FROM SNIFF TO SEARCH: THE FOURTH AMENDMENT'S TRESPASS THEORY AND THE K-9 VEHICLE CONTACT DEBATE

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When a trained drug-detection dog physically contacts a vehicle during a "free-air sniff," does that contact constitute a Fourth Amendment search under the Jones *property-based trespass test? This Note argues that such contact should qualify as a Fourth Amendment search. It contends that courts should adopt a more consistent application of the trespass rule under* Jones *by treating handler-directed dog contact as a search and proposes training reforms that preserve effective policing.*

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INTRODUCTION

> *Dogs are blameless, devoid of calculation, neither blessed nor cursed with human motives. Insofar as they have problems . . . it's usually because we either inflict them or fail to correct them. They can't really be held responsible for what they do. But we can.*
>
> Jon Katz, *The Dogs of Bedlam Farm*[1]

Police K-9s occupy a peculiar legal and conceptual space: half living creature, half law enforcement instrument.[2] Courts and officers alike often treat these animals as extensions of human senses—highly trained, mechanical tools designed to detect the otherwise undetectable.[3] Yet recent research on drug-detector dogs complicates this assumption, showing that detection outcomes often depend as much on training protocols, operational context, and handler interpretation as on the dog's olfactory abilities[4]—a reality that complicates courts' frequent characterization of dog sniffs as neutral, machine-like detection methods and reliance on the notion that canine behavior is "instinctive."[5] But unlike radar guns or thermal imagers,[6] dogs have bodies of their own. Those bodies move, wag, jump,

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1. JON KATZ, THE DOGS OF BEDLAM FARM, at xi (Villard Books) (2004).

2. Drug-sniffing dogs have always occupied an uneasy place in Fourth Amendment doctrine. The U.S. Supreme Court has described canine sniffs as sui generis—unique investigative tools that, when properly trained, reveal only the presence or absence of contraband. *See* United States v. Place, 462 U.S. 696, 707 (1983).

3. *See id.*; Illinois v. Caballes, 543 U.S. 405, 409–10 (2005); NSW OMBUDSMAN, REVIEW OF THE POLICE POWERS (DRUG DETECTION DOGS) ACT 2001 17 (2006) (describing drug-detection dogs as "tools or instruments" that aid police officers in forming reasonable suspicion).

4. *See* Adonai José Lacruz & Cristiano Callegario Silva, *The Use of Sniffer Dogs in Drug Enforcement: An Integrative Review*, 0 POLICE J. 1, 6–25 (2025) (reviewing 15 studies on the deployment and efficacy of drug-detector dogs and concluding that the effectiveness of these dogs varies significantly depending on operational environment, training practices, and handler interpretation).

5. Courts have frequently characterized canine sniffs as uniquely limited detection tools that reveal only the presence or absence of contraband. *See Place*, 462 U.S. at 707 (describing a dog sniff as a "limited" investigative technique that discloses only contraband); City of Indianapolis v. Edmond, 531 U.S. 32, 40 (2000) (stating that an exterior canine sniff is "much less intrusive than a typical search"); *Caballes*, 543 U.S. at 409 (holding that a dog sniff does not implicate legitimate privacy interests because it reveals only contraband); Florida v. Harris, 568 U.S. 237, 246–47 (2013) (explaining that courts may rely on certification and training records to establish the reliability of a drug-detection dog's alert). Courts have also relied on the notion that a police K-9's investigative behavior can be instinctual. *See, e.g.*, United States v. Stone, 866 F.2d 359, 364 (10th Cir. 1989) (treating a dog's entry into a vehicle as "instinctive" where the handler "let his leash go and let him go where his nose would take him").

6. *See* Kyllo v. United States, 533 U.S. 27, 34–40 (2001) (holding that the warrantless use of a thermal-imaging device to detect heat emanating from a private home constituted a Fourth Amendment search and explaining that sense-enhancing technologies not in general public use may not be employed to obtain information that would otherwise

sniff, and sometimes make physical contact with the objects they investigate. When that contact occurs during a criminal investigation, it raises a deceptively simple Fourth Amendment question: when does a drug-detection dog's touch become a *search*?[7] The answer matters because a trained detection dog's positive alert is widely treated as establishing probable cause to search the entire vehicle and its contents, thereby transforming a brief, ostensibly limited sniff into a gateway for a full-scale evidentiary search.[8]

Consider two familiar roadside encounters. In the first, an officer conducts a traffic stop and walks a trained drug-detection dog around the exterior of a vehicle. The dog sniffs the air near the doors and seams, never touching the car, and alerts to the presence of contraband from inches away. In the second, the same dog, responding to a handler's cue, jumps up, places its paw on the door panel, and presses its nose along the window seam before alerting. Both encounters are commonly described as "free-air sniffs,"[9] yet only one involves a physical intrusion onto the vehicle itself. Should the Fourth Amendment treat them the same?

This Note answers that question by drawing a simple but consequential distinction: not every contact between a trained dog and a vehicle triggers the Fourth Amendment, but purposeful investigative contact does.[10] A dog's incidental brush against a tire or bumper, when untethered to evidence-gathering, does not implicate

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require physical intrusion); *see also Caballes*, 543 U.S. at 410 (distinguishing a dog sniff from the thermal-imaging device in *Kyllo* by noting that "[t]he legitimate expectation that information about perfectly lawful activity will remain private is categorically distinguishable from [the *Caballes*] respondent's hopes or expectations concerning the nondetection of contraband in the trunk of his car").

7. *See* U.S. CONST. amend. IV ("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.").

8. *See Harris*, 568 U.S. at 246–47 (holding that a properly trained and certified drug-detection dog's alert can establish probable cause to search); United States v. Ross, 456 U.S. 798, 825 (1982) (permitting a warrantless search of every part of a vehicle and its contents that may conceal the object of the search once probable cause exists); *see also Caballes*, 543 U.S. at 409–10 (treating a dog alert as providing justification for further search).

9. A "free-air sniff" refers to a canine sniff conducted from a location where officers are lawfully entitled to be—typically involving a trained detection dog walking around the exterior of a vehicle or container in a public place without physical entry into the interior. *See Place*, 462 U.S. at 707; *Edmond*, 531 U.S. at 40 (explaining that walking a narcotics-detection dog around a vehicle's exterior "does not transform the seizure into a search" because it requires no entry and discloses only contraband); *Caballes*, 543 U.S. at 409–10 (holding that an exterior dog sniff during a lawful traffic stop generally does not implicate legitimate privacy interests). The Court has imposed important limits on such sniffs: officers may not prolong a traffic stop to conduct a sniff without independent reasonable suspicion, and the use of a drug-detection dog to investigate constitutionally protected areas such as the home or its curtilage constitutes a search. *See* Rodriguez v. United States, 575 U.S. 348, 354–57 (2015); Florida v. Jardines, 569 U.S. 1, 9–11 (2013).

10. *See* discussion *infra* Part IV.

constitutional protections.[11] But when law enforcement deploys a trained detection dog in a manner designed to facilitate physical contact with a vehicle to obtain information, that contact constitutes a search under the Fourth Amendment's property-based framework and must be supported by consent, a warrant, or probable cause.[12]

Under the Supreme Court's interpretation of the Fourth Amendment in *United States v. Jones*[13] and *Florida v. Jardines*,[14] a search occurs when the government, through any agent or instrument, physically intrudes upon a constitutionally protected area for the purpose of obtaining information.[15] A vehicle is an "effect" within the Fourth Amendment's text,[16] and a dog trained and directed to investigate it functions as an investigative instrument of the state.[17] When that instrument makes purposeful contact to gather evidence, the trespass test is satisfied, no matter how brief the intrusion.[18]

This inquiry is limited to vehicle sniffs conducted during traffic stops. Although similar questions could arise if a detection dog physically contacted a person or other personal effects, most canine-sniff litigation occurs in the roadside

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11. *See* discussion *infra* Section IV.B.

12. *See* discussion *infra* Section IV.B; United States v. Jones, 565 U.S. 400, 404–05 (2012) (holding that a physical intrusion on a constitutionally protected effect for the purpose of obtaining information constitutes a search); *Jardines*, 569 U.S. at 5–7 (holding that deploying a trained detection dog to physically intrude on protected property to obtain information is a search); State v. Dorff, 526 P.3d 988, 999–1000 (Idaho 2023) (treating a drug dog's physical contact with a vehicle as a trespassory search); *see also* Katz v. United States, 389 U.S. 347, 357 (1967) (stating that warrantless searches are per se unreasonable absent a recognized exception).

13. 565 U.S. at 404–05.

14. 569 U.S. at 5–9.

15. *See Jones*, 565 U.S. at 404–05 ("It is important to be clear about what occurred in this case: The Government physically occupied private property for the purpose of obtaining information. We have no doubt that such a physical intrusion would have been considered a 'search' within the meaning of the Fourth Amendment when it was adopted. . . . '[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; if he does he is a trespasser, though he does no damage at all; if he will tread upon his neighbour's ground, he must justify it by law.'" (quoting Entick v. Carrington, 95 Eng. Rep. 807, 817 (C. P. 1765))).

16. *Id.* at 404 ("It is beyond dispute that a vehicle is an 'effect' as that term is used in the [Fourth] Amendment."); *see also* United States v. Chadwick, 433 U.S. 1, 12 (1977) (noting that automobiles are "effects" under the Fourth Amendment, and searches and seizures of them are subject to the constitutional standard of reasonableness).

17. *See Jardines*, 569 U.S. at 12–13 (Kagan, J., concurring) (noting that drug-detection dogs are "highly trained tools of law enforcement, geared to respond in distinctive ways to specific scents so as to convey clear and reliable information to their human partners," and function as "specialized device[s] for discovering objects not in plain view (or plain smell)"); *see also* Florida v. Harris, 568 U.S. 237, 246 (2013) (noting that "evidence of a dog's satisfactory performance in a certification or training program can itself provide sufficient reason to trust his alert").

18. *See* United States v. Balsys, 524 U.S. 666, 692 (1998) (noting that "breaches of privacy are complete at the moment of illicit intrusion, whatever use may or may not later be made of their fruits").

context,[19] where officers deploy dogs to investigate vehicles during brief police-controlled encounters. Vehicles also occupy a distinctive position in Fourth Amendment doctrine: they are expressly protected "effects," yet subject to reduced expectations of privacy under longstanding precedent.[20] This combination has made vehicle sniffs the primary battleground for courts grappling with whether canine contact crosses constitutional lines. As recent litigation demonstrates,[21] vehicle sniffs are also where the choice between a privacy-based analysis and a property-based trespass framework most directly determines outcomes, with identical facts producing opposite constitutional results depending on the test applied.

Lower courts are increasingly divided on this issue. Courts applying a reasonable-expectation-of-privacy framework tend to dismiss canine contact as incidental or instinctive.[22] Courts applying the Fourth Amendment's revived property-based framework—most notably the Idaho Supreme Court in *State v.*

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19. Although no single statistic quantifies the proportion of canine-sniff litigation arising from traffic stops, Fourth Amendment doctrine and commentary on drug-detection dogs overwhelmingly focus on roadside vehicle encounters. The Supreme Court's foundational canine-sniff cases addressing the constitutionality of dog sniffs outside the home have almost exclusively arisen in the context of traffic or vehicle stops. *See, e.g.*, Illinois v. Caballes, 543 U.S. 405, 406 (2005) (vehicle sniff during traffic stop); Rodriguez v. United States, 575 U.S. 348, 350–54 (2015) (prolonged traffic stop for dog sniff). Even when the Court has confronted canine sniffs outside the vehicle context, it has done so by distinguishing traffic stops and other public roadside encounters from searches conducted on private property. *See Jardines*, 569 U.S. at 7–9. The predominance of traffic-stop cases in both Supreme Court precedent and lower-court decisions strongly suggests that roadside vehicle encounters constitute the primary setting in which canine-sniff constitutional disputes arise. *See* Andrea J. Garland, *Deconstructing Dog Sniffs at Traffic Stops*, 106 MARQ. L. REV. 419, 420, 443–50 (2022) (explaining that courts' routine approval of traffic-stop dog sniffs has depended not only on the premise that a trained dog reveals "only contraband," but also on the operational premise that the dog does not physically occupy the vehicle and instead "simply walk[s] around" it).

20. The U.S. Supreme Court has recognized that automobiles are "effects" protected by the Fourth Amendment, but individuals have a diminished expectation of privacy in vehicles because they are used for transportation, travel public thoroughfares, and are subject to extensive government regulation. *See* Carroll v. United States, 267 U.S. 132, 153–54 (1925) (establishing the automobile exception to the warrant requirement based on a vehicle's mobility and reduced privacy expectations); California v. Carney, 471 U.S. 386, 392 (1985) (noting that automobiles are subject to "pervasive regulation" and that their mobility creates exigent circumstances justifying warrantless searches).

21. Petitioner's Reply Brief at 1–2, Mumford v. Iowa, No. 24-1093 (U.S. Aug. 26, 2025).

22. *See, e.g.*, United States v. Pierce, 622 F.3d 209, 214–15 (3d Cir. 2010) (concluding that no Fourth Amendment violation occurred when a dog jumped instinctively through an open car door "without facilitation by his handler"); United States v. Lyons, 486 F.3d 367, 373–74 (8th Cir. 2007) (finding no Fourth Amendment violation when a dog stuck his head instinctively through a van's open window without officers directing him to do so); United States v. Stone, 866 F.2d 359, 363–64 (10th Cir. 1989) (holding no Fourth Amendment violation occurred when a dog jumped instinctively into defendant's open hatchback and officers did not ask the defendant to open the hatchback for purposes of the dog sniff).

Dorff[23]—have held that even if contact is slight, purposeful contact with a vehicle constitutes a trespassory intrusion onto a constitutionally protected effect and therefore amounts to a search.[24] This divide reflects a deeper doctrinal tension: whether canine sniffs should continue to be evaluated under the privacy-based logic of earlier cases or the property-based framework revived in *Jones*[25] and *Jardines*.[26]

This Note contends that the latter approach is both doctrinally sound and practicably administrable. Treating handler-directed canine contact with a vehicle as a search provides a clear, textually grounded rule that aligns with the Fourth Amendment's protection of property while preserving effective policing. As a matter of policy, law enforcement agencies can, and in many instances already do, train dogs to conduct no-contact sniffs, reducing risk without sacrificing investigative utility. Where contact nonetheless occurs, requiring officers to justify it as a search ensures transparency, accountability, and evidentiary integrity.

Part I of this Note situates the modern drug-detection dog within the broader history of canine policing, challenging the enduring myth of the dog's infallible nose. Part II traces the evolution of Fourth Amendment search doctrine from the reasonable-expectation-of-privacy framework to the Supreme Court's revived property-based trespass test. Part III applies that doctrinal framework to canine-contact cases, organizing lower-court decisions by analytical approach to illuminate a growing divide. Part IV then critiques courts' reliance on the instinct vs. direction distinction, arguing that this framework is doctrinally unstable and ill-suited to the realities of trained police dog deployment. Finally, Part V advances a clearer rule—treating handler-directed canine contact as a search—while proposing targeted reforms to training and evidentiary practices that preserve constitutional boundaries and effective law enforcement.

I. A BRIEF HISTORY OF CANINE POLICING

Police dogs have long served as extensions of state power. They track missing persons, bite and hold suspects, and charm elementary school children during public demonstrations. Yet their connection to law enforcement predates modern drug detection by centuries.[27] As legal scholar Madalyn Wasilczuk

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23. 526 P.3d 988, 998 (Idaho 2023).

24. *See id.* (finding a Fourth Amendment search occurred when the state's drug dog intermeddled with and thereby trespassed against the defendant's vehicle for the purpose of obtaining information).

25. 565 U.S. 400, 404–05 (2012).

26. 569 U.S. 1, 5–9 (2013); *see also* United States v. Ponce, 734 F.3d 1225, 1227–28 (10th Cir. 2013) ("We think that the Supreme Court's recent decision in *Jardines* . . . may call into question the application of some of our precedent that touches on this issue.").

27. *See generally* Madalyn K. Wasilczuk, *The Racialized Violence of Police Canine Force*, 111 GEO. L.J. 1125 (2023) (examining the historical and modern uses of police dogs as instruments of state force and social control); Chris Pearson, *Between Instinct and Intelligence: Harnessing Police Dog Agency in Early Twentieth-Century Paris*, 58 COMPAR. STUD. IN SOC'Y & HIST. 463 (2016) (tracing the early twentieth-century development of police dogs as tools of policing and public order); Irus Braverman, *Passing the Sniff Test: Police Dogs as Surveillance Technology*, 61 BUFF. L. REV. 81 (2013) (analyzing police dogs as state surveillance technologies embedded in law enforcement practices).

observes, Europeans weaponized dogs to hunt and kill Indigenous peoples and suppress rebellions in the Americas and the Caribbean.[28] That legacy persisted into the trans-Atlantic slave trade and the rise of southern slave patrols in the early eighteenth century, where bloodhounds were used to track enslaved people who escaped captivity.[29] Similar practices appeared across the Atlantic: in the 1870s, British authorities deployed dogs to hunt "social vermin"; in the 1890s, Belgian police began using sheepdogs to supplement human patrols; by the early twentieth century, canine partners had taken hold across Europe, the United States, and much of the colonial world.[30]

A. Early Detection Programs and the Militarization of Scent

Modern detection-dog programs emerged from mid-twentieth-century military and customs initiatives. Law enforcement in the United Kingdom began training dogs to detect narcotics by the 1950s.[31] In 1968, the U.S. Department of Defense launched its Military Working Dog Program at Lackland Air Force Base in San Antonio, Texas, and the U.S. Customs Service soon initiated an experimental narcotics-detector dog program there as well.[32] These early dogs were trained to identify marijuana and hashish, later expanding to cocaine and heroin.[33] Customs trainers demonstrated that canines could reliably discriminate among multiple target odors—a capacity previously thought biologically impossible.[34]

In 1970, as part of President Nixon's war on drugs, the U.S. Customs Service formalized its detector-dog program, and by 1973, both the newly created Drug Enforcement Administration and various state law enforcement agencies had adopted dogs of their own.[35] The U.S. Border Patrol launched a canine pilot program in 1986 that expanded from 4 teams to 75 within two years.[36] Following the creation of the Department of Homeland Security in 2003, the Customs Service and Border Patrol programs merged under U.S. Customs and Border Protection ("CBP").[37] Today, CBP's two academies—in El Paso, Texas, and Front Royal, Virginia—train more than 1,500 teams for missions centered on terrorist detection and narcotics

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28. *See* Wasilczuk, *supra* note 27, at 1132–38.

29. *See id.*; *see also* Pearson, *supra* note 27, at 463–90 (examining historical efforts to harness canine abilities for policing and criminal detection).

30. *See* Pearson, *supra* note 27, at 469–77.

31. *See* Braverman, *supra* note 27, at 135–38.

32. *See id.*; *see also* U.S. CUSTOMS & BORDER PROT., *Canine Academies* (last modified Sep. 2, 2026), https://www.cbp.gov/border-security/canine-program/canine-centers [https://perma.cc/VX8R-ZPPT] [hereinafter *Canine Academies*] (describing the establishment of the U.S. Customs Service's narcotics-detector dog program at Lackland Air Force Base).

33. *See Canine Academies*, *supra* note 32; *see also* MARK DERR, A DOG'S HISTORY OF AMERICA: HOW OUR BEST FRIEND EXPLORED, CONQUERED, AND SETTLED A CONTINENT 345–48 (2004) (describing the development of early narcotics-detection dog programs and substances for which the dogs were trained).

34. *See* Braverman, *supra* note 27, at 135–38.

35. *See* DERR, *supra* note 33.

36. *See Canine Academies*, *supra* note 32.

37. *See id.*

interdiction.[38] Today, these canine teams continue to facilitate substantial narcotics seizures, ranging from contraband worth hundreds of thousands of dollars in individual border interdictions to a recent seizure of 5 tons of marijuana that could fetch approximately $24 million on the illicit market.[39]

B. Expansion, Reliability, and the "Mythic Infallibility" of the Dog's Nose

By the 1990s, the war on drugs had evolved into a broader policing paradigm, and detector-dog programs proliferated beyond law enforcement. Insurance and emergency services trained dogs to detect accelerants, mold, and explosives, while the attacks on September 11, 2001, prompted a massive expansion of bomb-detection units.[40] Yet despite the units' ubiquity, scientific research on canine reliability lagged far behind operational deployment.

By law, a detection dog must be trained, certified, and demonstrably reliable, but it need not be infallible.[41] Courts, however, have often treated canine reliability with near-religious faith—something legal scholar Andrew Taslitz termed the judiciary's belief in the "mythic infallibility" of the dog's nose, an assumption that an alert almost always indicates the presence of contraband.[42]

But empirical research has painted a more complicated picture. A 2011 *Chicago Tribune* investigation found that only 44% of alerts by trained and certified drug-detector dogs led to the discovery of drugs or paraphernalia, and where Hispanic drivers were the subject of traffic stops, the success rate fell to a staggering 27%.[43] An Australian study Justice Sotomayor cited during oral arguments in

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38. *See id.*

39. *See* U.S. CUSTOMS & BORDER PROT., *CBP Seizes Hard Drugs Worth Nearly $395K* (Sep. 16, 2014), https://www.cbp.gov/newsroom/local-media-release/cbp-seizes-hard-drugs-worth-nearly-395k [https://perma.cc/6TEY-H8JY] (reporting canine-assisted seizures of approximately $187,000 in methamphetamine and heroin and $198,000 in cocaine); U.S. CUSTOMS & BORDER PROT., *Baltimore CBP Officers Intercept 5-Tons of Marijuana Bound to England* (June 18, 2026), https://www.cbp.gov/newsroom/national-media-release/baltimore-cbp-officers-intercept-5-tons-marijuana-bound-england [https://perma.cc/X4AE-PNS6] (reporting that a CBP narcotics detector dog alerted to more than 5 tons of marijuana valued at approximately $24 million in the United States and potentially twice that amount in Europe).

40. *See* DERR, *supra* note 33.

41. Florida v. Harris, 568 U.S. 237, 246–48 (2013). In *Harris*, the Supreme Court cautioned that a dog's field performance records are an imperfect measure of reliability. *Id.* at 246. Field data often omit false negatives (when a dog fails to alert to undetected drugs) and may overstate false positives because a dog can legitimately alert to residual odors or quantities too small for officers to find. *Id.* at 245–46. By contrast, controlled training and certification records, where evaluators know the precise placement of target odors, offer a more accurate gauge of performance. Thus, a properly certified dog's alert generally provides probable cause absent evidence undermining the training's quality or suggesting cueing or other unreliability. *Id.* at 246–47. The Court emphasized that defendants remain free to challenge reliability through cross-examination or expert testimony, but it rejected rigid evidentiary rules in favor of a "totality of the circumstances" inquiry. *Id.* at 246–48.

42. *See* Andrew E. Taslitz, *Does the Cold Nose Know? The Unscientific Myth of the Dog Scent Lineup*, 42 HASTINGS L.J. 15, 24 (1990).

43. *See* Dan Hinkel & Joe Mahr, *Tribune Analysis: Drug-Sniffing Dogs in Traffic Stops Often Wrong*, CHI. TRIB. (Jan. 6, 2011, at 01:00 CT),

Florida v. Harris reported that police dogs' drug-detection accuracy in the field across a variety of contexts ranged from 7% to 56% over a two-year period.[44] More recent scholarship reviewing the empirical literature likewise concludes that the effectiveness of detection dogs varies substantially across operational contexts and is strongly mediated by factors such as training quality, search environment, handler interpretation, and the presence of residual drug odors.[45] Ultimately, these findings suggest that the reliability of canine alerts, and by extension, the validity of searches based on them, depends less on a dog's olfactory ability than on its handler's conduct, training rigor, and documentation.[46]

These findings also undermine a recurring doctrinal premise in lower-court decisions that canine behavior during a sniff can be meaningfully separated from state action because it is "instinctive."[47] Modern detection dogs are trained to pursue odors to their source and to engage with that source in ways that facilitate identification and alerting.[48] What courts describe as instinct is, in practice, the predictable product of training and reinforcement.[49]

Understanding how detection dogs came to be treated as reliable, quasi-mechanical instruments helps explain why courts have historically been

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http://www.chicagotribune.com/2011/01/06/tribune-analysis-drug-sniffing-dogs-in-traffic-stops-often-wrong/ [https://perma.cc/4EEM-9Y8R].

44. Transcript of Oral Argument at 13–14, Florida v. Harris, 568 U.S. 237 (2013) (No. 11-817); *see* NSW OMBUDSMAN, *supra* note 3, at 57 tbl. 9; *see also* Taylor Phipps, *Probable Cause on a Leash*, 23 B.U. PUB. INT. L. J. 57, 66–77 (2014) (discussing the New South Wales study and its findings regarding variations in detector dog accuracy rates).

45. *See* Lacruz & Silva, *supra* note 4, at 6–25 (synthesizing 15 empirical studies and concluding that detection outcomes are highly contingent on contextual variables, including operational setting, handler interpretation, and environmental conditions); Lisa Lit, Julie B. Schweitzer & Anita M. Oberbauer, *Handler Beliefs Affect Scent Detection Dog Outcomes*, 14 ANIMAL COGNITION 387, 387 (2011) (explaining a study in which handlers, falsely told that a scent of interest was present, reported their dogs indicated the presence of the scent); *see also* United States v. Jordan, 455 F. Supp. 3d 1247, 1255–59 (D. Utah 2020) (holding that lack of double-blind training failed to remove risk of handler cueing and cast doubt on K-9's accuracy and suppressing evidence based on officer's unreasonably subjective interpretation of K-9's signals).

46. *See* Lacruz & Silva, *supra* note 4, at 6–25.

47. *See* United States v. Stone, 866 F.2d 359, 364 (10th Cir. 1989) (holding that a dog's "instinctive" entry into a vehicle did not violate the Fourth Amendment where officers did not facilitate the intrusion); *see also* Olivia Murphy, *Barking Bad: How the "Instinctive Exception" to Narcotic Canine Conduct at Traffic Stops Conflicts with State Responsibility and the Fourth Amendment*, 75 SYRACUSE L. REV. 251, 258–61 (2025) (arguing that courts' reliance on "instinct" mischaracterizes trained canine behavior and obscures the role of handler influence in drug-detection work).

48. *See* Murphy, *supra* note 47, at 262–66.

49. *See id.* (arguing that "instinct" is a legal characterization that masks training and handler influence); 3DK9 LLC, *How Are Drug Sniffing Dogs Trained to Find Narcotics?*, (Apr. 26, 2021), https://www.3dk9detection.com/news/how-are-drug-sniffing-dogs-trained-to-find-narcotics [https://perma.cc/M3LV-WNXK] ("The dog seeks the illegal substance in hopes of getting a reward.").

reluctant to scrutinize their physical conduct.[50] When dogs are framed as neutral sensory tools rather than state-directed investigative agents, their movements—and even their physical contact with property—fade into the background of Fourth Amendment analyses, despite evidence that canine alerts can be shaped as much by human handlers as by scent alone.[51]

This dynamic—human direction filtered through an ostensibly mechanical animal—lies at the heart of modern Fourth Amendment disputes involving drug-detection dogs. Yet courts have not spoken with one voice about how such encounters should be analyzed. Instead, courts have relied on two distinct and sometimes competing frameworks for defining what constitutes a search under the Fourth Amendment.[52]

II. TWO FRAMEWORKS FOR DEFINING A SEARCH

The Fourth Amendment provides two analytically independent ways of determining whether government conduct constitutes a "search." For much of the twentieth century, courts evaluated searches almost exclusively through the lens of privacy, asking whether government action violated a person's reasonable expectation of privacy.[53] More recently, however, the Supreme Court has revived a property-based understanding of the Fourth Amendment, grounded in common-law trespass principles and focused on physical intrusion into constitutionally protected spaces or effects.[54] These two approaches now coexist, and the framework a court chooses may determine whether a drug-detection dog's conduct constitutes a search.[55]

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50. *See, e.g.*, Illinois v. Caballes, 543 U.S. 405, 409 (2005) (holding that a canine sniff conducted during a lawful traffic stop is not a search because it reveals only the presence or absence of contraband, without examining how the sniff was conducted); United States v. Place, 462 U.S. 696, 707 (1983) (characterizing a canine sniff as a limited investigative technique that discloses only contraband, rather than scrutinizing the dog's physical conduct); United States v. Pierce, 622 F.3d 209, 214–15 (3d Cir. 2010) (declining to treat a dog's entry into a vehicle during a roadside sniff as a search where the conduct was deemed instinctive and the alert revealed only contraband).

51. *See* Lit, Schweitzer & Oberbauer, *supra* note 45, at 387.

52. *Compare* United States v. Sharp, 689 F.3d 616, 619–20 (6th Cir. 2012) (declining to treat a dog's entry into a vehicle during a lawful stop as a search where the conduct was not facilitated by officers and the sniff revealed only contraband), *with* State v. Dorff, 526 P.3d 988, 996–97 (Idaho 2023) (holding that a drug-detection dog's physical intrusion onto a vehicle constituted a search under a property-based trespass analysis).

53. *See* Katz v. United States, 389 U.S. 347, 360 (1967) (Harlan, J., concurring) (offering the reasonable-expectation-of-privacy test as the primary framework for identifying Fourth Amendment searches).

54. *See* United States v. Jones, 565 U.S. 400, 405–09 (2012) (reviving a property-based trespass framework grounded in common-law principles and explaining that *Katz* supplemented, rather than displaced, that approach); Florida v. Jardines, 569 U.S. 1, 5–7 (2013) (applying the trespass-based approach to a drug-detection dog and emphasizing that physical intrusion into constitutionally protected areas for information-gathering constitutes a search).

55. *See Jones*, 565 U.S. at 409 (explaining that *Katz* "*added to*, not *substituted for*" the common-law trespassory test).

A. The Reasonable-Expectation-of-Privacy Approach

The reasonable-expectation-of-privacy framework traces its origins to *Katz v. United States*, where the U.S. Supreme Court famously declared that "the Fourth Amendment protects people, not places."[56] Under this approach, a search occurs when government conduct violates a privacy expectation that society is prepared to recognize as reasonable.[57] For decades, this test dominated Fourth Amendment analyses and shaped how courts understood investigative techniques that did not involve physical entry.[58]

The Supreme Court first confronted the constitutional status of drug-detection dogs in *United States v. Place*.[59] The case presented a new challenge for Fourth Amendment doctrine: whether exposing personal luggage in a public place to a trained narcotics-detection dog constituted a search.[60] Although the Court reaffirmed that individuals possess a legitimate privacy interest in the contents of their luggage, it nevertheless concluded that a canine sniff did not implicate the Fourth Amendment because it involved only a "limited disclosure."[61] Emphasizing that the sniff neither required opening the luggage nor revealed noncontraband items that would otherwise remain private, the Court characterized the technique as sui generis—unlike any other investigative procedure in both the way information is obtained and the content of the information revealed.[62] That characterization proved consequential: by treating dog sniffs as categorically distinct from traditional searches, the Court embedded canine investigations within a privacy-based framework that largely sidestepped any questions of physical intrusion, in part by treating dogs as neutral detectors rather than state-engineered investigative instruments.[63]

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56. *Katz*, 389 U.S. at 351 ("For the Fourth Amendment protects people, not places. What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection . . . [b]ut what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected.") (citations omitted).

57. *See id.* at 361 (Harlan, J., concurring) ("As the Court's opinion states, 'the Fourth Amendment protects people, not places.' The question, however, is what protection it affords to those people. Generally, as here, the answer to that question requires reference to a 'place.' My understanding of the rule that has emerged from prior decisions is that there is a twofold requirement, first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable.'").

58. *See, e.g.*, Kyllo v. United States, 533 U.S. 27, 32–33 (2001) (describing the Court's repeated application of *Katz*'s reasonable-expectation-of-privacy test to determine when government surveillance constitutes a search); Smith v. Maryland, 442 U.S. 735, 740–41 (1979) (applying *Katz* to pen-register surveillance).

59. 462 U.S. 696, 707 (1983).

60. *Id.* at 697–98.

61. *Id.* at 707.

62. *Id.* "Sui generis" (Latin for "of its own kind") denotes something unique or belonging to its own class and is often used in law to describe doctrines that fall outside traditional legal categories. *See Sui Generis*, BLACK'S LAW DICTIONARY (12th ed. 2024).

63. *See* Braverman, *supra* note 27, at 94–109, 128 (arguing that drug-detection dogs function as "biotechnologies"—highly trained, manufactured investigative tools—yet are treated by courts as natural, quasi-human actors).

This logic was extended to subsequent canine-sniff cases involving vehicles. In *Illinois v. Caballes*, the Court extended *Place*'s reasoning to traffic stops, holding that a dog sniff conducted around the exterior of a lawfully stopped vehicle did not constitute a search so long as it did not prolong the stop beyond the stop's original mission.[64] Notably, the Court's account of the sniff at the center of *Caballes* was sparse, stating only that the officer "walked his dog around respondent's car" and that the dog "alerted at the trunk," without describing the dog's physical movements or whether it made contact with the vehicle at any point.[65] Under a reasonable-expectation-of-privacy lens, what mattered was not whether the investigative technique involved physical interaction with property, but whether it exposed contraband or noncontraband information.[66]

B. The Property-Based Trespass Test

The Supreme Court's revival of the Fourth Amendment's property-based trespass test disrupted this privacy-centered understanding of canine sniffs. In the early twenty-first century, the Supreme Court recalibrated its Fourth Amendment analysis by reintroducing a property-based understanding of what constitutes a search more closely aligned with the Fourth Amendment's textual protection of "persons, houses, papers, and effects."[67] Although the revival of the property-based framework in *Jones* has generated debate among courts and commentators, it remains a binding and independent method of identifying Fourth Amendment searches that applies even where privacy-based analysis might suggest a different result.[68]

This property-based approach centers on a physical intrusion. In *New York v. Class*, the Court held that the physical act of an officer reaching through an open car window to move a piece of paper that was obscuring the VIN plate constituted a search.[69] Although the intrusion was minimal and momentary, it nonetheless qualified as a physical entry into a constitutionally protected effect under the Fourth Amendment.[70] *Class* ultimately reaffirmed that even brief contact with a

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64. 543 U.S. 405, 408–10 (2005).

65. *Id.* at 406.

66. *See id.* at 409 (holding that a canine sniff does not implicate legitimate privacy interests because it reveals only the presence or absence of contraband); *Place*, 462 U.S. at 707 (emphasizing that a canine sniff is constitutionally significant only insofar as it discloses contraband, not private lawful information).

67. U.S. CONST. amend. IV.

68. *See* United States v. Jones, 565 U.S. 400, 406–07 (2012) (holding that a physical intrusion on a constitutionally protected effect for the purpose of obtaining information constitutes a search, independent of *Katz*); *id.* at 418–19 (Alito, J., concurring) (criticizing the majority's reliance on trespass principles and emphasizing the primacy of the reasonable-expectation-of-privacy test).

69. 475 U.S. 106, 114–15 (1986) ("The evidence that respondent sought to have suppressed was not the VIN, however, but a gun, the handle of which the officer saw from the interior of the car while reaching for the papers that covered the VIN. While the interior of an automobile is not subject to the same expectations of privacy that exist with respect to one's home, a car's interior as a whole is nonetheless subject to Fourth Amendment protection from unreasonable intrusions by the police.").

70. *Id.*

constitutionally protected area can implicate the Fourth Amendment when undertaken to gather information.[71]

This reasoning matured in *United States v. Jones*,[72] where the Court held that the government conducted a search when it physically attached a GPS device to a vehicle to monitor its movements.[73] Writing for the majority, Justice Scalia emphasized that the reasonable-expectation-of-privacy test had "been added to, not substituted for," the Fourth Amendment's common-law trespass principles.[74] Under this framework, a search occurs when the government physically intrudes upon a constitutionally protected area—persons, houses, papers, or effects—to obtain information, regardless of whether the intrusion violates a reasonable expectation of privacy.[75]

The following year, the Court applied that trespass-based reasoning to a canine sniff in *Florida v. Jardines*.[76] In *Jardines*, officers brought a drug-detection dog onto a homeowner's porch without a warrant to investigate an unverified tip that marijuana was being grown in the home.[77] The Court held that the officer's physical entry onto the curtilage of the home, accompanied by a dog trained to investigate for evidence of narcotics, constituted a trespass and was therefore a search.[78] Critically, the analysis did not turn on whether the homeowner had a reasonable expectation of privacy in odors emanating from the home but on whether law enforcement agents had physically intruded into a protected space to gather information. Justice Scalia's majority opinion emphasized that the Fourth

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71. *Id.*

72. 565 U.S. at 404–05.

73. *Id.* at 402–04 ("It is important to be clear about what occurred in this case: The Government physically occupied private property for the purpose of obtaining information. We have no doubt that such a physical intrusion would have been considered a 'search' within the meaning of the Fourth Amendment when it was adopted."). It is important to emphasize that many lower courts and Fourth Amendment scholars alike recognized *Jones* as a sea change. *See, e.g.*, United States v. Ackerman, 831 F.3d 1292, 1307 (10th Cir. 2016) (Gorsuch, J.) (explaining that there is now "reason to wonder" about the vitality of a 1984 Supreme Court decision after "*Jones* held that the *Katz* formula is but one way to determine" if a "'search' has taken place"); United States v. Sweeney, 821 F.3d 893, 899 (7th Cir. 2016) ("In recent years, the Supreme Court has revived a 'property-based approach' to identify unconstitutional searches."); United States v. Katzin, 769 F.3d 163, 181 (3d Cir. 2014) (en banc) ("*Jones* fundamentally altered [the] legal landscape by reviving—after a forty-five year hibernation—the Supreme Court's trespass theory.").

74. *Jones*, 565 U.S. at 409 (emphasis omitted).

75. *Id.* at 406 ("The Government contends that the Harlan standard shows that no search occurred here, since Jones had no 'reasonable expectation of privacy' in the area of the Jeep accessed by Government agents (its underbody) and in the locations of the Jeep on the public roads, which were visible to all. But we need not address the Government's contentions, because Jones's Fourth Amendment rights do not rise or fall with the *Katz* formulation. At bottom, we must 'assur[e] preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted.'").

76. 569 U.S. 1, 10–12 (2013).

77. *Id.* at 3–5.

78. *Id.* at 10–12.

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."[79]

Together, *Class*, *Jones*, and *Jardines* define a continuum: when the government, through any agent or instrument, physically intrudes upon a constitutionally protected area or effect for the purpose of obtaining information, a search has occurred, whether or not privacy expectations are implicated.[80] This rule applies with equal force to modern investigative tools, whether mechanical or biological. A trained detection dog deployed to investigate a vehicle functions as a law enforcement instrument no less than a GPS tracker or other sensing technology.[81] When that instrument physically contacts a vehicle to generate information, the trespass framework is implicated.

III. LOWER COURTS AND THE CANINE-CONTACT DIVIDE

Lower courts confronting cases in which a drug-detection dog physically contacts a vehicle during a sniff do not meaningfully disagree about what occurred on the roadside. The factual patterns are familiar and largely undisputed: during a traffic stop, officers deploy a detection dog to sniff a vehicle's exterior, and the dog places its paws or nose on the vehicle, sometimes even entering it, before alerting to contraband.[82] What divides courts is not the canine's conduct, but the doctrinal framework through which that conduct should be analyzed under the Fourth Amendment.[83]

Courts applying the reasonable-expectation-of-privacy framework tend to treat canine contact with a vehicle as incidental or instinctive, concluding that no search occurs so long as the sniff reveals only contraband and does not compromise

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79. *Id.* at 6.

80. *See* New York v. Class, 475 U.S. 106, 114–15 (1986) (recognizing that even a minimal physical intrusion into a vehicle to obtain information may constitute a search); *Jones*, 565 U.S. at 404–05; *Jardines*, 569 U.S. at 5–7 (applying the trespass-based framework to the use of a drug-detection dog as an investigative tool); United States v. Richmond, 915 F.3d 352, 358–59 (5th Cir. 2019) (holding that an officer's physical contact with a vehicle to obtain information constitutes a search regardless of how minimal the intrusion).

81. *See, e.g.*, Illinois v. Caballes, 543 U.S. 405, 409–10 (2005); Braverman, *supra* note 27, at 117, 128 (arguing that courts' treatment of drug-detection dogs as sui generis and as living rather than technological actors—despite their function as highly trained "biotechnologies"—has led to reduced Fourth Amendment scrutiny).

82. *See, e.g.*, United States v. Pierce, 622 F.3d 209, 211–12 (3d Cir. 2010) (describing a dog that jumped up and entered a vehicle during a roadside sniff); United States v. Sharp, 689 F.3d 616, 618–19 (6th Cir. 2012) (describing a dog that placed its paws on a vehicle during an exterior sniff); United States v. Olivera-Mendez, 484 F.3d 505, 511–12 (8th Cir. 2007) (same); United States v. Winningham, 140 F.3d 1328, 1330–31 (10th Cir. 1998) (describing canine entry into a vehicle during a sniff); State v. Dorff, 526 P.3d 988, 991–92 (Idaho 2023) (describing a drug-detection dog placing its paws on a vehicle during a traffic stop).

83. *Compare Sharp*, 689 F.3d at 619–20 (declining to treat canine contact with a vehicle as constitutionally significant where characterized as instinctive), *and Pierce*, 622 F.3d at 214–15 (same), *with Dorff*, 526 P.3d at 995–97 (treating similar canine contact as a physical intrusion sufficient to trigger Fourth Amendment scrutiny under a property-based framework).

any legitimate privacy interest.[84] Courts applying the property-based trespass test, by contrast, ask whether the government—acting through a trained law enforcement instrument—physically intruded upon a constitutionally protected effect for the purpose of obtaining information.[85] Under that framework, even brief or minimal contact can constitute a search if coupled with investigatory intent. This Part examines the split by organizing canine-contact cases according to the analytical framework employed. Section III.A addresses courts that adopt a privacy-based approach, while Section III.B examines decisions applying the trespass test revived in *Jones* and extended to canine investigations in *Jardines*.

A. Courts Treating Canine Contact as a Non-Search Under a Privacy Framework

Courts that resolve canine-contact cases under the reasonable-expectation-of-privacy framework generally conclude that a drug-detection dog's physical interaction with a vehicle does not constitute a Fourth Amendment search.[86]

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84. Under the Supreme Court's privacy-based approach, a canine sniff conducted from a lawful vantage point does not constitute a search because it "does not expose noncontraband items that otherwise would remain hidden from public view" and reveals only the presence or absence of contraband. United States v. Place, 462 U.S. 696, 707 (1983); *Caballes*, 543 U.S. at 409–10. Because "[o]fficial conduct that does not 'compromise any legitimate interest in privacy' is not a search subject to the Fourth Amendment," courts applying this framework generally treat a dog's brief or instinctive physical contact with a vehicle's exterior as constitutionally insignificant. *Caballes*, 543 U.S. at 408 (quoting United States v. Jacobsen, 466 U.S. 109, 123 (1984)). Consistent with that reasoning, multiple circuits have held that a trained dog's instinctive actions during an exterior sniff—including placing paws on a vehicle—constitute incidental contact rather than a Fourth Amendment search. *See, e.g.*, *Pierce*, 622 F.3d at 213–15; *Sharp*, 689 F.3d at 619–20; *Olivera-Mendez*, 484 F.3d at 511–12; United States v. Stone, 866 F.2d 359, 364 (10th Cir. 1989); *see also* United States v. Keller, 123 F.4th 264, 268–69 (5th Cir. 2024) (collecting cases and reaffirming that instinctive canine contact during an exterior sniff does not implicate legitimate privacy interests).

85. Independent of expectations of privacy, the Supreme Court has made clear that a Fourth Amendment search occurs when the government physically intrudes upon a constitutionally protected area or effect for the purpose of obtaining information. *See Jones*, 565 U.S. at 404–05 (holding that the installation of a GPS device on a vehicle constituted a search because it involved a physical intrusion on an effect to gather information); *Jardines*, 569 U.S. at 5–7 (applying the trespass test to a drug-detection dog and explaining that a search occurs when officers "physically intrud[e]" on protected property to obtain information). Applying this framework in the vehicle context, courts have treated trained detection dogs as instruments of law enforcement whose physical intrusion onto a vehicle during an investigatory sniff may constitute a search. *See, e.g.*, *Dorff*, 526 P.3d at 996–98; United States v. Buescher, 691 F. Supp. 3d 924, 930–39 (N.D. Iowa 2023); United States v. Corbett, 718 F. Supp. 3d 537, 559–62 (S.D.W. Va. 2024).

86. *See, e.g.*, *Place*, 462 U.S. at 707 (describing a canine sniff as sui generis because it reveals only the presence or absence of contraband); *Caballes*, 543 U.S. at 409 (holding that a dog sniff conducted during a lawful traffic stop does not implicate legitimate privacy interests); *see also Pierce*, 622 F.3d at 214–15 (treating a dog's entry into a vehicle as non-search where not facilitated by police and emphasizing the contraband-limited nature of the sniff); *Sharp*, 689 F.3d at 619–20 (characterizing a dog's placement of its paws on a vehicle as instinctive and not a search); *Olivera-Mendez*, 484 F.3d at 511–12 (treating canine contact with a vehicle as minimal and incidental); *Stone*, 866 F.2d at 364 (concluding that a dog's instinctive actions during a sniff do not implicate the Fourth Amendment).

Operating within the doctrinal logic of *Place* and *Caballes*, these courts focus on the nature of the information revealed by the sniff—contraband or noncontraband—rather than on the way that information is obtained.[87] As a result, canine contact with a vehicle is frequently characterized as incidental, instinctive, or legally insignificant, even when the dog briefly intrudes into or onto the vehicle itself.[88]

The Third Circuit's decision in *United States v. Pierce*[89] illustrates this approach. During a traffic stop, a narcotics-detection dog jumped up on its hind legs to reach its nose into the vehicle, then circled the vehicle before jumping into the open driver's side door and alerting to the dashboard area.[90] Officers subsequently conducted a warrantless search of the vehicle, discovered cocaine and cash inside the glove box, and arrested the driver.[91] On appeal, the driver argued that the dog's entry into the car constituted a search, particularly because the handler had extended the leash in a way that allegedly facilitated the intrusion.[92] The Third Circuit rejected that argument, holding that the dog's actions did not implicate the Fourth Amendment because they were instinctual rather than deliberately orchestrated by law enforcement.[93] Under the court's analysis, the relevant inquiry was not whether the dog physically entered the vehicle, but whether officers affirmatively created or encouraged the opportunity for entry. Because the dog's alert occurred in a public roadside setting and was not the product of such deliberate facilitation, the court concluded that no search had occurred.[94]

The *Pierce* decision illustrates how the privacy-based framework absorbs canine contact by reframing physical intrusion as legally irrelevant. By relying on *Place*'s characterization of dog sniffs as sui generis and *Caballes*'s holding that exterior sniffs affect no legitimate privacy interests,[95] the Third Circuit emphasized that a dog sniff—whether exterior or interior—does not constitute a search so long as it discloses only contraband. The court's discussion of "instinctive" canine behavior can also be seen as a means of preserving that privacy-based approach. By

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87. *See Place*, 462 U.S. at 707; *Caballes*, 543 U.S. at 409.

88. *See, e.g.*, *Pierce*, 622 F.3d at 214–15; *Sharp*, 689 F.3d at 619–20; *Olivera-Mendez*, 484 F.3d at 511–12; *Stone*, 866 F.2d at 364.

89. 622 F.3d at 213–15.

90. *Id.* at 211–12.

91. *Id.* at 212.

92. *Id.* at 210.

93. *Id.* at 214–15. Courts applying this framework have generally required some affirmative conduct by law enforcement—beyond mere leash extension or passive handling—to find deliberate facilitation. Such conduct has included officers opening or leaving open a vehicle door or hatchback, positioning the dog to enter confined spaces, issuing commands or gestures directing the dog upward or inside the vehicle, or otherwise creating the conditions necessary for a detector dog to gain interior access to the vehicle. *See, e.g.*, United States v. Winningham, 140 F.3d 1328, 1331 (10th Cir. 1998) (holding that officers facilitated the dog's entry by opening the van door and unleashing the dog without reasonable suspicion); State v. Freel, 32 P.3d 1219, 1225 (Kan. Ct. App. 2001) (concluding that an officer encouraged entry by directing the dog into the vehicle after no exterior alert); State v. Warsaw, 956 P.2d 139, 143 (N.M. Ct. App. 1997) (finding facilitation where the officer manipulated the trunk area in anticipation of the dog's entry into that part of the vehicle).

94. *Pierce*, 622 F.3d at 213–15.

95. *Id.*

characterizing the dog's jump into the vehicle as a natural continuation of an exterior sniff—rather than as the product of affirmative police conduct that created or encouraged the intrusion—the court avoided treating physical occupation of the vehicle as a triggering event under the Fourth Amendment.[96] In effect, the instinct–facilitation distinction functions as a sort of safety valve, allowing the court to preserve the premise that dog sniffs are non-searches without confronting whether physical intrusion itself should trigger Fourth Amendment scrutiny under a property-based analysis.[97]

Other courts applying the reasonable-expectation-of-privacy framework to canine–vehicle contact cases have adopted a similar line of reasoning. In *United States v. Sharp*, the Sixth Circuit emphasized that a dog's entry into a vehicle was "instinctual rather than orchestrated," declining to treat physical entry as constitutionally relevant absent evidence that officers affirmatively created the conditions for that entry.[98] Likewise, in *United States v. Olivera-Mendez*, the Eighth Circuit concluded that a dog's placement of its front paws on the exterior of a vehicle during a brief walk-around sniff amounted to "minimal and incidental contact" insufficient to implicate the Fourth Amendment.[99]

Even after the Supreme Court's revival of the property-based trespass test, many courts continue to analyze canine-contact cases through a privacy-centered lens. Under this approach, the constitutional inquiry turns less on the physical circumstances that led to the sniff and more on the nature of the information dog

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96. *See* Illinois v. Caballes, 543 U.S. 405, 409 (2005); United States v. Place, 462 U.S. 696, 707 (1983); *Pierce*, 622 F.3d at 214–15 (reasoning that a dog's entry into a vehicle does not constitute a search where the conduct is instinctive and not facilitated by police and emphasizing that canine sniffs reveal only contraband).

97. *See* Garland, *supra* note 19, at 447–50 (explaining that courts relying on the instinct–facilitation distinction preserve the conclusion that dog sniffs are non-searches while avoiding analysis of physical intrusion); *see also* Murphy, *supra* note 47, at 263–65 (arguing that the instinct framework improperly centers canine behavior rather than law enforcement conduct, obscuring the state's role in producing the intrusion).

98. *See* 689 F.3d 616, 619–20 (6th Cir. 2012). Courts applying the privacy-based framework generally describe canine behavior as instinctual when the dog's movement is framed as spontaneous or self-directed and officers neither open access points nor issue commands encouraging entry into the vehicle. *See, e.g.*, United States v. Stone, 866 F.2d 359, 364 (10th Cir. 1989) (holding that a dog's jump into a vehicle was "instinctive" and not facilitated by officers); United States v. Lyons, 486 F.3d 367, 373–74 (8th Cir. 2007) (emphasizing that the dog acted instinctively and that officers did not encourage entry); *Pierce*, 622 F.3d at 214–15 (concluding that a dog's instinctive entry into a vehicle did not constitute a search where officers did not facilitate the intrusion). By contrast, conduct is treated as orchestrated by the officer where officers affirmatively create or encourage entry—for example, by opening or leaving open a vehicle door or hatch, positioning the dog to enter confined spaces, issuing verbal commands or hand signals directing the dog upward or inside the vehicle, or otherwise manipulating the scene to facilitate intrusion. *See, e.g.*, *Sharp*, 689 F.3d at 620 (focusing on whether officers encouraged or facilitated the dog's entry into the vehicle); United States v. Winningham, 140 F.3d 1328, 1331 (10th Cir. 1998) (finding facilitation where officers opened a door and unleashed the dog); State v. Freel, 32 P.3d 1219, 1225 (Kan. Ct. App. 2001) (finding a search where officers encouraged entry after no exterior alert).

99. 484 F.3d 505, 511–12 (8th Cir. 2007).

sniffs are said to reveal.[100] Because canine sniffs are characterized as disclosing only the presence or absence of contraband—information in which individuals are deemed to have no legitimate privacy interest—courts applying this framework often conclude that no search has occurred, even when the dog's conduct involves physical contact with the vehicle.[101] In effect, the privacy-based analysis treats the limited evidentiary scope of the sniff as dispositive, rather than asking whether the government's method of obtaining that information involved a physical intrusion regulated by the Fourth Amendment's text.[102]

The Iowa Supreme Court's decision in *State v. Bauler*[103] offers a recent defense of this framework. Grounding its analysis in precedents like *United States v. Place*, *City of Indianapolis v. Edmond*,[104] and *Illinois v. Caballes*, the majority emphasized that exterior canine sniffs are sui generis investigative techniques that reveal only the presence or absence of contraband and therefore do not implicate legitimate privacy interests.[105] On that view, a dog sniff conducted during a lawful traffic stop—even one involving brief physical contact with the vehicle's exterior—remains less intrusive than a search and falls outside the Fourth Amendment altogether.[106]

Bauler also squarely rejected the argument that *Jones* and *Jardines* require a different result. The court distinguished *Jones* on the ground that it involved a prolonged physical occupation of a vehicle and extensive data collection, features absent from a momentary canine sniff.[107] It likewise confined *Jardines* to the home and its curtilage, emphasizing the home's unique constitutional status and reasoning

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100. *See* United States v. Place, 462 U.S. 696, 707 (1983) (emphasizing that a canine sniff is sui generis because it reveals only contraband); Illinois v. Caballes, 543 U.S. 405, 408–10 (2005) (holding that a dog sniff is not a search because it does not compromise any legitimate privacy interest); United States v. Jacobsen, 466 U.S. 109, 123 (1984) (reasoning that investigative techniques revealing only contraband do not infringe privacy interests). Together, these cases reflect a privacy-based approach that defines a "search" by the informational content disclosed, rather than by the physical means used to obtain it.

101. *See Caballes*, 543 U.S. at 409 (holding that a dog sniff revealing only the presence or absence of contraband does not implicate a legitimate privacy interest); *see also* United States v. Pierce, 622 F.3d 209, 213–15 (3d Cir. 2010) (treating a dog's entry into a vehicle as non-search and emphasizing the limited nature of the information obtained).

102. *See* Garland, *supra* note 19, at 444–50 (explaining that courts applying a privacy-based framework prioritize the contraband-limited nature of canine sniffs over the method by which information is obtained).

103. State v. Bauler, 8 N.W.3d 892, 898–902 (Iowa 2024).

104. 531 U.S. 32, 40 (2000). In *Edmond*, the Supreme Court held that suspicionless vehicle checkpoints conducted for general crime control purposes violate the Fourth Amendment but reaffirmed that a canine sniff of a vehicle's exterior does not constitute a search. *Id.* at 40–42. Relying on *United States v. Place*, the Court explained that an exterior dog sniff "does not require entry into the car" and reveals only the presence or absence of contraband, rendering it "much less intrusive than a typical search." *Id.* at 40 (quoting *Place*, 462 U.S. at 707).

105. *Bauler*, 8 N.W.3d at 898–902.

106. *See id.*; *see also Caballes*, 543 U.S. at 409 (holding that an exterior dog sniff conducted during a lawful traffic stop generally does not implicate legitimate privacy interests).

107. *Bauler*, 8 N.W.3d at 899–901.

that vehicles in public places lack the same historical inviolability.[108] Drawing on common-law principles governing trespass to chattels,[109] the court concluded that although brief, harmless touching of a vehicle's exterior may constitute a technical trespass, such contact is not actionable absent damage, dispossession, or interference with use and therefore does not trigger Fourth Amendment scrutiny.[110]

Under this reasoning, canine contact with a vehicle is not merely permissible but constitutionally irrelevant. So long as the sniff is framed as revealing only contraband and the dog's movements are characterized as incidental or instinctive, physical intrusion is absorbed into the privacy analysis and deemed insufficient to trigger Fourth Amendment scrutiny.[111] Any potential tension between this approach and the property-based reasoning of *Jones* and *Jardines*, the *Bauler* court concluded, must be resolved by the Supreme Court itself given *Caballes*'s continued precedential force.[112]

Taken together, cases like *Bauler* illustrate how courts applying the reasonable-expectation-of-privacy framework minimize the constitutional significance of canine contact by focusing on information disclosure rather than physical intrusion.[113] Whether that approach remains viable given the Supreme

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108. *Id.* at 900–02. *But see* Byrd v. United States, 584 U.S. 395, 404 (2018) ("One who owns and possesses a car, like one who owns and possesses a house, almost always has a reasonable expectation of privacy in it.").

109. By invoking a trespass-to-chattels doctrine, the *Bauler* court used common-law property principles to define the threshold of Fourth Amendment protection. *See Bauler*, 8 N.W.3d at 902–07. Under this approach, physical intermeddling may constitute a technical trespass to chattels, but the trespass is not actionable absent additional consequences, such as damage, dispossession, or substantial interference with use. *See id.*; *see also* RESTATEMENT (SECOND) OF TORTS § 218 (A.L.I. 1965) (providing that one who trespasses to a chattel is subject to liability only if the trespass results in dispossession, impairment, substantial deprivation of use, or legally cognizable harm). The *Bauler* court treated contact falling short of that actionable threshold as insufficient to constitute a Fourth Amendment search. *See Bauler*, 8 N.W.3d at 900. The practical consequence of this framing is that investigative techniques involving brief physical contact—so long as they are characterized as harmless or noninvasive—are insulated from Fourth Amendment review, even when undertaken for the purpose of obtaining information. That insulation determines whether courts ever reach questions of justification, reasonableness, or accountability. As this Note argues, that outcome sits in tension with *Jones* and *Jardines*, which treat physical intermeddling undertaken to gather information as constitutionally significant, regardless of damage or duration.

110. *Bauler*, 8 N.W.3d at 901–02, 905–06.

111. *See id.* at 901–07 (emphasizing that canine sniffs reveal only contraband and concluding that brief physical contact with a vehicle does not implicate the Fourth Amendment); *see also Caballes*, 543 U.S. at 409 (holding that a dog sniff does not implicate legitimate privacy interests where it reveals only contraband); United States v. Sharp, 689 F.3d 616, 619–20 (6th Cir. 2012) (treating a dog's contact with a vehicle as instinctive and constitutionally insignificant); United States v. Pierce, 622 F.3d 209, 214–15 (3d Cir. 2010) (declining to treat a dog's entry into a vehicle as a search where not facilitated by police).

112. *Bauler*, 8 N.W.3d at 902–03.

113. *See id.* at 901–07; *Pierce*, 622 F.3d at 214–15; *Sharp*, 689 F.3d at 619–20; United States v. Olivera-Mendez, 484 F.3d 505, 511–12 (8th Cir. 2007); *see also* Garland,

Court's renewed emphasis on property and trespass principles is the question addressed by courts applying a property-based framework.

B. Courts Treating Canine Contact as a Trespassory Search

Courts applying the Fourth Amendment's property-based trespass framework reach a different conclusion when a drug-detection dog physically contacts a vehicle during a sniff. Drawing on the Supreme Court's revival of trespass principles in *United States v. Jones* and their extension to canine investigations in *Florida v. Jardines*, these courts focus on whether the government, through a trained law enforcement instrument, physically intermeddled with a constitutionally protected effect for the purpose of obtaining information.[114] Under that framework, the inquiry does not turn on whether the intrusion was minimal, brief, or instinctive but on whether the contact constituted a purposeful investigative intrusion rather than a purely accidental brush.

The Idaho Supreme Court's decision in *State v. Dorff*[115] is the strongest recent articulation of this approach. During a traffic stop, a drug-detection dog repeatedly placed its paws on the passenger's and driver's side doors and windows to sniff higher seams before alerting to the presence of narcotics, leading the officers to search the vehicle and find methamphetamine.[116] The driver was charged with possession of methamphetamine and drug paraphernalia, and later moved to suppress the evidence discovered in his vehicle, arguing that the dog's "trespass" onto his vehicle constituted a warrantless "search" without probable cause under the Fourth Amendment.[117]

The Idaho Supreme Court agreed with the driver, holding that this conduct constituted a Fourth Amendment search because it involved a physical intrusion onto a constitutionally protected effect for the purpose of obtaining information about the vehicle.[118] Rejecting arguments that the contact was *de minimis* or merely

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supra note 19, at 444–50 (explaining that this approach prioritizes information disclosure over method of intrusion).

114. *See* United States v. Jones, 565 U.S. 400, 404–05 (2012); Florida v. Jardines, 569 U.S. 1, 5–7 (2013) (applying the trespass framework to a drug-detection dog and emphasizing that a physical intrusion to gather information triggers Fourth Amendment scrutiny regardless of minimality); New York v. Class, 475 U.S. 106, 114–15 (1986) (recognizing that even a brief physical intrusion into a vehicle to obtain information constitutes a search); *see also* State v. Dorff, 526 P.3d 988, 993–98 (Idaho 2023) (reasoning that a drug-detection dog's "intermeddling" with a vehicle constitutes a trespassory search where undertaken to obtain information).

115. 526 P.3d 988, 993–99 (Idaho 2023).

116. *Id.* at 991–92.

117. *Id.* at 992.

118. *Id.* at 998 ("Applying these principles to the instant case, a Fourth Amendment 'search' occurred here because the State's drug dog, Nero, intermeddled with (and thereby trespassed against) Dorff's vehicle for the purpose of obtaining information. As a preliminary matter, it cannot be overemphasized that a 'search' occurred here because Nero trespassed against Dorff's vehicle for the purpose of obtaining information about, or related to, the vehicle.").

instinctual,[119] the court emphasized that *Jones* does not require prolonged occupation or property damage; even a brief physical intrusion can suffice when it amounts to intermeddling undertaken to gather evidence.[120] The majority further reasoned that a trained detection dog acts as an agent or instrument of law enforcement, rendering its physical contact attributable to the government.[121] *Dorff* also squarely addressed—and rejected—the privacy-based logic that had dominated earlier canine-sniff cases, explaining that reliance on diminished expectations of privacy in vehicles misconceives the inquiry under a property-based test, which turns on physical intrusion rather than subjective expectations.[122]

Federal district courts applying the trespass framework have followed a similar path. In *United States v. Corbett*,[123] the court analyzed whether a police K-9 conducted a search in violation of the Fourth Amendment when the dog placed its paws on the defendant's vehicle's windowsill and inserted its snout through the open window before alerting to any odor.[124] The court synthesized *Jones* and *Jardines* into a three-part inquiry, asking whether (1) a trespass occurred, (2) the intrusion was undertaken to obtain information, and (3) the conduct was attributable to the government.[125] Applying that test, the court treated the detection dog's physical intrusion onto and into the defendant's vehicle as constitutionally significant without resorting to distinctions between instinctual and facilitated behavior.[126] In doing so, *Corbett* expressly updated pre-*Jones* canine cases that hinged on the dog's initiative, recasting attribution as a function of training, deployment, and investigative purpose rather than animal intent.[127]

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119. "De minimis" (Latin for "of the least") denotes something so trivial or insignificant that courts may disregard it. *See De Minimis*, BLACK'S LAW DICTIONARY (12th ed. 2024).

120. *Dorff*, 526 P.3d at 997 (distinguishing a dog's tail "brush[ing] against the bumper" from a dog that "without privilege or consent" jumps on or enters a vehicle, and explaining that although incidental exterior contact may be insufficient to constitute "intermeddling," physical entry into another's chattel "is a form of 'intermeddling' that suffers no de minimus exception.").

121. *Id.* at 999 ("[T]here is no asterisk to the Fourth Amendment excusing the unconstitutional acts of law enforcement when they are accomplished by means of a trained dog." (quoting State v. Howard, 496 P.3d 865, 868 (Idaho 2021))).

122. *Id.* at 993–94 ("Importantly, when the property-based test is applied, there is no room to carve out portions of an 'effect' (e.g., the exterior surface of a vehicle versus its interior space) as unworthy of protection by superimposing the 'reasonable expectation of privacy' nomenclature from *Katz*. A drug dog's sniff of the free air . . . may have a 'special status' as not a 'search' within the 'flexible boundaries of *Katz*'s reasonable expectation of privacy test, but the trespassory test of *Jones* affords dog sniffs no special treatment . . . . Thus, as our starting point, the entire vehicle or 'effect' is a 'constitutionally protected area'—to the extent a defendant has interests or rights in it.").

123. 718 F. Supp. 3d 537, 559–60 (S.D.W. Va. 2024).

124. *Id.* at 549–50.

125. *Id.* at 559–60.

126. *Id.* at 560–62.

127. *See id.* at 560–65 (explaining that attribution turns on law enforcement's training and deployment of the dog—rather than on whether the conduct was "instinctual"—because the dog "behaved exactly as it was trained to do" and was deployed for the purpose of obtaining information).

Other decisions reinforce this property-based reasoning. In *United States v. Buescher*, a detection dog's insertion of its head into an open car window was deemed a trespassory search facilitated by law enforcement.[128] And while not involving dogs, other cases applying *Jones* have likewise treated officers' minimal physical contact with vehicles as searches when undertaken to obtain information about the vehicle, underscoring that the trespass analysis does not turn on the degree of intrusion.[129]

Taken together, the cases discussed in this Part demonstrate that lower courts confronting canine-contact disputes diverge not simply over how much physical intrusion is sufficient to trigger constitutional protections, but more fundamentally over what constitutional significance that physical contact should carry. Although the nature and extent of a detection dog's contact with a vehicle may affect a court's analysis, the cases reflect a threshold doctrinal disagreement over whether that contact should be evaluated through the Fourth Amendment's privacy-based or property-based framework. Courts adhering to a privacy-based framework generally treat a detection dog's physical contact with a vehicle as constitutionally insignificant, so long as the sniff reveals only contraband and occurs in a public roadside setting.[130] Courts applying the property-based trespass test, by contrast, ask whether the dog's contact amounts to a trespassory intrusion undertaken for an investigative purpose. Under that framework, even relatively brief canine contact with a vehicle can constitute a search when the contact sufficiently interferes with the vehicle as a protected effect.[131] These competing approaches

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128. 691 F. Supp. 3d 924, 936–40 (N.D. Iowa 2023).

129. *See, e.g.*, United States v. Richmond, 915 F.3d 352, 358 (5th Cir. 2019) (concluding the "act of tapping tires" with an investigatory purpose was a search because there was "no difference between the *Jones* device touching the car and an officer touching the tire"); Taylor v. City of Saginaw, 922 F.3d 328, 332–33 (6th Cir. 2019) (finding that an officer chalking a car tire was a search because it constituted a trespass to chattel at common law and was done with an investigatory purpose).

130. *See* United States v. Place, 462 U.S. 696, 707 (1983) (characterizing a canine sniff as sui generis because it reveals only the presence or absence of contraband); City of Indianapolis v. Edmond, 531 U.S. 32, 40 (2000) (explaining that an exterior canine sniff of a vehicle "does not transform the seizure into a search"); Illinois v. Caballes, 543 U.S. 405, 408–10 (2005) (holding that a dog sniff conducted during a lawful traffic stop does not implicate legitimate privacy interests because it discloses only contraband). Applying this privacy-based reasoning, lower courts have generally treated a detection dog's brief or instinctive physical contact with a vehicle's exterior during a roadside sniff as constitutionally insignificant. *See, e.g.*, United States v. Pierce, 622 F.3d 209, 213–15 (3d Cir. 2010); United States v. Olivera-Mendez, 484 F.3d 505, 511–12 (8th Cir. 2007); State v. Bauler, 8 N.W.3d 892, 898–902 (Iowa 2024).

131. *See* United States v. Jones, 565 U.S. 400, 404–05 (2012) (holding that a Fourth Amendment search occurs when the government physically intrudes on a constitutionally protected effect for the purpose of obtaining information); Florida v. Jardines, 569 U.S. 1, 6–7 (2013) (applying the trespass test to a drug-detection dog and emphasizing physical intrusion plus investigative purpose). Applying this framework in the vehicle context, courts have concluded that a detection dog's physical contact with a vehicle during an investigatory sniff can constitute a search when the contact amounts to a trespassory intrusion or intermeddling with the vehicle. *See, e.g.*, State v. Randall, 496 P.3d 844, 851–56 (Idaho

produce divergent outcomes on materially indistinguishable facts, rendering the legality of canine-assisted vehicle searches contingent on doctrine rather than conduct, and resulting in an inconsistency that underscores the need for a clearer rule governing when canine contact crosses the Fourth Amendment's threshold.

IV. A "RUFF" DISTINCTION: WHY THE INSTINCT VS. DIRECTION FRAMEWORK FAILS

Parts II and III showed that lower courts confronting canine–vehicle contact cases divide not over facts, but over framework. Courts adopting a privacy-based approach minimize physical contact by characterizing it as instinctive or incidental,[132] whereas courts applying a property-based trespass analysis treat physical intrusion itself as constitutionally significant.[133] This Part argues that the instinct–direction distinction employed by privacy-based courts is doctrinally unsound. The problem is one of misclassification. The relevant question is not whether a dog's conduct can be labeled "instinctive" but whether the government has used a trained investigative instrument to make purposeful contact with a constitutionally protected effect to obtain information. Framed this way, the Fourth Amendment inquiry turns on the nature of the contact—not the perceived autonomy of the animal. Attributing constitutional significance to a dog's supposed autonomy undermines accountability and conflicts with the Supreme Court's revived property-based approach to Fourth Amendment protections.

A. The Fiction of Canine Independence and Doctrinal Instability

The instinct–direction distinction rests on a conceptual fiction: that a trained narcotics-detection dog can be treated as an independent constitutional actor. In reality, detection dogs do not act on untamed instinct; their investigative behaviors are the product of conditioning, reward structures, and handler-guided deployment designed to elicit specific responses to target odors.[134] As several courts

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2021); State v. Dorff, 526 P.3d 988, 996–98 (Idaho 2023); *Buescher*, 691 F. Supp. 3d at 930–39; *Corbett*, 718 F. Supp. 3d at 559–62.

132. Several circuit courts of appeals have ruled that absent police misconduct, the instinctive actions of a trained canine—including placing its paws on a vehicle's exterior—constitute incidental contact, not an unconstitutional Fourth Amendment search. *See, e.g.*, United States v. Shen, 749 F. App'x 256, 263 (5th Cir. 2018); United States v. Guidry, 817 F.3d 997, 1006 (7th Cir. 2016); *Sharp*, 689 F.3d at 619–20; *Pierce*, 622 F.3d at 213–15; *Olivera-Mendez*, 484 F.3d at 511–12; United States v. Stone, 866 F.2d 359, 364 (10th Cir. 1989).

133. *See, e.g.*, *Jardines*, 569 U.S. at 11–12 (holding that use of a drug-detection dog to physically intrude on constitutionally protected property for investigative purposes constitutes a search); *Jones*, 565 U.S. at 404–05 (establishing that a physical intrusion on an effect for the purpose of obtaining information is a search); *Randall*, 496 P.3d at 854–57 (rejecting "instinctive entry" doctrine and holding that a drug dog's trespass into a vehicle during a sniff constitutes a search).

134. *See Caballes*, 543 U.S. at 408–09 (describing a canine sniff as an investigative technique designed to detect contraband); Florida v. Harris, 568 U.S. 237, 246–47 (2013) (emphasizing that a detection dog's performance depends on training and certification); *see also* Braverman, *supra* note 27, at 128, 145, 151–53 (describing police dogs as highly trained "biotechnologies" whose behavior reflects conditioning and handler control); Murphy, *supra* note 47, at 263–66 (explaining that drug-detection dogs are trained through conditioning and

have recognized, law enforcement cannot plausibly claim the benefits of canine reliability when a dog alerts while disclaiming responsibility when the dog's body intrudes on a constitutionally protected property.[135] As the Idaho Supreme Court observed, law enforcement cannot "regard drug dogs as highly trained tools of law enforcement when their behavior is consistent with the limitations of the Fourth Amendment, and then regard them as mere dogs when their behavior runs afoul of it."[136] The Idaho Supreme Court also recognized in *State v. Howard* that "there is no asterisk to the Fourth Amendment excusing the unconstitutional acts of law enforcement when they are accomplished by means of a trained dog."[137] Treating instinct as constitutionally exculpatory misconceives both the nature of police dogs and the structure of Fourth Amendment doctrine. A drug-detection dog is deployed precisely because of its training, conditioning, and reliability; its conduct during a sniff should not be seen as independent of law enforcement, but as the product of it.

Reliance on canine "instinct" also produces doctrinal instability. Courts applying this framework routinely hinge Fourth Amendment analysis on minute factual distinctions—whether an officer extended a leash, opened a door, gestured, or merely stood nearby—so that materially identical instructions are treated differently based on post hoc characterizations of canine motivation rather than on constitutional criteria.[138] Scholars have noted that this mode of analysis reflects an effort to preserve pre-*Jones* dog-sniff outcomes by reframing physical occupation

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reinforcement to pursue odor to its source and to engage with that source in ways that facilitate alerting).

135. *See Randall*, 496 P.3d at 855–56 (rejecting the view that drug dogs may be treated as reliable law enforcement tools when their alerts support probable cause but as mere animals when their conduct intrudes on constitutionally protected property, and emphasizing that law enforcement is responsible for their training and deployment); *Corbett*, 718 F. Supp. 3d at 560–65 (attributing a drug-detection dog's physical intrusion to the government based on its training and deployment, rather than treating the conduct as instinctive); *see also* Braverman, *supra* note 27, at 128.

136. *Randall*, 496 P.3d at 855–56 ("At bottom, law enforcement is wholly responsible for the training and deployment of drug dogs; it is likewise wholly responsible when, as a result of their training and deployment, dogs enter vehicles during exterior sniffs.").

137. State v. Howard, 496 P.3d 865, 868 (Idaho 2021); *see also* Garland, *supra* note 19, at 447–50 (arguing that law enforcement remains constitutionally accountable for investigative acts carried out through trained police dogs).

138. *See* United States v. Sharp, 689 F.3d 616, 619–20 (6th Cir. 2012) (distinguishing between "instinctive" canine behavior and officer-facilitated intrusion); United States v. Pierce, 622 F.3d 209, 214–15 (3d Cir. 2010) (same); United States v. Vazquez, 555 F.3d 923, 930 (10th Cir. 2009) (holding that a dog's entry into a vehicle is not a search where officers did not facilitate the entry); United States v. Winningham, 140 F.3d 1328, 1331 (10th Cir. 1998) (finding a search where officers opened a vehicle and enabled canine entry); *see also* Garland, *supra* note 19, at 447–50 (criticizing the instinct–facilitation distinction as producing inconsistent, fact-bound outcomes and encouraging post hoc judicial characterization of canine behavior); Murphy, *supra* note 47, at 264–68 (observing that courts applying the instinctual exception rely on post hoc characterizations of canine behavior, producing inconsistent Fourth Amendment outcomes).

as legally irrelevant.[139] Once a court commits to the premise that dog sniffs are categorically non-searches, physical contact must either be minimized or re-characterized to avoid doctrinal disruption. The instinct–direction distinction thus functions less as a neutral analytical tool and more as a mechanism for preserving preexisting doctrinal outcomes.[140]

Additionally, focusing on *why* a dog entered a vehicle further destabilizes Fourth Amendment analysis. As legal scholar Andrea Garland explains, this inquiry improperly shifts the constitutional question from what an officer knew—and whether that knowledge supplied probable cause—to speculative assessments of a dog's internal motivation.[141] That shift "risks that courts will draw their own post hoc conclusions about the significance of a drug dog's pre-entry behavior without competent evidence on which to rely."[142] Fourth Amendment protections cannot turn on judicial guesswork about canine psychology, particularly where warrantless searches are already "specifically established and well-delineated exceptions" to a constitutional norm.[143]

More troubling still, the instinct framework threatens to collapse the Fourth Amendment's protection of property interests. Under the property-based test revived in *Jones*, a search occurs when the government physically intrudes upon a constitutionally protected area for the purpose of obtaining information.[144] That inquiry does not turn on the intruder's intent, the duration of the intrusion, or whether damage occurs, nor does it admit an exception for investigative tools that happen to be animals rather than mechanical devices.[145]

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139. *See* Garland, *supra* note 19, at 447 (noting that courts adopting the "instinctive entry" rationale in canine–vehicle contact cases frequently relied on pre-*Jones* authority and thus failed to confront *Jones*'s rearticulation of the Fourth Amendment's property baseline, including its recognition of vehicles as protected effects and its rule that physical intrusions for information-gathering purposes are searches).

140. *See id.* at 447–50 (arguing that courts preserve pre-*Jones* dog sniff outcomes by minimizing or reframing physical intrusion); Braverman, *supra* note 27, at 117, 128 (explaining that courts' treatment of drug-detection dogs as sui generis and natural actors reduces scrutiny and facilitates outcome-preserving analysis).

141. *See* Garland, *supra* note 19, at 447–50.

142. *See id.* at 448 (quoting State v. Randall, 496 P.3d 844, 854 (Idaho 2021)). "Post hoc" refers to reasoning developed after the fact, often to justify a conclusion already reached rather than to reflect on contemporaneous evidence. *See Post Hoc*, BLACK'S LAW DICTIONARY (12th ed. 2024).

143. *See* Katz v. United States, 389 U.S. 347, 357 (1967) (reaffirming that searches conducted outside the judicial process are per se unreasonable under the Fourth Amendment—notwithstanding probable cause—absent a few "specifically established and well-delineated exceptions").

144. *See* United States v. Jones, 565 U.S. 400, 404–05 (2012).

145. *See* Florida v. Jardines, 569 U.S. 1, 5–7 (2013) (applying the trespass framework to a drug-detection dog and emphasizing that a search occurs when officers physically intrude to gather information, regardless of the limited nature of the intrusion); New York v. Class, 475 U.S. 106, 114–15 (1986) (recognizing that even a momentary physical intrusion into a vehicle to obtain information constitutes a search); *see also* Garland, *supra* note 19, at 447–50 (arguing that no exception to the Fourth Amendment permits trespassory searches conducted through trained dogs).

Treating canine intrusion as instinctive creates a functional carve-out: it permits the government to accomplish through a trained animal what it cannot do directly. Where officers could not physically intrude on a vehicle without triggering the Fourth Amendment, they may rely on a dog trained to produce that same intrusion and then characterize it as a non-state action. Over time, this reasoning has eroded the property-based protections that *Jones* and *Jardines* reaffirmed, leaving citizens with diminished security against warrantless government intrusions depending on the subjective "motivation" of the instrument used.[146]

B. Toward a Clearer Property-Based Rule

A property-based approach to canine-vehicle contact resolves these problems by restoring a straightforward inquiry: did the government physically intrude upon a constitutionally protected effect for the purpose of obtaining information? Placement of an object, a hand, or a paw alone suffices when coupled with the requisite investigative intent; neither damage to the property nor prolonged occupation of the area is required.[147] Cases like *United States v. Richmond*, *Taylor v. City of Saginaw*, and *New York v. Class* confirm that even a minimal intrusion triggers Fourth Amendment scrutiny when undertaken to gather evidence.[148]

In *United States v. Richmond*,[149] the Fifth Circuit applied *Jones*'s trespass framework to a modest—but telling—vehicle intrusion. During a traffic stop prompted by visibly wobbly tires, an officer tapped the exterior of a truck tire to determine whether it contained something other than air.[150] The resulting thud led the officer to suspect the presence of concealed contraband.[151] Although the physical contact was brief and caused no damage, the court held that the officer's action constituted a search.[152] Relying on *Jones*, the Fifth Circuit emphasized that the Fourth Amendment is triggered when a physical intrusion on a protected effect is "conjoined with an attempt to find something or obtain information," and rejected any distinction between attaching a GPS device to a vehicle and an officer touching the vehicle by hand for investigative purposes.[153] Even a seemingly insignificant

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146. *See* Garland, *supra* note 19, at 447–50 (warning that treating canine intrusions as instinctive risks undermining property-based Fourth Amendment protections); Braverman, *supra* note 27, at 117, 128.

147. *See Jones*, 565 U.S. at 404–05 (holding that a search occurs when the government physically intrudes upon a constitutionally protected effect for the purpose of obtaining information); *Jardines*, 569 U.S. at 5–7; *Class*, 475 U.S. at 114–15; United States v. Richmond, 915 F.3d 352, 357–59 (5th Cir. 2019) (holding that an officer's tapping of a vehicle tire to obtain information constituted a search regardless of how minimal the intrusion appeared); Taylor v. City of Saginaw, 922 F.3d 328, 332–33 (6th Cir. 2019) (holding that chalking a tire constitutes a trespassory search notwithstanding its minimal physical impact).

148. *See Richmond*, 915 F.3d at 357–58; *Taylor*, 922 F.3d at 332–33 (treating the placement of chalk marks on a tire as a trespassory search under *Jones*, notwithstanding the intrusion's brevity or lack of damage); *Class*, 475 U.S. at 114–15 (holding that an officer's brief movement of papers inside a vehicle to view the VIN constituted a search, even though the intrusion was momentary and caused no damage).

149. 915 F.3d at 357–59.

150. *Id.* at 354–55.

151. *Id.*

152. *Id.* at 357–59.

153. *Id.*

physical intrusion, the court concluded, falls within the Fourth Amendment when undertaken to gather evidence.[154]

Additionally, a property-based framework avoids problems of doctrinal instability by restoring a simple, administrable inquiry that does not depend on post hoc characterizations of canine behavior or handler intent. As the Supreme Court has emphasized, one virtue of a trespass-based baseline is that it "keeps easy cases easy," requiring courts to ask only whether the government physically intruded on a protected effect for the purpose of obtaining information.[155]

This framework does not mean that every incidental brush by a human or drug-detector dog constitutes a search. The touchstone is purposeful investigative contact—physical contact that law enforcement enables, anticipates, or exploits to obtain information.[156] Accidental or incidental contact that is neither undertaken nor used for an investigative purpose falls outside that category. But where officers deploy a trained detection dog in a manner that predictably results in physical contact with the vehicle to advance the sniff—for example, by permitting the dog to "up" onto the vehicle, work seams at close range, or insert its snout into the vehicle's interior—that contact is investigative.[157] In this context, the dog's "instinct" is beside the point: when the government deploys and relies upon a trained instrument to obtain information through physical intrusion, the Fourth Amendment is implicated.[158]

One remaining question is whether such a rule is workable in practice—whether law enforcement can operate effectively under a regime that treats

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154. *Id.*

155. Although a trespass-based inquiry may appear simplistic and formalistic, proponents of the property framework view its clarity as a virtue rather than a defect. *See* United States v. Jones, 565 U.S. 400, 412–13 (2012) (warning that exclusively applying *Katz*'s reasonable-expectation-of-privacy test could lead to "particularly vexing" and "thorny" problems); Florida v. Jardines, 569 U.S. 1, 11 (2013) ("One virtue of the Fourth Amendment's property-rights baseline is that it keeps easy cases easy."); *see also* Erica Goldberg, *How* United States v. Jones *Can Restore Our Faith in the Fourth Amendment*, 110 MICH. L. REV. FIRST IMPRESSIONS 62, 68–69 (2011) (arguing that a property-based test provides a "clearer, cleaner metric of when the Fourth Amendment is implicated" and avoids the indeterminacy of expectation-of-privacy balancing).

156. *See Jones*, 565 U.S. at 404–05 (defining a search as a trespass conjoined with an attempt to obtain information); *Jardines*, 569 U.S. at 5–10 (emphasizing the purpose of the officer's actions as a critical part of the inquiry).

157. *See* New York v. Class, 475 U.S. 106, 114–15 (1986) (treating even momentary entry into a vehicle as a search); *Richmond*, 915 F.3d at 357–59 (holding that minimal physical manipulation of a vehicle to obtain information constitutes a search); United States v. Corbett, 718 F. Supp. 3d 537, 560–65 (S.D.W. Va. 2024) (treating a K-9's placement of paws on a vehicle and insertion of its snout into the interior as a trespass undertaken to obtain information).

158. *See* Murphy, *supra* note 47, at 262–66 (criticizing the instinctual exception for shifting the Fourth Amendment inquiry away from state action and toward canine motivation). *But see* United States v. Stone, 866 F.2d 359, 364 (10th Cir. 1989) (declining to treat a K-9's intrusion into a vehicle as constitutionally significant when labeled "instinctive").

purposeful canine contact as a search and how courts can reliably identify when such contact occurs.

V. POLICY CONSIDERATIONS AND PRACTICAL SOLUTIONS

Recognizing that deliberate canine contact with vehicles constitutes a Fourth Amendment search does not require abandoning drug-detection dogs or unduly constraining legitimate law enforcement practices. Instead, it clarifies constitutional boundaries while preserving, and in many respects strengthening, the lawful use of canine investigative tools.

One practical concern is evidentiary: how courts determine whether contact occurred and whether it was purposeful. In some cases, the only evidence may be the officer's account of the encounter, but the increasing use of body-worn cameras provides an objective record of canine deployments, allowing courts to assess the nature and extent of contact directly.[159] To the extent disputes persist, requiring documentation or recording of canine sniffs may become a necessary complement to any rule that turns on physical intrusion.

Concerns that a no-contact rule would be impractical are also overstated. Modern K-9 training standards confirm that reliable detection does not depend on pawing, climbing, or breaching a vehicle's exterior; instead, some programs require dogs to signal or indicate the presence of contraband through passive alerts—such as sitting or freezing—without touching or disturbing their targets.[160] Where physical intrusion occurs, it reflects a training or deployment choice that can be corrected. For example, because canine behavior is shaped by reinforcement,

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159. *See, e.g.*, United States v. Pulido-Ayala, 892 F.3d 315, 318–19 (8th Cir. 2018) (reviewing dashboard camera footage to evaluate the circumstances and reliability of a canine sniff); *Corbett*, 718 F. Supp. 3d at 559–62 (analyzing videos of dog sniff to assess the duration and nature of the dog's contact with the vehicle). These cases illustrate courts' increasing reliance on video recordings to reconstruct canine deployments and assess both handler conduct and the nature of the dog's interaction with the vehicle.

160. In K-9 training terminology, an "indication" refers to the trained behavior a narcotics-detection dog exhibits after it has alerted to the presence of a drug odor and pinpointed its strongest source. Indications are commonly categorized as either "aggressive" or "passive." An aggressive indication typically involves behaviors such as barking, scratching, or biting at the source of the odor, whereas a passive indication involves non-contact behaviors such as sitting, standing, lying down, or freezing in place. Both aggressive and passive indications are widely accepted in narcotics-detection training, and the choice between them reflects training and policy decisions rather than operational necessity. *See* Wendell Nope, *Narcotics Detector Dog Performance Objectives*, *in* NARCO DOG TRAINING MANUAL, UTAH POST K-9 PROGRAM, 53–60 (2012) [https://perma.cc/6QQM-GSBS]; *see also* Ray C. Phillips, TRAINING DOGS FOR EXPLOSIVES DETECTION 17 (1971) (discouraging pawing, biting, or otherwise disturbing target objects during detection training). *See generally* General Rules and Definitions Governing Certifications, U.S. CANINE ASS'N (Jan. 2024), https://www.uspcak9.com/assets/RULES/General%20Rules%20and%20Definitions%20for%20PDI%20%20%20May%20%202026%20%20%20%20.pdf [https://perma.cc/XS59-GCRH] (requiring dogs to give a "passive indication" by remaining stationary near the target "without touching or disturbing" it and mandating passive alert canines in certain detection contexts for safety reasons).

agencies can condition dogs to avoid contact with vehicles and await handler cues before escalating engagement.[161] Law enforcement agencies also routinely adapt canine training to evolving legal constraints, including changes in the legal status of substances and evidentiary standards. Adjusting training to limit physical intrusion is therefore not a departure from established practice, but a continuation of it.[162] Constitutional doctrine, in turn, supplies accountability when training decisions result in warrantless intrusions into or onto protected property. To the extent such reforms reduce certain forms of investigative efficiency, that tradeoff reflects the Fourth Amendment's core premise: that physical intrusions into protected property require justification and cannot hinge on mere convenience.

A bright-line rule prohibiting deliberate canine contact absent probable cause or a warrant offers substantial institutional benefits. For courts, a property-based rule reduces fact-intensive disputes over the degree or the significance of contact and avoids case-by-case line drawing about whether a particular intrusion was "minimal." For defendants, it preserves the Fourth Amendment's foundational protection against physical invasion of constitutionally protected effects—a protection that predates, and operates independently from, the expectation-of-privacy analysis.[163] For law enforcement, clear constitutional lines provide concrete operational guidance, reduce the risk of evidence suppression, and promote uniform training and deployment standards that may, in the long term, help

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161. The feasibility of training detection dogs to avoid physical contact with target objects has been recognized for decades. As early as 1971, a U.S. Army-sponsored feasibility study on explosive-detection dogs documented training protocols designed to prevent dogs from pawing, biting, or otherwise disturbing the source odor. *See* Phillips, *supra* note 160. The memorandum expressly cautioned that allowing dogs to touch, paw, or mouth the target odor was "undesirable," emphasizing that such behaviors could—and should—be prevented through training techniques that reward passive indications, such as a sit response, and withhold reinforcement when physical contact occurs. *See id.* The study's conclusions underscore that non-contact alerting is a matter of training choice rather than operational impossibility. This long-recognized training capability undermines claims that canine contact is unavoidable or merely accidental. *See also* Murphy, *supra* note 47, at 268–71 (proposing training reforms, including conditioning dogs to await handler cues before entering vehicles, and arguing that such adjustments are feasible within existing training frameworks).

162. *See* Murphy, *supra* note 47, at 269–71 (noting that law enforcement agencies routinely adapt canine training in response to changing legal and operational requirements).

163. *See* Carroll v. United States, 267 U.S. 132, 149 (1925) ("The Fourth Amendment is to be construed in the light of what was deemed an unreasonable search and seizure when it was adopted, and in a manner which will conserve public interests as well as the interests and rights of individual citizens."). *Jones* grounded its trespass analysis in the common law as it existed at the time of the Fourth Amendment's ratification, emphasizing that a physical intrusion onto a constitutionally protected effect for the purpose of obtaining information would have been understood as a "search" in 1791. United States v. Jones, 565 U.S. 400, 404–05 (2012) (relying on common-law trespass principles and citing Entick v. Carrington, 95 Eng. Rep. 807 (C.P. 1765)); *see also id.* at 419 & n.2 (Alito, J., concurring) (describing trespass to chattels as requiring only a violation of the "dignitary interest in the inviolability of chattels," not physical damage or dispossession (quoting W. PAGE KEETON ET AL., PROSSER & KEETON ON THE LAW OF TORTS § 14, at 87 (5th ed. 1984))). This historical understanding confirms that even minimal physical intermeddling with a vehicle's exterior may constitute a trespassory search when undertaken to gather information.

protect detector dogs and the evidence they reveal by discouraging contact-based detection techniques.[164]

Importantly, this approach does not disturb the existing dog-sniff doctrine where no trespass occurs. Exterior sniffs consistent with *Illinois v. Caballes* would remain permissible. Fourth Amendment scrutiny attaches only when the government, through a trained investigative instrument, physically intrudes upon a vehicle to obtain information. In that sense, a property-based rule harmonizes *Jones* and *Jardines* with canine-sniff jurisprudence, rather than allowing the sui generis logic of dog sniffs to eclipse the property protections those cases reaffirmed.[165]

Of course, some degree of physical proximity is inevitable during roadside encounters, and truly incidental contact may occur as a dog moves around a vehicle. In such cases, the burden should rest with the government to demonstrate that the contact was not undertaken or used to obtain information relating to the vehicle or the investigation. That allocation is consistent with the Fourth Amendment's traditional insistence that warrantless intrusions be justified by law enforcement under a recognized exception, not presumed constitutionally benign.[166]

Another related concern is doctrinal circumvention. If purposeful canine contact is treated as a search, officers may attempt to obtain consent to permit such contact, effectively transforming canine sniffs into a new category of consent searches, which already occupy a controversial space in Fourth Amendment doctrine given the pressures inherent in roadside encounters.[167] Recognizing canine contact as a search, therefore, raises broader questions about whether existing limits on consent searches are sufficient or additional safeguards are necessary when law enforcement seeks permission to conduct physically intrusive canine investigations.

Clearer rules promote legitimacy. Ambiguity in this area invites inconsistent outcomes and erodes public confidence in both policing and adjudication.[168] A property-based approach offers clarity, administrability, and fidelity to constitutional text—ensuring that evolving investigative techniques remain constrained by the same constitutional limits that have governed physical

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164. *See, e.g.*, Ryan M. Llera & Petra A. Volmer, *Toxicologic Hazards for Police Dogs Involved in Drug Detection*, 228 J. AM. VET. MED. ASS'N 1028, 1028 (2006) (noting that drug-detection dogs were historically trained to "paw, mouth, or bite" at target odors, thereby increasing their exposure to hazardous substances, and explaining that modern training increasingly emphasizes passive indication behaviors to reduce such risks).

165. *See Jones*, 565 U.S. at 404–05 (holding that physical intrusion upon a constitutionally protected effect for the purpose of obtaining information constitutes a search); Florida v. Jardines, 569 U.S. 1, 5–7 (2013) (holding that deploying a trained detection dog to physically intrude upon a protected area to gather information is a search).

166. *See* Katz v. United States, 389 U.S. 347, 357 (1967).

167. *See* Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973) (recognizing consent as an exception to the Fourth Amendment's warrant and probable cause requirements); Eva Lilienfeld & Kimberly Veklerov, *Permission to Destroy: How a Historical Understanding of Property Rights Can Rein in Consent Searches*, 108 VA. L. REV. 1055, 1055, 1059–60 (2022) (observing that consent searches are a primary means of circumventing the warrant requirement and routinely relied upon by officers despite longstanding concerns about their coercive nature and breadth).

168. *See* Goldberg, *supra* note 155.

searches since the Fourth Amendment was first conceived.[169] If agencies can train dogs to avoid contact, then contact reflects a deliberate investigative design rather than unavoidable instinct, making it appropriately subject to Fourth Amendment regulation.

CONCLUSION

The constitutional question raised by canine–vehicle contact is not whether drug-detection dogs are effective investigative tools but whether the Constitution permits the government to obtain information by physically intruding upon constitutionally protected property without judicial oversight. *United States v. Jones*[170] and *Florida v. Jardines*[171] answer that question in the negative. The instinct doctrine, as developed in cases like *United States v. Pierce* and *United States v. Stone*, does not supply an exception and only reallocates responsibility from the state to the animal, allowing the government to do indirectly what it cannot do directly.[172]

When the government deploys a trained dog to place its paws, snout, or body onto or into a vehicle in search of evidence without first establishing probable cause, it has crossed a constitutional line. That intrusion is a trespass undertaken for the purpose of obtaining information and therefore a search within the meaning of the Fourth Amendment.[173] Earlier cases that excused such conduct as "instinctive" or constitutionally insignificant cannot be squared with the property-based framework the Supreme Court revived in *Jones*.[174]

By recognizing canine contact with vehicles as a search, courts can preserve lawful exterior sniffs, reinforce accountability when constitutional boundaries are crossed, and incentivize training practices that respect property rights rather than evade them. In doing so, courts can keep easy cases easy, honor the Fourth Amendment's text and history, and ensure that advances in law enforcement technique do not come at the expense of constitutional guarantees.

The fact that officers may adapt their practices in response to a bright-line rule does not diminish the rule's constitutional significance. The Fourth Amendment has always required law enforcement to justify physical intrusions through warrants or established exceptions, even where alternative investigative techniques are available.

The choice before courts is straightforward: extend *Jones*[175] and *Jardines*[176] to the vehicle context or risk hollowing out the property-based protections those cases restored. The better course—doctrinally, practically, and

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169. *See* Carroll v. United States, 267 U.S. 132, 149 (1925).

170. 565 U.S. at 404–05.

171. 569 U.S. 1, 3–10 (2013).

172. *See* United States v. Pierce, 622 F.3d 209, 212–15 (3d Cir. 2010); United States v. Stone, 866 F.2d 359, 364 (10th Cir. 1989); *see also* Murphy, *supra* note 47, at 261–68.

173. *See Jones*, 565 U.S. at 404–05.

174. *Id.*

175. *See id.*

176. *See Jardines*, 569 U.S. at 3–10.

constitutionally—is to recognize that when the government sends a dog to put its paws on a car, it has conducted a search.