No. 25-1099

In the Supreme Court of the United States

QUASHAUN MELSUN REEL,
Petitioner,

v.

NORTH CAROLINA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF NORTH CAROLINA

MOTION FOR LEAVE TO FILE THE BRIEF AND BRIEF OF THE NATIONAL ASSOCIATION FOR PUBLIC DEFENSE AND THE MINNESOTA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS AMICI CURIAE IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Amici address this question:

Whether the recently created right of law enforcement to "knock" on a door of a residence and "talk" to a homeowner to find criminal activity not suspected, is a privacy intrusion protected under the Fourth Amendment.

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MOTION FOR LEAVE TO FILE THE AMICI BRIEF

Pursuant to S. Ct. R. 37.3(b), the Minnesota Association of Criminal Defense Lawyers (MACDL) and the National Association for Public Defense (NAPD) respectfully move for leave to file the accompanying amicus brief in support of petitioner. Respondent filed a waiver of response to Petitioner's filing, and was informed this brief would be filed prior to its filing.

NAPD consists of more than 25,000 professionals who deliver legal services across the United States. NAPD members include attorneys, investigators, social workers, administrators, and other support staff who are responsible for executing the constitutional right to effective assistance of counsel in a wide range of criminal matters. NAPD members are not only advocates in the courtroom and jails, but are deeply involved in the day-to-day realities of legal practice and community engagement. To that end, NAPD files many amici briefs each year in federal and state courts in cases presenting issues important to criminal defense lawyers, those facing criminal charges, and the criminal legal system.

The MACDL is a non-profit state-wide organization of defense lawyers seeking to uphold Constitutional rights and ensure justice for all, particularly from unchecked power of the government against the rights of individuals. MACDL's interest in the case is public in nature.

The attached amici brief would be of assistance to this Court supporting a grant of certiorari so that this Court may resolve important questions presented by the petition. NAPD and MACDL's deep experience

with criminal-defense issues allows it to offer guidance and commentary on "knock and talk" procedures in relation to the Fourth and Fifth Amendments and other constitutional and case law protections afforded people in America in their homes.

BRIEF OF THE NATIONAL ASSOCIATION FOR PUBLIC DEFENSE AND THE MINNESOTA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS AMICI CURIAE IN SUPPORT OF PETITIONER

INTERESTS OF AMICI CURIAE[1]

The National Association for Public Defense (NAPD) consists of more than 25,000 professionals who deliver legal services across the United States. NAPD members include attorneys, investigators, social workers, administrators, and other support staff who are responsible for executing the constitutional right to effective assistance of counsel in a wide range of criminal matters. NAPD members are not only advocates in the courtroom and jails, but are deeply involved in the day-to-day realities of legal practice and community engagement. Our collective expertise encompasses state, county, and local systems through full-time, contract, and assigned counsel delivery mechanisms supplemented by dedicated juvenile, capital, and appellate offices. The Minnesota Association of Criminal Defense Lawyers is a non-profit state-wide

[1] Pursuant to S. Ct. R. 37.6, neither a party nor party's counsel authored this brief, in whole or in part, or contributed money that was intended to fund its preparation or submission. No person (other than the *amici*, their members, or their counsel) made a monetary contribution intended to fund its preparation or submission. All parties received notice.

organization of defense lawyers seeking to uphold Constitutional rights and ensure justice for all, particularly from unchecked power of the government against the rights of individuals.

INTRODUCTION AND SUMMARY OF ARGUMENT

Quashaun Reel was indicted for various drug charges. He pled guilty pursuant to a plea agreement after losing a motion to suppress. The North Carolina Court of Appeals and the North Carolina Supreme Court affirmed the denial; his petition for certiorari to this Court is supported by amici curiae for this Court to address law enforcement's implied license to approach a citizen's residence and conduct a knock and talk—that is to speak with a homeowner at the door without suspicion of criminal activity, and for no other purpose than to search for a crime.

"Knock and talk" procedures by law enforcement were recognized as constitutionally permissible consensual encounters in *Kentucky* v. *King*, holding that when officers "knock on a door, they do no more than any private citizen might do." 563 U.S. 452, 469 (2011). Officers may approach a residence without a warrant, seeking to search by obtaining consent. *Id.* at 469-70. The doctrine was refined in *Florida* v. *Jardines*, which defined an "implied license" to approach homes. 569 U.S. 1 (2013).

Jurisdictional splits remain on what constitutes a home or curtilage of a home, whether law enforcement should be treated the same as a private citizen, and when a third-party can consent to officer entry. All these issues are present in Reel's case, which the Court can resolve with uniform guidance while

protecting the rights of Americans. For these reasons, amici curiae support certiorari and the relief sought by Reel.

ARGUMENT

I. Historically, law enforcement has required a warrant to intrude upon a citizen's privacy.

The Fourth Amendment was created to protect citizens from unwarranted government intrusions. The right to be free in one's home is ancient and venerable. There should be a reason for law enforcement to start overturning rocks, but the "knock and talk" is a recent case law creation which allows the government to flip rocks without cause.

It is no secret that our Constitution was drafted by men who feared government overreach. We opposed an unelected king, and the weaponization of state resources to expose the secrets of our fellow neighbor's lives without reasons because at the end of the day, all of us are sinners. Those sins can be used as weapons to silence political discord and impede our right to freedom:

> In the 1950s and 1960s, FBI Director J. Edgar Hoover directed agents to compile dossiers on journalists, anti-war protestors, and civil rights activists. Microphone bugs were hidden in Dr. Martin Luther King's hotel rooms so agent could record him from next door. This led to the discover of Dr. King's extramarital affairs. After the press refused to publicize the tapes, FBI agents sent copies of

> the tapes to Dr. King along with a letter reading, "The American public will know you are an abnormal beast." Note that at Hoover's direction, the FBI also compiled 360,000 files on government employees believed to be gay or lesbian.

Danielle Keats Citron, THE FIGHT FOR PRIVACY: PROTECTING DIGNITY, IDENTITY AND LOVE IN THE DIGITAL AGE 12 (2022) Unchecked privacy intrusions weaponize personal choices and silence political discourse. This phenomenon has been regularly observed worldwide:

> For example, the Cambodian government used intimate information to discredit the Venerable Loun Sovath, a Buddhist monk who documented the state's eviction of 400,000 Cambodians. When even arrest did not deter Sovath from exposing human rights abuses, the government circulated videos that appeared to show him having sexually suggestive conversations with a mother and her three daughters. Although the videos were deliberately deceptive, they had their intended effect. The Monk Council expelled Sovath from the religious order on the grounds that he had violated his vow of celibacy.

Id. at 55. Privacy is a modern-day civil liberty, and a human right. It is the last defense against a surveillance state which can weaponize the fallibility of any of its citizens.

In 1911, this Court first decided the appropriate remedy for a warrantless search must be suppression of the fruits of that search. *Weeks* v. *United States*, 232 U. S. 383, 393 (1914).

Weeks' neighbor told law enforcement where to find the key to Weeks' home while he was at work so they could ransack the home, seeking evidence to charge him with a crime. 232 U. S. at 393. *Weeks* discussed how our constitution deliberately imposed sanctions to prevent the overreach of British rule through general warrants or "writs of assistance" to search and seize papers for charges "real or imaginary," and how these writs had migrated to American colonies:

> These cases discussed the history of the Fourth and Fifth Amendments to prevent writs of assistance, which were described as "'the worst instrument of arbitrary power, the most destructive of English liberty and the fundamental principles of law, that ever was found in an English law book;' since they placed 'the liberty of every man in the hands of every petty officer.'"

Ibid. (citing *Boyd* v. *United States*, 116 U. S. 616, 624–25 (1886).

Boyd and *Weeks* explained these principles in depth, and held our founders' concerns weren't limited to the physical intrusion of the home, but the invasion of privacy we sought to protect:

> The principles laid down in this opinion affect the very essence of constitutional liberty and security. They reach further than the concrete form of the case than

> before the court, with its adventitious circumstance; they apply to all invasions on the part of the government and its employees of the sanctity of a man's home and the privacies of life. It is not the breaking of his doors and the rummaging of his drawers that constitutes the essence of the offense; but it is the invasion of his indefeasible right of personal security, personal liberty, and private property, where that right has never been forfeited by his conviction of some public offense–it is the invasion of this sacred right which underlies and constitutes the essence of Lord Camden's judgment.

Weeks, 232 U. S. at 391. But see *Elkins* v. *United States*, 364 U. S. 206 (1960).

It was not until *Mapp* v. *Ohio* that suppression was a remedy no longer up to states to decide, but a uniform rule. 367 U. S. 643, 648 (1961).

In 1961, officers in Ohio received information that a person of interest in a bombing was hiding out in a residential home. 367 U. S. at 648. A Black woman named Dollree Mapp–not the target of the information–encountered law enforcement at the target home. *Ibid*. Law enforcement pretended to have a warrant, waving what turned out to be a blank piece of paper in her face, and forced their way into the home despite her protests. *Ibid.* Offiers forcibly arrested her and searched the home, finding a book with cartoon images of naked people. Mapp was charged with an convicted of possessing lewd and lascivious

materials. *Ibid*. *Mapp* unequivocally held that it was no longer up to states to determine whether to suppress the fruits found in a warrantless search of a home, but that anything found from an illegal home search must be suppressed by the Fourth and Fifth Amendments to the United States Constitution. *Ibid.*

The right to privacy long predates *Mapp*. It traces to our common law heritage, and is one of the foundational principles upon which the Founders built our democracy: "[The] right to be left alone–the most comprehensive of rights and the right most valued by civilized men. To protect that right, every justifiable intrusion by the government upon privacy of an individual, whatever the means employed must be deemed a violation of the Fourth Amendment." *Olmstead* v. *United States*, 277 U. S. 438 (1928) (Brandeis, J., dissenting).

In the land of the free and brave, we built the rule of law through the United States Constitution to protect free speech, religious choices, and other personal matters from government intrusion by requiring law enforcement to have a justification to intrude on a citizen's privacy. There was no such justification here, where officers approached a home to find a crime by following a guest, and forced entry by placing a foot in the door.

III. Law enforcement should need a reason to "knock and talk" to a private citizen at their residence because it is a search under the Fourth Amendment

Knock and talks have been permissible because no search of the curtilage occurs where the public is allowed to be, under case law stemming from *King*, 563 U.S. at 469. But this Court has explained that, "to comply with the Constitution, law enforcement agents not only need a warrant, exigent circumstances, or consent to enter a home, they usually need one of those things to reach the front door in the first place." *Bovat* v. *Vermont*, 141 S. Ct. 22, 22 (2020) (Statement of Gorsuch, J., joined by Sotomayor and Kagan, JJ.) (citing *Jardines*, 569 U.S. 1). Prior to King, the Fourth Amendment protection of the home was "never extended to require law enforcement officers to shield their eyes when passing by a home on public thoroughfares." *California* v. *Ciraolo*, 476 U.S. 207, 213 (1986). This did not allow for knock and talk approaches.

The recent evolution of this "implied license" for law enforcement to walk up to a home was erroneous, based on the assumption that things like doorbells and door knockers signified visitors were welcome, and therefore a homeowner consented to the intrusion of law enforcement visitors. *Ibid.*

This implied license was based on two false assumptions, the first being that a doorbell was a home resident's choice, and not simply standard issue. The second merits argument: invited guests and lay people are not the same as law enforcement.

a. Law enforcement are not the same as visitors, invited guests, nor uninterested lay people. They should be treated differently

A guest or invited lay person is not paid to discover or solve a crime. They are typically unarmed. They act without the authority, or immunity, of the state. These commonsense differences led to the Court clearly treating officers differently than laypersons prior to the line of cases that followed *King*, 563 U. S. 452.

Unlike an invited guest, law enforcement has a coercive authority that courts have found can cause a lay person to acquiesce to an otherwise unlawful search or seizure. *Bumper* v. *North Carolina*, 391 U. S. 543, 550 (1963); and for example, "[t]he distinction between a consensual interaction and a seizure in the context of a bus is whether "a reasonable person would feel free to decline the officers' requests [to answer questions off the bus] or otherwise terminate the encounter." *Florida* v. *Bostick*, 501 U. S. 429, 436 (1991); see also *United States* v. *Little*, 18 F. 3d 1499, 1503 (CA1 1994) (en banc). To be valid, a suspect must give consent which is "unequivocal and specific and freely and intelligently given." *United States* v. *Sanchez*, 608 F.3d 685, 690 (CA10 2010).

And even without acquiescence, courts have treated laypersons as different from law enforcement because of differences in agenda and motive. For instance, a janitor is treated differently than a police officer as hotel guests expect a clean room and privacy. That is why janitor are welcome to enter without a warrant,

but law enforcement is not. *Stoner* v. *California*, 376 U. S. 483, 489 (1964).

Jardines distinguished a knocker on the front door from a police dog, "the knocker on the front door is treated as an invitation of license to attempt an entry. . ." different from a police dog "trained to explore the area around the home in hopes of discovering incriminating evidence. . ." 569 U. S. at 9–11.

But the police dog is only searching for incriminating evidence because it works for the police, who control the search, making them inherently different from an invited guest or ordinary citizen. Courts have treated dogs as a tool that allows for a sensory enhancement search requiring greater protections like we have for thermal imaging, to suppress the unwarranted intrusion. See *Jardines* (discussing *Kyllo* v. *United States*, 533 U. S. 27, 29 (2001)) comparing police dogs to a tool like thermal imaging. But the enhanced search with a police dog is only accomplished with an officer guiding the dog to do the same search she would do with her own senses on foot without it. The officer is the tool, the additional resources they have available to intrude on privacy from body worn cameras, thermal imaging, data grabbing devices, dogs, and ion scans are like accessories to the product which is the cop. An officer conducting a knock-and-talk is never there for any other purpose than seeking information to build a case on a crime. America was founded by people who believed those with power ought to have a reason to use it to intrude on a citizen's privacy before doing so.

IV. Homes deserve the greatest protection from government intrusion. Jurisdictions are split as to what parts of the home are protected from law enforcement approach and intrusion. A side yard entrance is part of the home.

a. Homes deserve the greatest protection from Government Intrusion

The "castle doctrine" followed Americans who migrated from Europe seeking a democratic government and freedom in their own homes. William Pitt, Earl of Chatham explained the significance of freedom in one's home from big government in 1766:

> The poorest man may in his cottage bid defiance to all forces of the Crown. It may be frail, its roof may shake; the wind may blow through it' the storm may enter, the rain may enter- but the King of England cannot enter; all his force dares not cross the threshold of the ruined tenement!

William Pitt, SPEECH ON THE EXCISE BILL BEFORE THE HOUSE OF LORDS, IN THE MACMILLIAN BOOK OF PROVERBS, MAXIMS, AND FAMOUS PHRASES 1191-92 (Burton Stevenson ed., 1948).

More recently, this Court addressed the Fourth Amendment as it relates to homes, and what constitutes part of the home in *Jardines*, finding that the area immediately surrounding and associated with the home is part of the home itself for Fourth Amendment purposes. 569 U. S. at 5–6. *Jardines* once again solidified that, "[w]hen it comes to the Fourth Amendment, the home is first among equals. At the

Amendment's 'very core' stands 'the right of a man to retreat into his own home and there be free from unreasonable governmental intrusions." *Id.* at 6 (citing *Silverman* v. *United States*, 365 U. S. 505, 511 (1961)). And that "[t]his right 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; the right to retreat would be significantly diminished if the police could enter a man's property to observe his repose from just outside the front window." *Ibid.* *Jardines* explained that the area around the home itself is linked to the home not just physically but psychologically, and that privacy expectations are thus "most heightened." *Id.* at 7.

A side yard entry by an uninvited guest seeking to discover a crime not yet known violates these expectations.

b. Jurisdictions are split as to what constitutes an intrusion on the home and its curtilage, and these splits are often arbitrary.

Jardines stated, "the boundaries of the curtilage are generally "clearly marked," the "conception defining the curtilage" is at any rate familiar enough that it is "easily understood from our daily experience." 569 U. S. at 7. But in practice, it has not proved as simple to define curtilage, and it may even be arbitrary and capricious.

The curtilage of the home includes a camping trailer out back of the home in Minnesota. *State* v. *Chute*, 908 N. W. 2d 578 (Minn. 2018). A motorcycle covered by a tarp under a partial garage is curtilage, *Collins* v. *Virginia*, 584 U. S. 586, 587 (2018); but a hallway

outside of an apartment building is not, according to the Sixth Circuit. *United States* v. *Trice*, 966 F. 3d 506 (CA6 2020). A vehicle in the curtilage of the home may not be searched with an automobile exception to warrant (*Collins* v. *Virginia*, 584 U. S. at 601), nor may a cottage 375 feet from the main residence in the Second Circuit; nor a honeysuckle patch 150 feet from the residence and within the fence of the home in the Fourth Circuit. See *United States* v. *Reilly*, 76 F. 3d 1271, 1279 (CA2 1996); *United States* v. *Van Dyke*, 643 F. 2d 992, 994 (CA4 1981). It makes more sense to cease the physical trespass of the uninvited officer, paid to discover crime, than to allow for arbitrary nuances to determine if you are protected in your home. Either way, these varying interpretations of what constitutes the home favor granting certiorari for guidance.

CONCLUSION

This Court should grant certiorari.

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