No. 25-1099

In the

Supreme Court of the United States

QUASHAUN MELSUN REEL,

Petitioner,

v.

STATE OF NORTH CAROLINA,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of North Carolina

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REPLY IN SUPPORT OF PETITION FOR CERTIORARI

Jeffrey A. Wald
NELSON MULLINS RILEY & SCARBOROUGH LLP
380 Knollwood Street, Suite 530
Winston-Salem, NC 27103

John J. Korzen
Counsel of Record
WAKE FOREST UNIVERSITY SCHOOL OF LAW
APPELLATE ADVOCACY CLINIC
1834 Wake Forest Road
Winston-Salem, NC 27109
336-758-5832
korzenjj@wfu.edu

Counsel for Petitioner

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INTRODUCTION AND REPLY TO RESPONDENT'S STATEMENT OF THE CASE

The Question Presented is important. Respondent has tacitly conceded the point. As it should. Police use so-called "knock and talks" aggressively with the goal of obtaining incriminating evidence from within the home's curtilage, sidestepping the Fourth Amendment. *See* Pet. 16–20. This situation need not continue, because "[t]here is no common law tradition of knock and talks." Jamesa Drake, *Knock and Talk No More*, 67 Me. L. Rev. 25, 41 (2014). Rather, "this law enforcement tactic is entirely new" and "highly disconcerting [to homeowners] by design." *Id.*

In addition to conceding the issue's importance, Respondent omits vital facts in its Statement of the Case. Respondent describes Officer Hilliard's investigation as "very routine," BIO at 3–4, but Respondent skips over the investigation's origin. A city council member related anonymous tips to the High Point City Manager that "the guy is selling drugs out of the apartment" at 1506-A Leonard Avenue. R p 51.[1] The City Manager contacted the Chief of Police, and the Chief emailed patrol commanders that "the neighbors' complaints are probably valid." R p 50. He ordered them to "conduct a Knock and Talk at this location or some sort of law enforcement action." R p 50.

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[1] Cites to "R p" are to the Record on Appeal filed in North Carolina Court of Appeals case number 23-711 and found on the e-filing page of the court's website.

After a "knock and talk" with Petitioner failed to generate evidence, Officer Hilliard took over and conducted a *second* "knock and talk." Respondent omits the fact that Officer Hilliard was with the High Point Police Department Street Crimes Unit and that the Unit's "primary function" is "to investigate violent crime and drug activity." Pet. App. 2a.

Respondent also claims that the surveillance video "tends to support" the trial court's narrative, BIO at 6, but the video contradicts several trial court findings. The video shows that Officer Hilliard parked to the side of the home (not in the same area as the visitor), did not use the front path, and did not attempt to engage in conversation.[2] It also shows that he opened the storm door and started to follow the visitor in, without ever knocking and waiting on the homeowner. BIO App. 16a.

ARGUMENT

Respondent's three arguments are unpersuasive. This case is a "good vehicle." Lower courts need greater clarity on how to apply the "purpose" limitation on "knock-and-talk" investigations this Court established in *Jardines*.

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[2] Respondent claims it has not confirmed that the video "is an exact, unedited copy of the video introduced at the hearing." BIO at 6 n.2. Petitioner assures the Court that it is the exact, unedited, 55-seconds-long video introduced as Defendant's Exhibit 6 at the hearing. The court of appeals ordered the video added to the appellate record on August 24, 2023. Petitioner's counsel included still photos from the video in his state supreme court brief, and the times on the still photos show they are from the same 55-seconds-long video. Petitioner's counsel also played the same video at oral argument in the state supreme court.

And Petitioner is not asking for mere "fact-specific error correction." He seeks legal "course correction."

I. This case is a good vehicle to address the question presented.

Petitioner has asked this Court to decide whether a search within the meaning of the Fourth Amendment has occurred when officers enter a home's curtilage to conduct a "knock and talk" with the purpose of gathering incriminating information. Pet. at i.

The State argues that Petitioner and the state courts did not raise or address the Question Presented because they did not address the officer's "purpose." BIO at 12. In the state courts, however, Petitioner repeatedly contended that the officers' "knock and talk" constituted a warrantless search in violation of the Fourth Amendment. Therefore, under the very decision that the State relies on, Petitioner has preserved the Question Presented. *See Yee v. City of Escondido, Cal.*, 503 U.S. 519, 534 (1992) ("Once a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below.").

Moreover, while Petitioner and the lower courts did not use the term "purpose," they did use the term "pretext" in a similar way. In this Court, Petitioner has intentionally used this Court's term, "purpose," instead of the term the state courts used below, "pretext."

Since 2017, the North Carolina Court of Appeals has used the term "pretext" where this Court used "purpose" in *Florida v. Jardines*, 569 U.S. 1 (2013). *See, e.g.*, *State v. Huddy*, 799 S.E.2d 650, 654

(N.C. Ct. App. 2017). In *Huddy*, the court stated, "Importantly, law enforcement may not use a knock and talk as a pretext to search the home's curtilage." *Id.* (emphasis added). In support, the court cited the exact same parts of *Jardines* that Petitioner has relied on. *See id.* In *Jardines*, however, this Court used the term "purpose," not "pretext."

The North Carolina Court of Appeals has continued to use "pretext" rather than "purpose" since *Huddy*. *See State v. Piland*, 822 S.E.2d 876, 884 (N.C. Ct. App. 2018) ("We note that 'law enforcement may not use a knock and talk as a pretext to search the home's curtilage.'") (quoting *Huddy*); *State v. Norman*, 901 S.E.2d 406, 414 (N.C. Ct. App. 2024) (Wood, J., dissenting) ("[L]aw enforcement may not use a knock and talk as a pretext to search the home's curtilage[,]" as "[t]his limitation is necessary to prevent . . . from swallowing the core Fourth Amendment protection of a home's curtilage.") (quoting *Huddy*), *affirmed as modified*, 920 S.E.2d 505 (N.C. 2025).

Because North Carolina courts use "pretext" in a similar way to this Court's use of "purpose," it is apparent that Petitioner's Question Presented was raised or addressed below. The trial court concluded that "Officer Hilliard and the other officers were not using the 'knock and talk' as a pretext to search the home or the curtilage to the home." Pet. App. 6a (emphasis added). The Court of Appeals majority quoted *Huddy*'s admonition that law enforcement may not use a knock and talk as a pretext to search a home's curtilage, though the majority then failed to analyze pretext. Pet. App. 19a. The Court of Appeals dissent relied on this Court's *Jardines* decision and

concluded, "After reviewing the evidence, I would conclude that Officer Hilliard, and the other HPPD officers, used the alleged 'knock and talk' as a pretext to search defendant's curtilage." Pet. App. 28a–29a (emphasis added).

Petitioner then appealed to the Supreme Court of North Carolina based on the dissent, thereby raising the issue of whether law enforcement "used the alleged 'knock and talk' as a pretext to search defendant's curtilage." Petitioner contended that the Court of Appeals majority "erred by holding that police officers' purported 'knock and talk' at Mr. Reel's home was not a search for Fourth Amendment purposes." *See* New Brief of Defendant-Appellant at i. Petitioner further contended that "officers with the HHPD violated Mr. Reel's core Fourth Amendment rights where they used a 'knock and talk' as a pretext to search his home's curtilage." *Id.* at 17. Thus, given that North Carolina courts use "pretext" where this Court uses "purpose," Petitioner's Question Presented was raised and addressed below.

Even applying Respondent's alternate phrasing of the Question Presented, the same pretext/purpose issue arises. Respondent phrases the Question Presented as whether the North Carolina Supreme Court correctly upheld the state trial court's denial of Petitioner's motion to suppress under *Jardines*. BIO at i. As Respondent acknowledges, the Court of Appeals issued the only reasoned decision below. BIO at 1 n.1. Unlike the Court of Appeals majority, which failed to analyze pretext/purpose, the dissent relied heavily on *Jardines* and did analyze pretext/purpose. Therefore, even if the question is whether the state supreme court correctly upheld the

denial of Petitioner's suppression motion under *Jardines*, the answer still turns on the same pretext/purpose analysis Petitioner has raised.

II. Lower courts are confused about officer purpose and when a "knock-and-talk" investigation constitutes a search.

Respondent argues that "any division or confusion" in the lower courts "is wholly illusory." BIO at 19. In reply, Petitioner will illustrate the "division or confusion" using the same cases cited in the petition for certiorari. *See, e.g.*, *Morgan v. Fairfield Cnty., Ohio*, 903 F.3d 553, 567 (6th Cir. 2018) (Stranch, J., concurring) ("our jurisprudence has evidenced some confusion related to the police action that we refer to as 'knock and talk' investigations").

There is "division or confusion" about the limits courts place on "knock-and- talk" investigations. Some courts recognize that "[t]he scope of the knock and talk exception is limited in two respects." *United States v. Walker*, 799 F.3d 1361, 1363 (11th Cir. 2015). One limit is when the evidence objectively reveals a "purpose to conduct a search." *Id.* (quoting *Jardines*, 133 S. Ct. at 1416-17). The other limit is "spatial," such as when officers conducting a "knock-and-talk" fail to approach the front door by the usual path. *See id.*

Petitioner agrees with those courts and contends that recognizing two limits—one regarding objective evidence of "purpose" to conduct a search and the other regarding the manner in which the "knock and talk" was performed—is what this Court's decision in *Jardines* requires. Many lower court judges—sometimes in minority opinions—agree. *See*

also United States v. White, 928 F.3d 734, 744–46 (8th Cir. 2019) (Grasz, J., concurring); *State v. Chute*, 908 N.W.2d 578, 589 n.1 (Minn. 2018) (McKeig, J., dissenting).

In *White*, the majority concluded that officers' second entry onto the curtilage of a home was a "permissible knock and talk" and did not constitute a search because their "conduct" of approaching the home, knocking promptly, and waiting to be received was objectively reasonable. 928 F.3d at 740-41. Judge Grasz disagreed, stating, "My concern with the court's opinion is that while it acknowledges *Jardines*, its analysis fails, in my view, to apply *Jardines*' holding." *Id.* at 745 (Grasz, J., dissenting). "The scope of this implied license," he continued, "'is limited not only to a particular area but also to a specific purpose.'" *Id.*

In *Chute*, Justice McKeig, joined by then-Chief Justice Gildea, stated that "*Jardines* introduced a 'purpose limitation' on an officer's implied license to trespass on the curtilage. Under *Jardines*, officers may not trespass on the curtilage with the purpose to investigate or search, with the exception that they may walk to the front door with the purpose of soliciting the resident." *Id.* Justice McKeig reasoned that prior state decisions might need to be reconsidered "in light of *Jardines*" because they "set only *spatial* limitations on the implied license to enter the curtilage and suggest that there are no *purpose* limitations on the license." *Id.*

Other courts, however, recognize only spatial limits, not the purpose limit, holding that "[t]he use of a knock and talk technique as an investigatory tool does not violate the Fourth Amendment, so long as

'police utilize the normal means of access to and egress from the house.'" *See, e.g.*, *State v. Newsome*, 835 S.E.2d 329, 332 (Ga. Ct. App. 2019). This Court rejected that approach in *Jardines*. 569 U.S. at 9, n.3 ("The dissent would let the police do whatever they want by way of gathering evidence so long as they stay on the base-path, to use a baseball analogy—so long as they 'stick to the path that is typically used to approach a front door, such as a paved walkway.'").

Therefore, the case law shows—despite Respondent's argument—that there *is* confusion in the lower courts about whether and how to apply this Court's decision in *Jardines*, particularly when it comes to "purpose." The better view, based on *Jardines* and as Petitioner has contended, is that "purpose matters." The majority below, however, failed to address "purpose" (or "pretext," unlike the dissent). Respondent argues that the majority "cited and applied *Jardines* itself," BIO at 29, but that is inaccurate. The majority only cited *Jardines* in passing. Pet. App. 18a. It did not also "apply" *Jardines*. Pet. App. 18a–22a. As Judge Grasz noted about the majority in *White*, the majority below merely acknowledged *Jardines* but failed to apply its holding. 928 F.3d at 745.

Two other points in Respondent's part II merit a reply. First, in a footnote (BIO at 29 n.7), Respondent states that Vermont has "reversed course" and "carefully considered" *Jardines* since three Justices of this Court issued a statement about the denial of certiorari in *Bovat v. Vermont*, 141 S. Ct. 22 (2020). Good for Vermont if it has applied *Jardines* to reign in law enforcement abuse of "knock and talk" investigations. But as Vermont goes, the nation does

not necessarily follow. Not without this Court's guidance.

Second, Respondent has not engaged with Petitioner's *amici* as promised. Respondent obtained an extension of time, pushing this case to the summer recess, in part to respond to "the additional points raised by *amici* who have filed briefs in support of Petitioner." *See* Respondent's May 13 extension motion. Yet Respondent alludes only once, in another footnote, to the *amici* briefs. *See* BIO at 18 n.5. Respondent criticizes one group of *amici* for proposing a "no greater than a Girl Scout" rule because "*Jardines* already established such a rule." *Id.* Respondent ignores *amici*'s accurate and powerful contention that:

> The court below largely ignored every word this Court has written on principles of relevance here, and it is not alone. Many other federal and state courts have sanctioned all manner of police efforts to expand [*Jardines*' implied license] rule, granting increasingly abusive intrusions in the home and its curtilage. . . . Accordingly, these amici agree with Fourth Amendment scholars that additional guidance is now required from this Court to prevent further abuses.

Brief *Amicus Curiae* of America's Future, Gun Owners of America, Gun Owners Foundation, et al., at 5.

Simply put, when police conduct a "knock and talk" to investigate tips that the homeowner is

engaging in crime, they are conducting a search. A Girl Scout doesn't do that. There is no badge for crime investigation during cookie sales.

Under the Fourth Amendment, warrantless searches are per se unreasonable, "subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967). Based on lower court decisions, however, the so-called "knock-and-talk exception" is *not* "well-delineated." This Court's guidance is needed.

Therefore, Petitioner again asks this Court to "grant certiorari to provide guidance to the lower courts regarding the scope of the implied license to enter the curtilage of a home to conduct a so-called 'knock and talk.'" Pet. at 16.

III. Petitioner asks this Court to engage in legal course correction, not fact-based error correction.

Petitioner is not asking this Court to engage in "fact specific error correction." *Cf.* BIO at 32. Instead, Petitioner asks this Court to engage in legal "course correction." Legal "course correction" is something in which this Court regularly engages. *See, e.g.*, *Seven Cnty. Infrastr. Coalition v. Eagle Cnty., Colo.*, 605 U.S 168, 184 (2025) ("A course correction of sorts is appropriate to bring judicial review under NEPA back in line with the statutory text and common sense."); *Nat'l Coll. Ath. Ass'n v. Alston*, 594 U.S. 69, 108 (2021) (Kavanaugh, J., concurring) ("The Court's decision marks an important and overdue course correction"); *Cooper v. Harris*, 581 U.S. 285, 327 (2017) (Thomas, J., concurring) ("Today's decision . . . represents a

welcome course correction to this Court's application of the clear error standard").

The necessary legal course correction is for this Court to clarify that, in so-called "knock-and-talk" investigations, purpose matters. If the record objectively shows that police entered a home's curtilage with the purpose of gathering incriminating evidence, then a search occurred. Absent a search warrant, the homeowner's Fourth Amendment rights were violated.

This legal course correction is needed because lower courts often fail to consider purpose and look only at the manner in which a "knock-and-talk" investigation is conducted. That is, lower courts cite *Jardines* or their own state's precedent for the proposition that a "knock-and-talk" is an "exception" to the Fourth Amendment so long as officers went to the front door by the customary path during the daytime and knocked. What this Court has said about purpose in *Jardines* and *Collins v. Virginia*, 584 U.S. 586 (2018), is ignored.

In the court below, for example, the majority identified "three pertinent circumstances" that distinguish a "knock and talk" from a "search": how officers approach a home, the time of day, and whether there are any indications that the homeowner welcomes uninvited guests on the property. Pet. App. 20a–21a. The majority did not analyze whether the evidence objectively revealed a purpose to conduct a search. The majority then distinguished *State v. Falls*, 853 S.E.2d 227 (N.C. Ct. App. 2020), but *Falls* itself never analyzed "purpose" (or "pretext").

Only the dissent below analyzed "pretext," concluding that a review of the evidence shows that the police "used the alleged 'knock-and-talk' as a pretext to search the defendant's curtilage." Pet. App. 28a–29a. While the dissent discussed four of the trial court's fact findings, Pet. App. 26a–27a, "the crux" of the dissent was the trial court's "legal conclusion" that the police did not use the knock-and-talk as a pretext to search the home's curtilage. Pet. App. 28a.

Thus, Petitioner asks this Court to engage in legal course correction, not mere fact-based error correction. Due to the Question Presented's importance and the need for this Court to provide guidance in the multitude of "knock-and-talk" investigations occurring throughout the United States every day, Petitioner asks this Court to grant his petition for certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted and either proceed to full merits briefing or, in the alternative, the judgment of the Supreme Court of North Carolina should be vacated and the case should be remanded for reconsideration in light of *Jardines* and *Collins*.

Jeffrey A. Wald
NELSON MULLINS RILEY
& SCARBOROUGH LLP
380 Knollwood Street, Suite 530
Winston-Salem, NC 27103

John J. Korzen
Counsel of Record
WAKE FOREST UNIVERSITY SCHOOL OF LAW

APPELLATE ADVOCACY CLINIC
1834 Wake Forest Road
Box 7206
Winston-Salem, NC 27109
336-758-5832
korzenjj@wfu.edu

Counsel for Petitioner