No. 21-___

IN THE

Supreme Court of the United States

ERIC IBARGUEN,

Petitioner,

v.

STATE OF NEW YORK,

Respondent.

On Petition for a Writ of Certiorari
to the Court of Appeals of New York

PETITION FOR A WRIT OF CERTIORARI

Patricia Pazner
Tammy E. Linn
Benjamin Welikson
APPELLATE ADVOCATES
111 John Street, 9th Floor
New York, NY 10038

Kendall Turner
O'MELVENY & MYERS, LLP
1625 Eye Street, NW
Washington, DC 20006

Jeffrey L. Fisher
Counsel of Record
STANFORD LAW SCHOOL
SUPREME COURT
LITIGATION CLINIC
559 Nathan Abbott Way
Stanford, CA 94305
(650) 724-7081
jlfisher@law.stanford.edu

QUESTION PRESENTED

Whether, or under what circumstances, social guests are entitled to the Fourth Amendment's protection against unreasonable searches of the home that they are visiting.

RELATED PROCEEDINGS

People v. Ibarguen, No. 56 (N.Y. 2021)

People v. Ibarguen, No. 2017-06039, 173 A.D.3d 1207 (N.Y. App. Div. 2019)

People v. Ibarguen, Indictment No. 10191/15 (N.Y. Sup. Ct. 2015)

TABLE OF CONTENTS

QUESTION PRESENTED i
RELATED PROCEEDINGS ii
TABLE OF AUTHORITIES v
PETITION FOR A WRIT OF CERTIORARI 1
OPINIONS BELOW 1
JURISDICTION 1
RELEVANT CONSTITUTIONAL PROVISION 1
INTRODUCTION 1
STATEMENT OF THE CASE 4
REASONS FOR GRANTING THE WRIT 8
I. Courts are deeply divided over how the Fourth Amendment applies to social guests in private homes 8
II. This case is an excellent vehicle for resolving the conflict over this important issue 11
III. The decision of the New York Court of Appeals is wrong 13
CONCLUSION 18

APPENDIX

Appendix A, Memorandum Opinion of the New York Court of Appeals (October 14, 2021) 1a
Appendix B, Decision and Order of the New York Supreme Court, Appellate Division (June 26, 2019) 33a

Appendix C, Affirmation in Support of Defendant's Omnibus Motion in the New York Supreme Court (October 1, 2015).....36a

Appendix D, People's Response to Defendant's Omnibus Motion (October 14, 2015).....38a

TABLE OF AUTHORITIES

Page(s)

Cases

Alderman v. United States,
394 U.S. 165 (1969) 18

Americans for Prosperity Foundation v. Bonta,
141 S. Ct. 2373 (2021) 16

Bonner v. Anderson,
81 F.3d 472 (4th Cir. 1996) 9

Boyd v. United States,
116 U.S. 616 (1886) 14, 15

Carpenter v. United States,
138 S. Ct. 2206 (2018) 14, 16

City of Champaign v. Torres,
824 N.E.2d 624 (Ill. 2005) 10

Collins v. Virginia,
138 S. Ct. 1663 (2018) 13

Encino Motorcars, LLC v. Navarro,
579 U.S. 211 (2016) 11

Facebook, Inc. v. Duguid,
141 S. Ct. 1163 (2021) 11

Figueroa v. Mazza,
825 F.3d 89 (2d Cir. 2016) 8, 9

Florida v. Jardines,
569 U.S. 1 (2013) 13, 14, 16

Gaylord v. State,
127 S.W.3d 507 (Ark. 2003) 10

Georgia v. Randolph,
547 U.S. 103 (2006) 14

Jones v. United States,
362 U.S. 257 (1960) 17

Katz v. United States,
389 U.S. 347 (1967) 16

Lange v. California,
141 S. Ct. 2011 (2021) 13

Mancusi v. DeForte,
392 U.S. 364 (1968) 16

Minnesota v. Carter,
525 U.S. 83 (1998) ..... *passim*

Minnesota v. Olson,
495 U.S. 91 (1990) ..... *passim*

Morton v. United States,
734 A.2d 178 (D.C. 1999) 10

NAACP v. Alabama ex rel. Patterson,
357 U. S. 449 (1958) 16

Nestlè USA, Inc. v. Doe,
141 S. Ct. 1931 (2021) 11

Payton v. New York,
445 U.S. 573 (1980) 13, 14

People v. Burton,
848 N.E.2d 454 (N.Y. 2006) 4

People v. Ortiz,
633 N.E.2d 1104 (N.Y. 1994) 6

Riley v. California,
573 U.S. 373 (2014) 14

Roberts v. U.S. Jaycees,
468 U.S. 609 (1984) 15, 16

State v. Ackerman,
499 N.W.2d 882 (N.D. 1993) 9

State v. Dannebohm,
421 P.3d 751 (Kan. 2018).....9

State v. Filion,
966 A.2d 405 (Me. 2009) 10

State v. Missouri,
603 S.E.2d 594 (S.C. 2004) 9

State v. Oien,
717 N.W.2d 593 (N.D. 2006).....9

State v. Redlich,
97 P.3d 1090 (Mont. 2004).....10

State v. Smith,
97 P.3d 567 (Mont. 2004).....10

State v. Talkington,
345 P.3d 258 (Kan. 2015).....9

United States v. Fields,
113 F.3d 313 (2d Cir. 1997) 9

United States v. Pollard,
215 F.3d 643 (6th Cir. 2000).....9

United States v. Rhiger,
315 F.3d 1283 (10th Cir. 2003).....8

United States v. Thomas,
372 F.3d 1173 (10th Cir. 2004).....8

In re Welfare of B.R.K.,
658 N.W.2d 565 (Minn. 2003).....9, 10

Wilson v. Layne,
526 U.S. 603 (1999).....14

Constitutional Provision

U.S. Const., amend. IV ..... *passim*

Statutes

28 U.S.C. § 1257(a) 1

N.Y. Crim. Proc. Law § 710.60[3] 11

N.Y. Crim. Proc. Law § 710.60[3][b] 4

Other Authorities

Coombs, Mary I., *Shared Privacy and the Fourth Amendment, or the Rights of Relationships*, 75 Cal. L. Rev. 1593 (1987).....15

Donohue, Laura K., *The Original Fourth Amendment*, 83 U. Chi. L. Rev. 1181 (2016) 14

The Father of Candor, *A Letter Concerning Libels, Warrants, Seizure of Papers, and Security for the Peace, &c.* (Almon 3d ed. 1765) 15

Fried, Charles, *Privacy*, 77 Yale L.J. 475 (1968) 16

Jefferson, Thomas, *The Complete Anas of Thomas Jefferson* (Franklin B. Sawvel ed., 1903) 12

LaFave, Wayne R., Search & Seizure: A Treatise on the Fourth Amendment (6th ed. 2021).....15

Miranda, Lin-Manuel, *In the Room Where It Happens*, *on* Hamilton: An American Musical (Atlantic Records 2015) 13

Risjord, Norman K., *The Compromise of 1790: New Evidence on the Dinner Table Bargain*, 33 Wm. & Mary Q. 309 (1976) 12-13

PETITION FOR A WRIT OF CERTIORARI

Petitioner Eric Ibarguen respectfully petitions for a writ of certiorari to review the judgment of the New York Court of Appeals.

OPINIONS BELOW

The opinion of the New York Court of Appeals (Pet. App. 1a-32a) is published at 2021 WL 4777276. The opinion of the Appellate Division (Pet. App. 33a-35a) is published at 173 A.D.3d 1207.

JURISDICTION

The decision of the Court of Appeals issued on October 14, 2021. Pet. App. 1a. On December 22, 2021, Justice Sotomayor extended the time within which to file a petition for a writ of certiorari to and including March 14, 2022. No. 21A279. This Court has jurisdiction under 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL PROVISION

The Fourth Amendment to the U.S. Constitution provides in relevant part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."

INTRODUCTION

This Court has repeatedly made clear that the Fourth Amendment sometimes protects houseguests against unreasonable governmental intrusion. But the breadth of this protection remains unresolved. In particular, different jurisdictions currently accord disparate protections to social guests who do not stay the night. As a result, it is currently unclear whether

houseguests such as those at dinner parties, romantic partners, attendees of book clubs, and participants in in-home Bible studies have any constitutionally guaranteed right to privacy in the spaces of their hosts.

Two decisions from this Court frame this issue. In *Minnesota v. Olson*, 495 U.S. 91, 96 (1990), the Court established that "overnight guests" are entitled to Fourth Amendment protection in the homes of their hosts. But the Court subsequently held in *Minnesota v. Carter*, 525 U.S. 83 (1998), that houseguests "present for a business transaction" and nothing more do not enjoy constitutional protection. *Id.* at 90. In *Carter*, five Justices expressed the view that "almost all social guests have a legitimate expectation of privacy, and hence protection against unreasonable searches, in their host's home." *Id.* at 99 (Kennedy, J., concurring); *see also id.* at 103 (Breyer, J. concurring in the judgment); *id.* at 108-09 (Ginsburg, J., dissenting). But the Court did not resolve whether social guests who do not stay the night may expect the same constitutional protection.

In the two decades since, lower courts have deeply divided over this oft-recurring issue. Some courts have followed the lead of the separate opinions in *Carter* and held, as a general rule, that short-term social guests have a reasonable expectation of privacy in the homes of their hosts. Other courts, including the New York courts in this case, have restricted the Fourth Amendment's protections largely to overnight guests.

This case provides an excellent opportunity to resolve this conflict. Petitioner Eric Ibarguen claims that he was having dinner with friends in their

apartment when police officers burst in without a warrant, ordered them all to step outside, and searched common areas of the apartment. Taking these assertions as true, the trial court rejected petitioner's Fourth Amendment claim on the ground that he "failed to sufficiently allege standing to challenge the search of the subject premises." Pet. App. 2a (quoting suppression court's ruling). The Appellate Division and a divided Court of Appeals each affirmed, deeming petitioner "merely a casual visitor [who] lacked standing to challenge the warrantless entry and subsequent search of the premises." *Id.* 34a (Appellate Division); *see also id.* 1a-2a (Court of Appeals).

This holding is untenable; at the very least, New York's rule should not stand without this Court's review. Millions of Americans regularly visit the homes of family and friends to engage in valuable social interactions. These visitors should not be stripped of constitutional protection in these private spaces to which they are invited. Nor should a homeowner's own solitude be imperiled "when she opens her home door to others," by a rule that "tempt[s] police to pry into private dwellings without warrant, to find evidence incriminating guests who do not rest there through the night." *Carter*, 525 U.S. at 107-08 (Ginsburg, J., dissenting). This Court should grant certiorari and clarify the Fourth Amendment's operation in this crucial sphere.

STATEMENT OF THE CASE

1. On a March evening in 2015, petitioner was having dinner with two friends in their basement-level apartment in Queens. Pet. App. 46a.[1] Petitioner lived just down the block but received his mail at his friends' home. *Id.* 52a. He had made this arrangement with his friends because he was "always at work," and mail left at his residence was frequently "tampered with" while he was away. *Id.*

While the group was eating together, several police officers suddenly crashed through the front door. Pet. App. 46a. They did not knock or provide any warning before entering the apartment. Nor did they have a warrant. The officers said they were pursuing a "short, fat, [B]lack" man "wearing a black hoody," who had allegedly sold drugs to an undercover officer and run away. *Id.* Petitioner, a slim Hispanic man, does not meet any element of the description the officers gave (nor, apparently, did either of his hosts). Nevertheless, the officers directed petitioner and his friends to stand outside the apartment and proceeded to conduct a search. *Id.*

While the officers did not find any Black man wearing a hoody sweatshirt in the apartment, their search uncovered a few glassines of heroin on a living room table. They accordingly arrested petitioner and his friends. Returning later with a warrant, the

---

[1] The State offered a significantly different recitation of the relevant facts below. But because this case arises on the equivalent of a motion to dismiss, all of petitioner's allegations must be taken as true. *See* N.Y. Crim. Proc. Law § 710.60[3][b]; *People v. Burton*, 848 N.E.2d 454 (N.Y. 2006).

police recovered one of two marked $20 bills allegedly used in the "controlled buy" of heroin by the man the officers had been chasing, as well as a black jacket.

Police also later searched the cell phone they seized from petitioner when they arrested him. The phone's call log contained no evidence of the conversation that the police had initiated to arrange the controlled buy.

2. The State charged petitioner with criminal sale of a controlled substance. The prosecution's theory was that petitioner had sold four glassines of heroin to an undercover officer and that the police had chased him into his friends' apartment.

Petitioner moved to suppress the evidence obtained during the officers' warrantless searches of the apartment. He claimed that the initial, warrantless search violated the Fourth Amendment and that later-recovered evidence was fruit of the poisonous tree. In response, the State did not argue that the officers' initial search was justified by exigent circumstances or was otherwise legal. Instead, the State asked the trial court to deny petitioner's motion without an evidentiary hearing on the ground that his allegations failed to "establish that he has standing" to challenge the officers' search. Pet. App. 42a; *see also id.* 39a. In particular, the State argued that "having dinner" at a friend's residence and "receiv[ing] mail" there "does not confer upon the defendant a legitimate expectation of [privacy in the friend's] residence." *Id.* 42a.

The trial court summarily denied petitioner's motion. Agreeing with the State, the trial court reasoned that petitioner "failed to sufficiently allege standing to challenge the search of the subject

premises." Pet. App. 2a (quoting suppression court's ruling).

Petitioner continued to deny he participated in any drug sale on the night in question and insisted upon trial. Among other things, he stressed that he bore no resemblance to the personal description the officers gave when they burst into his friends' apartment. Petitioner also noted that the officer who made the controlled purchase had never met him and that his cell phone had not received the call that had been made to set up the controlled purchase. Petitioner acknowledged that his heart had been "racing" when arrested. Pet. App. 56a-57a. But as he had put it to the prosecutor in his grand jury testimony: "If you have people crashing into somewhere you are having dinner, I am sure your heart would be racing too, ma'am." *Id.* 57a.

The jury returned a guilty verdict. Petitioner was sentenced to eight and one-half years in prison, to be followed by three years of supervised release.

3. The Appellate Division affirmed. As relevant here, the panel held that petitioner "lacked standing" to challenge the entry or search of his friends' apartment. Pet. App. 34a. Relying on New York precedent interpreting this Court's treatment of guests under the Fourth Amendment, the panel characterized petitioner as "merely a casual visitor" whose status "failed to establish a reasonable expectation in the apartment." *Id.* (citing *People v. Ortiz*, 633 N.E.2d 1104 (N.Y. 1994)).

4. The New York Court of Appeals granted review and affirmed by a 5-2 vote. Like the Appellate Division, the majority concluded that the trial court rightly denied petitioner's motion to suppress without

an evidentiary hearing "because the allegations in the motion papers were insufficient to warrant a hearing." Pet. App. 2a. In the majority's view, petitioner "failed to sufficiently allege standing to challenge the search of the subject premises." *Id.* (quoting suppression court's ruling).

Judge Wilson, joined by Judge Rivera, penned a lengthy dissent. They maintained that petitioner should have been afforded an evidentiary hearing because his asserted status "as a dinner guest at his friends' apartment" established "a privacy interest that the New York police violated when they entered without a warrant." Pet. App. 22a. The dissenters acknowledged that this Court's decisions in "*Olson* and *Carter* left significant space on the spectrum of social guest privacy undefined." *Id.* 24a. But they believed that the holdings in those cases "support the conclusion that social guests invited to share a dinner have some reasonable expectation of privacy . . . in a private residence where host and guest alike expect to be able to share woes and dreams" in an intimate setting. *Id.*

The dissenters closed by opining that "[t]he United States Supreme Court will eventually define the scope of the privacy rights of various sorts of invitees." Pet. App. 31a. Indeed, the dissenters declared that "[a] clear articulation of the scope of social guest privacy is overdue." *Id.* 30a. "The stakes of privacy in a home," they explained, "are important not just to the personal lives of individuals, but to our democracy." *Id.* 26a. "[H]ome gatherings have always been a site of political debate and activism," "[p]articularly for dissenting groups for whom the public sphere is hostile." *Id.* But regardless of the

reason for a home gathering, Judges Wilson and Rivera asserted that "a guest who has been invited by the home's residents for something as consequential as a meal" should not be left wondering whether the Fourth Amendment protects his or her privacy in that sequestered setting. *Id.* 31a.

REASONS FOR GRANTING THE WRIT

I. Courts are deeply divided over how the Fourth Amendment applies to social guests in private homes.

In the twenty-plus years since the Court decided *Minnesota v. Olson*, 495 U.S. 91, 96 (1990), and *Minnesota v. Carter*, 525 U.S. 83, 90 (1998), federal and state courts have deeply divided over how the Fourth Amendment applies to fact patterns between those two bookends—specifically, how it applies to social guests who are not staying the night in the home of their hosts. Eight federal courts of appeals and state courts of last resort have held that such persons can claim the protections of the Fourth Amendment; five state courts of last resort disagree.

1. To start with federal cases, the Tenth Circuit has "held that even social guests who do not stay the night have a reasonable expectation of privacy in the host's home and may therefore challenge a search of the home on Fourth Amendment grounds." *United States v. Thomas*, 372 F.3d 1173, 1176 (10th Cir. 2004); *see also United States v. Rhiger*, 315 F.3d 1283, 1286 (10th Cir. 2003). The Second Circuit likewise has held that "'overnight' status is not a precondition to a guest's ability to contest a search of his host's dwelling." *Figueroa v. Mazza*, 825 F.3d 89, 108 (2d Cir. 2016). At least those "social guests" with

a previous connection to the homeowner and who are visiting for a meaningful amount of time have Fourth Amendment rights in the dwelling. *Id.* at 109 (citing *United States v. Fields*, 113 F.3d 313, 320-21 (2d Cir. 1997)). The Sixth Circuit similarly held in a case with comparable facts that a homeowner's good friend who had occasionally stayed the night in the past and eaten meals with his host had a reasonable expectation of privacy in the premises. *United States v. Pollard*, 215 F.3d 643, 647-48 (6th Cir. 2000).[2]

Several decisions from state courts of last resort are in accord. *See State v. Dannebohm*, 421 P.3d 751, 754-57 (Kan. 2018) & *State v. Talkington*, 345 P.3d 258, 478-80 (Kan. 2015) (friends of hosts for several years who were not overnight guests); *In re Welfare of B.R.K.*, 658 N.W.2d 565, 572-77 (Minn. 2003) ("short-term social guest" in friend's home); *State v. Oien*, 717 N.W.2d 593, 597 (N.D. 2006) (reaffirming holding in *State v. Ackerman*, 499 N.W.2d 882, 884-85 (N.D. 1993), that "a guest generally has a reasonable expectation of privacy in a host's home"); *State v. Missouri*, 603 S.E.2d 594, 597-98 (S.C. 2004) (social guest who was "good friends" with the hosts). The reasoning of the Minnesota Supreme Court is typical: "The animating principle behind *Carter* is that an individual's expectation of privacy in commercial premises is less than an individual's expectation in a private residence, not that short-

---

[2] Prior to *Carter*, the Fourth Circuit also held that a social guest visiting an elderly neighbor was entitled to constitutional protection despite not being an overnight guest. *See Bonner v. Anderson*, 81 F.3d 472, 475 (4th Cir. 1996).

term social guests do not have a reasonable expectation of privacy." *B.R.K.*, 658 N.W.2d at 575.

Finally, after a thorough consideration of *Olson* and *Carter*, the D.C. Court of Appeals has concluded that "social guests of the host generally have a legitimate expectation of privacy," regardless of whether they are staying the night. *Morton v. United States*, 734 A.2d 178, 182 (D.C. 1999). The court then held that a social guest who was a longtime friend of his host had Fourth Amendment rights in the premises while visiting. *Id.*

2. By contrast, five state courts of last resort—including the New York Court of Appeals here—have held that social guests generally lack standing to challenge searches of their hosts' homes. *See* Pet. App. 1a-2a; *State v. Filion*, 966 A.2d 405, 407-09 (Me. 2009) (longtime friend who had visited regularly over the years to "hang out" but had never stayed the night); *City of Champaign v. Torres*, 824 N.E.2d 624, 631-32 (Ill. 2005) (guest at a party hosted by co-worker and friend); *State v. Smith*, 97 P.3d 567, 570 (Mont. 2004) & *State v. Redlich*, 97 P.3d 1090, 1091 (Mont. 2004) (guests at social gatherings); *Gaylord v. State*, 127 S.W.3d 507, 514 (Ark. 2003) (friend visting friend's trailer home). These courts reason that social guests who do not stay overnight lack a reasonable expectation of privacy because they lack any possessory interest in the dwelling and are unable to come and go as they please. *See, e.g.*, *Gaylord*, 127 S.W.3d at 514.

3. This conflict has no hope of working itself out. Different courts simply treat cases falling in the gray area in between *Olson* and *Carter* differently. Only this Court can bring needed clarity to the law.

II. This case is an excellent vehicle for resolving the conflict over this important issue.

For two reasons, this case offers an ideal opportunity to address how the Fourth Amendment applies to social guests in private homes who are not staying overnight.

1. The case arises on the equivalent of a motion to dismiss, thus eliminating any potential debate over the operative facts. New York law allows a trial court to deny a motion to suppress "summarily"—that is, without an evidentiary hearing—"where the motion papers do not provide adequate sworn allegations of fact." Pet. App. 1a, 13a; *see* N.Y. Crim. Proc. Law § 710.60[3]. That is the basis on which the trial court ruled here. Petitioner asserts that he was having dinner at his friends' apartment (a place where he often received mail too) when the police entered without a warrant and searched the dwelling. Without questioning those factual allegations, the trial court summarily denied petitioner's motion, stating that he "failed to sufficiently allege standing to search the subject premises." Pet. App. 2a (quoting suppression court's ruling).

The question whether petitioner's allegations and status as a social guest are sufficient to make out a violation of Fourth Amendment is thus squarely and cleanly presented here. This Court frequently grants certiorari to decide whether factual allegations in a complaint or the like state a legal violation. *See, e.g.*, *Facebook, Inc. v. Duguid*, 141 S. Ct. 1163, 1168-69 (2021); *Nestlè USA, Inc. v. Doe*, 141 S. Ct. 1931, 1935-36 (2021); *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 219 (2016). If so, then

the Court remands for further proceedings. The Court should follow the same course here.

2. Petitioner's status as a *dinner* guest makes him the quintessential social guest. Welcoming friends and family into our homes for meals is grounded in centuries of American tradition. For many, the activity carries religious significance (think, for example, of a Shabbat dinner or a Sunday brunch after church). For others, "breaking bread" around a table is a means of cementing friendships, deepening political and social associations, or exploring new relationships.

Our Founders themselves recognized the importance of shared meals. When they feared an impasse over whether the new national government would assume state debts incurred during the revolutionary war, Jefferson invited Madison and Hamilton to a private dinner at his home. *See* Thomas Jefferson, *The Complete Anas of Thomas Jefferson* 32-34 (Franklin B. Sawvel ed., 1903). Jefferson believed it "impossible that reasonable men, consulting together coolly, could fail, by some mutual sacrifice of opinion, to form a compromise which was to save the Union." *Id.* at 33-34. In the resulting "dinner table bargain," the men agreed that the federal government would indeed assume the debts, in exchange for locating the Nation's new capital in what became Washington, D.C. Norman K. Risjord, *The Compromise of 1790: New Evidence on*

the Dinner Table Bargain, 33 Wm. & Mary Q. 309 (1976).[3]

In short, this is the perfect case for sharpening where the dividing line lies, for Fourth Amendment purposes, between overnight guests and purely commercial visitors. This Court should take this opportunity to do so.

III. The decision of the New York Court of Appeals is wrong.

The widespread disagreement over how the Fourth Amendment applies in cases like this is reason alone to grant certiorari. The problems with the New York Court of Appeals' holding on the issue provide further reason for review.

1. While the Fourth Amendment protects against government intrusion in various places and contexts, "the home is first among equals." *Florida v. Jardines*, 569 U.S. 1, 6 (2013). At the "very core" of the Fourth Amendment is the right of people to be secure in their homes. *Lange v. California*, 141 S. Ct. 2011, 2018 (2021) (quoting *Collins v. Virginia*, 138 S. Ct. 1663, 1670 (2018)); *Payton v. New York*, 445 U.S. 573, 589-90 (1980).

---

[3] These events are recounted in the musical *Hamilton*. *See* Lin-Manuel Miranda, *In the Room Where It Happens*, *on* Hamilton: An American Musical (Atlantic Records 2015) ("But decisions are happening over dinner. Two Virginians and an immigrant walk into a room. Diametrically opposed, foes. They emerge with a compromise. Having opened doors that were previously closed. Bros. . . . Then Jefferson approaches with a dinner and invite. And Madison responds with Virginian insight.").

This well-established tenet embodies longstanding values. From its founding, our Republic has accorded "overriding respect" to the home, *Payton*, 445 U.S. at 601, providing heightened constitutional protection to safeguard its position as the "center of [our] private lives," *Georgia v. Randolph*, 547 U.S. 103, 115 (2006) (quoting *Carter*, 525 U.S. at 99 (Kennedy, J., concurring)); *see Wilson v. Layne*, 526 U.S. 603, 610 (1999) ("The Fourth Amendment embodies this centuries-old principle of respect for the privacy of the home."); *Boyd v. United States*, 116 U.S. 616, 630 (1886) (abridgment of "the sanctity of a man's home and the privacies of life" affect "the very essence of constitutional liberty and security").

This special solicitude has "ancient and durable roots." *Jardines,* 569 U.S. at 6. Steeped in the English common law tradition, the Founders believed deeply in the maxim that a "man's house is his castle." *Randolph*, 547 U.S. at 115. Opposition to the Crown's unrestrained invasions into the colonists' homes was a central catalyst of the Revolution and an animating force behind the Fourth Amendment's passage. *Carpenter v. United States*, 138 S. Ct. 2206, 2213 (2018); *Riley v. California*, 573 U.S. 373, 403 (2014); *see also* Laura K. Donohue, *The Original Fourth Amendment*, 83 U. Chi. L. Rev. 1181, 1249-50 (2016).

Indeed, trespass into the home was more than just a physical transgression. For the Founders, the home was a place of refuge, where individuals fostered intimacies with friends and family; a space where honest reflection and unguarded discourse could take place. Donohue, *supra*, at 1315. Accordingly, "[i]t [wa]s not the breaking of his doors,

and the rummaging of his drawers, that constitute[d] the essence of the offense; but it [wa]s the invasion of his indefeasible right of personal security, personal liberty." *Boyd*, 116 U.S. at 630. And the harm to be avoided covered not only homeowners themselves. No society could be free, the Founders reasoned, if the government could enter a person's home at will and seize papers and effects—impinging the privacy not just of householders, but that of their "friends and acquaintances" as well. Donahue, *supra*, at 1316 (quoting The Father of Candor, *A Letter Concerning Libels, Warrants, Seizure of Papers, and Security for the Peace, &c.* 54-55 (Almon 3d ed. 1765)).

2. In light of this tradition, as well as modern societal expectations, the five Justices who spoke to this issue in *Carter* were correct that social guests possess a reasonable expectation of privacy when visiting the home of another. *See Carter*, 525 U.S. at 99-101 (Kennedy, J., concurring); *id.* at 103 (Breyer, J. concurring in the judgment); *id.* at 108-09 (Ginsburg, J., dissenting); *see also* 6 Wayne R. LaFave, Search & Seizure: A Treatise on the Fourth Amendment § 11.3(b) (6th ed. 2021) (If the police "burst into *B*'s home and disrupt a dinner party at which *A* is present as a guest, then certainly *A* should be deemed to have standing to object.").

Many intimate and other social activities that are vital to our lives require a place where we may enjoy each other's company away from prying eyes. *Roberts v. U.S. Jaycees*, 468 U.S. 609, 619-20 (1984); *see also* Mary I. Coombs, *Shared Privacy and the Fourth Amendment, or the Rights of Relationships*, 75 Cal. L. Rev. 1593, 1593 (1987) ("Much of what is important in human life takes place in a situation of

shared privacy."); Charles Fried, *Privacy*, 77 Yale L.J. 475, 477 (1968) (similar). Examples include religious worship, political advocacy, or the fostering of close ties, which often require a "private place" that is free from "intrusion," where we know we "will not be disturbed." *Olson*, 495 U.S. at 99; *see also Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2382 (2021) (recognizing "the vital relationship between freedom to associate and privacy in one's associations" (quoting *NAACP v. Alabama ex rel. Patterson*, 357 U. S. 449, 462 (1958))). Such activities are critical for our "emotional enrichment" and for "cultivating and transmitting shared ideals and beliefs." *Roberts*, 468 U.S. at 619.

The home has long served as the central setting to engage in these types of personal activities together. As a matter of "daily experience," our homes afford private space to get closer with our chosen intimates. *Jardines*, 569 U.S. at 7. Maintaining the home's status for these shared activities is thus not only "valuable to society," *Olson*, 495 U.S. at 98, but "indispensable" to the way we live, *Carpenter*, 138 S. Ct. at 2220. It cannot be that social guests have no more expectation of privacy than if they were out in public. And that expectation should at minimum be on par with the caller who speaks from a public telephone booth, *Katz v. United States*, 389 U.S. 347, 353 (1967), the executive who works in a shared office, *Mancusi v. DeForte*, 392 U.S. 364, 369-70 (1968), or the cellphone user whose movements are shared with a third-party service provider, *Carpenter*, 138 S. Ct. at 2220.

3. In light of these precepts, the New York Court of Appeals was wrong to foreclose petitioner's Fourth

Amendment claim. Petitioner was invited by friends who lived down the block from him to share an intimate meal in their home—a paradigmatic social custom, indicating his "acceptance into the household," *Carter*, 525 U.S. at 90. Eating together connotes a mutual bond; a practically universal social custom that transcends culture. In fact, each of us has memories of tastes, smells, and conversations over homecooked meals shared with friends and family together in their homes. And we reasonably expect that we "will not be disturbed" when gathered together at the dinner table alongside our host. *Olson*, 495 U.S. at 99.[4]

Furthermore, conditioning the Fourth Amendment's protections on staying overnight would produce arbitrary and illogical results. An out-of-town friend-of-a-friend who stays one night, for example, can hardly claim greater "acceptance into the household" than a close confidante or family member who lives down the street and visits regularly. *Carter*, 525 U.S. at 90. And romantic partners expect the similar degrees of privacy during the evening as they do in the wee hours of the night.

---

[4] As the dissenting judges on the New York Court of Appeals observed, petitioner's expectation of privacy was confirmed by the fact that he received mail at his friends' residence. Pet. App. 17a, 24a. Keeping personal belongings in another person's home manifests trust and familiarity; it signifies connection to the home's residents, who have agreed to keep the belongings safe, and a sense of security about the dwelling itself. *See Olson*, 495 U.S. at 99 (guest's storage of belongings in host's home indicative of legitimate privacy expectation); *Jones v. United States*, 362 U.S. 257, 259-62 (1960) (same).

The privacy expectation in such circumstances arises from the nature of the relationship between the guest and the host and their shared intimacy; it should not be dictated by whether the encounter spans the hours on the clock that turn from one day to the next.

Refusing to recognize the legitimate privacy expectations of social guests also impairs the host's Fourth Amendment rights and erodes the home's value more broadly. As a homeowner, the home is more than a site of seclusion; it is a space we may hold open to those whom we choose to invite inside. That is, much of home's value derives from the "homeowner['s] right to expect privacy" not just for himself, but for "his family[] and his invitees" as well. *Alderman v. United States*, 394 U.S. 165, 179 n.11 (1969). Yet New York's rule vitiates this interest, "tempt[ing] police to pry into private dwellings without warrant" whenever social guests are present. *Carter*, 525 U.S. at 108 (Ginsburg, J., dissenting). Even if the fruits of such illegal searches cannot be used against homeowners, New York's rule allows them to form the basis of prosecutions against guests. Consequently, under New York's rule, the home is rendered vulnerable whenever friends and family are invited inside.

The Fourth Amendment does not countenance nor require this result. This Court should grant certiorari and reverse.

CONCLUSION

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

Respectfully submitted,

Patricia Pazner
Tammy E. Linn
Benjamin Welikson
APPELLATE ADVOCATES
111 John Street, 9th Floor
New York, NY 10038

Kendall Turner
O'MELVENY & MYERS, LLP
1625 Eye Street, NW
Washington, DC 20006

Jeffrey L. Fisher
Counsel of Record
STANFORD LAW SCHOOL SUPREME COURT LITIGATION CLINIC
559 Nathan Abbott Way
Stanford, CA 94305
(650) 724-7081
jlfisher@law.stanford.edu

March 11, 2022