No. 24-1093

IN THE

Supreme Court of the United States

ASHLEE MARIE MUMFORD,

Petitioner,

v.

IOWA,

Respondent.

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

BRIEF OF THE CENTER FOR APPELLATE LITIGATION AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

The Center for Appellate Litigation ("CAL") is a non-profit, public defense firm that represents indigent New Yorkers in criminal appeals and post-conviction proceedings in New York State's appellate courts. CAL routinely represents individuals who have been subjected to governmental searches and are challenging their criminal convictions on Fourth Amendment grounds. CAL is therefore well situated to explain the importance of retaining a categorical rule that triggers the Fourth Amendment guarantee where, as here, a government canine's sniff breaches the interior of an automobile and thereby physically intrudes on private property.

INTRODUCTION & SUMMARY OF THE ARGUMENT

This case presents the Court with an opportunity to restore a bedrock—but forgotten—Fourth Amendment principle: the protection against an unreasonable search is triggered when the government physically intrudes on private property to obtain information. That protection is the irreducible constitutional minimum. While *Katz* held that the Fourth Amendment also protects a reasonable expectation of privacy, *Katz*'s privacy test

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[1] Under this Court's Rule 37.2, amicus states that counsel of record for all parties received notice of amicus's intent to file this brief more than ten days before the brief's due date. And under this Court's Rule 37.6, amicus states that no counsel for a party authored this brief in whole or in part, that no such counsel or party made a monetary contribution intended to fund the brief's preparation or submission, and that no person other than amicus and its counsel made such a monetary contribution.

supplements—but does not abrogate—the bright-line property rule woven into the fabric of the Fourth Amendment guarantee. *Jones* and *Jardines* held as much, and the constitutional text demands no less. The Fourth Amendment names "houses, papers, and effects"—not abstractions, but a list of tangible items. And yet, despite that textual command, the decision below found no constitutional violation when a detection dog, without a warrant or probable cause, thrust its snout through the open window of petitioner's car—an indispensable "effect"—and alerted only after crossing into her private space. Although the government's physical intrusion into an effect to obtain information should have compelled the conclusion that the government had committed a Fourth Amendment search, the court ignored the physical trespass, applied a privacy-only Fourth Amendment framework that it conjured from *Katz*, and leaned on *Caballes*—which did not involve an interior intrusion—to hold that no Fourth Amendment search had occurred.

The decision below is not alone in overreading *Katz* and *Caballes* and in overlooking *Jones* and *Jardines*. As the petition details, several courts have, in recent years, made the same error. The result is a recurrent conceptual sleight of hand that robs the Fourth Amendment of its clarity, predictability, and administrability—and that weakens deeply rooted, property-based protections for the accused.

This doctrinal drift away from the Fourth Amendment's textual mooring is especially concerning in cases, like this one, involving cars. A car may not be a home, but it can function like one. It shields its occupant from the world, secures personal

belongings, and—for some—offers the only private space that they can afford. For good reason, a vehicle's interior marks a line that the government may not cross without constitutional consequence.

This Court should grant review to resolve a split that arises from analytical confusion, reverse, and reaffirm that the Fourth Amendment houses not only *Katz*'s privacy test, but also a categorical property rule: the government commits a Fourth Amendment search when, to obtain information, it physically intrudes on an "effect." In so holding, the Court can re-anchor Fourth Amendment search law to the constitutional text, history, and tradition.

ARGUMENT

I. The Fourth Amendment houses, alongside *Katz*'s privacy test, a bright-line property rule whereby a detection dog's sniff into a vehicle's interior is a search.

A. A privacy-only Fourth Amendment search analysis contravenes the property-focused text and history.

Although the framers could have drafted a Fourth Amendment that merely protected the "right of the people" from "unreasonable searches and seizures," that is not what they devised. Instead, they went further, specifying that "[t]he 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. That specificity is by design. *Cf. Holmes v. Jennison*, 39 U.S. 540, 570–71 (1840) ("In expounding the Constitution of the United States, every word must have its due force, and appropriate meaning; for it is evident from the

whole instrument, that no word was unnecessarily used, or needlessly added."). By enumerating tangible items—a list that stands out in our efficient founding document—the text reflects the framers' intent that the Fourth Amendment act as a bulwark against physical governmental invasions of private property.[2] There is thus "no doubt" that when the government "physically occupie[s] private property for the purpose of obtaining information," "such a physical intrusion would have been considered a 'search' within the meaning of the Fourth Amendment when it was adopted." *United States v. Jones*, 565 U.S. 400, 404–05 (2012); *see also* Brady, *supra*, at 987 (examining history of "specifically includ[ing]" effects: "personal property featured quite prominently in Founding-era grievances against the British and, later, in calls to support constitutional restrictions on federal power").

Put differently, the government's physical intrusion on private property to obtain information *is* a "search" under the Fourth Amendment, a designation that triggers the Fourth Amendment guarantee that the search be reasonable. *See Florida v. Jardines*, 569 U.S. 1, 5 (2013) ("The Amendment establishes a simple baseline, one that for much of our history formed the exclusive basis for its protections: When the Government obtains information by physically intruding on persons, houses, papers, or effects, a 'search' within the original meaning of the

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[2] James Madison's proposal for what would become the Fourth Amendment listed "their persons; their houses; their papers, and their other property"; the Committee of Eleven replaced "their other property" with "effects." *See* Maureen E. Brady, *The Lost "Effects" of the Fourth Amendment: Giving Personal Property Due Protection*, 125 Yale L.J. 946, 984 (2016).

Fourth Amendment has undoubtedly occurred.") (citation modified); *New York v. Class*, 475 U.S. 106, 114–15 (1986) (holding that a police officer's "reaching" into "the interior of the car" for "papers that covered the VIN" was an "intrusion" and a Fourth Amendment search).

To be sure, *Katz* recognized that even if the government has not physically invaded private property, the Fourth Amendment has a role to play. There, this Court ruled that government agents, by attaching a warrantless wiretap to a public phone booth, had violated the defendant's Fourth Amendment rights even though "the surveillance technique they employed involved no physical penetration." *Katz v. United States*, 389 U.S. 347, 352, 359 (1967). As Justice Stewart's opinion emphasized, the "ambit" of the Fourth Amendment guarantee encompasses not only "tangible items," but also "people." *Id.* at 353. And as Justice Harlan put the point in his influential concurrence, the Fourth Amendment's protection extends to a person's "reasonable expectation of privacy." *Id.* at 361.

Katz is properly read as supplementing—not as displacing—the rule that when the government physically intrudes on private property to obtain information, the government has committed a Fourth Amendment search. That is, "the message" of *Katz* and its progeny "is that property rights are not the *sole* measure of Fourth Amendment violations." *Soldal v. Cook Cnty., Ill.*, 506 U.S. 56, 64 (1992) (emphasis added); *see also* Thomas K. Clancy, *What Does the Fourth Amendment Protect: Property, Privacy, or Security?*, 33 Wake Forest L. Rev. 307, 324 (1998) ("[*Katz*] was premised primarily on extending

protection to intangible interests."); Gerald G. Ashdown, *The Fourth Amendment and the 'Legitimate Expectation of Privacy'*, 34 Vand. L. Rev. 1289, 1310 (1981) (reading *Katz* as having been decided "with the intent of expanding the scope of fourth amendment protection" and to "force law enforcement agencies to comply with fourth amendment requirements in cases in which they formerly would have been unconstrained by the Constitution").

Jones and *Jardines*, moreover, should erase any lingering doubt that *Katz* is additive, not restrictive. In 2012, *Jones* held that the government had committed a Fourth Amendment search when it attached a GPS tracker to the undercarriage of the defendant's Jeep. 565 U.S. at 402–03. Because the government's physical intrusion on an effect to obtain information was dispositive, this Court reasoned that it "need not address" *Katz*'s reasonable-expectation-of-privacy test. *Id.* at 406. After all: "[T]he *Katz* reasonable-expectation-of-privacy test has been added to, not substituted for, the common-law trespassory test." *Id.* at 409; *see also id.* at 414 (Sotomayor, J., concurring) (describing the "privacy expectations inherent in items of property that people possess or control" as an "irreducible constitutional minimum"). This Court reiterated that understanding a year later in *Jardines*, holding that the government had committed a Fourth Amendment search when it took a detection dog to the defendant's front porch. 569 U.S. at 11. Once again, this Court reasoned that it "need not decide" whether the government had violated the defendant's "expectation of privacy under *Katz*": "That the officers learned what they learned

only by physically intruding on [the defendant's] property to gather evidence is enough to establish that a search occurred." *Id.* And once again, this Court made clear that *Katz* is additive, not restrictive: "By reason of our decision in [*Katz*], property rights are not the sole measure of Fourth Amendment violations—but though *Katz* may add to the baseline, it does not subtract anything from the Amendment's protections when the Government *does* engage in a physical intrusion of a constitutionally protected area." *Id.* at 5 (citation modified); *see also id.* at 13 (Kagan, J., concurring) ("Was this activity a trespass? Yes, as the Court holds today. Was it also an invasion of privacy? Yes, that as well.").

In other words, when the government does not physically intrude on private property, a court may conduct a *Katz* analysis to vindicate the defendant's right to be free from an unreasonable search to the full extent that the Constitution demands. But where, as here, "the government gains evidence by physically intruding on constitutionally protected areas," the "reasonable-expectations test" is "unnecessary to consider," *see Jardines*, 569 U.S. at 11, and a court should apply the categorical property rule to avoid the "particularly vexing problems" with *Katz*'s potentially freewheeling privacy mode, *see Jones*, 565 U.S. at 411–12. In this way, the multi-faceted Fourth Amendment search regime "keeps easy cases easy," *see Jardines*, 569 U.S. at 11, without vitiating "rights that previously existed," *see Jones*, 565 U.S. at 411.

Within Fourth Amendment search doctrine, then, the categorical property rule stands alongside *Katz*'s flexible privacy analysis. Constitutional provisions may accommodate multiple principles, and the Fourth

Amendment is no exception. In the Fourth Amendment's case, moreover, the doctrinal property and privacy strands comfortably co-exist. "[W]idely shared social expectations" are "naturally enough influenced by the law of property." *Georgia v. Randolph*, 547 U.S. 103, 111 (2006); *see also Rakas v. Illinois*, 439 U.S. 128, 143 n.12 (1978) ("[O]ne who owns or lawfully possesses or controls property will in all likelihood have a legitimate expectation of privacy by virtue of this right to exclude."); Orin S. Kerr, *The Fourth Amendment and New Technologies: Constitutional Myths and the Case for Caution*, 102 Mich. L. Rev. 801, 823–24 (2004) ("*Katz*'s consistency with the property-based approach may help explain why the decision failed to dislodge property principles from Fourth Amendment law.").

B. Several courts, including the court below, have wrongly applied a privacy-only analysis to interior dog sniffs.

Caballes, too, harmonizes with the settled pluralistic Fourth Amendment search regime. There, this Court applied a privacy analysis to hold that a detection dog's sniff around a lawfully stopped vehicle was not a Fourth Amendment search. *Illinois v. Caballes*, 543 U.S. 405, 407–09 (2005). Yet the dog in *Caballes* did not touch the vehicle's exterior, let alone breach its interior plane. *Id.* at 408–09. Given the absence of a physical intrusion—rendering inapplicable the categorical property rule—*Caballes* viewed the case through a privacy-focused lens. Nothing in *Caballes* should cast doubt on the unassailable proposition that when, unlike there, the government physically intrudes on private property to obtain information, the government has committed a

Fourth Amendment search.

Numerous lower courts, however—including the Iowa Supreme Court below—have overread *Katz* and *Caballes* and overlooked *Jones* and *Jardines*. They have interpreted *Katz* as standing for the sweeping proposition that an individual's reasonable expectation of privacy is the *sole* touchstone of Fourth Amendment search analysis. In particular, some courts deem *Caballes* the "controlling case" for detection dog sniffs into vehicle interiors, assessing the privacy implications of such sniffs while disregarding obvious property considerations. *See, e.g.*, *United States v. Johnson*, 2024 WL 1956209, at *3 (6th Cir. May 3, 2024) (applying *Caballes* to detection dog's sniff into car's interior); *Felders ex rel. Smedley v. Malcom*, 755 F.3d 870, 880 (10th Cir. 2014) (same). Other courts decline to grapple with—much less cite—the plainly applicable property analysis set forth in *Jones* and *Jardines*. *See, e.g.*, *United States v. Munoz*, 134 F.4th 539, 543 (8th Cir. 2025) (not citing *Jones* or *Jardines*, though detection dog entered vehicle); *United States v. Guidry*, 817 F.3d 997, 1005–06 (7th Cir. 2016) (same); *United States v. Sharp*, 689 F.3d 616, 618–20 (6th Cir. 2012) (same). The decision below erred in both respects, relying on *Caballes* alone to hold that a detection dog's "breach into the cabin of a vehicle through an open window of a legally stopped vehicle" did not amount to a search, and ignoring *Jones* and *Jardines* despite case facts that readily satisfied the triggering conditions for the pair's property rule. *State v. Mumford*, 14 N.W.3d 346, 352–53 (Iowa 2024) ("We are bound to follow *Caballes*.").

All these decisions not only reflect a patterned misunderstanding of the interplay between *Katz*,

Jones, *Jardines*, and *Caballes*—they also flout the Fourth Amendment's traditional focus on property and minimize individuals' Fourth Amendment rights. When courts apply a privacy-only approach to detection dog sniffs into vehicle interiors, they break from the Fourth Amendment's text and history and fall into the trap that *Jones* and *Jardines* had warned about: making easy cases hard, while vitiating rights that previously existed. This Court should grant review to resolve a split that stems from doctrinal confusion. In doing so, the Court can ensure that Fourth Amendment search law remains tethered, where appropriate, to its property-based foundation.

II. The Fourth Amendment's bright-line property rule benefits police officers, accused persons, and courts alike.

When the government physically intrudes on private property to obtain information, it commits a Fourth Amendment search. That rule is a fixture of the Fourth Amendment search analysis, and it should remain so: property rights can demarcate a constitutional baseline for defendants that does not rise and fall with ever-evolving notions of privacy.

This Court has repeatedly emphasized the need for clear, administrable, and predictable standards throughout Fourth Amendment jurisprudence. *See, e.g.*, *Horton v. California*, 496 U.S. 128, 138 (1990) (noting that Fourth Amendment determinacy in the plain-view doctrine "is best achieved by the application of objective standards of conduct"); *New York v. Belton*, 453 U.S. 454, 458 (1981) (endorsing the view that Fourth Amendment principles regarding searches incident to lawful arrest should be "expressed in terms that are readily applicable by the

police" and "not qualified by all sorts of ifs, ands, and buts") (quoting Wayne R. LaFave, *"Case–By–Case Adjudication" versus "Standardized Procedures": The Robinson Dilemma*, 1974 Sup. Ct. Rev. 127, 141). Even during the heyday of post-*Katz* privacy analysis, this Court criticized an ad-hoc approach to Fourth Amendment search law: "This Court repeatedly has acknowledged the difficulties created for courts, police, and citizens by an ad hoc, case-by-case definition of Fourth Amendment standards to be applied in differing factual circumstances. The ad hoc approach not only makes it difficult for the policeman to discern the scope of his authority; it also creates a danger that constitutional rights will be arbitrarily and inequitably enforced." *Oliver v. United States*, 466 U.S. 170, 181–82 (1984) (citations omitted).

Yet the situation *Oliver* sought to avoid is precisely what a privacy-only conception of Fourth Amendment search law engenders. With each new advent in investigative technology, the officer is left guessing whether a defendant has a reasonable expectation of privacy in the object of the search vis-à-vis the chosen search method—and whether the government's need for the information outweighs the defendant's expectation of privacy. *See, e.g.*, *Kyllo v. United States*, 533 U.S. 27, 34 (2001) (balancing defendant's privacy interests in home against government's use of investigative thermal imaging technology); *Riley v. California*, 573 U.S. 373, 391–401 (2014) (balancing defendant's privacy interests in cellphone's files against government's heightened safety interests during search incident to arrest). Meanwhile, the defendant is denied a clear understanding of the metes and bounds of Fourth Amendment protections,

and the reviewing court—without the benefit of "standards sufficiently clear and simple to be applied with a fair prospect of surviving judicial second-guessing," *see Atwater v. City of Lago Vista*, 532 U.S. 318, 347 (2001)—is saddled with a potentially circular test and given no alternative. *See* William Baude & James Y. Stern, *The Positive Law Model of the Fourth Amendment*, 129 Harv. L. Rev. 1821, 1825 (2016) (cataloguing the *Katz* test's "serious defects": "its ambiguous meaning, its subjective analysis, its unpredictable application, its unsuitability for judicial administration, and its potential circularity"). Worse still, a non-falsifiable framework of the chancellor's foot variety, in the hands of a judge who does not share the framers' fear of government overreach, poses a grave threat to individual liberty.

Reaffirming that *Jones* and *Jardines*'s property rule exists alongside *Katz*'s privacy analysis, however, avoids the pitfalls of relying only on ever-changing conceptions of privacy. In appropriate cases, a property analysis affords certainty to the officer, insofar as property law "defines for the police a bare minimum area that always enjoys protection," thereby "enhanc[ing] police efficiency without sacrificing the flexibility needed to determine subsequent questions such as consent or probable cause." Laurent Sacharoff, *Constitutional Trespass*, 81 Tenn. L. Rev. 877, 901 (2014). Further, a property analysis enables judges to resolve appropriate cases on property grounds and thereby avoid wading into "whether an expectation of privacy is 'reasonable' or 'legitimate.'" *Id.* at 900. A property analysis also provides clarity to defendants, who will enjoy a "clear boundary" delineating their Fourth Amendment

rights. *Id.* at 901–02. As Professor Sacharoff explains: "A key element of being 'secure' in one's house, and in other areas, involves not only the right to exclude but also the certainty that there is a boundary and knowing where that boundary lies." *Id.* at 901.

Nor is Fourth Amendment search doctrine, compared with other constitutional doctrines, anomalous in maintaining a categorical rule for particular cases alongside a balancing test. Across constitutional law, categorical rules accompany flexible inquiries to safeguard cases worthy of special protection from fuzzy applications. This is a common and useful doctrinal solution. *See, e.g.*, *South Dakota v. Wayfair*, 585 U.S. 162, 173 (2018) (noting that dormant Commerce Clause doctrine houses a "virtually per se rule of invalidity" for state laws that facially and clearly discriminate against interstate commerce, alongside the *Pike* balancing inquiry); *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1015–16 (1992) (noting that Takings Clause doctrine houses, alongside *Penn Central*'s ad hoc test, "categorical" rules compelling compensation for a physical invasion of the property and for a total deprivation of the property's beneficial use).

Jones and *Jardines*'s categorical property rule should not be excised from Fourth Amendment search law. The rule establishes a constitutional floor beneath which protections must not descend and mitigates the shortcomings of *Katz*'s privacy test.

III. Enforcing the Fourth Amendment's bright-line property rule is especially important where, as here, the effect is a car.

By discounting dispositive property interests, the

decision below misapplied the Fourth Amendment in a manner that—if permitted to stand and replicated—will erode Fourth Amendment protections. A detection dog, after sniffing the exterior of petitioner's vehicle for information and failing to alert, stuck its nose through an open window into the car's interior. *Mumford*, 14 N.W.3d at 348–49. Under *Jones* and *Jardines*, the government's physical intrusion—coupled with the government's intent to gather information from petitioner's car (a constitutionally protected "effect," *see Jones*, 565 U.S. at 404)—was a Fourth Amendment search.

Yet the majority opinion relied on *Caballes* to hold that sniffs during lawful traffic stops are not Fourth Amendment searches—without addressing the factual distinction that *Caballes* involved an exterior sniff, while this case involved an interior sniff, and without discussing *Jones* and *Jardines*. *Id.* at 353. Indeed, the majority altogether disregarded the Fourth Amendment implications of the dog's physical breach of petitioner's private property. As Justice Oxley noted in dissent: "The majority continues to hide behind [*Caballes*], even though its *Katz*-based holding is irrelevant to a property-based Fourth Amendment challenge." *Id.* at 358.

The majority's conceptual error—which, as noted, other courts have also made—is especially pernicious and ripe for review because it weakens Fourth Amendment protections against physical intrusions on a constitutional effect with special importance: one's automobile. While a car does not warrant the same level of Fourth Amendment protection as a home does, *see, e.g.*, *South Dakota v. Opperman*, 428

U.S. 364, 368 (1976), it is an indispensable effect.[3] It can serve as a shelter from the elements, a secure place to store belongings, or a shield from violence. For someone starting over after a natural disaster or a period of incarceration, a car could be that person's castle. Still more, while the automobile is constitutionally protected property and has long embodied the American tradition of liberty through movement, it has also become a regular target of the government's search-and-seizure power. Retaining a bright-line property rule for vehicular searches thus affords meaningful Fourth Amendment protection in a vulnerable and vital context where Fourth Amendment rights are often tested.

This Court should grant review to ensure that lower courts heed the Fourth Amendment's foundational, property-oriented baseline—especially where, as here, the "effect" at issue is so essential.

CONCLUSION

The Court should grant the petition for writ of certiorari.

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[3] *See* Lori A. Hoetger, *Rethinking the Automobile Exception*, 93 U. Cin. L. Rev. 677, 679, 714 (2025) (discussing survey results suggesting that "people do not perceive a statistically—or possibly constitutionally—significant difference between the privacy that should be afforded" in homes versus cars).

Respectfully submitted,

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