No. 23-846

IN THE

Supreme Court of the United States

CITY OF SPARKS, NEVADA, et al.,
Petitioners,

v.

ROSA ESTER BRIZUELA, individually and as the Appointed Special Administrator of the Estate of Rolando Antonio Brizuela, et al.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

PETER GOLDSTEIN
Counsel of Record
PETER GOLDSTEIN LAW CORPORATION
10161 Park Run Drive
Suite 150
Las Vegas, NV 89145
(702) 474-6400
peter@petergoldsteinlaw.com

JEREMY FRIEDMAN
FRIEDMAN LAW, P.C.
138 Adams Street
Newton, MA 02458
(323) 920-5529

Attorneys for Respondents

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QUESTION PRESENTED

Whether a family home's front porch, which leads only to that family home's front door and patio—and not to any other residence—constitutes Fourth Amendment-protected curtilage, under existing precedent, including *Florida v. Jardines*, 569 U.S. 1, 7 (2013).

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INTRODUCTION

The petition omits key facts, misuses terminology, and misconstrues Fourth Amendment law, in an attempt to avoid controlling precedent. Petitioners seek review of an unpublished 3–0 decision that relied upon, and was mandated by, this Court's ruling in *Florida v. Jardines*, 569 U.S. 1 (2013). In *Jardines*, this Court stated that "[t]he front porch is the classic exemplar of an area adjacent to the home and to which the activity of home life extends"—i.e., Fourth Amendment-protected "curtilage." *Id.* 7. Citing *Jardines*, the district court and the court of appeals each concluded that two police officers violated Rolando Brizuela's clearly-established Fourth Amendment rights when the officers remained on the front porch of Mr. Brizuela's home—without a warrant and in the absence of any exception to the warrant requirement—after Mr. Brizuela demanded that they leave.

The petition is framed as asking whether "community-owned areas in front of a multifamily dwelling constitute[] curtilage." Pet. i. But that misleading formulation does not match the facts of this case, as the lower courts both found that "Brizuela's front porch … 'led only to … Brizuela's front door and patio, not to any other residence.'" App. 3 (citing App. 50). These facts—which the petition omits—were the basis for the court of appeals' straightforward application of this Court's *Jardines* decision. Additionally, the alleged community ownership boundaries are "inconsequential" (App. 50); land *ownership* is not needed to have privacy rights under Fourth Amendment law—which instead uses standards from

"our daily experience" (*Jardines*, 569 U.S. at 7) to evaluate a property's characteristics.

Jardines is squarely on-point; there is no split of authority. Citing primarily pre-*Jardines* cases, Petitioners implausibly allege a split of authority that supposedly includes *internal* splits *within five circuits*. In reality, there has never been a split of authority that bears on the facts of this case. As the district court carefully explained, Petitioners have cited cases that are factually distinguishable, as they involved areas whose physical layout evinced *shared usage* among different families' residences.

Both officers testified that they knew that the Brizuelas' front porch was curtilage. No judge requested a vote on rehearing. The petition seeks to manufacture confusion, where there is none.

Further review of the unpublished, non-precedential application of established precedent is unwarranted. The petition should be denied.

STATEMENT

A. Factual Background

On July 17, 2018, two City of Sparks police officers shot and killed Rolando Brizuela. They were standing on Mr. Brizuela's front porch, and Mr. Brizuela was standing in his adjacent enclosed patio. App. 3, 8, 52. The officers ignored Mr. Brizuela's repeated demands that they leave. *Id*. 16–27. And as Mr. Brizuela repeatedly stated before they shot him, they were required to have a warrant. *Id.*; *see also id.* 4, 58.

All portions of the incident (that are relevant to the petition) were captured on audio/video recordings from both officers' bodyworn camera ("BWC"); copies

of the BWC footage were filed with the lower courts. Court of Appeals Excerpts of Record, vol. 2, at 189, 336 (i.e., 2-E.R.-189, 2-E.R.-336).

The petition omits and mischaracterizes crucial portions of the factual record.

Herein, Respondents describe (1) the property's physical layout, (2) the incident, and (3) post-incident statements and developments.

1. Mr. Brizuela lived with his wife, Rosa, at 1753 London Circle in Sparks, Nevada. App. 23. Their home was located in Yorkshire Manor, a common-interest community with 160 individual homes in 40 fourplexes. *Id*. 12.

In the fourplexes, each of the four separate units had its own quadrant. 2-E.R.-276. The Brizuela residence was "Lot 14[, which] was the front-right unit facing London Circle." App. 12. (Lot 16 was in the front left; Lot 15 was in the back left; and Lot 13 was in the back right. 2-E.R.-276 (highlighting Lot 14).)

The residence unit had its own patio, which was enclosed by a pony-wall-style gate and wooden trellis. App. 49.

The walkway ended with two steps, which comprised the front porch. *Id*. 13–14. As shown in the image *infra*, the first step accessed the door to the enclosed patio; the second step accessed the home's front door.

Id. 13.

Each unit "has its own entrance, and each entrance has its own access point from the street." *Id.* 51. The petition never mentions these facts.

Each unit had its own separate front porch outside its entrance, i.e.: "Brizuela's front porch … 'led only to … Brizuela's front door and patio, not to any other residence.'" *Id.* 3 (quoting App. 50).[1] Even though this was the dispositive fact set forth in the court of appeals' ruling on the curtilage issue (*id.*), this fact was completely omitted in the petition.

Based on the foregoing factual findings (of the lower courts), it is highly misleading for the petition to repeatedly assert that the "concrete pad" (i.e.,

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[1] Likewise, the neighbor had a separate porch (at her unit in the next-door fourplex). *Id.* 23 ("[Shelly] Register was . . . sitting on her porch next door"); *see also id.* 25, 68.

porch)[2] was located in front of a "multi-family dwelling" (Pet. i, 1, 6, 8, 14, 18) – when, in reality, the front porch was located only in front of a single unit (i.e., the Brizuelas' unit). Indeed, elsewhere, the petition itself describes the "concrete pad" (i.e., porch) as being in front of the Brizuelas' unit—which matches the facts. Pet. 4 ("the concrete pad in front of his unit"); *id.* 5 ("the concrete pad in front of Mr. Brizuela's fourplex unit").[3]

Also, consistent with its basic layout, there was no evidence that anyone else had ever made personal use of the Brizuelas' front porch.[4]

2. On the evening of July 17, 2017, Sparks Police Department Officer Brian Sullivan dispatched to the Brizuelas' neighborhood after receiving reports that someone in the neighborhood had pushed a teenager off of a skateboard. *Id.* 14–15. Officer Sullivan initially encountered Mr. Brizuela as Mr. Brizuela was standing on the public sidewalk. Officer Sullivan

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[2] Both parties and the lower courts consistently referred to the two-step area as the unit's "porch"—e.g., "his porch" or "his front porch." *See* subsection 3, *infra*; *see also* note 8, *infra*. Before this Court, Petitioners now call it a "concrete pad."

[3] *See also* Pet. 3 ("the concrete pad leading up to the front door of the unit") (citing App. 12–13); *id.* 4 ("the concrete pad in front of the unit's door") (citing App. 24–25).

[4] The only evidence was that no other residents had ever made use of the Brizuelas' porch (or attempted to do so). Rosa Brizuela's declaration expressly stated that no other residents had ever made use of the Brizuelas' porch (or attempted to do so). S.E.R.-230. A similar declaration was procedurally stricken in an earlier filing, App. 49–50 n.6, 3-E.R.-617 (Dkt. 97); yet the declaration was re-submitted—and its contents were undisputed—as part of a subsequent filing. S.E.R.-230, 3-E.R.-618 (Dkt. 102).

asked some questions of Mr. Brizuela, who indicated where he lived. *Id.* 16–17. Officer Sullivan then left to speak to some other neighbors. *Id.* 17–20.

Officer Eli Maile later arrived on the scene, and the two officers created a plan to detain Mr. Brizuela. *Id.* 22. They headed to Mr. Brizuela's residence, where they saw him standing inside his enclosed patio area with the gate closed. *Id.* 13, 23. The officers did not have a warrant. *Id.* 4, 58.

When they approached the patio, Mr. Brizuela "immediately" told the officers that they were not permitted to enter without a warrant. *Id.* 23. When asked if he would voluntarily come out and speak with them, Mr. Brizuela declined and again emphasized that the officers could not be present "without a judge['s] order." *Id.*

Mr. Brizuela demanded that the officers "turn around and leave." *Id.* The officers "ignored" Mr. Brizuela's directives to leave. *Id.* 24.

Instead, Officer Sullivan moved closer to the home, stepping "onto the porch directly outside the patio gate." *Id.*

"[T]he Officers were on the porch for the majority of the encounter …." *Id.* 47; *see also id.* 58 ("the Officers … remained on the porch without a warrant").

Despite having been told to leave, Officer Maile continued to question Mr. Brizuela, while Officer Sullivan knocked on the metal screen of the Brizuelas' front door. *Id.* 25. Mr. Brizuela told Officer Sullivan, "Don't knock the door," but Officer Sullivan continued to do so. *Id.* Rosa Brizuela then opened the

front door of the house, keeping the metal screen closed. *Id.*

Officer Maile then said, "Hey, gun." *Id.* Officer Sullivan, standing on the step nearest to the front door, peered into the enclosed patio and saw that Mr. Brizuela possessed a gun. *Id.* 25–26. Subsequently, over the course of four seconds, the officers shot Mr. Brizuela eleven times, killing him. *Id.* 26, 29.[5]

Of the eleven shots that hit Mr. Brizuela, at least seven struck him in his posterior regions. *Id.* 29.

3. After the incident occurred late at night on July 17, 2018, the officers gave interview statements in the morning on July 18, 2018; and, in the subsequent litigation, they signed verified written discovery responses and gave deposition testimony. Court of Appeals Supp. Excerpts of Record at 4–124, 132–136 (i.e., S.E.R.-4–124, 132–136); 2-E.R.-193–268, 287–335.

In their testimony, both officers stated that they believed that the porch was part of the curtilage of the residence. *Id.* 14. They were unconcerned with being on the curtilage, because they believed that no warrant was needed: "Sullivan believed he had the legal authority to be on the porch, to break into the enclosed patio, and to break through the front door into the interior of the home." *Id.* 23. They were mistaken in believing no warrant was needed. *Id.* 3–

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[5] The petition alleges events in the final moments before the officers fatally shot Mr. Brizuela, Pet. 4; those events are highly controverted—and completely immaterial to the Fourth Amendment violation that commenced *earlier*, when the officers remained on the porch after Mr. Brizuela demanded that they leave.

4 (court of appeals ruling, unchallenged in petition, that there was no applicable warrant exception).

Both officers repeatedly described Brizuela's porch as "his front porch" or "his porch." For instance, Officer Sullivan testified, "I was on standing on his front porch." 2-E.R.-218 (p.95:16–17); *see also* S.E.R.-120:23–24; S.E.R.-119:21–23; S.E.R.-135:7 (#65). Also, Officer Maile used this language. S.E.R.-132 (first full ¶) ("his porch"); *see also* S.E.R.-79:19–20 (same).[6]

The issue of real property ownership boundaries was raised by Petitioners' lawyers *post hoc*, relying on real estate documents (2.-E.R.-276, 3-E.R.-400–410, 439–455) that were obtained in 2021—i.e., three years after the incident. 3-E.R.-406, 408, 410, 455 (records dated June 30, 2021); 2-E.R.-274 (declaration dated April 6, 2021).

Also, as mentioned above, there was no evidence that any other families had ever made personal use of the Brizuelas' front porch. *See* note 4, *supra*, & accompanying body text.

B. Procedural Background

Mrs. Brizuela, as the administrator of her husband's estate and in her individual capacity, filed suit along with her two children under 42 U.S.C. § 1983, alleging unreasonable search and seizure and excessive force in violation of the Fourth Amendment, loss of familial relationships under the

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[6] Likewise, Officer Sullivan described Shelly Register's porch—at her unit in the next-door fourplex—as "her front porch." S.E.R.-119:21-23. And Register, herself, referred to Brizuela's porch as "his front porch." 2-E.R.-272:12 (¶7).

Fourteenth Amendment, and interference with Second Amendment rights, as well as several municipal and state-law claims. App. 2. The district court issued a thorough ruling on the parties' cross-motions for summary judgment. *Id.* 8–116. The district court granted judgment for Mrs. Brizuela as to liability on the Fourth Amendment unreasonable search and seizure claim, *id.* 116, and granted judgment for the defendants on the Fourteenth Amendment substantive due process claim. *Id.* It permitted all other claims to proceed to trial. *Id.*

Relevant here, the court held that the Fourth Amendment protected the front porch because it was "part of the curtilage of the Brizuela residence." *Id.* 50. The district court noted that the question of ownership of the porch was irrelevant, explaining that regardless of whether the land was owned by the Brizuelas or by Yorkshire Manor, "the two steps adjacent to the Brizuela's front door and patio are clear analogues to the porch of a single family home" and therefore a "classic exemplar" of curtilage. *Id.* (quoting *Jardines*, 569 U.S. at 7). The court noted that the "porch is no more than a few feet from the home's entrance," that the officers were "able to (and did) peer over the fence into the enclosed patio" from the porch, that the porch "led only to the Brizuela's front door and patio" and "not to any other residence," and that "[s]tanding on the porch brought the Officers as close to the home as they could be without being inside the home itself." *Id.* In addition, the district court observed that, standing on the porch, "the Officers were able to block the patio gate, knock on the front door, converse with Mrs. Brizuela while she kept the metal screen on the front door

closed, and observe Mr. Brizuela's movements on the patio." *Id.*

Rejecting Petitioners' argument that the porch was not curtilage, the district court noted that the officers relied on inapposite "cases involving hotel hallways, apartment complex garages, and entrances to condominiums." *Id.* 51. Unlike in those cases, the court explained, there was no common use of the space where the officers confronted Mr. Brizuela. *Id.* 52. Rather, "[b]oth the porch and the walkway would be normally and regularly used only for visitors to the Brizuela Residence or by Yorkshire Manor maintaining the property, not by any other resident, other residents' guests, or members of the public." *Id.*

The defendants appealed. In an unpublished, non-precedential opinion, the Ninth Circuit affirmed the ruling on the Fourth Amendment search and seizure claim. The court of appeals "agree[d] with the district court that, under clearly established law, Brizuela's front porch, which, as the district court found, 'led only to … Brizuela's front door and patio, not to any other residence,' constituted protected curtilage." *Id.* 3 (quoting App. 50) (also citing *Jardines*, 569 U.S. at 7). And the court explained that, absent an applicable exception to the warrant requirement, "[d]etaining and questioning a suspect on the curtilage of their property without a warrant constitutes a presumptively unreasonable search and seizure under the Fourth Amendment." *Id.* 3. In reaching this conclusion, the court noted that this Court's precedent "clearly establishes that, when law enforcement encroaches on the curtilage of a suspect's home without a warrant, it violates the Fourth Amendment's prohibition against unreasonable searches." *Id.* 4 (citing *Jardines*, 569

U.S. at 7). Likewise, the court noted that this Court's precedent clearly establishes that "the Fourth Amendment has drawn a firm line at the entrance to the house." *Id.* 4 (quoting *Payton v. New York*, 445 U.S. 573, 590 (1980)). To detain and question Brizuela was therefore "presumptively unreasonable" unless an exception to the warrant requirement applied. None did, however, because, "[e]ven assuming the Officers had probable cause to arrest Brizuela, the record does not demonstrate that any exigent or emergency circumstances existed." *Id.*

The Ninth Circuit had varied dispositions on the remaining claims. As to the excessive force claim, the court held that factual disputes precluded it from exercising jurisdiction. *Id.* 2–3. As to two other claims—i.e., the Fourteenth Amendment claim for deprivation of familial relationships and the Second Amendment claim for interference with the right to bear arms—the Ninth Circuit reversed the district court's denial of summary judgment. *Id.* 4–6. Finally, the court held that it did not have interlocutory jurisdiction over the district court's determinations on the municipal liability claims. *Id.* 6.

Judge Siler, sitting by designation, concurred, writing separately to note that he "agree[d] with all aspects" of the opinion "except insofar as it concludes in the light most favorable to the defendant officers that there was evidence of a seizure." "Certainly," though, he agreed that there was "sufficient evidence to conclude that there was a search." *Id.* 7.

The question of what constitutes a Fourth Amendment "seizure"—i.e., the sole matter separately addressed by Judge Siler's opinion—is not at issue in the certiorari petition. The ruling was 3–

0 to affirm the district court's order, on the curtilage issue raised in the petition.

Petitioners' petition for rehearing was denied, with no judge requesting a vote. *Id.* 117.

REASONS FOR DENYING THE PETITION

There is no basis for review of the court of appeals' unanimous ruling that the Brizuelas' front porch—which led only to the Brizuelas' front door and patio, and not to any other residence—was curtilage under *Jardines*. The court of appeals' unpublished opinion is faithful to this Court's precedent, creates no new law, and does not implicate any split of authority. The petition should be denied.

I. The decision below correctly applies this Court's clear precedent.

A. The concept of curtilage is well-established by this Court's precedents. The Fourth Amendment provides that the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. Amdt. IV. At the "very core" of the Amendment's protections stands "the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Jardines*, 569 U.S. at 6 (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961)). This right would be of "little practical value" if a police officer "could stand in a home's porch or side garden and trawl for evidence with impunity," or likewise invade a person's privacy by "observ[ing] his repose from just outside the front window." *Id.* Therefore, the curtilage of a dwelling—the area "immediately surrounding and associated with the home"—is

considered "part of the home itself for Fourth Amendment purposes." *Id.* (quoting *Oliver v. United States*, 466 U.S. 170, 180 (1984)). The concept of curtilage encapsulates the recognition that the Fourth Amendment protects "families and personal privacy in an area intimately linked to the home, both physically and psychologically, where privacy expectations are most heightened." *Collins v. Virginia*, 584 U.S. 586, 592–93 (2018) (quoting *California v. Ciraolo*, 476 U.S. 207, 212–213 (1986)).

The concept of an "area around the home to which the activity of home life extends" is "easily understood from our daily experience." *Jardines*, 569 U.S. at 7 (quoting *Oliver*, 466 U.S. at 182 n.12).

A quarter century before *Jardines*, this Court addressed the determination of whether "the area near a barn, located approximately 50 yards from a fence surrounding a ranch house" was curtilage. *United States v. Dunn*, 480 U.S. 294, 296 (1987). In *Dunn,* this Court noted that "useful analytical tools" for identifying a home's curtilage include "the proximity of the area claimed to be curtilage to the home, whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by." *Id.* 301. *Dunn* also included a disclaimer: "We do not suggest that combining these factors produces a finely tuned formula that, when mechanically applied, yields a 'correct' answer to all extent-of-curtilage questions." *Id.*

In *Dunn*, there was an absence of close proximity: the barn area "was located 50 yards from the fence

surrounding the house and 60 yards from the house itself," i.e., a "substantial distance." *Id.* 302.

More than 25 years after *Dunn*, this Court's *Jardines* ruling specifically addressed the area in closest proximity to the home: i.e., the front porch. In unequivocal language, *Jardines* held, "[t]he front porch is the classic exemplar" of curtilage. 569 U.S. at 7; *see also Collins,* 584 U.S. at 587 ("the front porch" is curtilage) (citing *Jardines*, 569 U.S. at 6–7). *Jardines* also made clear that other areas in close proximity to a house are curtilage—e.g., a home's "side garden" or the area "just outside the front window." *Id.* 6; *see also Collins*, 584 U.S. at 593 (quoting *Jardines*, 569 U.S. at 6).

Five years after *Jardines*, this Court's *Collins* ruling quoted *Jardines* as guiding *Collins'* determination that the partially enclosed portion of a driveway abutting the house constituted curtilage. *Collins*, 584 U.S. at 593–94 (quoting *Jardines*, 569 U.S. at 6); *see also Collins*, 584 U.S. 586 (No. 16-1027) Jt. App. 16 (noting that the house to which the driveway abutted in *Collins* was a duplex).

B. The petition does not question this Court's precedents or any statements of law in the court of appeals' ruling in this case. Instead, the petition claims that the court of appeals misapplied the law by ruling that, based on *Jardines*, the front porch was curtilage in this case. Even if that were true (which it certainly is *not*), it would not be grounds for certiorari. S. Ct. R. 10 (a petition "is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law"). Regardless, there was no error here.

The lower courts' rulings correctly applied the law to the facts. As stated *supra*, "[t]he front porch is the classic exemplar" of curtilage. *Jardines*, 569 U.S. at 7. The Brizuelas' front porch was no exception. The porch was "intimately tied to the home itself," *Dunn*, 480 U.S. at 301, as the district court's extensive factual discussion concludes. App. 50 ("Considering the *Dunn* factors in their totality, along with the Supreme Court's clear directive in *Jardines*, the porch is clearly part of the Brizuelas' curtilage."). The Brizuelas' porch was "no more than a few feet from the home's entrance" (*id.*) and "led only to … Brizuela's front door and patio, not to any other residence." *Id.* 3 (court of appeals decision affirming the district court's curtilage determination on this basis) (quoting App. 50). Standing on the porch placed the officers "as close to the home as they could be without being inside"; it permitted them to "peer over the fence," as well as to "block the patio gate, knock on the front door, converse with Mrs. Brizuela while she kept the metal screen on the front door closed, and observe Mr. Brizuela's movements on the patio." *Id.* 50; *see also Jardines*, 569 U.S. at 6 (noting that the Fourth Amendment would be of "little practical value if the State's agents could stand in a home's porch … [and] observe his repose").

The petition never mentions *any* of the foregoing facts, because they are fatal to the petition. The petition's central premise—that the officers were standing at the entrance of a "multi-family dwelling" (Pet. i, 1, 6, 8, 14, 18; *see also id.* 10–12, 15–17)[7]—is

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[7] As noted *supra*, the petition elsewhere internally contradicts the false premise. *See* note 3, *supra*, & accompanying body text.

dispelled by the key fact set forth by the court of appeals: i.e., the porch led only to the Brizuelas' residence and not any other residence. App. 3 (citing App. 50). The petition seeks to evade the key facts, in an effort to avoid *Jardines*.

Also, in seeking to avoid *Jardines*, the petition goes astray in invoking out-of-context real property law terminology of land *ownership* boundaries—i.e., the description of the porch as being located on "community-owned" land. Pet. i, 3, 6, 8, 18. The court of appeals did not deem it necessary to address land ownership boundaries. And the district court declined to resolve the "inconsequential" question of land ownership because "whether the Brizuelas owned" the porch was "not dispositive of the issues before the Court." Appx. 50, 50 n.6. It is not this Court's function to engage in original fact-finding. S. Ct. R. 10.

Even assuming *arguendo* community ownership of the land, such ownership would have no bearing on the outcome here. Land ownership is not a prerequisite to a Fourth Amendment reasonable expectation of privacy. For example, it is well-established that "a tenant of a house, or the occupant of a room in a boarding house, [or] a guest in a hotel room is entitled to constitutional protection against unreasonable searches and seizures." *Stoner v. State of Cal.*, 376 U.S. 483, 490 (1964) (citing cases); *see also Georgia v. Randolph*, 547 U.S. 103, 112 (2006) (citing *Stoner, supra*, 376 U.S. 483, regarding hotel guests); *Lanza v. State of N.Y.*, 370 U.S. 139, 143 (1962) ("A hotel room, in the eyes of the Fourth Amendment, may become a person's 'house,' and so, of course, may an apartment.") (citation omitted). Likewise, "an overnight guest has a legitimate

expectation of privacy in his host's home." *Minnesota v. Olson*, 495 U.S. 91, 98 (1990).

The foregoing cases illustrate *Jardines'* statement that "property rights are not the sole measure of Fourth Amendment violations." 569 U.S. at 7 (citing *Soldal v. Cook County*, 506 U.S. 56, 64 (1992)); *see also Rakas v. Illinois*, 439 U.S. 128, 143 (1978) (Fourth Amendment law does not import terminology "developed in property and tort law"). Furthermore, a legitimate consideration of property rights only further dispels the petition's argument; under the law of the state in which the Brizuelas' home is located (Nevada), not only the property "owner," but also an "occupant," has the right to exclude unwanted visitors. Nev.Rev.Stat. (NRS) § 207.200, subdivs. (1)(b), (2)(e). Nevada law's recognition of an occupant's right of possession—irrespective of ownership—accords with this Court's Fourth Amendment case law, as cited *supra*.

Moreover, the officers did not purport to know—or even contemplate—the land ownership boundaries, in making their evaluation of the property under the standards of their "daily experience." *Jardines*, 569 U.S. at 7. In their statements, the officers never expressed any confusion about the curtilage. Both officers stated that they believed that the porch was part of the curtilage of the residence. App. 14. (The officers were unconcerned with being on the curtilage, because the lead officer mistakenly believed that no warrant was needed even to break through the front door into the house. *Id.* 23; *see also id.* 3–4 (court of appeals ruling, unchallenged in petition, that no warrant exception applied).) The petition's *non sequitur* argument, regarding land ownership boundaries, was raised by Petitioners'

lawyers, who relied on real estate documents that were obtained three years after the incident occurred (*see* Factual Background, § 3, *supra*); the *post hoc* argument bears no connection to the officers' evaluation of the property using standards of their "daily experience." *Jardines*, 569 U.S. at 7.

The law has been clearly established since at least as early as the time of the *Jardines* ruling that "[t]he front porch is the classic exemplar" of curtilage. 569 U.S. at 7. Although each case has different facts, in qualified immunity analysis a prior case stating applicable legal principles is sufficient to establish the law, as long as the case is not "materially distinguishable." *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 6 (2021). The law must simply be sufficient to "put [the officer] on notice" of the law. *Id.* Here, per the foregoing, *Jardines* is not materially distinguishable. Not only did *Jardines* provide notice of the law; but also, as noted *supra*, the officers have admitted that they knew that the front porch was curtilage. App. 14. Hence, the lower courts properly denied qualified immunity.

II. The decision below does not conflict with the decision of any court of appeals.

The decision below does not conflict with other decisions. In arguing to the contrary, Petitioners mistake differing outcomes based on different facts for a disagreement on a question of law. The layout of the front porch of Mr. Brizuela's home bears no resemblance to the hallways of apartment buildings and other common-use facilities at issue in the cases cited by Petitioners.

As Petitioners acknowledge, Pet. 6–7, this Court's case law provides the legal framework that lower

courts use to assess curtilage. The district court applied *Dunn*, *Jardines*, and *Collins* to find that Mr. Brizuela's house's front porch is curtilage, App. 47–53, and the Ninth Circuit affirmed based on *Jardines*, *id.* 3. The decisions that Petitioners cite, Pet. 6–16, take the same approach.

At the threshold, Petitioners' allegation of a split of authority is baseless, considering that the petition relies heavily on cases that were decided prior to *Jardines*—whose formulation, by this Court, was crystal clear. 569 U.S. at 7. A closer look only confirms that Petitioners' position is mistaken.

There has never been a split of authority on any issue that bears on the facts of this case. Dissimilar facts, not any disagreement on the law, explain the varying outcomes in Petitioners' cited cases—as Petitioners implicitly recognize by placing the First, Fifth, Sixth, Eighth and Ninth Circuits on *both* sides of the purported split. Pet. 8–16. Among other things, Petitioners argue that "the Ninth Circuit did not address or reconcile the clashing cases within its own Circuit," Pet. 17; yet that argument is dispelled not only by case law, but also by the fact that the Ninth Circuit ruled in an unpublished and non-precedential ruling that was 3–0 on the curtilage issue (App. 1–7), and not a single judge voted for rehearing. *Id.* 117. There are no splits of authority between or within the circuits (or state courts), on any issue that is implicated by the facts of this case.

In mistakenly alleging a split by misconstruing the cases that they cite, Petitioners conflate real property law terminology with Fourth Amendment law terminology. As stated in Section I.B, *supra*, land ownership is not required for Fourth Amendment

rights to apply. Yet Petitioners' use of terminology conflates the real property concept of *community ownership* (of land) with the much different Fourth Amendment law term "common area" which signifies other families' *shared usage* in their daily life experience.

Petitioners repeatedly attempt to invoke the line of Fourth Amendment cases involving a "common area" of which community members make shared usage. Pet. 1, 6, 8, 10, 14, 15–17. The petition cites cases where the property's physical layout evinces shared usage in community members' daily lives—e.g., hallways, walkways, and entranceways in apartment buildings and other similar areas. *See, e.g.*, *United States v. Brooks*, 645 F.3d 971 (8th Cir. 2011); *United States v. Acosta*, 965 F.2d 1248, 1257 (3d Cir. 1992); *State v. Williams*, 862 N.W.2d 831 (N.D. 2015); *State v. Milton*, 821 N.W.2d 789 (Minn. 2012); *State v. Dumstrey*, 873 N.W.2d 502, 516 (Wis. 2016).

The district court correctly explained that Petitioners' cited line of cases is readily distinguishable. App. 50–52. In the present case, the officers were not in an area that accessed the houses of different homeowners—rather, the officers were standing on the front steps of the Brizuelas' house. *Id.* 50, *quoted by* the court of appeals, App. 3. As the district court explained, in the other cases, the shared passageways "connect[ed] many residents and their guests to several units." *Id.* 52. In contrast, Mr. Brizuela's front porch "led "only to the Brizuela's front door and patio, not to any other residence," *id.* 50, and therefore would not normally or regularly be used "by any other resident, other residents' guests, or members of the public." *Id.* 52. "[E]ach door of the

fourplexes has its own entrance, and each entrance has its own access point from the street. *Id.* 51.[8] The petition never mentions any of these key facts, which defeat the petition's attempt to invoke the line of Fourth Amendment cases involving areas of shared community usage.

This Court should decline Petitioners' invitation to resolve a purported conflict that, in reality, does not exist.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

PETER GOLDSTEIN
Counsel of Record
PETER GOLDSTEIN LAW CORPORATION
10161 Park Run Drive

JEREMY FRIEDMAN
FRIEDMAN LAW, P.C.
138 Adams Street
Newton, MA 02458
(323) 920-5529

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[8] In lower court proceedings, under the standards of "our daily experience" (*Jardines*, 569 U.S. at 7), Mr. Brizuela's possession of the porch was further reflected by everyone's use of possessive language to describe the porch—e.g., "his front porch," "his porch," "Brizuela's front porch," or the "porch of" the residential unit. Pls.' App. Answ. Br. 30–31 (cataloguing quotes). Officer Sullivan, Officer Maile, and neighbor Shelly Register all used this language. *See* note 2, *supra*, & accompanying body text. Moreover, at times, Petitioners' *lawyers* used the language of "his front porch" (3-E.R.-489:22) and "his porch." Defs'. App. Br. 31. Also, tellingly, Petitioners' lawyers repeatedly referred to Register's porch (at her unit in the next-door fourplex) with possessive language. 3-E.R.-473:24–25, 3-E.R.-477:11, 3-E.R.-494:3, Defs'. App. Br. 6, 11, 43. Likewise, the court of appeals used possessive language (App. 3, 4), as did the district court. *Id.* 51, 53, 54, 58, 63, 66.

Suite 150
Las Vegas, NV 89145
(702) 474-6400
peter@petergoldsteinlaw.
com

Attorneys for Respondents

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