

No. 24-72

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IN THE  
**Supreme Court of the United States**

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BRUCE L. HAY,  
*Petitioner,*  
*v.*

UNITED STATES,  
*Respondent.*

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On Petition for Writ of Certiorari to the  
United States Court of Appeals  
for the Tenth Circuit

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**SUPPLEMENTAL BRIEF FOR THE PETITIONER**

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## SUPPLEMENTAL BRIEF FOR THE PETITIONER

Petitioner Bruce Hay files this supplemental brief to bring to the Court's attention the decision of the United States Court of Appeals for the Seventh Circuit in *United States v. House*, No. 23-1950, slip. op. (7th Cir. Nov. 5, 2024). While the *House* panel considered itself bound by the prior Seventh Circuit decision in *United States v. Tuggle*, 4 F.4th 505 (7th Cir. 2021), Judge Rovner endorsed the reasoning of the three-judge concurrence in *United States v. Moore-Bush*, 36 F.4th 320 (1st Cir. 2022). In her concurring opinion, Judge Rovner stated that she, "like the three concurring judges in [Moore-Bush], would conclude that developments in Fourth Amendment jurisprudence along with developments in technology would support" the conclusion that long-term pole camera surveillance of the home constitutes a Fourth Amendment search. *House*, slip. op. at 19 (Rovner, J. concurring).

Judge Rovner's concurrence emphasized the fundamental difference between momentary observation by passersby and the kind of surreptitious, sustained, and intrusive pole camera surveillance at issue in *House* and this case:

"Whatever the Supreme Court and this court have said about a reasonable person's expectation of privacy in the situation where officers watch one discrete activity viewed at one particular time, the analysis is unquestionably different when the police observe every movement, activity, and

association over the course of one month at one of the more intimate and protected locations – the curtilage of one’s home.” *Id.* at 20 (citing *Moore-Bush*, 36 F.4th, at 327 (Barron, C.J., concurring)).

As Judge Rovner explained, the proliferation of technology cannot ineluctably result in a diminished expectation of privacy for purposes of the Fourth Amendment. “[C]ourts will need to reckon with . . . citizens’ expectations of privacy in a world where pole camera video can scan and identify faces, read license plates, zoom in on what a person is doing on their phone, and compare actions and activities across public surveillance systems.” *House* slip. op. at 20 (Rovner, J., concurring).

Judge Rovner’s concurrence reveals that the disagreement in this area is not limited to a split between the federal courts and the state high courts. *House* demonstrates the need for this Court to provide guidance on whether core Fourth Amendment protections for the home survive the government’s increasing use of warrantless long-term pole camera surveillance. *See* Pet. 10-14. This question is pressing, ripe for decision, and warrants this Court’s review in this case.

## CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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