

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*

REPLY BRIEF FOR PETITIONER

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
INTRODUCTION.....	1
ARGUMENT.....	3
I. The courts of appeals and state high courts have split 4–5 over whether using a drug- detection canine to sniff the door of an apartment home in a multi-unit building is a Fourth Amendment search.....	3
II. The Fourth Circuit’s decision is wrong.	6
III. The question presented is important and recurring, and this case is an ideal vehicle.....	9
CONCLUSION	12

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Collins v. Virginia</i> , 584 U.S. 586 (2018).....	2, 6, 8, 9
<i>Davis v. United States</i> , 564 U.S. 229 (2011).....	10
<i>Florida v. Jardines</i> , 569 U.S. 1 (2013).....	2, 6, 7, 8, 9
<i>Illinois v. Caballes</i> , 543 U.S. 405 (2005).....	1, 2, 6, 7
<i>Kyllo v. United States</i> , 533 U.S. 27 (2001).....	2, 6, 7
<i>Lange v. California</i> , 594 U.S. 295 (2021).....	2, 7, 10
<i>People v. Bonilla</i> , 120 N.E.3d 930 (Ill. 2018).....	3, 4, 5
<i>Resident Action Council v.</i> <i>Seattle Housing Authority</i> , 174 P.3d 84 (Wash. 2008) (en banc).....	6
<i>State v. Organ</i> , 726 S.W.3d 346 (Tex. Crim. App. 2025).....	5
<i>State v. Rendon</i> , 477 S.W.3d 805 (Tex. Crim. App. 2015).....	3, 5
<i>United States v. Carloss</i> , 818 F.3d 988 (10th Cir. 2016).....	8
<i>United States v. Dunn</i> , 480 U.S. 294 (1987).....	7, 8, 9

TABLE OF AUTHORITIES

(continued)

	Page(s)
<i>United States v. Hayes</i> , 551 F.3d 138 (2d Cir. 2008)	4
<i>United States v. Leon</i> , 468 U.S. 897 (1984).....	10
<i>United States v. Lewis</i> , 38 F.4th 527 (7th Cir. 2022)	4, 12
<i>United States v. McKenzie</i> , 13 F.4th 223 (2d Cir. 2021).....	4
<i>United States v. Place</i> , 462 U.S. 696 (1983).....	1, 2, 6, 7
<i>United States v. Plancarte</i> , 105 F.4th 996 (7th Cir. 2024)	4
<i>United States v. Segoviano</i> , 30 F.4th 613 (7th Cir. 2022)	4
<i>United States v. Thomas</i> , 757 F.2d 1359 (2d Cir. 1985)	3
<i>United States v. Whitaker</i> , 820 F.3d 849 (7th Cir. 2016).....	3, 4
<i>United States v. Wills</i> , 634 F. Supp. 3d 14 (D. Conn. 2022)	4
<i>Ybarra v. Illinois</i> , 444 U.S. 85 (1979).....	11
CONSTITUTION	
U.S. Const. amend. IV.....	1, 2, 3, 4, 6, 7, 9, 10

INTRODUCTION

The government's brief in opposition confirms that the Court should grant review. The government doesn't dispute that the lower courts have split over whether using a drug-detection canine to sniff the door of an apartment home in a multi-unit building is a Fourth Amendment search. Nor does it dispute that the question is important—to millions of Americans. Instead, the government downplays the conflict by relying on merits arguments and irrelevant truisms about how Fourth Amendment cases involve facts. And it suggests that the case isn't a good vehicle even though the Fourth Circuit squarely decided the question and there are no alternative holdings.

1. On the split, the government says the Seventh and Second Circuits haven't extended their privacy-based holdings *beyond* the home to storage units or hotels. That's nonresponsive—the split concerns *the home*. The government has nothing worth saying, because the Seventh and Second Circuits have adhered to their holdings.

The government next says there's no conflict with the Illinois and Texas high courts' holdings that a door is curtilage, because the decisions are factbound. But those courts both relied on the principle—generally applicable, not factbound—that the threshold of the home is curtilage, plain and simple.

Put simply, this case would have come out differently in four other courts.

2. Given the undeniable conflict, the government fixates on the merits. It says that *United States v. Place*, 462 U.S. 696 (1983), and *Illinois v. Caballes*, 543 U.S. 405 (2005)—neither of which involved homes—resolve the question presented under the

privacy-based approach. And on the physical-intrusion-based approach, the government claims that Mr. Johnson’s door isn’t curtilage because other people use the hallway and Mr. Johnson didn’t have personal belongings outside indicating that he could exclude others from the door.

The government’s arguments lack merit, but given the acknowledged disagreement, they aren’t reasons to deny review anyway. A sniff of an apartment door violates reasonable privacy expectations because the dog is a super-sensitive tool used to learn details about the inside of the home that law enforcement couldn’t otherwise discover without physically intruding. *See Kyllo v. United States*, 533 U.S. 27, 40 (2001); *Florida v. Jardines*, 569 U.S. 1, 14-15 (2013) (Kagan, J., concurring). Extending *Place* and *Caballes* to the home would violate the fundamental principle that “the sanctity of a person’s living space” is entitled to “special” Fourth Amendment “protection” *Lange v. California*, 594 U.S. 295, 303 (2021).

The government’s curtilage arguments fare no better. The government ignores the basic point—which studying the common law confirms—that the area just outside an apartment door is curtilage because it is “linked to the home, both physically and psychologically.” *Collins v. Virginia*, 584 U.S. 586, 592-94 (2018). The government would switch off Fourth Amendment rights because visitors or cleaning staff walk the halls or there’s no porch or front yard. The Minutemen didn’t rise up, and the Framers didn’t design the Constitution, to protect only the wealthy, or to favor particular architectural choices.

3. Finally, the government claims this case is a poor vehicle given the good-faith exception to the

exclusionary rule and sufficient untainted evidence to establish probable cause. Those are remand questions for the court of appeals, which didn't reach them. And the Court often grants review—as in *Chatrie v. United States*, No. 25-112 (U.S.) (argument April 27)—despite good-faith arguments. This case is thus an *ideal* vehicle: The government's inapplicable objections only underscore the need to grant *now*, when no alternative holding shields review. The Court should intervene and provide crucial guidance to the lower courts, law enforcement, and millions of Americans.

ARGUMENT

I. The courts of appeals and state high courts have split 4–5 over whether using a drug-detection canine to sniff the door of an apartment home in a multi-unit building is a Fourth Amendment search.

A. The Seventh and Second Circuits hold that a sniff of an apartment door is a search because it violates reasonable expectations of privacy. *United States v. Whitaker*, 820 F.3d 849, 852-54 (7th Cir. 2016); *United States v. Thomas*, 757 F.2d 1359, 1366-67 (2d Cir. 1985). The Illinois and Texas high courts likewise hold that those sniffs are searches because law enforcement intrudes onto the curtilage to discover information. *People v. Bonilla*, 120 N.E.3d 930, 935-37 (Ill. 2018); *State v. Rendon*, 477 S.W.3d 805, 808-11 (Tex. Crim. App. 2015).

1. The government doesn't dispute that the Fourth Circuit split from the Seventh and Second under the privacy-based approach. Instead, it says (Opp. 16-17) that the Seventh and Second Circuits' rulings don't extend beyond the home to hotels and storage units.

So what? That argument just restates the certworthy circuit conflict. The Seventh and Second Circuits have remained steadfast that a sniff of an apartment home violates reasonable expectations of privacy, while declining to apply that reasoning *beyond* the home. For instance, *United States v. Lewis*, 38 F.4th 527, 534-35 (7th Cir. 2022), *reaffirmed Whitaker's* holding while declining to extend it to a hotel. The Seventh Circuit has repeatedly recognized that *Whitaker* is good law. *See, e.g., United States v. Plancarte*, 105 F.4th 996, 1000 (7th Cir. 2024); *United States v. Segoviano*, 30 F.4th 613, 623 (7th Cir. 2022).

Similarly, the Second Circuit reiterated *Thomas's* holding “that a dog sniff outside a closed apartment door violate[s] ... reasonable expectation[s] of privacy” in the home, while declining to extend it to a commercial storage unit. *United States v. McKenzie*, 13 F.4th 223, 232, 235 (2d Cir. 2021). “*Thomas* has never been overruled and remains binding.” *Id.* at 233; *see, e.g., United States v. Hayes*, 551 F.3d 138, 144 (2d Cir. 2008); *United States v. Wills*, 634 F. Supp. 3d 14, 21 (D. Conn. 2022).

2. The government says (Opp. 17-18) there’s no split with the Illinois and Texas high courts because their holdings were factbound. That’s wrong. Both courts hold that a sniff of a door in a multi-unit dwelling is a search because the door is curtilage, and that rule would apply equally here.

a. *Bonilla* held “that the threshold of the door to [the] defendant’s apartment” is curtilage, and “conduct[ing] a dog sniff of the threshold” is a search. 120 N.E.3d at 937, 939. The Fourth Amendment doesn’t “differentiate as to type of home involved,” the court reasoned, *id.* at 937—meaning the court would reach

the same result no matter the building's configuration. *Id.* And "whether the entrance to the common area of the defendant's apartment was unlocked" or locked likewise "is a distinction without a difference." *Id.* at 940. What matters is "use of a drug-detection dog *at the threshold*" of the home. *Id.* at 940-41.

b. *Rendon* holds that officers conduct a search when they "bring a trained drug-detection dog directly up to the front door of an apartment-home for the purpose of conducting a canine-narcotics sniff." 477 S.W.3d at 806, 808. The court recently reaffirmed that rule in *State v. Organ*, 726 S.W.3d 346, 358 n.59 (Tex. Crim. App. 2025). Again, what mattered was "that the dog sniff occurred at the threshold of [the] apartment-home." *Rendon*, 477 S.W.3d at 808. The court's statement that it was "narrowly hold[ing] that the curtilage extended to [the defendant's] front-door threshold located in a semi-private upstairs landing," *id.* at 810, simply explained that it didn't need to decide whether the area *beyond* the threshold of the door was curtilage, too. *See id.* at 808, 811.

B. On the other side, undisputedly, the Eighth Circuit and Maryland high court hold that an apartment-door sniff isn't a search because there's no reasonable expectation of privacy in contraband. And the Fourth Circuit and Minnesota and North Dakota high courts agree that a sniff isn't a search under the privacy- or physical-intrusion-based approach.

C. The split is outcome-determinative. The sniff here would have been an unconstitutional search in the Second and Seventh Circuits—as the government seems to accept—and in Texas and Illinois state court. But it isn't a search in the Fourth or Eighth Circuit, or in Maryland, Minnesota, or North Dakota courts.

II. The Fourth Circuit’s decision is wrong.

A. 1. A drug-dog sniff of an apartment door is a search because it violates reasonable expectations of privacy. Pet. 18-22. The dog is a super-sensitive tool, unavailable to the public, used to discover details about the inside of the home that officers couldn’t otherwise learn without physically intruding. *See Kyllo*, 533 U.S. at 40; *Jardines*, 569 U.S. at 14-15 (Kagan, J., concurring). History confirms that conclusion: The Fourth Amendment was meant to protect security and privacy in Americans’ homes. Pet. 20-22. Bringing a trained canine to the door to detect what’s inside violates the home’s security and privacy.

2. An apartment-door sniff is also a search because the officers physically intrude, without license, onto the curtilage of the home to gather information. *See Jardines*, 569 U.S. at 5-6; Pet. 22-24. “[D]aily experience” shows that the area just outside an apartment door is “linked to the home, both physically and psychologically,” and is thus curtilage. *Collins*, 584 U.S. at 592-94. Indeed, many jurisdictions treat the exterior of an apartment door as part of a tenant’s leasehold interest and recognize the tenant’s right to control the door and exclude others from it. *See, e.g., Resident Action Council v. Seattle Housing Authority*, 174 P.3d 84, 87-88 (Wash. 2008) (en banc); Pet. 24.

B. 1. a. The government acknowledges that neither *Place* nor *Caballes* involved drug-dog sniffs at the home. It nonetheless claims that *Place* and *Caballes* are dispositive because there is “no legitimate privacy interest” in contraband, which is all drug-dogs can detect. Opp. 11. That argument fails.

First, the government ignores this Court’s precedent and historical practice making clear that

“[f]reedom’ in one’s own ‘dwelling is the archetype of the privacy protection secured by the Fourth Amendment.” *Lange*, 594 U.S. at 303. Pet. 20-22, 25-27. *Place* and *Caballes* involved sniffs at an airport and a lawful traffic stop—they didn’t implicate the fundamental principle that the Fourth Amendment treats “the home [as] first among equals.” *Jardines*, 569 U.S. at 6. Indeed, *Kyllo* emphasized that “[i]n the home, ... all details are intimate details, because the entire area is held safe from prying government eyes.” 533 U.S. at 37. The court of appeals erred in extending *Place* and *Caballes* to the home, where tenants suffer severe privacy invasions when a canine’s alert—whether false or not—supposedly justifies entry. See Sacharoff Amicus Br. 2-8; Cato Amicus Br. 4-8; CASA Amicus Br. 12-15.

Second, extending *Place* and *Caballes* to the home contravenes this Court’s repeated refusal to apply Fourth Amendment doctrines for vehicles and public spaces to the home. Pet. 26-27. The government doesn’t bother trying to respond.

b. The government says (Opp. 13-14) *Kyllo* doesn’t apply because (1) *Jardines* didn’t rely on *Kyllo*; and (2) unlike thermal-imaging devices, law enforcement has used dogs for centuries. Those claims fail. *Jardines* didn’t decide the *Kyllo* privacy-based question because it took the physical-intrusion-based approach instead. 569 U.S. at 11. And *Jardines* found “irrelevant the State’s argument ... that forensic dogs have been commonly used by police for centuries.” *Id.* “[T]he antiquity of” law enforcement’s “tools” doesn’t matter. *Id.*

2. The government contends (Opp. 14-16) that the sniff of Mr. Johnson’s door wasn’t a search because

under the factors discussed in *United States v. Dunn*, 480 U.S. 294, 301 (1987), the threshold of an apartment home isn't curtilage. The government relies on three facts: (1) building management allowed people to enter the building; (2) other residents, cleaning staff, and visitors used the hallway; (3) Mr. Johnson didn't have personal possessions outside his door to suggest he could exclude others from the threshold. That argument lacks merit.

First, the government treats the *Dunn* factors like a checklist, but the Court has cautioned that *Dunn* didn't establish a "finely tuned formula." 480 U.S. at 301. *Collins* and *Jardines* didn't even cite *Dunn*, but instead explained that curtilage is "the area 'immediately surrounding and associated with the home,'" *Jardines*, 569 U.S. at 6-7—a "familiar" concept "easily understood from our daily experience," *Collins*, 584 U.S. at 593-94. An apartment door meets that commonsense standard. Common law supports that conclusion too, Pet. 22-23; Pacific Legal Foundation Amicus Br. 10-20. Indeed, "[a]t common law the curtilage was far more expansive than the front porch, sometimes" extending "some 200 yards ... from the dwelling house." *United States v. Carloss*, 818 F.3d 988, 1005 n.1 (10th Cir. 2016) (Gorsuch, J., dissenting). Tellingly, the government offers no response.

Second, whether management allows people to enter the building doesn't matter. The threshold of an apartment door immediately surrounds and is associated with the home regardless. CASA Amicus Br. 18-20. And Mr. Johnson took steps to "protect the area from observation," Opp. 15—he lived in a unit set back several feet from the hallway, App. 55a; Pet. 6-7.

Third, whether other residents, visitors, or cleaning staff use the hallway is irrelevant, too. They don't use *Mr. Johnson's* door, much less snoop outside to detect what's inside his home. Indeed, "[t]o find" others walking down the hall "is routine"; "to spot [those same individuals] exploring" the threshold of your door with a drug dog is not. *Jardines*, 569 U.S. at 9. Nor does the curtilage analysis turn on the right to exclude others from the door. But if it did, "daily experience," *Dunn*, 480 U.S. at 302, and precedent show that apartment dwellers *can* exclude others from the area immediately in front of their homes. Pet. 27-29; see, e.g., Maryland Criminal Defense Attorneys' Association (MCDAA) Amicus Br. 10. Such snooping violates social norms, to boot. Cato Amicus Br. 8-12.

Finally, Fourth Amendment rights don't turn on whether tenants keep personal belongings outside their door. The curtilage inquiry asks whether the area is "linked to the home, both physically and psychologically," *Collins*, 584 U.S. at 592-94, not how many shoes or umbrellas the tenant leaves outside his door. See MCDAA Br. 5, 8. And common sense—not to mention the common law—provides the easy answer.

III. The question presented is important and recurring, and this case is an ideal vehicle.

A. The question presented is critically important to millions of Americans; it regularly recurs; and this case, which presents no alternative holdings, is an ideal vehicle. Pet. 31-33. The Fourth Circuit's rule means that constitutional protections will often fall along racial or socioeconomic lines, even though the many Americans who live in multi-unit dwellings should have the same rights, nationwide, as those who live in single-family homes.

B. 1. The government doesn't dispute that the question presented is important. It simply ignores importance and all the amicus briefs emphasizing importance and urging review. Instead, the government invokes (Opp. 19-20) the good-faith exception to the exclusionary rule, arguing that officers relied on Maryland precedent holding that a sniff of an apartment door isn't a search. But that argument isn't a reason to deny review, and it fails on its own terms.

First, neither the court of appeals nor the district court ruled on the good-faith exception, making this case an ideal vehicle. *See* App. 1a-17a, 54a-60a.

Second, the Court often reviews Fourth Amendment questions even when the government invokes the good-faith exception. *See, e.g.*, Opp. 9, 13-17, *Chatrie*, No. 25-112; Opp. 8-9, *Lange v. California*, No. 20-18; Opp. 29-31, *Carpenter v. United States*, No. 16-402. That makes sense. Denying cert based on the good-faith exception would insulate important Fourth Amendment issues from this Court's review, leaving lower courts divided and justice uneven nationwide.

Third, "it frequently will be difficult to determine whether the officers acted reasonably without resolving the Fourth Amendment issue." *United States v. Leon*, 468 U.S. 897, 924-25 (1984). It thus makes sense to grant cert to resolve the Fourth Amendment question, and leave any good-faith question for remand.

Finally, the good-faith argument fails anyway. No binding federal "precedent specifically *authorize[d]*" the sniff, *Davis v. United States*, 564 U.S. 229, 241 (2011), which ignores this Court's precedent making clear that the home enjoys heightened Fourth Amendment protections. Officers couldn't reasonably rely on state court decisions suggesting otherwise.

2. The government asserts (Opp. 20-22) there was probable cause to secure a warrant even without the sniff. That argument isn't a reason for denying certiorari either, and it's also incorrect.

As with good faith, the court of appeals didn't reach the probable-cause question. The question likewise presents no reason to delay review of the important constitutional question, which has divided the lower courts.

What's more, without the sniff, the warrant didn't establish probable cause to search Apartment 201. The affidavit reasoned that evidence would be found there because (i) Philander Spruill met there with Latrice Campbell or Mr. Johnson; (ii) Campbell or Mr. Johnson was a drug dealer; and (iii) drug dealers keep contraband at home. App. 101a-110a. That logic fails.

The affidavit doesn't offer information suggesting that Campbell or Mr. Johnson met Spruill at Greenwich Place, or that Campbell was a drug dealer. Nor does the affidavit offer information suggesting that Mr. Johnson lived in Apartment 201. At most, it suggests that he drove a car registered to someone who leased that apartment. And investigators didn't "observe[] petitioner" at Spruill's home. *Contra* Opp. 21. What the affidavit *actually* says is that an "unknown black male" who visited Spruill and the person pictured in Mr. Johnson's driver's license "appear[ed] to possibly be the same person." App. 102a. And even if the affidavit established that Campbell or Mr. Johnson was associated with a suspected drug dealer, that doesn't mean there was probable cause to believe *they* were drug dealers storing contraband in Apartment 201. *Cf. Ybarra v. Illinois*, 444 U.S. 85, 91 (1979).

3. The government cites two prior denials (Opp. 10). But *Lewis* concerned a *hotel*, not a home. *Supra* p. 4. And *Makell v. United States*, No. 18-5509, involved an unpublished decision and poorly developed arguments, before the decision here and other Second and Seventh Circuit decisions have deepened and entrenched the split.

CONCLUSION

The Court should grant the petition.

Respectfully submitted.

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