No. 19-1301

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

BRIEF FOR AMICI CURIAE THE RUTHERFORD INSTITUTE AND RESTORE THE FOURTH, INC., IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE[1]

The Rutherford Institute is a nonprofit civil liberties organization headquartered in Charlottesville, Virginia. Founded in 1982 by its President, John W. Whitehead, the Institute's mission is to provide legal representation without charge to individuals whose civil liberties have been violated and to educate the public about constitutional and human rights issues. The Rutherford Institute works tirelessly to resist tyranny and threats to freedom, ensuring that the government abides by the rule of law and is held accountable when it infringes on the rights guaranteed to persons by Constitution and laws of the United States.

Restore the Fourth is a nonprofit civil liberties organization dedicated to the robust enforcement of the Fourth Amendment. Restore the Fourth believes that everyone is entitled to privacy in their persons, homes, papers, and effects and that modern changes to technology, governance, and law should foster—not hinder—the protection of this right. Restore the Fourth advances these principles by overseeing a network of local chapters whose members include lawyers, academics, advocates, and ordinary citizens. Each chapter devises a variety of grassroots activities designed to bolster political recognition of Fourth Amendment rights. On the national level, Restore the Fourth files

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[1] No counsel for a party authored this brief in whole or in part, and no entity or person, other than amici curiae, their members, and their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Counsel of record for the parties received notice of amici's intent to file this brief at least 10 days prior to its due date. The parties have consented to the filing of this brief.

amicus briefs in significant Fourth Amendment cases, including *Collins* v. *Virginia*, 138 S. Ct. 1663 (2018).

Amici are interested in—and concerned about—the decision below because they are committed to fighting the expansion of police authority in the United States, and interpretations of the Fourth Amendment that will permit such expansion. This case presents just such an expansive interpretation of the "knock-and-talk" doctrine. Law enforcement officers entered Clyde Bovat's property for the purpose of investigating a crime. They did not approach his front door; instead, they crossed his driveway to his covered garage and peered inside. The Vermont Supreme Court concluded that the officers were not required to obtain a warrant because a driveway is only a "semiprivate" area to which the full protections of the Fourth Amendment do not apply. Amici urge this Court to grant certiorari and reverse. The knock-and-talk doctrine should not be understood as a limitless grant of authority to law enforcement to roam around a person's property seeking evidence of a crime. Such a reading of this Court's precedents would dramatically diminish the Fourth Amendment protections afforded the home and its surroundings. Amici are committed to fighting doctrinal developments that permit encroachment of exactly this sort.

INTRODUCTION AND SUMMARY OF ARGUMENT

Law enforcement officers entered Clyde Bovat's property without a warrant and without his permission for the purpose of conducting a criminal investigation. They did not approach Bovat's house to seek his consent; rather, they walked directly to his covered garage and peered inside to look for evidence. The Vermont Supreme Court held that the officers were not required to obtain a warrant for such a search, explaining that

the officers were entitled to traverse Bovat's walkways and driveways looking for evidence because those areas are only "semiprivate" ones to which the Fourth Amendment's full protections do not attach.

That decision is incorrect. For one, it flatly contravenes this Court's opinion in *Florida* v. *Jardines*, 569 U.S. 1 (2013), which holds that the so-called knock-and-talk doctrine entitles a police officer only to "approach a home and knock" in exactly the manner a "private citizen might do," *id.* at 8. Under *Jardines*, officers may not "do whatever they want by way of gathering evidence … so long as they 'stick to the path that is typically used to approach a front door,'" or "peer into the house through binoculars" from the walkway. *Id.* at 9 n.3. But that is the holding of the decision below, which expressly permits officers to "conduct an investigation" in the area around the home as long as they "restrict their movement[s] to semiprivate areas." Pet. App. 10a-11a. The decision below cannot be reconciled with *Jardines*, nor with the common-law trespass principles on which *Jardines* rests.

The Vermont Supreme Court's decision should be reversed. It substantially expands the scope of police authority to trespass upon the area surrounding the home—an area at the core of the Fourth Amendment. It encourages police officers to enter private property without a warrant and without consent under the auspices of the knock-and-talk doctrine—even in cases like this one, in which there is neither knock nor talk. And it validates the increasingly common police tactic of relying on the knock-and-talk doctrine to justify aggressive and intrusive tactics at one's front door—tactics that too often end in violence. As Justice Jackson observed over half a century ago, "[u]ncontrolled search and seizure is one of the first and most effective weap-

ons in the arsenal of every arbitrary government." *Brinegar* v. *United States*, 338 U.S. 160, 180 (1949) (Jackson, J., dissenting). The decision below licenses such arbitrary conduct on the part of police officers.

The Court should grant certiorari in this case and either set the case for argument or summarily reverse the decision below.

ARGUMENT

I. THE DECISION BELOW IS INCORRECT

The Vermont Supreme Court held that police officers may enter the area around a person's home without a warrant for the purpose of conducting an investigation as long as they remain on "driveways or walkways." Pet. App. 10a. That holding is flatly inconsistent with this Court's decision in *Florida* v. *Jardines*, 569 U.S. 1 (2013), and with the foundational trespass principles on which *Jardines* rests. Because the decision contravenes settled law, the Court should grant certiorari and reverse.

A. *Jardines* Holds That Officers May Approach A Home Only As Private Citizens Would And May Not Search For Evidence

The question presented in *Jardines* was whether a police officer can approach a person's home with a drug-sniffing dog in order to investigate a crime. 569 U.S. at 3. Police officers had been sent to investigate a tip that marijuana was being grown in the respondent's house. *Id.* They arrived at the home with a drug-sniffing dog "trained to detect the scent of marijuana"; as the dog approached the homeowner's porch, he sensed the presence of "one of the odors he had been trained to detect," and alerted. *Id.* at 4. The officers left the scene,

obtained a search warrant, and, upon executing it, found marijuana plants in the house. *Id.* Jardines moved to suppress on the ground that "the canine investigation was an unreasonable search," and the state court agreed. *Id.* at 4-5. This Court granted certiorari and affirmed, holding that the officers had violated the Fourth Amendment by "gathering information … in the curtilage of [Jardines'] house" without permission and without a warrant. *Id.* at 5-6.

The Court began by observing that, "when it comes to the Fourth Amendment, the home is first among equals." 569 U.S. at 6. "At the Amendment's 'very core' stands 'the right of a man to retreat into his own home and there by free from unreasonable governmental intrusion.'" *Id.* (quoting *Silverman* v. *United States*, 365 U.S. 505, 511 (1961)). And because "[t]his right would be of little practical value if the State's agents could stand in a home's porch or side garden and trawl for evidence with impunity," the Court explained, "the area 'immediately surrounding and associated with the home'"—known as the curtilage—has traditionally been understood "as 'part of the home itself for Fourth Amendment purposes.'" *Id.* (quoting *Oliver* v. *United States*, 466 U.S. 170, 180 (1984)). Because the officers in *Jardines* had approached the respondent's home and stepped on his porch, the Court observed, there was "no doubt" that they had entered the curtilage, *id.* at 7, and thus an area protected by the Fourth Amendment.

The question on which *Jardines* turned was whether the police officers' entry could nonetheless be viewed as reasonable under the so-called "knock-and-talk" doctrine. *See* 569 U.S. at 7. And the Court explained that that question itself turned on "whether [Jardines] had given his leave (even implicitly) for [the officers] to do so," *id.* at 8—that is, whether Jardines had licensed the

officers' intrusion onto his property. "'A license may be implied from the habits of the country,'" the Court observed, and, as a general rule, a home's occupant should be viewed as having issued an "implicit license" to visitors of all kinds. *Id.* (quoting *McKee* v. *Gratz*, 260 U.S. 127, 136 (1922)). But that license is not unlimited: It "typically permits the visitor to approach the home by the front door, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave." *Id.* Thus, the Court explained, "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.'" *Id.* (quoting *Kentucky* v. *King*, 563 U.S. 452, 469 (2011)).

The police conduct at issue in *Jardines*, the Court held, plainly exceeded the scope of any implied license. 569 U.S. at 9. "There is no customary invitation," the Court explained, to "introduc[e] a trained police dog to explore the area around the home in hopes of discovering incriminating evidence." *Id.* And in response to an argument made by the dissenting Justices, the Court emphasized that its holding did not turn on the "instrument" employed (namely, a police dog), *id.* at 9 n.3: "We think a typical person would find it 'a cause for great alarm' … to find a stranger snooping about his front porch *with or without* a dog." *Id.* "The dissent," the Court explained, "would let the police do whatever they want by way of gathering evidence so long as they … 'stick to the path that is typically used to approach a front door, such as a paved walkway.'" *Id.* (quoting *id.* at 19 (Alito, J., dissenting)). "From that vantage point they can presumably peer into the house through binoculars with impunity." *Id.*; *accord id.* at 12 (Kagan, J., concurring). But such a rule, the Court emphasized, was "not the law." *Id.* at 9 n.3 (majority op.).

Jardines thus establishes that the knock-and-talk doctrine entitles a police officer at most to "approach a home and knock" in exactly the manner a "private citizen might do," 569 U.S. at 8; it does not entitle such an officer to enter the curtilage for the purpose of conducting an investigation.

B. The Decision Below Contravenes *Jardines* By Permitting Police To Search For Evidence In Protected Areas Around The Home

The decision below flatly contravenes *Jardines*. As the petition explains, Pet. 4-6, the game wardens in this case did exactly what *Jardines* prohibits. The wardens went to Bovat's home to investigate the unlawful killing of a deer because they believed that he owned a truck like the one reportedly used in the deer jacking. Pet. App. 4a-5a. Rather than approaching Bovat's home and knocking on the door, however, the wardens "proceeded up his driveway" to his garage, *id.*, going straight "up to the window of one of the garage bays so [they] could look in," *id.* at 60a. The wardens observed a truck in the garage that appeared to be smattered with animal hair and obtained a search warrant based on that observation. *Id.* at 5a. The wardens, in other words, entered the area around Bovat's home and unabashedly "explor[ed] [it] in hopes of discovering incriminating evidence," *Jardines*, 569 U.S. at 9—just what *Jardines* holds requires a warrant.

The Vermont Supreme Court, however, held that no warrant was required to justify the wardens' incursion because they remained on Bovat's driveway—a "semiprivate area." Pet. App. 10a-11a. In the court's view, "police officers are entitled to enter residential property, including portions that would be considered part of the curtilage, to carry out legitimate police

business" (i.e., investigations). *Id.* at 10a. In particular, the court explained, "[p]ortions of the curtilage like driveways or walkways … are considered semiprivate areas," and "[w]hen state officials restrict their movement to [such] areas to conduct an investigation," the Fourth Amendment is not implicated. *Id.* at 10a-11a. In this case, the court reasoned, "while the garage itself is a private area that the police would not have been justified to enter without a warrant," the fact that "the wardens restricted their movements to [Petitioner]'s driveway, a semiprivate area," rendered their conduct non-invasive and exempted them from the warrant requirement. *Id.* at 11a.

That holding cannot be squared with *Jardines*. *Jardines* holds that police officers may approach a person's home without a warrant under the knock-and-talk doctrine only in the same manner as would "any private citizen": Generally, they may "approach the home by the front path, knock promptly, wait briefly to be received, and then … leave." 569 U.S. at 8. The officers may *not* "do whatever they want by way of gathering evidence … so long as they 'stick to the path that is typically used to approach a front door,'" or "peer into the house through binoculars" from the walkway. *Id.* at 9 n.3. But that is exactly what the decision below permits: As long as the officers "restrict their movement to semiprivate areas," such as a walkway or (as here) a driveway, they may "conduct an investigation" without being limited by the Fourth Amendment. Pet. App. 10a-11a. That rule "is not the law," *Jardines*, 569 U.S. at 9 n.3; indeed, it has been expressly rejected by this Court. The court below erred in embracing it.

C. The Decision Below Contravenes Common-Law Trespass Doctrine

The decision below also contravenes the longstanding common-law principles on which *Jardines* rested. As the Court has explained, until the latter half of the twentieth century, "Fourth Amendment jurisprudence was tied to common-law trespass"; a law enforcement officer who physically intruded upon on an area enumerated by the Fourth Amendment would have conducted a search for which a warrant was required. *See United States* v. *Jones*, 565 U.S. 400, 405-406 (2012). *Jardines* rested on such an understanding of the Fourth Amendment: The "general rule" regarding trespass, the Court explained, was stated two centuries ago, in *Entick* v. *Carrington*: "[N]o man can set his foot upon his neighbour's close without his leave." 95 Eng. Rep. 807, 817 (K.B. 1765); *Jardines*, 569 U.S. at 8-9. The rule adopted by the court below is inconsistent with these common-law doctrines as well.

The Vermont Supreme Court's decision necessarily rests on its view that—in *Jardines*' terms—law enforcement officers have an implied license to enter the home and curtilage of a suspect for the purpose of conducting an investigation. But such a rule is "difficult to reconcile with the Constitution of the founders' design." *United States* v. *Carloss*, 818 F.3d 988, 1006 (10th Cir. 2016) (Gorsuch, J., dissenting). At the time of the Founding, "the common law permitted government agents to enter a home or its curtilage only with the owner's permission or to execute legal process," *id.*; agents who entered a person's home or the area around it to conduct an investigation would have been viewed as trespassers, and such an intrusion would have been deemed unlawful.

The common-law authorities traditionally relied on by this Court make that clear. Blackstone, for instance, identifies a handful of specific circumstances in which "entry on another's land or house [would] not … be accounted trespass," 3 Blackstone, *Commentaries* *212; *see also id.* at *212-214, but names no "permanent easement belonging to the state" that would permit an agent to conduct an investigation on private property—and in and around the home in particular. *Carloss*, 818 F.3d at 1006 (Gorsuch, J., dissenting). The absence of such authority is powerful evidence that none existed. *Id.*; *see also* Davies, *Recovering the Original Fourth Amendment*, 98 Mich. L. Rev. 547, 646 n.273 (1999) ("[A]s a general matter," in common-law sources, "the absence of an affirmative statement of authority was understood to mean there was no authority."); *Entick*, 95 Eng. Rep. at 817 ("[I]f this [was] law it would be found in our books … .").

The same is true of common-law trespass authority in the United States—and even in Vermont itself. In *Moore* v. *Duke*, 80 A. 194 (Vt. 1911), for instance, a law enforcement officer—the constable of the town of Plainfield—approached the plaintiff's house to search for certain records. *Id.* at 194-195. Although the constable had obtained a writ of replevin, which he thought sufficient to conduct the search, the state court held that the writ was invalid, making the constable "a trespasser from the beginning" unless he could mount another defense to trespass. *Id.* at 196. And the court rejected any argument that the constable could claim a license to enter the plaintiff's walkway of the sort contemplated in *Jardines*: The "breaking of the close"—that is, the "trespass to the lot on which [the plaintiff's home] stood"—"was complete when the officer stepped across the imaginary line which divided the lot from the

street." *Id.* The fact that the constable was a law enforcement officer conducting an investigation had no bearing on the case's outcome.

It has thus long been true that "state officials no less than private visitors could be liable for trespass when entering without [a] homeowner's consent," *Carloss*, 818 F.3d at 1006 (Gorsuch, J., dissenting), even when conducting an investigation. The decision below cannot be squared with these precedents.

II. THE DECISION BELOW DRAMATICALLY EXPANDS THE SCOPE OF POLICE AUTHORITY, BOTH ACTUAL AND AS ASSERTED

The Vermont Supreme Court's error warrants this Court's intervention. The decision below affords police unfettered discretion to invade private property for the purposes of conducting an investigation, as long as they remain within so-called "semiprivate" areas. That holding dramatically expands the actual scope of police authority, at least in jurisdictions that adopt the Vermont Supreme Court's rule. And it is likely to exacerbate a trend under which police *claim* substantial authority to enter private property pursuant to the knock-and-talk doctrine. As Justice Jackson explained over half a century ago, when the courts permit "any privilege of search and seizure without warrant," officers "will push [it] to the limit." *Brinegar* v. *United States*, 338 U.S. 160, 182 (1949) (Jackson, J., dissenting). Law enforcement reliance on the "knock-and-talk" exemplifies this observation: Spurred by the continuing uncertainty over exactly what the doctrine permits, police officers have expanded their use of the tactic considerably, and in circumstances that can and do result in violence.

The decision below dramatically and unjustifiably expands the scope of police authority. Under the rule adopted by the Vermont Supreme Court, a police officer may enter a person's property without a warrant, "freely wander" the person's walkway or driveway, and search for inculpatory evidence, all without ever approaching the home itself or seeking the homeowner's consent. *See* Pet. App. 14a (Reiber, C.J., dissenting). That expansion of police authority is inconsistent not only with *Jardines*, but with the basic notions of privacy that undergird the Fourth Amendment. As this Court recent observed in another context, if allowed to stand, the decision below would "unmoor the [doctrine] from its justifications, render hollow the core Fourth Amendment protection the Constitution extends to the house and its curtilage, and transform what was meant to be an exception into a tool with far broader application." *Collins* v. *Virginia*, 138 S. Ct. 1663, 1672-1673 (2018).

If permitted to stand, the decision below is likely to exacerbate a trend in which law enforcement officers approach homes to conduct a search or seizure without first obtaining a warrant—all under the auspices of the knock-and-talk doctrine. As the Court explained in *Jardines*, the knock-and-talk doctrine rests on the understanding that a homeowner should be viewed as having extended an "implicit license" to the public to "approach [his or her] home and knock." 569 U.S. at 8. Law enforcement, however, has expanded the scope of any such implied license beyond recognition—often with the after-the-fact approval of courts seemingly uncertain about the scope of the knock-and-talk doctrine. This Court's intervention is needed to clarify the metes and bounds of that doctrine and curtail the expansive scope it has been given in some quarters.

Some knock-and-talk cases look like this one—cases in which police officers enter one's curtilage for the express purpose of searching for evidence, not seeking consent or even approaching the home. For instance, in *United States* v. *Thomas*, 430 F.3d 274 (6th Cir. 2005), five police officers approached the defendant's property in order to search for anhydrous ammonia, a chemical used to manufacture methamphetamine, *id.* at 275-276. Rather than approaching the front door, they walked around the house to find the defendant's truck, which was parked in the back. *Id.* at 276. Peering into the truck, the officers spotted a silver canister. *Id.* Only at that point did they approach the door and knock; when the defendant emerged, the officers arrested him. *Id.* The Sixth Circuit sustained the officers' conduct. *Id.* at 278. That decision is consistent with—and the officers' conduct there expressly permitted by—the decision in this case. Although the Vermont Supreme Court here reasoned that this result is permissible because walkways and driveways are only "semiprivate," the effect of these cases is to essentially treat the main thoroughfare around the house as a public space in which officers may freely roam. In these cases, there need be neither knock nor talk; there need only be an investigation. No ordinary homeowner would license anyone to engage in such activity around his or her home.

Other cases are problematic for different reasons. In some cases, the conceded purpose of the knock-and-talk is to obtain "consent" to enter the home. As a wide range of scholarship demonstrates, most police searches are triggered by such consent: Ordinary people feel pressured to allow the police to search their homes and possessions, notwithstanding their right not to do so. *See, e.g.*, Simmons, *Not "Voluntary" but Still Reasonable*, 80 Ind. L. J. 773, 773-775 (2005) (observing that 90%

or more of warrantless searches are conducted through the consent exception); Strauss, *Reconstructing Consent*, 92 J. Crim. L. & Criminology 211, 211-212 (2002). Relying on the knock-and-talk exception, police officers regularly approach homes and other dwellings in order to obtain consent from residents to search the home. In *United States* v. *Crapser*, 472 F.3d 1141 (9th Cir. 2007), for instance, police officers believed that the defendant may have been involved in criminal activity, and so went to his motel room to "knock and talk [their] way into obtaining consent to search the room," *id.* at 1143. Four officers, three of whom were visibly armed, knocked on the door and demanded to speak with the defendant. *Id.* When the defendant and someone else emerged, the officers separated them and questioned them at length. *Id.* at 1144. The defendant ultimately consented to a search. *Id.*

"Knock-and-talks" like this bear little or no resemblance to the "typical[] … approach [to] the home" that the Court described in *Jardines*, one "generally managed without incident by the Nation's Girl Scouts and trick-or-treaters." 569 U.S. at 8. They frequently involve the show of force. In *United States* v. *Dickerson*, 975 F.2d 1245 (7th Cir. 1992), for instance, four police officers knocked on the defendant's door, all with "guns drawn" and one with "a shotgun in a forward position across his body," *id.* at 1247. After repeated knocks on the door, the defendant opened the door by one foot, at which point one officer "stuck his foot inside the open door." *Id.* The defendant ultimately "consented" to the search. *Id.* But such consent should not matter where the initial approach is not consistent with the terms of the "implied license" recognized by *Jardines*. It would stretch the knock-and-talk doctrine beyond the breaking point to extend it to cases like this.

Notwithstanding *Jardines*, however, courts continue to uphold the legality of such "knock-and-talks"—even when they have deadly consequences. In *Young* v. *Borders*, 850 F.3d 1274 (11th Cir. 2017) (per curiam), four armed officers pursued a speeding motorcycle to an apartment complex in the middle of the night, at which point they lost sight of him. *Id.* at 1289 (Martin, J., dissenting from the denial of rehearing en banc). The officers chose an apartment at random, "assumed 'tactical positions,'" with "guns all drawn and ready to shoot," and "pounded repeatedly on the door" of the apartment. *Id.* at 1290. The officers did not identify themselves. *Id.* When the apartment's occupant emerged with a handgun, the startled officers shot him and killed him. *Id.* at 1290-1291. Such conduct plainly exceeds the scope of any implied license extended by a homeowner: "[S]eeing people outside your door at 1:30 a.m., in the dark, holding loaded guns, would be a 'cause for great alarm' and would 'inspire most of us to[] call the police.'" *Id.* at 1296 (quoting *Jardines*, 569 U.S. at 9). And it is no surprise that many encounters that begin with a "knock-and-talk" of this kind end in shots fired. *See, e.g.*, Curtis, *Lawsuit Filed in Police 'Knock-and-Talk' Killing of Orlando Teen*, Orlando Sentinel (Jan. 16, 2015).

Absent this Court's intervention, police officers will continue to cite the knock-and-talk doctrine to justify increasingly aggressive assertions of authority to intrude on protected spaces. Law enforcement reliance on the knock-and-talk doctrine has been widely reported. "[T]he phrase 'knock and talk' in police jargon," one commentator observes, does not refer to the ordinary way it is described in *Jardines*, but as "a technique employed with calculation to the homes of people suspected of crimes." Bradley, "*Knock and Talk" and the*

Fourth Amendment, 84 Ind. L. J. 1099, 1104 (2009). Some agencies have specialized "knock-and-talk" units. The Dallas Police Department, for instance, at one point had a "46-member knock-and-talk task force," and the sheriff's office in Orange County, Florida, "ha[d] an entire division … dedicated to performing knock-and-talks," conducting "an estimated 300 knock-and-talks each month." Drake, *Knock and Talk No More*, 67 Me. L. Rev. 25, 35 (2014).

"Uncontrolled search and seizure is one of the first and most effective weapons in the arsenal of every arbitrary government." *Brinegar*, 338 U.S. at 180 (Jackson, J., dissenting). Decisions like the Vermont Supreme Court's license arbitrary government conduct of exactly this sort. By expanding the scope of the knock-and-talk doctrine in one kind of case—cases in which officers roam a suspect's walkways and driveways freely to search for evidence—the decision below tells police officers that they may continue to trespass in the area around the home, an area at the "very core" of the Fourth Amendment. *Silverman* v. *United States*, 365 U.S. 505, 511 (1961). If, as Justice Jackson warned in *Brinegar*, police officers will "push to the limit" any "privilege of search and seizure without warrant," and any such authority "may be exercised by the most unfit and ruthless officers as well as by the fit and responsible," 338 U.S. at 182 (Jackson, J., dissenting), the decision below will surely encourage continued gamesmanship over the scope of the knock-and-talk doctrine. The Court should grant certiorari in this case to clarify the narrow scope of that doctrine and repudiate the expansive reading adopted by the court below.

III. SUMMARY REVERSAL IS APPROPRIATE

For the reasons set out in the petition, amici agree that the Court's plenary review is warranted in this case. As Bovat explains, federal courts of appeals and state courts of last resort have divided over the scope of the knock-and-talk doctrine after *Jardines*, Pet. 12-19, and the issue is a significant one that warrants this Court's intervention, *id.* at 19-23. The Court would aid litigants and lower courts by granting certiorari and clarifying the metes and bounds of the knock-and-talk doctrine.

In amici's view, however, this case is also a suitable candidate for summary reversal. Summary reversal is appropriate to "correct[] a lower court's demonstrably erroneous application of federal law." *Maryland* v. *Dyson*, 527 U.S. 465, 467 n. (1999) (per curiam); *see also Salazar-Limon* v. *City of Houston*, 137 S. Ct. 1277, 1278 (2017) (Alito, J., concurring in the denial of certiorari) (summary reversal is appropriate when the court below "conspicuously failed to apply a governing legal rule"). The decision below rests on a demonstrably erroneous application of federal law—namely, *Jardines*. As discussed above, *Jardines* holds that a police officer may enter a person's curtilage only in the manner that "any private citizen might do," and may not "explore the area around the home in hopes of discovering incriminating evidence," 569 U.S. at 8-9, but the decision below expressly permits an officer to engage in just such a search. *See supra* pp. 4-7. The decision below thus "conspicuously failed" to apply *Jardines*, 137 S. Ct. at 1278 (Alito, J., concurring).

Accordingly, even if the Court declines to use this case to clarify the scope of what the knock-and-talk doctrine *does* permit, it should at least reverse the de-

cision below and in doing so reinforce what the doctrine *does not* permit—entry by law enforcement into one's curtilage without a warrant and without consent for the express purpose of conducting an investigation.

CONCLUSION

For the foregoing reasons, amici urge the Court to grant the petition for a writ of certiorari and either set the case for argument or summarily reverse.

Respectfully submitted.

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