No. 18-

In the Supreme Court of the United States

ILLINOIS,
PETITIONER,

v.

DERRICK BONILLA,
RESPONDENT.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Police entered an apartment building through an unlocked outer door and led a trained narcotics detection dog to a third-floor hallway, where the dog alerted to the presence of narcotics outside of respondent's unit. Police obtained a search warrant based on the dog's alert and, upon executing the warrant, seized cannabis from respondent's apartment. The questions presented are:

1. Whether a sniff by a drug-detection dog conducted in the common area of an apartment building is a Fourth Amendment search under *Florida v. Jardines*, 569 U.S. 1 (2013).

2. If the dog sniff was an unreasonable search, whether the good-faith exception to the exclusionary rule applies.

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PETITION FOR A WRIT OF CERTIORARI

The State of Illinois respectfully petitions for a writ of certiorari to review the judgment of the Illinois Supreme Court.

OPINIONS BELOW

The opinion of the Illinois Supreme Court (App. 1a-36a) is reported at 2018 IL 122484, __ N.E.3d __ (Ill. 2018). The opinion of the Illinois Appellate Court, Fourth Judicial District, (App. 37a-55a) is reported at 82 N.E.3d 128 (Ill. App. Ct. 2017). The oral ruling of the Circuit Court of the Fourth Judicial Circuit, Rock Island County, Illinois granting respondent's motion to suppress and exclude evidence (App. 56a-57a) is unreported.

JURISDICTION

The Illinois Supreme Court entered judgment on October 18, 2018. On November 27, 2018, the Illinois Supreme Court allowed the State's motion to stay that court's mandate pending the filing and resolution of a petition for a writ of certiorari in this Court. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT

The decision below affirms the suppression of evidence, including illegal drugs, obtained during a search of respondent's apartment executed pursuant to a warrant. In conflict with many, but not all, decisions from other jurisdictions, the Illinois Supreme Court held that under *Florida v. Jardines*, 569 U.S. 1 (2013), the search violated the Fourth Amendment because the warrant issued based on the positive alert of a drug detection dog in the common area hallway outside of respondent's apartment door. App. 26a. The court reasoned that the common area was at "the threshold of the door to" respondent's apartment and thus was within the apartment's curtilage, making the dog sniff an illegal search. App. 12a-17a.

The Illinois Supreme Court further held, in conflict with many, but not all, decisions from other jurisdictions, that the good-faith exception to the

exclusionary rule did not apply. App. 26a. While acknowledging that binding precedents held that a dog sniff did not constitute a search within the meaning of the Fourth Amendment and that residents had no reasonable expectation of privacy in an unlocked common area, the court reasoned that officers could not rely on those precedents because no case had specifically authorized dog sniffs in common areas. App. 21a. This Court should grant certiorari to resolve the deep splits on both issues.

1. A police officer led a drug detection dog though the unlocked outer doors of respondent's apartment building, and through the common area hallways on the second and third levels, each of which had four apartments. App. 3a. The dog alerted only at the doorway of apartment #304, respondent's unit. The officers obtained a search warrant based on the alert and, upon executing it, found cannabis in respondent's apartment.

2. Respondent was charged with unlawful possession of cannabis with intent to deliver in violation of 720 ILCS 550/5(c). He moved to suppress the drug evidence, alleging that the dog sniff violated the Fourth Amendment under *Jardines* and *People v. Burns*, 50 N.E.3d 610 (Ill. 2016), a decision of the Illinois Supreme Court applying *Jardines* to a common area behind a locked outer door. App. 3a. The trial court granted the motion, reasoning that it would "be unfair" to prohibit a dog sniff at the front door of a single family house but not an apartment. App. 57a.

3. The State appealed, and the Illinois Appellate Court affirmed in a split decision. App. 52a. The majority acknowledged that in *Burns* the building's outer door was locked, but reasoned that it would be "unfair" to distinguish buildings that did not have locked exterior doors. App. 48a. The majority further determined that the good-faith exception did not apply, though it "acknowledge[d] that there is precedent to support the State's assertion that a person does not have a reasonable expectation of privacy in the [unlocked] common area of an apartment building, that a dog sniff is not a search under the fourth amendment," and "that a dog sniff is not the same as the thermal imaging scan that was condemned in *Kyllo* [*v. United States*, 533 U.S. 27 (2001)]." App. 49a. The dissent concluded that the hallway was not curtilage under the factors set forth in *United States v. Dunn*, 480 U.S. 294, 301 (1987). App. 55a.

4. In a splintered decision, the Illinois Supreme Court affirmed. App. 26a. The majority held that the sniff occurred in the curtilage of respondent's apartment because the common-area hallway was at "the threshold of the door to [respondent's] apartment" and thus akin to the front porch in *Jardines*. App. 13a.

The majority also rejected the State's argument that the officers relied in objectively reasonable good faith on binding precedent such that the exclusionary rule should not apply. App. 25a. While acknowledging that this Court has held that a dog sniff "did not constitute a 'search' within the meaning of the Fourth Amendment,'" App. 20a (quoting *United*

States v. Place, 462 U.S. 696 (1983)), the majority held that the good-faith exception did not apply because those cases did not "specifically authorize" a dog sniff "*at the threshold of defendant's home*." App. 21a (italics in original). Similarly, the officers could not rely on cases authorizing their presence in unlocked common areas because a dog sniff is "much different" than the investigative techniques approved in those cases. App. 22a.

Justice Thomas, joined by Chief Justice Karmeier, dissented, concluding that the concept of curtilage has no application to the common areas of multi-unit dwellings. App. 35a-36a. Chief Justice Karmeier also dissented separately, explaining that the hallway was not an area physically and psychologically linked to the home, where privacy expectations are most heightened, but instead a publicly accessible means of ingress or egress for respondent, all other residents, and anyone else who cared to enter through the building's unlocked doors. App. 29a. Chief Justice Karmeier further concluded that the good-faith exception should apply because (i) Illinois and federal cases have held that residents have no reasonable expectation of privacy in a common hallway in an locked apartment building and (ii) this Court has held that a dog sniff is not a Fourth Amendment search because it reveals only the presence or absence of contraband. App. 34a.

REASONS FOR GRANTING THE PETITION

I. This Court Should Resolve the Split Over Whether Dog Sniffs in Multi-Unit Dwelling Common Areas Are Fourth Amendment Searches Under *Jardines*.

The Illinois Supreme Court's decision below, holding that a dog sniff in an apartment building's common area was an unlawful search, widened a deep split involving at least a dozen other jurisdictions.

Florida v. Jardines, 569 U.S. 1, 5 (2013), was a "straightforward" case: the dog sniff was a Fourth Amendment search because "officers were gathering information in an area belonging to Jardines and immediately surrounding his house . . . by physically entering and occupying the area to engage in conduct not explicitly or implicitly permitted by the homeowner." See also *ibid.* ("When the Government obtains information by physically intruding on persons, houses, papers, or effects, a search within the original meaning of the Fourth Amendment has undoubtedly occurred.") (internal quotation marks omitted). But applying *Jardines* to multi-unit buildings has proved anything but straightforward.

A. Most Courts Hold that a Dog Sniff in a Common Area of a Multi-Unit Building Is Not a Search.

The Illinois Supreme Court's decision below conflicts with those of the majority of jurisdictions to have addressed the issue. For instance, the North Dakota Supreme Court has held that a dog sniff was not a search because it took place in a common area

hallway that was not within the apartment's curtilage, noting that the curtilage "concept is significantly modified when applied to a multifamily dwelling." *State v. Nguyen*, 841 N.W.2d 676, 682 (N.D. 2013). See also *ibid.* ("The 'central component of th[e] inquiry [i]s whether the area harbors . . . intimate activity associated with the sanctity of a man's home and the privacies of life.'") (quoting *Dunn*, 480 U.S. at 300). The Minnesota Supreme Court, too, has held that a dog sniff in an apartment building common area hallway was not within a unit's curtilage, applying the *Dunn* factors and explaining that the defendant "did not establish that he exclusively uses or possesses the hallway." *State v. Edstrom*, 916 N.W.2d 512, 518–19 (Minn. 2018), *cert. denied* Feb. 25, 2019, No. 18-6715. Similarly, the Maryland Court of Special Appeals has held that a hallway outside an apartment door was not curtilage, so that a dog sniff there was not a search under *Jardines*. *Lindsey v. State*, 127 A.3d 627, 642–43 (Md. Ct. Spec. App. 2015); see also *State v. Mouser*, 119 A.3d 870, 875 (N.H. 2015) (parking area behind multifamily dwelling was not curtilage because it was available for shared benefit and not for private activities).

Federal courts have reached the same conclusion. See *United States v. Makell*, 721 F. App'x 307, 308 (4th Cir. 2018) (per curiam), *cert. denied*, No. 18-5509 (Dec. 10, 2018) (applying *Dunn* to "find that the common hallway of the apartment building, including the area in front of [defendant's] door, was not within the curtilage of his apartment"); *Seay v. United States*, No. 14-0614, 2018 WL 1583555, at *4–5 (D. Md. Apr. 2, 2018), *appeal dismissed*, 739 F.

App'x 193 (4th Cir. 2018) (dog sniff in apartment building hallway did not occur in unit's curtilage); *United States v. Bain*, 155 F. Supp. 3d 107, 118–19 (D. Mass. 2015), *aff'd*, 874 F.3d 1 (1st Cir. 2017) (area in front of apartment door was not curtilage); *United States v. Penaloza-Romero*, No. 13 CR 36, 2013 WL 5472283, at *7 (D. Minn. Sept. 30, 2013) ("Defendant's reliance on *Jardines* is misplaced because it cannot be said the common hallway of the apartment building was curtilage."); *United States v. Mathews*, No. 13 CR 79, 2013 WL 5781566, at *3 (D. Minn. Oct. 25, 2013), *aff'd*, 784 F.3d 1232 (8th Cir. 2015) ("The holding in *Jardines* did not fundamentally alter Fourth Amendment protections over homesteads, and it did not expand Fourth Amendment coverage to common areas outside of an apartment."); see also Wayne R. LaFave, Search and Seizure § 2.2(g), at 50 (5th ed. Supp. 2015) ("'[T]he concept of curtilage has little if any application to commercial structures or to multiple-unit dwellings, so that a dog sniff of such structures would likely be deemed a non-search.").

Courts have reached the same result when considering dog sniffs conducted in condominiums. See *State v. Williams*, 862 N.W.2d 831, 838 (N.D. 2015) (holding that dog sniff in hallway outside condominium unit was not search under *Jardines*, and noting that property interest in common area was "not exclusive"); *State v. Luhm*, 880 N.W.2d 606, 618 (Minn. Ct. App. 2016) (hallway outside defendant's condominium was not within curtilage of unit even though building was secured; thus, dog sniff not search under *Jardines*).

And the Fourth Circuit has held that a dog sniff of a hotel room door was not a search under *Jardines*, applying the four factors set forth in *Dunn* and noting that the "centrally relevant consideration is whether the area in question is so intimately tied to the home itself that it should be placed under the home's umbrella of Fourth Amendment protection." *United States v. Legall,* 585 F. App'x 4, 5–6 (4th Cir. 2014) (internal quotation marks omitted). See also *United States v. Lewis*, No. 15 CR 10, 2017 WL 2928199, at *7–8 (N.D. Ind. July 10, 2017) (dog sniff in external hotel walkway was not in room's curtilage, applying *Dunn* factors); *State v. Foncette*, 356 P.3d 328, 331 (Az. Ct. App. 2015) (no *Jardines* search when sniff performed in hotel hallway revealed information about room because hallway not constitutionally protected area); *Sanders v. Commonwealth,* 772 S.E.2d 15, 23 (Va. Ct. App. 2015) (walkway outside motel rooms not curtilage and dog sniff not search under *Jardines*).

B. Other Courts Hold that a Dog Sniff in a Common Area of a Multi-Unit Building Is an Unlawful Search.

In conflict with the above-cited cases, other courts have held that *Jardines* applies to dog sniffs in multi-unit building common areas, eschewing the primacy of property law and the curtilage concept. The Illinois Supreme Court here held that the dog sniff was a search under *Jardines* even though the hallway was open to the general public because it was at "the threshold of the door to [respondent's] apartment." App. 13a. The court relied heavily on its decision in *Burns*, 50 N.E.3d at 620–21, which held

that a dog sniff in a common area was a search even though the defendant did not have a possessory interest in it because the building was secured by a locked outer door. See App. 11a.

Similarly, in *United States v. Whitaker*, 820 F.3d 849 (7th Cir. 2016), the Seventh Circuit held that a dog sniff in an apartment building common area was an unlawful search. Relying on Justice Kagan's concurring opinion in *Jardines*, which viewed the question through a privacy lens, the court held that the dog sniff violated Whitaker's reasonable expectation of privacy under *Kyllo v. United States*, 533 U.S. 27 (2001). Just as police in *Kyllo* could not validly use a thermal imaging device to detect heat emanating from a home (even without trespassing), they could not validly use a dog to detect "something (the presence of drugs) that otherwise would have been unknowable without entering the apartment." 820 F.3d at 853. Moreover, two "practical effects of *Jardines*" warranted its extension to dog sniffs at apartment doors: limiting its holding to stand-alone houses could (1) create confusion in the "middle ground between traditional apartment buildings and single-family houses," and (2) disproportionately affect non-white and lower-income people, and thereby "apportion Fourth Amendment protections on grounds that correlate with income, race, and ethnicity." *Whitaker*, 820 F.3d at 854. *Whitaker* thus extended *Jardines*'s holding to an apartment hallway even though it conceded that there was no "reasonable expectation of complete privacy" there. *Id.* at 853.

By contrast, *United States v. Sweeney*, 821 F.3d 893, 900 (7th Cir. 2016), found no search under *Jardines* when officers searched a black plastic bag in the basement common area of an apartment building, because the area was not curtilage. *Sweeney* described *Whitaker* as involving a search only because officers brought the dog "into an apartment hallway and had the dog sniff a particular apartment door," making it "a search of the apartment itself." *Id.* at 903. After *Whitaker* and *Sweeney*, it is unclear how the Seventh Circuit views dog sniffs in common areas generally. More broadly, *Sweeney* demonstrates the continued confusion over *Jardines*' application to multi-unit buildings.

The Eighth Circuit, too, has found that dog sniffs conducted from apartment building common areas or spaces not owned by the unit's occupant are searches under *Jardines*. See *United States v. Hopkins*, 824 F.3d 726, 731–32 (8th Cir. 2016) (applying *Dunn* to hold that sniff of townhome-apartment front door, where dog was outside on development's central courtyard walkway, was within curtilage because of area's proximity to door and storage of grills and bicycles there); *United States v. Burston*, 806 F.3d 1123, 1126–28 (8th Cir. 2015) (sniff outside apartment window was within curtilage and thus a *Jardines* search). Cf. *United States v. Jackson,* 728 F.3d 367, 370, 373–74 (4th Cir. 2013) (assuming that patio located directly behind each two-story, "rowhouse type" unit in apartment building was curtilage, but concluding that sidewalk beyond patio was not).

The entrenched and deepening conflict among state and federal courts concerning whether a dog sniff at the threshold of a unit within a multi-unit dwelling constitutes a Fourth Amendment search reflects continued uncertainty over how to apply the mix of approaches employed by the justices in *Jardines*. Certiorari is appropriate to bring clarity and uniformity to this important and recurring area of law.

II. This Court Should Resolve the Split Over Whether the Good-Faith Exception to the Exclusionary Rule Applies to Dog Sniffs in Building Common Areas.

Lower courts are also divided over whether the good-faith exception to the exclusionary rule applies to dog sniffs conducted outside apartments and other residences. The split reflects fundamentally different approaches to assessing the culpability of police officers and demonstrates the need for this Court's intervention.

The exclusionary rule is a prudential doctrine whose "sole purpose" "is to deter future Fourth Amendment violations," so where "suppression fails to yield appreciable deterrence, exclusion is clearly unwarranted." *Davis v. United States*, 564 U.S. 229, 237 (2011) (internal quotation marks and ellipses omitted). Because it "requires courts to ignore reliable, trustworthy evidence" and "its bottom-line effect, in many cases, is to suppress the truth and set the criminal loose," the exclusionary rule is used "only as a last resort." *Ibid.* (internal quotation marks omitted). "[W]hen the police act with an objectively

reasonable good-faith belief that their conduct is lawful, . . . or when their conduct involves only simple, isolated negligence, . . . the deterrence rationale loses much of its force, and exclusion cannot pay its way." *Id.* at 238 (internal quotation marks and citations omitted).

Thus, "[e]vidence obtained during a search conducted in reasonable reliance on binding precedent is not subject to the exclusionary rule." *Id.* at 241. Nor is evidence obtained in reasonable reliance on a search warrant issued by a neutral magistrate, even when the warrant application is later determined to be insufficient, as long as the officers did not knowingly or recklessly include false information and the affidavit was not so lacking in indicia of probable cause as to render belief in its existence entirely unreasonable. *United States v. Leon*, 468 U.S. 897, 913, 922 (1984). For that reason, in "27 years of practice under *Leon*'s good-faith exception, [this Court] 'never applied' the exclusionary rule to suppress evidence obtained as a result of nonculpable, innocent police conduct." *Davis*, 564 U.S. at 240 (quoting *Herring v. United States*, 555 U.S. 135, 144 (2009)).

A line of authority holds that dog sniffs conducted beyond the curtilage of a defendant's home do not frustrate legitimate privacy interests and thus are not Fourth Amendment searches. *United States v. Place*, 462 U.S. 696, 707 (1983) (dog sniff of luggage at airport "did not constitute a 'search' within the meaning of the Fourth Amendment" because it was "so limited both in the manner in which the information is obtained and in the content of the

information revealed by the procedure"); *City of Indianapolis v. Edmond*, 531 U.S. 32, 40 (2000) (no Fourth Amendment search when officers conducted dog sniff of automobile at highway checkpoint because sniff "is not designed to disclose any information other than the presence or absence of narcotics"); *Illinois v. Caballes*, 543 U.S. 405, 409 (2005) (because one has no legitimate interest in possessing contraband, governmental conduct, such as a dog sniff, that reveals only the possession of contraband does "not implicate legitimate privacy interests," and any intrusion on driver's "privacy interests does not rise to the level of a constitutionally cognizable infringement"). *Jardines*, which turned on the defendant's property interest in his house, did not disturb this line of authority. 569 U.S. at 10–11.

Lower courts have divided on whether these precedents and principles trigger the exclusionary rule for pre- and post-*Jardines* dog sniffs conducted outside residences. Some, including the Seventh, Eighth, and Tenth Circuits, have held that police officers were not culpable for pre-*Jardines* searches. Relying on this Court's cases holding that dog sniffs are not Fourth Amendment searches, these courts have declined to exclude evidence seized pursuant to pre-*Jardines* sniffs. Beginning with *United States v. Davis*, 760 F.3d 901, 904–05 (8th Cir. 2014), the Eighth Circuit has repeatedly held that officers reasonably could have relied on *Place* and local precedent to believe in good faith that they could use a dog sniff outside an apartment door to secure a search warrant. *Ibid.* See also *United States v. Mathews*, 784 F.3d 1232, 1235 (8th Cir. 2015) (officers acted in good faith in conducting dog sniff in

apartment building hallway); *United States v. Givens*, 763 F.3d 987, 989, 992 (8th Cir. 2014) (same); *United States v. Hunter*, 770 F.3d 740, 743 (8th Cir. 2014) (same). The Eighth Circuit explained that "[w]hen the police comply with authoritative precedent, only to see the law evolve after the fact, there is nothing to deter; the police cannot modify their conduct to accord with cases not yet decided." *Davis*, 760 F.3d at 905 (internal quotation marks omitted).

The Eighth Circuit has extended the application of the good-faith exception to post-*Jardines* dog sniffs. *Hopkins*, 824 F.3d at 733–35, held that officers acted in good-faith reliance on a warrant secured by a positive alert from a dog sniff outside a townhouse even though the sniff was a Fourth Amendment search under *Jardines*. The Eighth Circuit explained that the officer was objectively reasonable in believing that the conduct did not violate *Jardines* because he believed the area outside the townhouse apartment was a "joint sidewalk" "common area." *Id.* at 733.

The Seventh Circuit, too, has applied the good-faith exception to pre-*Jardines* dog sniffs conducted outside apartments and other dwellings. *United States v. Gutierrez*, 760 F.3d 750, 752 (7th Cir. 2014) (good-faith exception applied to pre-*Jardines* dog sniff outside house); *United States v. Herman*, 588 F. App'x 493, 494 (7th Cir. 2014) (good-faith exception applied to pre-*Jardines* dog sniff in apartment hallway).

Other courts have similarly found that officers acted in good faith in conducting pre- and post-*Jardines* dog sniffs outside residences. See *McClintock v. State*, 541 S.W.3d 63, 74 (Tex. Crim.

App. 2017) (even after *Jardines*, officer could in good faith conduct dog sniff in publicly accessible common area given uncertainty about what constitutes curtilage of apartment); *Jones v. United States*, 14 F. Supp. 3d 811, 822 (W.D. Tex. 2014) (officers acted in good-faith reliance on *Place* and other precedents to perform dog sniff outside house); *People v. Sheppard*, No. 320928, 2015 WL 2437150, at *1–2 (Mich. Ct. App. 2015) (officers relied in good faith on then-existing precedent to conduct dog sniff in common area hallway outside apartment).

Courts have reached a similar conclusion by emphasizing that dog sniffs were used to secure search warrants. These courts recognized that the officers' conduct was not only not culpable but commendable: the officers presented the evidence of their investigations to neutral magistrates and relied on their independent probable cause determinations. Thus, in *Wisconsin v. Scull*, 862 N.W.2d 562, 568 (Wis. 2015), the Wisconsin Supreme Court held that the good-faith exception applied to evidence seized following a dog sniff outside defendant's home because "the officers ultimately obtained a warrant to search Scull's home and that warrant was issued by a detached and neutral commissioner," whose "decision to grant the warrant was a reasonable application of the unsettled state of the law at the time the warrant issued." *Id.* at 568. The Tenth Circuit similarly applied the good-faith exception to a pre-*Jardines* warrant obtained using a drug dog's positive alert outside a garage because the officer could have reasonably believed that the dog sniff was not a Fourth Amendment search and that the area was not

within the curtilage of the house. *United States v. Ponce*, 734 F.3d 1225, 1228–29 (10th Cir. 2013).

In contrast, other courts, like the Illinois Supreme Court, have applied the exclusionary rule to warrantless dog sniffs near residences, including in apartment building common areas, both pre- and post-*Jardines*. The Illinois Supreme Court held here that reliance on *Place* and its progeny was unreasonable because those cases did not "specifically authorize" a dog sniff "at the threshold of" an apartment. App. 22a; see also *Burns*, 50 N.E.3d at 628 (holding that officers could not rely on warrant issued by judge based on pre-*Jardines* dog alert because conduct was not "specifically authorized").

Similarly, the Fourth Circuit has held that police could not act in good faith reliance on *Place* to conduct a pre-*Jardines* dog sniff after they had completed a protective sweep of a parolee's unauthorized new residence, reasoning that *Place* did not authorize "indiscriminate" use of dog sniffs. *United States v. Hill*, 776 F.3d 243, 251 (4th Cir. 2015). See also *Whitaker*, 820 F.3d at 854–55 (good-faith exception did not apply to post-*Jardines* dog sniff in apartment building hallway even though no recognized expectation of privacy there because no precedent "specifically authorized" such conduct). Cf. *Burston*, 806 F.3d at 1128–29 (holding officers did not act in good faith in conducting sniff outside apartment window separated from walkway by grill and bush that partially obscured window).

This Court should grant certiorari to resolve the deep split over whether the good-faith exception

applies to dog sniffs conducted in apartment building common areas, and to provide guidance on how to properly assess the culpability of police officers—that is, whether officers may engage only in conduct "specifically authorized," or whether they may rely in good faith on the general holdings of binding precedent.

III. This Case Is an Ideal Vehicle for Resolving These Important and Recurring Questions.

This case provides an ideal vehicle to resolve both of these clear splits. The case turns on pure questions of law, and the facts are straightforward and undisputed—indeed, the parties stipulated that officers entered the unlocked outer door of an apartment building with a drug detection dog that performed a sniff in common area hallways used for nothing but ingress and egress, and that the dog alerted outside respondent's door. See App. 2a. Nor did the Illinois Supreme Court rely at all on state law or the state constitution. Cf. *Michigan v. Long*, 463 U.S. 1032, 1041 (1983) (holding that this Court does not have jurisdiction over state court decisions relying on "adequate and independent state grounds").

The sheer number of cases alone demonstrates that these questions recur frequently. That is unsurprising given that, in the United States, there are over thirty-five million residential units in buildings with two or more residences, and almost sixty-five million Americans live in such buildings. U.S. Census Bureau, *2017 American Community Survey* (available at https://tinyurl.com/y9h5d2dx; https://tinyurl.com/y9onoafz). And police regularly

use dog sniffs to detect contraband, such as illegal drugs.

The legal questions here are distilled and untainted by any factual disputes, and the case provides a textbook opportunity to resolve these critical and recurring Fourth Amendment issues.

IV. This Court Should Reverse the Illinois Supreme Court's Judgment.

The Illinois Supreme Court erred in concluding that the dog sniff conducted outside of respondent's apartment door was a Fourth Amendment search under *Jardines*. Respondent had no possessory interest in the common area hallway, which also did not qualify as the apartment's curtilage under the four analytic tools set forth in *Dunn*: although the hallway was in close proximity to the apartment, it was not included within any enclosure, respondent used it for nothing but ingress and egress to the apartment, and respondent made no effort to protect the landing from observation. See *Dunn*, 480 U.S. at 301. The hallway did not harbor "the intimate activity associated with the sanctity of a man's home and the privacies of life," which *Dunn* described as the "central component of this inquiry." *Id.* at 300.

And even if the dog sniff was a search, the Illinois Supreme Court erred in holding that the exclusionary rule applied. As discussed, *Place*, *Edmond*, and *Caballes* all hold that a dog sniff beyond the outer limits of a defendant's home is not a Fourth Amendment search, and the officers here relied in good faith on this line of precedent. The Illinois Supreme Court mistakenly believed that the good-

faith exception did not apply because those cases did not "specifically authorize" a dog sniff at the threshold of a residence. See App. 21a. But if a dog sniff conducted in public is not a search because it reveals only the presence of contraband, then the officers (and the judge who issued the search warrant) reasonably could conclude that a dog sniff conducted in a publicly accessible hallway outside respondent's apartment door also was not a search. And *Jardines* did not call into question the dog sniff cases on which the officers reasonably relied. 569 U.S. at 10–11.

Moreover, at the time of the dog sniff, courts had concluded that residents had no reasonable expectation of privacy in unlocked apartment building common areas. See pp. 4-5, *supra*; App. 22a, 34a, 49a. The officers here did not act culpably by entering a location that enjoyed no reasonable expectation of privacy and engaging in activity that was not a Fourth Amendment search. Accordingly, the Illinois Supreme Court erred in excluding the drug evidence in this case.

CONCLUSION

The petition for a writ of certiorari should be granted.

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