

No. 25-774

In the Supreme Court of the United States

ERIC TYRELL JOHNSON, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether law-enforcement officers conducted an unreasonable search in violation of the Fourth Amendment when they brought a drug-detection dog to the common hallway outside the door of petitioner's apartment.

ADDITIONAL RELATED PROCEEDINGS

United States Court of Appeals (4th Cir.):

United States v. Coleman-Fuller, No. 23-4237 (Jan. 15, 2025)

United States v. Spruill, No. 23-4289 (Aug. 24, 2023)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-17a) is reported at 148 F.4th 287. The memorandum opinion of the district court (Pet. App. 18a-60a) is available at 2022 WL 2484143. A subsequent memorandum opinion of the district court is available at 2022 WL 2789093.

JURISDICTION

The judgment of the court of appeals was entered on August 5, 2025. On October 22, 2025, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including January 2, 2026. The petition for a writ of certiorari was filed on December 31, 2025. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the District of Maryland, petitioner was convicted of conspiring to distribute and possess with intent to distribute heroin and fentanyl, in violation of 21 U.S.C. 841(b)(1)(B)(i) and 21 U.S.C. 841(b)(1)(B)(vi) (2018); possessing controlled substances with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(B)(i) and 21 U.S.C. 841(b)(1)(B)(vi) (2018); and possessing a firearm and ammunition following a felony conviction, in violation of 18 U.S.C. 922(g)(1) and 18 U.S.C. 924(a)(2) (2018). Am. Judgment 1. The district court sentenced him to 150 months of imprisonment, to be followed by five years of supervised release. *Id.* at 2-3. The court of appeals affirmed. Pet. App. 1a-17a.

1. a. In 2019, a Washington County, Maryland narcotics task force, working with the Drug Enforcement Administration, was investigating a drug-trafficking organization suspected of selling fentanyl and heroin in Maryland and West Virginia. Pet. App. 3a. Through use of wiretaps, physical surveillance, and other investigative techniques, the task force officers came to suspect that petitioner was distributing drugs from Apartment 201 in Greenwich Place, a large apartment complex in Owings Mills, Maryland. *Id.* at 3a, 91a-104a.

The lead investigator, Agent Jasen Logsdon of the Washington County Sheriff's Department, decided to conduct a dog sniff from outside petitioner's apartment door. Pet. App. 3a. Agent Logsdon received permission from the building's management to access the building's common areas for that purpose. C.A. App. 364. On August 7, 2019, at approximately 3 a.m., using a passcode or swipe card provided by the building's management, Agent Logsdon entered the building, accompanied by

Detective George Vigue and his canine partner, Cody. Pet. App. 3a; C.A. App. 365.

The Greenwich Place complex was “very large,” with “well over 100 separate apartments” located on “multiple floors.” C.A. App. 362-363. Apartment 201 was located on the second floor of the building, on a long hallway with numerous units. Pet. App. 3a; C.A. App. 365. Because it was the closest apartment to the common elevator and stairwell, other tenants and their visitors routinely walked past it on their way to and from other units. Pet. App. 4a; C.A. App. 373. The door was recessed from the hallway by approximately three and a half feet and flanked on both sides by storage or utility closets. Pet. App. 4a; C.A. App. 372-374. At the time of the investigators’ visit, there were no personal possessions in front of or around the door to Apartment 201. Pet. App. 4a, 79a-80a; C.A. App. 369.

Upon arriving in the second-floor hallway, Agent Logsdon directed Detective Vigue to the general area in which to perform the canine sniff. C.A. App. 365-367. After being deployed by Detective Vigue, Cody conducted a “free air scan” (*i.e.*, a scan not directed to a particular spot) and gave a positive alert for the odor of controlled substances emanating from the lower door seam of Apartment 201. *Id.* at 366; see *id.* at 397; Pet. App. 4a.

b. The next day, a task force officer applied to a Maryland state judge for a warrant to search Apartment 201. Pet. App. 4a. The affidavit in support of the warrant set forth the basis for probable cause to believe that petitioner was distributing drugs from Apartment 201 in Greenwich Place. *Id.* at 78a-113a.

As recounted in the affidavit, by June 2019, investigators had identified an individual named Philander Spruill

as the leader of a local drug trafficking organization and obtained a court-authorized wiretap for his cellphone. Pet. App. 87a-91a, 94a. On July 9, 2019, the officers intercepted a call between Spruill and a drug purchaser in which Spruill indicated that he was on his way to meet his supplier to purchase a quantity of drugs. *Id.* at 92a-94a. About an hour and a half later, Spruill's cellphone pinged in Owings Mills, Maryland, approximately a kilometer from the Greenwich Place apartment complex. *Id.* at 94a. Shortly thereafter, Spruill began traveling back toward his residence in Hagerstown, Maryland. *Ibid.*; see *id.* at 101a.

Later that afternoon, investigators observed Spruill arrive back at his residence. Pet. App. 94a. About 15 minutes later, they intercepted a call between Spruill and an individual named Bret Redman regarding Redman purchasing two grams of heroin or fentanyl from Spruill at a predetermined location. *Id.* at 94a-95a. Investigators then observed Spruill leave his residence carrying a gray Walmart grocery bag and followed him as he drove away. *Id.* at 95a. Shortly after Spruill parked at the location discussed in the intercepted call, Redman arrived and got into Spruill's car. *Ibid.* When Redman got out of Spruill's car, he was carrying the gray Walmart grocery bag, which appeared to be full of clear plastic bags. *Ibid.*

As Spruill drove away, Redman crossed the street and threw the Walmart bag into an open trash container on the sidewalk. Pet. App. 95a. After Redman left, investigators recovered the Walmart bag and found numerous plastic sandwich bags with cut corners, a large plastic bag, a foil pack, and two wax papers, all with a tan powder that they suspected to be fentanyl residue. *Id.* at 95a-96a. The investigators believed that those items

were consistent with Spruill having purchased a quantity of drugs from his supplier, cut and packaged it for resale, and then handed the garbage to Redman for disposal. *Id.* at 96a.

The next day, investigators intercepted a call between Spruill and an unknown man. Pet. App. 97a. Spruill again indicated that he was on his way to pick up drugs. *Id.* at 97a-98a. Shortly thereafter, a court-authorized GPS tracking device affixed to Spruill's car indicated that he traveled to Owings Mills and parked outside the main entrance to Greenwich Place. *Id.* at 98a. The investigators went to Greenwich Place and saw Spruill leave the building and get into his car, after which he returned to his residence. *Id.* at 98a-99a.

The investigators then intercepted a phone call between Spruill and the same unknown man. Pet. App. 99a-100a; see *id.* at 97a. The man indicated that he would take "two of them"—which investigators knew from experience is common drug terminology for two grams or other units of illegal drugs—and Spruill responded that the drugs were "being made as we speak." *Id.* at 100a; see *id.* at 101a. A mixing sound was audible in the background. *Id.* at 100a. Half an hour later, Spruill again called the man and told him that he could have "the two." *Id.* at 101a.

On July 30, 2019, a task force officer monitoring a surveillance camera at the rear of Spruill's residence observed a car pull into the driveway, while Spruill was home. Pet. App. 101a-102a. An unknown man got out of the driver's side of the car and went into Spruill's residence. *Id.* at 102a. A short time later, an unknown woman got out of the passenger's side of the car and smoked a cigarette while waiting outside the residence. *Ibid.* A few minutes later, the man came out of the residence and got

into the car's passenger seat. *Ibid.* The woman got into the driver's seat and drove away. *Ibid.*

The officer ran the car's license plates and found that it was registered to Latrice Campbell. Pet. App. 102a. Maryland State Police records showed that the car had been stopped three times in 2019 and that each time, it was driven by petitioner. *Ibid.* The officer compared petitioner's driver's-license photograph to the unknown man captured on the surveillance camera at Spruill's residence and determined that it was "possibly" the same person. *Ibid.* Investigators then sent a subpoena to the management of Greenwich Place inquiring whether petitioner or Campbell leased an apartment there. *Id.* at 103a.

The subpoena response indicated that Campbell was the lessee of Apartment 201. Pet. App. 103a. On August 4, 2019, a task force officer observed Spruill's car parked in a lot in the same business and residential complex as Greenwich Place. *Id.* at 103a-104a. Intercepted communications and the court-authorized GPS tracking device on Spruill's car indicated that Spruill also traveled to Greenwich Place on July 15, July 24, and August 6, 2019. *Id.* at 104a.

The affidavit also detailed petitioner's extensive criminal history, which included multiple convictions for drug-related offenses. Pet. App. 88a. And it recited common practices of narcotics traffickers gleaned from the affiant's training, experience, and participation in other drug investigations. For example, the affidavit explained that "it is common for narcotics traffickers to secrete contraband, proceeds of narcotics sales and records of narcotics transactions in secure locations within their residences" and "the residences of relatives and associates * * * for ready access and to conceal these items from law enforcement authorities." *Id.* at 105a-106a.

The affidavit further stated that on August 7, 2019, Detective Vigue and Cody performed a “free air scan” of Apartment 201’s “main entry door.” Pet. App. 104a. Detective Vigue advised that Cody “gave a positive alert for the odor of a controlled dangerous substance.” *Ibid.*

c. The Maryland judge issued the warrant, and police searched Apartment 201 on August 12, 2019. Pet. App. 4a; C.A. App. 125-127. The police recovered “a heroin-fentanyl powder mixture, a handgun, ammunition, cell phones, cash, and other items indicative of drug-dealing.” Pet. App. 4a.

2. A grand jury in the District of Maryland returned a third superseding indictment charging petitioner with conspiring to distribute and possess with intent to distribute heroin and fentanyl, in violation of 21 U.S.C. 841(b)(1)(B)(i) and 21 U.S.C. 841(b)(1)(B)(vi) (2018); possessing controlled substances with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(B)(i) and 21 U.S.C. 841(b)(1)(B)(vi) (2018); and possessing a firearm and ammunition following a felony conviction, in violation of 18 U.S.C. 922(g)(1) and 924(e)(1). C.A. App. 52, 55, 58-59.

Petitioner moved to suppress the evidence obtained from the search of his apartment, arguing that the affidavit contained illegally obtained evidence in the form of the results of the warrantless dog sniff. D. Ct. Doc. 213-1 (May 27, 2021). The district court held an evidentiary hearing at which it heard testimony from Agent Logsdon and from a defense investigator hired to measure the recessed area in front of Apartment 201. Pet. App. 54a-56a. The court then denied the suppression motion. *Id.* at 54a-59a.

The district court determined that, under the circumstances, the “area just outside [petitioner’s] apartment

door is not within the curtilage” of his home. Pet. App. 56a. The court observed that building management granted access to the building’s common areas “routinely upon request” and that the hallway outside petitioner’s apartment was accessed regularly by other tenants on their way to and from their units and daily by the building’s cleaning staff. *Ibid.* It found that petitioner “had no property based right outside the apartment door.” *Id.* at 58a. And the court explained that because the dog sniff “disclosed only the presence of illegal narcotics,” it did not violate petitioner’s “reasonable expectation of privacy.” *Id.* at 58a-59a (quoting *United States v. Legall*, 585 Fed. Appx. 4, 6 (4th Cir. 2014) (per curiam), cert. denied, 574 U.S. 1183 (2015)).

A jury found petitioner guilty on all counts. Pet. App. 63a. The district court sentenced him to 150 months of imprisonment, to be followed by five years of supervised release. Am. Judgment 2-3.

3. The court of appeals affirmed. Pet. App. 1a-17a.

The court of appeals explained that the dog sniff did not violate petitioner’s reasonable expectation of privacy. Like the district court, the court of appeals found that petitioner’s reliance on *Kyllo v. United States*, 533 U.S. 27 (2001), which involved officers’ use of a thermal-imaging device directed at a house, was misplaced. Pet. App. 8a-9a. While the court accepted that the Fourth Amendment generally forbids the government from using “a specialized device ‘not in general public use’” to detect details about the interior of a home that are normally hidden from view, it found that this Court’s precedent does not treat dog sniffs as a search. *Id.* at 8a (quoting *Kyllo*, 533 U.S. at 40).

Quoting this Court’s decisions, the court of appeals explained that the “interest in possessing contraband cannot

be deemed ‘legitimate,’” Pet. App. 8a (quoting *Illinois v. Caballes*, 543 U.S. 405, 408 (2005)); that a dog sniff “exposes ‘only the presence or absence of narcotics, a contraband item,’” *id.* at 9a (quoting *United States v. Place*, 462 U.S. 696, 707 (1983)); and that a dog sniff therefore “cannot violate any reasonable expectation of privacy.” *Ibid.* (citing *Place*, 462 U.S. at 707). And it further explained that this Court’s logic was not tied to the dog sniffs of a car or luggage that provided the backdrop for those decisions, but instead applies equally to a residence. *Id.* at 9a-10a.

The court of appeals also explained that the dog sniff was not an invasion of any property-based interests. Pet. App. 11a. The court disagreed with petitioner’s contention that the area outside his door “qualifies * * * as protected ‘curtilage.’” *Ibid.* (citation omitted). Applying the four factors identified in *United States v. Dunn*, 480 U.S. 294 (1987)—“proximity of the area claimed to be curtilage to the home, whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing”—the court of appeals found that “as the district court explained, th[e] area was part of a common hallway, used regularly by other building residents and by building cleaning staff,” and “despite locks at the front door, entry to the interior hallways was not restricted * * * because building management routinely granted consent to enter on request.” Pet. App. 11a-13a (citations and internal quotation marks omitted).

The court of appeals rejected petitioner’s contrary argument that “*Dunn*’s first factor—proximity of purported curtilage to the home—weighs so heavily in his favor that it is dispositive.” Pet. App. 13a. While accepting

that the factor “has been treated as highly relevant” in some cases, the court found the “context of those cases is critically different” because petitioner, unlike the defendants in those cases, lacked “the right to exclude others” from the area at issue. *Id.* at 13a-14a. In doing so, the court stressed that that “[m]ulti-dwelling units come in all kinds of configurations, and some may include ‘common’ areas different from the apartment hallway here,” and that “[o]ther cases may present different factual twists.” *Id.* at 16a. And the court made clear that it “h[e]ld only that on the facts as found by the district court and disputed by neither party, the police did not intrude on Fourth Amendment-protected curtilage when they conducted a dog sniff in the common hallway just outside [petitioner’s] apartment door.” *Id.* at 17a.

ARGUMENT

Petitioner renews his contentions that a drug-detection dog’s sniff outside his apartment infringed his reasonable expectation of privacy (Pet. 19-22), and that officers trespassed on his curtilage by entering a common hallway area outside his apartment (Pet. 22-24). The court of appeals correctly rejected those contentions, and petitioner identifies no conflict warranting further review in this case. In addition, this case would be an unsuitable vehicle for resolving the question presented because petitioner’s challenge to the denial of his suppression motion independently fails on two alternative grounds advanced by the government below that the court of appeals did not need to reach. This Court has previously denied petitions raising similar issues. See *Makell v. United States*, 586 U.S. 1051 (2018) (No. 18-5509); *Lewis v. United States*, 143 S. Ct. 2499 (2023) (No. 22-6774). It should follow the same course here.

1. The court of appeals correctly affirmed the district court's determination that the dog sniff outside petitioner's apartment door did not infringe petitioner's reasonable expectation of privacy.

a. This Court has repeatedly held that a sniff by a drug-detection dog is not a search for Fourth Amendment purposes because it does not infringe any legitimate privacy interest. The Court first addressed the issue in *United States v. Place*, 462 U.S. 696 (1983), which considered whether a drug-detection dog's sniff of luggage at an airport constituted a Fourth Amendment search.

The Court determined that it did not, reasoning that a "canine sniff is *sui generis*" because it "discloses only the presence or absence of narcotics, a contraband item." *Place*, 462 U.S. at 707. The Court accordingly explained that even though "the sniff tells the authorities something about the contents of the luggage," the information obtained is so limited that it does not infringe a protected privacy interest and so does "not constitute a 'search.'" *Ibid.* And in *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000), the Court applied *Place*'s reasoning to a drug-detection dog's sniff of a car at a drug-interdiction checkpoint. *Id.* at 40.

In *Illinois v. Caballes*, 543 U.S. 405 (2005), the Court reaffirmed that a drug-detection dog's sniff does not intrude on any legitimate privacy interest, holding that the Fourth Amendment permits police to use a drug-detection dog to sniff a vehicle during a valid traffic stop. *Id.* at 407-409. The Court explained that "any interest in possessing contraband cannot be deemed 'legitimate,' and thus, governmental conduct that *only* reveals the possession of contraband 'compromises no legitimate privacy interest.'" *Id.* at 408 (quoting *United States v. Jacobsen*, 466 U.S. 109, 123 (1984)).

The Court observed that its holding was “entirely consistent” with *Kyllo v. United States*, 533 U.S. 27 (2001), which had held that the use of a thermal-imaging device to detect the growth of marijuana in a house constituted an unlawful search. *Caballes*, 543 U.S. at 409. The Court explained that the device in *Kyllo* “was capable of detecting lawful activity—in that case, intimate details in a home, such as ‘at what hour each night the lady of the house takes her daily sauna and bath.’” *Id.* at 409-410 (quoting *Kyllo*, 533 U.S. at 38). In contrast, “[a] dog sniff conducted during a concededly lawful traffic stop that reveals no information other than the location of a substance that no individual has any right to possess does not violate the Fourth Amendment.” *Id.* at 410.

b. Petitioner here does not dispute that the dog sniff outside his apartment door revealed only the presence of illegal drugs. Thus, as the court of appeals recognized, a straightforward application of this Court’s precedent establishes that the dog sniff did not infringe petitioner’s reasonable expectation of privacy. See Pet. App. 8a-10a.

Petitioner offers no sound basis in this Court’s precedent for his contention (Pet. 25-27) that *Place* and *Caballes* should not apply to dog sniffs conducted outside a home, as opposed to sniffs of luggage or the outside of a car. As the court of appeals recognized, the reasoning of *Place* and *Caballes* is “categorical, not context-specific.” Pet. App. 10a. Those decisions establish that an individual’s legitimate expectation of privacy in his lawful activities is “categorically distinguishable” from any “hopes or expectations concerning the nondetection of contraband” in his possession. *Caballes*, 543 U.S. at 410. That principle is consistent with and draws support from other precedent in analogous contexts, including this Court’s holding in *Jacobsen* that a chemical test that reveals

only the presence or absence of contraband “compromises no legitimate privacy interest” and therefore does not constitute “a search subject to the Fourth Amendment.” 466 U.S. at 123-124.

This Court’s opinion in *Florida v. Jardines*, 569 U.S. 1 (2013), does not support petitioner’s reasonable-expectation-of-privacy claim. In *Jardines*, the Court held that police officers conducted a Fourth Amendment search when they took a drug-sniffing dog onto the front porch of a house owned by a suspect, and the dog moved to the base of the front door and alerted to the presence of drugs inside the house. *Id.* at 3-4, 11-12. The Court concluded that the officers’ actions amounted to a Fourth Amendment search because they had trespassed on a constitutionally protected area (the front porch) and exceeded the scope of any implied license to approach the front door when they brought a drug-sniffing dog to explore the area in hopes of obtaining evidence of a crime. *Id.* at 7-9. Because that physical intrusion was “enough to establish that a search occurred,” the Court had no need to, and did not, “decide whether the officers’ investigation of Jardines’ home violated his expectation of privacy.” *Id.* at 11.

Instead of relying on this Court’s precedent, petitioner instead invokes the view expressed in a three-Justice concurrence in *Jardines* that a privacy violation had occurred in that case. Pet. 20; see *Jardines*, 569 U.S. at 12-16 (Kagan, J., concurring). But four dissenting Justices, in the only other opinion to address that question in *Jardines*, saw “no basis for concluding that the occupants of a dwelling have a reasonable expectation of privacy in odors that emanate from the dwelling and reach spots where members of the public may lawfully stand.” 569 U.S. at 24 (Alito, J., dissenting). Similarly, no other

Justices endorsed the view that use of a drug-detection dog constitutes, like the thermal-imaging device at issue in *Kyllo*, “a device that is not in general public use” that enables the government “to explore details of the home that would previously have been unknowable without physical intrusion,” such that “police officers cannot use it to examine a home without a warrant.” *Id.* at 14-15 (Kagan, J., concurring) (quoting *Kyllo*, 533 U.S. at 40).

Petitioner also echoes (Pet. 21) Justice Souter’s *Caballes* dissent in asserting that dog sniffs should be treated as “modern investigatory techniques that are the functional equivalent of home invasions, like the thermal-imaging device in *Kyllo*.” While the dissent sought to “rethink[] *Place*’s analysis” based in part on *Kyllo*, the Court did not do so. *Caballes*, 543 U.S. at 411 (Souter, J., dissenting); see *id.* at 413-414 & n.3 (citing *Kyllo*, *supra*). But petitioner does not explain why Cody, the drug-detection dog that sniffed his door, is analogous to a thermal-imaging device. To the contrary, a dog “is not a new form of ‘technology’ or a ‘device,’” and “the use of dogs’ acute sense of smell in law enforcement dates back many centuries.” *Jardines*, 569 U.S. at 25 (Alito, J., dissenting). Nor did petitioner present any evidence below to support the analogy he seeks to draw.

2. Petitioner separately contends (Pet. 22-24) that the drug-detection team’s entry into the area of the hallway outside his apartment constituted a search because it trespassed on the curtilage of his home. The court of appeals correctly affirmed the district court’s rejection of that factbound claim on the record in this case.

a. This Court has set forth four factors to inform the inquiry whether an area is constitutionally protected curtilage: (1) proximity to the home; (2) whether the area is

included within an enclosure surrounding a home; (3) the nature and uses of the area; and (4) the steps taken by the resident to protect the area from observation by people passing by. *United States v. Dunn*, 480 U.S. 294, 301 (1987). In this case, the lower courts correctly applied the *Dunn* factors to the specific facts of this case to find that the area in front of petitioner’s apartment door is not curtilage of his apartment.

Although the hallway was within the locked doors to the main entry of the apartment complex, entrance to the hallway was in practice “‘not restricted . . . in any way’ because building management ‘routinely’ granted consent to enter on request.” Pet. App. 13a (quoting *id.* at 56a, 58a). The area was “part of a common hallway, used regularly by other building residents and by building cleaning staff” in addition to non-resident visitors, *id.* at 12a-13a, all of whom “would routinely walk past [petitioner’s] door on their way to and from the elevators,” *id.* at 4a. And although the area at issue was close to his door, the “context” showed petitioner’s lack of a right to exclude others from it. See *id.* at 13a-14a. Nor had petitioner even attempted to signal exclusivity or control by placing personal possessions in the area. *Id.* at 4a.

Contrary to petitioner’s contention (Pet. 23), the decision below does not conflict with this Court’s decisions in *Jardines* and *Collins v. Virginia*, 584 U.S. 586 (2018), neither of which addressed the constitutional status of an apartment building’s common areas. As the court of appeals observed, the defendant in *Jardines*, “as the owner of the property, had a right to exclude others from his front porch,” whereas petitioner had no such right to exclude others from the common hallway outside his apartment. Pet. App. 16a n.7. Similarly, *Collins*, which

the court of appeals noted, *id.* at 11a, addressed a partially enclosed driveway abutting a house, *Collins*, 584 U.S. at 593-594, not the common area of an apartment building. Neither case conflicts with the court of appeals' limited finding pursuant to *Dunn* that, "on the facts as found by the district court and disputed by neither party, the police did not intrude on Fourth Amendment-protected curtilage when they conducted a dog sniff in the common hallway just outside [petitioner's] apartment door." Pet. App. 17a.

3. Petitioner contends (Pet. 11-18) that lower courts have divided on both issues that he has raised. But petitioner identifies only a shallow conflict on the reasonable-expectation-of-privacy issue, and no conflict at all on the factbound curtilage issue. Neither issue warrants further review in this case.

As to a reasonable expectation of privacy, petitioner contends (Pet. 12-15) that the decision below conflicts with two decisions by other circuits holding that a drug-detection dog's sniff outside an apartment door infringed an apartment dweller's reasonable expectation of privacy. See *United States v. Thomas*, 757 F.2d 1359 (2d Cir. 1985), cert. denied, 474 U.S. 819 (1985), and 479 U.S. 818 (1986); *United States v. Whitaker*, 820 F.3d 849 (7th Cir. 2016). But as petitioner acknowledges, the forty-year-old Second Circuit case on which he relies, *Thomas*, has been subject to "criticism," Pet. 14, and the Second Circuit has recently "declin[ed] to extend it" in recognition that its analysis "has fallen out of favor," *United States v. McKenzie*, 13 F.4th 223, 233 (2021), cert. denied, 142 S. Ct. 2766 (2022). Similarly, the Seventh Circuit has recently "distinguished" and declined to "extend" the decision of that court, *Whitaker*, on which petitioner relies.

United States v. Lewis, 38 F.4th 527, 533, 535 (2022), cert. denied, 143 S. Ct. 2499 (2023).

On the curtilage issue, petitioner contends (Pet. 14-15) that the decision below conflicts with two state-court decisions finding that an area outside an apartment door was curtilage. But neither of those decisions addressed facts analogous to this case. In each of those state cases, the defendant lived on the top floor of a small apartment building and shared a landing with a small number of other tenants. See *State v. Rendon*, 477 S.W.3d 805, 806-807 (Tex. Crim. App. 2015) (defendant lived on second floor of four-unit building); *People v. Bonilla*, 120 N.E.3d 930, 932 (Ill. 2018) (defendant lived on third floor of 12-unit building), cert. denied, 589 U.S. 916 (2019). Thus, the areas at issue in those cases were “semi-private,” *Rendon*, 477 S.W.3d at 810, and effectively “not open to the general public,” *Bonilla*, 120 N.E.3d at 936 (deeming case materially similar to previous case with such a finding).

In this case, in contrast, the Greenwich Place apartment complex housed “well over 100 separate apartments,” C.A. App. 363, and entrance to the building’s common areas was effectively “not restricted to residents in any way,” Pet. App. 58a. Petitioner’s apartment was located on a long hallway serving numerous units, close to the common elevator and stairwell, and the area at issue was frequented by other tenants, non-resident visitors, and the building’s cleaning staff. See pp. 14-16, *supra*.

Given those facts, it is far from clear that any court would conclude that the area outside petitioner’s apartment door constitutes curtilage. Instead, the state-court decisions on which he relies are expressly factbound. See *Bonilla*, 120 N.E.3d at 933 (“Obviously, our legal analysis on a motion to suppress is heavily dependent on the specific facts of each case”); *Rendon*, 477 S.W.3d

at 810 (“We * * * narrowly hold that the curtilage extended to appellee’s front-door threshold located in a semi-private upstairs landing”).

Conversely, the court of appeals in this case recognized that “[m]ulti-dwelling units come in all kinds of configurations” and therefore took care to limit its holding to “the facts as found by the district court and disputed by neither party.” Pet. App. 16a-17a. No further review of the factbound curtilage determination in this case is warranted. See Sup. Ct. R. 10; *United States v. Johnston*, 268 U.S. 220, 227 (1925) (“We do not grant a [writ of] certiorari to review evidence and discuss specific facts.”); see also *Kyles v. Whitley*, 514 U.S. 419, 456-457 (1995) (Scalia, J., dissenting) (“[U]nder what we have called the ‘two-court rule,’ the policy [in *Johnston*] has been applied with particular rigor when district court and court of appeals are in agreement as to what conclusion the record requires.”) (citing *Graver Tank & Mfg. Co. v. Linde Air Prods. Co.*, 336 U.S. 271, 275 (1949)).

4. At all events, this case would be an unsuitable vehicle to address the question presented because petitioner’s challenge to the denial of his suppression motion independently fails on two alternative grounds advanced by the government below but not addressed by the court of appeals. See *Dandridge v. Williams*, 397 U.S. 471, 475 n.6 (1970) (prevailing party may rely on any ground to support the judgment, even if not considered below); Gov’t C.A. Br. 36-39. This Court does not grant a writ of certiorari to “decide abstract questions of law * * * which, if decided either way, affect no right” of the parties. *Supervisors v. Stanley*, 105 U.S. 305, 311 (1882); see *Herb v. Pitcairn*, 324 U.S. 117, 126 (1945) (“[O]ur power is to correct wrong judgments, not to revise opinions.”).

a. First, suppression of the evidence resulting from the dog sniff outside petitioner’s apartment door is unwarranted under the good-faith exception to the exclusionary rule.

The exclusionary rule is a “judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect.” *United States v. Leon*, 468 U.S. 897, 906 (1984) (quoting *United States v. Calandra*, 414 U.S. 338, 348 (1974)). This Court has emphasized, however, that suppression is an “extreme sanction,” *id.* at 916, recognizing that the “exclusion of relevant incriminating evidence always entails” “grave” societal costs, *Hudson v. Michigan*, 547 U.S. 586, 595 (2006). Most obviously, it allows “guilty and possibly dangerous defendants [to] go free—something that ‘offends basic concepts of the criminal justice system.’” *Herring v. United States*, 555 U.S. 135, 141 (2009) (quoting *Leon*, 468 U.S. at 908).

This Court has accordingly held that, “[t]o trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system.” *Herring*, 555 U.S. at 144. Suppression may be warranted “[w]hen the police exhibit ‘deliberate,’ ‘reckless,’ or ‘grossly negligent’ disregard for Fourth Amendment rights.” *Davis v. United States*, 564 U.S. 229, 238 (2011) (quoting *Herring*, 555 U.S. at 144). “But when the police act with an objectively reasonable good-faith belief that their conduct is lawful, * * * the deterrence rationale loses much of its force, and exclusion cannot pay its way.” *Ibid.* (citation and internal quotation marks omitted). Reliance on “binding appellate precedent” can establish the applicability of the good-faith exception. *Id.* at 241.

As the government argued in the court of appeals, those principles confirm that suppression would not be appropriate here even if a Fourth Amendment violation occurred. Gov't C.A. Br. 40-43. As petitioner acknowledges (Pet. 15-16), well before the Maryland state officers conducted the dog sniff in this case, the Court of Appeals of Maryland—that State's highest court—had held that “a sniff of an apartment door from a common area is a permissible non-search under the Fourth Amendment.” *Fitzgerald v. State*, 864 A.2d 1006, 1007 (2004). And Maryland's intermediate appellate court had reached the same conclusion following *Jardines*. See *Lindsey v. State*, 127 A.3d 627, 641-644 (Md. Ct. Spec. App. 2015), cert. denied, 135 A.3d 417 (Md. 2016); accord *United States v. Makell*, 721 Fed. Appx. 307 (4th Cir.) (per curiam) (non-precedential decision reaching the same result), cert. denied, 586 U.S. 1051 (2018).

It was reasonable for the Maryland officers who conducted the dog sniff outside petitioner's apartment door to rely on the Maryland courts' “binding appellate precedent specifically *authoriz[ing]*” that “particular police practice.” *Davis*, 564 U.S. at 241. Petitioner cannot show that the officers exhibited anything approaching the “‘deliberate,’ ‘reckless,’ or ‘grossly negligent’ disregard for Fourth Amendment rights” that is required to justify the high costs of suppressing evidence of petitioner's crimes. *Id.* at 238 (citation omitted).

b. Second, even if petitioner were to prevail in his challenge to the dog sniff, the warrant application would have established probable cause to search petitioner's apartment without the results of that sniff. Gov't C.A. Br. 36-39. The inclusion of illegally obtained evidence in the warrant affidavit would invalidate the warrant only “if it proved to be critical to establishing probable cause for

the issuance of the warrant.” *United States v. Karo*, 468 U.S. 705, 719 (1984). If, on the other hand, “sufficient untainted evidence was presented in the warrant affidavit to establish probable cause, the warrant was nevertheless valid.” *Ibid.*

The information in the warrant affidavit established probable cause to search petitioner’s apartment even without the canine sniff. The affidavit recounted the extensive wiretap investigation and physical surveillance that led the task force officers to Apartment 201. See pp. 3-7, *supra*. Investigators twice observed Philander Spruill, a known drug trafficker, travel to the Greenwich Place apartment complex shortly after he was intercepted, on the wiretap, informing a potential drug purchaser that he was on his way to obtain drugs from his supplier. Pet. App. 92a-101a.

In both instances, after returning to his residence, Spruill was intercepted on the wiretap arranging to sell the drugs to the would-be purchasers. Pet. App. 92a-101a. In one of those instances, Spruill was observed giving the drug purchaser a grocery bag containing items used to cut and package drugs for street-level sales, which appeared to contain fentanyl residue. *Id.* at 95a-96a. In the other instance, Spruill was heard mixing the drugs in the background of the call while commenting that they were being prepared at that moment. *Id.* at 100a.

Physical surveillance and GPS tracking data revealed that Spruill visited Greenwich Place at least four more times in July and August 2019. Pet. App. 103a-104a. In the same period, investigators observed petitioner and a woman visit Spruill at his residence. *Id.* at 101a-102a. They determined that the car was registered to Latrice Campbell, and found traffic-stop records showing that

petitioner had repeatedly been the driver of that car. *Id.* at 102a. And they learned from Greenwich Place's management that Campbell was the lessee of Apartment 201. *Id.* at 103a.

The affidavit also described petitioner's extensive criminal history, which included multiple convictions for drug trafficking, Pet. App. 88a, and explained that it is common for drug traffickers to conceal contraband, drug proceeds, and records of drug transactions at their residences and residences of their relatives and associates, *id.* at 105a-106a. Thus, even without the results of the dog sniff, the information in the warrant application established probable cause to believe petitioner was selling drugs out of his apartment. See *Karo*, 468 U.S. at 719.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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