

No. 25-399

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*

REPLY BRIEF FOR THE PETITIONER

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

TABLE OF CONTENTS

	Page
A. The decision below implicates a conflict on both questions presented	3
B. The decision below is incorrect.....	7
C. The questions presented are important and warrant the Court’s review in this case.....	10

TABLE OF AUTHORITIES

Cases:

<i>Ames v. Ohio Department of Youth Services</i> , 605 U.S. 303 (2025).....	4
<i>Andy Warhol Foundation for the Visual Arts, Inc.</i> <i>v. Goldsmith</i> , 598 U.S. 508 (2023).....	3
<i>Bovat v. Vermont</i> , 141 S. Ct. 22 (2020).....	2
<i>Carpenter v. United States</i> , 585 U.S. 296 (2018).....	7, 10, 11
<i>Chong v. United States</i> , 112 F.4th 848 (9th Cir. 2024).....	6
<i>Collins v. Virginia</i> , 584 U.S. 586 (2018).....	2, 4, 7, 9-11
<i>Florida v. Jardines</i> , 569 U.S. 1 (2013)	2, 5, 6, 8-10
<i>Kyles v. Whitley</i> , 514 U.S. 419 (1995).....	6
<i>Kyllo v. United States</i> , 533 U.S. 27 (2001).....	7
<i>United States v. Carpenter</i> , 926 F.3d 313 (6th Cir. 2019).....	11
<i>United States v. Dunn</i> , 480 U.S. 294 (1987)	1, 3-5, 7, 8
<i>United States v. Jones</i> , 565 U.S. 400 (2012)	8

Constitution:

U.S. Const. Amend. IV	2, 4-8, 10, 11
-----------------------------	----------------

Miscellaneous:

Los Angeles County Sheriff’s Department, <i>14-23—Legal Standing Upon the Curtilage</i> <i>of Residences</i> (last visited Dec. 23, 2025) <tinyurl.com/LACurtilage>	4
--	---

In the Supreme Court of the United States

No. 25-399

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*

REPLY BRIEF FOR THE PETITIONER

Petitioner was subject to a warrantless search of his car while it was parked in the driveway of his home, adjacent to his front porch. Despite ample evidence that the driveway was regularly used for family gatherings and as a children’s play area, a divided Third Circuit panel affirmed the district court’s denial of petitioner’s motion to suppress, holding that evidence of how petitioner’s family actually used the driveway was irrelevant under *United States v. Dunn*, 480 U.S. 294 (1987), and that the driveway was not curtilage.

The government does not dispute that the decision below joined the minority side of a 4-3 conflict on the consideration of actual-use evidence under *Dunn*. Instead, it contends that a conflict as to one factor of a multi-factor test is too narrow to be worth the Court’s time. See Br. in

Opp. 14. But this Court routinely grants review in similar circumstances, and resolving the conflict will have enormous practical implications for homeowners and law-enforcement officials alike. Nor can the government escape the disagreement among courts as to the treatment of residential driveways more generally. It offers the meek suggestion that the petition “overgeneraliz[es]” the degree of disagreement, see *id.* at 11, but it ultimately cannot explain away any, let alone all, of the many cases that have rejected the approach taken below.

On the merits, the government declines to offer any coherent justification for its proposed rule about actual use. The government’s rule disregards history, Justice Scalia’s views, and the Court’s recent focus on a property-based understanding of the Fourth Amendment. Throughout the petition, the government relies heavily on the arguments that any portion of a driveway that is visible or within the path to the front door of a home cannot be curtilage. See Br. in Opp. 2, 8-9, 14-15, 17. But this Court has rejected those very arguments in its two most recent curtilage decisions—*Collins v. Virginia*, 584 U.S. 586 (2018), and *Florida v. Jardines*, 569 U.S. 1 (2013).

This should have been an easy case under those precedents. But the ensuing widespread division in the lower courts, and the government’s reprisal of arguments this Court has specifically rejected, lays bare that “*Jardines*’s [and *Collins*’s] message about the protections due a home’s curtilage” has “badly eluded” not only the “state [and] federal courts,” but also the federal government. *Bovatt v. Vermont*, 141 S. Ct. 22, 24 (2020) (Mem.) (Gorsuch, J., respecting the denial of certiorari). This Court should not permit that division to fester. The petition for a writ of certiorari should be granted.

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

The government does not dispute (Br. in Opp. 9-15) that the lower courts are divided as to each question presented, contending only that petitioner “overstates the extent” of the disagreement. *Id.* at 7. Those conflicts warrant the Court’s review.

1. The court of appeals acknowledged that “[c]ircuits have split” over the question whether evidence of a homeowner’s actual use of the searched property is relevant to the *Dunn* inquiry. Pet. App. 12a. The government does not deny the existence of that conflict. See Br. in Opp. 14-15. Specifically, the government does not dispute that the court of appeals’ decision conflicts with the decisions of four other circuits (the First, Second, Ninth, and Tenth), which consider the evidence of actual use that the court of appeals deemed off-limits in this case. Nor does it dispute that the Sixth and Eighth Circuits follow the court of appeals’ rule, which depends on the evidence available to the searching officers. The resulting 4-3 conflict warrants the Court’s review.

Unable to deny the acknowledged, well-developed conflict, the government contends that the Court should not bother to resolve it, characterizing it as “narrow” because it involves only one of the four *Dunn* factors. See Br. in Op. 14. But that factor is critical, because the “nature of the uses to which the area is put” is central to the ultimate inquiry whether the area is “intimately tied to the home.” *Dunn*, 480 U.S. at 301. And the Court routinely grants review to resolve disagreement as to a single factor of a multi-factor test. See, e.g., *Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith*, 598 U.S. 508, 515-516, 525 (2023).

Relatedly, the government suggests that the conflict is not worth this Court’s time because the *Dunn* factors

are a “heuristic” that “need not be applied in every curtilage case.” Br. in Opp. 15. That is no obstacle to review either. Just last Term, the Court granted review to resolve a conflict as to the proper application of the first step of the *McDonnell-Douglas* framework, a similar heuristic that “merely aims to provide a sensible, orderly way to evaluate the evidence.” *Ames v. Ohio Department of Youth Services*, 605 U.S. 303, 308 & n.2 (2025) (internal quotation marks and citation omitted).

And while the *Dunn* factors “need not be applied in every curtilage case,” Br. in Opp. 15, courts are in fact applying them with startling frequency. A search of the Westlaw database reveals approximately 400 decisions citing *Dunn* since this Court decided *Collins* in 2018, with approximately 130 of those cases applying the *Dunn* factors. And that is likely the tip of the iceberg, given the number of trial-court rulings that never result in a written decision or find their way into a commercial database. Moreover, police officers are instructed to rely on the *Dunn* factors to discharge their day-to-day duties. See, e.g., Los Angeles County Sheriff’s Department, *14-23—Legal Standing Upon the Curtilage of Residences* (last visited Dec. 23, 2025) <tinyurl.com/LACurtilage>. Resolving the division over the application of the use factor will provide much-needed guidance to lower courts and law-enforcement officials alike.

Failing to diminish the conflict, the government reaches for a pseudo-vehicle argument, contending that review is “unwarranted” because petitioner’s Fourth Amendment claim “would have failed even if actual-use evidence were considered.” Br. in Opp. 14. But that is surely incorrect, given the strength of that evidence here. Judge Ambro, who wrote the dissenting opinion, would have come out the other way on the actual-use question. Pet. App. 30a-32a. And relying on that evidence, he would

also have come out the other way as to the application of the *Dunn* factors and as to the ultimate Fourth Amendment claim. *Id.* at 27a-37a, 42a. In the First, Second, Ninth, and Tenth Circuits, this warrantless search would have been held unconstitutional.

The government's primary basis for contending that the "actual use" evidence could not make a difference here is that the searched car "was still 'plainly visible from the street and on the path that any stranger might take to the front door.'" Br. in Opp. 14 (quoting Pet. App. 8a). Tellingly, the government's argument in that respect relies exclusively on lower-court cases from 2007 or earlier. See *id.* at 15. That is because the government is living in a pre-*Jardines* world. The government tried the very same argument in its *Jardines* brief, contending that the protections of the Fourth Amendment do not apply to "a walkway or driveway leading to the front door" because "they are customarily open to visitors and therefore may be used by the police as well." U.S. Br. at 24 n.8, *Jardines, supra* (No. 11-564). But the Court flatly rejected that contention. The Court explained that "the background social norms that invite a visitor to the front door do not invite him there to conduct a search." *Jardines*, 569 U.S. at 9. Yet the government invokes that rejected argument throughout its brief in opposition, see Br. in Opp. 2, 8-9, 14, 17, and the decision below relied on similar reasoning, see Pet. App. 8a, 13a-14a. The fact that lower courts and the federal government cling to that abrogated reasoning underscores the need for the Court to intervene and restore the curtilage protections the Court had previously mandated.

2. Nor does the government succeed in undermining the conflict as to the second question presented. As the petition explained, courts of appeals and state courts of last resort are deeply divided about the curtilage status of

driveways. See Pet. 17-20. The government attempts to muddy the waters by identifying fact-specific circumstances in each case in an effort to explain away the disagreement. See Br. in Opp. 9-11. But by the end of that exercise, even the government is not persuaded, claiming only that the petition’s assertion of a deep and growing conflict is an “overgeneralization.” See *id.* at 11.

At bottom, the cases reveal two fundamentally irreconcilable views as to whether driveways are presumptively curtilage. The government suggests that some of the cases that have found a driveway to be within the curtilage are distinguishable because “police officers ventured beyond the path to the front door and into other areas of the property” on their way to the driveway. Br. in Opp. 9. But that reprises the government’s mistaken (and rejected) view about the path to the front door. See p. 5, *supra*. Regardless, the cases considered the path the officers followed in assessing the separate question (not at issue here) whether the “trespass [onto the curtilage] was unlicensed.” *Chong v. United States*, 112 F.4th 848, 852 (9th Cir. 2024) (per curiam), cert. denied, 145 S. Ct. 1218 (2025); see *Jardines*, 569 U.S. at 7.

The government’s next move is a puzzling one: it invokes the two-court rule, applicable where a petitioner seeks review on a theory that “a concededly correct view of the law was incorrectly applied to the facts” by both lower courts. *Kyles v. Whitley*, 514 U.S. 419, 456-457 (1995) (Scalia, J., dissenting) (citation omitted). But that is not petitioner’s theory at all. Instead, review of the second question presented is warranted because the decision below erred in its legal analysis of curtilage: specifically, by adopting the legally mistaken view that a portion of a driveway in close proximity to the home is presumptively not curtilage. That is precisely the kind of Fourth Amend-

ment question this Court routinely reviews. See, e.g., *Collins*, 584 U.S. at 588; *Carpenter v. United States*, 585 U.S. 296, 300 (2018); *Kyllo v. United States*, 533 U.S. 27, 29 (2001).

B. The Decision Below Is Incorrect

The government devotes significant attention to the merits of both questions. See Br. in Opp. 8-9, 12-13. Although the merits are ultimately a matter for another day, the government’s arguments miss the mark.

1. The government acknowledges that the curtilage inquiry turns on whether an area “harbor[s] ‘the intimate activity associated with’” the home, Br. in Opp. 8 (citation omitted), yet it offers no explanation as to how disregarding the disputed area’s actual uses is consistent with that inquiry. Indeed, the government offers no response to most of petitioner’s arguments on this front. See Pet. 20-26. As the petition laid out (Pet. 24-25), and amici have underscored (Gun Owners Br. 12-16), the historical record powerfully supports petitioner. The government offers no countervailing historical evidence of its own to justify its rule, which would allow the protections of the Fourth Amendment to expand and contract based on considerations such as the time of day.

The government defends the officer-perception rule as “consistent with this Court’s decision in *Dunn*” because the Court there emphasized “objective data” available to the officers that “the barn was not being used for intimate activities of the home.” Br. in Opp. 12-13 (quoting *Dunn*, 480 U.S. at 302). But as the petition explained (Pet. 22-23), while the Court deemed relevant evidence that was objectively available to the officers, it does not follow that evidence *unavailable* to the officers is off-limits. Tellingly, Justice Scalia faulted the majority for even consid-

ering the officers' access to the evidence; deeming evidence unavailable to the officers to be categorically off-limits would be a gross departure from Justice Scalia's understanding of the proper curtilage inquiry. See Pet. 23 (citing 480 U.S. at 305 (opinion concurring in part)).

More broadly, the government takes the view that all that matters to the Fourth Amendment analysis is what is apparent to a searching officer. See Br. in Opp. 13. Again, that would have been news to Justice Scalia, who explained that “[w]hat is significant” is how the disputed area was being used, “whether or not the law enforcement officials knew it.” *Dunn*, 480 U.S. at 305 (opinion concurring in part). Indeed, in emphasizing officers' contemporaneous perceptions, the government seems to have forgotten that a “traditional property-based understanding”—not just the expectations of the defendant or the officers—is at the root of the Fourth Amendment. *Jardines*, 569 U.S. at 11; see *United States v. Jones*, 565 U.S. 400, 405-407 (2012).

Bereft of text and precedent, the government primarily contends that its rule is a better guide for “police in their day-to-day activities.” Br. in Opp. 13 (citation omitted). But that tees up a core problem with the government's rule. Under a rule that depends on an officer's perception, an area closely associated with the home is fair game for a warrantless search as long as the officer approaches the home when evidence of domestic activities is least likely to be apparent. Under the government's rule, curtilage protection is the rare exception, coming into play only when the area is being put to intimate use at the time of the search itself.

2. The court of appeals also erred by determining that the portion of the driveway searched was not curtilage. At the time of the search, petitioner's car was adjacent to his front porch, in a private driveway enclosed on

three sides and used for domestic activities. See Pet. 7-9. Under *Collins*, the search of petitioner’s car occurred within the home’s curtilage. See Pet. 26-29.

Like the court of appeals, the government believes that, absent unusual circumstances, driveways are not curtilage. See Br. in Opp. 8-9. In making that argument, however, the government flouts this Court’s precedents. The government first attempts to distinguish *Collins* on the ground that the portion of the driveway at issue in this case was “on the path that any stranger might take to the front door.” Br. in Opp. 8 (citation omitted); see *id.* at 9, 14, 17. But as explained above, that argument is flatly contrary to *Jardines*. See p. 5. In similar disregard for the Court’s precedents, the government contends that a driveway cannot be curtilage if it is “plainly visible from the street.” Br. in Opp. 8, 14 (citation omitted). But the Court expressly rejected that argument in *Collins*, explaining that “[t]he 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.

To reconcile its cramped view with this Court’s precedents, the government contends that the driveway in *Collins* was curtilage only because it was “behind the front perimeter of the house,” partially enclosed, *and* next to the side door. Br. in Opp. 8-9 (citation omitted). But *Collins* was far from an edge case; the Court easily concluded that the driveway “is properly considered curtilage” because it “constitutes an area adjacent to the home and to which the activity of home life extends.” 584 U.S. at 594 (internal quotation marks and citation omitted). The government’s effort to limit *Collins* to its exact facts should be rejected.

**C. The Questions Presented Are Important And Warrant
The Court’s Review In This Case**

Finally, the government asserts that this case is not a suitable vehicle because, if petitioner prevails, the good-faith exception to the exclusionary rule can save his conviction. See Br. in Opp. 15-17.

In support of that argument, the government reprises its mistaken view that officers have carte blanche as long as they “approach[ed] the home by the front path,” just as the “Girl Scouts and trick-or-treaters” might. Br. in Opp. 17 (quoting *Jardines*, 569 U.S. at 8). In *Jardines*, however, the Court said just the opposite. Girl Scouts and trick-or-treaters do not search the homeowner’s car and person, so “[t]here is no customary invitation to do *that*.” *Jardines*, 569 U.S. at 9. Regardless of the path taken, “physically intrud[ing] on the curtilage to gather evidence” is a “search” under the Fourth Amendment that “is presumptively unreasonable absent a warrant.” *Collins*, 584 U.S. at 593.

The good-faith exception is a particularly poor reason to deny review in this case because the dissenting opinion, which would have reached the opposite result as to the curtilage inquiry, specifically explained that the good-faith exception would not apply because “*Collins* and *Jardines* are close enough to this case” to alert a reasonable officer that his conduct was unlawful. Pet. App. 41a (opinion of Ambro, J.).

And even if, contrary to Judge Ambro’s views, suppression might ultimately be unwarranted, that is no reason to deny the petition. If this Court reverses the decision below, it can remand for lower courts to sort out the good-faith inquiry—just as it has routinely done in previous Fourth Amendment cases. See, e.g., *Collins*, 584 U.S. at 601; *Carpenter*, 585 U.S. at 321. And regardless of how the exclusionary-rule analysis would play out in this case,

the Court’s intervention to restore the correct understanding of curtilage will provide key guidance for “police in their day-to-day activities.” Br. in Opp. 13. The government apparently prefers that this Court stay out of the business of interpreting the Fourth Amendment entirely. But this Court’s consideration of the questions presented in *Carpenter* and *Collins* were hardly wasted, even though the petitioners’ convictions in both cases were ultimately affirmed. See, e.g., *United States v. Carpenter*, 926 F.3d 313, 317-318 (6th Cir. 2019). Any other approach would all but eliminate the Court’s ability to review important questions of Fourth Amendment law and correct lower-court decisions, such as this one, that undermine core Fourth Amendment protections.

* * * * *

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

DECEMBER 2025