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Knock and Talks: Faithfully Applying Social Norms to Prevent Unconstitutional Police Intrusion upon the Home

Alexander Newman†

ABSTRACT

A “knock and talk” is a common police practice involving an officer approaching a home and knocking on the front door to speak with a resident. The knock and talk is a long-recognized exception to the Fourth Amendment’s warrant requirement, making it a powerful police tool to access constitutionally protected areas of the home. But courts have struggled to define the limits of a knock and talk. For example, when police officers knock and receive no answer, can they remain standing at the door, or even roam to other parts of the home?

The Supreme Court grounds the practice in a recognized social license for any person to knock on someone else’s door. But the circuits have developed a chaotic body of rulings that are unmoored from this guiding principle, allowing police to impermissibly expand the scope and duration of knock and talks. This Comment argues that the circuits have expanded or restricted knock and talks in ways inconsistent with Supreme Court precedent, resulting in numerous splits. These splits can be harmonized with a renewed focus on the social license underlying the knock and talk. This would result in common-sense rules that allow police to conduct knock and talks without undermining the Fourth Amendment’s robust protection of the home.

I. INTRODUCTION

Under the Fourth Amendment, the home is protected as “first among equals.”¹ Even before the founding, the common law declared property rights to be “sacred.”² Despite these words of high reverence, a well-established doctrine of American law permits a police officer to approach any house in the country, at nearly any time, for any reason,

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† B.A., Washington University in St. Louis, 2020; J.D. Candidate, The University of Chicago Law School, 2024. I would like to thank Professor Judith Miller for her thoughtful feedback and guidance, as well as the previous and current staff of The University of Chicago Legal Forum for their support.

¹ Florida v. Jardines, 569 U.S. 1, 6 (2013).
² Id. at 8 (quoting Entick v. Carrington (1765) 95 Eng. Rep. 807, 817).
and stand squarely on the doorstep to knock. But when no one comes
to the door, what the officer can and cannot do is anything but well-
established.

The Fourth Amendment protects not just the interior of a house,
but also its curtilage, defined as an area that harbors the “intimate ac-
tivity associated with the ‘sanctity of a man’s home and the privacies
of life.’” Thus, police must secure a warrant supported by probable
cause in order to search areas outside of a suspect’s home. To deter-
mine whether an area of the home is within the curtilage, courts look
at four factors laid out in United States v. Dunn: “the 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 by.”

One area clearly afforded this protection is the front porch of a house, the “classic exemplar” of an area within the curtilage.

Even though the home is a constitutionally protected area, the po-
lice have enjoyed a long-recognized ability to warrantlessly enter the
curtilage of the home to conduct a “knock and talk,” where an officer
will knock on the front door and request to speak with an occupant.

Should the occupant consent to a search, any evidence found by the
police will be admissible in court. Additionally, while conducting a
knock and talk, police may see evidence that will then be admissible
under the plain view doctrine. The knock and talk can therefore be
a powerful police tool for entering and investigating constitutionally
protected areas, even when police lack the probable cause necessary to
obtain a warrant.

Although state and federal courts had already recognized the
knock and talk exception for decades, the Supreme Court did not
weigh in on knock and talks until the relatively recent cases of Ken-
tucky v. King and Florida v. Jardines. In those cases, the Court af-

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4 Id.
6 Id. at 301.
8 See id. at 8–9.
9 See, e.g., United States v. Carloss, 818 F.3d 988 (10th Cir. 2016) (allowing admission of
methamphetamine residue discovered inside house during consent search).
10 See, e.g., United States v. Jones, 239 F.3d 716 (5th Cir. 2001) (holding that there is no ex-
pectation of privacy concerning articles that can be seen in plain view by an officer when a de-
defendant opens the door to respond to knocking).
firmed the justification that lower courts had often made for the exception: there is an implied social license that allows any visitor to approach the home, knock, and be received.\textsuperscript{13} But while the Court has recognized the legality of knock and talks, its decisions provide little guidance on the scope of the exception, leaving ambiguities as to which parts of the home may be visited and for how long. Indeed, in the past, the Court explicitly declined to state whether the knock and talk exception allows police to approach any entrance that is open to visitors or only applies to the front door.\textsuperscript{14} The Court also says little on whether factors like the time of day, fences, the layout of the property, and signage could ever revoke the implicit license to approach the home. If the license can be revoked, some circumstances could prevent the police from even approaching the home to conduct a knock and talk.

The clarity of knock and talk guidelines is also important for the appropriate enforcement of Fourth Amendment rights. Often, the only remedy for a homeowner whose rights have been violated during a knock and talk is a 42 U.S.C. § 1983 claim ("Section 1983").\textsuperscript{15} Section 1983 enables individuals to sue state officials for depriving them of their rights.\textsuperscript{16} However, police officers can claim qualified immunity if the right in question was not clearly established,\textsuperscript{17} and courts are divided on what rights, if any, \textit{Jardines} and other cases recognize.\textsuperscript{18} As such, a coherent understanding of \textit{Jardines}'s impact on the Fourth Amendment landscape is crucial to determining whether police officers can be held civilly liable for their behavior during a knock and talk.

This Comment focuses on judicial attempts to define the physical and temporal scope of the knock and talk exception in relation to \textit{Jardines} and argues that most circuits have adopted rules that cannot be justified under Fourth Amendment jurisprudence. Accordingly, this Comment proposes guidelines that would bring knock and talk practices in line with the social license that permits them. Part II provides a background of the general types of police behavior that have long

\textsuperscript{13} \textit{Id.} at 8.

\textsuperscript{14} \textit{See} Carroll v. Carman, 574 U.S. 13, 20 (2014) ("We do not decide today . . . whether a police officer may conduct a 'knock and talk' at any entrance that is open to visitors rather than only the front door").

\textsuperscript{15} 42 U.S.C. § 1983.

\textsuperscript{16} \textit{Id.}

\textsuperscript{17} \textit{See} Ashcroft v. al-Kidd, 563 U.S. 731, 735 (2011) ("Qualified immunity shields federal and state officials from money damages unless a plaintiff pleads facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was 'clearly established' at the time of the challenged conduct.") (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)).

\textsuperscript{18} \textit{See, e.g.}, United States v. Carloss, 818 F.3d 988 (10th Cir. 2016).
been considered allowed by the knock and talk exception, as well as an overview of the Court’s landmark decision in Jardines. Part III examines the heavily fractured state of current knock and talk jurisprudence, with a particular focus on how courts have interpreted Jardines and its discussion of the implied license to approach the home. Part III also identifies which circuits heavily constrain where police may go during a knock and talk, and which circuits allow police to intrude on the curtilage even after no one has answered the door. Part IV argues that under Jardines, the Fourth Amendment compels a set of limitations on the scope of knock and talks. Specifically, these limitations would require police to only conduct knock and talks at entrances to the home and forbid police from extending the duration of knock and talks without explicit invitation from an occupant. Part V concludes.

II. HISTORY: KNOCK AND TALK JURISPRUDENCE BEFORE AND UP TO JARDINES

A. The Implied License and Knock and Talks Pre-Jardines

There has been a longstanding recognition of an implied license for people to approach a house and knock on the door. Before the Supreme Court’s decisions in Jardines and King, courts across America had already developed a largely similar body of case law concerning knock and talks. Generally, courts have held that the knock and talk exception permits police to approach any entrance or area that would be accessible to visitors. Courts have also generally permitted police to stay at the door and continue to knock if no one answers the first knock, particularly when the police believe someone is inside the residence. When no one answers an officer’s knocking, police have been able to knock elsewhere on the property, including side doors, back doors, garage doors, and even areas not attached to the home like cars and sheds. And though courts have spoken disapprovingly of knock

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19 See Breard v. City of Alexandria, La., 341 U.S. 622, 626 (1951) ("the knocker on the front door is treated as an invitation or license to attempt an entry, justifying ingress to the home by solicitors, hawkers and peddlers for all kinds of salable articles.").
21 See, e.g., United States v. Perea-Rey, 680 F.3d 1179 (9th Cir. 2012).
22 See, e.g., Hardesty v. Hamburg Twp., 461 F.3d 646, 654 (6th Cir. 2006).
23 See, e.g., Edens v. Kennedy, 112 F. App’x 870 (4th Cir. 2004) (allowing knock and talk where police knocked at both the front and back door of a residence); United States v. Gomez-Moreno, 479 F.3d 350, 356 (5th Cir. 2007) (acknowledging that police may knock at back door if front door is not answered).
and talks performed late at night, they have often allowed them anyway.24

Courts have generally avoided saying what is necessary for a resident to revoke the implied license to approach the door. In many pre-

*Jardines* cases, courts highlighted the lack of a “no trespassing” sign as additional confirmation that there was an implied license to con-
duct a knock and talk. However, even in cases where such a sign was posted on the property, courts have still found an implied license.

The first time that the Supreme Court considered the social li-
cense involved in a knock and talk was in *Kentucky v. King*.25 In that
case, police knocked on the door of an apartment that smelled of mari-
juana to announce their presence.26 After they heard sounds of evi-
dence being destroyed, the police kicked in the door and found narcotics.27 Although the knock itself was not the case’s main issue, the
Court said that the officers were allowed to knock on the door without
a warrant because that was “no more than any private citizen might
do” and that “the occupant has no obligation to open the door or to
speak.”28 The Court emphasized that its holding strongly protected the
privacy rights at interest in the Fourth Amendment because an occu-
pant’s refusal to answer the door would drive a warrantless investiga-
tion to “a conspicuously low point.”29

B. The Decision in *Jardines* and the Revival of the Property-Based
Understanding of the Fourth Amendment

The Supreme Court extensively discussed knock and talks for the
first time in *Florida v. Jardines*.30 In that case, police brought a drug-
sniffing dog to the defendant’s home to investigate a suspected mari-
juana growing operation.31 The dog went onto the front porch and
alerted for drugs.32 Using this information, the police secured a war-

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24 See, e.g., United States v. Ray, 199 F. Supp. 2d 1104 (D. Kan. 2002) (allowing police to conduct a knock and talk at 1:30 a.m. after receiving a tip that a trailer was a meth lab); Scott v. State, 366 Md. 121 (2001) (allowing a suspicionless knock and talk at motel room at 11:30 p.m.); United States v. Walker, 799 F.3d 1361, 1364 (11th Cir. 2015) (allowing a knock and talk at 5:04 a.m. because there were lights on, indicating someone was awake).


26 Id. at 456.

27 Id.

28 Id. at 469–70.

29 Id. at 470 (quoting United States v. Chambers, 395 F.3d 563, 577 (6th Cir. 2005) (Sutton, J., dissenting)).


31 Id. at 3–4.

32 Id.
rant. The Court held that using a police dog to sniff for drugs within the curtilage of the home is a search under the Fourth Amendment, which therefore requires a warrant. Justice Scalia distinguished this behavior from a knock and talk, saying that while a knock and talk was permitted under an implied social license, taking a police dog within the curtilage to search for drugs was not covered by any implied license and required a warrant. The implicit license “typically permits the visitor to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave.” The license is also limited in scope to a specific purpose: “the background social norms that invite a visitor to the front door do not invite him there to conduct a search.” Since the dog was there to explore the home and sniff for evidence, this exceeded the scope of the social license.

It is important to note that Justice Scalia’s opinion relies upon “the traditional property-based understanding of the Fourth Amendment.” Early Fourth Amendment jurisprudence understood the Amendment as protecting property interests. The English common law case Entick v. Carrington, described by the Supreme Court as “undoubtedly familiar to ‘every American Statesman’ at the time of the founding,” stated that “[o]ur law holds the property of every man so sacred, that no man can set his foot upon his neighbour’s close without his leave.” Applying this axiom to Fourth Amendment issues, early American courts considered whether the government had intruded on the defendant’s property.

This understanding contrasts with the now common privacy-based understanding of the Fourth Amendment stated in Katz v. United States. Under Katz, courts consider whether police have invaded an area where there is a “reasonable expectation of privacy.” Katz famously rebuffed a purely property-based interpretation of the

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33 Id.
34 Id. at 11–12.
35 See id. at 8–10.
36 Jardines, 569 U.S. at 8.
37 Id. at 9.
38 Id. at 11.
39 See, e.g., Olmstead v. United States, 277 U.S 564 (1928) (holding that a wiretap without a warrant was admissible evidence because telephone wires outside of the home are not property protected under the Fourth Amendment), overruled by Katz v. United States, 389 U.S. 347 (1967).
41 Jardines, 569 U.S. at 8 (quoting Boyd v. United States, 116 U.S. 616, 626 (1886)).
42 Id. (quoting Entick, 95 Eng. Rep. at 817).
44 Id. at 360 (Harlan, J., concurring).
Fourth Amendment, with the Court saying “[t]he Fourth Amendment protects people, not places.” But the Court in *Jardines* said it did not need to determine whether there was a reasonable expectation of privacy from a police dog sniffing on the front porch. A *Katz* analysis was unnecessary because the police had already violated the Fourth Amendment by physically intruding on Jardines’s property to obtain information. A solely property-based analysis was acceptable because “[t]he Katz reasonable-expectations test 'has been added to, not substituted for,' the traditional property-based understanding of the Fourth Amendment.”

III. THE CHAOTIC STATE OF CURRENT KNOCK AND TALK JURISPRUDENCE

A. Disputes over *Jardines’s* Relevance

Although *Jardines* discussed knock and talks at some length, it was not immediately clear whether the landscape of knock and talks had changed at all. The challenged behavior in the case was the use of a police dog to gather information. The officers in *Jardines* never even attempted a knock and talk. Many courts nevertheless read *Jardines* as redefining the scope of the knock and talk exception. The First Circuit, for example, reads *Jardines* as generally defining the scope of the implied social license to approach and knock on the house door, rather than applying to the specific context of a search for evidence using a police dog. In *French v. Merrill*, the First Circuit concluded “it was not the dog that was the problem in [*Jardines*].” Instead, the problem was that the officers had entered a protected area to gather information without having any license to be there. And when the First Circuit denied a rehearing en banc, the majority reiterated that “*Jardines* was all about the nature and scope of the implied license to enter the curtilage of a private residence without a warrant.”

Judge Lynch of the First Circuit dissented from the majority’s interpretation of *Jardines*, saying that *Jardines* is inapplicable in the context of a knock and talk “where there was no police dog or any oth-

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45 *Id.* at 351.
46 *Jardines*, 569 U.S. at 11.
47 *Id.*
48 *Id.* (quoting United States v. Jones, 565 U.S. 400, 409 (2012)).
50 *Id.* at 134.
51 *Id.*
52 French v. Merrill, 24 F.4th 93, 94 (1st Cir. 2022) (denying rehearing en banc).
er instrumentality used.” 53 In Judge Lynch’s view, “Jardines is not about the limitations, if any, on the duration or location of a knock and talk license to contact the resident of a home, and thus could not clearly establish the purported illegality of the officers’ conduct [in French].” 54 The Tenth Circuit agreed. In United States v. Carlsson, 55 the court determined that Jardines did not change prior circuit precedent, nor did it restrict knock and talks, because a knock and talk did not occur in Jardines. 56

The Fifth Circuit has also analyzed a knock and talk outside of the context of Jardines. In Westfall v. Luna, 57 another Section 1983 claim, the police attempted two additional knock and talks after the person answering the door had closed it. 58 The Fifth Circuit ultimately declined to say whether the officers’ behavior was a valid knock and talk but notably did not use Jardines in its analysis. 59 Instead, the court continued to cite pre-Jardines Fifth Circuit precedent concerning the scope of the knock and talk exception. 60 The Fifth Circuit’s decision to avoid Jardines is curious given that the appellant’s first argument on appeal was that the police had violated the Fourth Amendment under Jardines. 61

The Eleventh Circuit takes a similar position to the First Circuit, arguing that Jardines is not limited to the specific facts of the case. Rather, “[Jardines] extends to any police intrusion onto curtilage that exceeds the customary license extended to all, whether measured by officers’ actions or their intent.” 62

While the Supreme Court has not directly said how broadly Jardines must be read, multiple Justices recently asserted in a statement concerning the denial of certiorari that Jardines protects the curtilage from far more than police dogs. In Bovat v. Vermont, 63 the Court considered a Vermont Supreme Court ruling that police officers did not violate the Fourth Amendment by walking up a private drive-

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53 French, 15 F.4th 116 at 142 (Lynch, J., dissenting).
54 Id. at 143 (Lynch, J., dissenting).
55 818 F.3d 988 (10th Cir. 2016).
56 Id. at 992–93.
57 No. 21-10159, 2022 WL 3334535 (5th Cir. 2022).
58 Id. at *1.
59 Id. at *7.
60 Id. at *4 (noting that police may attempt a second knock at a different entrance, but that if no one answers, police must change their strategy) (quoting United States v. Gomez-Moreno, 479 F.3d 350, 355–56 (5th Cir. 2007)).
61 Appellant’s Opening Brief at 30, Westfall v. Luna, No. 21-10159 (5th Cir. 2022).
62 United States v. Maxi, 886 F.3d 1318, 1327 (11th Cir. 2018).
63 141 S.Ct 22 (2020).
way and peering into a suspect’s garage for roughly fifteen minutes.\textsuperscript{64} Relying on its pre-\textit{Jardines} precedent, the Vermont Supreme Court held that while the garage and driveway were within the curtilage, driveways are “semiprivate areas” that are not covered by the Fourth Amendment.\textsuperscript{65} Justice Gorsuch, joined by Justices Sotomayor and Kagan, questioned why the Vermont Supreme Court had decided the case “without reference to \textit{Jardines},” because “that case’s teachings almost certainly required a different result.”\textsuperscript{66} To Justice Gorsuch, “\textit{Jardines} plainly held that the home’s curtilage and observations made anywhere within its bounds are covered by the Fourth Amendment; no exceptions. And the Fourth Amendment hardly tolerates the sort of meandering search that took place here.”\textsuperscript{67} While the case at issue did not involve a knock and talk, Justice Gorsuch’s statements demonstrate that at least three Justices likely view \textit{Jardines} as protecting the entire curtilage from unauthorized intrusion. Taking heed of Justice Gorsuch’s admonishment, the Vermont Supreme Court overturned \textit{State v. Bovat}\textsuperscript{68} two years later.\textsuperscript{69} This time, the court applied \textit{Jardines} to conclude that an officer could not conduct a search in the driveway of a home after no one answered his knocks at the front door.\textsuperscript{70}

B. Courts that View \textit{Jardines} as Limiting the Knock and Talk to the Front Door

The Third Circuit attempted to address the new role of \textit{Jardines} in \textit{Carman v. Carroll},\textsuperscript{71} a Section 1983 action against police officers who warrantlessly entered Carman’s property and went directly to the back door.\textsuperscript{72} The Third Circuit used the language of \textit{Jardines} alongside its own precedent to hold that a knock and talk must begin at the front door.\textsuperscript{73} The Third Circuit also determined that the officers were not entitled to qualified immunity because the constitutional rights at issue were clearly established at the time of the encounter.\textsuperscript{74} The Third Circuit could not rely on \textit{Jardines} for its qualified immunity

\textsuperscript{64} See \textit{State v. Bovat}, 211 Vt. 301, 309 (Vt. 2019).
\textsuperscript{65} \textit{Id}. at 307–09.
\textsuperscript{66} \textit{Bovat v. Vermont}, 141 S.Ct. at 23.
\textsuperscript{67} \textit{Id}. at 24.
\textsuperscript{68} 211 Vt. 301 (2019).
\textsuperscript{70} \textit{Id}.
\textsuperscript{71} 749 F.3d 192 (3rd Cir. 2014).
\textsuperscript{72} \textit{Id}. at 197.
\textsuperscript{73} \textit{Id}. at 199.
\textsuperscript{74} \textit{Id}.
holding since the events of the case occurred before *Jardines* was decided. But the Third Circuit said its own precedents at the time clearly established that a knock and talk must begin at the front door. The Supreme Court disagreed, stating that the Third Circuit’s cited decision was insufficient. The Court’s Per Curiam decision did not even mention *Jardines* and explicitly declined to state whether a knock and talk must begin at the front door.

The First Circuit also likely views *Jardines* as restricting police to approaches at the front door. In *French v. Merrill*, police attempted a knock and talk but received no response. As the officers were leaving, one of them noticed a figure at a window who, upon being spotted, quickly covered the window and turned out the lights. The police then went back to the front door and knocked again, and after receiving no response, proceeded to the side of the house and knocked on the occupant’s bedroom window frame. The First Circuit found that the police officers did not have qualified immunity from a Section 1983 claim because their behaviors clearly violated the law established in *Jardines*.

In *United States v. Wells*, the Eighth Circuit considered a case where police proceeded directly into the backyard of a house to investigate reports of a methamphetamine lab being run from a rear building. Once in the backyard, police conducted a knock and talk at the back door and subsequently discovered drugs. The Eighth Circuit determined that this knock and talk violated the Fourth Amendment, saying “[w]e are not prepared to extend the [knock and talk] rule to situations in which the police forgo the knock at the front door and, without any reason to believe the homeowner will be found there, proceed directly to the backyard.”

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75 Id.
76 *Caroll v. Carman*, 574 U.S. 13, 17–20 (2014) (“But whether or not the constitutional rule applied by the court below was correct, it was not ‘beyond debate.’”).
77 Id. at 20 (“We do not decide today . . . whether a police officer may conduct a ‘knock and talk’ at any entrance that is open to visitors rather than only the front door”).
78 15 F.4th 116 (1st Cir. 2021).
79 Id. at 129.
80 Id.
81 Id.
82 Id. at 130.
83 648 F.3d 671 (8th Cir. 2011).
84 Id. at 673.
85 Id.
86 Id. at 680.
C. Courts that Expand the Knock and Talk License to Cover the Curtilage Generally

The Fourth and Eleventh Circuits have held that the police may conduct knock and talks beyond the front door of the house and that the knock and talk exception even extends to circumstances where the police do not knock on a door.87

In United States v. Walker,88 police officers knocked on the front door of a house, received no response, and left.89 Later that night, instead of approaching the front door again, the officers went to a carport adjacent to the house and knocked on the car’s window.90 The defendant, who was sleeping inside the car, answered the police and was arrested for evidence that the police subsequently found in plain view.91 The Eleventh Circuit first held that the police had not objectively revealed a purpose to search under Jardines; rather, they had simply approached to speak with the homeowner.92 Walker found this to be “squarely within the scope of the knock and talk exception.”93 The court also held that knocking on the car window was permitted under the knock and talk exception because it was only a “small departure from the front door,”94 which the Eleventh Circuit considered permissible.95

In the Fourth Circuit’s view, “although the knock-and-talk doctrine is sometimes framed as a right to approach the home by the front path or knock on a front door . . . we have made clear that the implicit license is broader than that.”96 In Covey v. Assessor of Ohio Cnty.,97 officers received a tip that the defendant was growing marijuana behind his home. The officers then arrived at the property, entered the curtilage, and advanced to the back of the house, where the defendant was located.98 Police then arrested the defendant and collected evidence.99 The Fourth Circuit stated that if the police had en-

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87 See Covey v. Assessor of Ohio Cnty., 777 F.3d 186 (4th Cir. 2015); see also United States v. Walker, 799 F.3d 1361 (11th Cir. 2015).
88 799 F.3d.
89 Id.
90 Id. at 1362–63.
91 Id.
92 Id. at 1363.
93 Id. at 1363.
94 Id. at 1364.
95 See United States v. Taylor, 458 F.3d 1201, 1205 (11th Cir. 2006).
96 United States v. Miller, 809 F. App’x 131, 138 (4th Cir. 2020) (internal quotation marks omitted).
97 777 F.3d 186 (4th Cir. 2015).
98 Id. at 190.
99 Id.
tered the curtilage without having seen the defendant beforehand, they had violated the Fourth Amendment. However, if the officers had seen the defendant from an area outside the curtilage, the knock and talk exception allowed the officers to approach him. The court then remanded the case for further proceedings. The Covey court reiterated the Fourth Circuit’s pre-Jardines precedent that “[a]n officer may also bypass the front door (or another entry point usually used by visitors) when circumstances reasonably indicate that the officer might find the homeowner elsewhere on the property.” Thus, an officer can head directly to the backyard of a property without knocking at the front door, or approach residents standing in a driveway.

D. Courts Where Police Cannot Remain at the Door after No One Has Answered

Before Jardines, the Sixth Circuit had held that officers could take reasonable steps to attempt to speak with an occupant when “circumstances indicate that someone is home” and the officer’s knocking produced no response. But the Sixth Circuit later overturned this precedent after determining that Jardines forbids this practice. Instead, officers cannot “linger on the curtilage once they have exhausted the ‘implied invitation extended to all guests,’ even if they suspect that someone is inside.”

The First Circuit similarly maintains that if an occupant does not come to the door, the police cannot persist in attempting additional knock and talks. In French v. Merrill, officers attempted a knock and talk, but received no response and left the house. Despite the officers stating that they thought the occupant did not want to talk, they entered the curtilage later that night to knock on the door again. The First Circuit said that this behavior exceeded the social license necessary for a knock and talk, since “the mere fact that [the defend-

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100 Id. at 193.
101 Id.
102 Id. (citing Pena v. Porter, 316 Fed.Appx. 303, 313 (4th Cir.2009)).
103 See Alvarez v. Montgomery Cnty., 147 F.3d 354, 359 (4th Cir. 1998) (“[I]n light of the sign reading ’Party In Back’ with an arrow pointing toward the backyard, it surely was reasonable for the officers to proceed there directly as part of their effort to speak with the party’s host.”).
104 United States v. Miller, 809 F. App’x 131 (4th Cir. 2020).
106 See Brennan v. Dawson, 752 F. App’x 276, 283 (6th Cir. 2018).
107 Id. (quoting Morgan v. Fairfield Cnty., Ohio, 903 F.3d 553, 565 (6th Cir. 2018)).
109 Id.
E. Courts That Are Permissive of Officers Remaining on the Curtilage after Receiving No Response

In multiple pre-Jardines case, the Fifth Circuit held that when nobody answers the door, officers must end a knock and talk and pursue different strategies. But the Fifth Circuit did not limit officers to only knocking at a single door before needing to withdraw. After knocking on the front door and receiving no response, “[officers] might have then knocked on the back door or the door to the back house.” Nonetheless, police were not allowed to use the knock and talk exception to peer through a bedroom window on the side of the house after receiving no response at the front door. The Fifth Circuit also rejected a Jardines challenge to a knock and talk where police continued to knock for several minutes after seeing someone peer through the blinds but not answer the door.

In United States v. Carloss, the Tenth Circuit examined a knock and talk that lasted for several minutes. The court declined to set a time limit on how long officers could knock before exceeding the license of a knock and talk. The court found that the officers did not linger on the curtilage for too long despite knocking for several minutes. The Court considered it relevant that the officers heard movement inside the house, which “encouraged” them to remain at the door, especially because no one inside the house demanded that the officers leave.

IV. Bringing Knock and Talk Doctrine into Accordance with the Implied License

The Supreme Court’s jurisprudence requires the conclusion that warrantless police activity within the curtilage after a knock and talk fails violates the Fourth Amendment. The social license of a knock and talk is merely a license to approach the home and knock, not a general

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110 Id. at 131 (quoting Hopkins v. Bonvicino, 573 F.3d 752, 765 (9th Cir. 2009)).
111 See United States v. Gomez-Moreno, 479 F.3d 350, 356 (5th Cir. 2007); United States v. Troop, 514 F.3d 405, 410 (5th Cir. 2008).
112 Gomez-Moreno, 479 F.3d at 356.
113 Troop, 514 F.3d at 411.
114 See United States v. Flores, 799 F. App’x 282 (5th Cir. 2020).
115 818 F.3d 988 (10th Cir. 2016).
116 Id. at 994.
117 Id. at 998.
118 Id. at 998.
license to speak with the occupants of the home. Once a knock and talk goes unanswered, the implied license has run its course. A police officer’s mere desire to speak to an occupant should not be used to expand or extend the license beyond what existed the moment the officer approached the home. This means that if the initial knock and talk fails, the officer cannot continue knocking or try knocking in new locations.

A. The Location of the Knock and Talk Is Limited to Doorways Accessible to Visitors.

When Justice Scalia described the license underlying the knock and talk, he noted that the license arises from “the knocker on the front door.”¹¹⁹ And he formulated the license itself as “permit[ting] the visitor to approach the home by the front path.”¹²⁰ While the Third Circuit reads Justice Scalia’s description of the license literally, finding that knock and talks must occur at the front door,¹²¹ a literal reading is unwise for several reasons. First, there is no reason to think that the license can only extend to the front door. While the front door of a home typically has a prominent knocker of some sort, many homes have multiple doors with knockers or doorbells, suggesting that the resident anticipates visitors approaching from more than one entrance to establish contact. This would create an implied license to approach any of those doors. In addition, every residence is different, and it may not be obvious which door is the “front” door. Attempting to limit knock and talks to solely the front door could prove impractical, as this would be a difficult factual determination to make in many cases. Admittedly, the Third Circuit’s rule provides strong protection for residents from police intrusion. But a more realistic view of the social license involved demands a flexible understanding of knock and talks.

Courts are rightfully concerned that police would use a flexible standard to bypass the front door and instead search for a door that offers greater access to otherwise private areas of the home.¹²² A well-applied understanding of the implied license, however, provides firm protection to these areas. Police are strictly limited to certain entrances to the home. Police must approach a door that faces the street or has visible characteristics like a doorbell, knocker, or mail slot. These features indicate that visitors are expected to arrive at those doors,

¹¹⁹ Florida v. Jardines, 569 U.S. 1, 8 (2013).
¹²⁰ Id.
¹²¹ See Carman v. Carroll, 749 F.3d 192, 199 (3rd Cir. 2014).
¹²² See, e.g., United States v. Wells, 648 F.3d 671 (8th Cir. 2011) (where officers entered the backyard to search for drug manufacturing operations instead of knocking on accessible front door).
providing a clear license to approach. Doors without such visible indicators, such as those in a backyard, cannot be approached when there are alternative entrances. Above all, courts must apply common sense and require the police to use a door that is available to visitors. Such a test “does not require fine-grained legal knowledge; it is generally managed without incident by the Nation’s Girl Scouts and trick-or-treaters.”

B. A Knock and Talk Cannot Be Extended Because Occupants Are Present

An important question to resolve between the circuits is whether the police can extend a knock and talk when they believe that someone is present in the house. A faithful reading of *Jardines*, coupled with a general understanding of the implicit license at issue, requires the answer to be no. As *Jardines* reiterated, the source of the implied license for an officer to approach the door of a home and knock is the “knocker” on the door. This implied consent remains present whether the occupant is home or not. It would be nonsensical to say that by virtue of being home, an occupant gives greater consent to having his or her door knocked on. Granted, it would be more reasonable to knock on the door of a house known to be occupied, but *Jardines* makes clear that reasonableness “depends upon whether the officers had an implied license to enter” the curtilage.

Under this analysis, the Sixth Circuit is correct in maintaining that the police cannot linger at the front door simply because someone is inside. The Tenth Circuit, on the other hand, is mistaken in concluding that officers who hear noises inside of a house are “encouraged” to stay. The only action by an individual that should extend the social license is an “invitation to linger longer.” Noises on their own are not invitations. When no one answers the door after several minutes of knocking, it is the very opposite of an invitation to linger.

Those in favor of allowing police to extend the duration of a knock and talk might argue that an occupant who refuses to answer the door to police is often attempting to hide, and police should not be forced to ignore suspicious behavior. Even so, to allow police to continue knocking when they believe someone is inside undermines the Court’s holding in *King*. In that case, the Court held that when police knock on a

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123 *Jardines*, 569 U.S. at 8.
124 *Id.*
125 *Id.* at 10.
126 See Brennan v. Dawson, 752 F. App’x 276, 283 (6th Cir. 2018).
127 United States v. Carlloss, 818 F.3d 988, 998 (10th Cir. 2016).
128 *Jardines*, 569 U.S. at 8.
The Court also suggested that an occupant’s right to not answer discourages police from abusing their ability to knock on doors. If an occupant chooses not to speak, “the investigation will have reached a conspicuously low point” because the police will need to leave until they can return with a warrant. But under the Tenth Circuit’s analysis, if an occupant refuses to answer the door, the investigation is given additional justification to proceed. The curtilage of one’s home should not be made more vulnerable to intrusion on account of someone utilizing their rights under the Fourth Amendment.

Instead, the implicit license should only last for a short time after the first knock. Once it becomes clear that no one will respond, the police lose the license to remain on the curtilage and must leave. The police cannot linger on the curtilage or knock for minutes on end. While the sound of movement inside the home might be relevant because it could signify someone coming to the door, which would extend the license, someone answering the door would likely come shortly after hearing the knock. Accordingly, there is little benefit to allowing officers to spend an abnormal amount of time at the door because they suspect someone may be coming. Additionally, if an officer is truly interested in waiting to see if someone answers the door, the officer can always leave the curtilage and wait to see if someone comes to the door and provides consent for the police to reenter.

C. The Knock and Talk Exception Extends to Entrances of the Home and No Further

While the knock and talk exception allows police to enter the curtilage of the home without a warrant, there is no reason for courts to apply this exception to any police activities except those made near a doorway. It is important to remember that the Court has emphasized that the knock and talk results from a license to approach the door and knock. There is not, however, any license to simply attempt to speak to someone on their property. The Eleventh Circuit applied this principle incorrectly in Walker when it allowed the police to leave the front door and approach a sleeping defendant elsewhere on the curtilage. The court described this as a “small departure from the front door.” While the distance between the front door and a carport was only a couple of feet, the legality of approaching each area is vastly dif-

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130 Id. at 470 (quoting United States v. Chambers, 395 F.3d 563, 577 (6th Cir. 2005)).
131 United States v. Walker, 799 F.3d 1361, 1364 (11th Cir. 2015).
132 Id.
There is no well-recognized social license for private citizens to approach a parked car and knock. Similarly, the Fourth Circuit is mistaken in allowing police to bypass knocking on the front door if they see someone elsewhere on the property.\textsuperscript{133} To the Fourth Circuit, the mere sight of a person on the property is enough to create an implied license to approach.\textsuperscript{134} This behavior is divorced from the license underlying a knock and talk, which derives from social customs related to approaching doorways.\textsuperscript{135} There is no license to step onto another’s property just to speak with them.

These circuits formulate the knock and talk in a way that wrongfully undermines the private property interests that the Court recognized in \textit{Jardines}. The Fourth Amendment protects the curtilage in order to defend “the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.”\textsuperscript{136} Under cases like \textit{Walker} and \textit{Covey}, however, a resident’s presence on the curtilage gives the police increased license to warrantlessly enter the curtilage and attempt to initiate a conversation. This reading of the knock and talk exception paradoxically provides less recognition to the property interests of an occupied home than it does to an unoccupied one.

Preventing police from approaching and speaking to someone who is standing in plain sight could be seen as placing a significant burden on society’s interest in effective policing. But such a rule would not excessively interfere with police activities because it would simply require the police to avoid intruding upon the curtilage. This limitation does not prevent police from attempting to speak to a person, so long as they do so while respecting the property interests protected by the Fourth Amendment. Police would be free to stand on the sidewalk, for example, and attempt to converse at a distance. This would do nothing to prevent police from having a full conversation with visible residents and asking for consent to conduct a search. Critically, it would prohibit police from using the knock and talk to initiate a conversation that would not be feasible from the sidewalk or front door.

\textsuperscript{133} See Covey v. Assessor of Ohio Cnty., 777 F.3d 186,193 (4th Cir. 2015) (quoting Pena v. Porter, 316 Fed.Appx 303, 313 (4th Cir. 2009)).

\textsuperscript{134} \textit{Id.} (“If the officers first saw Mr. Covey from a non-curtilage area, they may well prevail under the knock-and-talk exception at summary judgment.”).

\textsuperscript{135} See Breard v. City of Alexandria, La., 341 U.S. 622, 626 (1951) (“The knocker on the front door is treated as an invitation or license to attempt an entry.”).

\textsuperscript{136} Florida v. Jardines, 569 U.S. 1, 6 (2013) (quoting Silverman v. United States, 365 U.S. 505, 511 (1961)).
D. The Value of Using Bright-Line Rules Once Police Have Begun a Knock and Talk

When it comes to expansion of the knock and talk exception, courts are too permissive of police officers expanding the bounds of the exception. Courts extend the knock and talk exception by declaring police oversteps justified by the circumstances. This is understandable, since the Supreme Court has stated that “[t]he touchstone of the Fourth Amendment is reasonableness.” 137 With this understanding, “the Court has consistently eschewed bright-line rules, instead emphasizing the fact-specific nature of the reasonableness inquiry.” 138 It may therefore seem unusual to suggest several bright-line rules constraining knock and talks, but there are multiple reasons to treat knock and talks as a unique exception to the warrant requirement.

First, there is a “presumption of unreasonableness that attaches to all warrantless home entries.” 139 Accordingly, “[b]efore agents of the government may invade the sanctity of the home, the burden is on the government to demonstrate exigent circumstances.” 140 While other warrantless entries are presumed to be unreasonable, knock and talks are by default permitted. Fourth Amendment jurisprudence already treats knock and talks differently than other warrantless entries of the home.

Additionally, while other exceptions to the warrant requirement depend on fact-specific circumstances and are therefore limited in their applicability, knock and talks enjoy extremely broad authorization. Consider other circumstances where the police may enter the curtilage of the home without a warrant. Police can enter without a warrant to prevent the destruction of evidence. 141 Police in “hot pursuit” of a fleeing felony suspect can also follow the suspect into the home without a warrant. 142 And police can enter without a warrant if they believe someone is injured or in danger. 143 All of these scenarios require an exigency serious enough to overcome the warrant requirement. And this exigency will need to be demonstrated by a fact-driven inquiry. By contrast, the Court has acknowledged that the general

140 Id.
141 See Kentucky v. King, 563 U.S. 452, 462 (2011) (“warrantless entry to prevent the destruction of evidence is reasonable and thus allowed.”).
143 See Brigham City, Utah v. Stuart, 547 U.S. 398, 400 (2006) (holding that “police may enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury.”).
“habits of the country” give the police a license to conduct knock and talks.  

The Supreme Court has also singled out the space of the home as an area which must be protected by bright-line rules. The Fourth Amendment draws a “firm line at the entrance to the house” because “[t]he physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.” And in Kyllo v. United States, the Court held that line is “not only firm but also bright.” Prohibiting police from extending a knock and talk beyond the site of the initial knock and talk would be in line with Fourth Amendment objectives.

Because knock and talks are distinct from other exceptions to the warrant requirement, it makes sense to constrain them with bright-line rules. The license to conduct a knock and talk is so much broader in scope than the other exceptions that without clear limits, the knock and talk exception threatens to eclipse the stringent protections that the Fourth Amendment grants.

One potential concern with using bright-line rules to govern knock and talks is that social customs related to knocking on the door are amorphous, leading to police confusion. A knock and talk is theoretically identical to what a private citizen might do, but different private citizens behave differently around someone’s home. While it would be unusual for trick-or-treaters or canvassers to probe around a house after receiving no response at the front door, a friendly neighbor may feel perfectly comfortable heading into the backyard to see if anyone is home. Neighbors on especially good terms may even occasionally let themselves into an unlocked door and walk around inside to see if someone is home. Since there are so many scenarios to consider, it makes it difficult to craft a rule that differentiates between those actions that are covered by the license and those that are not.

This ambiguity could justify using a bright-line rule to determine acceptable behavior. The implied license should not be construed overbroadly simply because a small group of people act as trusted neighbors. The Supreme Court has recognized that a knock and talk is no more than what “any” private citizen can do. Accordingly, the license should be understood as only covering baseline behaviors that are available to all citizens. This consists of approaching an accessible

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147 Id. at 40.
door, knocking, waiting for a response, and leaving at the conclusion. While neighbors could potentially have greater license to approach a home than salesmen, police should not be able to claim a neighborly license. Such a construction would give police greater ability to move around the home than many private citizens and would expand the knock and talk beyond what the implied license permits.

Limiting knock and talks according to bright-line rules would not interfere with legitimate police work. Constraints on knock and talks are counterbalanced by the police’s ability to pursue other strategies, including applying for a warrant. For other exceptions to the warrant requirement, the police do not have time to seek a warrant, so their options are limited. When there are no exigencies, knock and talks are merely one of several investigative strategies the police can pursue.

E. Restricting Unconstitutional Knock and Talks Will Vindicate the Property Rights of Residents

One potential reason that courts are permissive of meandering police behavior on the curtilage is that there is rarely a sufficient expectation of privacy to give rise to *Katz* protection. Front and back porches, yards, and driveways are almost always exposed to public view. Even if an area behind the home is not visible from the street, police can constitutionally observe these spaces, even using means of aerial surveillance to do so.\(^{149}\) Since *Katz* provides the usual test for violations of the Fourth Amendment, courts may wrongly view impermissible knock and talks as insignificant oversteps of government power. Courts may also find it pointless to restrict police from wandering around the home because they could obtain the same visual information through other means. Nevertheless, when the police physically intrude upon the home without permission, these considerations are irrelevant. In *Jones v. United States*,\(^{150}\) another case where the Court utilized a property-based understanding of the Fourth Amendment, the Court held that the physical attachment of a GPS tracker to a car constituted a search.\(^{151}\) Like in *Jardines*, the warrantless physical intrusion upon the car to gather information was sufficient to violate the Fourth Amendment, and *Katz* was therefore irrelevant to the analysis.\(^{152}\) In *Jones*, the Court considered it unimportant that there is generally no expectation of privacy on public roads and that the location

\(^{149}\) *See* Florida v. Riley, 488 U.S. 445 (1989) (holding that police helicopter observation of backyard area was not a search that required a warrant).

\(^{150}\) 565 U.S. 400 (2012).

\(^{151}\) *Id.* at 404–8.

\(^{152}\) *Id.*
of a vehicle is considered voluntarily conveyed to the public.\textsuperscript{153} Once physical intrusion occurs, a warrant is needed. This is for good reason. As the Court noted, the Fourth Amendment “embod[ies] a particular concern for government trespass upon [enumerated] areas.”\textsuperscript{154} The warrant requirement, at the expense of police convenience, ensures that investigations proceed in a justified and constrained manner.

When the courts allow knock and talks to proceed beyond the limits of any implied license or warrant, they enable tactics that can be used for unfettered intimidation. Police can post themselves on a citizen’s doorstep and refuse to leave. They can knock and call for minutes on end or wander around the perimeter of the house. Attempting to hide within the confines of one’s home may simply prolong the harassment. Confoundingly, the police are free to engage in such behavior on a whim, without ever needing to show suspicion.

The right to be free from government intrusion in one’s home is the right “[a]t the very core” of the Fourth Amendment.\textsuperscript{155} Rather than legitimizing questionable police knock and talks, courts must stand up to attempts to sidestep the warrant requirement and reaffirm the paramount respect that the Constitution grants to the home.

V. CONCLUSION

Following the Supreme Court’s decision in \textit{Jardines}, courts across the country modified their knock and talk jurisprudence to varying degrees. These ongoing controversies about police authority leave the home, the area most heavily protected by the Fourth Amendment, vulnerable to warrantless intrusion. The Supreme Court’s discussion of knock and talks, though limited, implies consistent and sensible limits on police usage of knock and talks. Courts must analyze these Fourth Amendment issues by considering the implied social license to approach the door of a home and knock.

Several circuits allow police to extend the duration and scope of an attempted knock and talk based on the circumstances that police encounter after beginning the knock and talk, but this cannot be justified. Without an invitation to continue from an occupant, any effort by the police to persist with an unsuccessful knock and talk oversteps the social license that allows the police to be on the curtilage in the first instance.

Adopting clearer and stricter rules is necessary to ensure that police perform knock and talks in a way that comports with the princi-

\textsuperscript{153} \textit{Id.} at 409.
\textsuperscript{154} \textit{Id.} at 406.
ples of the Fourth Amendment. Additional constraints will not prevent police from conducting ordinary knock and talks, but instead will safeguard against police who abuse this privilege to visit private areas of the home for an extended duration. Through a renewed focus on the implicit license to knock on the door, courts will reaffirm the home’s special status in Fourth Amendment jurisprudence as “first among equals.”

156 Florida v. Jardines, 569 U.S. 1, 6 (2013).