. It explained that there is "a significant difference" between those areas and the rest of the curtilage. *Id.* (quoting *State* v. *Libbey*, 577 A.2d 279, 280 (Vt. 1990)).

For these areas it deemed "semiprivate," the majority set out a bright-line rule: As long as law enforcement officers "restrict their movement to semiprivate areas to conduct an investigation, observations made from such vantage points are not covered by the Fourth Amendment." *Id.* at 10a–11a (internal quotation marks omitted). Officers are "entitled" to enter these areas "to carry out legitimate police business," even without a warrant. *Id.* (internal quotation marks omitted).

Applying that rule, the majority held that because the wardens had remained on the driveway, where they had a lawful right to be, they did not violate the Fourth Amendment. Though the wardens could not have entered the "garage itself * * * without a warrant," they had "observed the truck from a legal vantage point." *Id.* The majority also concluded that the interior of the garage was within plain view of that vantage point. *Id.* at 12a ("Any adult standing on defendant's driveway could see into the interior of his garage where his truck was parked * * * .).

Chief Justice Reiber, joined by Justice Robinson, dissented from the majority's "bright-line rule that permits law enforcement officers to freely wander and observe while on a person's driveway, without reference to the particular circumstances of the search." *Id.* at 14a. The dissent explained that the majority had "misapplied the plain-view doctrine and the knock-and-talk exception." *Id.* As to the plain-view doctrine, its application "depends on an object's being in plain view from a lawful vantage point." *Id.* at 17a. And "[w]here, as here, * * * officers make observations from within the curtilage itself," that means officers must "have lawfully intruded into the * * * curtilage to the point of observation." *Id.* at 18a.

And as to the knock-and-talk exception, the dissent recognized that, "[w]ithout naming it, the majority" had relied on it to find that the wardens were lawfully within the curtilage of Bovat's home. *Id.* Under that exception, officers have license to "enter a person's curtilage *in the same manner* as a reasonably respectful member of the public." *Id.* at 20a (internal quotation marks omitted). But that license to do so had not, until the majority opinion, "*categorically* allow[ed]" officers "to enter a person's driveway for legitimate police business." *Id.*

The majority's categorical rule, the dissent explained, extended the knock-and-talk exception far beyond its justification. The exception rests on the " 'implicit license' that permits the public to enter a person's curtilage "to approach the home by the front path.' " *Id.* at 23a (quoting *Jardines*, 569 U.S. at 8). Officers may enter the curtilage in the same way.

But to do more, that is, to "exceed[]" that license—by, for example, "walk[ing] away from the normal access route to the house" or "conduct[ing] a * * * search within the curtilage"—a warrant is required. *Id.* at 23a–24a, 26a.

Applying those principles, the dissent would have reversed the trial court and granted Bovat's motion to suppress. *Id.* at 14a. The trial court's "findings do not establish" that the wardens approached the garage "and made the observation in the same manner as a reasonably respectful member of the public." *Id.* at 25a–26a (internal quotation marks omitted). In fact, the evidence indicated the opposite. *Id.* at 26a–27a. The garage is to the left of the path that a visitor would take to the front door of the house; the garage windows are small, requiring one to walk directly in front of them and stop to peer in; Bovat's wife testified that the wardens walked around and looked in the garage for about 15 minutes before approaching the home; and a warden testified that they went to Bovat's home to find the truck, not to talk to Bovat. *Id.* Thus, the dissent would have held that the wardens conducted "an unconstitutional search." *Id.* at 27a–28a.

The Vermont Supreme Court denied Bovat's motion for reargument. *Id.* at 50a–51a. This petition followed.

REASONS TO GRANT THE PETITION

The Vermont Supreme Court's bright-line rule for the knock-and-talk license conflicts with this Court's precedent and splits with the rules in the other lower courts. It gives officers permission "to freely wander and observe while on a person's driveway" to conduct

an investigation. Pet. App. 14a (Reiber, C.J., dissenting). This "transform[s] what was meant to be an exception into a tool" for law enforcement "with far broader application." *Collins* v. *Virginia*, 138 S. Ct. 1663, 1672–73 (2018). In doing so, it seriously undermines "the core Fourth Amendment protection the Constitution extends to the house and its curtilage." *Id.*

This Court should grant this petition to resolve the disagreement over whether an officer exceeds the scope of the implied knock-and-talk license if he does not immediately approach the primary entrance to the home after entering the property. Alternatively, because the Vermont Supreme Court's decision conflicts with this Court's Fourth Amendment precedents, this Court may wish to summarily reverse.

I. The Vermont Supreme Court's Broad Interpretation Of The Implied Knock-And-Talk License Conflicts With Other Lower Courts.

The Vermont Supreme Court's decision departs from the approaches taken by federal courts of appeals and state supreme courts, and certiorari is warranted to resolve this conflict.

A. Officers may enter the curtilage under the implied knock-and-talk license.

This Court has long recognized the "ancient and durable" principle that the curtilage receives the same Fourth Amendment protection as the home. *Jardines*, 569 U.S. at 6. This rule safeguards the core Fourth Amendment right to be "free from unreasonable governmental intrusion," a right that

would mean little if officers could enter the property, walk up to the home, and "observe * * * from just outside." *Id.* (internal quotation marks omitted).

Thus, just as when an officer enters the home, his physical intrusion into "the curtilage to gather evidence" is "a search within the meaning of the Fourth Amendment." *Collins*, 138 S. Ct. at 1670. The entry is "presumptively unreasonable" without a warrant, *id.*, unless it "falls within a specific exception to the warrant requirement," *Riley*, 573 U.S. at 382.

One such exception is when officers enter the property under the so-called knock-and-talk license. An officer does not need a warrant to enter the curtilage if a homeowner has "given his leave (even implicitly)" for the officer to do so. *Jardines*, 569 U.S. at 8. This Court has identified a narrow "implicit license." *Id.* A visitor "typically" may "approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave." *Id.* Because a private visitor may take this path to reach the home, an officer may too. *See id.* ("[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.' " (quoting *King*, 563 U.S. at 469)).

But this implied license is *not* a license to roam the curtilage; it is limited by space, time, and purpose. *See Jardines*, 569 U.S. at 9. The "act of hanging a knocker" on the front door invites a visitor to walk there, not elsewhere on the property, such as "into

the garden." *Id.*[1] That visitor may "wait briefly" after knocking but "then" must "leave." *Id.* at 8.[2] And although that act may serve to "invite a visitor to the front door" to speak with the resident, it does not "invite him there to conduct a search." *Id.* at 9.

B. Courts are split on whether the implied license extends further than an invitation to approach the home's main entrance.

Many federal courts of appeals and state courts of last resort have considered the scope of this implied knock-and-talk license. A substantial majority hold that the implied license permits an officer only to approach the home's main entrance in order to speak to the residents. *See, e.g.*, *Carroll* v. *Carman*, 574 U.S. 13, 19 (2014) (per curiam) (noting the disagreement); *State* v. *Chute*, 908 N.W.2d 578, 587 (Minn.) (recognizing the "split"), *cert. denied*, 139 S. Ct. 413 (2018) (mem.). A minority of courts hold that an officer may approach *other* parts of the property, but only if there is a reasonable indication he will be able to find and speak to the residents there. Only the

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[1] On this, the Court was unanimous. *See Jardines*, 569 U.S. at 19 (Alito, J., dissenting) ("A visitor cannot traipse through the garden, meander into the backyard, or take other circuitous detours that veer from the pathway that a visitor would customarily use.").

[2] Here too, the Court was unanimous. *See Jardines*, 569 U.S. at 20 (Alito, J., dissenting) ("The license is limited to the amount of time it would customarily take to approach the door, pause long enough to see if someone is home, and (if not expressly invited to stay longer), leave.").

Vermont Supreme Court has untethered the license from its premise—to allow an officer to approach the home to *knock* and ask to *talk* to its residents like any other visitor—and held that an officer may freely roam any "semiprivate" access path in order to conduct an investigation.

1. Nine courts of appeals and five state supreme courts have held that the implied license permits an officer only to approach the main entrance of the home upon entering the property.

In *Carman*, the Third Circuit held that a knock-and-talk "must begin at the front door because that is where police officers, like any other visitors, have an implied invitation to go." *Carman* v. *Carroll*, 749 F.3d 192, 198 (3d Cir. 2014), *rev'd on other grounds,* 574 U.S. 13. There, a "clearly marked path [led] to the front door." *Id.* at 195. Officers had parked behind the house and looked inside the garage because a light was on inside, and then "continued walking through the backyard and proceeded to the back deck." *Id.* This exceeded the scope of the implied license because the knock-and-talk exception "does not license officers to bypass the front door and enter other parts of the curtilage based on where they park their cars." *Id.* at 199.

Similarly, in *Watson*, the Sixth Circuit held that an "officer without a warrant" may only " 'approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave.' " *Watson* v. *Pearson*, 928 F.3d 507, 512 (6th Cir. 2019) (quoting *Jardines*, 569 U.S. at 8). This conclusion flowed from an earlier case, in which the court held that *Jardines* had overruled its prior

cases holding that officers act within the implied license if they approach the front door, knock, and proceed to the back door if no one answers. *See Morgan* v. *Fairfield County*, 903 F.3d 553, 564–565 (6th Cir. 2018), *cert. denied*, 139 S. Ct. 1377 (2019) (mem.). Applying this rule, the court held that officers exceeded the scope of the implied license when they approached the front door to serve a civil levy, continued to knock after they served the levy and the person left the residence, and then "walked around the exterior of the house" to look for items to levy. *Watson*, 928 F.3d at 509; *see also United States* v. *Troop*, 514 F.3d 405, 410 (5th Cir. 2008) ("[W]e have also held that when no one answers the door, the officers should end the knock and talk and change their strategy by retreating cautiously, seeking a search warrant, or conducting further surveillance." (alteration and internal quotation marks omitted)).

And in *Wells*, the Eighth Circuit stated that it had "never found" that a homeowner had given "implied consent to be contacted at home * * * where officers made no attempt to reach the homeowner at the front door." *United States* v. *Wells*, 648 F.3d 671, 679 (8th Cir. 2011). There, a house was set back from the street, with a paved driveway leading to a carport, a paved walkway leading from that driveway to the front door, and an unpaved driveway running along one side of the home. *See id.* at 673. After officers entered the property, one walked down the unpaved driveway to look in a back shed. The others joined him on the unpaved driveway, where they saw a light on in an "outbuilding" behind the home. *Id.*

They knocked on that building's door and, when it opened, smelled marijuana. *See id.* at 673–674. The "officers' entry" was not "justified as a 'knock-and-talk.' " *Id.* at 680. The court was "not prepared to extend the 'knock-and-talk' rule" to permit officers to "forgo the knock at the front door and, without any reason to believe the homeowner will be found there, proceed directly to the backyard." *Id.*

Several circuits that apply this rule have recognized that the home's primary entrance is not always the literal front door. In *Shuck*, for example, the Tenth Circuit considered a home where the path to the front door was blocked by a fence that appeared to be locked and out of use. *See United States* v. *Shuck*, 713 F.3d 563, 565, 568 (10th Cir. 2013). Officers walked around the house to the back door. The court held that the officers acted within the scope of the implied license because they "used the normal route of access, which would be used by anyone visiting." *Id.* at 568. The First, Second, Seventh, and Ninth Circuits have reached the same conclusion. *See United States* v. *Daoust*, 916 F.2d 757, 758 (1st Cir. 1990) (Breyer, C.J.) (holding that "if that [front] door is inaccessible," then officers may "go[] to the back of the house to look for another door"); *United States* v. *Titemore*, 437 F.3d 251, 259 (2d Cir. 2006) ("[T]he sliding-glass door was in fact a primary entrance visible to and used by the public."); *United States* v. *James*, 40 F.3d 850, 862 (7th Cir. 1994) (stating that if "the back door * * * is readily accessible to the general public," then officers may approach it "in the reasonable belief that it is a principal means of access"), *vacated on other*

grounds, 516 U.S. 1022 (1995); *United States* v. *Perea-Rey*, 680 F.3d 1179, 1188 (9th Cir. 2012) ("Officers * * * need not approach only a specific door if there are multiple doors accessible to the public.").[3]

The highest courts of five States have likewise held that an officer exceeds the scope of the implied license if he does not proceed to the main entrance of the home upon entering the property. The Minnesota Supreme Court reached this conclusion on facts that parallel this case. In *State* v. *Chute*, an officer parked in a dirt driveway and walked to a camper he believed was stolen. 908 N.W.2d at 581. Then "once he verified" it was the same camper, he "started walking toward the back door of the home" before stopping at the garage when he heard voices inside. *Id.* The court held the officer exceeded the scope of the implied license because he "deviate[d] substantially from the route that would take him to the back door of the house or to the garage." *Id.* at 587. "Anyone observing" his actions "would conclude that his purpose was not to question the resident of the house, but to inspect the camper." *Id.*

The rule is the same in Florida, New Hampshire, New Jersey, and South Carolina. *See State* v. *Morsman*, 394 So. 2d 408, 409 (Fla. 1981) (distinguishing "a front porch where salesmen or visitors may appear at any time" from a "backyard" that "was not a common passageway normally used" to "approach the tenants"); *State* v. *Socci*, 98 A.3d 474, 479 (N.H.

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[3] The Third Circuit has reserved this question. *See Carman*, 749 F.3d. at 198 & n.6.

2014) (holding that the "implicit license * * * did not extend so far as to allow a private citizen, let alone a police officer not armed with a warrant, to circle his garage to gather evidence" (citation and internal quotation marks omitted)); *State* v. *Domicz*, 907 A.2d 395, 405 (N.J. 2006) (holding that when an "officer walks to a front or back door" to "mak[e] contact with a resident and reasonably believes that the door is used by visitors, he is not unconstitutionally trespassing"); *State* v. *Bash*, 797 S.E.2d 721, 727–728 (S.C. 2017) (holding that officers exceeded the license because their "entry into the grassy area"—bypassing the front door—"objectively demonstrates their purpose was to conduct a search").

2. The Fourth and Eleventh Circuits have defined the implied license more broadly while still tethering the license to the goal of talking to a resident. In these jurisdictions, an officer does not exceed the knock-and-talk license if he bypasses the main entrance upon entering the property and approaches another part of the curtilage or home to contact the homeowner here.

In *Covey*, the Fourth Circuit noted that, "in the typical situation," the implied license is to approach the main entrance, but "[a]n officer may also bypass" that entrance "when circumstances reasonably indicate that the officer might find the homeowner elsewhere on the property." *Covey* v. *Assessor of Ohio Cty.*, 777 F.3d 186, 192–193 (4th Cir. 2015). In that case, a civil suit, officers claimed they saw a homeowner in a "walkout basement patio area" before entering the property. *Id.* at 193. The court noted that *if* this was true—and they had not seen

him "only *after* they entered the curtilage"—the officers might prevail on summary judgment. *Id.*; *see Covey* v. *Assessor of Ohio Cty.*, 666 F. App'x 245, 246, 249, 250 (4th Cir. 2016) (per curiam) (affirming a grant of summary judgment for the officers); *see also Alvarez* v. *Montgomery County*, 147 F.3d 354, 356–359 (4th Cir. 1998) (holding officers did not exceed the scope of the implied license when they "walked away from the front door" and "entered the back-yard" because they believed the owner was there).

And in *Walker*, the Eleventh Circuit held that a "small departure from the front door * * * to contact the occupants is permissible." *United States* v. *Walker*, 799 F.3d 1361, 1364 (11th Cir. 2015) (per curiam) (internal quotation marks omitted). There, officers had visited a residence twice to knock "at the main door." *Id.* at 1362. On their third visit, they noticed a car in the carport with the dome light on and approached the car. *See id.* The Eleventh Circuit held that the officers had not exceeded the implied license for two reasons: Their "behavior did not objectively reveal a purpose to search" as opposed to contacting a resident, and the carport was "right next to the house" and thus not outside the "geographic[] limit[]" on the license. *Id.* at 1363–64.

3. The Vermont Supreme Court departed from both of these rules. Under its bright-line rule, an officer need not approach the front entrance to talk to the homeowner first. And an officer need not even approach an area where he reasonably believes the homeowner will be found. All that matters is that officers "restrict[] their movements to * * * a semi-private area." Pet. App. 11a.

This categorical approach "untether[s] the" knock-and-talk exception "from the justifications underlying" it. *Riley*, 573 U.S. at 386 (internal quotation marks omitted). The exception merely places officers in the same position as any other person. *See Jardines*, 569 U.S. at 9 n.4 ("[I]t is not a Fourth Amendment search to approach the home in order to speak with the occupant, *because all are invited to do that*."). An implicit license invites "solicitors, hawkers and peddlers of all kinds" to a homeowner's door. *Id.* at 8 (internal quotation marks omitted). So, when officers approach and "knock on a door, they do no more than any private citizen might do." *King*, 563 U.S. at 469.

The Vermont Supreme Court has now placed officers on a *different* footing than private citizens, giving law enforcement *greater* license to intrude on the protected space of the home. A private citizen is impliedly invited only to enter the curtilage to approach the front door and try to speak to the homeowner. *See Jardines*, 569 U.S. at 9 n.4 ("[N]o one is impliedly invited * * * to do nothing but conduct a search."). Yet an officer in Vermont may enter the curtilage "to conduct an investigation"; he is not limited to trying to speak to the homeowner. Pet. App. 10a–11a.

II. The Scope Of The Implied Knock-And-Talk License Is An Important Issue.

This Court's review is needed to avoid the substantial intrusion on "the core Fourth Amendment protection afforded to the home and its curtilage" that will result from the Vermont Supreme Court's rule. *Collins*, 138 S. Ct. at 1671.

There can be no doubt that the rule "undervalue[s]" those protections. *Id.* "[W]hen it comes to the Fourth Amendment, the home is first among equals." *Jardines*, 569 U.S. at 6. And the curtilage is "part of the home itself for Fourth Amendment purposes." *Id.* (internal quotation marks omitted). By deeming officers lawfully present anytime they are within a semiprivate area in the curtilage, the Vermont Supreme Court's bright-line rule gives certain areas within the curtilage lesser Fourth Amendment protection. This, in turn, expands the area from which an officer may make a plain-view observation, effectively eliminating the protection that the curtilage affords the home. *See* Isaac A. Rank, *The Uninvited Guest: The Unexpected Damage to Privacy from the Expansion of Implied Licenses*, 94 N.C. L. Rev. 1354, 1373 (2016) ("Allowing officers to lurk and loiter on the driveway and front porch, peering through windows for as long as they like, seriously threatens the privacy interests at the heart of the Fourth Amendment.").

This erosion of protection for the home is especially concerning because law enforcement's use of knock-and-talks has increased in recent years. Indeed, some jurisdictions have established knock-and-talk task forces that conduct hundreds of these encounters per month. *See* Jamesa J. Drake, *Knock and Talk No More*, 67 Me. L. Rev. 25, 35 & nn.91–96 (2014). In others, knock-and-talks have become "the new 'stop and frisk.' " Khaled A. Beydoun, *America, Islam, and Constitutionalism: Muslim American Poverty and the Mounting Police State*, 31 J.L. & Religion 279, 287 (2016); *see also* Andrew Eppich,

Wolf at the Door: Issues of Place and Race in the Use of the "Knock and Talk" Policing Technique, 32 B.C. J.L. & Soc. Just. 119, 147 (2012) (explaining that knock-and-talks are especially intrusive in urban communities).[4]

Worse still, the Vermont Supreme Court's focus on whether areas within the curtilage can be deemed "semiprivate" means that those with greater financial resources can secure greater protection from police intrusion into their residences. A homeowner who can purchase a fence, locks, or other barriers to the pathways around their home can render those areas private, rather than semiprivate, "and there be free from unreasonable governmental intrusion." *Collins*, 138 S. Ct. at 1670 (internal quotation marks omitted). A homeowner who cannot must accept the possibility that he will "find a stranger"—including a law enforcement officer—"snooping about his front porch" or other access points. *Jardines*, 569 U.S. at 9 n.3. But even "the most frail cottage in the kingdom is absolutely entitled to the same guarantees of privacy as the most majestic mansion." *United States* v. *Ross*, 456 U.S. 798, 822 (1982).

On top of this, the Vermont Supreme Court's rule—though categorical—will prove unadministrable. The rule that the curtilage receives the same protection as the home itself is longstanding, and so officers have learned what is and is not within the curtilage.

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[4] What is more, if this Court leaves the decision in place, it can be invoked in Vermont or elsewhere in support of a qualified-immunity defense to liability for plainly unconstitutional knock-and-talks.

See Collins, 138 S. Ct. at 1674–1675. They have no familiarity with the new distinction the Vermont Supreme Court drew here, between private curtilage that is treated the same as the home and "semiprivate" curtilage that is not. Under a rule tethered to an attempt to contact a resident, an officer must simply stick to the path that leads to the front door, a task "generally managed without incident by the Nation's Girl Scouts and trick-or-treaters." *Jardines*, 569 U.S. at 8. Under the Vermont Supreme Court's rule, officers must assess what areas constitute the "normal access route[]" someone visiting the property could possibly take and then stay within those areas to conduct their investigation. Pet. App. 10a.[5] "[C]reating a carveout to the general rule that curtilage receives Fourth Amendment protection * * * seems far more likely to create confusion than does uniform application of the Court's doctrine." *Collins*, 138 S. Ct. at 1675.

The Vermont Supreme Court's rule offers no benefits to offset these costs. There is simply no need for a categorical exception from the Fourth Amendment's warrant requirement for so-called "semiprivate" portions of the curtilage. Officers can secure

[5] The use of the term "semiprivate" suggests, for example, that an officer entering the curtilage will have to consider whether the homeowner has taken steps to restrict access paths from visitors' use, reserving them for members of the household. *See United States* v. *Carloss*, 818 F.3d 988, 1014 (10th Cir. 2016) (Gorsuch, J., dissenting) ("That much may invite a new chapter of cases forced to make fine judgments about the placement and content of signs.").

electronic warrants quickly; indeed, the wardens did just that in this case. *See Riley*, 573 U.S. at 401 (explaining that electronic warrants can issue in as little as fifteen minutes); *see supra* p. 6. And in the event that even fifteen minutes is too long, other exceptions to the warrant requirement can step in. *See, e.g.*, *Riley*, 573 U.S. at 391 (rejecting a categorical exception to the warrant requirement for cell-phone searches because the exigency doctrine is a "targeted way[]" to address any concerns).

III. This Case Warrants This Court's Review.

This case presents an ideal vehicle to resolve the conflict among courts over the scope of the implied knock-and-talk license.

The Vermont Supreme Court's holding could not be clearer. It adopted a "bright-line rule." Pet. App. 14a (Reiber, C.J., dissenting). Under that rule, "[p]ortions of the curtilage like driveways or walkways, which are normal access routes for anyone visiting the premises, are considered semiprivate places" and "observations made from such vantage points are not covered by the Fourth Amendment." *Id.* at 10a–11a (internal quotation marks omitted).

This case presents none of the complications that often prevent review in cases involving the scope of the implied knock-and-talk license. The case arises under the Fourth Amendment, not Vermont's state constitutional equivalent. Bovat did not post "No Trespassing" signs or otherwise attempt to revoke the implied license. Mrs. Bovat did not consent to a search of the garage. The officers entered Bovat's property during the daytime. The State has never claimed that exigency justified the warrantless entry

onto the property. And this case arises from a motion to suppress, so there is no need to inquire whether the law was clearly established.

Rejecting the Vermont Supreme Court's bright-line rule "exempt[ing]" any access paths "from protection against governmental intrusion" is outcome determinative here. *Id.* at 26a (Reiber, C.J., dissenting). The trial court's "findings do not establish" that the officers' intrusion into the curtilage was limited to an attempt to contact Bovat or another resident. *See id.* at 25a–26a (noting that the trial court did not find that the game "wardens came to the point of observation and made the observation in the same manner as a reasonably respectful member of the public" (internal quotation marks omitted)). Indeed, those findings "are silent on how the wardens came to be looking in the garage-door window or whether that spot was part of the public's access route to the house." *Id.* at 26a.

Instead, the record indicates that the wardens entered the curtilage to conduct a search, and did just that. The wardens knew Bovat was not home. *Id.* at 65a. One testified that they went to Bovat's home to search for the black truck. *Id.* (Question: "So knowing that he was gone, you still showed up at the residence * * * intending to do a search?" Answer: "Yeah, because we were interested in the * * * black truck. Yes."). Photographs show that to see the truck, the wardens would have had to veer left, "away" from the path to the house, "walk directly to the garage-door window," "stand right in front of" the small window, and peer in. *Id.* at 26a–27a (Reiber, C.J., dissenting); *see id.* at 53a. And Bovat's wife

testified that the wardens remained on the driveway and walked around the garage for about fifteen minutes before approaching the house. *Id.* at 27a (Reiber, C.J., dissenting).

Given this record, Bovat's motion to suppress would have been granted under either the majority or minority rule. Under the majority's approach, the wardens exceeded the scope of the implied license when they proceeded *away from* the principal entrance to Bovat's home. *See, e.g.*, *Socci*, 98 A.3d at 479 (holding that the officer did not have license "to circle [the homeowner's] garage to gather evidence"). And under the minority approach, the game wardens exceeded the scope of the implied license because they "bypass[ed] the front door" without "reason to believe" they would find anyone in the garage. *Covey*, 777 F.3d at 193.

IV. A Summary Reversal Of The Vermont Supreme Court Is Warranted.

This Court may also wish to consider exercising its supervisory authority to summarily reverse the Vermont Supreme Court. It has previously used this authority to bring state-court Fourth Amendment rulings back in line with its precedents. *See, e.g.*, *Grady* v. *North Carolina*, 575 U.S. 306, 310–311 (2015) (per curiam) (failure to consider whether the warrantless search was reasonable); *Maryland* v. *Dyson*, 527 U.S. 465, 467 (1999) (per curiam) (misapplication of the automobile exception); *Pennsylvania* v. *Labron*, 518 U.S. 938, 940–941 (1996) (per curiam) (same). This same result would be appropriate here.

Jardines expressly declined to hold that because a visitor may use a path to approach a front door, he

(or an officer) may enter and remain on that path for any reason. The dissent urged that rule. *See Jardines*, 569 U.S. at 19–22 (Alito, J., dissenting) (stating that a visitor who "stick[s] to the path that is typically used to approach a front door," does not enter the property at night, and does not stay too long is within the implied license). The majority rejected it. A rule that "would let the police do whatever they want by way of gathering evidence so long as they stay on the base-path * * * is not the law." *Id.* at 9 n.3.

And yet, that is now the rule in Vermont. The Vermont Supreme Court held that so long as officers "restrict their movement" to those "[p]ortions of the curtilage like driveways or walkways, which are normal access routes for anyone visiting the premises," then their observations from those areas "are not covered by the Fourth Amendment." Pet. App. 10a–11a (internal quotation marks omitted). This bright-line rule permits exactly what *Jardines* prohibits: It allows officers "to enter the protected premises of the home in order to do nothing but conduct a search." *Jardines*, 569 U.S. at 9 n.4; *see also Carloss*, 818 F.3d at 1004 (Gorsuch, J., dissenting) ("An officer approaching your home to return your lost dog or to solicit for charity may not be conducting a 'search' within the meaning of the Fourth Amendment. But one calling to investigate a crime surely is."). A rule under which officers may "freely wander and observe while on a person's driveway, without reference to the particular circumstances of the search" is simply

foreign to this Court's precedents. Pet. App. 14a (Reiber, C.J., dissenting).[6]

Indeed, the Vermont Supreme Court's rule goes further than the rule sought by the *Jardines* dissent. The court below defined "semiprivate" areas that officers have license to roam as the "normal access routes for anyone visiting the premises," including a "driveway, steps and a walkway." Pet. App. 10a (quoting *Libbey*, 577 A.2d at 280).[7] That is, it allowed an officer to roam *any part* of the curtilage

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[6] This conflict also exists under the approach offered by the *Jardines* concurrence. *See Jardines*, 569 U.S. at 15–16 (Kagan, J., concurring) (deeming that case "easy * * * twice over" because the use of a drug-sniffing dog also violated the homeowner's reasonable expectation of privacy (internal quotation marks omitted)). The wardens violated Bovat's reasonable expectation of privacy that strangers would not enter his property in order to view the contents of his garage. *See* Pet. App. 29a (Reiber, C.J., dissenting) ("[A]lthough defendant's driveway was publicly exposed, * * * he could reasonably expect that the public would not wander around his driveway, in the opposite direction from his house, position themselves close to his garage-door window, and peer in.").

[7] The Vermont Supreme Court's use of the term "semiprivate" suggests that it viewed these areas as less deserving of Fourth Amendment protection than the rest of the curtilage, or perhaps even access areas shielded from the public's view. *See* Pet. App. 20a-21a (C.J. Reiber, dissenting) (responding to this suggestion). *Collins* forecloses that reasoning. *See Collins*, 138 S. Ct. at 1675 ("The ability to observe inside curtilage from a lawful vantage point is not the same as the right to enter curtilage without a warrant * * * ."); *see also State* v. *Hernandez*, 417 P.3d 207, 210 (Ariz. 2018) (disagreeing "that an entire driveway is *always* semi-private and * * * never warrants an expectation of privacy equivalent to the home").

that a visitor *might possibly use* to reach a home. But not every part of a driveway or walkway will be on the officer's way to the front door. *See, e.g.*, *Collins*, 138 S. Ct. at 1671 (noting that a visitor to the house "would have to walk partway up the driveway, but would turn off before entering the enclosure" and that the officer searched a motorcycle "parked inside this partially enclosed top portion of the driveway"); *see also supra* p. 5 (explaining that Bovat's driveway continues past the turnoff for the path to the front door). At bottom, the Vermont Supreme Court treated some areas within the curtilage as deserving of less protection than the rest, and as open to law enforcement investigation. That was incorrect. *See Collins*, 138 S. Ct. at 1675 ("So long as it is curtilage, a parking patio or carport * * * is no less entitled to protection from trespass and a warrantless search than a fully enclosed garage.").

But the conflict with this Court's precedents does not end there. The decision below creates a bright-line rule even though *Jardines* held that "[t]he scope of a license * * * is limited" by several factors. 569 U.S. at 9. Whether an officer exceeds the scope of the license turns on how long an officer intrudes, where he intrudes, and why he intrudes. *See supra* pp. 11–12.

The Vermont Supreme Court did not try to distinguish *Jardines*. That is because there is nothing it could have said to reconcile its rule with this Court's holding. "There is no customary invitation to do" what officers may now do in Vermont. *Jardines*, 569 U.S. at 9.

Adhering to *Jardines* "keeps easy cases easy." *Id.* at 11. This case should have been one of them.

CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative, the Court should grant the petition and summarily reverse the decision of the Vermont Supreme Court.

Respectfully submitted,

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