No. 25-774

In the Supreme Court of the United States

ERIC TYRELL JOHNSON, *Petitioner,*

v.

UNITED STATES

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

BRIEF OF *AMICUS CURIAE* PROJECT FOR PRIVACY & SURVEILLANCE ACCOUNTABILITY, INC. SUPPORTING PETITIONER

GENE C. SCHAERR
Counsel of Record
ERIK S. JAFFE
JUSTIN A. MILLER
SCHAERR | JAFFE LLP
1717 K Street NW, Suite 900
Washington, DC 20006
Telephone: (202) 787-1060
gschaerr@schaerr-jaffe.com

Counsel for Amicus Curiae

February 2, 2026

QUESTION PRESENTED

Whether police conduct a Fourth Amendment search when they use a drug-detection canine to sniff the door of an apartment home in a multi-unit building to determine whether there is contraband inside.

TABLE OF CONTENTS

QUESTION PRESENTED i

TABLE OF AUTHORITIES iii

INTRODUCTION, SUMMARY, AND INTEREST OF *AMICUS CURIAE* 1

STATEMENT 2

ADDITIONAL REASONS FOR GRANTING THE PETITION 3

I. This Case Gives the Court An Excellent Opportunity to Correct An Erroneous "Dog-Sniff" Exception to its Fourth Amendment Precedents. 5

II. This Case Also Provides an Excellent Opportunity to Correct an Erroneous Exception to This Court's Fourth Amendment Curtilage Precedent. 13

CONCLUSION 20

TABLE OF AUTHORITIES

Cases **Page(s)**

Byars v. *United States*,
273 U.S. 28 (1927) 11

Caniglia v. *Strom*,
593 U.S. 194 (2021) 14

Case v. *Montana*,
607 U.S.--, 2026 WL 96690 (2026) 17

Fitzgerald v. *Maryland*,
864 A.2d 1006 (Md. App. Ct. 2004) 6

Florida v. *Jardines*,
569 U.S. 1 (2013) 1, 4, 5, 8, 13-15, 19, 20

Hodge v. *Alabama*,
13 So. 385 (Ala. 1892) 9

Illinois v. *Caballes*,
543 U.S. 405 (2005) 2

Katz v. *United States*,
389 U.S. 347 (1967) 5, 11

Kentucky v. *King*,
563 U.S. 452 (2011) 14

Kyllo v. *United States*,
533 U.S. 27 (2001) 1, 2, 4, 6-8, 10, 11, 13

Miller v. *United States*,
357 U.S. 301 (1958) 16

Minnesota v. *Edstrom*,
916 N.W.2d 512 (Minn. 2018) 6

North Dakota v. *Nguyen*,
841 N.W.2d 676 (N.D. 2013) 6

Oliver v. *United States*,
466 U.S. 170 (1984) 13, 17

Payton v. *New York*,
445 U.S. 573 (1980) 11

People v. *Bonilla*,
120 N.E.3d 930 (Ill. 2018) 3

Silverman v. *United States*,
365 U.S. 505 (1961) 7

Stoner v. *California*,
376 U.S. 483 (1964) 17

United States v. *Dunn*,
480 U.S. 294 (1987) 17

United States v. *Jacobsen*,
466 U.S. 109 (1984) 7, 10, 11, 12

United States v. *Jones*,
565 U.S. 400 (2012) 13

United States v. *Place*,
462 U.S. 696 (1983) 2, 3, 5, 6, 10-12

United States v. *Ross,*
456 U.S. 798 (1982) 11, 16, 19

United States v. *Scott*,
610 F.3d 1009 (8th Cir. 2010) 6

United States v. *Whitaker*,
820 F.3d 849 (7th Cir. 2016) 3

Constitutional Provision

U.S. Const. amend. IV 7, 11, 15

Treatise

William Blackstone,
Commentaries on the Laws of England (1769) 15, 16

Other Authorities

Amanda Carpenter,
Row Houses, *in* The Encyclopedia of Greater Phila. (2013) 18, 19

William J. Cuddihy,
The Fourth Amendment: Origins and Original Meaning 602–1791 (Oxford Univ. Press 2009) 8

William F. Handy et al.,
The K-9 Corps: The Use of Dogs in Police Work, 52 J. Crim. L., Criminology & Police Sci. 328 (1961) 9

John C. McWhorter,
The Bloodhound As a Witness, 26 W. Va. L. Rev. 91 (1920) 9

NSW Ombudsman,
Review of the Police Powers (Drug Detection Dogs) Act 2001 (2006) 6

U.S. Census Bureau,
2020 Census Urban Areas Facts (June 2023) 15

U.S. Customs & Border Prot.,
Canine Center History (May 16, 2025) 9

INTRODUCTION, SUMMARY, AND INTEREST OF *AMICUS CURIAE*[1]

This case presents an exceptionally important Fourth Amendment question: Do police conduct a search when they bring a trained drug-detection canine to an apartment door, without a warrant, to sniff for contraband located inside the home? Contrary to the decisions below, such searches intrude on the reasonable expectation of privacy in the home—the "very core" of Fourth Amendment protection—and effect a physical trespass onto curtilage, using a sense-enhancing tool not in general public use to obtain otherwise imperceptible information. See *Kyllo* v. *United States*, 533 U.S. 27, 31, 34 (2001); *Florida* v. *Jardines*, 569 U.S. 1, 6-7 (2013).

Because warrantless canine sniffs at residential thresholds threaten privacy by bypassing warrant requirements, they concern *Amicus Curiae* Project for Privacy & Surveillance Accountability, Inc. ("PPSA"), a nonprofit, nonpartisan organization dedicated to protecting privacy rights against unwarranted government surveillance. PPSA urges this Court to grant certiorari and reverse the Fourth Circuit's decision. In so doing, the Court should clarify that Americans retain a reasonable expectation of privacy in the interior of their homes, and that the curtilage of apartment doors is protected. The Court can thereby ensure that home privacy is not left "at the mercy of

---

[1] This brief was not authored in whole or in part by counsel for any party and no person or entity other than *amicus curiae* or its counsel has made a monetary contribution toward the brief's preparation or submission. Counsel of record for all parties received timely notice of *amicus'* intent to file this brief.

advancing technology." *Kyllo*, 533 U.S. at 35 (citation omitted).

STATEMENT

Despite lacking probable cause sufficient for a warrant, investigators who had been focused on other people came to suspect Petitioner Eric Tyrell Johnson's involvement in drug trafficking. App.3a, 94a, 97a-99a, 102a, 104a; CA4 3JA998, 3JA1015 (ECF No. 42-3). Rather than build their case and obtain a warrant, they instead chose to conduct a dog-sniff at his apartment door without a warrant. App.3a, 54a-56a, 79a, 104a. Although many of the apartment doors in the building were "almost flush with the wall," Petitioner's apartment door was set back "by a couple feet" from the hallway, forming an "alcove" in front of the door. CA4 2JA372, 2JA401-403 (ECF No. 42-2); App.55a. The agent used his specially trained dog to conduct a warrantless sniff within that alcove, and the dog gave a "positive alert" for the odor of narcotics at "the lower door seam." App.3a, 54a-56a.

Based on that dog-sniff, agents sought and received a search warrant for the apartment, where they found drugs, a gun, and other items of interest. Johnson was thereafter indicted for several drug- and gun-related charges. App.4a, 78a-113a; CA4 2JA411, 2JA419, 2JA422 (ECF No. 42-2).

On Johnson's appeal from his conviction, the Fourth Circuit held that, under *United States* v. *Place*, 462 U.S. 696 (1983), and *Illinois* v. *Caballes*, 543 U.S. 405 (2005), dog sniffs reveal only contraband and thus invade no legitimate privacy interest—even at an apartment home's door. App.9a-10a. The Fourth

Circuit recognized that its holding on this point split from the Seventh Circuit's contrary view in *United States* v. *Whitaker*, 820 F.3d 849 (7th Cir. 2016). App.10a. The Fourth Circuit also held the common hallway outside the door is not protected curtilage, as Johnson had no right to exclude others from the shared space, distinguishing *Jardines* and noting a contrary Illinois decision in *People* v. *Bonilla*, 120 N.E.3d 930 (Ill. 2018). App.11a-16a & n.7.

ADDITIONAL REASONS FOR GRANTING THE PETITION

Amicus agrees with Petitioner that this case presents an important Fourth Amendment question that has deeply divided federal and state courts. Pet.11-18. *Amicus* further agrees that the warrantless canine sniff at his apartment door intruded on core privacy interests in the home, using a "super-sensitive instrument" not in general public use to detect otherwise imperceptible details from the interior. Pet.18-22. Just as thermal imaging in *Kyllo* revealed intimate home activities without physical entry, a trained narcotics-detection dog reveals the presence of contraband inside the dwelling—information that could not be obtained by ordinary human senses or public visitors. These circumstances are far removed from the public sniff of luggage in *Place*, which this Court described as "*sui generis*." 462 U.S. at 707. Extending *Place*'s "no legitimate expectation of privacy in contraband" rationale to the home, including the apartment home at issue here, inverts the constitutional analysis, subordinating the sanctity of the home to the nature of what is sought.

Moreover, the Fourth Circuit's erroneous denial of curtilage protection to the apartment threshold adds to the number of lower courts abandoning the Founding-era baseline of privacy in dwellings, including those resembling modern apartments with shared spaces familiar to the Founders like rowhouses and boardinghouses. That denial and similar holdings elsewhere will continue to undermine Americans' home privacy as law enforcement increasingly deploys sense-enhancing tools to probe at the thresholds of residences without warrants.

Amicus writes separately to emphasize that, as *Kyllo* and *Jardines* clarified, Fourth Amendment home protections are not categorically lost when biological enhancements rather than electronic ones are used, nor are they lost in shared spaces. The focus should remain on whether the investigative technique reveals interior information that would otherwise require physical entry, using means not available to the public. And apartment homes deserve the same curtilage protection as any other. The Court should grant review to prevent a contrary understanding from continuing to erode Founding Era expectations of privacy and the home's status as the "very core" of Fourth Amendment protection—especially now, as trained canines and emerging technologies make warrantless probing of all residences more feasible and routine.

I. This Case Gives the Court An Excellent Opportunity to Correct An Erroneous "Dog-Sniff" Exception to its Fourth Amendment Precedents.

The dog-sniff searches at issue here are a product of lower-court confusion and uncertainty under this Court's Fourth Amendment caselaw. A "search" under the Fourth Amendment occurs when the government intrudes on a person's reasonable expectation of privacy. See *Katz* v. *United States*, 389 U.S. 347, 353 (1967). And these privacy expectations are at their zenith in the home.

1. When this Court first addressed dog-sniff searches, it declared that "the canine sniff is *sui generis*," *i.e.*, unique. *Place*, 462 U.S. at 707. There, this Court held that a dog-sniff search of luggage in an airport is not a Fourth Amendment search because of "both * * * the manner in which the information is obtained," *i.e.*, less-intrusive search in public, *and* "the content of the information revealed," *i.e.*, the presence of drugs. *Ibid.* Thus, that a dog-sniff might be reasonable in an airport in no way suggests that it would also be reasonable at a home.

This Court had an opportunity to make that clarification in *Jardines*. See 569 U.S. at 12 (Kagan, J., concurring). But instead, the Court based its holding on the handler and drug-detection dog's physical intrusion onto the home's curtilage. *Jardines*, 569 U.S. at 8. The resulting uncertainty has produced a deep split among lower courts over whether warrantless dog sniffs outside residences are searches under the reasonable-expectation-of-privacy standard.

See Pet.11-18. This case offers the Court a clear vehicle to limit *Place* to its facts (public venues like airports), hold that dog-sniff searches of residences are Fourth Amendment searches, and realign the doctrine with *Kyllo*'s historically grounded protection of the home.

2. In *Kyllo*, moreover, this Court emphasized the need to "preserv[e] * * * that degree of privacy against government that existed when the Fourth Amendment was adopted," *Kyllo*, 533 U.S. at 34, by focusing on location and method of an intrusion rather than the legality of what is sought. Dog-sniffs are admittedly less intrusive than other methods of investigation. They do not require "rummaging through the contents" of a container or home to the same extent as a more intrusive search. *Place*, 462 U.S. at 707.[2] And lower courts have heavily relied on the statement in *Place* that such searches are "*sui generis*" to hold that dog-sniffs are outside the Fourth Amendment's protections. App.8a-17a.[3] But *Place* was meant to be a limited exception from its inception.

Indeed, this Court's description of public dog-sniffs as "*sui generis*," *i.e.*, unique, *Place*, 462 U.S. at 707, was disproved the very next Term, when this

---

[2] The fallibility of drug dogs has long been a contested issue. See, *e.g.*, NSW Ombudsman, *Review of the Police Powers (Drug Detection Dogs) Act 2001*, at 29-30 & fig. 5 (2006) (approximately 74% of 10,211 alerts were false alerts), https://tinyurl.com/4vmjcavb.

[3] See also *United States* v. *Scott*, 610 F.3d 1009, 1016 (8th Cir. 2010); *Fitzgerald* v. *Maryland*, 864 A.2d 1006, 1011 (Md. App. Ct. 2004); *Minnesota* v. *Edstrom*, 916 N.W.2d 512, 523 (Minn. 2018); *North Dakota* v. *Nguyen*, 841 N.W.2d 676, 681-682 (N.D. 2013).

Court applied similar reasoning to chemical field tests, see *United States* v. *Jacobsen*, 466 U.S. 109 (1984). The basis for these two decisions—that no reasonable expectation of privacy exists in contraband—is untethered from the original understanding of the Fourth Amendment, which was meant to channel searches through proper warrants and probable cause. The Fourth Amendment's text protects the people's "persons, houses, papers, and effects" based on the reasonability of the intrusion, not on what is being sought. U.S. Const. amend. IV.

At the Founding, the legal status of the object sought did not determine the constitutional protection afforded to the place searched—even stolen goods or contraband required a warrant if secured inside a home. *Kyllo*, 533 U.S. at 34-40. The home stands at the "'very core'" of Fourth Amendment protection, and "with few exceptions, the question whether a warrantless search of a home is reasonable * * * must be answered no." *Id.* at 31 (quoting *Silverman* v. *United States*, 365 U.S. 505, 511 (1961)). People have "the right * * * to retreat into [their] own home and there be free from unreasonable governmental intrusion." *Ibid.* (quoting *Silverman*, 365 U.S. at 511). This protection is indifferent to whether the object sought is lawful. Thus, the home's interior details are intimate and shielded from warrantless probing. *Id.* at 37.

This Court further emphasized the sanctity of the home in *Kyllo*, reasoning that using "sense-enhancing technology * * * not in general public use" to try to obtain information from a home's interior otherwise

inaccessible without physical intrusion is a search. *Kyllo*, 533 U.S. at 34.

3. Trained drug-detection dogs qualify. They detect trace narcotics imperceptible to humans and require extensive training and annual recertification, both to detect the narcotics and to alert their handlers. These dogs are not equivalent to an ordinary pet. *Cf. Jardines*, 569 U.S. at 16-17 (noting "ubiquit[y]" of dogs at time Fourth Amendment was adopted). And the biological nature of this tool does not distinguish it from *Kyllo*'s thermal imager.[4] Both devices artificially enhance senses to reveal otherwise unknowable interior details. Neither device is traditional or now in general public use.

In fact, the use of dogs to detect drugs is a modern invention. At the Founding, no sense-enhancing tools like trained drug-detection dogs existed to probe homes; investigative techniques relied on human senses and limitations. See generally William J. Cuddihy, *The Fourth Amendment: Origins and Original Meaning 602–1791* (Oxford Univ. Press 2009). Dogs were, of course, present in colonial life. But their use in law enforcement was informal and limited to tracking fugitives, protection, and rescue. And their use to track fugitives was grounded in the principles underlying the "hot pursuit" doctrine for arrests, not general investigations. See generally John C. McWhorter, *The Bloodhound As a Witness*, 26

[4] Indeed, selective breeding for sense enhancement, or even eventual genetic engineering, make the line between mechanical and biological technology essentially meaningless.

W. Va. L. Rev. 91 (1920).[5] But the "hot pursuit" doctrine presents unique considerations. Tracking a fugitive is not the same as investigating for evidence. See, e.g., *United States* v. *Santana*, 427 U.S. 38, 42-43 (1976) (noting right of police only a few minutes behind suspect to enter house to arrest robber and search for weapons).

Drug-detection dogs first emerged in America much later, only in 1969. U.S. Customs & Border Prot., *Canine Center History* (May 16, 2025), https://tinyurl.com/3mhumdw3. Before then, even on the global stage as late as 1961, the idea of using a dog to search for drugs was a "remarkable" curiosity, not a regular law enforcement practice. See William F. Handy et al., *The K-9 Corps: The Use of Dogs in Police Work*, 52 J. Crim. L., Criminology & Police Sci. 328, 332 (1961) (noting "a remarkable example" of "a dog in London trained to enter a crowd of people and pick out by scenting any person carrying marijuana"). Until the 1970s, the common consensus was that "[d]ogs are not particularly useful in such functions as * * * investigation details," *id.* at 336, the very function at issue here. That drug-dog sniffs have been singled out for special Fourth Amendment treatment, despite lack

[5] The first reported use of tracking humans in America involved slavery. John C. McWhorter, *The Bloodhound As a Witness*, 26 W. Va. L. Rev. 91, 94 (1920) (citing *Hodge* v. *Alabama*, 13 So. 385 (Ala. 1892)). Dogs must be trained to "track a human being," as "no breed of domesticated dogs is by instinct or disposition inclined" do so. *Id.* at 95. And in America, bloodhounds that had traditionally been used for tracking fugitives were not imported until the 1880s, nearly a century after the Fourth Amendment was ratified. *Id.* at 96, 101.

of a historical precedent and questionable accuracy, is an anomaly that should be corrected.

4. This case presents an ideal opportunity to correct this "*sui generis*" anomaly in this Court's privacy precedents and to restore the definition of "search" for homes to its historically grounded understanding. *Place* and *Jacobsen* collapse the definition of "search" into the legal status of the item sought, untethered from text or original meaning. *Kyllo* corrects this approach by asking whether a method enables perception of interior information that previously required physical intrusion, using tools not in general public use.

Kyllo, moreover, is grounded in the original understanding of the Fourth Amendment, unlike the *Place* and *Jacobsen* decisions. In *Kyllo*, this Court reemphasized the need to preserve "that degree of privacy against government that existed when the Fourth Amendment was adopted." 533 U.S. at 34. Under that standard, the expectation of privacy in the interior of the home has "roots deep in the common law." *Ibid*. Accordingly, any use of sense-enhancing technology not in general public use to obtain information about the interior that could not otherwise be obtained without physical intrusion is a search, without regard to the legality of what is ultimately discovered.

In contrast, *Place* and *Jacobsen* fail to tie their "no privacy in contraband" rationale to the text of the Fourth Amendment or to what was reasonable at the time of the Founding. Those decisions instead proceed from an atextual and ahistorical premise that a

technique that reveals only contraband does not implicate a "legitimate" privacy interest and thus is not a search. See *Place*, 462 U.S. at 707; *Jacobsen*, 466 U.S. at 120. That rule is far afield from the Fourth Amendment's protection of "persons, houses, papers, and effects." U.S. Const. amend. IV. The Fourth Amendment's protections focus on location and method of an intrusion, not the legal status of what a person, house, paper, or effect might be holding.

5. Search-and-seizure law's unmooring from the Fourth Amendment in *Place* and *Jacobsen* threatens to erode the privacy that this Court reaffirmed in *Kyllo*. The "no reasonable expectation of privacy in contraband" test inverts *Katz* by focusing not on the privacy of the place or container to be searched, but on the legal status of the item the government hopes to find. Indeed, *every* search presumably seeks contraband or at least evidence of illegality. It is a fundamental Fourth Amendment principle that a "search prosecuted in violation of the Constitution is not made lawful by what it brings to light." *Byars* v. *United States*, 273 U.S. 28, 29 (1927). And this Court has held that the "Fourth Amendment provides protection to the owner of every container that conceals its contents from plain view." *United States* v. *Ross,* 456 U.S. 798, 822-823 (1982) (citation omitted).

Nor is "the sanctity of the home" lessened to justify a warrantless arrest merely because the home harbors contraband or a fugitive. See *Payton* v. *New York*, 445 U.S. 573, 588-589 (1980). Until *Place* and *Jacobsen*, the fact that a container contains contraband, which indeed it usually does in such

cases, never altered this Court's analysis. And this Court has never extended those decisions to the home.

6. Approving warrantless investigative techniques because the government claims its technology searches only for contraband also paves the way for technology to render the Fourth Amendment obsolete. Under that rule, if a device could detect contraband, and (supposedly) *only* contraband, merely by being aimed at a person, it would not be a Fourth Amendment search.[6] The logical result of that rule would be for the government to set up such supposedly narrow-searching devices on every street corner to scan all passersby.

Nor would any constitutional obstacle exist to police cruisers systematically scanning every home street-by-street to detect whatever the government has designated as contraband. Surely the Founders' expectation of privacy would not allow such a dystopian outcome.

In the digital age, this danger is even more acute. Modern technology makes it easier than ever to access constitutionally protected spaces—homes, personal effects, and digital devices—to search for items the government has labeled contraband. And once such intrusive techniques are authorized, they rarely remain isolated, as even the expansion of the "*sui generis*" search at issue here shows; it was expanded only one Term later in *Jacobsen*. The binary and likely false "yes or no" search rationale in *Place* and *Jacobsen*

[6] The inaccuracy and false positives of detection methods—be they dog sniffs or AI facial detection—shows why the privacy invasion would not be so limited.

incentivizes the government to engineer increasingly sophisticated devices that can identify activity in the home under the banner of detecting contraband. Its end result would be to render the Fourth Amendment's protections of privacy hollow and meaningless.

This case allows the Court to resolve the circuit split, emphasize the limited nature of *Place*, and restore the Fourth Amendment's original public meaning as articulated in *Kyllo*. That decision far better fits the Fourth Amendment's original public meaning and should govern here.

II. This Case Also Provides an Excellent Opportunity to Correct an Erroneous Exception to This Court's Fourth Amendment Curtilage Precedent.

This case also offers another opportunity for needed clarification of Fourth Amendment doctrine regarding curtilages. The Fourth Amendment has historically been "understood to embody a particular concern for government trespass upon the areas * * * it enumerates," *i.e.*, a person's person, house, papers, or effects. *United States* v. *Jones*, 565 U.S. 400, 406 (2012). And of the constitutionally protected areas, the home holds a special place as the "first among equals," representing the "very core" of Fourth Amendment protection. *Jardines*, 569 U.S. at 6 (citation omitted from second quotation). And the curtilage surrounding the home is considered "part of the home itself." *Ibid.* (quoting *Oliver* v. *United States*, 466 U.S. 170, 180 (1984)). When an officer without a valid warrant enters this curtilage to approach the home, he

generally may only "take actions that any private citizen might do." See *Caniglia* v. *Strom*, 593 U.S. 194, 198 (2021) (cleaned up). They normally may do "no more" than that. *Kentucky* v. *King*, 563 U.S. 452, 469 (2011).

1. Although this Court has held that the front porch of a home is curtilage protected by the Fourth Amendment, *Jardines*, 569 U.S. at 7, lower courts have divided on whether this protection includes apartment homes. Some courts have erroneously excepted the front doors of apartment homes from the Fourth Amendment. But Founding Era expectations would protect the curtilage of all dwellings, including apartments. Contrary rulings in some circuits and states have effectively granted different constitutional protections for rural and urban homes. This Court should grant review to clarify that a search occurs when an apartment's threshold is trespassed beyond the implied license granted to all people to knock or leave packages.

Amicus agrees with Petitioner that the Fourth Circuit has now deepened an existing state-split on whether a search occurs under this Court's curtilage precedents when police use a drug detection dog to conduct a sniff-search at the threshold of an apartment home. Pet.14-18. Illinois and Texas recognize the sanctity of the home, no matter its structure, by holding that the threshold of an apartment home is part of its curtilage. Pet.14-15. In contrast, the Fourth Circuit, Minnesota, and North Dakota conclude that an apartment's threshold is part of a common hallway and is thus fair game for drug-dog sniffs. Pet.15-18. The Fourth Circuit in this case

determined that the drug-dog sniff was not a search because Johnson could not exclude others from "the common hallway *outside* his door," and it was thus not curtilage. App.11a-17a. This deepening federal and state split requires this Court's intervention.

2. The Fourth Circuit's decision and similar decisions contradict Founding Era expectations of privacy, which would protect curtilage of all dwellings, including apartment thresholds. The plain text of the Fourth Amendment protects "[t]he right of the people to be secure in their persons, *houses*, papers, and effects, against unreasonable searches." U.S. Const. amend. IV (emphasis added). The Founders did not discriminate between types of homes when creating the Fourth Amendment, as some courts have done, and would not have understood a "house" to apply only to a detached home with a front porch like the one in *Jardines*. See *Jardines*, 569 U.S. at 7. Instead, the "'curtilage or homestall,'" included "'all [the house's] branches and appurtenants.'" *Id.* at 6-7 (quoting 4 William Blackstone, *Commentaries on the Laws of England* 223, 225 (1769)).

Even though the front door of an apartment differs in some respects from the front porch of a detached home, apartment homes should not be relegated to second-class constitutional protection. Urban dwellers, constituting eighty percent of the American population, often do not have front porches. U.S. Census Bureau, *2020 Census Urban Areas Facts* (June 2023), https://tinyurl.com/2z8w2pzf. Denying protection for apartment thresholds thus creates different privacy protections for rural and urban Americans.

The abrogation of constitutional protection based on the characteristics of a home runs counter to Founding Era expectations of privacy. William Pitt famously remarked that "[e]very man's house was his castle." *Miller* v. *United States*, 357 U.S. 301, 307 n.7 (1958) (citation omitted). Even the "poorest man may in his cottage bid defiance to all the forces" of the government. *Id.* at 307 (citation omitted). The home "may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England cannot enter—all his force dares not cross the threshold of the ruined tenement!'" *Ibid.* (citation omitted). Since then, this Court has continuously re-emphasized that point: "[T]he most frail cottage in the kingdom is absolutely entitled to the same guarantees of privacy as the most majestic mansion." *Ross*, 456 U.S. at 822. To extend Fourth Amendment protection to the curtilage of detached homes but not to the curtilage of apartments is to separate the rights of the majestic mansion's dwellers from the cottage dwellers.

Indeed, the exclusion of apartment homes from the Fourth Amendment's full aegis would grant these homes less protection than the Founding generation would grant even temporary dwellings. Blackstone affirmed that such dwellings, including a "room or lodging, in any private house," is for "all * * * purposes" "the mansion house of the owner" or "the lodger." 4 Blackstone, *Commentaries* 225. The exception would be "if the owner himself lies in the house, and hath but one outward door at which he and his lodgers enter." *Ibid.*

This Court has extended this precedent to modern times by recognizing the Fourth Amendment's protection of hotel rooms. *Stoner* v. *California*, 376 U.S. 483, 490 (1964) (citation omitted). Thus, the Fourth Amendment protects all dwellings, whether they be frail cottages, majestic mansions, or simple hotel rooms. This case gives the Court an excellent opportunity to correct some courts' erroneous exclusion of apartments from the Fourth Amendment's protection.

3. To determine whether an area is constitutionally protected curtilage, the primary question is "whether the area in question 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). Although the boundary of the curtilage is "easily understood from our daily experience," *id.* at 302 (quoting *Oliver*, 466 U.S. at 182 n.12), the Court need not "depend on nothing more than current judicial instincts about reasonable expectations of privacy," *Case* v. *Montana*, 607 U.S.--, 2026 WL 96690, at *10 (2026) (Gorsuch, J., concurring) (cleaned up). Instead, the Court can rely on the Founder's understanding of homes and curtilage "rather than mere intuition." *Ibid.*

The Founders were familiar with homes that resemble modern apartments and would thus have expected those apartment-like dwellings to be protected against unwarranted search like any other home. For example, when the Fourth Amendment was ratified, the United States capital was in Philadelphia, a city famous for its rowhouses. Like apartments,

these homes share walls, are tightly packed, and have a front door that opens directly into a public walkway. Amanda Carpenter, *Row Houses*, *in* The Encyclopedia of Greater Phila. (2013), https://tinyurl.com/3jxms9bk. These rowhouses were so pervasive that they were considered the "typical" or "model" Philadelphia home. *Ibid.* And rowhouse neighborhoods such as Budd's Row or Elfreth's Alley, *ibid.,* existed within a short walk of Independence Hall where the Constitution was drafted.

Beyond Philadelphia, rowhouses were prevalent along the East Coast in cities like New York, *ibid.*, where the first Congress drafted the Bill of Rights. And rowhouses likewise became prevalent in other neighboring cities including Baltimore and Washington, D.C. *Ibid.*

The Founders would have spent significant time in and around these rowhouses or similar boardinghouses and structures. It is inconceivable that they would not have considered their own (sometimes temporary) dwellings and the dwellings around them to be "houses" for Fourth Amendment purposes.

4. Rowhouses, boardinghouses, and similar structures bear more similarity to a modern-day apartment than to a detached home. Apartments, like rowhouses, share walls and are high-density structures.

Most relevant here, the curtilages of both styles of dwelling are nearly identical in all material respects. Their front doors open directly into a public space,

where residents have limited ability to exclude others. See *ibid.*

The Founder's familiarity with a home—and curtilage—that so strongly resembles that of an apartment makes it unlikely that the Founders would have ratified an amendment that protected a front porch but not a front door. See *Jardines*, 569 U.S. at 7. Indeed, it borders on the absurd to suggest the Founders would have been indifferent to government agents listening in on them with their ears against the front door, so long as they did not cross the threshold.

5. To be sure, in *Jardines*, the Court held that the front porch is the "classic exemplar" of a place where "the activity of home life extends." *Jardines*, 569 U.S. at 7 (citation omitted from second quotation). But as the classic exemplar, the front porch does not represent the limit of protected curtilage. The porchless threshold of the apartment is also "intimately linked to the home" and should also be under the Fourth Amendment's umbrella of protection. *Ibid.* (citation omitted).

Thus, to condition Fourth Amendment protection on whether the structure has a front porch or similar structure not only misses the central question, it effectively excludes urban dwellers from a significant portion of Fourth Amendment protection. This exception runs against current precedent, which promises that the curtilage of "frail cottage[s]" has the same guarantee against warrantless search as the curtilage of "majestic mansion[s]." *Ross*, 456 U.S. at 822. The New York apartment should be entitled to the same protection as the Iowa farmhouse. And the

Philadelphia rowhouse should not be less protected from government intrusion than the Southern veranda. The "activity of home life extends" just as much to the urban front door as it does to the rural porch. *Jardines*, 569 U.S. at 7.

This Court should grant review to correct the erroneous exclusion of an apartment's curtilage from the Fourth Amendment's definition of "house" and to clarify that a home's curtilage includes the threshold and front door of all dwellings.

CONCLUSION

The Fourth Amendment draws a firm line around a home, which forms the "very core" of the Fourth Amendment. And that line does not evaporate when that home is an apartment. When the government brings a drug-detection dog to the front door, it is doing something that no ordinary visitor has license to do, any more than they have license to peep through the keyhole or put their ear against the door to listen in. By going even further, and using a super-sensitive biological tool not in general public use, the government is performing a search—whether analyzed under reasonable expectations of privacy or as a trespass onto curtilage—requiring a warrant supported by probable cause. This Court should grant certiorari and restore the home—including the vast majority that lack front porches—to its rightful place as the fortress the Founders intended.

Respectfully submitted,

GENE C. SCHAERR
Counsel of Record
ERIK S. JAFFE
JUSTIN A. MILLER
SCHAERR | JAFFE LLP
1717 K Street NW, Suite 900
Washington, DC 20006
Telephone: (202) 787-1060
gschaerr@schaerr-jaffe.com

Counsel for Amicus Curiae

FEBRUARY 2, 2026