

**No. 25-774**

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In the Supreme Court of the United States

ERIC TYRELL JOHNSON,  
*Petitioner,*  
*v.*

UNITED STATES,  
*Respondent.*

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

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**BRIEF OF CASA AS *AMICUS CURIAE*  
IN SUPPORT OF PETITIONER**

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## **INTEREST OF *AMICUS CURIAE*<sup>1</sup>**

CASA, Inc. is a non-profit, member-led organization that supports immigrants and low-income people in Maryland, Pennsylvania, Virginia, and Georgia. CASA's mission is to create a more just society by building power and improving the quality of life in working class Black, Latino, Afro-descendant, Indigenous, and Immigrant communities. The vast majority of CASA members live in multi-unit housing and are directly affected by the outcome of this case. CASA has deep roots in tenant organizing, tenants' rights education, and tenant advocacy in the form of legal services. CASA provides eviction defense services throughout Maryland pursuant to the state's Access to Counsel in Evictions program. In the course of that representation, CASA consults and advises its tenant members on, as well as litigates, issues of privacy, security, and the landlord-tenant relationship in multi-unit buildings.

## **INTRODUCTION AND SUMMARY OF ARGUMENT**

Petitioner seeks the Court's intervention to resolve a sharply divided issue that impacts the privacy of millions of Americans in their home: whether the government may use a drug-sniffing dog at the door of a home in a multi-unit building to discover information about

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<sup>1</sup> Pursuant to Supreme Court Rule 37.6, *amicus* states that no counsel for a party authored this brief in any part, and that no person or entity other than *amicus* or its counsel made a monetary contribution to fund its preparation and submission. Pursuant to Supreme Court Rule 37.2, *amicus* gave timely notice of its intent to file this brief to counsel of record for Petitioner and Respondent.

the inside of the home without a warrant. Today, people who live in multi-unit buildings within the Fourth Circuit, Eighth Circuit, Maryland, Minnesota, and North Dakota are subject to inspection by drug-sniffing dogs at their doors without a warrant, unlike people who live in single-family homes. In those courts and States, the Fourth Amendment applies differently based solely on the type of home people live in. By contrast, the Second and Seventh Circuits, along with the high courts of Illinois and Texas, hold that the sniff at the door of a multi-unit building is a search requiring a warrant or exigent circumstances.

The disparate application of the Fourth Amendment warrants this Court’s review. Those who live in multi-unit buildings are disproportionately young, lower-income, people of color, or urban residents. But virtually every American, regardless of their background, will live in a multi-unit building at some point in their life. And demand for such housing continues to grow as homeownership falls further out of reach.

The Fourth Circuit’s decision, moreover, is incorrect. This Court’s precedents show that the Fourth Amendment’s protections for the home and the area surrounding it should apply equally to residents of multi-unit housing and single-family housing. A trained dog sniff of an apartment door constitutes a search under either this Court’s privacy-based or physical-intrusion frameworks.

Under *Kyllo v. United States*, people have a reasonable expectation of privacy inside their homes no matter the type of home they live in. 533 U.S. 27, 33 (2001). Thus, as Justice Kagan reasoned in her application of *Kyllo*’s rule to dog sniffs, a search occurs

when officers use a sense-enhancing technology that is not in general public use (a highly trained drug-detection dog) to discover details about the home's interior (the presence of drugs) which are otherwise unknowable without physical entry. *Florida. v. Jardines*, 569 U.S. 1, 14-15 (2013) (Kagan, J., concurring). *Kyllo*'s firm and bright line at the entrance to the home applies to single-family and multi-unit housing because, for both types of dwellings, the use of sense-enhancing technology to obtain information regarding the inside of the home that could not otherwise have been obtained without physical intrusion into a constitutionally protected area is a search.

Alternatively, a drug-sniffing dog at an apartment door is a search under the Court's precedents addressing physical intrusions into homes by law enforcement. A search occurs when police physically contact "an integral part" of the home with a tool to obtain information about the interior when a highly-trained dog sniffs the home's front door seam. *Silverman v. United States*, 365 U.S. 505, 511 (1961); *see United States v. Jones*, 565 U.S. 400, 410 (2012). And a physical intrusion also occurs when police bring a drug-sniffing dog in front of an apartment door because the area is curtilage—signified "physically and psychologically" by its "intimate[] link to the home" and where "the activity of home life extends"—just as front porches are under *Jardines*. 569 U.S. at 5-9.

As millions of Americans live in multi-unit housing, and millions more are likely to move into multi-unit housing in the coming years, the Court's guidance on this question is necessary to resolve uneven treatment across the country and to ensure that the Fourth

Amendment's longstanding preservation of the sanctity of the home aligns with the present and future realities of American homes.

## **ARGUMENT**

### **I. The split among the courts denies millions of Americans Fourth Amendment protection in their homes.**

Under the Fourth Circuit's holding, multi-unit housing residents who cannot exclude others from the space immediately outside the door of their home lack the right to be free from police bringing a highly trained drug dog into their apartment building to sniff the seam of their door without a warrant. *United States v. Johnson*, 148 F.4th 287, 295-96 (4th Cir. 2025). For those in single-family homes, however, police need a warrant. *Jardines*, 569 U.S. at 11. Thus, for people living in areas that have adopted the approach of the decision below, the application of the Fourth Amendment's protection depends solely on whether a person lives in a single-family home or instead in a multi-unit building. But in the Second and Seventh Circuits, and the high courts of Illinois and Texas, the sniff at the door of a multi-unit building is a search requiring a warrant or exigent circumstances. See Pet. 12-15.

The different treatment of those who live in multi-unit buildings compared to those who inhabit single family homes affects millions of Americans. If allowed to persist, the circuit split will only affect more people, as increasing numbers of Americans live in multi-unit housing. As of 2024, more than 68,000,000 Americans lived in multi-unit buildings, and roughly one-quarter

of all occupied housing units were in multi-unit buildings—an increase of more than 3,000,000 from 2014. *See* U.S. Census Bureau, *Selected Population Profile in the United States, American Community Survey*, Table S0201 (2024), <https://perma.cc/UJX5-XALS>. *Compare* U.S. Census Bureau, *Total Population in Occupied Housing Units by Tenure by Units in Structure, American Community Survey*, Table C25033 (2024), <https://perma.cc/3L5V-KARV>, with U.S. Census Bureau, *Total Population in Occupied Housing Units by Tenure by Units in Structure, American Community Survey*, Table C25033 (2014), <https://perma.cc/WP9A-6A9E>.<sup>2</sup> This trend is likely to continue for the foreseeable future, as projections based on homeownership rates and demographic trends indicate a need for as many as 4,800,000 new housing units by 2035. *See* *Homeownership Rate Hits Lowest Level Since 2019*, Nat'l Ass'n of Home Builders (July 30, 2025), <https://perma.cc/57QY-MENB>; *U.S. Apartment Demand Through 2035*, Nat'l Multifamily Housing Council & Nat'l Apartment Ass'n, at 40-41 (May 2022), <https://perma.cc/NJ42-4ZUJ>; *see also* Comptroller of Maryland, *State of the Economy Series: Housing & the*

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<sup>2</sup> *Amicus* at times relies on statistics about renters as a proxy (albeit imperfect) for residents of multi-unit buildings. Of course, not all who live in renter-occupied housing live in multi-unit buildings, but nearly 60% do. U.S. Census Bureau, *Total Population in Occupied Housing Units by Tenure by Units in Structure, American Community Survey*, Table B25033 (2024), <https://perma.cc/3BLC-UUB9>. By contrast, just 4% of people who live in owner-occupied housing live in multi-unit buildings. *Id.* And a majority of occupied housing units in multi-unit buildings—approximately 86%—are occupied by renters. *Id.* Accordingly, when information about residents of multi-unit buildings is unavailable, *amicus* draws from renter statistics instead.

*Economy* 24 (Oct. 2025), <https://perma.cc/C5KE-TZUS> (showing that Maryland has an estimated shortage of 96,000 housing units and must build an additional 590,000 housing units to meet projected demand through 2045).

Those who live in such multi-unit buildings—and are thus subject to lessened Fourth Amendment protections under the Fourth Circuit’s approach—are disproportionately young, lower-income, people of color, or urban residents. U.S. Census Bureau, *Demographic Characteristics for Occupied Housing Units, American Community Survey*, Table S2502 (2024), <https://perma.cc/7JLL-GGJ8>; U.S. Census Bureau, *Financial Characteristics, American Community Survey*, Table S2503 (2024), <https://perma.cc/S3SW-NH88>; U.S. Census Bureau, *Poverty Status in the Past 12 Months of Families by Household Type by Tenure, American Community Survey*, Table B17019 (2024), <https://perma.cc/UGJ8-FDCP>; Phil Thompson, *From Size of Homes to Rental Costs, Census Data Provide Economic and Lifestyle Profile of U.S. Housing*, U.S. Census Bureau (June 29, 2023), <https://perma.cc/BBY5-8RGM>; Manny Garcia & Edward Berchick, *Renters: Results from the Zillow Consumer Housing Trends Report 2024*, Zillow (Oct. 14, 2024), <https://www.zillow.com/research/renters-housing-trends-report-2024-34387/>; Joint Center for Housing Studies of Harvard University, *America’s Rental Housing 2024* 21 (2024), <https://perma.cc/ST7F-T3AX> (“Nearly three-quarters of rentals in urban neighborhoods were multifamily units, compared to 59 percent in suburban neighborhoods and 41 percent in neighborhoods outside metropolitan areas. Apartments in large multifamily buildings with 20 or more units

were also far more common in urban communities . . . ."); U.S. Census Bureau, *2023 American Housing Survey Table Creator*, <https://www.census.gov/programs-surveys/ahs/data/interactive/ahstablecreator.html>. More than half of all householders under the age of thirty and more than a quarter of those age thirty to forty-four live in multi-unit buildings. U.S. Census Bureau, *2023 American Housing Survey Table Creator*, <https://www.census.gov/programs-surveys/ahs/data/interactive/ahstablecreator.html>.

While younger adults as an age group are those most likely to live in multi-unit buildings, as people age, they too become more likely to live in multi-unit homes. "The shares of both homeowners and renters living in multifamily buildings increase with age," as older adults' accessibility needs change and many choose to relocate for "onsite amenities, cost savings, and reduced responsibility for repairs and maintenance." Joint Center for Housing Studies of Harvard University, *Housing America's Older Adults 7* (2023), <https://perma.cc/8KLY-PA6E> ("As of 2021, 21 percent of renters aged 65-79 live in buildings with at least 50 units, as compared to 39 percent of adults age 80 or older.").

Those who live in multi-unit buildings also tend to have lower incomes than those who live in single-family homes. Just over 50% of homes in multi-unit buildings were occupied by households with an income of less than \$50,000 in 2023, while another 30% housed households with an income of \$50,000 to \$99,999. U.S. Census Bureau, *2023 American Housing Survey Table Creator*, <https://www.census.gov/programs-surveys/ahs/data/interactive/ahstablecreator.html>.

Similarly, more than one-third of households with an income less than \$50,000 live in multi-unit buildings, compared to 25% of households with an income of \$50,000 to \$99,999 and just 15% of households with an income of \$100,000 to \$199,999. U.S. Census Bureau, *2023 American Housing Survey Table Creator*, <https://www.census.gov/programs-surveys/ahs/data/interactive/ahstablecreator.html>; see also Joint Center for Housing Studies of Harvard University, *America's Rental Housing 2022* 13 (2022), <https://perma.cc/9G69-6N94> (noting that, as of 2019, “fully 61 percent of all renter households me[t] HUD’s definition of low income (earning no more than 80 percent of the adjusted area median”). But with the costs of buying a home skyrocketing relative to incomes, many are being priced out of purchasing a home. As a result, more people in higher income brackets are residing in rentals, which more often than not are in multi-unit buildings. See Joint Center for Housing Studies of Harvard University, *The State of the Nation's Housing 2025* 24-26 (2025) (explaining that a first-time home buyer today “needs an annual income of at least \$126,700 to afford payments on the median-priced home,” while “that same buyer would have needed an annual income of \$79,300 in 2021”); Laurie Goodman, Ted Tozer & Jun Zhu, *Homeownership Has Fallen Further Out of Reach for Younger Families with the Lowest Incomes*, Urban Institute (Mar. 17, 2025), <https://www.urban.org/urban-wire/homeownership-has-fallen-further-out-reach-younger-families-lowest-incomes> (noting that for all but the highest income quintile, there has been “roughly an 8 percentage-point drop in the homeownership rate” from 1980 to 2023 for those ages 35 to 44). Cities and states are

responding to this trend by shifting away from single-family zoning toward multi-family zoning, thus increasing the supply of units in multi-unit buildings for buyers and renters alike. See Nicholas Julian, *How Zoning Regulations Affect Affordable Housing*, Nat'l Ass'n of Home Builders (Nov. 11, 2024), <https://perma.cc/Q7RT-4NHE>; Marcel Negret, Maulin Mehta, Nadav Bigelman & Christine Garner, *How Six Cities are Creating Missing Middle Housing*, Regional Plan Ass'n (June 2024), <https://perma.cc/3S98-Y7KR>; Anthony Flint, *A State-by-State Guide to Zoning Reform*, Lincoln Inst. of Land Pol'y (Dec. 23, 2022), <https://perma.cc/7CN7-U9LQ>.

While people of all racial and ethnic backgrounds live in multi-unit buildings, people of color are more likely than their white counterparts to live in a multi-unit building. As of 2023, roughly 21% of white householders lived in multi-unit dwellings, compared to 39% of Black householders and 35% of Asian householders. U.S. Census Bureau, *2023 American Housing Survey Table Creator*, <https://www.census.gov/programs-surveys/ahs/data/interactive/ahstablecreator.html>.

Differences in the housing supply between urban and rural areas and across geographic regions mean that residents in certain parts of the United States are far more likely to live in multi-unit buildings. Those who live in urban areas are significantly more likely to live in multi-unit buildings than their rural counterparts, particularly if they rent their home, due to there being relatively few single-family homes available in urban neighborhoods. See *America's Rental Housing 2022*, at 17-18. Similarly, due to regional differences in housing stock, those in the Northeast, for

example, are more likely to live in multi-unit buildings than those in other regions. *See id.*

Although certain segments of the population—young, lower-income, people of color, and urban residents—more commonly live in multi-unit housing, most Americans at some point in their life will reside in a multi-unit building and thus be subject to lessened Fourth Amendment protection if they live in an area that has adopted the Fourth Circuit’s approach. For example, a college student may leave their parents’ single-family home to live in a dormitory or in an on-campus apartment; an older individual may relocate to a senior living community or into a multi-unit building that better accommodates their accessibility needs, *see Housing America’s Older Adults, supra*, at 20 (“As they age, older households are more likely to move to multifamily buildings, particularly large buildings. 21 percent of renters between the ages of 65 and 79 live in buildings with at least fifty units, compared to 39 percent of adults 80 or older.”); and an individual displaced by a natural disaster may have no choice but to move into an apartment while waiting for an insurance payout, *see U.S. Census Bureau, Household Pulse Survey – Displaced in Last Year by Natural Disaster*, <https://perma.cc/5K8N-7B97> (showing more than four million people were displaced from their homes by natural disaster in the last year); *The State of the Nation’s Housing 2025, supra*, at 43 (“In 2023, more than 160,000 households had to move because of fires or other disasters . . . .”). And with home ownership becoming increasingly unaffordable, even those who are fortunate enough to own single-family houses may not always be able to continue to do so. *See The State of the Nation’s Housing* at 26-28, 30, 44-45;

Megan Hunt, *U.S. Foreclosure Rates by State – December 2025*, ATTOM (Jan. 16, 2026), <https://perma.cc/Y7QM-HGX8> (showing foreclosure rates in December 2025 were 57% higher than the prior year); Press Release, CB25-147, U.S. Census Bureau, *The Cost of Homeownership Continues to Rise* (Sep. 11, 2025), <https://perma.cc/AX4J-Z8DG> (“Median monthly owner costs increased 3.8% from 2023 to 2024, more than the increase of 3.0% from 2022 (\$1,902) to 2023. This increase was primarily driven by higher mortgage costs and insurance fees.”); Joint Center for Housing Studies of Harvard University, *America’s Rental Housing: Meeting Challenges, Building on Opportunities* 16 (2011), <http://perma.cc/DHB6-2K9X> (“The climb in overall homeownership rates as householders age masks the fact that many people switch in and out of owning over time. The National Longitudinal Survey of Youth indicates that 45 percent of first-time buyers in the 1980s and 1990s returned to renting or even a stay with parents or others.”).

In short, without this Court’s intervention, millions of Americans in circuits and states that adhere to the Fourth Circuit’s approach will continue to be subject to suspicionless drug dog sniffs of their homes, whereas those in single-family homes enjoy Fourth Amendment protections against such intrusions. Disadvantaged populations—the young, lower-income, people of color, and urban residents—will bear the brunt of this differential treatment. Such differential treatment in the application of Fourth Amendment protection to the space outside a person’s home is unwarranted.

**II. The Fourth Amendment’s protections in the space surrounding a home apply equally to residents of multi-unit buildings.**

The Fourth Amendment and the Court’s precedents interpreting it make clear that its protections apply equally to people who live in apartments and standalone houses. Whether considered under the privacy-based or physical-intrusion frameworks, a sniff by a trained canine at the door of a home in a multi-unit building constitutes a Fourth Amendment search, just as it does at the door of a single-family home. The Fourth Circuit erred by adopting a narrow understanding of the Constitution’s core protection of the home that does not account for the sanctity of a home’s interior space or modern realities of the way in which millions of Americans live.

**A. A canine sniff of an apartment door is a Fourth Amendment search under the privacy-based framework.**

Residents of homes, including people who live in multi-unit buildings or single-family, detached houses, have a reasonable expectation of privacy in their homes. *See Kyllo v. United States*, 533 U.S. 27, 33 (2001) (explaining that a search occurs under the Fourth Amendment “when the government violates a subjective expectation of privacy that society recognizes as reasonable”). Confirming the sanctity and privacy of the home, this Court in *Kyllo* announced that no matter where government agents are located, “obtaining by sense-enhancing technology *any* information regarding the *interior of the home* that could not otherwise have been obtained without physical

“intrusion into a constitutionally protected area’ constitutes a search.” 533 U.S. at 34 (emphasis added) (quoting *Silverman v. United States*, 365 U.S. 505, 512 (1961)).

The facts of the case illustrate that point. In *Kyllo*, government agents used a thermal imager to scan a house from across a public street. *Id.* at 29-30. The agents detected unusually high heat from inside the house and concluded that the resident was using high-intensity lamps to illegally grow marijuana inside. *Id.* The Court reasoned that even though relative heat might not seem particularly intimate or revealing, “all details are intimate details” in the home. *Id.* at 37. Thus, gathering *any* information about the interior of the home that otherwise could not be discovered without physical entry with technology that is not in “general public use” is a Fourth Amendment search. *Id.* at 40. Drawing this “firm” and “bright” line at the entrance to the house is essential to preserve “that degree of privacy against government that existed when the Fourth Amendment was adopted.” *Id.* at 34, 40.

*Kyllo*’s focus on drawing a firm and bright line at a home’s entrance, to protect the resident’s intimate details inside, resolves this case. Under *Kyllo*, a court must ask whether law enforcement gathers, through sense-enhancing technology, information about the home’s interior that could not otherwise have been obtained without physical intrusion. That is precisely what occurred here: the drug sniffing dog gathered information about the interior of the home, where residents have a reasonable expectation of privacy. The type of dwelling that a person resides in has no bearing on that issue. Regardless of whether the entrance

opens to a front porch attached to a single-family home or into an apartment hallway, in both situations, the Fourth Amendment provides the same privacy protection for the intimate details of life occurring within the interior of the home.

That emphasis on the sanctity of the home is reflected in Justice Kagan's concurrence in *Jardines*. As Justice Kagan explained, a dog sniff at a home's door is a search because the police use a sense-enhancing technology that is not in general public use (a highly trained drug-detection dog) to discover details about the home's interior (the presence of drugs) which are otherwise unknowable without physical entry. *Florida v. Jardines*, 569 U.S. 1, 14-15 (2013) (Kagan, J., concurring). The fact that the dog in *Jardines* was on a front porch and the dog here was at the threshold of an apartment does not matter. In both cases the police used a "super-sensitive instrument" to reveal details of the interior of the home. *Id.* at 12. While drug-detection dogs may not be the "sophisticated systems" of the future, *Kyllo*, 533 U.S. at 36, they are an advanced law enforcement tool used precisely because of their ability to smell inside a private dwelling and alert law enforcement to their discoveries.

This protection of a dwelling's private interior space draws further support from this Court's recognition that the degree of constitutional protection that a person enjoys does not hinge on the kind of home one can afford. *See Collins v. Virginia*, 584 U.S. 586, 601 (2018) (declining to limit constitutional protection to only those who can afford a certain type of curtilage). As the Court has explained, "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). And in *Kyllo*, the target “house” was “part of a triplex” and police compared the heat from the house to “neighboring homes in the triplex,” further confirming that the Fourth Amendment does not treat multi-unit dwellings differently from single-family homes. 533 U.S. at 29-30.

The *Kyllo* standard accordingly applies just as forcefully to a skyscraper apartment as a Philadelphia rowhouse or a detached mansion. It preserves “the realm of guaranteed privacy” without asking courts to parse the architectural design of myriad American homes. *Id.* at 34. Whether in a hallway, street, stoop, or porch, the government must obtain a warrant or face exigent circumstances before using specialized tools like drug-sniffing canines to discover details about the inside of a home.

**B. A canine sniff at an apartment door is a search under the physical-intrusion framework.**

While *Kyllo* controls this case, the facts here make the outcome even easier because the police and the sense-enhancing canine in this case were located at the door of the home rather than across the street. This Court has held in cases like *Silverman v. United States*, 365 U.S. 505 (1961), and *United States v. Jones*, 565 U.S. 400 (2012), that a search occurs where the police use an instrument (here, a drug-sniffing canine) to physically intrude on a constitutionally protected area (here, the door of a house). And this Court has also observed in *Jardines* that, where the police undertake a “canine forensic investigation” in the

home's curtilage exceeding their license, that too amounts to a physical intrusion constituting a search. 569 U.S. at 9. Either line of cases refutes the Fourth Circuit's conclusion that no search occurred here.

**1. A search occurs when a government tool physically intrudes on a constitutionally protected area.**

This Court's precedents establish that when police use tools to actually contact a constitutionally protected area such as part of a house, whether an apartment in a multi-unit building or a single-family home in a suburban neighborhood, that is a physical intrusion on property that constitutes a search under the Fourth Amendment. For example, in *Silverman v. United States*, the government conducted a search by placing an instrument called a "spike mike" several inches into the wall of an adjoining vacant rowhouse until it "made contact with a heating duct serving the [targeted] house." 365 U.S. at 506-07. The Court concluded that the search was not based on technical trespass under local law but rather "the reality of an actual intrusion into a constitutionally protected area." *Id.* at 512. Because the heating system was "an integral part of the premises," the use of the spike mike without the occupants' knowledge or permission was an unlawful "usurpation" of the house. *Id.* at 511.

*Silverman* is not meaningfully different from the facts here. Just like the police in *Silverman* had permission to enter the vacant rowhouse next door, the police here had permission to enter the locked apartment building hallway. The police in both cases did not, however, have permission to make contact with the home. The drug-sniffing dog used here sniffed and

contacted Mr. Johnson's "lower door seam." App. 55a. Like a tool touching the heating duct, the dog touched the front door and intruded on an "integral part of the premises"—the primary door separating inside from out. 365 U.S. at 511.

More recently, in *United States v. Jones*, the Court held that the police "encroached on a protected area" and conducted a search by attaching a device to the undercarriage of a suspect's car "for the purpose of obtaining information." 565 U.S. at 404, 410. As in *Silverman*, the Court in *Jones* held that police conduct searches when they use investigative tools that actually contact protected, private space (in that case, a car).

*Jones* further demonstrates that a search occurred here. Residents of apartments, rowhouses, and other multi-unit homes have a protected property interest in their doors, including the doors' exteriors, and the door is part of the home. *See Nyer v. Munoz-Mendoza*, 430 N.E.2d 1214, 1216 (Mass. 1982); *Dubin v. Robert Newhall Chesebrough Trust*, 96 Cal. App. 4th 465, 473 (Ct. App. 2002); *Resident Action Council v. Seattle Hous. Auth.*, 174 P.3d. 84, 87 (Wash. 2008). Just as placing a tracker under a car to obtain information from a private space is a search, fixing a trained dog's nose on the door of houses absent a warrant is an impermissible encroachment on an area protected by the Fourth Amendment.

**2. A search occurs when a drug-sniffing canine physically intrudes on the apartment's curtilage.**

This Court's opinion in *Jardines* provides an

independent basis to conclude that a search occurred here. *Jardines* demonstrates that the government physically intrudes on the curtilage of an apartment when the police use a drug-sniffing canine to inspect the home's interior from the area in front of the door. And the logic of *Jardines* applies equally to multi-unit dwellings, such as petitioner's apartment, and single-family houses.

In *Jardines*, the Court held that officers conducted a search when they physically intruded on the curtilage of a house by using a canine to investigate the contents of the home without express or implied permission. 569 U.S. at 5-9. In doing so, the Court recognized that the area "immediately surrounding and associated with the home" is curtilage and "part of the home itself for Fourth Amendment purposes." *Jardines*, 569 U.S. at 6 (quoting *Oliver v. United States*, 466 U.S. 170, 180 (1984)). "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." *California v. Ciraolo*, 476 U.S. 207, 212-13 (1986); see *Jardines*, 569 U.S. at 7 (quoting *Ciraolo*). The front porch in *Jardines* was "the classic exemplar of an area adjacent to the home and 'to which the activity of home life extends.'" *Id.* (quoting *Oliver*, 466 U.S. 170 at 182, n.12).

The area immediately outside an apartment door in a hallway is intimately linked to the home on the other side of the door because it is where "the activity of home life extends." *Id.* The area outside an apartment door marks the entrance to the resident's

private, interior space. It also contains welcome mats, umbrella stands, religious objects, and holiday décor tying the space to the inside of the apartment. And it serves as parking for baby strollers and dirty shoes. The area immediately outside an apartment door is physically and psychologically linked to the apartment itself, and is no less private than the open porch or unfenced side-yard of a single-family home facing a public street. The millions of residents in multi-unit buildings nationwide should therefore have the same protections that residents of single-family homes have long possessed “against unreasonable searches.” *Jones*, 565 U.S. at 411.

The Fourth Circuit’s opinion does not refute any of this but instead treats it as irrelevant. Under the court’s view, apartment residents do not enjoy Fourth Amendment protection in the immediate area outside their front doors because they lack the right to exclude others from that space. App. 13a-16a. Because apartment residents cannot exclude *everyone* from the hallway, the court reasoned, the Fourth Amendment does not extend to apartment thresholds.

Focusing solely on the right to exclude departs from this Court’s precedents on curtilage, which have never conditioned its designation on the right to exclude. *See, e.g., United States v. Dunn*, 480 U.S. 294, 301 (1987) (assessing curtilage based on proximity of the area to the home, whether the area is enclosed with the home, what the area is used for, and any steps taken to protect the area from observation); *Oliver*, 466 U.S. at 180 (acknowledging that courts and common law have defined curtilage based on “the factors that determine whether an individual reasonably

may expect that an area immediately adjacent to the home will remain private”); *Ciraolo*, 476 U.S. at 212-13 (describing curtilage as an “area intimately linked to the home, both physically and psychologically, where privacy expectations are most heightened”). It also conflicts with state high court rulings that the protection of curtilage applies equally to multi-unit dwellings under the U.S. Constitution. *People v. Bonilla*, 120 N.E.3d 930, 935-37 (Ill. 2018) (holding that the unlocked common-area hallway outside an apartment door is curtilage); *State v. Rendon*, 477 S.W.3d 805, 808-12 (Tex. Crim. App. 2015) (holding that the front door threshold of an apartment-home located in a semi-private area is curtilage). And it cannot be reconciled with the way millions of Americans live. As American families increasingly turn to multi-unit buildings in urban areas, accessory dwelling units in suburban neighborhoods, and other more affordable, attached homes throughout the country, this Court should reject a new condition on the home’s “branches and appurtenants,” 4 W. Blackstone, *Commentaries on the Laws of England* 223, 225 (1769), that would allow law enforcement to encroach on the sanctity of a home without a warrant merely because the residence is in a multi-unit dwelling. Cf. *Carpenter v. United States*, 585 U.S. 296, 403 (2018) (Gorsuch, J., dissenting) (Fourth Amendment protection extends not only to “specific rights known at the founding” but to “their modern analogues too”).

**C. Exempting homes in multi-unit buildings from Fourth Amendment protection creates uncertainty for other common, traditional American homes.**

If the area outside a front door in a locked, indoor apartment hallway is not a protected part of the home, countless other types of common and traditional American housing will be subject to different Fourth Amendment protections than those who live in single-family homes. For example, under the logic of the decision below, it is unclear whether police may use a drug-sniffing dog without a warrant on the threshold of a historic rowhouse facing the street in Philadelphia, at the door of a detached house split into three units in Los Angeles, or in the open breezeway of a condominium building in Miami. There is no obvious reason under the decision below why the Fourth Amendment would restrict such police activity. These and countless other examples show that a narrow focus on the right to exclude—rather than on how millions of Americans enter and exit their dwellings every day—would remove critical Fourth Amendment protections against the many and increasing number of ways in which the government may use technology to learn about what goes on in people’s homes. This Court’s voice on those critical questions will provide essential guidance as courts continue to address these issues.

That guidance is needed now more than ever. Federal and state court decisions on this issue have often turned on the details of the space, such as whether a hallway is private or locked or how many people use a particular common area. *See, e.g., State v. Ortiz*, 600

N.W.2d 805, 819 (Neb. 1999); *United States v. Johnson*, 148 F.4th 287, 294 (4th Cir. 2025). The increasing diversity and abundance of multi-unit housing in this country creates difficult line-drawing problems for the courts and law enforcement. Guidance from this Court on how the Fourth Amendment applies to millions of households in multi-unit buildings—and whether the focus of the analysis should be on the home's interior—is critical.

### CONCLUSION

The Court should grant the petition for certiorari.

Respectfully submitted,

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February 2, 2026