

No. _____

In the Supreme Court of the United States

DAVID DAVALOS, *PETITIONER*,

V.

UNITED STATES OF AMERICA, *RESPONDENT*.

*On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit*

PETITION FOR WRIT OF CERTIORARI

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Questions Presented

The Fourth Amendment “draw[s] a firm line at the entrance” to the home, which includes its curtilage. *Payton v. New York*, 445 U.S. 573, 590 (1980); *see also Florida v. Jardines*, 569 U.S. 1, 6 (2013). Absent “exigent circumstances,” a police officer cannot “enter a home or its curtilage in order to search a vehicle therein” without a warrant. *Collins v. Virginia*, 584 U.S. 586, 601 (2018). And “application of the exigent-circumstances exception in the context of a home entry should rarely be sanctioned when there is probable cause to believe that only a minor offense ... has been committed.” *Welsh v. Wisconsin*, 466 U.S. 740, 753 (1984). Rather, the case-by-case inquiry requires that the “totality of circumstances shows an emergency.” *Lange v. California*, 594 U.S. 295, 308 (2021). The questions presented are:

1. Whether a portion of a driveway immediately adjacent to a home is curtilage under the Fourth Amendment.
2. Whether a parked car’s tinted windows categorically qualify as an exigent circumstance to justify an officer’s warrantless entry onto the home’s curtilage and search of the vehicle.

Parties to the Proceedings

Pursuant to Sup. Ct. R. 14.1(b)(i), the parties to the proceedings in the court whose judgment is sought to be reviewed are:

Petitioner David Davalos, the defendant in the district court and appellant below.

Respondent United States of America, the plaintiff in the district court and appellee below.

Related Proceedings

United States District Court for the Western District of Texas:

United States v. Davalos, No. 5:22-cr-00378-OLG (Nov. 12, 2024) (criminal judgment)

United States Court of Appeals for the Fifth Circuit:

United States v. Davalos, No. 24-50925 (Jan. 29, 2026)

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PETITION FOR WRIT OF CERTIORARI

Petitioner David Davalos, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Opinion Below

The opinion of the court of appeals is reported at 165 F.4th 928 and is reproduced at Pet. App. 1a–7a. The order of the district court denying Davalos’s motion to suppress is unreported and reproduced at Pet. App. 8a. The order adopts the magistrate judge’s report and recommendation, which is unreported but available at 2023 WL 9791916 and reproduced at Pet. App. 9a–19a.

Jurisdiction

The opinion and judgment of the United States Court of Appeals for the Fifth Circuit were entered on January 29, 2026. Justice Alito granted Davalos’s motion to extend time for filing a petition for writ of certiorari to May 29, 2026. *See Davalos v. United States*, No.25A1085. The Court has jurisdiction to grant certiorari under 28 U.S.C. § 1254(1).

Constitutional and Statutory Provisions 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. “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) (cleaned up).

The first question—whether a driveway immediately adjacent to a home is curtilage—has divided the courts of appeals and state courts of last resort. In *Collins v. Virginia*, 584 U.S. 586 (2018), the Court held both that the portion of a driveway in a residential, urban neighborhood abutting a home was curtilage and that the automobile exception to the warrant requirement did not justify the warrantless entry to “a home or its curtilage in order to search a vehicle therein.” *See id.* at 593–594, 601. But the courts of appeals and state courts of last resort are divided as to 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 immediate surroundings.

Whether a home’s driveway is curtilage also defines the inquiry demanded by the second question: whether a car’s tinted windows alone create “exigent circumstances” that justify the warrantless entry of a home’s curtilage to search it. “Any warrantless entry based on exigent circumstances must, of course, be supported by a genuine exigency.” *Kentucky v. King*, 563 U.S. 452, 470 (2011). Whether an emergency exists is a case-by-case analysis based on the totality of the circumstances, including the nature of

the crime. *Lange v. California*, 594 U.S. 295, 308–09 (2021). “When only a minor offense has been committed and there is no flight by the misdemeanant, the surrounding facts must present an emergency to authorize an officer’s home entry.” *Welsh v. Wisconsin*, 466 U.S. 470, 750 (1984). To date, the Court has not permitted a categorical rule—like the one employed by the Fifth Circuit here—to define an emergency and bypass this case-specific inquiry. *See Lange*, 594 U.S. at 308–09.

Davalos—like the petitioner in *Collins*—was subject to a warrantless entry and search when an officer walked up his driveway to look inside his car, which was parked immediately adjacent to his home. During the search, the officer discovered a firearm, leading to Davalos’s indictment for being a felon in possession of a firearm. The district court denied his motion to suppress the firearm on the ground that the driveway where his car was parked was not curtilage. Alternatively, the district court concluded that exigent circumstances justified the physical intrusion of the curtilage and car because the officer was in “hot pursuit” of Davalos for a minor traffic violation: failing to signal a lane change. Thus, in the district court’s view, the officer was authorized to perform a protective sweep of the car to ensure his own safety.

The court of appeals affirmed, albeit on different grounds. The court concluded that it had “no need to address whether the area searched was curtilage.” Pet. App. 7a. That is because, the court reasoned, the officer was engaged in a legal traffic stop and exigent circumstances—the car’s windows were tinted—justified the officer’s initial trespass and search of the car. Pet. App. 5a, 7a. From there, the officer developed probable cause to search the car without a warrant. Pet. App. 5a.

The decision below is incorrect in both respects. The first question—whether the driveway is curtilage—is necessary for defining the contours of the second—whether exigent circumstances existed to permit the warrantless entry onto the driveway and search of the car. As to the first question, the Court can resolve a conflict between circuits, as well state courts of last resort, as to whether a driveway immediately adjacent to a home is clearly curtilage. As to the second question, the Court can address whether a car’s tinted windows categorically justify a warrantless entry onto the curtilage and search. This case presents an excellent vehicle to bring clarity to the law on the Fourth Amendment’s protection of a home’s curtilage. The petition for a writ of certiorari should be granted.

A. Legal 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. *Florida v. Jardines*, 569 U.S. 1, 6 (2013). 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 v. United States*, 365 U.S. 505, 511 (1961). “It is axiomatic that the physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.” *Welsh v. Wisconsin*, 466 U.S. 740, 748 (1984) (cleaned up). Absent exigent circumstances, this Court has “consistently held that the entry into a home to conduct a search or make an arrest is unreasonable under the Fourth Amendment unless done pursuant to a warrant.” *Steagald v. United States*, 451 U.S. 204, 211 (1981); see *Payton v. New York*, 445 U.S. 573, 589–90 (1980).

2. The protection of the home extends to the “curtilage,” the area “immediately surrounding and associated with the home” that is “intimately linked to [it], both physically and psychologically.” *Oliver v. United States*, 466 U.S. 170, 180 (1984) (first quote); *California v. Ciraolo*, 476 U.S. 207, 213 (1986) (second

quote). 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) (first quote), and 4 William Blackstone, *Commentaries on the Laws of England* 223, 225 (1769) (Blackstone) (second quote)). For Fourth Amendment purposes, an invasion of the curtilage, like the invasion of a home, is presumptively unreasonable without a warrant. *See Collins v. Virginia*, 584 U.S. 586, 593 (2018).

a. In evaluating whether a specific area is curtilage—rather than an “open field” that lies beyond it—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 (cleaned up). That definition of “curtilage” is “familiar enough that it is easily understood from our daily experience.” *Collins*, 584 U.S. at 593 (cleaned up). Classic examples of curtilage are “the front porch, side garden, [and] area outside the front window” of a home. *Id.* at 593 (cleaned up).

b. While the Fourth Amendment protects a home’s curtilage—a zone of real property surrounding a dwelling—it does not extend to the “open fields” that lie beyond it. *Oliver*, 466 U.S. at 179–80. That is because society does not recognize as reasonable an expectation in privacy in open fields where “activities such as the cultivation of crops” occur or in “a thickly wooded area” that is unoccupied or undeveloped away from the curtilage. *Id.* at 179 (first quote), 180 n.11 (second quote). Thus, “an individual may not legitimately demand privacy for activities out of doors in fields, except in the area immediately surrounding the home.” *Id.* at 178.

c. “[F]or most homes, the boundaries of the curtilage will be clearly marked.” *Id.* at 182 n.12. But the curtilage-open-fields distinction proved to be more difficult for large parcels of private property in rural or commercial settings. See *Dunn*, 480 U.S. at 302 (large rural ranch); *Dow Chemical Co. v. United States*, 476 U.S. 227, 239 (1986) (holding that open areas within Dow’s 2,000-acre facility were more like an open field than a home’s curtilage). In *Dunn*, the Court held that a barn, which was located 50 yards from the home’s outer fence, was outside the curtilage of the home. 480 U.S. at 297–98, 301. To help identify where the curtilage ended and the open field began, the Court identified four factors: “the proximity of the area claimed to be curtilage to the home, whether the

area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by.” *Id.* at 301. Applying those four factors to the barn and the area surrounding it, the Court concluded “that this area lay outside the curtilage of the ranch house.” *Id.* Yet the Court cautioned that there is no “finely tuned formula” or exclusive list of factors for determining whether an area constitutes curtilage. *Id.* And it stressed that these factors cannot be “mechanically applied.” *Id.*

d. In an urban, residential setting, however, the Court has not used the *Dunn* factors to identify the area around the home as curtilage. In *Jardines*, the Court held that officers undoubtedly intruded on the home’s curtilage when they walked a drug-sniffing dog onto the home’s unenclosed front porch because “[t]he front porch is the classic exemplar of an area adjacent to the home and ‘to which the activity of home life extends.’” 569 U.S. at 7 (quoting *Oliver*, 466 U.S. at 182, n.12); *cf. California v. Greenwood*, 486 U.S. 35, 37 (1988) (upholding warrantless search of garbage, noting that its placement at the street curb was “outside the curtilage of a home”). After determining that the officers’ investigation took place on the constitutionally protected curtilage, the Court examined whether those officers accomplished their investigation

through an unlicensed physical intrusion. *Jardines*, 569 U.S. at 7. Because a home’s front door knocker impliedly permits visitors to “approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave,” the officers were also impliedly invited to approach a home and knock on its front door because that is precisely the same invitation that is extended to private citizens. *Id.* at 8. But the Court emphasized that there existed no similar license to bring a trained drug-sniffing dog to explore the home’s curtilage in hopes of discovering contraband. *Id.*

To find a visitor knocking on the door is routine (even if sometimes unwelcome); to spot that same visitor exploring the front path with a metal detector, or marching his bloodhound into the garden before saying hello and asking permission, would inspire most of us to—well, call the police.

Id. at 9. Accordingly, the Court held that the officers’ unlicensed physical intrusion onto a home’s front curtilage for the specific purpose of gathering evidence constituted a “search” within the meaning of the Fourth Amendment. *Id.*

In *Collins*, the Court applied *Jardines*—not *Dunn*—and held that a residential home’s driveway—just like a front porch, side garden, or “area outside the front window”—was curtilage, and the warrantless search of a motorcycle parked on that curtilage was

not justified by the automobile exception to the Fourth Amendment's warrant requirement. 584 U.S. at 593–94, 601. It was not “constitutional[ly] significan[t]” that the police officers had a plain view from the street of a motorcycle that had been involved in multiple traffic infractions and evaded arrest. *Id.* at 600. Without a warrant, the automobile exception does not permit an officer to walk up the home's driveway and search a vehicle parked there. *Id.* at 589, 593–94, 600–01.

3. While the automobile exception does not justify a warrantless entry onto the home's curtilage, the “exigent circumstances” exception can. *Collins*, 584 U.S. at 601. But the exception is a narrow one. *See Birchfield v. North Dakota*, 579 U.S. 438, 456 (2016).

a. Any warrantless home entry based on exigent circumstances “must, of course, be supported by a *genuine* exigency.” *Kentucky v. King*, 563 U.S. 452, 470 (2011) (emphasis added). That is, “the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable.” *Lange v. California*, 594 U.S. 295, 301 (2021) (cleaned up). The Court has recognized several kinds of circumstances that may give rise to an exigency, including the need “to render emergency assistance to an injured occupant, to protect an occupant from immi-

ment injury,” to ensure an officer’s own safety, to prevent the imminent destruction of evidence, or to prevent a suspect’s escape. *Id.* (cleaned up).

b. Whether an emergency exists is a case-by-case inquiry that depends on the totality of the circumstances. *Missouri v. McNeely*, 569 U.S. 141, 149–50 (2013). The Court has never permitted a categorical rule to bypass the case-specific inquiry. *Lange*, 594 U.S. at 308–09. This is especially true when a minor offense is involved because police officers do not usually face the kind of emergency that can justify a warrantless entry. *Id.* at 306; *see also Welsh v. Wisconsin*, 466 U.S. 740, 753 (1984).

B. Facts and Procedural History.

1. In June 2022, Davalos ran an errand to a local tire shop before returning to his home on Haliday Street in San Antonio, Texas. Federal drug enforcement agents had been surveilling the area around the tire shop and had seen Davalos put a plastic bag in his trunk before leaving the shop. However, no information indicated that Davalos himself was the subject of surveillance or that he was in possession of contraband. Nonetheless, the agents radioed Trooper Johnson to perform a traffic stop on Davalos’s white Lincoln Town Car for failure to signal a lane change. That traffic infraction is a nonjailable misdemeanor offense subject to a fine

between \$1 and \$200 dollars. TEX. TRANSP. CODE ANN. §§ 542.301, 542.401, 545.104 (1995).

Video evidence and Trooper Johnson's testimony at a subsequent suppression hearing confirm that, for much of Trooper Johnson's pursuit, Davalos was out of view, and Trooper Johnson had to take directions from other agents to know where to turn. *See* C.A. ROA.273–74; Def. Ex. 1 (00:00–01:56) (dash camera video). Trooper Johnson did not initiate his lights until he turned onto Haliday Street, at which point Davalos was turning into his driveway. C.A. ROA.294.



Def. Ex. 1 (1:48) (still image from Trooper Johnson's dash camera as he turned onto Haliday Street; red arrow identifies Davalos's white car).

Davalos parked his car on the driveway adjacent to his small, urban home and was exiting the car when Trooper Johnson pulled up behind him and initiated a traffic stop for Davalos's failure to signal a lane change. Trooper Johnson ordered Davalos—and any passengers—to get out of the car, and Davalos answered that “no-body” else was in the car. Gov't Ex. 1 (clip 1 at 00:07–00:12). Trooper Johnson ordered Davalos to the street, and, leaving his driver's door open, Davalos peaceably complied.



Gov't Ex. 1 (00:37); *see also* C.A. ROA.259–60.

At the street, Trooper Johnson told Davalos that he had failed to signal multiple times and requested Davalos's license and proof of insurance. Davalos responded that his proof of insurance was in the car. At that point, Trooper Johnson decided to search the car

out of concern for officer safety because the car windows were tinted. He ordered Davalos to stay on the street, instructed a second officer who was riding with him to watch Davalos, and entered Davalos's property. He walked to the driver's side of the car, looked inside, and smelled marijuana.

Back at the street, Trooper Johnson ordered Davalos to return to his car to get his registration. He followed Davalos, confirmed that he smelled marijuana, and they returned to the street. There, Trooper Johnson asked Davalos whether he had just smoked some marijuana. Davalos admitted he had and still had some in his pocket. Davalos handed Trooper Johnson the marijuana from his pocket and Trooper Johnson conducted a pat-down. Trooper Johnson then told Davalos he would be conducting a vehicle search "due to the odor of marijuana." C.A. ROA.269, 283; Gov't Ex. 1 (clip 8 at 00:00–00:04). The search turned up a handgun hidden inside the car's front door panel and a small amount of marijuana.

2. The government charged Davalos with one count of possessing a firearm as a felon, in violation of 18 U.S.C. § 922(g)(1). Davalos moved to suppress all evidence discovered as the result of the initial, unlawful search of Davalos's car. He argued that, because Davalos and his car were on the curtilage of his home when

Trooper Johnson initiated a traffic stop for a minor traffic infraction, Trooper Johnson needed a warrant before approaching and searching his car.

The magistrate judge entered a report and recommendation for the district court to deny Davalos’s motion to suppress. The magistrate judge concluded that the driveway where Davalos was parked was not part of the home’s curtilage and distinguished Davalos’s driveway from the driveway at issue in *Collins v. Virginia*, 584 U.S. 586 (2018). Pet. App. 13a–14a. Instead, the magistrate judge concluded that all four *Dunn* factors weighed against a finding that Davalos’s driveway was part of the home’s curtilage. Pet. App. 14a–15a. Thus the magistrate judge concluded that Trooper Johnson was “entitled to approach the vehicle as part of the lawful stop,” and the odor of marijuana then created the necessary probable cause to search the car. Pet. App. 15a. Alternatively, the magistrate judge said, exigencies justified the initial search of the car based on officer safety—under *Terry v. Ohio*, 392 U.S. 1 (1968) and *Maryland v. Buie*, 494 U.S. 325 (1990)—and because Trooper Johnson was in “hot pursuit” of Davalos under *Scher v. United States*, 305 U.S. 251 (1938). Pet. App. 16a–18a.

Over Davalos's objection, the district court adopted the magistrate judge's report and recommendation without change and denied Davalos's motion to suppress. Pet. App. 8a. Davalos pleaded guilty to the indictment pursuant to a conditional plea agreement, preserving his right to appeal the ruling on his suppression motion. Davalos was sentenced to time served and three years' supervised release.

3. The court of appeals affirmed, albeit on different grounds than those identified by the district court. It held that, because Trooper Johnson was "validly conduct[ing] a stop after a traffic violation," the "heavily tinted car" presented exigent circumstances that justified his initial search of the car. Pet. App. 5a, 7a. The smell of marijuana then gave Trooper Johnson probable cause to conduct the subsequent warrantless search of the car. Pet App. 6a. And because exigent circumstances existed, the court found "no need to address whether the area searched was curtilage." Pet. App. 7a.

Reasons for Granting the Petition

As to the first question presented, the court of appeals' decision implicates a well-developed conflict among the courts of appeals and state courts of last resort about whether a driveway immedi-

ately adjacent to a home is curtilage under the Fourth Amendment. For both questions, the decision below contradicts the Court's precedents, history, and common sense. 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 homes. This case readily satisfies the criteria for further review. The petition for a writ of certiorari should be granted.

I. The Decision Below Implicates a Conflict on the First Question Presented.

This case presents an ideal opportunity to answer questions about the Fourth Amendment's treatment of driveways as curtilage that have divided the courts of appeals and state courts of last resort. In the years since the 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 lower courts coming in on both sides. The decision below entrenches that conflict by concluding that it can ignore the question altogether when an officer initiates a traffic stop for a minor infraction. The decision 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. This conflict warrants the Court's review.

1. The Eighth and Ninth Circuits have 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, 677–79 (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]” 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 931–32. 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. See *Coleman*, 909 F.3d at 931–32. 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 852–53, 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.

2. 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, 941–42 & n.3 (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”) (cleaned up).¹

3. By contrast, the Fifth Circuit joins the Third and Sixth Circuits, as well as the Massachusetts Supreme Judicial Court, to take a myopic view of when a driveway is curtilage. 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 456–57. Similarly, the Third Circuit held that the defendant’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.” *United States v. Moses*, 142 F.4th 126 (2025), *cert. denied*, No. 25-399, 2026 WL 79996 (U.S. Jan. 12, 2026).

¹ In several of these decisions, the courts considered whether a search warrant that covered the curtilage reached a particular area, not whether the warrant requirement attached in the first instance. But that distinction is not relevant for present purposes: the curtilage inquiry cannot be more expansive when the answer operates against a criminal defendant and narrower when it works in the defendant’s favor.

In line with those decisions, 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.” *Commonwealth v. Wittey*, 210 N.E.3d 355, 370 (2023) (cleaned up). Despite this Court’s decision in *Collins*, the Massachusetts Supreme Judicial Court maintained that a “prominent factor in the analysis is whether the driveway freely is exposed to public view.” *Id.* However, the court acknowledged that “some cases have come to the opposite conclusion.” *Id.* at 179.

Prior to the decision below, the Fifth Circuit joined these jurisdictions in its view that driveways are presumptively not curtilage, at least absent strong evidence of an enclosure. Prior to *Collins*, the Fifth Circuit held in *United States v. Beene*, 818 F.3d 157 (2016), 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 in an unpublished opinion, concluding that “*Beene* compels our holding ... that [appellant’s] driveway is not curtilage” because it was not enclosed. *Evans v. Lindley*, No. 21-20118, 2021 WL 5751451, at *5 (Dec. 2, 2021).

With its holding below, the Fifth Circuit has deepened the growing conflict on how to treat driveways under the Fourth Amendment. The upshot of the Fifth Circuit’s decision to bypass the question of curtilage dissolves the Fourth Amendment’s “firm line” around the home and its curtilage. *Lange*, 594 U.S. at 303 (cleaned up). And if that line is not readily identifiable, then the contours of any warrant exception cannot be “jealously and carefully drawn.” *Id.*

II. The Decision Below Is Incorrect.

The court of appeals in this case declined to address the question of whether Davalos’s car was parked in the curtilage, holding that the car’s tinted windows alone created “exigent circumstances” that justified the entry onto the driveway to search the car. The decision below was incorrect in both respects. The first question—whether the driveway is curtilage—is necessary for defining the contours of the second—whether exigent circumstances existed to permit the warrantless entry onto the curtilage and search.

1. The court of appeals erred when it declined to consider whether the driveway was curtilage. A court’s job, *at a minimum*, is to decide whether the action in question would have constituted a ‘search’ within the original meaning of the Fourth Amendment.”

United States v. Jones, 565 U.S. 400, 406 n.3 (2012) (emphasis in original). As the Court has repeatedly recognized, curtilage is “the area immediately surrounding and associated with the home.” *Jardines*, 569 U.S. at 6 (cleaned up). 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.

a. The portion of a driveway that is within close proximity to the home is clearly 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 (cleaned up); see *Ciraolo*, 476 U.S. at 213. 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, 729–30 (1987) (Scalia, J., concurring). And that “the most

frail cottage in the kingdom is absolutely entitled to the same guarantees of privacy as the most majestic mansion.” *United States v. Ross*, 456 U.S. 798, 822 (1982).

Those principles apply with particular force here. The area of Davalos’s driveway where he was parked was just a few feet from his home—just outside his home’s front window—within the boundary of his private property. 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 (cleaned up). Our “daily experience” demonstrates that this driveway is “an area adjacent to the home and to which the activity of home life extends, and so is properly considered curtilage.” *Id.* at 593–94 (cleaned up). That Davalos’s driveway was not enclosed does not matter. As the Court explained in *Collins*, “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.” *Id.* 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.” *Id.*

That the court of appeals turned a blind eye to 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” it to the back of the house. *Id.* at 593. Like here, the driveway in *Collins* was visible from the roadway. *Id.* at 586, 600. And like here, the officer in *Collins* was within a few feet of the house. *Id.*

b. First principles and historical evidence also confirm that the portion of a driveway immediately adjoining a home is constitutionally protected curtilage. “[F]or most of our history the Fourth Amendment was understood to embody a particular concern for government trespass upon the areas (‘persons, houses, papers, and effects’) it enumerates. *Jones*, 565 U.S. at 406. Thus, “‘when the Government *does* engage in physical intrusion of a constitutionally protected area in order to obtain information, that intrusion may constitute a violation of the Fourth Amendment.’” *Id.* at 407 (quoting *United States v. Knotts*, 460 U.S. 276, 286 (1983) (Brennen, J., with whom Marshall, J., joins, concurring in judgment)) (emphasis in *Jones*).

“Heightened protection for curtilage is longstanding and pre-dates 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.” *Chong*, 112 F.4th at 866 (Bumatay, J., concurring) (quoting *Curtilage*, *New Law Dictionary* (1792)). 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.

2. When the Fourth Amendment’s line at the entrance of the home and its curtilage is not “firm,” then the contours of any warrant exception cannot be “jealously and carefully drawn.” *Lange*, 594 U.S. at 303 (cleaned up). The exigent-circumstances exception may allow a warrantless entry onto a home’s curtilage, *see Collins*, 584 U.S. at 601, but the exception is a narrow one. It exists only

“when an emergency leaves police insufficient time to seek a warrant.” *Birchfield*, 579 U.S. at 456. The categorical rule applied below—that a car’s tinted windows created an emergency—conflicts with the Court’s precedents. It also yields unjustified results because it allows an officer investigating a minor, nonjailable traffic offense to forcibly enter a home’s curtilage and conduct a warrantless search even where there is no real emergency.

a. The exigent-circumstances exception bypasses the warrant requirement’s critical protection by allowing a police officer “to act as his own magistrate.” *McDonald v. United States*, 335 U.S. 451, 460 (1948) (Jackson, J., concurring). Whether an emergency exists—that is, the situation presents a “compelling need for official action and not time to secure a warrant”—depends on the totality of the circumstances. *Lange*, 594 U.S. at 301–02 (cleaned up).

The Court has recognized several kinds of circumstances that may justify application of the exigent-circumstances exception, including the need for an officer to ensure his own safety. *Id.* at 301. But the inquiry is the same as in any other exigent-circumstances inquiry: Whether the “facts on the ground” reflect that a “now or never situation actually exists” and the “officer has no time to secure a warrant.” *Id.* at 302.

Rather than engage with that question, the court below applied a categorical rule that a car's tinted windows are sufficient to justify a warrantless entry and search regardless of the surrounding circumstances. Pet. App. 5a. That approach flouts the Court's repeated instruction that the exigent-circumstances exception "always requires case-by-case determinations" that an emergency actually exists. *Birchfield*, 579 U.S. at 467.

The Court has never identified a categorical rule to bypass the case-specific inquiry of the exigent-circumstances exception. See *McNeely*, 569 U.S. at 150 n.3. In *Lange*, for example, the Court rejected the categorical rule that a misdemeanor's flight alone is an exigency that justifies a warrantless home entry. 594 U.S. at 298. Indeed, the Court has repeatedly rejected bright-line rules when a minor, nonjailable offense is involved and there is no threatened harm. *Id.* at 313; *Welsh*, 466 U.S. at 753–54 (rejecting categorical rule permitting warrantless home entry because a driver's blood-alcohol level might dissipate while obtaining warrant and noting that "home entry should rarely be sanctioned when there is probable cause to believe that only a minor offense" is involved).

b. The categorical, tinted-windows rule, relied on below, stretches the exigent-circumstances exception beyond its justification. It would give police officers discretion to forcibly enter curtilage when there is no real emergency. The categorical rule allows officers investigating even a nonjailable infraction or violation to bootstrap their way into a domestic space whenever they can establish probable cause to believe only that the suspect committed a minor traffic violation.

That sort of bootstrapping is exactly what happened here. Trooper Johnson had probable cause to believe only that Davalos committed a failure-to-signal traffic violation—nothing more. Yet a categorical rule allowed the government to justify Trooper Johnson’s warrantless entry onto Davalos’s curtilage based on the car’s tinted windows. The categorical rule gives officers in this situation a free pass to pursue a suspect into a home and search it without a warrant even if there is no threat.

c. To be sure, the Court considers officer safety to be an interest that is “both legitimate and weighty.” *Pennsylvania v. Mimms*, 434 U.S. 106, 110 (1977) (per curiam). And it is an interest that has justified categorical rules in certain contexts without the need to show an actual emergency. *See McNeely*, 569 U.S. at 150 n.3 (citing

cases). But officer safety cannot in all circumstances justify a warrantless search or seizure. *Knowles v. Iowa*, 525 U.S. 113, 117, 119 (1998); *see also Lange*, 594 U.S. at 309–13 (discussing common law’s distinction between pursuit of a suspected misdemeanant who threatened no harm and suspected felons); *Riley v. California*, 573 U.S. 373, 387–88 (2014) (officer safety did not justify extending the search-incident-to-arrest exception to the contents of a cell phone). Given the sanctity of the home, whether dangers to the officers “may be implicated in a particular way in a particular case,” they are better addressed through the case-by-case approach required by the exigent-circumstances exception and not a categorical rule. *Riley*, 573 U.S. at 387.

Even if the Court were willing to condone some bright-line rule for a warrantless entry on curtilage, a car’s tinted windows is a particularly poor candidate—especially in the context of a minor traffic infraction—because of its “considerable overgeneralization.” *McNeely*, 569 U.S. at 153 (cleaned up). As this case illustrates, non-violent, nonjailable misdemeanors like Davalos’s—failure to signal a lane change—pose no threat to the safety of officers or the public absent unusual circumstances. *See Lange*, 594 U.S. at 306–07; *Welsh*, 466 U.S. at 753. And there were no unusual circumstances

here: there was no risk of destruction of evidence, no flight,² and no objective evidence—or inference—that any other person was in the car or that Davalos himself posed a danger. The car’s tinted windows alone did not present a risk of any “real immediate and serious consequences” to justify a warrantless entry onto the curtilage. *Welsh*, 466 U.S. at 751 (cleaned up).

Rather, Trooper Johnson could have issued the citation for the minor traffic offense. Or had he developed the requisite probable cause at the street to search Davalos’s car, he could have sought and obtained a warrant remotely in “as little as five minutes.” *McNeely*, 569 U.S. at 173 (Roberts, C.J., concurring). The decision below is contrary to the Court’s precedent, which has long been clear—when police have time to seek authorization from a neutral magistrate before invading the privacy of the home, they must “postpone[] action to get a warrant.” *Welsh*, 466 U.S. at 751 (cleaned up).

² For there to be a “hot pursuit,” “there must be some sort of a chase. The pursuit must be immediate or continuous. And the suspect should have known the officer intended for him to stop.” *Lange*, 594 U.S. at 329 (Kavanaugh, concurring) (cleaned up). Here, video evidence and Trooper Johnson’s testimony reflect that he did not turn on his lights until Davalos was turning into his driveway. *See supra* p.13.

III. The Questions Presented Are Important 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 *Bovatt 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 *Bovatt*, it is now clear that the Constitution’s protection of curtilage is getting short shrift in 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. *Id.*

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 (cleaned up). 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.” *United States v. Ronquillo*, 94 F.4th 1169, 1171 (10th Cir. 2024). This case thus raises issues of critical constitutional importance.

The disagreement among the lower courts on the first question 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 593–94; *Jardines*, 569 U.S. at 6–7.

2. This case is an excellent vehicle for the Court to resolve the acknowledged circuit conflict whether a driveway is presumptively curtilage and to address whether the categorical rule below—a car’s tinted windows—gives rise to exigent circumstances. The questions presented were pressed and passed upon below, and further percolation would not help the Court 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 decision below rested exclusively on its holding that a car's tinted windows created exigent circumstances. While the court attempted to bypass the question of curtilage, its application of the warrant exception necessarily assumes that the Fourth Amendment protected the area of Davalos's property that Trooper Johnson transgressed. 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 fracture the lower courts—and the exigent circumstances exception.

Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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