No. 25-774

In the
Supreme Court of the United States

ERIC TYRELL JOHNSON,
Petitioner,
v.

UNITED STATES,
Respondent.

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

BRIEF OF THE MARYLAND CRIMINAL DEFENSE ATTORNEYS' ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF GRANTING THE PETITION

John R. Grimm
Counsel of Record
BREGMAN, BERBERT,
SCHWARTZ & GILDAY, LLC
7315 Wisconsin Avenue
Suite 800 West
Bethesda, MD 20814
301-656-2707
jgrimm@bregmanlaw.com
Counsel for Amicus Curiae

January 30, 2026

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Constitutional Provisions

Statutes

Other Authorities

INTEREST OF *AMICUS CURIAE*

The mission of the Maryland Criminal Defense Attorneys' Association ("MCDAA") includes research, education, and advocacy relating to criminal defense practice, the proper administration of justice, and the protection of individual rights. MCDAA respectfully submits this *amicus curiae* brief[1] to address the serious implications the Fourth Circuit's decision will have on criminal defendants throughout Maryland and beyond.

SUMMARY OF THE ARGUMENT

As this Court's precedent makes clear, the ultimate purpose of the Fourth Amendment is to require that judges, not police, determine when somebody's person, house, papers, or effects can be searched. But the Fourth Circuit allowed police to march a drug-sniffing dog up to Mr. Johnson's front door to investigate what was on the other side without any prior judicial approval. The court held that because Mr. Johnson could not exclude others from the shared hallway outside his door, the hallway was not "curtilage" and received no Fourth-Amendment protection. Yet no one questions that the exact same search

---

[1] On January 5, 2026, more than ten days prior to its due date, MCDAA notified counsel for Mr. Johnson and the United States of its intention to submit this brief. No counsel for a party authored this brief in whole or in part, no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief, and no person other than *Amicus* or its counsel made such a monetary contribution.

at a single-family house would be unconstitutional.

I. By embracing a right to exclude others as the Fourth-Amendment touchstone, the decision below will lead to unfair results. If people living in multi-unit buildings cannot exclude others from common areas, and if that inability to exclude is dispositive of residents' Fourth-Amendment rights up to their doorway, then apartment and condominium residents will have a diminished Fourth-Amendment right compared to people who own single-family homes. In Maryland, this disparity will affect millions of people, and those people will be disproportionately less wealthy than the homeowners whose Fourth-Amendment rights are at their highest. And given the nationwide division among courts that have considered this question, the decision below perpetuates a Fourth Amendment that offers significantly different protection based solely on geography.

Not only is this result wrong, it is also unnecessary. Even under a right-to-exclude analysis, this Court recognizes that the right to exclude is situational; surely apartment residents can turn away someone sniffing under their door, whether or not they can turn away their neighbors walking down the hallway. Indeed, other courts have held in non-Fourth-Amendment contexts that apartment residents have enough of a property interest in the area adjacent to their door to exclude trespassers. The Court should harmonize the law in the Fourth Circuit with those holdings.

II. The decision below overlooks the Fourth Amendment's broader purpose of preventing unwarranted government intrusions into people's homes. In a seminal Fourth-Amendment case also called *Johnson v. United States*, the Court easily held that police had violated the Fourth Amendment when they searched a hotel room without a warrant after smelling opium coming from the door. And although *Florida v. Jardines* reestablished a property-rights strand of Fourth-Amendment analysis, the Court did not hold that a strictly defined right to exclude is the *sine qua non* of constitutional protections. The Fourth Circuit's decision prioritizes property technicalities over the Fourth Amendment's driving principles.

Moreover, despite asking whether a shared hallway counts as curtilage, the Fourth Circuit overlooked why curtilage matters at all. This Court has made clear that curtilage is not protected for its own sake, but in order to protect what lies behind it: *the home*. But Mr. Johnson's home did not receive that protection.

Ultimately, the decision below rewards police for not seeking warrants even when they could do so. There is no reason to think the investigation here would have suffered if police had requested a warrant before searching Mr. Johnson's door, especially given their use of wiretap orders in the same investigation. Nevertheless, the Fourth Circuit approved of police making their own decision that a warrant was unnecessary. The Fourth Amendment requires more.

ARGUMENT

Justice Robert Jackson described the Fourth Amendment better than anyone, when he explained that:

> The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.

Johnson v. United States, 333 U.S. 10, 13–14 (1948).

Johnson remains good law, but it is hard to recognize in the decision below: Deciding for themselves to investigate what was inside Mr. Johnson's apartment, police came into a locked hallway in his building, walked a drug-sniffing dog up to an "alcove" in front of his door, and gathered evidence about what was on the other side of "the boundary between his residence, protected as a home under the Fourth Amendment, and the apartment complex's common property." (Pet. 7; App. 11a (quotation marks omitted).) Only then did they seek a warrant. (App. 4a.)

Nevertheless, shifting its attention away from investigators' warrantless evidence gathering, the Fourth Circuit has become the latest court to hold that intrusions like this one are fine constitutionally when someone has "no property based right outside his apartment door." (App. 11a (quotation marks and modifications omitted).) That decision hardly left Mr. Johnson "secure in [his] . . . house[] . . . and effects . . . ." U.S. Const. amend. IV.

In Fourth-Amendment questions, details have always mattered. But an atomized approach to Fourth-Amendment analysis that envisions "all kinds" of different common areas (App. 15a), each potentially receiving a different degree of protection, (*see id.*), elevates minor distinctions above the Fourth-Amendment's broader purpose. The Court should grant the petition to ensure that core Fourth-Amendment rights are not overtaken by a jurisprudence of minutiae.

I. A STRICT RIGHT TO EXCLUDE IS NOT A PREREQUISITE TO FULL FOURTH-AMENDMENT PROTECTIONS.

If Mr. Johnson owned a detached single-family home, the police would clearly have violated the Constitution when they led a drug dog to his front door to learn what was on the other side.[2] (*Cf.* App. 12a (distinguishing as "critically different" cases in which "the defendant owned or otherwise

[2] Of course, the Fourth Circuit stressed that it was not *basing* its holding on the fact that Mr. Johnson rented his home as opposed to owning it. (App. 15a.) But the court's holding will affect renters more than others, even if it sweeps in some condo or apartment owners as well.

had the right to exclude others from the area immediately surrounding his dwelling").) By making a right to exclude others from property the lynchpin of Fourth-Amendment protections, courts prejudice anyone who lives in a multi-unit dwelling. In Maryland alone, this decision will leave hundreds of thousands of households with weakened Fourth-Amendment protections simply because people live in the wrong kind of home. And due to the split among other circuits and state high courts on this issue, the Fourth Circuit's decision means that apartment dwellers in places like Baltimore, Raleigh, and Charleston have inferior Fourth-Amendment protections compared to apartment dwellers in New York, Chicago, or Dallas. (*See* Pet. at 11–12.) This unfair and disparate result is all the worse because, although the Fourth Circuit grounded its holding in supposed property rights, there is no compelling justification under property law for denying Fourth-Amendment protection in the area immediately outside homes in multi-unit buildings.

A. A Fourth Amendment Predicated on a Narrow Right to Exclude Cannot Protect All People Equally.

Inevitably, grounding Fourth-Amendment rights in somebody's ability to exclude others from a hallway will mean less protection for people with lower incomes. Justice Greene of the Supreme Court of Maryland made this point decades ago, when he observed that "[a] far reaching consequence" of holding that "a canine sniff . . . of the exterior of an apartment from a common area is not a search" "is that those who

reside in apartment buildings with gated or secured entrances will be afforded greater protections under law than those who reside in apartment buildings that are left unsecured or open to the public." *Fitzgerald v. State*, 864 A.2d 1006, 1023 (Md. 2004) (Greene, J., dissenting).

Multi-unit buildings are more likely to have common spaces than private homes, and people with lower incomes are more likely than people with higher incomes to live in those buildings. *See* Joseph Magrisso, *Protecting Apartment Dwellers from Warrantless Dog Sniffs*, 66 U. Mia. L. Rev. 1133, 1156 & n.175 (2014) (noting that in 2010, 25 percent of occupied housing was in structures with at least two apartments, whereas 41 percent of poor households lived in apartments). In Maryland, multi-unit buildings house hundreds of thousands of households—comprising millions of people.[3] The 2024 American Community Survey showed that in Maryland, 509,425 renter-occupied homes were found in buildings with two or more units (including 340,457 in buildings with ten or more units). U.S. Census Bureau, *Physical Housing Characteristics for Occupied Housing Units*, American Community Survey, https://data.census.gov/table/ACSST1Y2024.S2504?t=Housing&g=040XX00US24 (last accessed Jan. 28, 2026). And the Maryland

[3] The Census Bureau estimates that between 2019 and 2023 there were an average of 2.58 people per Maryland household. U.S. Census Bureau, *Quickfacts, Maryland*, https://www.census.gov/quickfacts/fact/table/MD/SBO010222#:~:text=Table_title:%20Table%20Table_content:%20header:%20%7C%20Population%20%7C,Population:%20Age%20and%20Sex%20%7C%20:%20%7C (last accessed Jan. 28 2026).

Department of Housing and Community Development estimates that Maryland has 714,085 total renter households, that *half* are cost burdened, and that in many parts of the State, "median renter household income is below $45,000." Md. Dep't of Housing & Community Development, *Maryland Housing Needs Assessment Update* at 47 (2025), *available at* https://news.maryland.gov/dhcd/2025/07/24/state-of-maryland-releases-2025-housing-needs-assessment/.

Nor is there any comfort in the Fourth Circuit's suggestion that "[m]ulti-dwelling units come in all kinds of configurations, and some may include 'common' areas different from the apartment hallway here . . . ." (App. 15a.) That is undoubtedly true, but realistically, it is hard to see how any truly "common" space would fare better than Mr. Johnson's hallway as long as the test is whether other people "all had a right to be" there. (App. 12a.) And even if some theoretical apartment configuration could result in a better-protected common area, that only underscores the inequity of allowing building-design details beyond a person's control to affect the scope of that person's Fourth-Amendment rights. Residents of multi-unit buildings are left to wonder how distinguishable their home is from Mr. Johnson's. A Fourth Amendment that rises and falls on an undefined gradation of apartment configurations is too hollow to afford real protection.

The Court should not allow an overemphasis on the traditional rights of landowners to put millions of people at risk of increased police intrusions compared to wealthier citizens.

B. There Is No Justification in Property Law for the Fourth Circuit's Rigid Right-to-Exclude Test.

a. Even under a property-rights analysis, it makes no sense to deny someone Fourth-Amendment protections just because, in the most general sense, other people "all had a right to be in the common hallway *outside* [that person's] door." (App. 12a (emphasis in original).) It may be true that other residents, visitors, or staff have a right to be outside people's apartments as they walk through common areas, but it does not follow that they can linger long enough and close enough to someone's door that they are able to examine what is going on inside an apartment—or that if someone caught a neighbor snooping around his apartment door, he could not make the neighbor leave.

The Court's precedent accords with this common-sense notion. In *Florida v. Jardines*, the Court specifically explained that "[t]he scope of a license [to be on someone's property]—express or implied—is limited not only to a particular area but also to a specific purpose." 569 U.S. 1, 9 (2013). And while "[t]o find a visitor knocking on the door is routine (even if sometimes unwelcome)," "to spot that same visitor exploring the front path . . . marching his bloodhound into the garden . . . would inspire most of us to—well, call the police." *Id.* Even in a multi-unit apartment, a visitor's "specific purpose," *id.*, can

and should be considered when determining whether a resident's rights have been violated.

b. Outside the Fourth-Amendment context, other courts have recognized that apartment dwellers have at least enough property rights in the area immediately outside their door that they are not required to accept unwanted intrusions from the common area. In *Walls v. State*, the Indiana Court of Appeals upheld a criminal trespass conviction against someone who was pounding on doors and harassing tenants from the common hallway of an apartment building. 993 N.E.2d 262, 265 (Ind. Ct. App. 2013). The court held that, although the tenants were "not in exclusive control of the common areas," they "had a sufficient possessory interest in, at a minimum, their apartment *doors*, the *threshold* of their apartments, and the *immediate adjacent areas* by which they accessed their leased apartment units, to request that a person leave that specific area and stop persistently banging on their doors." *Id.* at 267 (emphasis added). "A rigid rule, applied without exception, that a tenant does not have a sufficient possessory interest in such property," the court concluded, "would defy logic and lead to an absurd result." *Id.* But that was the result below. The *Walls* court's reasoning is just as sound in the warrantless-search setting, and leads to a better Fourth-Amendment rule.

II. THE FOURTH CIRCUIT OVERLOOKED THE BROADER MESSAGE OF THIS COURT'S FOURTH-AMENDMENT JURISPRUDENCE.

By rigidly focusing on such vagaries as "whether the area of the common hallway just outside [a] door qualifies . . . as protected 'curtilage,'" (App. 10a), or whether someone has the "right to exclude" others from his hallway, (App. 15a), lower courts lose sight of the Fourth Amendment's promise: that people are safe from government incursion into their homes, and that, as Justice Jackson explained, the decision to search a home is not made by the police doing the searching. *See Johnson*, 333 U.S. at 14.

a. *Johnson* itself is instructive, and has more in common with this case than its name. In that case, "unknown persons were smoking opium in the Europe Hotel." *Id.* at 12. Several officers came to the hotel and "recognized at once a strong odor of burning opium" coming from the defendant's room, which they then entered and searched after arresting its occupant. *Id.* Yet despite its similarity to this case,[4] in the 1948 *Johnson*, the Court reversed the defendant's conviction, remarking that "[i]f the officers in this case were excused from the constitutional duty of

[4] It does not matter that here, the police sought a warrant after their dog sniff and before they searched Mr. Johnson's apartment, because the dog sniff itself was warrantless, and any warrant based on evidence from the dog sniff was tainted and invalid. *Cf. Jardines*, 569 U.S. at 5 (citing lower-court holding that unauthorized dog sniff "render[ed] invalid the warrant based upon information gathered in that search").

presenting their evidence to a magistrate, it is difficult to think of a case in which it should be required." *Id.* at 15.

That observation is just as accurate here, and in diverging from *Johnson*, the Fourth Circuit took a narrower view of the Fourth Amendment than this Court's precedent requires. Even under a "property-rights baseline," the Fourth Amendment protects areas outside a home where "solicitors, hawkers and peddlers of all kinds" generally have a "license . . . to approach the home by the front path, knock promptly, wait briefly to be received, and then . . . leave." *Jardines*, 569 U.S. at 11, 8; *see also id.* at 16 (Alito, J., dissenting). And as the petition rightly points out, (Pet. 28), a right to exclude others is found nowhere in the Court's articulation of curtilage. *See United States v. Dunn*, 480 U.S. 294, 301 (1987) (laying out factors for determining curtilage). This Court should grant the petition and restore the Fourth Amendment to its proper reach.

b. The Fourth Circuit's close attention to curtilage and property rights also misses why curtilage matters in the first place: At the Fourth Amendment's "very core" is "the right of a man to retreat into his home and there be free from unreasonable governmental intrusion." *Collins v. Virginia*, 584 U.S. 586, 592 (2018) (quotation marks omitted) (quoting *Jardines*, 569 U.S. at 6). In order to "give *full practical effect* to that right, the Court considers curtilage" "to be part of the home itself for Fourth Amendment purposes." *Id.* (emphasis added) (quotation marks omitted) (quoting *Jardines*, 569 U.S. at 6). But "[t]he

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." *Id.* at 592–93 (quoting *California v. Ciraolo*, 476 U.S. 207, 212–13 (1986)). Police undeniably peered into the area where Mr. Johnson's privacy rights were most heightened; that fact should matter more than where the police were standing—or whether other people could have been standing there too—when they did so.

c. Finally, the Fourth Circuit's decision needlessly encourages police not to seek warrants when they easily could. This Court has stated plainly that "the police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure[.]" *Terry v. Ohio*, 392 U.S. 1, 20 (1968). And although the Court recognizes many exceptions to this rule where the need for an immediate search outweighs the need for a warrant—like when evidence might be destroyed, or to protect officers' safety—none of those justifications applies in a case like this, where police were deep into an ongoing investigation by the time they conducted their warrantless search. Significantly, before searching Mr. Johnson's door, police had already made effective use of court-issued *wiretap* orders,[5] (*see* App. 3a, 90a),

[5] The reason why the same police who did *not* go to a judge to get a warrant *did* go to court for a wiretap order is clear: they *had* to, because there are no property-rights exceptions to the Wiretap Act's requirement of a court (Continued)

which puts to rest any suggestion that obtaining a *search warrant* would have impeded the investigation. Yet, when the police finally began to suspect Mr. Johnson, they did not bring their evidence before a judge. Instead, in a complete inversion of the normal Fourth-Amendment order, they "decided to conduct a dog sniff at Johnson's apartment to confirm—or dispel—those suspicions *before seeking a search warrant* for the premises." (App. 3a (emphasis added).) Allowing the police to search first and seek a warrant later stands the Fourth Amendment on its head, and denies courts their role—as a neutral and independent branch of government—in ensuring unlawful searches do not take place. The Court should restore the proper Fourth-Amendment balance in the Fourth Circuit and beyond.

---

order. *See* 18 U.S.C. § 2511; *see also id.* § 2518(7)(a)–(b) (allowing exception to court-order requirement for certain emergency situations where, *inter alia*, investigators "reasonably determine[]" that "there are grounds upon which an order could be entered . . . . to authorize such interception . . . .").

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

John R. Grimm
Counsel of Record

BREGMAN, BERBERT,
SCHWARTZ & GILDAY, LLC
7315 Wisconsin Avenue
Suite 800 West
Bethesda, MD 20814
301-656-2707
jgrimm@bregmanlaw.com

January 30, 2026

Counsel for Amicus Curiae