No. 24-1093

IN THE
Supreme Court of the United States

ASHLEE MARIE MUMFORD,
Petitioner,

v.

STATE OF IOWA,
Respondent.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether a police dog's incidental nose poke through an open car window during a lawful exterior sniff—which the Iowa Supreme Court concluded was not officer-directed as a matter of fact—is permissible under the instinctual-entry doctrine or amounts to a Fourth Amendment search under *Jones* and *Jardines*.

PARTIES TO THE PROCEEDING

Ashlee Marie Mumford, petitioner on review, was the defendant-appellant below.

State of Iowa, respondent on review, was the appellee below.

RELATED PROCEEDINGS

Supreme Court of Iowa:

- *State of Iowa* v. *Mumford,* No. 23-1075 (Dec. 6, 2024) (reported at 14 N.W.3d 346).

Iowa District Court for Madison County:

- *State of Iowa* v. *Mumford,* No. SRCR109847, SMAC005298 (June 9, 2023) (not reported).

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BRIEF IN OPPOSITION

INTRODUCTION

This is a case about dogs, not *Katz*. Petitioner tries to turn a dog's instinctual, non-facilitated, non-directed nose poke through an already-open car window into a question of national importance by pitting *Katz* v. *United States,* 389 U.S. 347 (1967), against *Florida* v. *Jardines,* 569 U.S. 1 (2013), and *United States* v. *Jones,* 565 U.S. 400 (2012). But the purported split evaporates once the facts are set straight and the cases are sorted correctly. Worse, it then becomes clear that the crucial question here is a factual one, making this case a poor vehicle, too.

Every federal circuit and nearly every state high court follows the same rule: A police dog's instinctual,

non-facilitated, and momentary incursion during a lawful exterior sniff is neither a property trespass nor a *Katz*-style privacy invasion attributable to the officer. That is for several reasons—first because courts ask whether a dog's actions are attributable to police misconduct.

Though Petitioner skips that threshold question, the Iowa Supreme Court did not. It affirmed Petitioner's conviction, reasoning that the officers "did nothing to encourage" the dog, any intrusion was "fleeting," "almost imperceptibl[e]," and suppression would serve no deterrence because the officers acted in objective reliance on uniform precedent. Pet. App. 20a–22a, *Mumford* v. *Iowa*, No. 24-1093 (U.S. Apr. 7, 2025).

Petitioner instead conflates three very different lines of authority to manufacture a split: (1) cases where officers themselves trespassed into a vehicle, (2) cases where a dog first alerted outside and then entered with probable cause, and (3) cases like this one, governed by the instinctual-entry doctrine. After clearing the obfuscation about those three lines of cases, the circuits (and state high courts) are in near unison.

Petitioner argues the Fifth and Ninth Circuits are split from the Third, Sixth, Seventh, Eighth, and Tenth Circuits because the former applies the *Jones* property test to dog sniffs while the latter do not. Pet. 10–19. But the Fifth Circuit in *United States v. Keller*, applied the instinctual-entry doctrine from the Third, Sixth, Seventh, Eighth, and Tenth Circuits to a *Jones*-style trespass claim and held that there was no search. 123 F.4th 264, 268–269 (5th Cir. 2024) (collecting cases). As Petitioner notes: "According to the Fifth Circuit, the dog's 'incidental contact' was not

part of an intentional effort to gather information." Pet. 14 (quoting *Keller*, 123 F.4th at 268).

Meanwhile, Petitioner's Ninth Circuit cases involve materially different facts, either an officer trespassing or an exterior alert that gives probable cause—not a dog's instinctual entry. Pet. 11–13.

Petitioner emphasizes an Idaho Supreme Court decision. Far from evidence of a deeply entrenched conflict, that court stands alone. *See State* v. *Dorff*, 526 P.3d 988 (Idaho), *cert. denied*, 144 S. Ct. 249 (2023). Idaho alone rejects the instinctual-entry doctrine.

But even if Petitioner's purported conflict existed, this case is a poor vehicle. The decisive question below was factual—whether the drug-detection dog Orozco's entry was facilitated or instinctive—and, after reviewing the record, the Iowa Supreme Court ruled the dog's intrusion was *de minimis* based on uncontested testimony that the officer did not encourage or facilitate the dog's nose poke. App. 20a, 22a; *see* Pet. 6, 7, 22, 24 (Petitioner conceding Iowa Supreme Court found Orozco's entry was instinctive rather than officer-directed). That finding dooms any claim that the dog's momentary intrusion was police misconduct.

In any event, the good-faith exception bars suppression, because, "[t]o trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system." *Herring* v. *United States*, 555 U.S. 135, 144 (2009). Inadvertently allowing a dog to instinctively, and "almost imperceptibly," put its snout through an open window is not equivalent to the kind of "intentional conduct that [is] patently

unconstitutional" that the exclusionary rule was created to address. *Id*.

In short, there is no entrenched conflict calling out for this Court's review. Rather, at the heart of this case sits a fact dispute. And Petitioner lost that fact question at the Iowa Supreme Court. This Court should deny certiorari.

STATEMENT

1. Winterset, Iowa Police Officer Logan Camp stopped the car Petitioner Ashlee Mumford was driving late at night. He had seen the car parked at a known drug dealer's residence—after being unable to read her dirt-covered license plate, a traffic violation under Iowa Code § 321.38. App. 17a–18a. During the stop, Officer Camp asked Mumford and her passenger to step out of the vehicle. App. 3a–4a. The passenger left the front-seat window rolled down. App. 22a, 55a. Camp radioed for Officer Christian Dekker, the department's K-9 handler, who arrived with certified drug-detection dog Orozco within minutes. App. 3a, 61a–62a.

Dekker conducted a 15- to 20-second exterior sniff. App. 19a. Orozco briefly rose on his hind legs, put his paws on the passenger door, and his nose "momentarily, almost imperceptibly" crossed the plane of the open window. App. 14a. Dekker testified—and video confirmed—that he neither shortened the leash nor issued any command directing the dog inside the cabin. App. 57a. After the nose poke, Orozco alerted on the passenger window. App. 4a, 14a. The ensuing search uncovered two bags of methamphetamine in the glove box and, in Mumford's purse, some marijuana and a pipe. App. 4a.

Mumford moved to suppress, arguing (1) the stop was pretextual and (2) the "interior sniff" was unconstitutional. App. 14a. The district court found probable cause for the stop and ruled the dog's fleeting contact incidental, denying suppression. App. 14a–15a. After a bench trial, the court acquitted on methamphetamine possession but convicted on marijuana and paraphernalia possession. *Id.* It also rejected a post-verdict motion in arrest of judgment. App. 28a. Mumford appealed. App. 13a–14a.

2. A five-justice majority of the Iowa Supreme Court affirmed. Relying on *State* v. *Bauler*, 8 N.W.3d 892 (Iowa 2024), and Eighth Circuit precedent, the court held that a dog's instinctual, non-facilitated, and "brief[], almost imperceptibl[e]" nose-poke through an already-open window is not an impermissible Fourth-Amendment search. App. 20a–22a. Alternatively, the exterior sniff was lawful under *Illinois* v. *Caballes*, 543 U.S. 405 (2005), and any incidental contact was not deliberate, reckless, or grossly negligent conduct attributable to police misconduct or facilitation. App. 22a–23a.

The majority emphasized two major points: *First*, that Orozco's actions were spontaneous and instinctual, and the officers "did nothing to encourage it." App. 20a. *Second*, even had there been error, suppression was unwarranted because the case "does not involve deliberate, reckless, or grossly negligent conduct," but instead conduct in line with what the "Supreme Court explicitly approved in *Caballes*." App. 21a–22a.

Justice Oxley dissented, joined by Justice McDermott, reasoning that once Orozco's nose breached the window, the encounter became a trespassory search

under *Jones* and *Jardines*, rendering *Caballes* inapposite. App. 30a–36a. Unlike the majority, Justice Oxley would have found that officers facilitated Orozco's entry. App. 35a. And she opposed applying a federal-style good-faith exception to Iowa's constitution. App. 36a. Justice McDermott penned a separate dissent, warning that treating any interior sniff as harmless invites broader canine incursions. App. 36a–42a.

REASONS FOR DENYING THE PETITION

I. THE IOWA SUPREME COURT'S APPLICATION OF THE INSTINCTUAL-ENTRY DOCTRINE ALIGNS WITH ALL COURTS BUT ONE.

Petitioner attempts to entice this court with a manufactured split that glosses over key distinctions. But those distinctions matter. And when analyzed in context, a deep split is nowhere to be found. At best, Petitioner highlights one outlier state high court—a circumstance unworthy of this Court's review.

The question here, properly framed, is whether a "barely perceptible," incidental, and non-officer-facilitated nose-poke through an open window by a dog during a lawful *Caballes* sniff is a full-blown Fourth Amendment search under *Jones* and *Jardines*.

Petitioner attempts to conjure as a circuit split courts that apply *Katz* and those that apply *Jones*/*Jardines*. Petitioner reports that some courts—like the Third, Sixth, Seventh, Eighth, and Tenth Circuits, and now the Iowa Supreme Court—disregarded the trespass test in the dog-sniff context while other courts, like the Fifth, Ninth, and Idaho Supreme Court, apply the trespass test. But Petitioner overstates the alleged split.

A. There Is No Circuit Split Regarding Whether A Property-Based Analysis Applies To The Facts Presented Here.

Petitioner contends that the circuits are divided on whether a drug-dog's brief interior sniff must be analyzed under the Fourth Amendment's property-based trespass test or only under *Katz*/*Caballes*. Pet. 9. Petitioner groups the cases into two camps.

First, the property-plus camp. Petitioner argues that decisions from the Idaho Supreme Court and the Fifth and Ninth Circuits treat a dog's nose (or paws) crossing the window line as a physical trespass that automatically constitutes a search under *Jones* and *Jardines*. Pet. 10–14.

Second, the privacy-only camp. Petitioner then argues that the Iowa Supreme Court and the Third, Sixth, Seventh, Eighth, and Tenth Circuits look only to the *Katz*/*Caballes* "reasonable expectation of privacy" test and hold that an interior sniff is not a search so long as the exterior sniff is itself lawful. Pet. 14–20.

Petitioner's lines do not cleanly divide the cases. Instead, her cases are better sorted based on key factual distinctions. Those distinctions result in three buckets that determine the outcome with Idaho as the only split:

1. Officer Trespass. This bucket involves cases where police officers trespassed into the car without probable cause. In these cases, like Petitioner's Fifth and Ninth Circuit cases, no dog sniff is at issue. Pet. 10–14.

Consider *United States* v. *Ngumezi*, 980 F.3d 1285 (9th Cir. 2020). Pet. 11–12. There, an officer opened a car door and leaned in without probable cause, which the Ninth Circuit held was an unconstitutional search. *Ngumezi*, 980 F.3d at 1288. Next consider *United States* v. *Richmond*, 915 F.3d 352 (5th Cir. 2019), where the Fifth Circuit held that an officer pushing on a tire to look for drugs constituted a search under the Fourth Amendment. Pet. 13; *Richmond*, 915 F.3d at 358.

Those cases establish that an officer's own intentional intrusion into a car without probable cause is an unconstitutional search. Courts are neither confused nor split. Even before *Jones* and *Jardines*, courts had already declared that an officer's warrantless entry into a car is a Fourth Amendment search because cars are "protected by a legitimate expectation of privacy." *United States* v. *Ryles*, 988 F.2d 13, 15 (5th Cir. 1993).

But Petitioner conflates an officer's intentional entry into a car with a dog's incidental and non-facilitated touch. Petitioner cites no cases from either the Fifth or Ninth circuits that hold that a dog's incidental contact with a car qualifies as a full-blown *Jones*/*Jardines* search. Pet. 11–14.

The cited Ninth Circuit cases are irrelevant to the real issue here of a dog's incidental contact. Indeed, the Ninth Circuit has not even addressed the issue of a dog's instinctual entry or touching of a car. The closest petitioner's brief gets is an unpublished and non-precedential opinion in *United States* v. *Moore*, 2023 WL 6937414, at *3 (9th Cir. Oct. 20, 2023). Pet. 12–13. But in *Moore*, the dog first alerted on the exterior of the car, giving the dog and the officer probable cause to enter the vehicle and rendering the dog's subsequent entry into it constitutional. This result is consistent with decades of federal circuit precedent and is the essence of a *Caballes* search. This factual predicate of an exterior alert before entry is discussed in the second bucket of cases that resolve the supposed split.

The Fifth Circuit has addressed the issue, and its conclusion cuts against Petitioner. In *United States* v. *Keller*, the Fifth Circuit held that a dog's incidental touching of a bumper was not an unconstitutional

Fourth Amendment search under *Jones*/*Jardines* because a dog's "incidental contact" was not automatically attributable to police conduct, and it was more like "mere physical touching, such as when an officer leans on the door of a car while questioning its driver." 123 F.4th at 268 (quoting *Richmond*, 915 F.3d at 357). The court further relied on the Third, Sixth, Seventh, and Eighth Circuits for the proposition that a dog's instinctual, non-facilitated touching of a car is not an unconstitutional search that violates *Jones*/*Jardines*. *Id.* at 268–269.

Oddly, Petitioner cites *Keller* for the proposition that the Fifth Circuit is split from the circuit cases *Keller* explicitly affirmed. *Id.* at 268 ("Numerous circuits agree that, absent police misconduct, the instinctive actions of a trained canine—including placing his paws on a vehicle's exterior—constitute incidental contact, not an unconstitutional Fourth Amendment search."). But Petitioner lets that inter-circuit-harmony dog lie. As *Keller* shows, circuit courts agree that *Jones* does not change the analysis.

2. Exterior Alerts Give Probable Cause. On the other side of the Petitioner's purported split, Petitioner cites cases where courts have upheld a police dog's entry into a car and again claims that this somehow pits *Katz* against *Jones* and *Jardines*. Pet. 14–19.

But in those cases, the dogs first alerted outside of a car during an exterior sniff, creating probable cause to enter. *See United States* v. *Johnson*, 2024 WL 1956209, at *3 (6th Cir. May 3, 2024); *United States* v. *Winters*, 782 F.3d 289, 304 (6th Cir. 2015); *United States* v. *Plancarte*, 105 F.4th 996, 1000 (7th Cir. 2024); *United States* v. *Guidry*, 817 F.3d 997, 1006 (7th Cir. 2016); *United States* v. *Seybels*, 526 F.App'x 857, 859 n.1 (10th Cir. 2013).

The Fifth and Ninth Circuits align with the other circuits on this point. *See United States* v. *Powell*, 732 F.3d 361, 373 (5th Cir. 2013); *Moore*, 2023 WL 6937414, at *3. In *Powell*, the Fifth Circuit reiterated that exterior alerts give probable cause to enter the vehicle. 732 F.3d at 373. Or consider *Moore*, where the Ninth Circuit agreed that an exterior alert before a dog enters a car rendered neither the dog nor the officer's ultimate entry into the vehicle unconstitutional. 2023 WL 6937414, at *3.

Petitioner attempts to use exterior alert cases as both a sword and a shield. Pet. 12–13 ("[B]ecause the dog in *Moore* alerted to the presence of contraband before entering the car—a fact absent here—the officers had probable cause to search before the dog's entry into the vehicle.") (citations omitted); Pet. 14 n.2 (explaining that *Wilson*, which held that a "canine 'sniff' of [a] vehicle was not an unlawful search" is partly inapplicable because that opinion cites a case based on an exterior alert) (citations omitted).

And Petitioner misstates the Sixth Circuit's position on dog sniffs, reporting that the court has expressly precluded applying the trespass test in *Jones* and *Jardines* for dog sniffs. Pet. 16 (citing *Winters*, 782 F.3d 289, 292 (6th Cir. 2015) ("the Supreme Court's decision in *Jardines* is premised on a trespass rationale involving the special protection accorded to the home and, therefore, it does not alter the analysis for traffic stops")).

But read in context, *Winters* distinguished between a non-trespassory exterior sniff like in *Caballes* and a sniff during a real property trespass on a home's curtilage like in *Jardines*. *Winters*, 782 F.3d at 305 (holding that there was no "need to address the issue" of *Jardines* because there was no physical trespass by

the dog). And, importantly, in *Winters*, the dog first alerted on the car's exterior, giving probable cause for officers to enter. *Id*. at 294.

Petitioner also contends that the Seventh Circuit "solely" applies the privacy-based approach, citing *Guidry*. Pet. 18–19. That case involved "circumstances largely indistinguishable from the facts here." Pet. 19 (*citing Guidry*, 817 F.3d 997). As Petitioner explains, because the defendant's argument in *Guidry* "sound[ed] in the logic of *Jones* and *Jardines*," the court's rejection of defendant's Fourth Amendment argument must have also been a repudiation of *Jones*/*Jardines*. *Id.* But Petitioner leaves out a key fact: *Guidry* included an exterior alert, which gave probable cause to enter the car. *Guidry*, 817 F.3d at 1001–02, 1006.

Petitioner repeatedly cites cases upholding a dog's entry into a car but omits the fact that exterior alerts or other sources granted probable cause for that entry. Pet. 15–19 (citing *United States* v. *Pierce*, 622 F.3d 209, 214 (3d Cir. 2010); *Johnson*, 2024 WL 1956209, at *1–*3; *Plancarte*, 105 F.4th at 1000; *Guidry*, 817 F.3d at 1006; *United States* v. *Munoz*, 134 F.4th 539, 542–543 (8th Cir. 2025); *United States* v. *Pulido-Ayala*, 892 F.3d 315, 319 (8th Cir. 2018); *Seybels*, 526 F.App'x at 859 n.1; *United States* v. *Moore*, 795 F.3d 1224, 1232 (10th Cir. 2015)).

Taken together, courts agree that a dog's exterior alert gives probable cause, even if the officer eventually directed or facilitated the dog's entry into the car. And on this point, *Jones* or *Katz* are not in tension. The different facts in those exterior-alert cases blur both the potential split and those cases' relevance here.

3. Instinctual-Entry Doctrine. That leaves the third bucket of cases—the instinctual-entry doctrine. This bucket covers the facts established below.

The instinctual-entry doctrine applies when: (1) police officers execute a lawful exterior sniff, (2) during that sniff the dog incidentally touches the exterior or passes into the interior of a car without first alerting, and (3) the dog's accidental entry or touching during that sniff was neither officer-directed nor officer-facilitated.

Instinctual entries contrast with officer facilitated entries—those include a dog's entry after an exterior alert establishes probable cause as described above.

If the officer facilitated the dog's entry without probable cause, or other police misconduct was present, it is a Fourth Amendment search—full stop. *See, e.g.*, *Felders ex rel. Smedley* v. *Malcom*, 755 F.3d 870, 885 n.8 (10th Cir. 2014); *United States* v. *Winningham*, 140 F.3d 1328, 1330–31 (10th Cir. 1998).

Federal circuits unanimously agree that a dog's incidental, non-facilitated touching during an exterior sniff is not an unconstitutional search meriting suppression.[1] Indeed, many courts considering an exterior alert have explained that the instinctual-entry doctrine alternatively permitted the search.[2]

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[1] *See, e.g.*, *Keller*, 123 F.4th at 264, 268–269; *United States* v. *Wilson*, 2024 WL 3634199, at *2 n.1 (5th Cir. Aug. 2, 2024); *United States* v. *Sharp*, 689 F.3d 616, 619 (6th Cir. 2012); *United States* v. *Kelvin Lyons*, 486 F.3d 367, 373 (8th Cir. 2007); *United States* v. *Mostowicz*, 471 F.App'x 887, 891 (11th Cir. 2012).

[2] *See, e.g.*, *United States* v. *Pierce*, 622 F.3d 209, 214 (3d Cir. 2010); *United States* v. *Shen*, 749 F.App'x 256, 262 (5th Cir. 2018); *United States* v. *Johnson*, 2024 WL 1956209, at *3 (6th

That harmony across the circuits undermines Petitioner's purported split. Petitioner argues the Fifth Circuit split from the Third, Sixth, Seventh, Eighth, and Tenth Circuits. Pet. 13–14. But, in *Keller*, the Fifth Circuit held that a dog touching the car's bumper was not an unconstitutional search under *Jones* because it was incidental and not facilitated. 123 F.4th at 268.

The Fifth Circuit cited favorably instinctual-entry opinions from the Third, Sixth, Seventh, Eighth, and Tenth Circuits. *Id.* (citing *United States* v. *Sharp*, 689 F.3d 616, 619–620 (6th Cir. 2012) (holding that the dog's entry into the vehicle through the window that the defendant had rolled down of his own volition was not an unconstitutional search because the officer did not facilitate the dog's entry); *Guidry*, 817 F.3d at 1006 (holding that a dog's unfacilitated, incidental breach into an open car window was not an unconstitutional search); *Pierce*, 622 F.3d at 213–215 (holding that a drug dog's jumping into a vehicle through an open car door without an officer's direction to do so was not an unconstitutional search); *United States* v. *Olivera-Mendez*, 484 F.3d 505, 511–512 (8th Cir. 2007) (concluding that an unconstitutional search did not result after a dog instinctively placed it's paws on a car); *United States* v. *Stone*, 866 F.2d 359, 364 (10th Cir. 1989) (holding that an unconstitutional search does not result from a dog jumping into a car without facilitation by the officer)).

Cir. May 3, 2024); *United States* v. *Vazquez*, 555 F.3d 923, 930 (10th Cir. 2009); *United States* v. *Guidry*, 817 F.3d 997, 1006 (7th Cir. 2016); *United States* v. *Olivera-Mendez*, 484 F.3d 505, 511–512 (8th Cir. 2007); *United States* v. *Seybels*, 526 F.App'x 857, 859 n.1 (10th Cir. 2013); *United States* v. *Moore*, 795 F.3d 1224, 1232 (10th Cir. 2015).

Petitioner's entire split hinges on requiring circuit courts to invoke the magic words of *Jones*, *Jardines*, and an expressly applied property-based trespass test. Pet. 9 ("[C]ourts are split on whether a property-based analysis applies to a dog sniff into a vehicle's interior") (cleaned up); *see also* Pet. 19 (arguing the Seventh Circuit is split because in *Guidry* it rejected defendant's argument "[s]ounding in the logic of *Jones* and *Jardines*"—but omitting the circuit court's ultimate holding that the dog's exterior alert gave probable cause to enter the vehicle).

Petitioner's *amici* parrot the same narrative, asserting that any canine intrusion, however momentary, is a per se search and courts are split on *Jones* versus *Katz*. Brief for the Ctr. for Appellate Litig. as *Amicus Curiae* in Support of Petitioner at 3–10; Brief for The Rutherford Inst. & Restore the Fourth, Inc. as *Amici Curiae* in Support of Petitioner at 4–7, *Mumford v. Iowa*, No. 24-1093 (U.S. June 13, 2025) ("Rutherford Amicus Br.").

But *Jones* and *Jardines* cabined their rule to intentional governmental trespasses—not fleeting, unprovoked entries like here. *See Jones*, 565 U.S. at 408 n.5.

Put simply, the circuits Petitioner claims are divided are not. Far from it: The "circuits agree that, absent police misconduct, the instinctive actions of a trained canine—including placing his paws on a vehicle's exterior—constitute incidental contact, not an unconstitutional Fourth Amendment search." *Keller*, 123 F.4th at 268.

Petitioner acknowledges the instinctual-entry doctrine, yet fails to address whether it resolves her supposed "circuit split." Instead, Petitioner admits that neither a privacy nor trespass framework changes the

analysis when the key question is whether the contact was facilitated by the officer: "[W]hen a 'dog place[s] his paws on the rear bumper of the vehicle and sniff[s] near the back hatch' . . . . the [] scenario is governed . . . by *Jones* . . . . Even so, the Fifth Circuit held that a search did not occur . . . [because] the dog's 'incidental contact' was not part of an intentional effort to gather information." Pet. 13–14.

What Petitioner brushes aside is that, regardless of a privacy or trespass framework, courts first ask whether the dog's touch of a car was incidental or facilitated. Indeed, that threshold question is why many courts, under similar facts, do not even discuss *Jones/Jardines*.

On the one hand, courts agree that when an officer facilitates the dog's entry into a vehicle, an unconstitutional search results because it is equivalent to an officer's unlawful entry under both a privacy and trespass framework. *See, e.g.*, *Winningham*, 140 F.3d at 1330–31 (holding that an unconstitutional search took place because the officer opened the car door, moved the floor mat, and allowed the dog to methodically sniff the interior without probable cause).

That was true before *Jones*/*Jardines*, and it remains true after. *See Malcom*, 755 F.3d at 880 (holding that there was a reasonable expectation of privacy in a car when officers facilitated a dog's entry into the car's interior by holding car door open and allowing the dog to methodically sniff its interior absent probably cause).

On the other hand, courts also agree that, during a lawful exterior sniff, if a dog incidentally and minimally breaches the cabin of a car without an officer facilitating that entry, then the dog's actions are not

automatically an impermissible search attributable to officer misconduct. *Keller*, 123 F.4th at 268. Instead, the police dog is just being a dog.

Neither a privacy nor trespass framework changes that. Under both, courts agree that a dog touching a car of its own accord—without officer facilitation—does not violate the Fourth Amendment. *See infra* note 4 (collecting cases). "[A] common law trespass by a government agent constitutes a Fourth Amendment search only when it is 'conjoined with an attempt to find something or obtain information.'" *Keller*, 123 F.4th at 268–269 (quoting *Jones*, 565 U.S. at 408 n.5). So "absent police misconduct, the instinctive actions of a trained canine . . . constitute incidental contact, not an unconstitutional Fourth Amendment search." *Id.* And under a privacy framework, drivers lack a reasonable expectation of privacy in the "interior of the car that the[y have] voluntarily exposed to the dog" before a lawful exterior *Caballes* sniff. *Malcom*, 755 F.3d at 880.

And despite the fact-intensive nature of this inquiry, courts dependably reach the same result. Indeed, every circuit case Petitioner cites on both sides of the purported split post-dating *Jones* or *Jardines* (that did not involve either (1) officer entry, or (2) an exterior alert), focused on whether the entry was instinctual and whether the police officers involved facilitated it. Pet. 11–20 (*citing Keller*, 123 F.4th 264; *United States* v. *Wilson*, 2024 WL 3634199, at *2 n.1 (5th Cir. Aug. 2, 2024); *Sharp*, 689 F.3d at 619; *Johnson*, 2024 WL 1956209, at *3; *Moore*, 795 F.3d at 1232; *Malcom*, 755 F.3d at 885 n.8; *United States* v. *Mostowicz*, 471 F.App'x 887, 891 (11th Cir. 2012)).

A 2018 Eighth Circuit decision does not ring an errant note interrupting that harmony. In dicta, a panel

cast some doubt on the instinctual-entry doctrine as presented in earlier cases. *See Pulido-Ayala*, 892 F.3d at 318–319 (the instinctual-entry doctrine may be improper in light of *Ashcroft* v. *al-Kidd*, but probable cause existed to enter the car) (*citing United States* v. *Michael Lyons*, 957 F.2d 615 (8th Cir. 1992); *Ashcroft* v. *al-Kidd*, 563 U.S. 731, 736–737 (2011)). But as Petitioner rightly points out, the Eighth Circuit earlier this year "clarified that the *Lyons* cases remain good law." *See* Pet. 18. The Eighth Circuit therefore continues to apply the instinctual-entry doctrine. *Munoz*, 134 F.4th at 543.

In short, Petitioners fail again to show a split in authority. What matters under these facts is not *Jones*/*Jardines* nor any privacy or trespass framework. The purportedly split cases come down to a threshold factual question: Did the officer facilitate the dog's entry? If not, then the dog was being a dog. And there was no Fourth Amendment search.

B. Idaho's Divergence Rests on State-Specific Grounds and Does Not Disrupt State High Courts Alignment with Federal Courts of Appeals on the Instinctual-Entry Doctrine.

1. State high courts align with federal circuits, faithfully applying the instinctual-entry doctrine, even after *Jones*/*Jardines*. *See, e.g.*, *Pier* v. *State*, 421 P.3d 565, 582 (Wyo. 2018) (recognizing the instinctual-entry doctrine by citing the Third, Sixth, Seventh, Eighth, and Eleventh Circuits); *People* v. *Pham*, 562 P.3d 894, 900 (Colo. 2025) ("[F]ederal courts have perceived no Fourth Amendment violation when a drug-detection dog acted 'instinctively' *and without facilitation by its handler* in entering a vehicle"); *State* v. *Miller*, 766 S.E.2d 289, 296 (N.C. 2014) ("This point [the instinctual-entry doctrine] is dispositive in this

case, and . . . supports the holdings in those federal circuit court cases."). Countless state intermediate courts agree.[3]

Petitioner cites one state high court that diverges from all other state high courts and all federal circuits.[4] *State* v. *Randall*, 496 P.3d 844 (Idaho 2021) (rejecting the instinctual-entry doctrine). But Petitioner does not frame the split along these grounds. Perhaps that is because no federal circuit court has rejected the doctrine; or perhaps it is because this Court has recently denied certiorari on this exact issue at least twice before. *See State* v. *Howard*, 496 P.3d 865 (Idaho

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[3] *See, e.g.*, *Commonwealth* v. *Rogers*, 741 A.2d 813 (Pa. 1999), *aff'd*, 578 Pa. 127 (2004); *State* v. *Schreck*, 2018 WL 988903 (Ariz. Ct. App. Feb. 20, 2018); *Omar* v. *State*, 262 S.W.3d 195 (Ark. Ct. App. 2007); *State* v. *Medina*, 2020 WL 104323 (Del. Super. Ct. Jan. 7, 2020); *People* v. *Sanchez*, 2022 WL 3928539 (Ill. Ct. App. 3d Aug. 31, 2022); *State* v. *Freel*, 32 P.3d 1219 (Kan. Ct. App. 2001); *Cruz* v. *State*, 895 A.2d 1076 (Md. Ct. App. 2006); *State* v. *Logan*, 914 S.W.2d 806 (Mo. Ct. App. 1995); *State* v. *Fuqua*, No. A-0137-18, 2021 WL 3701734 (N.J. Super. Ct. App. Div. Aug. 20, 2021); *State* v. *Warsaw*, 956 P.2d 139 (N.M. Ct. App. 1997); *State* v. *Barton*, 2025 WL 1512437 (Ohio Ct. App. May 28, 2025); *State* v. *Beames*, 511 P.3d 1226 (Utah Ct. App. 2022).

[4] By the State's account, only a handful of other state *intermediate* appellate courts have cast doubt on the instinctual-entry doctrine: *State* v. *Campbell*, 5 N.W.3d 870 (Wis. Ct. App. 2024) (applying without deciding whether instinctual-entry doctrine governs); *State* v. *Organ*, 697 S.W.3d 916 (Tex. App. 2024), petition for discretionary review granted (Jan. 15, 2025) (rejecting instinctual-entry doctrine but currently on appeal to Texas Criminal Court of Appeals because the decision conflicts with other state intermediate courts which adopted the doctrine); and a pair of conflicting opinions from California, *People* v. *Prince*, No. C096016, 2023 WL 3316211 (Cal. Ct. App. May 9, 2023) (arguing that *Jones* counsels a different analysis); *People* v. *Stillwell*, 129 Cal. Rptr. 3d 233 (Cal. Ct. App. 3d 2011) (applying instinctual-entry doctrine). Petitioner does not consider these cases either.

2021), *cert. denied*, 143 S. Ct. 271 (2022); *Dorff*, 526 P.3d at 995–996.

Petitioner instead reframes Idaho's divergence as part of a larger split, alongside the Fifth and Ninth circuits. Pet. 10. But that skips over the threshold question all courts—except Idaho—apply: Whether a dog's instinctive actions are attributable to the officer involved. Indeed, neither the Fifth nor Ninth Circuit repudiates this approach.

2. Idaho's outlier decision is largely premised on state-specific case law. The Idaho Supreme Court applied modern developments in Idaho-specific law regarding trespasses to chattel and real property. *See Howard*, 496 P.3d at 868–869; *Dorff*, 526 P.3d at 995–996. That court more recently reasoned that, although it should "respect" Fourth Amendment jurisprudence from this Court and others, the "overlay of *state*-focused common law 'trespass'" warranted a different analysis. *Dorff*, 526 P.3d at 995. Perhaps this is why this Court denied certiorari twice on the issue.

Idaho's outlier approach is a far cry from a matter that is nationally significant and has engendered great division and debate.

II. THE DECISION BELOW IS CORRECT.

The Iowa Supreme Court's ruling correctly applies the Fourth Amendment. When a properly-trained canine, during a lawful *Illinois v. Caballes* exterior sniff, momentarily poked its nose through an open window the suspect had opened, the Iowa Supreme Court held that fleeting, non-facilitated contact does not convert the sniff into a constitutionally invalid search.

By applying the instinctual-entry doctrine—long recognized by every federal circuit to address the issue

and by Iowa's own precedent—the court applied the settled principle that the Fourth Amendment targets police misconduct, not a dog's spontaneous reactions.

And even if Petitioner had successfully convinced the Iowa Supreme Court to skip the instinctual-entry doctrine, the officer's actions would have survived scrutiny under common-law trespass principles. And that is because a dog's actions at common law for trespass are not automatically attributable to its owner, even in the context of a trespass to real property. More, a trespass to chattels required damages to be actionable. And here, Orozco's instinctive actions are not attributable to the officer, and did not cause any damage by sniffing just inside a rolled-down window.

A. The Iowa Supreme Court Followed Well-Established Precedent by Holding Constitutional a Dog's Incidental and Non-facilitated Contact with a Car During a *Caballes* Sniff.

The Iowa Supreme Court correctly held that the officers here executed a lawful *Caballes* dog sniff. App. 22a. The Iowa Supreme Court, citing the Eighth Circuit's opinion in *Kelvin Lyons* and its own precedent in *Bauler*, reasoned that Orozco's incidental contact with the car and "barely perceptible" nose-poke through a window the defendant left open did not transform the sniff into an unlawful one warranting suppression of evidence. App. 21a–22a (citing *Kelvin Lyons*, 486 F.3d at 373–374); App. 20a (*Bauler* "largely controls our case . . . . a drug dog's quick, incidental touch did not violate the Fourth Amendment").

The Court reiterated that Orozco's entry was "instinctual" and the officers "did nothing to encourage

it." App. 20a. And it cited various other courts that have applied the instinctual entry doctrine. App. 21a–22a (citing *Wilson*, 2024 WL 3634199, at *2 & n.1 (collecting cases and holding no search where a dog instinctively entered a cabin without direction); *Pierce*, 622 F.3d at 214–215 (citing other circuit courts and holding instinctual-entry doctrine applied and the incidental contact was not unconstitutional).

The Iowa Supreme Court's holding is consistent with well-established federal circuit and Iowa Supreme Court precedent. Circuit courts, for example, have said a dog's entry into a vehicle during an exterior *Caballes* sniff is lawful when: "(1) the dog's leap into the car was instinctual rather than orchestrated and (2) the officers did not ask the driver to open the point of entry, such as a hatchback or window, used by the dog." *United States* v. *Vazquez*, 555 F.3d 923, 930 (10th Cir. 2009) (citing *Stone*, 866 F.2d at 364; *Winningham*, 140 F.3d at 1330–31); *see also Moore*, 795 F.3d at 1232; *Malcom*, 755 F.3d at 880; *United States* v. *Lujan*, 398 F.App'x 347, 350 (10th Cir. 2010).

That makes sense, given the instinctual-entry doctrine determines whether officers intended to facilitate an interior search. *Winningham*, 140 F.3d at 1331. And that focus aligns well with the Fourth Amendment's purpose, because "the Fourth Amendment addresses 'misuse of power,' not the accidental effects of otherwise lawful government conduct." *Brower* v. *Cty. of Inyo*, 489 U.S. 593, 596 (1989) (quoting *Byars* v. *United States*, 273 U.S. 28, 33 (1927)).

Despite that, Petitioner contends that the Iowa Supreme Court committed reversible error by not specifically referencing *Jones*/*Jardines* and invoking the property test. But nothing required the Iowa Supreme Court to invoke those cases. The instinctual-entry

doctrine asks a threshold question, even if the dog committed common-law trespass. That is because *Jones* specified that "[a] trespass on 'houses' or 'effects,' or a *Katz* invasion of privacy, is not alone a search unless it is done to obtain information." *Jones*, 565 U.S. at 408 n. 5. As the Fifth Circuit echoed, "[a] common law trespass by a government agent constitutes a Fourth Amendment search only when it is 'conjoined with an attempt to find something or obtain information.'" *Keller*, 123 F.4th at 268.

Regardless of whether the Court employs a property or privacy framework in cases like this one, a government actor's conduct must still be done for the purpose of gathering information. And if a police dog acts without facilitation of its handler, "it cannot be said that a State or governmental actor intends to do anything." *Miller*, 766 S.E.2d at 296. In such cases, the dog is simply being a dog.

But if an officer engages in misconduct or facilitates the dog's entry, the Court can infer an intent to obtain information. *Id.*; *see also Keller*, 123 F.4th at 268. And what constitutes "facilitation" or "police misconduct" is a fact question. For example, in *Winningham* the officers opened the car door and unleashed the dog near the open door. 140 F.3d at 1330–31. The court held that the officers facilitated the dog's entry into the car, transforming a lawful exterior sniff into an unlawful search. *Id.*

Courts have clarified that merely training a police dog to sniff and locate drugs is not "facilitation." *Sharp*, 689 F.3d at 620. An officer must affirmatively act by opening a door, lifting a dog in, or training the dog to jump through open windows, regardless of any illicit smell. *Id.* (stating it would be non-instinctual if

an officer had trained the dog "to jump into vehicles rather than merely trained to sniff for drugs").

But when a defendant leaves their car door open or window down, then a dog acts on its own volition and instincts, all courts that have addressed the issue agree there is no Fourth Amendment violation. *See, e.g., id.* ("The officers did not encourage or facilitate the dog's jump into the vehicle and did not have an affirmative duty to close the open window."); *Keller*, 123 F.4th at 269 ("[C]ircuits agree that, absent police misconduct, the instinctive actions of a trained canine . . . constitute incidental contact, not an unconstitutional Fourth Amendment search." (citations omitted) (collecting cases)).

Here, Officer Dekker testified at the suppression hearing that he did not instruct, facilitate, or encourage Orozco to enter Petitioner's car. App. 19a–20a (Iowa Supreme Court's factfinding that Officer Dekker did not encourage Orozco's brief intrusion); *see also* App. 55a, 60a–61a (Suppression Hearing Transcript). At no point did Dekker enter or touch the car, nor did Orozco jump inside it.

Nor is there any evidence that Dekker or Orozco's actions caused any damage to Petitioner's car during the sniff. Indeed, Dekker kept control of Orozco with a leash, and he testified that he neither shortened the leash nor corrected the dog's behavior because he did not foresee nor intentionally cause Orozco's entry. App. 60a–61a. Dekker even clarified that the intended sniff was limited strictly to an exterior sniff. App. 19a ("Camp and Dekker intended to conduct a dog sniff around the exterior of the vehicle.").

So, the court found, Officer Dekker neither intended nor had substantial certainty that Orozco would enter

Petitioner's vehicle. Orozco's brief intrusion was spontaneous, occurred without the officer's knowledge or intention, and resulted because of Orozco's own instinctual actions. Based off that factual finding, the court held that Orozco's spontaneous action—placing his paws on the car's door and briefly inserting his snout into the already open window without any encouragement from the officer—is precisely the type of incidental, instinctual entry that does not implicate police misconduct and warrant Fourth Amendment scrutiny.

B. The Court's Application of the Instinctual-Entry Doctrine Aligns with Common-law Trespass Principles.

In *Jones*, this Court introduced a historical trespass test to determine whether a Fourth Amendment search occurred. *Jardines* applied *Jones* to hold that a person's home and its curtilage were areas historically afforded heightened Fourth Amendment protections. This Court underscored that the home occupies a privileged constitutional position. Any unauthorized intrusion onto someone's real property is thus a trespass. *See Jardines*, 569 U.S. at 7 (citing *Entick* v. *Carrington*, 95 Eng. Rep. 807 (K.B. 1765)). Unlike *Jardines*, this case involves a vehicle—a chattel—not real property. History reveals that distinction matters.

1. At common law, trespass-to-chattels actions arise in two narrow situations.

First, when the defendant physically possessed, occupied, or carried away another's goods, otherwise known as a *trespass de bonis asportatist*. According to Blackstone, "fraud or force" could effect a dispossession, and the law implied damage from that loss of

possession even if the defendant later returned the unharmed item. 3 WILLIAM BLACKSTONE, COMMENTARIES CH. 9 (1768).

Second, when interference fell short of dispossession—brushing a horse, tapping a wagon, or other "indirect intermeddling"—the plaintiff had to sue and could recover only by pleading and proving actual consequential harm because harmless contact was *damnum absque injuria*—damage without injury. *Id.*; *see also* PROSSER & KEETON ON TORTS § 14, at 85–87 (5th ed. 1984). In short, either dispossession or damaging injury was a necessary predicate for a trespass against chattels. Mere fleeting contact with intact chattel did not suffice.

On this point, *Jones* is illustrative. *Jones* involved a *trespass de bonis asportatist*—an occupying trespass—because it involved the officers' intentional physical occupation of a vehicle. There, the FBI and D.C. police surreptitiously crawled under the defendant's Jeep and affixed a GPS tracking device to its undercarriage, then monitored the car's every movement for 28 days without a warrant. *Jones*, 565 U.S. at 403. Vitally, "[t]he Government *physically occupied* private property for the purpose of obtaining information." *Id.* at 405 (emphasis added). Thus, under common law, no damages had to be proved because the government "physically occupied" the car. *Id.* at 419 n.2.

Nothing like that happened here. Officer Dekker never touched or manipulated the car, much less attached a device. Suppr. Ex. A at MM 11:15–11:30 (1:28:03–1:28:18 a.m.). Orozco's "barely perceptible" nose entry was unintended, fleeting, and caused neither dispossession nor damage. *Id.* It merely confirmed, by scent, what an exterior dog sniff lawfully could reveal under *Caballes*.

Amici warn that affirmance leaves motorists defenseless against "thermal imagers, density meters, or X-ray scanners." Rutherford Amicus Br. 9–10. Those devices require affirmative police operation; they are worlds apart from a dog's unintended brush through an already-open window. The slippery-slope is thus imaginary. And, in any event, statutes and the Fourth Amendment's ordinary probable-cause requirements stand ready to police hypotheticals like this.

2. Common law—like the instinctual-entry doctrine—distinguishes between intentional and accidental contacts. The Restatement (Second) of Torts § 217 explains that actionable trespass to chattel requires intentional physical intermeddling or the substantial certainty that such contact will occur. *See also* *Taylor* v. *Rainbow*, 12 Va. 423, 439–440 (Va. 1808) ("[T]o constitute a trespass . . . the act causing the injury must be *voluntary*, and with some degree of *fault*; for if done *involuntarily*, and without fault, no action of trespass *vi et armis* lies. As, where the defendant drove the plaintiff's sheep out of his *own* ground with a dog that chased and followed them into the *plaintiff's* ground, it was held, that the defendant might justify chasing the sheep off his own ground, and, as the dog could not be suddenly called in, the trespass and injury was involuntary, it appearing that the defendant had *called* the dog in; and the defendant had judgment.").

A dog's trespass, unlike cattle's, was not imputed to its owner as a matter of law. *Ex parte Cooper*, 3 Tex. App. 489, 493–494 (Tex. Ct. App. 1878) ("[A]lthough man might have such right of property in a dog . . . he was held . . . to have 'no absolute and valuable property' therein which . . . would make him responsible for the trespasses of his dog on the lands of other

persons, as he would be for the trespasses of his cattle"). Instead, cases at common law refused to consider a dog or cat's trespass to be the owner's trespass, absent intentional direction or foreseeable harm, or to impose strict liability on the pet owner otherwise. PROSSER & KEETON ON TORTS, STRICT LIABILITY, "ANIMALS," at 539; PROSSER & KEETON ON TORTS § 76.

3. Indeed, Petitioner's rule not only contradicts common-law trespass principles, but is unworkable and highlights why the Iowa Supreme Court got the issue right. Under Petitioner's approach, any incidental and non-damaging contact—even a dog's fur briefly touching a car's exterior during a lawful sniff—would be treated as a constitutional trespass requiring suppression. Such an expansive interpretation would transform *de minimis*, unintended contacts into constitutional violations, an outcome incompatible with traditional principles of property law, common sense, precedent, and practical law enforcement procedures. (Nor is it clear that the exclusionary rule even has a constitutional basis under the Fourth Amendment.)

As applied by all courts but one, the better touchstone is whether the officer engaged in misconduct during the sniff. As the Iowa Supreme Court correctly held, Officer Dekker performed a lawful *Caballes* sweep. App. 22a. And as a matter of fact, any incidental and minimal entry by Orozco into an already open window was neither officer-facilitated nor -directed and thus did not transform the *Caballes* sweep into an unconstitutional one.

* * *

In sum, the Iowa Supreme Court correctly applied the instinctual-entry doctrine. That conclusion aligns with established precedent, sound legal reasoning,

and practical law enforcement procedures. Orozco's brief, spontaneous entry into the car window Petitioner left open did not constitute a Fourth Amendment search.

III. THIS CASE IS A POOR VEHICLE FOR THIS COURT'S REVIEW.

This Court reserves certiorari for disputes to answer recurring legal questions and will resolve that question in the granted case below. This case does neither. The decision rests on a video- and testimony-driven finding that Orozco's split-second nose-poke was purely instinctual—an inherently fact-bound determination that presents no doctrinal conflict for the Court to resolve. And even if Petitioner persuades the Court to extend Fourth-Amendment protections to such incidental contact, the good-faith exception would still foreclose suppression, meaning this Court's decision would have no practical effect on the outcome below.

A. Petitioner Failed to Preserve Any Challenge of the Instinctual-Entry Doctrine.

Petitioner did not dispute the applicability of the instinctual-entry doctrine on appeal to the Iowa Supreme Court. Petitioner assumed it applied and instead argued that Officer Dekker facilitated the dog's brief nose poke into her car. Appellant's Final Brief, *State* v. *Mumford*, No. 23-1075, at 16–17 (Iowa 2024) (arguing first that Orozco's actions were facilitated by Officer Dekker before arguing a trespass occurred). Because the Iowa Supreme Court disagreed on that threshold factual question, it did not need to address Petitioner's *Jones* argument.

The closest Petitioner got to arguing against the instinctual-entry doctrine was asserting that the trespass test applies. But as her own cases recognize, even

courts that apply a property framework for dog sniffs still render instinctual dog entries constitutional. Pet. 14 (citing *Keller*, 123 F.4th at 268).

After all, whether a dog's instinctive actions are attributable to police misconduct is a threshold question to whether a Fourth Amendment search occurred.

As a result, Petitioner must first convince a court that the officer facilitated Orozco's momentary nose poke before a court even needs to decide whether a common-law trespass to chattel occurred violative of *Jones*/*Jardines*.

B. The Underlying Dispute Is Factual—Was the Brief Entry "Facilitated" or "Instinctual?"

Petitioner frames the question here as a pure legal one but the central controversy is factual. How should a court characterize Officer Dekker's and Orozco's actions? On that question, the Iowa Supreme Court's majority and dissent diverged. The majority described Orozco's entry as "fleeting," "almost imperceptible," and within "the normal scope of a dog sniff." App. 22a–23a. It emphasized that Orozco engaged in a lawful exterior sniff and "the open window [was] left open by a passenger," not because Officer Dekker directed anyone to roll the window down. *Id.* In other words, the majority found no police facilitation—Orozco acted on his own.

Contrast that with the dissent, which painted a very different picture. Officer Dekker gave the dog a specific "scan search" command, effectively encouraging the dog to jump up and stick its head into the open window as it was trained to do. App. 35a (Oxley, J., dissenting). According to the dissent, "Orozco did as he was trained to do"—implying the dog's entry was

an intended part of the search, not a mere accident. App. 36a.

Petitioner echoes the dissent's portrayal. But resolving which view is correct would require this Court to wade into the weeds of the record—examining dash-cam video and parsing an officer's testimony about K-9 training methods. Drawing such fine factual lines is ordinarily unsuitable for the Court's supervisory function. Petitioner disregards the factual intricacies of officer-facilitated entry and true instinctual entries, because doing so cleans up her supposed split.

This Court typically avoids granting certiorari where the outcome may turn on such case-specific factual determinations rather than a dispositive legal principle. This case is a poor vehicle.

C. Suppression Here Does Not Change the Ultimate Outcome Because of the Good-Faith Exception.

Even if this Court found error in the Iowa Supreme Court's Fourth Amendment analysis, Petitioner would not likely be entitled to suppression of the evidence—and thus would not benefit from a win. The record makes clear that the officers in this case acted in objective good faith, relying on then- and still-prevailing law that permits exterior dog sniffs of cars (*Caballes*) and incidental contact by dogs. *See* App. 19a (Iowa Supreme Court majority's explanation that "Dekker intended to conduct a dog sniff around the exterior of the vehicle"); App. 58a (Officer's testimony on cross-examination that he let the dog freely search "the exterior of the vehicle" because to do otherwise would "have an attorney sitting here across from me telling me that I told him to indicate at that point in time").

The Iowa Supreme Court reasoned that the officers' conduct was not "deliberate, reckless, or grossly negligent," but complied with what courts have generally approved. App. 22a. The exclusionary rule's deterrent purpose would not be served by punishing officers for "conduct [that] is not culpable enough to trigger the harsh sanction of exclusion." App. 23a (citations omitted). That reasoning aligns with this Court's precedent on the good-faith exception. Under *Herring* v. *United States*, courts should not suppress evidence absent police conduct that is sufficiently culpable such that suppression's deterrent value outweighs its heavy costs. 555 U.S. at 144.

Here, any Fourth Amendment mistake was, at worst, reasonable. Many courts have upheld similar dog sniffs. App. 21a (collecting cases on instinctual-entry doctrine). No binding precedent warned that Orozco's incidental nose poke violated the Fourth Amendment. Indeed, as here, every federal circuit that has considered the scenario has held it *non*-violative. At a minimum, the Court can hardly fault the officers for not anticipating the novel extension of *Jones* that Petitioner urges.

So even if this Court announced that *de minimis* and incidental contact by a dog against chattel is unconstitutional, the State would have a formidable argument that the evidence remains admissible under the good-faith exception. See *Davis* v. *United States*, 564 U.S. 229 (2011) (refusing to apply the exclusionary rule when officers acted in reliance on settled circuit precedent).

In effect, a victory for Petitioner might still leave her without suppression of the evidence—meaning her convictions would stand. So granting certiorari here means that this Court will expend its resources only

to reach either (1) a pyrrhic result or (2) to remand for further proceedings on exceptions to the exclusionary rule. The issue here is not cleanly presented and resolving it likely would not be outcome-determinative.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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