No. 24-1093

In the Supreme Court of the United States

ASHLEE MARIE MUMFORD,
PETITIONER,

v.

IOWA

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

BRIEF OF *AMICI CURIAE* THE RUTHERFORD INSTITUTE AND RESTORE THE FOURTH, INC. SUPPORTING PETITIONER

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INTERESTS OF *AMICI CURIAE*[1]

Amici curiae are The Rutherford Institute and Restore the Fourth, Inc.

The Rutherford Institute is a nonprofit civil liberties organization headquartered in Charlottesville, Virginia. Founded in 1982 by its President, John W. Whitehead, the Institute provides legal assistance at no charge to individuals whose constitutional rights have been threatened or violated and educates the public about constitutional and human rights issues affecting their freedoms. The Institute works tirelessly to resist tyranny and threats to freedom by seeking to ensure that the government abides by the rule of law and is held accountable when it infringes on the rights guaranteed by the Constitution and laws of the United States.[2]

Restore the Fourth is a non-partisan nonprofit dedicated to robust enforcement of the Fourth Amendment. Restore the Fourth oversees a series of local chapters whose membership includes lawyers, academics, advocates, and ordinary citizens. Restore the Fourth has also filed *amicus* briefs in many significant Fourth Amendment cases. *See, e.g.*, Br. of *Amicus Curiae* Restore the Fourth, Inc. in Supp. of Neither Party, *Barnes v. Felix*, 145 S. Ct. 1353 (2025) (No. 22-585); Br. of *Amicus Curiae* Restore the Fourth, Inc. in Supp. of Petitioner, *Torres v. Madrid*, 592 U.S 306 (2021) (No. 19-292).

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[1] No counsel for a party authored this brief in whole or in part. No person other than *amici curiae* or their counsel made a monetary contribution to its preparation or submission. The parties were given timely notice of *amici curiae*'s intent to file this brief.

[2] The views in this brief are those of the *amici curiae* only and not necessarily of any of the institutions with which they are or have been affiliated.

The Rutherford Institute and Restore the Fourth are interested in this case because they are committed to ensuring the continued vitality of the Fourth Amendment. Review of the Iowa Supreme Court's decision is needed to address the majority's validation of canine sniffs of interior vehicle cabins without probable cause or consent. This decision substantially erodes Fourth Amendment protections by failing to respect this Court's property-based approach to physical intrusions upon constitutionally protected areas, which does not allow any exception for supposedly minor or fleeting intrusions.

INTRODUCTION

"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. amend. IV (emphasis added). The Founders wrote these words to protect the undisturbed, "sacred" ground of a citizen's property. *United States v. Jones*, 565 U.S. 400, 405 (2012) (plurality op.) (quoting *Entick v. Carrington*, 95 Eng. Rep. 807, 817 (C.P. 1765)). But in this case, the government has done exactly what the Founders most feared: to obtain incriminating information, the government has trespassed upon a person's effects—specifically, petitioner's vehicle—without a warrant, without probable cause, and without the person's consent. This Court should grant *certiorari* and reverse the decision of the Iowa Supreme Court.

SUMMARY OF ARGUMENT

The facts are straightforward. Officer Logan Camp stopped a vehicle driven by petitioner, Ashlee Mumford. *See* Pet. App. 3a. Officer Camp requested assistance from Officer Christian Dekker, a certified K9 handler and a drug recognition expert. *Id.* Officer Dekker arrived with a certified drug detection dog. *Id.* The officers asked petitioner and her passenger to step out of the car. *Id.* at

4a. As the pair complied, the passenger left his window open. *Id.* at 19a. Neither officer smelled any drugs. *Id.* at 52a, 60a.

Officer Dekker conducted a "scan search" of the vehicle, walking the dog around the vehicle's exterior, placing the dog at the driver-side door, and commanding the dog to search "the entirety of the car." *Id.* at 55a-58a. By his own admission, Officer Dekker was "always in control of [the dog]" throughout the search and could control the dog's movements with a leash. *Id.* at 57a-59a.

After receiving Officer Dekker's command to search, the dog jumped and placed his paws on the driver-side door. *Id.* at 56a. Officer Dekker walked the dog from the driver-side door, around the vehicle's rear, and eventually stopped the dog at the passenger-side door. *Id.* at 4a, 60a. At *no* point during this exterior search did the dog alert. *Id.* at 19a-20a, 34a. But when stationed outside the passenger-side door, the dog put its paws on the door and stuck its nose *inside* the car. *Id.* at 54a-55a. Only after breaking the exterior plane of the passenger-side window did the dog alert to the presence of drugs. *Id.* at 19a-20a, 34a. In Officer Dekker's words, the dog did "what [it] was trained to do" when the dog stuck its nose into the car and sniffed the interior cabin. *Id.* at 62a. Based on the dog's subsequent alert, the officers searched the car and petitioner's person. *Id.* at 4a. The officers recovered methamphetamine, marijuana, and drug paraphernalia. *Id.*

The trial court denied petitioner's motion to suppress the evidence. *Id.* at 14a-15a. On appeal, the Iowa Supreme Court affirmed. *Id.* at 13a-29a.

That decision cannot stand. First, the Iowa Supreme Court incorrectly analyzed petitioner's Fourth Amendment rights. This Court has ruled that Fourth Amendment protections apply whenever the government physically intrudes upon a "constitutionally protected

area in order to obtain information." *Jones*, 565 U.S. at 407-09 (citations omitted). A vehicle's interior is protected by the Fourth Amendment. *See id.* at 404 ("It is beyond dispute that a vehicle is an 'effect' as that term is used in the [Fourth] Amendment."); *see also Carroll v. United States*, 267 U.S. 132, 149 (1925) (Fourth Amendment protects automobiles).

Second, the Iowa Supreme Court's sweepingly broad validation of the dog sniff here is unworkable. The court reasoned that because the dog's snout only "briefly, almost imperceptibly, crossed the plane of the passenger window," the "intrusion into the vehicle cabin" was "*de minimis*." Pet. App. 14a, 20a-22a. But this Court has rejected the diminishment of Fourth Amendment rights based on so-called *de minimis* police intrusions (and in the context of dog sniffs, no less). *See Rodriguez v. United States*, 575 U.S. 348, 356-57 (2015). As Justice Matthew McDermott warns below, the logic of *de minimis* intrusions offers no principles that would limit "further incursion on the rights of citizens in vehicles." *Id.* at 41a (McDermott, J., dissenting). If trespass through a dog's snout is *de minimis*, the same may be said of thermal-imaging cameras, x-ray technology, and other police instrumentalities.

The Court should thus grant *certiorari* and reverse the Iowa Supreme Court's decision.

ARGUMENT

I. THE IOWA SUPREME COURT MISAPPLIED ESTABLISHED FOURTH AMENDMENT LAW

The Iowa Supreme Court erred when it held that a drug dog's physical entry into a car's interior cabin was not a search under the Fourth Amendment.

This Court has adopted two approaches to determine if the government has conducted a Fourth Amendment search. First, a search occurs when the government

intrudes upon a space where a citizen has a reasonable expectation of privacy. *See Katz v. United States*, 389 U.S. 347, 351 (1967). In *Katz*, the defendant moved to suppress telephone conversations overheard by FBI agents, who had attached electronic listening and recording devices to the outside of a public telephone booth. *Id.* at 348. Although the agents did not "physical[ly] penetrat[e]" the telephone booth, *id.* at 352, this Court concluded that this "violated the privacy upon which [the defendant] justifiably relied while using the telephone booth and thus constitute a 'search and seizure' within the meaning of the Fourth Amendment." *Id.* at 353.

Second, a search occurs when the government physically enters a "constitutionally protected area in order to obtain information." *Jones*, 565 U.S. at 407 (citations omitted); *see id.* at 404 ("It is beyond dispute that a vehicle is an 'effect' as that term is used in the [Fourth] Amendment. We hold that the Government's installation of a GPS device on a target's vehicle, and its use of that device to monitor the vehicle's movements, constitutes a 'search.'") (citation omitted). This property-based approach addresses the Founders' concern to keep a citizen's property "sacred." *Id.* at 406-07 ("[F]or most of our history the Fourth Amendment was understood to embody a particular concern for government trespass upon the areas . . . [the Amendment] enumerates."); *Florida v. Jardines*, 569 U.S. 1, 5 (2013) (affirming the property-based approach as the "baseline" Fourth Amendment test).

This Court repeatedly has stressed that the property-based approach is best-suited for resolving Fourth Amendment cases where the government has committed a physical intrusion on a person's effects. *See Grady v. North Carolina*, 575 U.S. 306, 308-09 (2015) (explaining that because "the Government had 'physically occupied

private property for the purpose of obtaining information[,] . . . it was not necessary to inquire about the target's expectation of privacy"); *Jardines*, 569 U.S. at 11 (holding the "property-rights baseline" was the better approach when "officers learned what they learned only by physically intruding on [the defendant's] property to gather evidence"); *see also, e.g.*, *Taylor v. City of Saginaw*, 922 F.3d 328, 332 (6th Cir. 2019) (holding that *Jones* sets forth the applicable framework when the government commits a common law trespass).

The Iowa Supreme Court instead relied on *State v. Bauler*, 8 N.W.3d 892 (Iowa 2024), and *Illinois v. Caballes*, 543 U.S. 405 (2005), to conclude that the *Katz* reasonable-expectation-of-privacy test controlled. *See* Pet. App. 20a-22a. But *Bauler* and *Caballes* considered a dog's sniff of the *exterior* perimeter of a vehicle—a search without a physical intrusion. *See Bauler*, 8 N.W.3d at 896 ("[Officer] Rohmiller directed the dog to conduct an open-air sniff around the exterior of Bauler's car. . . . At no point during the open-air sniff did either Rohmiller or the dog enter Bauler's vehicle."); *Caballes*, 543 U.S. at 409 ("[T]he dog sniff was performed on the exterior of respondent's car[.]"); *compare United States v. Ngumezi*, 980 F.3d 1285, 1289 (9th Cir. 2020) (dog sniff of a vehicle's interior without consent or probable cause violates the Fourth Amendment); *State v. Howard*, 496 P.3d 865 (Idaho 2021) (applying *Jones* to dog sniffs of a vehicle's interior); Pet. App. 10-14 (citing cases).

In this case, Officer Dekker's dog did *not* alert while sniffing the exterior of petitioner's vehicle, which might have established probable cause to search the vehicle's interior cabin. *See Caballes*, 543 U.S. at 409 (drug dog's alert at the car's exterior provided sufficient probable cause to search the trunk); *United States v. Pulido-Ayala*, 892 F.3d 315, 319 (8th Cir. 2018) (police had probable cause to search a vehicle's interior "[g]iven the strong

reaction of the trained drug dog while it was *outside* the car") (emphasis in original); *United States v. Pierce*, 622 F.3d 209, 213 (3d Cir. 2010) ("It is also well-established that . . . a [drug] dog's positive alert while sniffing the exterior of the car provides an officer with the probable cause necessary to search the car without a warrant.") (citations omitted); *United States v. Vazquez*, 555 F.3d 923, 929-30 (10th Cir. 2009) (drug dog's alerts to multiple parts of a vehicle's exterior provided probable cause for an interior search). It is undisputed that Officer Dekker's dog alerted to the presence of drugs only *after* sticking its nose through the passenger-side window of petitioner's car. Pet. App. 20a, 34a.

Had Officer Dekker stuck his own head inside petitioner's car and sniffed the interior cabin, there is no question that this would have been a search. In *United States v. Montes-Ramos*, for example, the Tenth Circuit held that "a police officer's intentional act of intruding a vehicle's air space, even if by only a few inches, constitutes a search within the meaning of the Fourth Amendment." 347 F. App'x 383, 389-90 (10th Cir. 2009); *id.* at 385 (the officer "'placed [his] nose—[his] face inside the [front passenger-side] door approximately two inches.' The sole purpose of the sniff was to determine whether there was marijuana in the backseat") (alterations in original); *see also* Pet. App. 34a-35a (Oxley, J., dissenting) (citing cases).

It follows that because drug dogs are acting as government instrumentalities, a search likewise occurs when a drug dog physically crosses into the interior cabin of a person's car. *See id.* at 35a (Oxley, J., dissenting) (citing *Pulido-Ayala*, 892 F.3d at 318 ("A drug dog is an instrumentality of the police[.]")); *see also Skinner v. Ry. Lab. Execs' Ass'n*, 489 U.S. 602, 614 (1989) (holding the Fourth Amendment "protects against such intrusions . . . [by] an instrument or agent of the Government").

II. THE IOWA SUPREME COURT'S DECISION IS LIMITLESS

The Iowa Supreme Court's decision also merits review because it is limitless, inviting further erosion of Fourth Amendment protections. It must be reversed.

The court below reasoned that a drug dog's sniff of a vehicle's interior cabin does not implicate the Fourth Amendment if the dog's snout only "briefly, almost imperceptibly" breaks the plane of the passenger-side window. Pet. App. 20a; *see also id.* at 23a (noting "[t]he drug dog's almost imperceptible entry into the open window of the vehicle cabin"); *id.* at 24a ("[T]he drug dog fleetingly touched the vehicle[.]"). According to the Iowa Supreme Court, this "*de minimis* crossing of the drug dog's nose into the open window of the vehicle is of no constitutional import." *Id.* at 23a.

But what do terms like "brief, imperceptible," "fleeting," or "*de minimis*" intrusion into a vehicle's cabin really mean? Or at what point does an intrusion cross the line and violate the Fourth Amendment? The Iowa Supreme Court never says. If a drug dog's entire head, as opposed to just his nose, enters the car cabin, is that still just a *de minimis* intrusion? And how long may the dog sniff of the interior cabin proceed before the sniff ceases to be "fleeting"? Five seconds? Ten? Twenty? Justice McDermott posed similar questions:

> I struggle to find any limiting principle. May a police dog climb completely onto the hood or trunk or roof on all four legs to sniff about? Or, to twist the line in George Orwell's *Animal Farm*, are two legs good but four legs bad? On what rationale would such a distinction rest after today? And may police now direct their dogs to climb completely inside the passenger compartment too? On this

> question, if a police dog's actual searching tool—its nose—presents no constitutional problem inside a car, why would the rest of its body?

Id. at 41a (McDermott, J., dissenting).

The decision below thus presents complicated questions without clear answers. But "[o]ne virtue of the Fourth Amendment's property-rights baseline" is that it is supposed to "keep[] easy cases easy." *Jardines*, 569 U.S. at 11. Indeed, police and the courts do not need to discern at what point an intrusion becomes more than "brief, imperceptible," "fleeting," or "*de minimis*," because the property-based approach flatly prohibits any physical intrusion by the government upon a citizen's effects without a warrant, probable cause, or consent. There are no *de minimis* exceptions. *See Jones*, 565 U.S. at 412 (whether a search within the Fourth Amendment occurs does not turn on the magnitude of the intrusion); *Ngumezi*, 980 F.3d at 1289 ("[T]he Supreme Court has never suggested that the magnitude of a physical intrusion is relevant to the Fourth Amendment analysis."); *Howard*, 496 P.3d at 868 ("[T]here is no *de minimis* exception to the test articulated in *Jones*.").

Any ambiguity caused by a *de minimis* exception matters given the rapid pace of technological advancements. What other instrumentalities may a *de minimis* exception allow? For example, could an officer use thermal imaging to conduct a "fleeting" inspection of a vehicle's interior? *But see Kyllo v. United States*, 533 U.S. 27 (2001) (thermal imaging device aimed at a private home from a public street is a Fourth Amendment search). What about density meters or x-ray technology?[3]

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[3] *See, e.g., How a Density Meter Helps Locate Contraband in Vehicles*, CSECO, https://cseco.com/how-a-density-meter-helps-locate-contraband-in-vehicles/ (last visited June 11, 2025).

The makers of these devices describe "[t]his sophisticated technology" as enabling police "to scan different types of items or spaces" through "*quick* inspections" that "determine whether or not a vehicle carries hidden contraband *within five minutes*."[4] A similar technology is a fiberscope, which police may insert through a car window or door to take still and video images of the interior.[5] *But see Silverman v. United States*, 365 U.S. 505, 506-08 (1960) (police insertion of a spike microphone into a home was a Fourth Amendment search: "the eavesdropping was accomplished by means of an unauthorized physical penetration"). If the Iowa Supreme Court's decision stands, no Fourth Amendment protection exists to stop police use of these fleetingly intrusive tools against motorists without probable cause or their consent.

Justice Souter foresaw this danger. Dissenting in *Illinois v. Caballes*, 543 U.S. 405 (2005), he warned that dismissive judicial treatment of dog sniffs would ultimately make the Fourth Amendment "indifferent to

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[4] *Id.* (emphases added); *see* Isaac French, *X-ray Technology Helps Law Enforcement Agencies Conduct Contraband Searches*, WIBW 13 NEWS (July 11, 2021), www.wibw.com/2021/07/12/x-ray-technology-helps-law-enforcement-agencies-conduct-contraband-searches/ ("Viken Detection is dedicated to helping security and law enforcement officers by providing them technology that *limits the time* it takes to inspect vehicles for illegal material. . . . An officer or agent can take the system and they scan whatever they are looking at or what they are inspecting and essentially we are able to see inside through the panels, the steel panels of vehicles and find the contraband, and find the drugs or the weapons or find the cash.") (emphases added) (internal quotation marks omitted).

[5] *See* CSECO, *supra* note 3 (video on right side of the webpage at 2:03) ("[O]ur fiberscope . . . . [can] be used with our window wedge to go inside a car door and identify contraband, money, explosives, whatever hidden inside a vehicle. We also package this scope with a camera so you can have actual still and video which can be used in a courtroom as proof of the bust.").

suspicionless and indiscriminate sweeps of cars in parking garages." *Id.* at 411 (Souter, J., dissenting); *see also id.* at 417 ("[T]he Court's stated reasoning provides no apparent stopping point short of such excesses."). Justice Souter thereby echoed an alarm that has rung clear throughout this Court's Fourth Amendment jurisprudence: that "illegitimate and unconstitutional practices get their first footing" through "*silent* approaches and *slight* deviations"; through "the obnoxious thing in its *mildest* and *least repulsive* form." *Boyd v. United States*, 116 U.S. 616, 636 (1886) (emphases added). Set against the Iowa Supreme Court's creation of a limitless *de minimis* exception to the Fourth Amendment's protection of effects against physical trespasses, that alarm should not be ignored.

CONCLUSION

The Court should grant *certiorari* and reverse the decision of the Iowa Supreme Court below.

Respectfully submitted.

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