No. _____

IN THE
Supreme Court of the United States

RYAN AUSTIN COLLINS,
Petitioner,

v.

COMMONWEALTH OF VIRGINIA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Fourth Amendment's automobile exception permits a police officer, uninvited and without a warrant, to enter private property, approach a home, and search a vehicle parked a few feet from the house.

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Petitioner Ryan Austin Collins respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Virginia.

OPINIONS BELOW

The opinion of the Supreme Court of Virginia is reported at 790 S.E.2d 611 (Va. 2016). App. 1. The decision of the Court of Appeals of Virginia is reported at 773 S.E.2d 618 (Va. Ct. App. 2015). App. 32. The decision of the Circuit Court of Albemarle County was issued from the bench and is not reported, but is reprinted at App. 50.

JURISDICTION

The Supreme Court of Virginia entered judgment on September 15, 2016. App. 26. It then denied Collins's petition for rehearing on November 22, 2016. App. 111. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourth Amendment to the United States Constitution reads:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Virginia Code § 18.2-108, upon which Collins was convicted, reads:

A. If any person buys or receives from another person, or aids in concealing, any stolen goods or other thing, knowing the same to have been stolen, he shall be deemed guilty of larceny thereof, and may be proceeded against, although the principal offender is not convicted.

B. If any person buys or receives any goods or other thing, used in the course of a criminal investigation by law enforcement that such person believes to have been stolen, he shall be deemed guilty of larceny thereof.

STATEMENT OF THE CASE

I. Factual history.

The facts are not in dispute. Officers McCall and Rhodes of the Albemarle County Police Department were looking for the person who eluded them on a motorcycle in two high-speed incidents. App. 3. The rider's helmet had obscured his face. App. 3, 67, 70. For reasons not relevant here, the officers suspected Petitioner, Ryan Collins. App. 3, 5.

A few months after the eluding incidents, Officers McCall and Rhodes encountered Collins at the DMV. App. 5. During their conversation, one officer visited Collins's Facebook page and spotted a picture of a motorcycle, covered by a tarp, parked at a house. Collins told the officers he did not know anything about the motorcycle. App. 5.

After leaving the DMV, Officer Rhodes located the house in the photograph on Dellmead Lane. App.

5-6. Collins's girlfriend (and mother to his child) lived there, as did Collins himself at least several nights each week. App. 27, 91. The court below thus referred to the Dellmead Lane house as "Collins's residence," which is accurate for Fourth Amendment purposes.[1] App. 12.

The Dellmead Lane house was a brick rancher. App. 56-57. Its driveway ran from the street up to the left side of the house. App. 30, 112 (photograph). The driveway passed the front threshold of the house, and came to a dead end about halfway alongside the left side of the building. App. 30, 114 (photograph).

A dark colored car was parked about halfway up the driveway, where a visitor might pass to reach the front door. App. 112-13 (photographs). A motorcycle covered in a white tarp sat behind that car. App. 6, 112-13 (photographs). The motorcycle rested on the part of the driveway running past the house's front perimeter. App. 30. This portion of the driveway was enclosed on three sides: the home on one side, a brick retaining wall on the opposite side, and a brick wall in the back. App. 30, 57, 114 (photograph). The motorcycle was no more than a car's length away from the side of the dwelling. App. 30, 114 (photograph).

Seeing the motorcycle covered in a tarp, Officer Rhodes walked onto the driveway. App. 6. He did not have permission to go onto this property. App. 88. Officer Rhodes then entered the partially enclosed parking space alongside the home, removed the tarp, and obtained the license tag and VIN number. App. 6.

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[1] "An overnight guest in a home may claim the protection of the Fourth Amendment." *Minnesota v. Carter*, 525 U.S. 83, 90 (1998).

After running the VIN number, Officer Rhodes learned the motorcycle was flagged as stolen. App. 6. Officer Rhodes knocked at the front door, and Collins answered. App. 6. Collins admitted that he owned the motorcycle. App. 7-8. Officer Rhodes then arrested Collins for possession of stolen goods. App. 8.

II. Proceedings below.

Collins was charged with receiving stolen property with knowledge that it was stolen. App. 8.

Moving to suppress, Collins challenged Officer Rhodes's trespass onto curtilage as unconstitutional. App. 8, 97-98. Collins also argued that the automobile exception did not apply to vehicles located on private property. App. 8, 97-98, 103-04. The Circuit Court of Albemarle County denied the motion to suppress. App. 10. Collins was later convicted of the charge. App. 10.

Collins appealed. The Court of Appeals of Virginia observed that the Commonwealth "[did] not dispute that Officer Rhodes's actions constituted [Fourth Amendment] searches." App. 38. The court reasoned that the only question before it was what exceptions (if any) to the Warrants Clause justified Officer Rhodes's warrantless searches. App. 38.

The Court of Appeals assumed the partially enclosed parking space where the motorcycle was parked was curtilage. App. 40-41. The court also reflected in a footnote that the automobile exception might not apply to vehicles on private property. App. 43. But the court held "Officer Rhodes acted lawfully under the Fourth Amendment in entering the property and searching the motorcycle." App. 44.

Collins again appealed, and the Supreme Court of Virginia granted his petition.

The court applied what it called a "simple, bright-line test for the automobile exception." App. 14. "If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment permits police to search the vehicle without more." App. 14-15 (quoting *Maryland v. Dyson*, 527 U.S. 465, 467 (1999)). Simply applying this rule to the motorcycle and facts of this case, the court held that probable cause existed. App. 15 ("Officer Rhodes had several reasons to believe the motorcycle was contraband."). Nor was there any real question that the motorcycle was "readily mobile." Accordingly, the warrantless searches were lawful. *Id.*

The court then added that the automobile exception applied to the motorcycle even though it was located on private property. App. 19-20. The court's justification was threefold. First, the U.S. "Supreme Court has never limited the automobile exception such that it would not apply to vehicles parked on private property." App. 20. Second, "[o]ur Court has held that there is no reasonable expectation of privacy in a vehicle parked on private property yet exposed to public view." App. 20. Third, *Coolidge v. New Hampshire*, 403 U.S. 443 (1971), and *California v. Carney*, 471 U.S. 386 (1985), "did not distinguish the automobile exception on a public roadway versus on a private driveway." App. 20. Instead, *Carney* focused only on finding that the automobile exception applied to a motor home. App. 20. And any reliance on *Coolidge* "is misguided" because "the *Coolidge* plurality opinion cannot be fairly read to create a bright-line rule precluding warrantless searches on

private property under all circumstances." App. 21 (quoting *United States v. Brookins*, 345 F.3d 231, 237 (4th Cir. 2003)). The court then held that the automobile exception applies to a vehicle located on private property. App. 21-22.

The court concluded that Officer Rhodes' Fourth Amendment searches were "justified" under the automobile exception, and affirmed. App. 26; App. 111 (denying rehearing).

REASONS FOR GRANTING THE PETITION

The issue here is whether the automobile exception permits police to enter private, residential property (specifically, the curtilage of the home), and to search vehicles there without a warrant.

The Supreme Court of Virginia held that the automobile exception permits such a warrantless search. That was a serious constitutional error.

To be sure, the automobile exception is easily applied to most circumstances. In general, if "a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment . . . permits police to search the vehicle without more." *Maryland v. Dyson*, 527 U.S. 465, 467 (1999).

But this Court has always stopped short of applying that rule on private, residential property. *Coolidge v. New Hampshire*, 403 U.S. 443, 474-75, 479-80, 482 (1971) (majority opinion); *id.* at 458-64 (plurality opinion) (police towed a car from the defendant's driveway after arresting him; the court found no automobile exception applied). Residential private property implicates heightened privacy

interests different from cars operating on public streets, parking lots, or gas stations. A search of a vehicle pulled over on the side of a public highway is constitutionally different from a search of a vehicle parked alongside a house. *California v. Carney*, 471 U.S. 386, 392-93 (1985).

If police can search a car *wherever* they find it with no warrant, this Court's protection of the curtilage will lose much of its value. *Florida v. Jardines*, 133 S. Ct 1409, 1414-15 (2013) (observing that curtilage should receive the same protections as the home).

Yet the Supreme Court of Virginia is not alone in broadening the automobile exception. *See, e.g., United States v. Hatley*, 15 F.3d 856, 859 (9th Cir. 1994) (holding that "the vehicle exception applies to a search of a vehicle parked in a private driveway" and permitting a warrantless search of the defendant's car in his driveway); *Harris v. State*, 948 So.2d 583, 597 (Ala. Ct. Crim. App. 2006) (holding that "the automobile exception applies to vehicles located on private property without any additional exigency requirement," and permitting a warrantless search of a vehicle parked *behind* the defendant's house).

Other courts, however, properly disagree. *United States v. Fields*, 456 F.3d 519, 524-25 (5th Cir. 2006) (holding that "the automobile exception may not apply when a vehicle is parked at the residence of the criminal defendant"); *State v. Vickers*, 793 S.E.2d 167, 171 (Ga. Ct. App. 2016) (holding that "vehicles, like any other item or location within the curtilage of a residence, are not to be searched without a warrant, consent, or exigent circumstances" and refusing the apply the exception to a search of a car in a

defendant's driveway); *Redwood v. Lierman*, 772 N.E.2d 803, 813 (Ill. App. Ct. 2002) (observing that "one's backyard is a vastly different place, for purposes of the Fourth Amendment, than a public street," and refusing the apply the automobile exception to a vehicle parked on curtilage).

Certiorari is warranted here to resolve the split of authority and to clarify the proper scope of the automobile exception to the Fourth Amendment's warrant requirement.

I. The Supreme Court of Virginia erred by significantly expanding the automobile exception.

A. The automobile exception does not permit officers to enter curtilage.

The court below applied a "simple, bright-line test for the automobile exception." App. 14. Quoting *Maryland v. Dyson*, the court reflected "[i]f a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment permits police to search the vehicle without more." App. 14-15. Simply applying this rule to the motorcycle and facts of the case, the court held the warrantless searches lawful. App. 15.

This Court's "bright line rule" cannot apply to vehicles parked on private, residential property—particularly the curtilage of the home. If it did, any vehicle with probable cause could be searched anywhere, any time. Officers could creep into garages and carports at night, removing tarps, rummaging for contraband in glove boxes. If officers can intrude upon curtilage to search a vehicle, there is no reason why

they could not walk through a house to reach a car in the backyard. All of this could occur with no warrant and no special exigency. *Dyson*, 527 U.S. at 466 (the automobile exception "has no separate exigency requirement").

The automobile exception has two premises—inherent mobility and a reduced expectation of privacy. *Carney*, 471 U.S. at 390-92. Both are unique to vehicles.

The second of these premises is absent in the curtilage of the home. The law "regard[s] the area immediately surrounding and associated with the home—what our cases call the curtilage—as part of the home itself for Fourth Amendment purposes." *Jardines*, 133 S. Ct. at 1414. "At common law, the curtilage is the area to which extends the intimate activity associated with the sanctity of a man's home and the privacies of life, and therefore has been considered part of home itself for Fourth Amendment purposes." *Oliver v. United States*, 466 U.S. 170, 180 (1984). "This area around the home is intimately linked to the home, both physically and psychologically, and is where privacy expectations are most heightened." *Jardines*, 133 S. Ct. at 1415. "The protection afforded the curtilage is essentially a protection of families and personal privacy." *California v. Ciraolo*, 476 U.S. 207, 212-13 (1986).

Accordingly, the automobile exception has never authorized warrantless searches intruding upon places like the home. *See United States v. Martinez-Fuerte*, 428 U.S. 543, 561 (1976) ("[O]ne's expectation of privacy in an automobile and of freedom in its operation are significantly different from the traditional expectation of privacy and

freedom in one's residence."). The automobile exception does not permit police to search homes and curtilage, even if they are ultimately looking for a vehicle. "[N]o Supreme Court decision allows warrantless entry into areas of a home or business where the owner has a reasonable expectation of privacy simply because the police are in search of an automobile." *Binder v. Redford Twp. Police Dep't*, 93 F. App'x 701, 703 (6th Cir. 2004) (holding that an officer's warrantless entry into a garage to seize a motorcycle was not justified by the automobile exception).

B. The search here intruded on the curtilage of the home.

Here, Officer Rhodes walked into a partially enclosed space alongside the house. He did not "walk and talk" up to the front porch. *See Jardines*, 133 S. Ct. at 1415 n.1. Instead, to investigate the motorcycle, Officer Rhodes walked past the front porch. App. 30, 113-14 (photographs). The motorcycle was enclosed on three sides: the home on one side, a "retaining wall" on the opposing side, and a brick wall along the back. App. 30, 57, 114. Only the entryway into the parking space was open. This private space was a dead end, where home visitors would not normally walk. *Jardines*, 133 S. Ct. at 1422 (Alito, J., dissenting) ("Of course, this license has certain spatial and temporal limits. A visitor must stick to the path that is typically used to approach a front door, such as a paved walkway.").

As the photographs show, the motorcycle sat just a few feet from the side of the house, "beyond the front perimeter wall of the house." App. 30, 112-14.

This was curtilage, as "easily understood from our daily experience." *Jardines*, 133 S. Ct. at 1414-15 ("[The Fourth Amendment's protection of the home] would be of little practical value if the State's agents could stand in a home's porch or side garden and trawl for evidence with impunity; the right to retreat would be significantly diminished if the police could enter a man's property to observe his repose from just outside the front window.").

In fact, "[t]he Commonwealth does not dispute that Officer Rhodes's actions constituted searches." App. 38. If the partially enclosed parking space was not curtilage, there would be no Fourth Amendment search by entering into the area. Officer Rhodes would have simply walked on an "open field." *United States v. Jones*, 565 U.S. 400, 411 (2012). By conceding that entering the area was a Fourth Amendment search, the Commonwealth conceded that the partially enclosed parking space was curtilage. *See id.*

II. There is no proper justification for expanding the automobile exception.

The Supreme Court of Virginia's primary error was simply applying an apparent bright-line rule to circumstances that are meaningfully different. App. 14-15 (quoting *Dysons* and "applying that test").

Along the way, the court made several errors. First, it wrongly discounted this Court's decisions in *Coolidge* and *Carney*. Second, it held that this Court has never limited the automobile exception to public property. Third, it relied on its own precedent about the plain view doctrine—which confuses the Fourth Amendment interests at stake here.

A. *Coolidge* and *Carney* recognized privacy interests in residential property.

The Supreme Court of Virginia wrongly believed that *Coolidge v. New Hampshire*, 403 U.S. 443 (1971), and *California v. Carney*, 471 U.S. 386 (1985) did not constrain its analysis. App. 20.

In *Coolidge*, two cars were parked in the defendant's driveway. 403 U.S. at 447-48. After arresting Coolidge, the police towed his cars and searched them. *Id.* at 447. In one of the cars, police found evidence incriminating Coolidge in the murder of a 14-year old. *Id.* at 448. New Hampshire argued that the car searches were permitted under the automobile exception. *See id.* at 458-64 (plurality opinion). The Court rejected that argument, and threw out the evidence.

The *Coolidge* plurality stated that "the word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears." 403 U.S. at 461 (Section II-B). The plurality noted that "it seems abundantly clear that there is a significant constitutional difference between stopping, seizing, and searching a car on the open highway, and entering private property to seize and search an unoccupied, parked vehicle not then being used for any illegal purpose." *Id.* at 463 n.20. The plurality found the automobile exception "simply irrelevant." *Id.* at 462.

Moreover, a majority in *Coolidge* defended the presumption of requiring a warrant, even for some car searches. *See id.* at 473-84 (Section II-D); *id.* at 491

(Harlan, J., concurring). The majority expressed alarm at the idea of a bright line rule that would permit a search of *any* automobile, *anywhere*, so long as probable cause existed. *Id.* at 479 (observing that, if no warrant was required to search a car where there was "no stopping, and the vehicle was unoccupied," then "it is but a short step to the position that it is *never* necessary for the police to obtain a warrant before searching and seizing an automobile").

In other words, "if the police may, without a warrant, seize and search an unoccupied vehicle parked on the owner's private property, not being used for any illegal purpose, then it is hard to see why they need a warrant to seize and search a suitcase, a trunk, a shopping bag, or any other portable container in a house, garage, or back yard." *Id.* at 480. The *Coolidge* Court held that such a result "would cast into limbo the whole notion of a Fourth Amendment warrant requirement." *Id.* at 483.

This is a clear statement that the *Coolidge* majority meant to stop short of permitting warrantless, non-exigent searches of cars on the owner's private property. After all, the Court invalidated the search in that case.

Similarly, in *California v. Carney*, 471 U.S. 386 (1985), this Court again limited the scope of the automobile exception.

In that case, police had probable cause to believe that Carney was selling marijuana in a motor home parked in a city parking lot. *See id.* at 388. "Without a warrant or consent, one agent entered the

motor home" and saw drugs. *Id.* The motor home was seized and searched, and more drugs were found. *Id.*

The *Carney* Court began by recognizing the two rationales for the automobile exception. First, automobiles are readily movable. *Carney*, 471 U.S. at 390-91. Second, automobiles carry a lower expectation of privacy, derived "from pervasive regulation of vehicles capable of traveling on the public highways." *Id.* at 391-92. This Court then announced when these underlying justifications for the automobile exception "come into play." *Id.* at 392-93. Those justifications are present "[w]hen a vehicle is being used on the highways, or if it is readily capable of such use *and is found stationary in a place not regularly used for residential purposes*—temporary or otherwise." *Id.* (emphasis added).

This Court then applied those principles to the facts of the case. The Court determined that the motor home was readily mobile, licensed to operate on public streets, and "was so situated" that it would be objectively understood as being used as a vehicle and not a residence. *Id.* at 393. That is, the motor home was "parked" in a "lot"—it was "stationary in a place not regularly used for residential purposes." *Id.* at 392. The automobile exception applied. *Id.* at 392-93.

Both *Coolidge* and *Carney* reflect this Court's interest in reserving application of the automobile exception to cars parked on residential private property, such as the curtilage in this case.

The Supreme Court of Virginia set *Coolidge* and *Carney* aside by stating that "those cases did not distinguish the automobile exception on a public

roadway versus on a private driveway." App. 20. But the *Coolidge* plurality—and arguably the majority—did exactly that by affirming the automobile exception on the open highway but finding it inapplicable to the suspect's unoccupied car, sitting in his driveway. 403 U.S. at 461-63 (plurality opinion); *id.* at 479-80 (majority opinion). The *Carney* Court also repeatedly noted that the motor home searched in that case was located in a parking lot, and not in a place "regularly used for residential purposes." 471 U.S. at 392.

B. The court failed to focus on the privacy and property interests in *residential* private property.

The Supreme Court of Virginia further held "[t]he Supreme Court has never limited the automobile exception such that it would not apply to vehicles parked on private property." App. 20. Even setting aside *Coolidge* and *Carney*, this reasoning does not support expanding the automobile exception to private, residential property and curtilage.

Naturally, many car searches occur on public property. *See, e.g.*, *United States v. Ross*, 456 U.S. 798, 801 (1982) (car stopped on public street); *Brinegar v. United States*, 338 U.S. 160, 162-63 (1949) (car stopped on public highway).

Other car searches occur on private property, but do not implicate the residential privacy of the car's owner. *See, e.g., Carney*, 471 U.S. at 392; *Pennsylvania v. Labron*, 518 U.S. 938, 939 (1996) (in the second paired case, car was on driveway to farmhouse owned by a non-defendant); *California v. Acevedo*, 500 U.S. 565, 567 (1991) (car was stopped

and searched after it "started to drive away" from apartment complex parking lot). And sometimes, private property stands open to the public or is not used for residential purposes. *See, e.g.*, *Colorado v. Bannister*, 449 U.S. 1, 1 (1980) (car searched at a service station); *South Dakota v. Opperman*, 428 U.S. 364, 366 (1976) (car searched at an impound lot).

None of those cases factually undercut the privacy interests raised by searches on private property used for residential purposes—like the curtilage used by Collins.

Similarly, the Supreme Court of Virginia reflected upon its previously holding "that there is no reasonable expectation of privacy in a vehicle parked on private property yet exposed to public view." App. 20. This point has little relevance here. Of course, observation of effects left in plain view does not give rise to a Fourth Amendment search. *Minnesota v. Dickerson*, 508 U.S. 366, 375 (1993). But the plain view doctrine says nothing about the physical intrusions of this case: physical entry onto curtilage within a few feet of the house and removal of a tarp to read a VIN number.

This focus on privacy interests also obscures the interests implicated in this case. At issue here are also Collins's property interests infringed upon by a physical entry onto curtilage and subsequent vehicle search. The related context of determining when a Fourth Amendment search occurs is instructive.

"The text of the Fourth Amendment reflects its close connection to property, [and this Court's] Fourth Amendment jurisprudence was tied to common-law

trespass, at least until the latter half of the 20th century." *Jones*, 565 U.S. at 405. The Court's later cases, originating in *Katz v. United States*, introduced an "expectations of privacy" analysis to determine when a Fourth Amendment search occurred. *Jones*, 565 U.S. at 405-06. Importantly, however, these later cases did not override (but merely added to) the Fourth Amendment's adherence to protecting property rights. *Id.* at 406-07. That property-based approach continues to endure. *See, e.g.*, *Jardines*, 133 S. Ct at 1414-15 (the unlicensed physical intrusion onto a porch was a Fourth Amendment search).

The same privacy and property interests are implicated by the issue here. The officer's unlicensed, physical intrusion upon curtilage and the removal of a tarp were Fourth Amendment searches. To ignore the property interests implicated by those searches, when determining whether a bright-line exception to the Warrant Clause should apply, incorrectly diminishes the Fourth Amendment's protection of property interests. *See Soldal v. Cook Cty.*, 506 U.S. 56, 64 (1992) (Fourth Amendment's protection of privacy interests under *Katz* did not "snuff[] out the previously recognized protection for property"). Instead, both property and privacy rights are infringed upon by the warrantless search of an automobile on curtilage. *See Jardines*, 133 S. Ct. at 1419 (Kagan, J., concurring) ("It is not surprising that in a case involving a search of a home, property concepts and privacy concepts should so align."). Both types of property interests should be considered when determining whether the automobile exception extends to such Fourth Amendment searches.

III. Courts are split about whether the automobile exception applies on the defendant's private, residential property.

Whether the automobile exception applies to a vehicle located on residential private property is "a significant unresolved issue." *United States v. Goncalves*, 642 F.3d 245, 250 (1st Cir. 2011) (not resolving the issue because it was unpreserved and there was no miscarriage of justice on the facts presented).

Some courts hold that the automobile exception does not apply to vehicles parked on the defendant's private, residential property. *See, e.g.*, *United States v. Fields*, 456 F.3d 519, 524-25 (5th Cir. 2006). Other courts hold that the automobile exception applies everywhere, even on a private driveway. *See Goncalves*, 642 F.3d at 251 (observing that the Seventh, Eighth, and Ninth Circuits "have squarely applied the automobile exception to permit searches of vehicles parked in the driveway of the defendant's own residence").

A. The Fifth Circuit, Tenth Circuit, Georgia, and Illinois require a warrant for searches like those here.

The Fifth Circuit holds the "automobile exception may not apply when a vehicle is parked at the residence of the criminal defendant challenging the constitutionality of the search." *Fields*, 456 F.3d at 524-25; *id.* at 525 ("[E]xigent circumstances are required to justify a warrantless search of a vehicle when the vehicle is parked in the driveway of a

residence."). Under the facts presented in *Fields*, however, the exception did apply, because the private property was not Fields's residence, and because the car was not parked in the driveway. *Id.* (citing *Coolidge* and *Carney*, and noting that "Fields'[s] vehicle was not parked in the driveway. Rather, Fields had crashed the car into the side of the building.").

Similarly, in *United States v. Reed*, 26 F.3d 523, 529-30 (5th Cir. 1994), the Fifth Circuit addressed a warrantless search of a car in the defendant's driveway. The court evidently rejected the simple automobile exception under those facts. Instead, the court engaged in an extensive analysis before finding exigency that supported the warrantless search. In that case, the crime was bank robbery, the officers suspected the money was in the trunk of the car—it was emitting a radio signal—and they traced the car quickly to a driveway, where much of the neighborhood turned out to observe. Concern about confederates or others with keys to the car having access to the stolen money justified the warrantless search. *Id.* at 530.

The Fifth Circuit recently reaffirmed its position that separate exigency is required to support a warrantless search of a vehicle in the defendant's driveway. *See United States v. Beene*, 818 F.3d 157 (5th Cir. 2016). In *Beene*, the Fifth Circuit carefully laid out the automobile exception and its normal application, but then observed: "when a vehicle is parked in the defendant's residential driveway, we generally require that there be exigent circumstances justifying a search." *Id.* at 164. The *Beene* court vacated and remanded the case for the district court

to determine, in the first instance, whether such exigency existed.

Similarly, the Tenth Circuit "acknowledge[s]" that the automobile exception "'may not apply when [a vehicle] is parked at the residence of the criminal defendant challenging the constitutionality of the search.'" *United States v. DeJear*, 552 F.3d 1196, 1202 (10th Cir. 2009) (quoting *Fields*, 456 F.3d at 524-25). In *DeJear*, the vehicle had been parked on residential private property. *Id.* at 1198. But the defendant did not argue that it was *his* residence. *Id.* at 1202. Thus, the automobile exception applied. *Id.*

Georgia recognizes that the automobile exception does not apply to vehicles parked on "the curtilage of a private residence." *State v. Vickers*, 793 S.E.2d 167, 170 (Ga. Ct. App. 2016). "[T]he established Georgia rule [is] that vehicles, like any other item or location within the curtilage of a residence, are not to be searched without a warrant, consent, or exigent circumstances." *Id.* at 171. Tracing to *Carney*, Georgia distinguishes the different privacy interests in "the curtilage of a private residence [from] private commercial property." *Id.* at 170. For this reason, in *Vickers* the automobile exception did not apply because the vehicle was parked in the driveway of the home of one of the defendants. *Id.* at 168-69.

Vickers is particularly apt, as the vehicle search there was on curtilage (like here). But curtilage is not even necessary in Georgia courts. Instead, what is important is that the vehicle is on private, residential property. The Georgia Supreme Court cited both *Carney* and *Coolidge* to hold that this Court's automobile exception "cases do not hold that a search

warrant is *never* needed to search a car." *State v. LeJeune*, 576 S.E.2d 888, 892 (Ga. 2003). "There is an automobile exception to the search warrant requirement, not an exemption." *Id.* at 892. "Otherwise, the Supreme Court of the United States would have held that the police would not, under any circumstances, need to obtain a search warrant for an automobile, provided they have probable cause for the search." *Id.*

Thus, in *LeJeune* the automobile exception did not apply when "the suspect's car was legally parked in his residential parking space, the suspect and his only alleged cohort were not in the vehicle or near it and did not have access to it, and the police seized the automobile without a warrant, placed it on a wrecker and hauled it away to be searched at a later date." *Id.* at 893.

Illinois also distinguishes private residential property from other property where an automobile might be parked. In *Redwood v. Lierman*, 772 N.E.2d 803, 810 (Ill. App. Ct. 2002), an individual filed a 42 U.S.C. § 1983 suit alleging that her Fourth Amendment rights were violated when a deputy "entered [plaintiff's] land, without a warrant and without her consent, and towed the van away."

The Illinois court reasoned that "[o]ne may reasonably infer that the van was sitting within the curtilage of [plaintiff's] home." *Redwood*, 772 N.E.2d at 812. This location was "crucial." *Id.* at 813. "By parking a vehicle in the driveway or yard of one's home, one brings the vehicle within the zone of privacy relating to one's home." *Id.* "In short, one's backyard is a vastly different place, for purposes of the

fourth amendment, than a public street." *Id.* The court effectively held that the automobile exception did not apply to a vehicle parked on curtilage. *Id.*

B. The Seventh, Eighth, Ninth Circuits and Alabama, as well as now Virginia, do not.

The Ninth Circuit holds "that the vehicle exception applies to a search of a vehicle parked on a private driveway." *United States v. Hatley*, 15 F.3d 856, 859 (9th Cir. 1994). In the Ninth Circuit, the automobile exception applies even when—as in *Hatley*—the vehicle is parked on the defendant's residential property. *Id.*

The Ninth Circuit adopted this rule in a case where a motor home was on private, residential driveway. *United States v. Hamilton*, 792 F.2d 837, 842-43 (9th Cir. 1986), *rev'd on other grounds by United States v. Kim*, 105 F.3d 1579, 1580-81 (9th Cir. 1997). In *Hamilton*, the Ninth Circuit asserted that although the motor home was on a "private residential drive" rather than a "public parking lot," the automobile exception still applied. *Id.* at 843 This was because the motor home "was located in a residential driveway, it had easy access to a public road." *Id.*

The Eighth Circuit also applies the automobile exception to vehicles parked on private residential property. *United States v. Blaylock*, 535 F.3d 922, 926-27 (8th Cir. 2008); *see also id.* at 928-29 (Melloy, J., concurring) (suggesting that the court was expressly confronted with the argument that the automobile exception does not apply on private residential property). In *Blaylock*, the vehicle parked on the

defendant's residential driveway was searched. *Id.* at 925. The Eighth Circuit held that this search was subject to the automobile exception. *Id.* at 926-27.

The Eighth Circuit held, essentially, that the lowered expectation of privacy in vehicles overcomes heightened expectations of privacy associated with private, residential property. *Id.*; *see also id.* at 929 (Melloy, J., concurring) (opining that a warrantless search of a vehicle on residential property might be "antithetical" to *Carroll*, but it is permitted under the modern "expansive reading" of the automobile exception).

The Seventh Circuit has joined the Eighth and Ninth Circuits. *See, e.g.*, *United States v. Hines*, 449 F.3d 808, 810-15 (7th Cir. 2006) (automobile exception justified warrantless search of van on driveway to defendant's home).

Alabama "agree[s] with those jurisdictions cited above that have held that the automobile exception applies to vehicles located on private property without any additional exigency requirement." *Harris v. State*, 948 So.2d 583, 597 (Ala. Ct. Crim. App. 2006). The automobile exception applies even if the vehicle is parked in the curtilage of the home. *Id.* at 596-97. Thus, in *Harris*, a search of a vehicle parked behind a mobile home was subject to the automobile exception. *Id.* at 586, 597.

The *Harris* court engaged in a lengthy discussion of lower courts' treatment of Fourth Amendment law. *Id.* at 588-97. Distilled, the court recognized the two justifications—ready mobility and lowered expectations of privacy—for the automobile

exception. *Id.* at 589-90. Citing *Maryland v. Dyson*, the court reasoned the automobile exception has no "public property" element. *Id.* at 590-91. The court concluded that the justifications for the automobile exception do not change with the location of the vehicle, and so a vehicle on private property can be searched on probable cause alone. *Id.* at 597.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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