No. 19-1301

In The
Supreme Court of the United States

CLYDE S. BOVAT,

Petitioner,

v.

STATE OF VERMONT,

Respondent.

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

BRIEF OF INSTITUTE FOR JUSTICE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF THE *AMICUS CURIAE* [1]

The Institute for Justice ("IJ") is a nonprofit, public-interest law center committed to defending the essential foundations of a free society and securing the constitutional protections necessary to ensure individual liberty. A central pillar of IJ's mission is to protect private property rights, both because an individual's control over his own property is a tenet of personal liberty and because property rights are inextricably linked to all other civil rights. *See United States* v. *James Daniel Good Real Prop.*, 510 U.S. 43, 61 (1993) ("Individual freedom finds tangible expression in property rights.").

The Institute's work in this regard includes challenging programs that permit government officials to trespass against private property without first securing a warrant based on individualized probable cause. *See*, *e.g.*, *McCaughtry* v. *City of Red Wing*, 831 N.W.2d 518 (Minn. 2013); *Black* v. *Vill. of Park Forest*, 20 F. Supp. 2d 1218 (N.D. Ill. 1998). It has also challenged government requirements that food truck owners install and operate GPS tracking devices on their vehicles as a condition of licensure. *See LMP Serv., Inc.* v. *City of Chicago*, 2019 Ill. 123123 (May 23, 2019). In addition, IJ has filed *amicus* briefs in numerous Fourth Amendment cases before this Court, including in *Collins* v. *Virginia*, 138 S. Ct. 1663

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[1] All parties received timely notice of and have consented to the filing of this brief. *Amicus* affirms that no counsel for any party authored this brief in whole or in part and that no person or entity made a monetary contribution specifically for the preparation or submission of this brief.

(2018), *City of Los Angeles* v. *Patel*, 576 U.S. 409 (2015), and *Florida* v. *Harris*, 568 U.S. 237 (2013).

SUMMARY OF ARGUMENT

The Vermont Supreme Court's decision expands this Court's narrow knock-and-talk exception to the Fourth Amendment's warrant requirement into a broad license for law enforcement officers to investigate private property at will. This Court recently held that the knock-and-talk exception is "limited" and permits officers to approach a person's front door to have a conversation—much like a Girl Scout or trick-or-treater. But as the decision below demonstrates, lower courts are increasingly sanctioning law enforcement's use of this narrow exception as a means to conduct an investigation on private property without a warrant. This Court expressly prohibited law enforcement from using knock and talks for that purpose, and should grant certiorari to curb further expansion of that limited exception to the warrant requirement.

Since before the dawn of the Republic, common law has recognized that property rights are central to the search and seizure analysis. *See United States* v. *Jones*, 565 U.S. 400, 405 (2012). For this reason, "a search … undoubtedly occur[s]" whenever government officials "obtain[] information by physically intruding on" a constitutionally protected area, such as a person's curtilage. *Florida* v. *Jardines*, 569 U.S. 1, 5–6 (2013) (quotation marks omitted). When officers conduct such a search without a warrant, "the *only* question is whether" the property owner "had given his leave … for them to do so." *Id.* at 8 (emphasis added).

This Court has held that officers have an "implicit license" to enter another's estate to "approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave." *Jardines*, 569 U.S. at 8. But the implied license permits no more than that, and is no broader for government officials than for private visitors. *Id.*; *see also* William Baude & James Y. Stern, *The Positive Law Model of the Fourth Amendment*, 129 Harv. L. Rev. 1821, 1869 (2016) (the Fourth Amendment requires that "police stand in a position of equality with private citizens"). Indeed, "no one is impliedly invited to enter the protected premises of the home in order to do nothing but conduct a search." *Jardines*, 569 U.S. at 9 n.4.

The Vermont Supreme Court's decision directly conflicts with these principles and undermines "the Fourth Amendment's property-rights baseline" reestablished by this Court's recent precedent. *Jardines*, 569 U.S. at 11. In a 3–2 opinion over the Chief Justice's dissent, the court held that law enforcement officers may enter private property without a warrant "to conduct an investigation," so long as they "restrict their movement to" so-called "semiprivate areas." *State* v. *Bovat*, 224 A.3d 103, 108 (Vt. 2019). The court's decision creates "a bright-line rule that permits law enforcement to freely wander and observe while on a person's driveway" or other "semiprivate" areas solely to conduct a search—even though that same conduct would constitute trespass if committed by a private citizen. *Id.* at 109 (Reiber, C.J., dissenting). The decision ignores the Fourth Amendment's common-law roots, and contravenes this Court's search-and-seizure jurisprudence.

This Court's intervention is necessary to reaffirm the sacred protections that the Fourth Amendment affords private property and to curb further attempts to diminish the Amendment's scope. While Vermont is alone in permitting government officials to enter "semiprivate areas" to conduct an investigation, lower courts have increasingly narrowed the Fourth Amendment's protections while broadening the government's authority to use invasive knock and talks to conduct warrantless searches of private property. This Court should grant certiorari and reverse to deter further erosion of every person's right to be secure in their home.

ARGUMENT

I. This Court Should Grant Certiorari to Reinforce the Property-Rights Baseline of the Fourth Amendment.

"The text of the Fourth Amendment reflects its close connection to property." *United States* v. *Jones*, 565 U.S. 400, 405 (2012). At the founding, a person's estate was a particularly "sacrosanct interest," "as evidenced by the doctrine that 'a man's house is his castle.'" Thomas Y. Davies, *Recovering the Original Fourth Amendment*, 98 Mich. L. Rev. 547, 642 (1999); *see also, e.g.*, 1 Legal Papers of John Adams 137 (L. Kinvin Wroth & Hiller B. Zobel eds., 1965) (John Adams citing the "strong Protection, that sweet Security, that delightfull Tranquillity which the Laws have thus secured to [an Englishman] in his own House"). In a case "undoubtedly familiar" to "every American statesman" at the time of the Amendment's ratification (*Jones*, 565 U.S. at 405), Lord Camden explained that "the property of every man [is] so

sacred, that no man can set his foot upon his neighbour's [estate] without his leave" (*Entick* v. *Carrington*, 95 Eng. Rep. 807, 817 (C.P. 1765)). In fact, the house-as-castle mantra was the "most recurrent theme" regarding search and seizure during the ratification debates. William J. Cuddihy, The Fourth Amendment 766 (2009).

Unsurprisingly, then, the founding generation considered unreasonable any warrantless, nonemergency search that interfered with the sacrosanct interest in the quiet refuge of one's living space. *See* Laura K. Donohue, *The Original Fourth Amendment*, 83 U. Chi. L. Rev. 1181, 1188 (2016) ("[a]t the time of the Founding," the government "could not forcibly enter a subject's domicile for purposes of search and seizure without a specific warrant" "outside of active pursuit of a known felon"). Such a search, like any other trespass, violated the rights holder's power to exclude—which was "[t]he essential attribute of the right to be secure" in one's person, house, papers, and effects. Thomas K. Clancy, *What Does the Fourth Amendment Protect: Property, Privacy, or Security?*, 33 Wake Forest L. Rev. 307, 308 (1998); *see also Loretto* v. *Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982) (right to exclude is "one of the most treasured strands in an owner's bundle of property rights"); Morgan Cloud, *Property Is Privacy: Locke and Brandeis in the Twenty-First Century*, 55 Am. Crim. L. Rev. 37, 42–43 (2018) ("[p]roperty stood as a primary bulwark against improper government intrusions into the lives of the people").

This Court's early cases construed the Fourth Amendment consistent with the founding generation's property-rights understanding of the Amendment. Most prominently, this Court held in *Boyd* v. *United States*, 116 U.S. 616, 635 (1886), that "constitutional provisions for the security of person and property should be liberally construed." There, the government subpoenaed the defendant to produce an invoice he had received for glass panes he had allegedly imported without paying sufficient duties. *Id.* at 618. The trial court admitted the invoice into evidence, but this Court reversed. Quoting Lord Camden, the Court explained that "[t]he great end for which men entered society was to secure their property," and that "every invasion of private property, be it ever so minute, is a trespass" unless "some positive law has justified or excused" the trespasser. *Id.* at 627 (quoting *Entick*, 95 Eng. Rep. at 817). These principles "affect the very essence of constitutional liberty and security." *Id.* at 630. Applying this reasoning, the Court held that the subpoena was unconstitutional because although government is entitled to obtain contraband, "it is not" entitled to personal papers. *Id.* at 623.

Over time, however, this Court's Fourth Amendment decisions became unmoored from a proper understanding of the property-rights framework, and lower courts frequently disregarded that framework altogether. For example, in *Olmstead* v. *United States*, 277 U.S. 438, 465 (1928), the Court held that the government's warrantless wiretapping of a suspected bootlegger's conversations was not a search within the meaning of the Fourth Amendment because the phone lines were not "house[s], papers, or

effects." Rejecting the majority's crabbed reading of the Fourth Amendment, Justice Butler in dissent applied a "liberal construction" of the constitutional provisions "safeguarding personal rights" and concluded that communications should be protected from wiretapping based on positive law. *Id.* at 487 (Butler, J., dissenting). But the majority did not agree, thus breaking from the Fourth Amendment's property-rights roots and significantly weakening constitutional protections.

In *Katz* v. *United States*, 389 U.S. 347 (1967), the Court further strayed from the property-rights roots recognized in *Boyd*. Overturning *Olmstead*, the *Katz* Court created a new Fourth Amendment standard unrelated to property rights in holding that a wiretap was a "search" because it impinged on Katz's "reasonable expectation of privacy." *Id.* at 360 (Harlan, J., concurring); *see also Terry* v. *Ohio*, 392 U.S. 1, 9 (1968) (adopting this language).

The reasonable-expectation-of-privacy standard added to, but "did not repudiate," the common-law trespass test observed in *Boyd*. *Jones*, 565 U.S. at 406–07; *see also id.* at 406 ("Fourth Amendment rights do not rise or fall with the *Katz* formulation"); *Florida* v. *Jardines*, 569 U.S. 1, 5 (2013) ("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" (brackets in original; quotation marks omitted)). Nevertheless, many courts after *Katz* focused their Fourth Amendment analysis not on whether an individual had the right to exclude others from their property, but on whether

that person's expectation of privacy was "reasonable" based only on "the degree of government intrusion society is willing to condone," even though that could "wan[e]" or "fluctuat[e]" over time. *State* v. *Kirchoff*, 587 A.2d 988, 993 (Vt. 1991); *see also Jones*, 565 U.S. at 427 (Alito, J., concurring) (noting societal factors may "lead to periods in which popular expectations are in flux"); *State* v. *Ochoa*, 792 N.W.2d 260, 276 (Iowa 2010) (noting criticism of *Katz* as "a malleable notion of privacy lacking any core of substantive rights"). Under this rubric, the founding-era trespass test "often [was] lost in *Katz*'s shadow." *Carpenter* v. *United States*, 138 S. Ct. 2206, 2268 (2018) (Gorsuch, J., dissenting).

The reasonable-expectation-of-privacy standard has proven insufficiently protective of individuals' right to be secure in their property. *See* William Baude & James Y. Stern, *The Positive Law Model of the Fourth Amendment*, 129 Harv. L. Rev. 1821, 1824–25 (2016); Jim Harper, *Escaping Fourth Amendment Doctrine After* Jones*: Physics, Law, and Privacy Protection*, 2012 Cato Sup. Ct. Rev. 219, 219 (2012) (noting "reasonable expectations is a confusing, unworkable test" that "reverses the inquiry that the Fourth Amendment's language requires"). The Fourth Amendment "did not guarantee some generalized 'right of privacy' and leave it to this Court to determine which particular manifestations of the value of privacy 'society is prepared to recognize as reasonable.'" *Minnesota* v. *Carter*, 525 U.S. 83, 97 (1998) (Scalia, J., dissenting). Thus, it comes as no surprise that courts are ill-equipped to proclaim what intrusions society deems reasonable, or that courts often allow evidence of the defendant's guilt

discovered during the relevant government encounter to influence the "reasonableness" of his or her expectation of privacy. *See* Chris Guthrie et al., *Inside the Judicial Mind*, 86 Cornell L. Rev. 777, 799–805 (2001); Jeffrey J. Rachlinski, *A Positive Psychological Theory of Judging in Hindsight*, 65 U. Chi. L. Rev. 571, 588–90 (1998).

The reasonable-expectation-of-privacy standard also is irredeemably circular, as it permits courts to define (and in effect, circumscribe) "reasonable" expectations of privacy according to public perception of effective law enforcement, not what the constitution commands. *See*, *e.g.*, *Kyllo* v. *United States*, 533 U.S. 27, 34 (2001) (explaining *Katz* "has often been criticized as circular, and hence subjective and unpredictable"); Jed Rubenfeld, *The End of Privacy*, 61 Stan. L. Rev. 101, 106–07 (2008). For example, if the government "were suddenly to announce on nationwide television that all homes henceforth would be subject to warrantless entry," individuals "could not realistically expect privacy in their homes." *Carpenter*, 138 S. Ct. at 2245 (Thomas, J., dissenting) (quotation marks omitted). But that kind of discretionary entry was the founding generation's paradigmatic unreasonable search. *See Riley* v. *California*, 573 U.S. 373, 403 (2014) ("the Fourth Amendment was the founding generation's response to the reviled 'general warrants' and 'writs of assistance' of the colonial era, which allowed British officers to rummage through homes in an unrestrained search for evidence of criminal activity"). And a Fourth Amendment violation is no less unconstitutional when the rights holder knows it is coming.

This Court has recently begun returning Fourth Amendment jurisprudence to its property-rights roots. In *Jones*, the Court held that the installation of a GPS tracking device on the undercarriage of a vehicle constituted a search. 565 U.S. at 400. Emphasizing that "[t]he Government physically occupied private property for the purpose of obtaining information," the Court had "no doubt that such a physical intrusion would have been considered a 'search' within the meaning of the Fourth Amendment when it was adopted." *Id.* at 404–05.

The Court then held in *Jardines* that the government's taking a drug-sniffing dog onto a person's front porch also constituted a search because the government's actions were outside the implied license that people enjoy when entering upon someone's homestead. 569 U.S. at 11–12. The Court explicitly tied the permissibility of the warrantless entry onto private property to the "background social norms that invite a visitor to the front door," holding that an officer "not armed with a warrant may approach a home and knock," and no more, "precisely because that is no more than any private citizen might do." *Id.* at 8–9 (quotation marks omitted). Indeed, "the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion" would "be of little practical value if the State's agents could stand in a home's porch or side garden and trawl for evidence with impunity." *Id.* at 6.

This Court should grant the petition here to reinforce the property-rights framework established by the founding generation and reinvigorated by

Jones and *Jardines*. That framework can be supplemented through the Positive Law model, which looks at "whether government officials have engaged in an investigative act ... that would be tortious, criminal, or otherwise a violation of some legal duty" if done by a private actor. Baude & Stern, *supra*, at 1825–26; *see also Jardines,* 569 U.S. at 7 (holding that, absent a warrant or emergency, an officer could do "no more than any private citizen might"); *Kentucky* v. *King*, 563 U.S. 452, 469 (2011) (same); *Florida* v. *Riley*, 488 U.S. 445, 451 (1989) (plurality opinion) (police officer's conduct was permissible because the officer "did no more" than what "[a]ny member of the public could legally have [done]").

The property-rights framework augmented by positive law is more than fully capable of resolving whether a "search" has occurred. Indeed, it would provide two significant benefits that *Katz*'s reasonable-expectation-of-privacy test does not. *See* Richard M. Re, *The Positive Law Floor*, 129 Harv. L. Rev. F. 313, 332 (2016) (articulating positive law floor model); Baude & Stern, *supra*, at 1826 (recommending positive law model for the Fourth Amendment). First, it provides an objective standard based on what the positive law permits or proscribes, rather than a malleable assessment based on what some judges subjectively believe is reasonable. Second, it would provide a more durable framework for determining whether a Fourth Amendment violation has occurred—one that would prevent future attempts to weaken the Amendment's protections, and would have precluded the Vermont Supreme Court's majority from adopting a rule granting officers blanket authority to roam private property in search

of evidence. In this way, the positive law floor model ensures robust protection of the "sacrosanct interest" of security in one's own home. Davies, *supra*, at 642.

II. The Vermont Supreme Court's "Semiprivate Areas" Standard Contradicts the Property-Rights Framework.

The decision below created a bright-line rule permitting law enforcement to freely wander "semiprivate areas" within the curtilage without a warrant. The decision completely disregarded *Jones* and *Jardines*, upended the property-rights baseline of the Fourth Amendment, and obliterated Vermont residents' rights to security in their property. It should be reversed.

A. The Property-Rights Framework Protects All Areas of the Curtilage and Narrowly Limits the Knock-and-Talk Exception.

"One virtue of the Fourth Amendment's property-rights baseline is that it keeps easy cases easy." *Jardines*, 569 U.S. at 11. That is particularly true when the government enters a person's estate. The home is "first among equals" when it comes to the Fourth Amendment. *Id.* at 6. After all, a person's right to "retreat into his own home and there be free from unreasonable government intrusion" stands "[a]t the Amendment's very core." *Collins* v. *Virginia*, 138 S. Ct. 1663, 1670 (2018). And the curtilage is "part of the home itself for Fourth Amendment purposes." *Jardines*, 569 U.S. at 6. Accordingly, an officer's intrusion within the curtilage is "sharply circumscribed." *Id.* at 7.

To protect the security of the curtilage, the knock-and-talk exception should be applied narrowly. The implied license underpinning the exception derives "from the habits of the country," and authorizes officers to do "no more than any private citizen might do." *Jardines*, 569 U.S. at 8. It applies only in narrow circumstances where law enforcement (1) approaches the home with the intent to speak with a resident, and (2) takes the route that any visitor would use to the front door, without meandering to other areas of the curtilage. *Id.* at 7. "A visitor cannot traipse through the garden, meander into the backyard, or take other circuitous detours that veer from the pathway that a visitor would customarily use"; "come to the front door in the middle of the night without an express invitation"; or "linger at the front door for an extended period"—nor may law enforcement. *Id.* at 19–20 (Alito, J., dissenting).

The implied license rationale makes good sense. As Justice Brandeis cautioned, "[o]ur government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for the law." *Olmstead*, 277 U.S. at 485 (Brandeis, J., dissenting). Permitting law enforcement to trespass freely on any private or "semiprivate" areas for any "investigative purpose," as Vermont now does, portends a bleak future for property rights and property owners' "treasured" right to exclude others from their curtilage. *See Loretto*, 458 U.S. at 435. For this reason, this Court should reject the "semiprivate" rule established below, which would significantly curtail Americans' rights to be secure in their property.

B. The Vermont Supreme Court's Decision Diminished the Protection Afforded Curtilage and Expanded the Knock-and-Talk Exception into a Freewheeling Investigatory License.

This case demonstrates the danger of straying from the founding generation's emphasis on property rights. Here, law enforcement officers entered Clyde Bovat's property to find a black pickup truck. *Bovat*, 224 A.3d at 105. The officers did not walk to the front porch, knock on the door, and attempt to talk to Bovat—which is what the implied license permits. *See Jardines*, 569 U.S. at 8. Instead, the officers parked in the driveway, walked "a significant distance" in the opposite direction of the home to a detached two-door garage that was "separated" from the home by a "row of trees," and began looking for the truck. *Bovat*, 224 A.3d at 105–06. Finding the garage closed and its contents obscured, the officers peered through a small, rectangular window in the garage door (about eight inches by twelve inches), and saw a black truck parked inside, the truck's license plate number, and what appeared to be animal hair and blood on the rear tailgate. *Id.* at 105, 115. The officers then left, their investigation complete.

That conduct unquestionably constitutes a "search" under this Court's precedent and the original understanding of that term. As the Court has explained, when an officer "physically intrudes on the curtilage to gather evidence, a search within the meaning of the Fourth Amendment has occurred." *Collins*, 138 S. Ct. at 1670. Indeed, at the founding, the meaning of the term "search" was "the same as it

is today": a "'seeking after, a looking for.'" *Carpenter*, 138 S. Ct. at 2238 (Thomas, J., dissenting) (quoting Nathan Bailey, An Universal Etymological English Dictionary (22nd ed. 1770)); *see also Morgan* v. *Fairfield Cty.*, 903 F.3d 553, 568 (6th Cir. 2018) (Thapar, J., concurring in part and dissenting in part) (the term "search" meant "what it means now: a purposeful, investigative act (and nothing more)"). For that reason, "[a]n officer approaching your home to return your lost dog or to solicit for charity may not be conducting a 'search' within the meaning of the Fourth Amendment." *United States* v. *Carloss*, 818 F.3d 988, 1004 (10th Cir. 2016) (Gorsuch, J., dissenting). After all, the officer is not investigating anything in that situation. But an officer who is "calling to investigate a crime"—let alone an officer who enters a person's estate and peers through the small windows of a detached garage—"surely *is*." *Id.* (emphasis added).

And because the officers did not obtain a warrant, the search was presumptively unreasonable. A "basic principle of Fourth Amendment law," this Court has "often said," is that "searches and seizures inside a home without a warrant are presumptively unreasonable." *King*, 563 U.S. at 459 (quotation marks omitted); *see also Collins*, 138 S. Ct. at 1670 ("the Court considers curtilage … part of the home itself for Fourth Amendment purposes"). That presumption can be rebutted only by exigent circumstances. *Payton* v. *New York*, 445 U.S. 573, 590 (1980); *see also* William J. Cuddihy, The Fourth Amendment lxvi (2009) (at the founding, "[u]nless some emergency was involved that precluded the use of a warrant, specific warrants were mandatory and

were intended to be the conventional method of search and seizure"); Davies, *supra*, at 649 (the common law provided "no justification for the search of a house beyond the ministerial execution of a valid search warrant"). Because no exigency existed here, the search was unreasonable.

The knock-and-talk exception cannot salvage this presumptively unreasonable search. *Jardines* held that the question is whether the officers followed "the background social norms that invite a visitor to the front door." 569 U.S. at 9–10 ("whether the officers had an implied license to enter the porch ... depends upon the purpose for which they entered"). Here, the wardens intruded on Bovat's driveway and garage—areas within the curtilage of his home—with the intent to conduct a search for his vehicle. In doing so, they strayed from the path visitors would be expected to use and thus exceeded the implied license. Accordingly, the officers' observations of the contents of Bovat's garage were not made from a lawful vantage point.

In an attempt to avoid this conclusion, the Vermont Supreme Court impermissibly expanded the knock-and-talk exception by creating a new zone of privacy—the "semiprivate area" (*Bovat*, 224 A.3d at 106)—that officers can enter to "conduct an investigation" without triggering Fourth Amendment scrutiny, regardless of their intent (*id.* at 108). The court recognized that such areas—"like driveways or walkways"—are part "of the curtilage" and thus entitled to "the same constitutional protection from unreasonable searches as the home itself." *Id.* at 107–08. Yet, it placed the burden on homeowners to take

affirmative steps to "indicate" an additional expectation of privacy in their driveways and garages, or else forfeit all protection the Constitution affords those areas. *Id.* at 109 (Bovat did not have a reasonable expectation of privacy in his garage because he "did little, if anything, to indicate that expectation"). That makes no sense—if an area is within the curtilage and thus entitled to the same Fourth Amendment protection as the home itself, then a government official may no more enter that area to conduct a search than he could enter the home to do the same. The Vermont Supreme Court's contrary holding diminishes the property rights afforded at common law, and demonstrates why the reasonable-expectation-of-privacy test insufficient on its own to protect property rights.

Vermont's rule conflicts with *Jardines*, original meaning, and the justifications for the knock-and-talk exception. It invites law enforcement to freely explore "semiprivate" areas of the curtilage in ways that private citizens may not, and therefore erodes the property rights underlying Americans' Fourth Amendment protections.

C. This Court Should Apply the Property-Rights Framework to This Case.

The parties focused on the reasonable-expectation-of-privacy rubric below, but this Court should grant review and decide this case under the property-rights framework reestablished in *Jones* and *Jardines*.

Bovat asserted a Fourth Amendment challenge below, and "[o]nce a federal claim is properly

presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below." *Yee* v. *City of Escondido*, 503 U.S. 519, 534 (1992). Indeed, in *Jones*, the petitioner relied exclusively on the reasonable-expectation-of-privacy test in the lower court (*United States* v. *Maynard*, 615 F.3d 544, 555 (D.C. Cir. 2010)), yet this Court granted certiorari and affirmed under a property-rights analysis (*Jones*, 565 U.S. at 405). The same approach is warranted here.

III. This Court's Intervention Is Necessary to Halt Further Attempts to Diminish Fourth Amendment Protection.

The Vermont Supreme Court's departure from this Court's Fourth Amendment jurisprudence is not an anomaly. Courts across the country are expanding the knock-and-talk exception in a manner that erodes the Fourth Amendment's protections and grants law enforcement broad investigatory powers.

For example, the Tenth Circuit has held that a homeowner did not revoke the implied license to enter the home's curtilage and knock on the front door by posting "No Trespassing" signs on his front and side yards, driveway, and front door. *Carloss*, 818 F.3d at 995–997; *but see id.* at 1003–04 (Gorsuch, J., dissenting). The Tennessee Supreme Court committed a similar error in *State* v. *Christensen*, 517 S.W.3d 60, 77 (Tenn. 2017), finding no unreasonable search when officers drove directly past "No Trespassing" and "Private Property" signs onto the defendant's driveway as part of an investigation.

As courts have refused to enforce the Fourth Amendment to limit invasive knock and talks, law enforcement's use of the practice has exploded. *See*, *e.g.*, *Carloss*, 818 F.3d at 1003 (Gorsuch, J. dissenting) (noting that "law enforcement has found the knock and talk an increasingly attractive investigative tool and published cases approving knock and talks have grown legion"); Quiwana N. Chaney, *United States v. Carloss: An Unclear and Dangerous Threat to Fourth Amendment Protections of the Home and Curtilage*, 95 Denv. L. Rev. 519, 525 (2018). For example, the Dallas Police Department has a 46-member knock-and-talk task force that approaches homes and requests permission to enter based on neighbors' tips of unusual activity. Jamesa J. Drake, *Knock and Talk No More*, 67 Me. L. Rev. 25, 35 (2014). Former Deputy Police Chief Christina Smith described the task force as a "way to lower crime and make good arrests." Tristan Hallman, *Dallas Police Are Finding Drug Houses by Walking Up and Asking*, Dallas Morning News (Aug. 25, 2013), https://tinyurl.com/ydex2ze3. And the Orange County Sheriff's Office in Florida has an entire division dedicated to performing knock and talks, conducting an estimated 300 knock and talks each month. Drake, *supra*, at 35; *see also* Orange County Sheriff's Office, Narcotics Section, https://tinyurl.com/ybshu4mg (last visited June 16, 2020) (in 2012, agents "closed 848 tips from conducting 'Knock and Talks'").

As illustrated by this case, lower courts have distorted the narrow knock-and-talk license to allow exactly the sort of at-will home intrusion that prompted the founding generation to insist on the Fourth Amendment. This Court's intervention is

necessary to restore the people's core constitutional right to be secure in their houses.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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