No.

In the Supreme Court of the United States

RONELL MOSES, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

KANNON K. SHANMUGAM
MASHA G. HANSFORD
JAKE L. KRAMER
EMMA R. WHITE
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
2001 K Street, N.W.
Washington, DC 20006

ELISA A. LONG
JASMINE SOLA
Counsel of Record
STACIE FAHSEL
SAMANTHA STERN
RENEE PIETROPAOLO
FEDERAL PUBLIC DEFENDER FOR THE WESTERN DISTRICT OF PENNSYLVANIA
1001 Liberty Avenue, Suite 1500
Pittsburgh, PA 15222
(412) 644-6565
Jasmine_Sola@fd.org

QUESTIONS PRESENTED

1. Whether a defendant's actual use of an area adjacent to his home is relevant to whether that area is curtilage under the Fourth Amendment, as four circuits have held, or whether a court should disregard any evidence beyond a police officer's objective observations at the time of the search, as three circuits have held.

2. Whether a portion of a driveway immediately adjacent to a home is curtilage under the Fourth Amendment.

RELATED PROCEEDINGS

United States District Court (W.D. Pa.):

United States v. *Moses*, Crim. No. 21-160 (Nov. 7, 2023)

United States Court of Appeals (3d Cir.):

United States v. *Moses*, No. 23-3078 (July 3, 2025)

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Ronell Moses, Jr., respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-42a) is reported at 142 F.4th 126. The opinion of the district court denying petitioner's motion to suppress (App., *infra*, 43a-59a) is unreported but available at 2023 WL 3408574.

JURISDICTION

The judgment of the court of appeals was entered on July 3, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment of the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT

This case presents two exceptionally important questions concerning the Constitution's protection against unlawful searches of a home's curtilage. Both questions have divided the courts of appeals and state courts of last resort. "At the very core" of the Fourth Amendment "stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Silverman* v. *United States*, 365 U.S. 505, 511 (1961). And the curtilage—the area "immediately surrounding and associated with the home"—is considered "part of the home itself." *Florida* v. *Jardines*, 569 U.S. 1, 6 (2013) (citation omitted).

In *Collins* v. *Virginia*, 584 U.S. 586 (2018), this Court held both that the portion of a driveway abutting a home was curtilage and that the automobile exception to the warrant requirement did not justify a warrantless search of a vehicle parked in the curtilage. See *id.* at 593-594, 597-598. But the courts of appeals and state courts of last resort have divided as to (1) whether evidence of how a homeowner actually used the area can be considered in the curtilage inquiry if the use would not have been apparent to the officer conducting the search; and (2) whether a portion of a driveway immediately adjacent

to a home is curtilage. Those questions go to the heart of the Constitution's fundamental protection for the sanctity of the home and its surroundings.

Petitioner in this case—just like the petitioner in *Collins*—was subject to the warrantless search of a vehicle parked in the driveway of his home, near the entrance to the front porch. That driveway, which was immediately adjacent to petitioner's home and partially shielded from view by a hedge, was frequently used for family gatherings and as a children's play area. During the search, the officer discovered a firearm, and the government charged petitioner with possessing a firearm as a felon. The district court denied petitioner's motion to suppress on the ground that the portion of the driveway where petitioner's car was parked was not curtilage. Petitioner then pleaded guilty on the condition he could appeal the district court's denial of the motion to suppress.

A divided court of appeals affirmed. As is relevant here, the court of appeals held that evidence of how petitioner's family actually used the driveway could not be considered because the driveway's use would not have been apparent to the officer performing the search. In so doing, the court recognized that other circuits had reached conflicting holdings on that question. In addition to declining to consider petitioner's actual use, the court of appeals took the view that the driveway was not particularly secluded and otherwise lacked the special characteristics that the court believed existed for the driveway at issue in *Collins*. The court therefore concluded that the portion of the driveway at issue was not curtilage and could be searched without a warrant.

Judge Ambro dissented. In his view, the majority's choice to reject evidence of actual use "flout[ed] the weight of authority" and would "eviscerate" the Fourth

Amendment's protection. App., *infra*, 30a (citation omitted). And because a reasonable person would not "tolerate a stranger lurking about the back of [his] driveway, mere feet away from the steps to [his] front door," Judge Ambro would have held that the portion of the driveway that was searched was curtilage protected by the Fourth Amendment. *Id.* at 26a-27a.

The decision below implicates two circuit conflicts, both of which warrant this Court's resolution. As to the first question: the First, Second, Ninth, and Tenth Circuits have all held, contrary to the court below and the Sixth and Eighth Circuits, that a court may consider evidence of how an area is actually used in determining whether it is curtilage under the Fourth Amendment. As to the second question: the decision below conflicts with recent decisions of the Eighth and Ninth Circuits, as well as decisions of multiple state courts of last resort, that hold that driveways are "obviously" and "clearly" curtilage; by contrast, like the court below, the Fifth and Sixth Circuits and the Supreme Judicial Court of Massachusetts adopt a narrower view of curtilage. Because the decision below was incorrect in both respects, and because this case presents an excellent vehicle to resolve both conflicts and bring clarity to the law on the Fourth Amendment's protection of curtilage, the petition for a writ of certiorari should be granted.

A. Background

1. The Fourth Amendment protects individuals against unreasonable searches and seizures, guaranteeing "[t]he right of the people to be secure in their persons, houses, papers, and effects." U.S. Const. Amend. IV. The home is "first among equals" in the hierarchy of Fourth Amendment protection. *Jardines*, 569 U.S. at 6. At the Fourth Amendment's "very core" stands "the right of a

man to retreat into his own home and there be free from unreasonable governmental intrusion." *Silverman*, 365 U.S. at 511.

The protection of the home extends to the "curtilage," the area "immediately surrounding and associated with the home" that is "intimately linked to the home, both physically and psychologically." *Oliver* v. *United States*, 466 U.S. 170, 180 (1984); *California* v. *Ciraolo*, 476 U.S. 207, 212-213 (1986). The protection of the curtilage is "as old as the common law," where protection of the home from burglars extended to "all its branches and appurtenants." *Jardines*, 569 U.S. at 6-7 (quoting *Hester* v. *United States*, 265 U.S. 57, 59 (1924), and 4 William Blackstone, *Commentaries on the Laws of England* 223, 225 (1769) (Blackstone)). Curtilage is "part of the home itself for Fourth Amendment purposes." *Collins*, 584 U.S. at 592 (quoting *Jardines*, 569 U.S. at 6). And an invasion of the curtilage, like the invasion of a home, is presumptively unreasonable without a warrant. See *id.* at 593.

2. In evaluating whether a specific area is curtilage, a court must determine whether the area is "so intimately tied to the home itself that it should be placed under the home's 'umbrella' of Fourth Amendment protection." *United States* v. *Dunn*, 480 U.S. 294, 301 (1987). The "central component" of that inquiry is "whether the area harbors the intimate activity associated with the sanctity of a man's home and the privacies of life." *Id.* at 300 (internal quotation marks and citation omitted). That definition of "curtilage" is "familiar enough that it is easily understood from our daily experience." *Collins*, 584 U.S. at 593 (internal quotation marks and citation omitted). Classic examples of curtilage are "the front porch, side garden, [and] area outside the front window" of a home. *Id.* at 593 (internal quotation marks and citation omitted).

This Court has further instructed that the curtilage inquiry "should be resolved with particular reference to four factors": (1) "the proximity of the area * * * to the home"; (2) "whether the area is included within an enclosure surrounding the home"; (3) "the nature of the uses to which the area is put"; and (4) "the steps taken by the resident to protect the area from observation by people passing by." *Dunn*, 480 U.S. at 301. Those factors are not to be "mechanically applied," but are instead "useful analytical tools" in conducting the central inquiry. *Ibid.*

In *Collins*, the Court determined that a portion of a driveway where a searched motorcycle was parked was curtilage because it "constitute[d] an area adjacent to the home and to which the activity of home life extends." 584 U.S. at 593-594 (internal quotation marks and citation omitted). The driveway at issue in *Collins* ran "alongside the front lawn and up a few yards past the front perimeter of the house." *Id.* at 593. The portion of the driveway abutting the house was "enclosed on two sides by a brick wall about the height of a car and on a third side by the house." *Ibid.* And even though the relevant portion of the driveway was visible to a person standing on the street, the Court emphasized that a "parking patio or carport into which an officer can see from the street is no less entitled to protection from trespass and a warrantless search than a fully enclosed garage." *Id.* at 600.

B. Facts And Procedural History

1. Petitioner was driving near his home in Pittsburgh when he passed police officer Dustin Hess, who was driving in the opposite direction. Hess, who claimed he smelled marijuana, turned around and followed petitioner for about 20 seconds before petitioner pulled into the driveway of his home and parked his car. App., *infra*, 2a,

45a; see *id.* at 17a (Ambro, J., concurring in part and dissenting in part).

The driveway of petitioner's home is approximately 70 feet long. In the front of the home, and partially shielding the driveway and front yard from view, sits a row of small hedges. As the photograph below shows, the driveway is partially enclosed on the other three sides, with a row of tall hedges on the right, a garage at the back, and a two-foot-tall retaining wall and the stairs to the home's front porch on the left:

App., *infra*, 20a (Ambro, J., concurring in part and dissenting in part); see *id.* at 10a-13a, 48a-49a, 54a.

As reflected by the additional photograph below (a screenshot from the officer's body-camera footage on the day of the search), petitioner parked the car adjacent to the stairs to the front porch of the home. Officer Hess parked his patrol car at the end of the driveway. Hess walked up the driveway to approach petitioner, who provided Hess with his drivers' license and a valid medical marijuana license. Hess claimed he could smell marijuana and saw a lit marijuana cigarette in the center cup holder;

petitioner also produced a bag of marijuana at Hess's request. Hess confirmed that petitioner resided in the home abutting the driveway and ordered petitioner to step out of the car, at which point Hess patted down petitioner. Hess found no weapons or contraband on petitioner's person.

App., *infra*, 8a; see *id.* at 46a-47a, 54a; *id.* at 18a, 28a (Ambro, J., concurring in part and dissenting in part); 02/22/23 Hearing Tr. 61.

Petitioner declined to consent to a search of the car. Although Officer Hess did not have a warrant, he proceeded with the search anyway. The search revealed a firearm in the car's center console. Hess placed petitioner under arrest. App., *infra*, 47a (Ambro, J., concurring in part and dissenting in part).

2. The government charged petitioner with one count of possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1). As is relevant here, petitioner moved to suppress the firearm, arguing that it was the fruit of an illegal warrantless search within the curtilage of his home. In support of that motion, petitioner offered evidence that his family regularly used the driveway that led to their home as a children's play area and for family gatherings—

such as holidays, birthdays, and graduations—because of the small size of the home and the slope of the backyard. App., *infra*, 2a-3a, 12a-13a, 47a-48a, 55a; *id.* at 18a, 20a (Ambro, J., concurring in part and dissenting in part).

The district court denied the motion to suppress. App., *infra*, 43a-59a. The court observed that there were no particular features of the driveway, such as "no trespass" signs, playground equipment, toys, outdoor furniture, or a grill, that would suggest that the driveway was used as "an extension of the daily intimate activities of the home." *Id.* at 54a-55a. And it distinguished the Court's decision in *Collins*, *supra*, which determined that a vehicle parked in a driveway was within a home's curtilage, by reasoning that the portion of the driveway at issue in *Collins* was more secluded than the portion of petitioner's driveway where his car was parked. *Id.* at 52a; see 584 U.S. at 593-594.

After the district court issued its ruling on the motion to suppress, petitioner entered a conditional guilty plea, preserving his right to appeal the denial of the motion. App., *infra*, 3a. Petitioner was sentenced to 40 months of imprisonment, to be followed by three years of supervised release. D. Ct. Dkt. 88, at 2-6.

3. In a divided decision, the court of appeals affirmed. App., *infra*, 1a-42a.[1]

a. As is relevant here, the court of appeals concluded that the portion of petitioner's driveway where the search occurred was not curtilage. App., *infra*, 1a-14a. In so doing, the court considered (1) a "holistic view" based on "daily experience"; (2) the four factors set out by this

[1] Petitioner also challenged the constitutionality of Section 922 (g)(1), both on its face and as applied, under the Second Amendment. The district court denied petitioner's motion to dismiss on that basis, App., *infra*, 2a, and the court of appeals affirmed, *id.* at 14a. Petitioner does not renew that challenge before this Court.

Court in *Dunn*, *supra*; and (3) its view of "the purpose of the curtilage rule." *Id.* at 7a-8a.

The court of appeals first determined that "a holistic view shows that this patch of driveway was not an extension of [petitioner's] home." App., *infra*, 7a. The court explained that, although the driveway was in close proximity to petitioner's home and partially enclosed on three sides, it was "not secluded" and was "plainly visible from the street and on the path that any stranger might take to the front door." *Id.* at 8a.

The court of appeals next determined that the *Dunn* factors "reinforce[d]" its "holistic view." App., *infra*, 7a, 10a. Of particular relevance here, as to the nature of the use, the court acknowledged that "[c]ircuits have split over whether to focus on how the homeowner used the area or how it looks objectively to a reasonable officer." *Id.* at 12a. Taking sides in that split, the court held that "this factor considers only objective evidence—whether a reasonable officer would believe that the space was used for domestic activities." *Ibid.* The court reasoned that its position was consistent both with "how *Dunn* framed the factor" and with the other *Dunn* factors, which the court believed "look for objective evidence." *Ibid.*

The court of appeals declined to consider evidence that petitioner's family used the area for domestic activities, including for family gatherings and as a children's play area, because "there was no sign of these [activities] to alert the officer" at the time of the search. App., *infra*, 12a-13a. Having limited its analysis to evidence available to the officer, the court reasoned that the nature of the use "favor[ed] the government." *Id.* at 13a.

The court of appeals finally determined that "[t]he rationale for protecting curtilage does not extend to this patch of driveway." App., *infra*, 13a. Explaining that a "reasonable officer would not expect to learn more about

the inside of [petitioner's] home by walking up the driveway than he could by standing on the street," the court concluded that "the driveway is not the kind of area that the Fourth Amendment protects." *Id.* at 7a, 14a.

b. Judge Ambro dissented in relevant part. App., *infra*, 16a-42a.

In particular, Judge Ambro criticized the majority's approach to the nature of the use, describing it as "misunderstand[ing] the inquiry and flout[ing] the weight of authority." App., *infra*, 30a. The majority's objective standard would, in Judge Ambro's view, "totally eviscerate" the protection of the curtilage rule by "presuming the absence of curtilage until and unless the contrary appears." *Ibid.* (citation omitted). In addition, Judge Ambro reasoned that the majority's focus on the officer's perspective went astray by "merging the curtilage inquiry with the later good-faith inquiry." *Ibid.* That approach, Judge Ambro warned, "would amaze courts of appeals around the country, which have largely understood *Dunn* to articulate an actual-usage test." *Id.* at 31a. Because the record revealed that petitioner's family "used the driveway for domestic and recreational purposes," such as for family gatherings and as a children's play area, Judge Ambro would have determined that the nature of the use supported the conclusion that the relevant portion of petitioner's driveway was curtilage. *Id.* at 32a.

Aside from the *Dunn* factors, Judge Ambro reasoned that daily experience supported the same conclusion. App., *infra*, 24a-27a. Judge Ambro noted that "*Collins* is far closer to this case than the majority lets on." *Id.* at 25a. And he explained that a reasonable person would not "tolerate a stranger lurking about the back of [his] driveway, mere feet away from the steps to [his] front door," but would instead "think they had ventured into [his] private space and intruded on [his] privacy." *Id.* at 26a-27a.

Because he would have concluded that the relevant portion of petitioner's driveway was curtilage, Judge Ambro proceeded to address (and reject) the government's arguments that the search fell within one of the exceptions to the warrant requirement and that the good-faith exception to the exclusionary rule applied. App., *infra*, 37a-42a. As to the latter, Judge Ambro explained that "*Collins* and *Jardines* are close enough to this case" that a reasonable officer "would know that this portion of the driveway was within the curtilage of [petitioner's] home." *Id.* at 41a.

REASONS FOR GRANTING THE PETITION

The court of appeals' decision in this case implicates two well-developed conflicts among the courts of appeals and state courts of last resort. As the court of appeals recognized, its decision conflicts with the decisions of other courts by holding that evidence of how an area was actually used by the homeowner is irrelevant to the curtilage inquiry unless the use would have been apparent to the officer conducting the search. In addition, the decision deepens a conflict as to whether a driveway immediately adjacent to a home is curtilage under the Fourth Amendment. In each respect, the decision contradicts this Court's precedents, history, and common sense. And those errors seriously undermine the Fourth Amendment's bedrock prohibition against warrantless searches, leaving Americans in portions of the country with substantially reduced protection for their domestic spaces. As the dueling opinions below illustrate, this case readily satisfies the criteria for further review. The petition for a writ of certiorari should be granted.

A. The Decision Below Implicates A Conflict On Both Questions Presented

This case presents an ideal opportunity to answer two related questions about the Fourth Amendment's protection of curtilage that have divided the courts of appeals and state courts of last resort. The decision below deepens a conflict on a specific question relevant to the curtilage analysis by limiting the inquiry into actual uses of the disputed area to those objectively available to the searching officer. See App., *infra*, 12a-13a. In that respect, the decision below conflicts with decisions of the First, Second, Ninth, and Tenth Circuits and aligns with decisions of the Sixth and Eighth Circuits. The decision below also entrenches a broader conflict as to the treatment of driveways under the Fourth Amendment by holding that the relevant portion of petitioner's driveway is not curtilage. In that respect, the decision below, which accords with decisions of the Fifth and Sixth Circuits and the Supreme Judicial Court of Massachusetts, cannot be reconciled with decisions of the Eighth and Ninth Circuits and at least three state supreme courts that have easily concluded that driveways are curtilage. Both conflicts warrant the Court's review.

1. The First, Second, Ninth, and Tenth Circuits consider evidence of the actual use of the contested area as part of the curtilage analysis, regardless of whether that use was apparent to the searching officer. By contrast, the Third Circuit (in the decision below), along with the Sixth and Eighth Circuits, deem evidence of actual use irrelevant where the use was not apparent.

a. In *United States* v. *Diehl*, 276 F.3d 32, 41 (2002), the First Circuit determined that a clearing adjacent to the defendants' living quarters was curtilage. The magistrate judge in *Diehl*, like the court of appeals in this case, had asked whether there was an "objective basis" for the

searching officer to conclude that the defendants used the clearing "for the intimate activities of the home." *Id.* at 40. The First Circuit specifically rejected that approach, declining to "require that, to invoke curtilage protection, there must be objective evidence of intimate uses possessed by officers." *Ibid.* Limiting the analysis to evidence possessed by officers, the court explained, would "eviscerate the protection" for a home's curtilage, "making it depend on the exigencies of night or day, rain or shine, and winter or summer." *Ibid.* In addition, limiting the analysis "would turn the concept upside down, presuming the absence of curtilage until and unless the contrary appears." *Id.* at 40-41. Because there was ample evidence that the clearing was actually used for "personal, even intimate" purposes, the court determined that the nature of the use supported its determination that the area in question was curtilage. *Id.* at 41.

The Second Circuit has also rejected the objective standard. In *United States* v. *Alexander*, 888 F.3d 628 (2d Cir. 2018), the court held that the portion of the defendant's driveway adjoining the home was curtilage, as it was used "at least occasionally for recreation" such as hosting barbeques and was thus "an area to which the activity of home life extends"—even though the area was not being used in that way at the time of the search, and even though the driveway's "primary use" was for parking cars. *Id.* at 633 (internal quotation marks and citation omitted). Likewise, in *Harris* v. *O'Hare*, 770 F.3d 224 (2014), the Second Circuit held that a gated front and back yard that the homeowners "used for cookouts, playing with the dogs and hanging out together and with friends" was curtilage; the court did not ask whether evidence of those activities was available to the officers executing the search. *Id.* at 227, 240.

Both *Alexander* and *Harris* build on *United States* v. *Reilly*, 76 F.3d 1271 (2d Cir. 1996). There, officers searched the back portion of a defendant's property, which the defendant and his guests used for "a variety of private activities," including "fishing, swimming (at times naked), croquet, cooking, and sexual intercourse." *Id.* at 1278. The Second Circuit concluded that "the numerous intimate uses of the area clearly support the district court's finding that the area searched was within the curtilage." *Ibid.* The Second Circuit acknowledged that, in *Dunn*, this Court said it was "especially significant that the law enforcement officials possessed objective data indicating that the barn was not being used for intimate activities of the home." *Ibid.* (quoting *Dunn*, 480 U.S. at 302). But the Second Circuit "d[id] not believe that this language alter[ed] the Court's earlier statements about the importance of actual use." *Ibid.* Because the perceptions of the officers in *Dunn* aligned with the actual use of the property, the court reasoned, it "would be inappropriate to assume that the Court meant to modify the actual use test." *Id.* at 1278-1279.

The Ninth and Tenth Circuits have likewise considered evidence of the actual use of an area, in addition to the evidence available to the officer. The Ninth Circuit has held that the area of a driveway outside a defendant's garage was curtilage because the defendant was "a practicing nudist and often walked around in the nude in the driveway outside the garage"; it relied on that evidence without requiring the officer to know about it, noting only that the officer had no data "indicating that [the defendant] used his garage or adjacent driveway area for illegal activity rather than for those activities associated with the privacies of domestic life." *United States* v. *Depew*, 8 F.3d 1424, 1427 (1993), overruled on other grounds by *United States* v. *Johnson*, 256 F.3d 895, 913 n.4 (9th Cir. 2001).

And the Tenth Circuit has held that a detached garage was curtilage because the defendant "used the detached garage as a living quarter," even though the officer had "no objective data indicating the use of the garage." *United States* v. *Ronquillo*, 94 F.4th 1169, 1174-1175 (2024).

b. In contrast to those decisions, the decision below expressly rejected the relevance of evidence of the actual use of the area in question. The court of appeals limited its inquiry to "whether a reasonable officer would believe that the space was used for domestic activities." App., *infra*, 12a. As a result, the court refused to consider evidence of petitioner's family using the driveway for family gatherings and as a children's play area because "there was no sign of these gatherings to alert the officer," and it concluded that the nature of the use factor favored the government. *Id*. at 12a-13a.

The court of appeals acknowledged that "[c]ircuits have split" over this question, and it recognized that its decision conflicted with the decisions of the First and Second Circuits. App., *infra*, 12a. And in his dissenting opinion, Judge Ambro lamented that conflict; he explained that, if allowed to stand, the decision below "would amaze courts of appeals around the country, which have largely understood *Dunn* to articulate an actual-usage test." *Id*. at 31a.

As the court of appeals observed, its approach aligns with that of the Sixth and Eighth Circuits, which also limit the nature-of-the-use inquiry to evidence available to the searching officer. See App., *infra*, 12a (citing *Daughenbaugh* v. *City of Tiffin*, 150 F.3d 594 (6th Cir. 1998), and *United States* v. *Gerard*, 362 F.3d 484 (8th Cir. 2004)). In *Daughenbaugh*, the Sixth Circuit limited its analysis of the nature of the use to "only objective information known by the officers" at the start of the search. 150 F.3d at 599.

Similarly, in *Gerard*, the Eighth Circuit limited its analysis to "[o]bjective data" available to reasonable officers before they climbed a ladder to look into the locked garage. 362 F.3d at 488. The resulting 4-3 conflict cannot be resolved without intervention from this Court.

2. The court of appeals' ultimate holding that petitioner's private driveway was not curtilage implicates a growing conflict as to the treatment of driveways. Courts have long divided as to whether the portion of a driveway immediately adjacent to a home is curtilage. In the years since this Court held in *Collins* v. *Virginia*, 584 U.S. 586 (2018), that a portion of an exposed driveway was "easily understood from our daily experience" to be curtilage, *id.* at 593, the conflict has only grown, with additional courts coming in on both sides. The decision below deepens that conflict.

a. The Eighth and Ninth Circuits have both held that driveways immediately adjacent to the home are curtilage. Even before *Collins*, the Eighth Circuit held that the portion of a defendant's driveway extending alongside the home and into the backyard was curtilage. See *United States* v. *Wells*, 648 F.3d 671, 677-679 (2011). The court reasoned that, even though the entirety of the driveway was visible from the street, the defendant could "reasonably expect" that members of the public would not "traipse down the drive[way]" in order to view an area of the property that they otherwise could not freely observe. *Id.* at 678. Later, in *United States* v. *Coleman*, 909 F.3d 925 (2018), the Eighth Circuit held after *Collins* that a warrant to search "the premises and curtilage area" included a vehicle parked in the driveway. *Id.* at 931-932. Although the district court had found to the contrary and the government disputed the proposition in a brief filed before *Collins* was decided, see U.S. Br. at 27, 30, *Coleman*, *supra*, 2017 WL 5515394 (No. 17-2644) (Nov. 15,

2017), the court of appeals treated the proposition that a vehicle parked in the driveway was within the curtilage as too self-evident to require further analysis. And in *Chong* v. *United States*, 112 F.4th 848 (2024) (per curiam), the Ninth Circuit, after reviewing the "history of curtilage and the efforts the Supreme Court has taken to delineate its boundaries," "easily conclude[d]" that an exposed driveway was curtilage. *Id.* at 852-853, 858. Even though the driveway in *Chong* "wasn't enclosed," it was "obvious" in the wake of *Jardines* and *Collins* that officers had entered the curtilage of the defendant's home. *Id.* at 858, 862.

Likewise, both before and after *Collins*, the Georgia Supreme Court held that a "driveway to the home"—whatever its particular features—was "plainly" curtilage. *Peacock* v. *State*, 878 S.E.2d 247, 257 n.12 (2022); see also *Landers* v. *State*, 301 S.E.2d 633, 634 (1983). The Indiana Supreme Court also considered a vehicle parked in a driveway to be within the curtilage. *Hardin* v. *State*, 148 N.E.3d 932, 941-942 (2020). The Vermont Supreme Court has repeatedly reached the same conclusion. See *State* v. *Calabrese*, 268 A.3d 565, 577 (2021); *State* v. *Bovat*, 224 A.3d 103, 108 (2019), cert. denied, 141 S. Ct. 22 (2020) (Mem.), overruled on other grounds by *Calabrese*, 268 A.3d at 577. And the Minnesota Supreme Court stated that a "driveway of a home [is] often considered to be within the curtilage of a home." *State* v. *Chute*, 908 N.W.2d 578, 584 (2018) (citing *State* v. *Lewis*, 270 N.W.2d 891, 897 (1978)). Those courts therefore join the Eighth and Ninth Circuits in holding that driveways are easily defined as curtilage—at least absent strong evidence to suggest otherwise. Cf. *State* v. *Pinkham*, 679 A.2d 589, 190-191 (N.H. 1996) (noting that "[a] driveway leading directly to a house clearly falls within the scope of land or grounds surrounding the dwelling which are necessary

and convenient and habitually used for family purposes and carrying on domestic employment") (internal quotation marks and citation omitted).[2]

b. By contrast, the court of appeals in this case joined the Fifth and Sixth Circuits, as well as the Massachusetts Supreme Judicial Court, in taking a cramped view of when a driveway is curtilage.

In *United States* v. *Beene*, 818 F.3d 157 (2016), the Fifth Circuit held that a driveway was not curtilage where "nothing blocked its access or obstructed its view from the street." *Id.* at 162. In the wake of *Collins*, the court reaffirmed its position, concluding that "*Beene* compels our holding * * * that [appellant's] driveway is not curtilage." *Evans* v. *Lindley*, No. 21-20118, 2021 WL 5751451, at *5 (Dec. 2, 2021). In *United States* v. *Coleman*, 923 F.3d 450 (2019), the Sixth Circuit reaffirmed its pre-*Collins* cases holding that a driveway is not curtilage where it is not enclosed and no steps are taken to obstruct the area. See *id.* at 456-457. And in *Commonwealth* v. *Wittey*, 210 N.E.3d 355 (2023), the Massachusetts Supreme Judicial Court held that a "driveway is only a 'semiprivate area,'" where "the expectation of privacy a possessor of land may reasonably have in his or her driveway will generally depend upon the nature of the activities carried out there and the degree of visibility from the street." *Id.* at 370 (internal quotation marks, citation, and alteration omitted). Despite this Court's decision in *Collins*, the

[2] In several of these decisions, the court was considering the curtilage question in order to determine whether a search warrant that covered the curtilage reached a particular area, rather than to determine whether the warrant requirement attached in the first instance. But that distinction is not relevant for present purposes: to state the obvious, the curtilage inquiry cannot be more expansive when the answer redounds against a criminal defendant and more narrow when it redounds in the defendant's favor.

Massachusetts Supreme Judicial Court maintained that a "prominent factor in the analysis is whether the driveway freely is exposed to public view." *Ibid.* At the same time, the court acknowledged that "some cases have come to the opposite conclusion." *Id.* at 179.

In line with those decisions, the Third Circuit held in the decision below that petitioner's driveway was not curtilage because it was "not secluded" and was "plainly visible from the street and on the path that any stranger might take to the front door." App., *infra*, 8a. The upshot is that, in the Third Circuit, driveways are presumptively *not* curtilage, at least absent strong evidence of domestic activity. The Third Circuit thus deepened the growing conflict on how to treat driveways under the Fourth Amendment.

B. The Decision Below Is Incorrect

The court of appeals in this case declined to consider evidence of petitioner's personal use of his driveway, limiting the analysis to uses that would have been apparent to the officer conducting the search. And the court held that the relevant portion of petitioner's secluded driveway—enclosed on three sides, abutting stairs to the front porch of the home, and used to host family gatherings—was not curtilage. Both the court's cramped analysis of the nature of the use and its ultimate determination that the search did not occur within the curtilage of petitioner's home were incorrect.

1. Precedent, first principles, history, and common sense all confirm that the relevant inquiry in assessing the nature of the use is how the disputed area was actually used, regardless of whether evidence of the use was available to the searching officer.

a. i. Precedent supports considering a homeowner's actual use of an area in determining whether it qualifies

as curtilage. In *Dunn*, this Court set out four factors that it deemed "useful analytical tools" in conducting the curtilage inquiry: (1) "the proximity of the area claimed to be curtilage to the home"; (2) "whether the area is included within an enclosure surrounding the home"; (3) "the nature of the uses to which the area is put"; and (4) "the steps taken by the resident to protect the area from observation by people passing by." 480 U.S. at 301. Critically, those factors serve to illuminate the "centrally relevant consideration": "whether the area in question is so intimately tied to the home itself that it should be placed under the home's 'umbrella' of Fourth Amendment protection." *Ibid.* As *Collins* subsequently put it, the "protection afforded the curtilage" is "essentially a protection of families and personal privacy in an area intimately linked to the home, both physically and psychologically, where privacy expectations are most heightened." 584 U.S. at 592-593 (citation omitted); see *Jardines*, 569 U.S. at 7.

How a homeowner actually uses an area is relevant to that ultimate inquiry. A court cannot decide whether an area is "psychologically" linked to the home without taking account of evidence of the types of activities the homeowner conducts in the area. See *Collins*, 584 U.S. at 593-594. Nor can a court decide whether an area "harbors those intimate activities associated with domestic life" without such evidence. *Dunn*, 480 U.S. at 301 n.4. To be sure, how an area would objectively appear to an officer at the time of the search also serves as evidence of how the area was used, and thus is also relevant to the ultimate inquiry. See *id.* at 302-303. But an area's linkage to the home does not turn on whether indicia of its uses happen to be present at the moment of the search.

ii. In deeming evidence of actual usage irrelevant unless available to the searching officer, the court of appeals

noted that this Court considered "only 'objective data'" in applying the nature-of-the-use factor in *Dunn*. App., *infra*, 12a. But the court of appeals drew the wrong inference from *Dunn*.

In *Dunn*, the Court held that an "area near a barn, located approximately 50 yards from a fence surrounding a ranch house" was not curtilage protected by the Fourth Amendment. 480 U.S. at 296. After explaining that curtilage determinations should be resolved with reference to "the nature of the uses to which the area is put," the Court reasoned that it was "especially significant" that "the law enforcement officials possessed objective data indicating that the barn was not being used for intimate activities of the home." *Id.* at 301-302. Specifically, the officials had aerial photos showing that phenylacetic acid—used to make methamphetamine—was being loaded into the barn, and, when the officers approached the property, they could smell the acid and hear a motor running. *Id.* at 302-303. The Court concluded that this evidence demonstrated that "the use to which the barn was being put could not fairly be characterized as so associated with the activities and privacies of domestic life" that it should have been deemed "part of respondent's home." *Id.* at 303.

Dunn thus addressed the opposite of the situation in this case, because it involved evidence that *was* available to the searching officer and that tended to demonstrate that the barn was not curtilage. But it does not follow from the fact that a court can consider evidence that was available to the searching officer, that a court should disregard evidence that was *not*. The Court's willingness to consider the officer's knowledge thus provides no support for a rule that declines to consider evidence of actual uses absent such knowledge.

Tellingly, what the majority in *Dunn* was silent on, Justice Scalia clearly answered. As he explained, "[w]hat is significant" is that the barn was not being used for intimate activities of the home, "whether or not the law enforcement officials knew it." 480 U.S. at 305 (opinion concurring in part). The "officers' perceptions," Justice Scalia further reasoned, are "no more relevant to whether the barn was curtilage than to whether the house was a house." *Ibid.* Under that approach, there can be no doubt that the decision below is incorrect. The decision below thus overextends the holding of *Dunn* and cannot be reconciled with Justice Scalia's concurrence.

The court of appeals went similarly astray in reasoning that only evidence available to the officer is relevant because the other factors outlined in *Dunn* "look for objective evidence." App., *infra*, 12a. The premise of that statement is incorrect. That the other factors look to "objective evidence" does not mean that they are limited to evidence available to the officer at the time of the search. For example, in assessing the other factors, the *Dunn* Court considered "the physical layout of [the defendant's] ranch in its entirety" for itself, instead of asking how the ranch would have appeared to the searching officers. 480 U.S. at 302. Precedent therefore weighs firmly against the court of appeals' approach.

b. First principles likewise indicate that what matters are the actual uses of the property, not an officer's perception of those uses. The specific items protected by the Fourth Amendment—"persons, houses, papers, and effects"—do not vary based on the perception of the officer conducting the search. See *United States* v. *Ross*, 456 U.S. 798, 822 & n.30 (1982) (rejecting the proposition that "the Fourth Amendment protects only those containers that objectively manifest an individual's reasonable expectation of privacy"); cf. *Jones* v. *United States*, 362

U.S. 257, 259, 265 (1960) (determining Fourth Amendment standing based on whether a defendant was in fact an overnight guest, rather than whether the defendant's status would have been apparent to the searching officer).

As Justice Scalia explained in *Dunn*, what matters is how the area in question was actually used, "whether or not the law enforcement officials knew it." 480 U.S. at 305 (opinion concurring in part). The "officers' perceptions might be relevant to whether intrusion upon curtilage was nevertheless reasonable." *Ibid.* But, as Justice Scalia pithily explained, the officers' perceptions "are no more relevant to whether the barn was curtilage than to whether the house was a house." *Ibid.* In his dissent below, Judge Ambro made a related point: by focusing on the officer's perception, he explained, the majority "merg[ed] the curtilage inquiry with the later good-faith inquiry." App., *infra*, 30a-31a. In short, although the officer's perception is relevant at various other stages of the analysis, identifying the nature of the property in question depends instead on the reality of the property's use.

c. The historical underpinnings of the curtilage definition further indicate that the actual use of an area, rather than a searching officer's perception of that use, is centrally relevant. The concept of curtilage has "ancient and durable roots," reflecting the common-law principle that "the 'house protects and privileges all its branches and appurtenants.'" *Jardines*, 569 U.S. at 6-7 (quoting 4 Blackstone 225); see *Collins*, 584 U.S. at 602 (Thomas, J., concurring). Of particular relevance here, the definition of curtilage derives from "the elements of common-law burglary." *Dunn*, 480 U.S. at 300 n.3. At common law, burglary was considered "a very heinous offence," often punishable by death. 4 Blackstone 223. A burglary was committed by breaking and entering, at night, into a

"mansion house" with intent to commit a felony. *Id.* at 224.

Whether a particular house was a "mansion house" for purposes of burglary turned on whether the house was actually occupied, regardless of the burglar's perception. In fact, a home was a mansion house even if "no one be in it[] at the time of the fact committed," as long as "a man sometimes resides" and "the owner hath only left for a short season." 4 Blackstone 225. Accordingly, a summer house in the country could be the object of burglary even though the house lay vacant and the family remained in a separate house in the city, as long as the owner of the country house had an intention of returning. See *John Nutbrown's Case* (1750) 168 Eng. Rep. 38, 38-39 (K.B.). The homeowner's use of the home, and not the burglar's perception, controlled for purposes of identifying common-law burglary. Consistent with the common-law approach, the relevant question in assessing whether an area is curtilage is whether the area was actually used for domestic activity, regardless of the indicia available to the searching officer.

d. Allowing a court to consider evidence of actual use also accords with common sense. The "conception defining the curtilage" is, in many cases, "familiar enough that it is easily understood from our daily experience." *Collins*, 584 U.S. at 593 (citation omitted). Yet requiring evidence of domestic activity to be apparent at the time of the intrusion does not align with daily experience. Instead, it makes the protections of the Fourth Amendment "depend on the exigencies of night or day, rain or shine, and winter or summer." *Diehl*, 276 F.3d at 40. It would allow the boundaries of the home to expand and contract depending on the activity engaged in at the relevant time. But as one court has put it, "one is not required to keep

particular domestic objects on one's lawn in order to maintain a reasonable expectation of privacy." *Wells*, 648 F.3d at 677 (citation and alteration omitted). The reality is that people are not always, or even often, using the area surrounding their homes. It defies common sense to suggest that such an area is protected by the Constitution only when it is actually occupied.

Considering the actual use of an area also avoids creating perverse incentives. Under the court of appeals' rule, an officer need only wait until a time when the home's surrounding areas are least likely to be used in order to avoid the restrictions of the Fourth Amendment. By approaching a home at night, during a storm, or over the holidays, officers could secure the ability to search a portion of the property that is otherwise regularly put to intimate use. The protection the Fourth Amendment offers to the home and its appurtenances should not be so fickle, nor so open to manipulation by the officer conducting the search.

2. In addition to its error in declining to consider evidence of the actual use of petitioner's driveway, the court of appeals erred in determining that the relevant portion of the driveway was not curtilage.

As the Court has repeatedly recognized, curtilage is "the area immediately surrounding and associated with the home." *Jardines*, 569 U.S. at 6 (internal quotation marks and citation omitted). Certain areas are "easily understood from our daily experience" to qualify. *Id.* at 7 (citation omitted). A driveway immediately adjacent to a home is curtilage because it is physically and psychologically linked to home life and an area that families regularly use for domestic activities.

The portion of a driveway that is within close proximity to the home is analogous to other areas that the Court has already recognized as curtilage. Those areas include

backyards as well as "the front porch, side garden, or area outside the front window." *Collins*, 584 U.S. at 593 (internal quotation marks and citation omitted); see *California* v. *Ciraolo*, 476 U.S. 207, 212-213 (1986). Just like for those areas, "the right to retreat would be significantly diminished if the police could enter a man's [driveway] to observe his repose." *Jardines*, 569 U.S. at 6. Thus, absent strong evidence that the driveway lacks an intimate connection with the home, portions of the driveway within close proximity to the home are also curtilage. That rule ensures that the protections of the Fourth Amendment are "not only firm but also bright." *Kyllo* v. *United States*, 533 U.S. 27, 40 (2001); cf. *O'Connor* v. *Ortega*, 480 U.S. 709, 729-730 (1987) (Scalia, J., concurring).

Those principles apply with particular force here. The area of petitioner's driveway searched was in close proximity to the home; was adjacent to "a short set of stairs to the front porch leading to the house's main entrance"; and was surrounded on three sides—by a retaining wall, a row of tall hedges, and the home itself. App., *infra*, 26a (Ambro, J., concurring in part and dissenting in part). Petitioner's family undertook extensive efforts to protect the driveway from observation by maintaining shrubs in front of the house and by placing the mailbox at the end of the driveway. *Id.* at 19a, 48a. Consistent with those features, petitioner's family used the driveway regularly for family gatherings and as a place for their kids "to converse, to do whatever they want, [and] to enjoy family." *Id.* at 32a (Ambro, J., concurring in part and dissenting in part). Just as this Court concluded in *Collins*, the area is akin to a "front porch, side garden, or area outside the front window." 584 U.S. at 593 (internal quotation marks and citation omitted). Our "daily experience" demonstrates that this "driveway enclosure" is "an area adjacent to the home and to which the activity of home life extends, and so is

properly considered curtilage." *Id.* at 593-594 (internal quotation marks and citation omitted).

The court of appeals held that the relevant portion of the driveway was not curtilage in part because it was "not secluded" and was "plainly visible from the street and on the path that any stranger might take to the front door." App., *infra*, 8a. That reasoning is flatly inconsistent with this Court's decision in *Collins*. There, the Court explained that "the ability to observe inside curtilage from a lawful vantage point is not the same as the right to enter curtilage without a warrant for the purpose of conducting a search to obtain information not otherwise accessible." 584 U.S. at 600. Accordingly, "a parking patio or carport into which an officer can see from the street is no less entitled to protection from trespass and a warrantless search than a fully enclosed garage." *Ibid.*

The court of appeals' cramped conception of when a driveway is entitled to the Fourth Amendment's protection is particularly troubling given the similarity between the driveways here and in *Collins*. Like here, the driveway in *Collins* "[ran] alongside the front lawn" and provided access to the house. 584 U.S. at 593. Like here, the driveway in *Collins* was enclosed on three sides. *Ibid.* And like here, the area searched in *Collins* was visible from the roadway. *Id.* at 586, 600. And while the officer in *Collins* was within arm's reach of the house, the officer here was in arm's reach of the front porch. Thus, "*Collins* is far closer to this case than the majority lets on." App., *infra*, 25a (Ambro, J., concurring in part and dissenting in part).

The court of appeals' reasoning is also deeply flawed as a matter of first principles. The court denied curtilage protection to petitioner's driveway because it took the view that petitioner lacked a "reasonable expectation of privacy in [the] part of his driveway" the officer searched.

App., *infra*, 8a-9a. But as this Court has reiterated, the reasonable-expectation-of-privacy inquiry was not "intended to withdraw any of the protection which the [Fourth] Amendment extends to the home." *United States* v. *Jones*, 565 U.S. 400, 407 (2012) (internal quotation marks and citation omitted); see *Jardines*, 569 U.S. at 5. The court of appeals' decision does just that, using the court's view about reasonable expectations of privacy at the expense of the traditional property-based approach.

c. Historical evidence confirms that the portion of a driveway immediately adjoining a home is constitutionally protected curtilage. "Heightened protection for curtilage is longstanding and predates even the Founding of this country, tracing its roots to the English common law." *Chong*, 112 F.4th at 864 (Bumatay, J., concurring). As Blackstone observed, protection of the home extended at common law to "all its branches and appurtenants." 4 Blackstone 225. Thus, "at common law the curtilage was far more expansive than the front porch, sometimes said to reach as far as an English longbow shot—some 200 yards—from the dwelling house." *United States* v. *Carloss*, 818 F.3d 988, 1005 n.1 (10th Cir. 2016) (Gorsuch, J., dissenting). Confirming that understanding, contemporary dictionaries at the Founding defined curtilage as "a courtyard, backside, or piece of ground, lying near and belonging to a house." *Curtilage*, New Law Dictionary (1792); see *Chong*, 112 F.4th at 866 (Bumatay, J., concurring). The broad historical understanding of curtilage confirms that, absent strong evidence that it lacks an intimate connection with the home, a portion of a driveway immediately adjoining a home is constitutionally protected.

C. The Questions Presented Are Important And Recurring And Warrant The Court's Review In This Case

The questions presented in this case are of substantial legal and practical importance, and this case is an ideal vehicle in which to consider them.

1. When this Court denied certiorari in *Bovat* v. *Vermont*, 141 S. Ct. 22 (2020), Justice Gorsuch, joined by Justices Sotomayor and Kagan, wrote that, despite the Vermont Supreme Court's disregard for the Constitution's protection of curtilage, it was "unclear whether *Jardines*'s message about the protections due a home's curtilage has so badly eluded other state or federal courts" to warrant intervention. *Id.* at 24 (statement respecting the denial of certiorari). Although the particular questions presented here are different than those in *Bovat*, it is now clear that the Constitution's protection of curtilage is getting short shrift in far too many courts. This Court's intervention is badly needed to ensure that "[t]he Constitution's historic protections for the sanctity of the home and its surroundings" receive the "respect" they deserve. *Ibid.*

The privacy and sanctity of the home lie at the "very core" of the rights guaranteed by the Fourth Amendment. *Jardines*, 569 U.S. at 6 (citation omitted). Those rights "belong in the catalog of indispensable freedoms" because "[u]ncontrolled search and seizure is one of the first and most effective weapons in the arsenal of every arbitrary government." *Brinegar* v. *United States*, 338 U.S. 160, 180 (1949) (Jackson, J., dissenting). Yet "[c]ourts have agonized over the parameters of curtilage since Justice Holmes first hinted at the idea nearly a century ago." *Ronquillo*, 94 F.4th at 1171. This case thus raises issues of critical constitutional importance.

The disagreement among the lower courts on the questions presented is particularly troubling because the

Court has long recognized the importance of uniformity in the interpretation of the Fourth Amendment. See, *e.g.*, *Ornelas* v. *United States*, 517 U.S. 690, 697 (1996); *Brinegar*, 338 U.S. at 171. Only this Court can prevent the Fourth Amendment's protection of curtilage from varying by happenstance of geography. Accordingly, this Court has repeatedly granted certiorari to provide guidance to lower courts as to the proper analysis of curtilage. See *Collins*, 584 U.S. at 593-594; *Jardines*, 569 U.S. at 6-7.

In addition to the legal significance of the questions, the conflicts have substantial practical consequences. The questions presented could affect the vast majority of Americans. Petitioner's home is one of over 90 million in the United States that have a garage or carport. See U.S. Census Bureau, American Housing Survey (2023). That suggests that at least two out of every three homes in the United States have a driveway. See *id.* And the questions presented here will necessarily arise anytime an officer enters a driveway without a warrant.

2. This case is an excellent vehicle for the Court to resolve the acknowledged circuit conflicts. The questions presented were pressed and passed upon below, and the subject of specific disagreement between the majority and the dissent. And because the questions presented have been thoroughly addressed in the courts of appeals and state courts of last resort, further percolation would not help the Court to resolve those questions.

In addition, this case is a particularly suitable vehicle in which to consider the questions presented because they are likely to be outcome-determinative. The majority's decision rested exclusively on its holding that the area searched was not curtilage. See App., *infra*, 2a, 14a. And the dissenting judge, who would have reached the oppo-

site answer on the questions presented, would have reversed petitioner's conviction as a result. See *id.* at 40a-42a. Those features make this case an ideal vehicle in which to consider and resolve the contours of the curtilage inquiry—an inquiry that continues to vex the lower courts.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

KANNON K. SHANMUGAM
MASHA G. HANSFORD
JAKE L. KRAMER
EMMA R. WHITE
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
2001 K Street, N.W.
Washington, DC 20006

ELISA A. LONG
JASMINE SOLA
STACIE FAHSEL
SAMANTHA STERN
RENEE PIETROPAOLO
FEDERAL PUBLIC DEFENDER FOR THE WESTERN DISTRICT OF PENNSYLVANIA
1001 Liberty Avenue, Suite 1500
Pittsburgh, PA 15222
(412) 644-6565
Jasmine_Sola@fd.org

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