No. 25-774

IN THE

Supreme Court of the United States

ERIC TYRELL JOHNSON,

Petitioner,

v.

UNITED STATES,

Respondent.

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

BRIEF FOR *AMICUS CURIAE* PACIFIC LEGAL FOUNDATION IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

Since 1973, Pacific Legal Foundation ("PLF"), widely regarded as the most experienced and successful nonprofit legal organization of its kind, has advanced the principles of individual rights and limited government—in state and federal courts—advocating for the views of thousands of supporters nationwide. In particular, PLF is known for its defense of private property rights, including in *Sheetz v. Cnty. of El Dorado*, 601 U.S. 267 (2024); *Tyler v. Hennepin Cnty.*, 598 U.S. 631 (2023); *Sackett v. E.P.A.*, 598 U.S. 651 (2023); *Wilkins v. United States*, 598 U.S. 152 (2023); *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021); *Knick v. Twp. of Scott*, 588 U.S. 180 (2019); *U.S. Army Corps of Eng'rs v. Hawkes Co.*, 578 U.S. 590 (2016); *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595 (2013); *Sackett v. E.P.A.*, 566 U.S. 120 (2012); and *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987).

PLF is experienced in cases involving complex and often novel Fourth Amendment issues. *See, e.g.*, Br. of X Corp. As *Amicus Curiae* in Support of Pet'r, *Chatrie v. United States*, No. 25-112, 2025 WL 2607361 (U.S. Aug. 29, 2025) (amicus in support of petition for writ of certiorari challenging application of the third-party doctrine to cell phone location data obtained via geofence warrant); Br. of *Amicus Curiae* Pacific Legal Foundation in Support of Appellant, *CF Homes LLC v. Dept. of Dev. Servs. for N. Canton*, No. 2025-0458

[1] No counsel for any party authored this brief in whole or in part, and no person or entity other than *Amicus* or its counsel made any monetary contribution intended to fund the preparation or submission of this brief. All parties waived timely notice of *Amicus*'s intent to file this brief as required by Rule 37.2.

(Ohio Aug. 11, 2025) (amicus in support of appellant's challenge to North Canton's issuance of administrative warrant to search home without probable cause); *Stavrianoudakis v. USFWS*, 108 F.4th 1128 (9th Cir. 2024) (representing licensed falconers required to submit to unannounced searches); *Vondra v. City of Billings*, 736 F. Supp. 3d 933 (D. Mont. 2024) (representing massage therapists required to submit to unannounced searches).

PLF is interested in this case because it concerns the protection that private property receives under the Fourth Amendment, protection that should be afforded without regard to owners' or inhabitants' socioeconomic status. PLF writes in support of Petitioner.

SUMMARY OF ARGUMENT

The Fourth Amendment "must 'assur[e] preservation of that degree of privacy against government that existed when'" it "'was adopted.'" *United States v. Jones*, 565 U.S. 400, 406 (2012) (quoting *Kyllo v. United States*, 533 U.S. 27, 34 (2001)). Because the alcove directly in front of Mr. Johnson's apartment door would have been deemed his home's curtilage at common law, it is entitled to the full protection the Fourth Amendment affords to the home—including the warrant requirement. *See, e.g.*, *Groh v. Ramirez*, 540 U.S. 551, 559 (2004).

The primary authorities delineating the scope of common-law curtilage are those dealing with burglary and arson. *See, e.g.*, *Florida v. Jardines*, 569 U.S. 1, 6–7 (2013) (looking to burglary law to define the curtilage). These authorities show that "curtilage was far more expansive than the front porch" at common law, "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). In addition to land near a dwelling, the common law also viewed as part of the home itself any structure that "was under the same roof" or "had an internal communication with the principal building." Horace Smith, Roscoe's Digest of the Law of Evidence in Criminal Cases 354 (7th Am. ed. 1874).

Under these principles, the alcove outside Mr. Johnson's apartment home—where the police used a drug-detection canine to sniff for contraband—would be deemed his curtilage for several independent reasons.

Pet. App. 3a–4a. As Blackstone explained, an apartment is for "all" "purposes" a person's "mansion-house." 2 William Blackstone, Commentaries on the Laws of England *225 (Blackstone 1769, Callaghan and Company 2d ed., 1872); *see also, e.g.*, Roscoe's Digest at 358, 360 ("Chambers in the inns of court are to *all purposes* considered as distinct dwelling-houses." (emphasis added)). It follows, then, that an apartment has at least some curtilage. And however far the curtilage might extend, it would at least encompass the 3.5-foot recessed alcove outside of Mr. Johnson's doorway. Pet. App. 3a–4a. The hallway would also be curtilage because it is "under the same roof" and "ha[s] an internal communication" with his apartment. Roscoe's Digest at 354.

It does not matter that Mr. Johnson shares the hallway with other tenants. Many common-law cases affirmed burglary convictions in shared spaces that were nevertheless deemed part of the dwelling, including a house used for banking, a factory, and a college kitchen. Courts did not care whether the area in question was shared or exclusive; what mattered was the area's connection to the home and the dweller's right to use or possess it as against the burglar.

In sum, the alcove in front of Mr. Johnson's apartment door, located within a secured apartment building hallway, would have been protected at common law as part of his home. Yet the court below joined the many courts that have eroded the common-law protections afforded to the apartment hallways of millions of Americans. This Court should grant certiorari to reverse this trend and ensure that "the Constitution's guarantees" do not "mean less today than they did the

day they were adopted." *United States v. Haymond*, 588 U.S. 634, 642 (2019).

ARGUMENT

I. The Fourth Amendment protects the sanctity of every person's home—including its curtilage—from governmental intrusion.

Few principles are as deeply rooted in our legal tradition as the inviolability of one's home. As Coke famously put it, "a mans house is his castle, et domus sua cuique est tutissimum refugium"—each man's home is his safest refuge. Edward Coke, The Third Part of the Institutes of the Laws of England: Concerning High Treason, and Other Pleas of the Crown, and Criminal Causes 161 (1797); *see also, e.g.*, *Semayne's Case* (1604) 77 Eng. Rep. 194, 195; 5 Co. Rep. 91 a, 91 b ("The house of every one is his castle."). Blackstone, too, explained that "the law of England has so particular and tender a regard to the immunity of a man's house, that it styles it his castle and will never suffer it to be violated with impunity." Blackstone *223. Unsurprisingly, then, the English common law prohibited "the Crown from forcibly entering a domicile to conduct [a] search and seizure, outside of narrow constraints." Laura K. Donohue, *The Original Fourth Amendment*, 83 U. Chi. L. Rev. 1181, 1235 (2016).

American colonists inherited this legal tradition and codified it in the Fourth Amendment: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. Amend. IV. During the ratification debates, the amendment was described as preventing "the horror of a free people, by which our dwelling houses, those castles considered so

sacred by the English law, will be laid open." 2 Jonathan Elliot, Debates of the Several State Conventions on the Adoption of the Federal Constitution 511 (2d ed. 1836). Indeed, the Americans who ratified the amendment took an even more absolutist attitude toward the home's sanctity than their cousins across the Atlantic. While the debate in England centered on what "narrow" justifications permitted the crown to enter a home, Americans instead debated "whether homes could be entered *at all*." Donohue, *supra*, at 1241 (emphasis added).

The Fourth Amendment's special solicitude for the home, though, has never been limited to a building's four walls. Everything within a home's "curtilage" receives protection too. *See, e.g.*, *Jardines*, 569 U.S. at 6; *United States v. Dunn*, 480 U.S. 294, 300 (1987); *Hester v. United States*, 265 U.S. 57, 59 (1924). Curtilage—"the area immediately surrounding and associated with the home"—is part of the home itself for Fourth Amendment purposes because it is "intimately linked to the home, both physically and psychologically." *Jardines*, 569 U.S. at 6–7 (cleaned up).[2]

This Court routinely looks to the common law to determine the scope of curtilage protected under the Fourth Amendment. Common-law guidance on the scope of a home's curtilage stems primarily from authorities concerning burglary and arson—crimes that

[2] Some common-law authorities use "curtilage" to refer only to the land near a home. As will be explained, however, other places were viewed as part of the home itself even if not described as "curtilage." For simplicity, this brief sometimes uses the umbrella term "curtilage" to refer to all areas protected as part of the home itself at common law.

depend in part on whether action was taken in a dwelling. *See id.* (relying on Blackstone's discussion of common-law burglary); *Oliver v. United States*, 466 U.S. 170, 180 (1984) (same); *Dunn*, 480 U.S. at 300 & n.3 (same); *Hester*, 265 U.S. at 59 (same). These authorities show that curtilage was understood broadly—the better to ensure that people were truly secure in their homes.

Burglary at common law involved the breaking and entering of a dwelling at night with the intent to commit a felony therein. Blackstone *224. Although the crime ostensibly required a "dwelling," it was well-accepted that burglary could be committed in other areas within the curtilage. The rule was simple and straightforward: "[T]he capital house protects and privileges all its branches and appurtenances, if within the curtilage." Blackstone *225. (Common-law sources use terms like "capital house," "dwelling house," "mansion-house," and "domus mansionalis" to mean the principal home used as a residence. 1 Francis Wharton, A Treatise on Criminal Law § 781 (9th ed. 1885).) These "branches and appurtenances" were considered part of the home itself. Blackstone *225.

Notwithstanding disagreements at the margins, the leading common-law authorities all agreed that the curtilage includes at least the "space[] necessary and convenient and habitually used" as part of the home. *State v. Shaw*, 31 Me. 523, 527 (1850); *see also People v. Taylor*, 2 Mich. 250, 252 (1851) (collecting contemporaneous definitions of the term). In other words, the law protected any areas "contributory to" or "a necessary appendage" of the dwelling house. *Palmer v. State*, 47 Tenn. 82, 89–90 (1869). After all, burglary sought to prevent the "midnight terror"—and attendant risk

of violence—inherent to stumbling upon an intruder in spaces used as part of the dwelling. Blackstone *225. And these spaces were understood broadly: "[a]t 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." *Carloss*, 818 F.3d at 1005 n.1 (Gorsuch, J., dissenting).

Curtilage could be established in several ways aside from sheer proximity to the dwelling house. A place would be deemed part of the home when it "was under the same roof" as the dwelling house. Roscoe's Digest at 354–55; *see also* Hawkins, *supra*, at 134 (8th ed. 1824) ("shop" would be deemed part of the home if "under the same roof" as the dwelling house). The rationale was simple: when "one part of the building is used as a habitation, it gives the character of a dwelling house to" everything under the same roof. *United States v. Cardish*, 145 F. 242, 247 (E.D. Wis. 1906). The "entire building" becomes the home in the eyes of the law. *Id.*

Even without a shared roof, any area with "an internal communication with the principal building" was curtilage. Roscoe's Digest at 354. "Though parts of a building are not used for habitation, if they connect internally with parts which are, burglary may be committed in them." Joel Prentiss Bishop, Criminal Procedure § 138 (3d ed. 1880). An internal communication meant a connection between places, such as a passageway, doorway, staircase, or the like. *See, e.g.*, *Rex v. Stock* (1810) 168 Eng. Rep. 751; Russ. & Ry. 185 ("That room communicated by a door-way with an inner room"); *id.* ("[T]here was no communication . . . except that there was a trap door in the floor of one of the

upper rooms, and a ladder to go down by into the lower part."); Roscoe's Digest at 348 (describing a cellar that "communicated with the other parts of [the house] by an inner staircase").

Curtilage encompassed, too, wholly separate "outhouses"—"building[s] adjacent to a dwelling house, and subservient thereto, but distinct from the mansion itself." *Carter v. State*, 32 S.E. 345, 346 (Ga. 1899). "[I]f an out-house be so near the dwelling-house that it is used with the dwelling-house as appurtenant to it," it would be deemed part of the home itself even if not connected to it. Francis Wharton, A Treatise on the Criminal Law of the United States 358 (1846). A "barn, stable, or warehouse" was an outhouse, even though such places were "not under the same roof or contiguous" to the "mansion-house." Blackstone *225. Likewise, a "bake-house eight or nine yards distance from the dwelling-house, but connected with each other by means of a paling [i.e., fence]" was an outhouse. Hawkins, *supra*, at 134 § 24. And a "shop" adjoining a house was an outhouse—even if no person slept in it and there was no "internal communication" between the shop and the house—so long as the shop was "within the curtilage" of the home. *Id.* § 25.

A similar rule governed common-law arson, which required "maliciously and voluntarily burning the house of another." *Id.* at 137. Like burglary, arson could be committed by setting fire to any "outhouses" that were parcel to the main dwelling house—even "though not contiguous thereto, nor under the same roof, [such] as barns and stables." Blackstone *221; *see also* John Poulos, *The Metamorphosis of the Law of Arson*, 51 Mo. L. Rev. 295, 300 (1986) ("Since burglary and arson were both offenses against the security of

the habitation, they, for the most part, shared a common definition of 'dwelling house.'").

II. At common law, the area in front of Mr. Johnson's apartment door would have been deemed his apartment's curtilage.

The Fourth Amendment "must 'assur[e] preservation of that degree of privacy against government that existed when'" it "'was adopted.'" *Jones*, 565 U.S. at 406 (quoting *Kyllo*, 533 U.S. at 34). Because the alcove in front of Mr. Johnson's apartment door would have been deemed part of his home at common law, it is entitled to the full protection the Fourth Amendment affords to curtilage today—including the warrant requirement. *See, e.g.*, *Groh*, 540 U.S. at 559.

The common law treated an apartment or other rented unit in a larger building as a dwelling the same as a freestanding house. So apartments must receive the same curtilage protection as standalone homes. And whatever the outer limits of that curtilage, law enforcement agents surely intruded in it when they entered the recess in front of Mr. Johnson's apartment door and used a canine to sniff Mr. Johnson's door seam without a warrant. Pet. App. 3a–4a, 55a. The concept of curtilage broadly encompassed places that were under the same roof or shared an internal connection to the home. Even detached buildings, including those that were much further removed than one's doorstep, were protected. Nor would the common law care that the curtilage might be shared. What mattered was whether the area was an appendage of the home—not whether others also had the right to or were permitted to use the same space.

A. Apartments and other rented units were viewed as the tenant's dwelling house and treated the same as a freestanding house.

At common law, an apartment was equally the dwelling house of a tenant as a standalone house was of its owner. As Blackstone explained, a rented unit, such as a "chamber in a college or an inn of court" or certain "room[s] or lodging, in any private house," would be deemed for "all" "purposes" the "mansion-house of the owner." Blackstone *225.[3] Indeed, it was "agreed by all" that "a Chamber in one of the Inns of Court wherein a Person usually lodges . . . may be called his Dwelling-House; and will sufficiently satisfy the Words *Domus mansionalis*" in a burglary indictment. 1 William Hawkins, A Treatise of the Pleas of the Crown 103 (1716); *see also* Matthew Hale, Pleas of the Crown 83 (5th ed. 1716); Coke, *supra*, at 64–65; *Mason*, 26 N.Y. at 203 (the "well-settled rule" was that "[w]herever a building is severed by lease into distinct habitations, each becomes the mansion or dwelling

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[3] Some authorities, such as Blackstone, suggest that a different rule might exist "if the owner himself lies in the house" and enters through the same door as his tenants. Blackstone *225. Others, however, thought the rented unit was the dwelling house of the tenant regardless. *See, e.g.*, Roscoe's Digest at 360. Either way, the result here is the same because nothing in the record seems to suggest that Mr. Johnson's building was owner occupied.

The common law also distinguished between "lodgers," who were casual guests, from those who rented property "for a specified time." *Mason v. People*, 26 N.Y. 200, 202–03 (1863); *see also State v. Johnson*, 4 Wash. 593, 594–96 (1892) (elaborating on the distinction). But this nuance does not change the analysis in this case because Mr. Johnson was no mere guest in the apartment. *See* CA4 App. JA309.

house of the lessee thereof, and is entitled to all the privileges of an individual dwelling").

The common law viewed both a standalone house and an apartment with equal regard because they served the same purpose. As Coke explained, "every house for the dwelling and habitation of man is taken to be a mansion-house, wherein burglary may be committed." Coke, *supra*, at 64. In other words, "it was not the character of the building, such as the distinction between a commercial building and a single family residence, but its use as a home that was important." Poulos, *supra*, at 307.

For just that reason, Hawkins dismissed the "[o]bjection" that an apartment should be treated differently because a tenant enters his home through "the same Door with the other Inhabitants." Hawkins, *supra*, at 104 (1716). That a tenant relies on a shared entry, he said, does "not make the Apartment it self in any Respect less his own, than a Way through a Door belonging to himself only would have done." *Id.* In short, the renter of an apartment received no less security under the common law than the owner of a freestanding house.

B. Because Mr. Johnson's apartment is his dwelling house, the area in front of it is protected curtilage.

The alcove area immediately in front of Mr. Johnson's apartment door would be protected curtilage at common law for at least three independent reasons.

1. To begin with, because Mr. Johnson's apartment is for "all" "purposes" his "mansion-house," it follows that it would receive the common-law protections attached to a freestanding house—including curtilage

protections. Blackstone *225 (the primary dwelling house "protects and privileges all its branches and appurtenances"); *see also Mason*, 26 N.Y. at 203 (recognizing that a leased space is entitled to "*all* the privileges of an individual dwelling" (emphasis added)); Roscoe's Digest at 358, 360 ("Chambers in the inns of court are to *all purposes* considered as distinct dwelling-houses." (emphasis added)). Mr. Johnson's apartment was set back by approximately 3.5 feet from the common hallway, such that there was an "alcove area" or "foyer" immediately in front of his door. CA4 App. JA401–JA403. *See also* Pet. App. 55a–56a. There is no doubt that the alcove immediately in front of Mr. Johnson's door is "space, necessary and convenient and habitually used, for the family purposes." *Shaw*, 31 Me. at 527; *see also* Wharton, *supra*, § 783 (9th ed. 1885) (places "appurtenant or ancillary" to the home and "within such convenient distance from the same as to make passing and repassing an ordinary household occurrence" are curtilage). Wherever the curtilage may end, it extends at least to the alcove immediately in front of Mr. Johnson's home where the agents conducted the canine sniff. Pet. App. 55a; CA4 App. JA372–JA373.

2. Beyond that, Mr. Johnson's doorstep is his protected curtilage because it is within the same building as his individual apartment unit. At common law, an area was deemed curtilage whenever it "was under the same roof" as the dwelling house or "had an internal communication with the principal building"—regardless how separate the area might otherwise have been. *See supra*, at 7; Roscoe's Digest at 354; Bishop, *supra*, § 138 (curtilage includes all parts of a building which "connect internally with parts which are" "used for

habitation"). The rule that "[i]f one part of the building is used as a habitation, it gives the character of a dwelling house to the entire building" applies with equal force here. *Cardish*, 145 F. at 247.

Three cases illustrate the point. *First*, Edward East's treatise describes a case involving the burglary of a barn connected to the dwelling house of Martin Graydon. 1 Edward Hyde East, Treatise of the Pleas of the Crown 493 (1806). Graydon had the following buildings extending from his dwelling house (in this order): a stable, a cottage, a cowhouse, and then the barn. Each of these places was "in one range of building" and "under one roof" but there was no "communication from either to the other within." *Id.* Still, the barn was held to be part of the dwelling house itself because it was under the same roof of the building used as a dwelling. *Id.*

Second, in *Walter's Case* (1824) 168 Eng. Rep. 947; 1 Lewin 29, the court considered a dwelling house that opened into a backyard. That yard was enclosed by the dwelling house, other buildings, and a wall. One of the buildings in the yard was a "warehouse" that the owner used for his trade as a grocer, and which was burglarized. *Id.* Another building leased to a third-party "directly intervened between" the owner's dwelling house and the warehouse. *Id.* But because all three "were under the same continuous roof," the court deemed the warehouse part of the victim's dwelling house and upheld the burglary conviction. *Id.*

Third, in *Rex v. Burrowes* (1830) 168 Eng. Rep. 1270; 1 Mood. 274, the property in question was a two-floor house. There were two rooms on the first floor and several bedrooms on the second floor. *Id.* A cellar and

"wash-house" adjoined the first-floor rooms but were separated from them by a "partition wall." *Id.* The door to the wash-house opened only into the backyard. *Id.* A majority of judges found that the wash-house was part of the dwelling house itself. *Id.*

These cases demonstrate why the area where the agents performed the warrantless canine sniff for contraband should be viewed as part of Mr. Johnson's home. Because the hallway is within the same building and under the same roof, it is properly viewed as part of the home itself. Just as barns, warehouses, and wash-houses were deemed part of the home itself where they shared a roof, so too should the enclosed, secured hallway a tenant uses to traverse from his home to the laundry, trash room, or elevator. The hallway is "a necessary appendage" to Mr. Johnson's home and thus part of it. *Palmer*, 47 Tenn. at 89–90.

Indeed, the case for finding Mr. Johnson's doorstep curtilage is even stronger than these examples because the hallway also "had an internal communication" with Mr. Johnson's apartment. Roscoe's Digest at 354. Neither the barn, warehouse, or wash-house in the cases above were directly accessible from the dwelling house. In each case, the owner would have to fully exit his home, walk a certain distance through other buildings or a yard, and then re-enter through a different door in order to reach the burglarized area. Here, Mr. Johnson did not need to walk through any other building or yard to reach the area in question. All he had to do was open the door to his home and take a couple of steps. Certainly, the risk of "midnight terror"—the reason for curtilage protection—is far greater for Mr. Johnson with respect to his recessed entryway within a secured internal hallway than a

barn, wash-house, or warehouse much further away. This area should therefore be deemed part of his home and protected by the Fourth Amendment.

3. Finally, even if the hallway was treated as a separate building, it would nevertheless be a modern-day "outhouse" to Mr. Johnson's apartment. The hallway qualifies as a structure "adjacent to" Mr. Johnson's "dwelling house, and subservient thereto, but distinct from the mansion itself." *Carter*, 32 S.E. at 346. Early cases routinely found even fully detached buildings to be part of the home itself, despite being at much further distance from the dwelling house. *See, e.g.*, *Pitcher v. People*, 16 Mich. 142, 145 (1867) (upholding conviction for burglary of a barn "eight rods" [132 feet] from the dwelling house and part of the same partially enclosed yard); *Taylor*, 2 Mich. 250 (province of the jury to decide whether a barn sitting 80 feet from the dwelling house was properly viewed as part of the curtilage). If structures 132 feet away could be deemed part of the dwelling house, then the 3.5-foot space directly in front of Mr. Johnson's home certainly should qualify.

C. That Mr. Johnson shares the hallway with other tenants does not change the curtilage analysis.

Modern courts often accord less Fourth Amendment protection to shared spaces. *See, e.g.*, Pet. App. 12a–13a (counting against Mr. Johnson the fact that "that area was part of a common hallway, used regularly by other building residents and by building cleaning staff"). But numerous common-law courts upheld burglary convictions in shared spaces because they were

nonetheless considered part of the dwelling house. Indeed, judges in these cases did not even think the shared nature of the space was worth spilling ink over. Consider a few examples.

Take first a "leading case in England," *Rex v. Stock* (1810) 168 Eng. Rep. 751; Russ. & Ry. 185, recounted in *Cardish*, 145 F. at 247. *Stock* affirmed a burglary conviction where three partners used the first floor jointly as a banking house—the area broken into—and the partners' servant and his family occupied the upper floor as a dwelling. *Cardish*, 145 F. at 247. That the banking house was shared did not matter. *Cardish* relied on this case to uphold an arson charge where a schoolhouse set on fire was also used as a dwelling for the teachers. *Id*. The area deemed part of a dwelling house there would presumably have been shared twice over: by the students and teachers when it was used as a school, and by the multiple teachers living there together. *See id.* Similarly, *Rex v. Hancock* (1810) 168 Eng. Rep. 743; Russ & Ry. 170, held that a shared factory jointly used by business partners was part of one partner's dwelling house which abutted the factory. *See also* 2 William Oldnall Russell, A Treatise on Crimes and Indictable Misdemeanors 58 (2d ed. 1828) (discussing *Hancock*).

Another case involved a man indicted for burglary of the "mansion-house of the master, fellows, and scholars" of Bennet College at Cambridge. East, *supra*, at 501. The burglar had broken into and stolen from the "buttery of the college," *id.*, which was a room "where butter, milk, provisions and utensils are kept" and "[i]n some colleges, a room where liquors, fruit and refreshments are kept for sale to the students," Noah

Webster, American Dictionary of the English Language (1828). All judges agreed that the burglary charge was proper. East, *supra*, at 501; *see also* Roscoe's Digest at 362 (discussing the same case).

Early American cases took the same approach. In *People v. Bush*, 3 Parker Cr. Cas. 552 (N.Y. 1857), the court considered a shared home where the victim, John Wood, rented a basement, the entire first floor, and part of the third floor. The rest of the house was occupied by other families, all of whom shared an "outer or hall door" with Wood. *Id.* The court declared that the "rooms occupied by Wood constituted his dwelling-house," even though the other families would presumably have needed to traverse the first floor to reach their units on higher floors. *Id.* at 557. Indeed, the court was undeterred by the evidence showing that other "tenants in the house were constantly going in and out the hall door" and that "strangers frequently obtained admittance to the house" without the tenants' knowledge. *Id.* at 553.

Similarly, in *Trapshaw's Case*, a man rented the first-floor parlor and one of the rooms on the second floor, where he slept. (1786) 168 Eng. Rep. 315; 1 Leach 427. The other rooms of the second floor were inhabited by other families. All of the residents shared the same "outer door" to the street. *Id.* A man broke into and stole from the parlor on the ground floor. *Id.* The court unanimously held this to be the dwelling house of the man who leased it, without stopping to worry whether the area was traversed by the other residents of the upper floors. *Id.* at 428–29.

None of these courts cared whether, or to what extent, the area in question was shared rather than used

exclusively by the person claiming it to be part of their home. The same is true of the cases addressing the scope of curtilage around a standalone house. None suggest that it matters whether the barn, warehouse, wash-house, or other structure was used by multiple people. *Supra*, 12–13. And by the nature of each of these places, they were almost certainly used by more than just the owner of the dwelling house. What mattered instead was whether the victim had a right of possession and use as against the intruder—not other people who also had some rights to the area. *See State v. Johnson*, 4 Wash. 593, 596 (1892) ("In burglary, ownership means any possession which is rightful as against the burglar," even if there is no right "as against the person claiming title to the property," such as the owner) (quoting Bishop, *supra*, § 137); *Smith v. People*, 115 Ill. 17, 20 (1885) (same).

Similarly, it is irrelevant that Mr. Johnson might share curtilage with his neighbors. "Under various circumstances the ownership [of the place burglarized] may be laid equally well in one person or another" for purposes of the indictment. Bishop, *supra*, § 138. In other words, it does not matter that a particular area could be viewed as curtilage of multiple people's homes—such as owners of a duplex who share a front porch otherwise identical to the one in *Jardines*. What matters instead is whether an area can properly be treated as part of a person's home vis-à-vis the intruder, not other people who might have claim to the same space. *Cf. Cardish*, 145 F. at 248–49 (precise ownership structure of a schoolhouse didn't matter so long as it belonged to someone other than defendant).

The common law's indifference to whether an area was shared with others makes sense in light of the

purpose of curtilage. The ultimate concern of burglary law is whether a dweller would experience "midnight terror" upon encountering a stranger in an area used as part of the home itself. Blackstone *223, *225. Many dwellers might share barns, stables, washhouses, warehouses and the like. But that such spaces are shared doesn't make it any less terrifying when they are invaded by someone who doesn't belong there.

* * *

This Court has routinely looked to the common law when determining what the home encompasses for Fourth Amendment purposes. Doing so here confirms that a tenant's apartment is his dwelling just the same as a standalone house. As such, it receives all the protections conferred by the common law, including curtilage protections. Because the alcove in front of Mr. Johnson's doorway was so near to his home, connected to it as part of the same building, and used as a modern-day "outhouse," the area would be deemed Mr. Johnson's curtilage at common law. That management, other tenants, or their guests might traverse the area changes nothing.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari.

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