No. 25-____

IN THE

Supreme Court of the United States

ROLANDO ANTUAIN WILLIAMSON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The definition of "search" that was introduced by Justice Harlan in *Katz* v. *United States*, 389 U.S. 347 (1967), and subsequently embraced by the Court, requires considering whether "a person ha[s] exhibited an actual (subjective) expectation of privacy" and whether "the expectation" is "one that society is prepared to recognize as 'reasonable.' " *Id.* at 361 (Harlan, J., concurring). As new technologies have emerged, "*Katz* has yielded an often unpredictable—and sometimes unbelievable—jurisprudence," most of all in "data privacy cases." *Carpenter* v. *United States*, 585 U.S. 296, 394-395 (2018) (Gorsuch, J., dissenting).

Here, law enforcement officers conducted surreptitious and continuous video surveillance of Rolando Williamson's backyard for ten months. Williamson's yard is largely blocked from public view by an eight-foot privacy fence, but officers mounted a camera high on a utility pole so that they could look over the fence. Applying the *Katz* test, the District Court denied Williamson's motion to suppress the evidence collected in this manner, and the Eleventh Circuit affirmed.

The questions presented are:

1. Whether a "search" occurs when the government takes a purposeful, investigative act directed toward an individual's home and curtilage, regardless of whether the individual has a "reasonable expectation of privacy" in the area; and

2. Whether, even under *Katz*, long-term, continuous, and surreptitious surveillance of an individual's home and curtilage constitutes a "search."

PARTIES TO THE PROCEEDING

Petitioner in this Court is Rolando Antuain Williamson, who was the defendant in the District Court and the appellant in the Eleventh Circuit. Ishmywel Calid Gregory, Hendarius Lamar Archie, and Adrien Hiram Taylor were also defendants before the District Court and appellants before the Eleventh Circuit.

Respondent is the United States of America.

RELATED PROCEEDINGS

U.S. Court of Appeals for the Eleventh Circuit:

United States v. *Gregory*, No. 22-12843 (11th Cir. Feb. 13, 2025) (reported at 128 F.4th 1228);

U.S. District Court for the Northern District of Alabama:

United States v. *Williamson*, 2:19-cr-466 (N.D. Ala.);

United States v. *Williamson*, 2:20-cr-405 (N.D. Ala.).

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INTRODUCTION

For ten months, law enforcement officers covertly surveilled Petitioner Rolando Williamson's home using a hidden camera. Williamson's backyard is largely shielded from public view by an eight-foot privacy fence and overgrown vegetation. Officers mounted the camera on a utility pole that overlooks the privacy fence, giving the camera a view of Williamson's home and backyard that no passerby on the street or agent in a squad car could obtain. Officers monitored the camera around the clock for nearly a year. And they did all this without a warrant.

This petition asks whether the government's lengthy, continuous, and surreptitious surveillance of Williamson's home and curtilage constituted a search

under the Fourth Amendment. The Eleventh Circuit held that it was not. According to that court, because an officer standing in a particular spot—far from the actual location of the hidden camera—could peer through the bushes into Williamson's backyard, Williamson "exposed" his yard "to the public" and had no reasonable expectation of privacy in that space. Pet. App. 4a.

Certiorari is warranted to review that result for two reasons.

First, certiorari is warranted to reconsider *Katz*'s reasonable-expectation-of-privacy test. This case—which squarely presents the question of whether a "search" occurred—offers an ideal vehicle to resolve that discrete and important question.

Originally articulated in Justice Harlan's solo concurrence in *Katz* v. *United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring), the *Katz* test has bedeviled litigants, courts, and scholars. By its plain terms, the Fourth Amendment prohibits unreasonable "search[es]" of protected persons or property. At the Founding, "search" referred to a purposeful, investigative act. The *Katz* test does not match that definition. Indeed, the *Katz* test has "no plausible foundation in the text of the Fourth Amendment." *Minnesota* v. *Carter*, 525 U.S. 83, 97 (1998) (Scalia, J., concurring).

The *Katz* test has proven unworkable. It "invites courts to make judgments about policy, not law," *Carpenter* v. *United States*, 585 U.S. 296, 343 (2018) (Thomas, J., dissenting); is inherently "circular[]," *United States* v. *Jones*, 565 U.S. 400, 427 (2012) (Alito, J., concurring in judgment); and yields "unpredictable—and sometimes unbelievable"—

results, *Carpenter*, 585 U.S. at 394 (Gorsuch, J., dissenting). Moreover, the test was poorly reasoned from the start and is inconsistent with this Court's repeated emphasis on the Constitution's original meaning, and the government has no valid reliance interest in applying a test that deprives the people of their constitutionally guaranteed rights. The Court should overrule the *Katz* test.

Second, alternatively, if the Court decides to maintain the *Katz* test, the Court should grant certiorari to clarify that courts applying *Katz* should consider intrusiveness as part of the analysis.

As Judge Jordan recognized in his separate opinion below, "state and federal courts * * * are divided" over how to decide whether warrantless pole-camera surveillance constitutes a search. Pet. App. 45a (Jordan, J., concurring in part and concurring in judgment). The First, Second, Sixth, and Tenth Circuits, in addition to the Eleventh Circuit below, hold that even partial public exposure is dispositive in finding a Fourth Amendment search. The Fifth Circuit has adopted the inverse position: Government surveillance of enclosed curtilage can trigger Fourth Amendment protections, even if the public could theoretically view the area in question. And the high courts of Colorado and South Dakota treat the surveillance's duration—rather than partial public exposure—as determinative.

The Court should resolve this division. Instead of treating partial public exposure as dispositive, as the Eleventh Circuit did below, courts should focus on intrusiveness, which requires evaluating exposure, duration, location, and the technology's capabilities. This approach helps guard against the very concerns

the Framers feared: the "arbitrary" exercise of government power and "too permeating police surveillance." *Carpenter*, 585 U.S. at 304-305 (quotation marks omitted). Applying that multi-faceted approach, law enforcement's surreptitious surveillance of Williamson's home and curtilage for ten months using technologically advanced cameras, despite his attempts to shield his backyard from public view, was clearly a search.

Whether the Court takes up the first question or the second, the Court "is obligated—as '[s]ubtler and more far-reaching means of invading privacy have become available to the Government'—to ensure that the 'progress of science' does not erode Fourth Amendment protections." *Id.* at 320 (quoting *Olmstead* v. *United States*, 277 U.S. 438, 473-474 (1928) (Brandeis, J., dissenting)) (alteration in *Carpenter*). This Court should heed that obligation here and grant certiorari.

OPINIONS BELOW

The Eleventh Circuit's opinion is reported at 128 F.4th 1228. Pet. App. 1a-48a. The District Court's opinion is not reported and is not publicly available. The magistrate judge's report and recommendation, which the District Court adopted without change, was sealed, and is included under seal in the appendix. Pet. App. 55a-134a.

JURISDICTION

The Eleventh Circuit entered judgment on February 13, 2025. Pet. App. 1a-48a. The Eleventh Circuit denied a timely petition for panel rehearing or rehearing en banc on April 22, 2025. Pet. App. 51a-

52a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment, U.S. Const. amend. IV, provides:

> 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.

STATEMENT

A. Legal Background

1. Whether a "search" occurred was historically "tied to common-law trespass." *Jones*, 565 U.S. at 405. In *Olmstead*, for example, the Court held that physically tapping wires located "in the streets" outside the defendant's home was not a search because it did not "trespass upon" the defendant's property. 277 U.S. at 457, *overruled by Katz*, 389 U.S. 347. But "that exclusively property-based approach," which required a physical intrusion on the defendant's property, proved a poor fit as technology evolved. *Jones*, 565 U.S. at 405.

The Court changed course in *Katz*, holding that the Fourth Amendment does not "turn upon the presence or absence of a physical intrusion into any given enclosure." 389 U.S. at 353.

In *Katz*, this Court held that the use of an electronic listening device that was attached to the outside of a public telephone booth constituted a Fourth

Amendment search. Rejecting *Olmstead*'s "narrow" physical-trespass rule, the Court explained it was of "no constitutional significance" that the listening device "did not happen to penetrate the wall of the booth." *Ibid.* Rather, "what [one] seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected." *Id.* at 351.

The majority did not explain how to determine whether a search had otherwise occurred. Justice Harlan's solo concurrence supplied that missing piece: when the government violates a "(subjective) expectation of privacy" that "society * * * recognize[s] as reasonable." *Id.* at 361 (Harlan, J., concurring) (quotation marks omitted). Applying that rule, Justice Harlan explained the defendant's "momentary * * * expectations of freedom from intrusion" in the booth—a "temporarily private place"—were "reasonable." *Ibid.*

The full Court adopted Justice Harlan's test one year later. *See Terry* v. *Ohio*, 392 U.S. 1, 9 (1968).

2. The Court later went on to hold that, as a general matter, a reasonable expectation of privacy is not invaded when the government surveils a person's home and curtilage from a (technically) public vantage point.

This Court's overflight cases illustrate that principle. In *California* v. *Ciraolo*, 476 U.S. 207 (1986), the Court held that police officers flying at 1,000 feet did not conduct a search when they observed a backyard enclosed by fences that prevented ground-level observation. The Court acknowledged that the backyard constituted the curtilage—"an area intimately linked to the home, both physically and psychologically, where privacy

expectations are most heightened." *Id.* at 213. The Court concluded, however, that the defendant's expectation that his backyard would be protected from observation was "unreasonable" because any member of the public flying in that airspace could have seen everything the officers observed. *Id.* at 213-214; *see also Florida* v. *Riley*, 488 U.S. 445 (1989) (plurality op.) (applying *Ciraolo* to hold that observing the home's curtilage from a helicopter flying at 400 feet above the ground was not a search).

Some Justices expressed doubt about those results from the beginning. As they explained, "[u]nder [this] exceedingly grudging Fourth Amendment theory, the expectation of privacy is defeated if a single member of the public could conceivably position herself to see into the area in question without doing anything illegal," regardless of "whatever the difficulty a person would have in so positioning herself, and however infrequently anyone would in fact do so." *Riley*, 488 U.S. at 457 (Brennan, J., dissenting); *see also Ciraolo*, 476 U.S. at 222-225 (Powell, J., dissenting).

3. As surveillance technologies developed, this Court attempted to adapt the *Katz* test to meet these new challenges by suggesting that inquiry must "assur[e] preservation of that degree of privacy against government that existed" prior to the advent of the new technology in question. *Jones*, 565 U.S. at 406 (alteration in original) (quotation marks omitted). But it has struggled to apply that rule consistently.

For example, in *Kyllo* v. *United States*, the Court resorted to a quasi-trespass-based rationale in holding the use of thermal imaging to "detect relative amounts of heat within the home" is a "search." 533 U.S. 27, 29 (2001). The Court acknowledged that the

Katz test rejected "a mechanical interpretation of the Fourth Amendment" and was difficult to apply when dealing with "the curtilage and uncovered portions of residences." *Id.* at 34-35. But the Court concluded that "obtaining by sense-enhancing technology any information regarding the interior of the home that could not otherwise have been obtained without physical intrusion into a constitutionally protected area" constitutes a search where "the technology in question is not in general public use." *Id.* at 34 (quotation marks omitted).

But later cases involving newer technology discarded that trespass-based rationale to focus instead on the unique capabilities of the technology at issue. In *Riley* v. *California*, for example, the Court held that the search-incident-to-arrest exception does not apply to cell phones. 573 U.S. 373 (2014). To reach that result, the Court highlighted features like cell phones' "immense storage capacity" and the "sensitive personal information" they contain—often far beyond that contained in one's home. *Id.* at 393, 395, 397. Based on this, the Court concluded the "privacy-related concerns" were "weighty enough" to require a warrant. *Id.* at 392 (quotation marks omitted).

Further illustrating the difficulties of applying the *Katz* test, in *Jones*, the Court failed to reach a collective consensus regarding the applicable test. All nine Justices agreed that attaching a GPS device to an individual's vehicle to track their movements on public streets constituted a search—but for different reasons. *See generally* 565 U.S. 402. Four Justices applied a trespass theory, holding that "a physical intrusion" "for the purpose of obtaining information" constitutes a search. *Id.* at 404-405 (plurality op.). But

four concurring Justices would have found that monitoring Jones's movements in that manner violated his reasonable expectation of privacy. *Id.* at 419, 430 (Alito, J., concurring in judgment). Although Justice Sotomayor found a search under both tests, she agreed that both were are "ill suited to the digital age." *Id.* at 413-418 (Sotomayor, J., concurring).

Most recently, in *Carpenter*, the Court drew on both "a person's expectation of privacy in his physical location and movements" and "the unique nature of cell phone location records," to conclude that reviewing cell-site location information constitutes a search. 585 U.S. at 306, 309-310. The dissenting Justices objected to this as a "stark departure" from the Court's precedents and the Fourth Amendment's text. *See id.* at 321-341 (Kennedy, J., dissenting); *id.* at 342-361 (Thomas, J., dissenting); *id.* at 361-386 (Alito, J., dissenting); *id.* at 386-406 (Gorsuch, J., dissenting).

B. Factual Background

This case arises from an investigation of drug-trafficking in Birmingham, Alabama. Pet. App. 5a. Law enforcement suspected Williamson was connected to this trafficking. *See ibid.*

In October 2018—without obtaining a warrant—officers installed two "pole cameras" outside of Williamson's home in Bessemer, Alabama, a suburb of Birmingham. Pet. App. 6a. Pole cameras are small cameras installed in public places, like utility poles, which law enforcement frequently uses for long-term, surreptitious surveillance. The cameras monitoring Williamson's home continuously recorded video footage and were capable of expanding the angle captured, tilting the lens, and zooming in. Pet. App.

90a-91a. Officers could also access the recorded footage at will.

The first camera overlooked the front yard and "could view only what was visible from the public street in front of the house." Pet. App. 6a.

The second camera overlooked Williamson's backyard, around which Williamson had installed an eight-foot privacy fence. *See* Dkt. 148 at 3. [1] Williamson's backyard abuts a public alley. The fence extends down one side of Williamson's property and across the portion running parallel to the alley; it was tall enough to completely obstruct a passerby's line of sight from those angles. *See* Pet. App. 53a-54a, 90a-92a. The remaining portion of the yard is partially screened by shrubbery. *Ibid.* As a result, a law enforcement officer standing in the alley diagonal to Williamson's home could see portions of his backyard through gaps in the shrubbery. But the officer would *not* have been able to see *all* of the backyard, and an officer peering through the shrubbery would have been visible to anyone standing in Williamson's backyard. The following photo shows that vantage point:

[1] Citations to "Dkt." refer to docket entries on *United States* v. *Gregory*, No. 22-12800 (11th Cir.).

Pet. App. 54a.

But the backyard pole camera was installed in a different position and at a different vantage point: on a utility pole next to the privacy fence, far above eye level. Installing the camera in that location allowed officers a view of Williamson's home and backyard that the privacy fence would have otherwise blocked. The following photo taken from the pole camera shows this vantage point:

Pet. App. 53a.

Using these cameras, along with others installed at two other residences Williamson maintained, law enforcement tracked Williamson's every move from

October 2018 to August 2019. *See generally* D. Ct. Dkt. 304-9 (search warrant).[2] That footage allowed agents to produce a detailed diary of Williamson's day—down to the minute—of where he was, what he was doing, and whom he was with. *See generally ibid.*

On one occasion, officers intercepted a communication from Williamson to a guest, in which Williamson asked the guest to park in his backyard. The officers later concluded that Williamson made this request to ensure that he and his guest "would have privacy as the back yard is surrounded by a wooden privacy fence." *Id.* ¶ 15. Officers watched the interaction through the pole camera anyway.

All told, officers surreptitiously surveilled Williamson nonstop for over *ten months*. The pole cameras collected over 438,000 minutes of footage of Williamson's life and home for officers to peruse at their leisure, whether in real-time or at a later date. *See, e.g.*, *id.* ¶ 16. Officers relied on this footage to obtain a search warrant of Williamson's home, leading to his indictment on several counts of drug trafficking, conspiracy, and firearms offenses. *See generally id.*; Pet. App. 6a-9a.

C. Procedural History

1. Williamson moved to suppress the evidence obtained from the pole cameras.

Relying on *Jones*, 565 U.S. 400, and *Carpenter*, 585 U.S. 296, Williamson explained that the warrantless use of pole cameras violated the Fourth Amendment. Pet. App. 96a-98a. In particular, he argued that the

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[2] Citations to "D. Ct. Dkt." refer to docket entries on *United States* v. *Williamson*, No. 2:19-cr-466-AHA-JHE (N.D. Ala.).

extended nature of the surveillance (over ten months) and the vantage point at which the cameras were installed (to see over his privacy fence) violated his reasonable expectation of privacy in his backyard, which is part of his home's curtilage. Pet. App. 97a, 104a.

2. In a report and recommendation later adopted by the District Court, Pet. App. 49a-50a, the magistrate judge recommended denying that motion, Pet. App. 55a-134a.

The magistrate agreed that the backyard was part of Williamson's curtilage, but concluded that Williamson had no objectively reasonable expectation of privacy in his backyard. Pet. App. 104a-111a. The magistrate acknowledged that the backyard was "partially enclosed (along with the home) in a privacy fence," obstructed by "overgrown foliage," and "used for private meetings," and that "the angle of the camera"—mounted to overlook the privacy fence—"differed from the angle a passerby would have seen had she peeked into the yard from" the alley. Pet. App. 105a, 109a.

Nonetheless, the magistrate judge concluded that the "Backyard Pole Camera was placed where an officer could have lawfully observed Williamson's back yard." Pet. App. 108a. The magistrate judge also found it immaterial that the camera was affixed far above eye level because the footage used to support the search warrant *could* have been captured from a specific angle in the alley. Pet. App. 109a.

The District Court adopted the magistrate judge's recommendation and denied the motion without further analysis. Pet. App. 49a-50a.

3. At trial, the government elicited testimony about the footage, introduced portions of the footage into evidence, played the footage for the jury, and referenced the footage during its closing argument. *E.g.*, D. Ct. Dkt. Nos. 765 at 205-213, 766 at 12-15, 767 at 168, 768 at 102.

The jury found Williamson guilty on all counts. The District Court sentenced him to life in prison. Pet. App. 12a-13a.

4. The Eleventh Circuit affirmed in relevant part. Pet. App. 43a.[3]

The Panel agreed that Williamson's backyard was "open to public view from an observer standing on the street," defeating any "reasonable expectation of privacy." Pet. App. 17a-18a. The Panel dismissed as irrelevant Williamson's attempt to protect his backyard from public view because it was not complete: The area was not "fully enclosed" by the privacy fence, and an observer in the alley could see into the backyard "with her view obstructed only by some overgrown vegetation." Pet. App. 16a-17a (quotation marks omitted).

The Panel brushed aside the continuous nature of the monitoring and its extended duration, reasoning that "[n]othing in the Constitution forbids the government from using technology to conduct lawful investigations more efficiently." Pet. App. 18a.

The Panel also distinguished *Jones* and *Carpenter* based on the technology at issue. Although police can use pole cameras to piece together a person's

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[3] The Eleventh Circuit reversed Williamson's conspiracy conviction on other grounds. Pet. App. 38a.

movements, pole cameras are "stationary" and do not "track location" or "chronicle * * * past movements" in the same way as GPS trackers or cell-site records. Pet. App. 18a-20a. And although the cameras recorded Williamson's every interaction with guests at his home, the court believed this did not provide the same "wealth of detail" as a GPS monitor or "degree of intrusion" as cell-site information. Pet. App. 19a-20a (quotation marks omitted). The Panel further concluded that "[p]ole cameras are a conventional surveillance technique," which *Carpenter* did not disturb. Pet. App. 20a.

Judge Jordan concurred. He acknowledged that courts "are divided" over how to address "the constitutionality of pole cameras" and "urge[d] caution before assuming that the Fourth Amendment's public view doctrine constitutionally immunizes pole cameras regardless of the length of time they record nearby human activities." Pet. App. 45a-47a (Jordan, J., concurring in part and concurring in judgment) (internal citation omitted).

In Judge Jordan's view, "the Fourth Amendment might be implicated if such a camera records what goes on around a home for a long period of time." Pet. App. 46a. He also expressed concern "that current Fourth Amendment doctrine" might not be well-equipped "to deal with the challenges of long-term surveillance in the digital age." Pet. App. 48a. But Judge Jordan did not resolve those issues because, in his view, the "good-faith exception" applied. Pet. App. 44a.

5. The Eleventh Circuit denied Williamson's rehearing petition. Pet. App. 51a-52a.

This petition follows.

REASONS FOR GRANTING THE PETITION

I. CERTIORARI IS WARRANTED TO OVERRULE THE *KATZ* TEST AND CLARIFY THE MEANING OF "SEARCH" UNDER THE FOURTH AMENDMENT.

The Court was right to hold in *Katz* that a search can happen even absent a trespass. But it was egregiously wrong to adopt Justice Harlan's view that law enforcement otherwise conducts a search only if it violates a reasonable expectation of privacy. That test has proven unworkable, particularly as new investigative technologies—like the long-term, continuous, and surreptitious pole-camera surveillance conducted here—have emerged. And there are no reliance interests on the *Katz* test that would prohibit this Court from adopting a test that comports with the Fourth Amendment's original meaning. In short, *stare decisis* does not command that the Court perpetuate *Katz*'s error.

A. The *Katz* Test Is Egregiously Wrong.

"Words in a constitution * * * are always to be given the meaning they have in common use, unless there are very strong reasons to the contrary." *Tennessee* v. *Whitworth*, 117 U.S. 139, 147 (1886). This Court's task is therefore "to decide whether the action in question would have constituted a 'search' within the original meaning of the Fourth Amendment." *Jones*, 565 U.S. at 406 n.3.

"Search" was not a "term of art" in 1791. *Carpenter*, 585 U.S. at 347 (Thomas, J., dissenting). "When the Fourth Amendment was adopted, as now, to 'search' meant '[t]o look over or through for the purpose of finding something; to explore; to examine by

inspection; as, to *search* the house for a book; to *search* the wood for a thief.' " *Kyllo*, 533 U.S. at 32 n.1 (quoting Noah Webster, *An American Dictionary of the English Language* (1828) (reprint 6th ed. 1989)); *see* 2 Samuel Johnson, *A Dictionary of the English Language* (8th ed. 1792) (defining "search" as to "examine," "explore," "look through," "inquire," "seek," or "try to find" by "looking into every suspected place").

"In other words, officers conduct a search when they engage in a purposeful, investigative act." *Morgan* v. *Fairfield County*, 903 F.3d 553, 568 (6th 2018) (Thapar, J., concurring in part and dissenting in part). As such, the Framers would have understood "search" to carry this ordinary meaning. Indeed, that matches how Americans understand the term today. *See, e.g.*, *Search*, Merriam-Webster's Collegiate Dictionary (11th ed. 2020) ("to look into or over carefully or thoroughly in an effort to find or discover something"); *Search*, Webster's New World College Dictionary (5th ed. 2016) ("to go over or look through for the purpose of finding something; explore; rummage; examine").

The historical background also supports this interpretation. "[T]he Fourth Amendment was the founding generation's response to the reviled 'general warrants' and 'writs of assistance' of the colonial era, which allowed British officers to rummage through homes in an unrestrained search for evidence of criminal activity." *Riley*, 573 U.S. at 403. Those efforts to uncover "smuggled goods" and seditious materials —which James Otis and Patrick Henry condemned as "the worst instrument of arbitrary power"—were searches in the ordinary sense of the term. *Boyd* v. *United States*, 116 U.S. 616, 625 (1886) (quotation

marks omitted); *see also* 3 *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 448-449 (Jonathan Elliot ed., 2d ed. 1836) (Henry decrying the practice of using "general warrants to search suspected places," arguing that without the "bill of rights," tax collectors could "go into your cellars and rooms, and search, ransack, and measure, every thing you eat, drink, and wear").

Early American "courts confirmed this understanding of a 'search.' " *Morgan*, 903 F.3d at 570 (Thapar, J., concurring in part and dissenting in part). Those courts found that searches had occurred where officers opened and examined "letters[] and sealed packages," *Ex parte Jackson*, 96 U.S. 727, 733 (1877); looked through a "shop and dwelling" for a stolen "gold piece," *Larthet* v. *Forgay*, 2 La. Ann. 524, 525 (La. 1847); poked through a "cellar, which was part and parcel of the dwelling-house," to look for stolen barrels of flour, *Bell* v. *Clapp*, 10 Johns. 263, 265 (N.Y. 1813) (per curiam); and entered a man's house, "turned over the beds," looked through "every hole," and "required every locked place to be opened," *Simpson* v. *Smith*, 2 Del. Cas. 285, 287 (Del. 1817).

Katz's reasonable-expectation-of-privacy test does not comport with this definition. *See, e.g.*, *Carter*, 525 U.S. at 91 (Scalia, J., concurring) (arguing this test "gives short shrift to the text of the Fourth Amendment"). Instead, "the fuzzy standard of 'legitimate expectation of privacy' " imports "a consideration that is often relevant to whether a search or seizure covered by the Fourth Amendment is 'unreasonable' " into "the threshold question whether a search or seizure covered by the Fourth Amendment *has occurred*." *Id.* at 91-92. Employed in

that manner, the test "has no plausible foundation in the text of the Fourth Amendment." *Id*. at 97.

B. The *Katz* Test Has Proven Unworkable.

Katz's reasonable-expectation-of-privacy test "has yielded an often unpredictable—and sometimes unbelievable—jurisprudence." *Carpenter*, 585 U.S. at 394 (Gorsuch, J., dissenting). Hovering a police helicopter 400 feet above one's home to check for drugs is not a search. *Riley*, 488 U.S. 445 (plurality op.). Neither is sifting through curbside trash to look for drugs—even if state law expressly protects the right "to privacy in [one's] garbage." *California* v. *Greenwood*, 486 U.S. 35, 43-44 (1988). And although tracking someone's movements using cell-site location records *is* a search, even when those records cannot provide precise location information, *Carpenter*, 585 U.S. 296, using an electronic beeper to track an individual's journey to their "dwelling place" *is not* a search, even though officers could not have found that location relying "solely on their naked eyes," *United States* v. *Knotts*, 460 U.S. 276, 282, 285 (1983).

As these examples highlight, the *Katz* test is particularly "ill suited to the digital age." *Jones*, 565 U.S. at 417 (Sotomayor, J., concurring). Because it focuses on "reasonable" expectations, the Fourth Amendment's protections "dissipate[] as soon as [a new] technology is in general public use." *Kyllo*, 533 U.S. at 47 (Stevens, J., dissenting) (quotation marks omitted). "As long as the government moves discreetly with the times, its use of advanced technologies will likely not breach society's reconstituted (non)expectations of privacy." *United States* v. *Tuggle*, 4 F.4th 505, 510 (7th Cir. 2021); *see Jones*, 565 U.S. at 427 (Alito, J., concurring in judgment) (explaining this

test "involves a degree of circularity"). Of course, the government can also manipulate privacy expectations at a faster clip when it wishes: "[I]f the Government were suddenly to announce on nationwide television that all homes henceforth would be subject to warrantless entry, individuals thereafter might not in fact entertain any actual expectation [of] privacy regarding their homes, papers, and effects." *Smith* v. *Maryland*, 442 U.S. 735, 740 n.5 (1979).

A return to the original meaning of the Fourth Amendment would simplify both a police officer's task in determining when to seek a warrant, and a trial court's task in resolving a suppression motion. Indeed, it is "unclear what question the *Katz* test is even asking." *Carpenter*, 585 U.S. at 356-358 (Thomas, J., dissenting); *see Loper Bright Enters.* v. *Raimondo*, 603 U.S. 369, 407-408 (2024) (overruling *Chevron* deference in part because its "defining feature * * * evaded meaningful definition"). The subjective nature of that test also leaves much "to the judicial imagination." *Carpenter*, 585 U.S. at 391 (Gorsuch, J., dissenting); *see, e.g.*, *Carter*, 525 U.S. at 97 (Scalia, J., concurring) (calling this test "self-indulgent"). "Asking whether an officer engaged in a purposeful, investigative act brings courts back into their wheelhouse: analyzing the facts before them." *Morgan*, 903 F.3d at 572 (Thapar, J., concurring in part and dissenting in part).

C. The Remaining *Stare Decisis* Criteria Favor Overruling The *Katz* Test.

In reevaluating precedent, this Court considers the quality of the decision's reasoning, its consistency with other decisions, and potential reliance interests. *Ramos* v. *Louisiana*, 590 U.S. 83, 106 (2020). Each

counsels in favor of overruling *Katz*'s reasonable-expectation-of-privacy test.

1. "Justice Harlan did not cite anything for this 'expectation of privacy' test, and the parties did not discuss it in their briefs." *Carpenter*, 585 U.S. at 345 (Thomas, J., dissenting). The test was instead "presented for the first time at oral argument" after the defendant's attorney, "a recent law-school graduate," had an "epiphany" that the Fourth Amendment's protections should apparently mirror the reasonable-person test used in Torts. *Ibid*. (alterations and quotation marks omitted). There is little doubt, then, that the "quality of [the *Katz* test's] reasoning" counsels in favor of overruling it. *Loper Bright*, 603 U.S. at 407 (quotation marks omitted).

As a chorus of academic voices have made clear, the *Katz* test has been subject to a crescendo of criticism from the start. Scholars have panned this test as "ambiguous," "subjective, unpredictable, and conceptually confused." William Baude & James Y. Stern, *The Positive Law Model of the Fourth Amendment*, 129 Harv. L. Rev. 1821, 1823, 1825 (2016). The test nominally requires determining the defendant's subjective expectation of privacy, an inquiry that can be "quite challenging" and for which there is no normative support. Matthew B. Kugler & Lior Jacob Strahilevitz, *Actual Expectations of Privacy, Fourth Amendment Doctrine, and the Mosaic Theory*, 2015 Sup. Ct. Rev. 205, 217 (2015).

And commenters have long bemoaned the second step—which asks whether that subjective expectation is "reasonable"—as "overly narrow, incoherent, short-sighted, deleterious to liberty, and totally out of touch with society." Daniel J. Solove, *Fourth Amendment*

Pragmatism, 51 B.C. L. Rev. 1511, 1519 (2010). Scholars trace these issues to the fact that the reasonable-expectation-of-privacy test is unmoored from the Fourth Amendment's text, "prematurely introduc[es] assessments of reasonableness into the definition of search," and is inherently ambiguous. David Gray, *The Fourth Amendment Categorical Imperative*, 116 Mich. L. Rev. Online 14, 20-21 (2017).

All the while, lower courts remain bound by that test—even as they have struggled to apply it in the digital age. *See, e.g.*, *Tuggle*, 4 F.4th at 511 (finding the court was "bound by Supreme Court precedent" to hold that "extensive pole camera surveillance" was not a search).

2. The *Katz* test is also inconsistent with this Court's precedent reinforcing the elemental proposition that constitutional interpretation must start with the Constitution's original meaning.

The Court has repeatedly stressed that constitutional interpretation must begin with the text, including in overruling long-standing constitutional precedents. *See, e.g.*, *New York State Rifle & Pistol Ass'n, Inc.* v. *Bruen*, 597 U.S. 1 (2022) (Second Amendment); *Ramos*, 590 U.S. 83 (Sixth Amendment); *Janus* v. *Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878 (2018) (First Amendment); *Franchise Tax Bd. of Cal.* v. *Hyatt*, 587 U.S. 230 (2019) (Eleventh Amendment).

The *Katz* test's atextual standard deviates from this "traditional conception of the judicial function," *see Loper Bright*, 603 U.S. at 395-396, making it an outlier.

3. Overruling *Katz*'s reasonable-expectation-of-privacy test would not interfere with any

substantial—let alone, valid—reliance interests. *See Ramos*, 590 U.S. at 107-108.

To be sure, under the original meaning of the Fourth Amendment, "rifling through a person's garbage," "reading through their bank records," "flying a helicopter four-hundred-feet over a person's greenhouse to look through an opening in its roof," "traipsing through somebody's farm to look for marijuana," and "peering into somebody's barn with a flashlight to see if they are doing something illegal" are all purposeful, investigative acts. *Morgan*, 903 F.3d at 571-572 (Thapar, J., concurring in part and dissenting in part) (collecting cases).

But that would not disturb any justifiable reliance on the *Katz* text. After all, the government has no legitimate interest in depriving individuals of their liberty based on a decision that defies both the Constitution and the common law. *See United States* v. *Gaudin*, 515 U.S. 506, 521 (1995). Where, as here, the Court considers a rule of constitutional law, *stare decisis* "is at its weakest." *Ramos*, 590 U.S. at 105-106 (quotation marks omitted).

D. The Decision Below Is Wrong.

1. Applying the original meaning of "search" leads to the conclusion that law enforcement officers engaged in a search of Williamson's home and curtilage.

As part of their investigation into Williamson, law enforcement officers used a pole camera to surveil his home and curtilage nonstop for ten months, even though Williamson had taken steps to shield the area from public view. *See supra* pp. 10-12. That was a purposeful, investigative act—and, thus, a search. Yet the Eleventh Circuit found that no "search occur[ed]" because the pole cameras at issue did not "invade[]"

Williamson's "reasonable expectation of privacy." Pet. App. 16a. That cannot be right.

The Court should grant certiorari and hold that surveillance constituted a search under the original-meaning test.

2. Because this petition asks only whether a search occurred, the Court need not decide how the remainder of the Fourth Amendment's text would apply.

Nevertheless, if the Court were inclined to reach that question, as to the object of the search: this was plainly a search of a constitutionally protected zone. Williamson's curtilage is "part of the home itself for Fourth Amendment purposes." *Florida* v. *Jardines*, 569 U.S. 1, 6 (2013) (quotation marks omitted).

As for whether the search unreasonably violates the people's right to be secure, the Court should remand for the lower court to conduct that analysis in the first instance. *See, e.g.*, *Groff* v. *DeJoy*, 600 U.S. 447, 473 (2023) ("Having clarified the Title VII undue-hardship standard, we think it appropriate to leave the context-specific application of that clarified standard to the lower courts in the first instance."); *Adarand Constructors, Inc.* v. *Pena*, 515 U.S. 200, 237-238 (1995) ("Because our decision today alters the playing field in some important respects, we think it best to remand the case to the lower courts for further consideration in light of the principles we have announced.") .

A remand is especially appropriate because there is no academic consensus on how to approach this question. Some scholars argue that courts should look to whether the government's conduct was "against the reason of the common law." *See, e.g.*, Laura K.

Donohue, *The Original Fourth Amendment*, 83 U. Chi. L. Rev. 1181, 1270-76 (2016); David A. Sklansky, *The Fourth Amendment and Common Law*, 100 Colum. L. Rev. 1739, 1779 (2000). Others have proposed a test rooted in positive law, under which government action would only be prohibited if it was "unlawful for a similarly situated private actor to perform" the same conduct. Baude & Stern, *supra*, at 1825-26. *But see* Richard M. Re, *The Positive Law Floor*, 129 Harv. L. Rev. F. 313 (2016) (arguing positive law is the floor, not the ceiling). Still others propose looking to general law. Danielle D'Onfro & Daniel Epps, *The Fourth Amendment and General Law*, 132 Yale L.J. 910 (2023). Because the lower courts have been hemmed in by the *Katz* test, they have not yet determined which approach to apply. *See, e.g.*, *Morgan*, 903 F.3d at 575 (Thapar, J., concurring in part and dissenting in part) (recognizing "court[s] must grapple with" these questions if this Court overrules *Katz*'s test).

II. CERTIORARI IS WARRANTED TO CLARIFY WHEN LONG-TERM, CONTINUOUS, AND SURREPTITIOUS, POLE-CAMERA SURVEILLANCE IS A SEARCH.

Even if the Court decides to maintain the *Katz* test, the Court should still grant certiorari to clarify the appropriate application of that test in the context of pole-camera surveillance. The lower courts are sorely in need of guidance on how to determine whether warrantless pole-camera surveillance violates the Fourth Amendment. In particular, courts' single-minded focus on public exposure cannot be reconciled with precedent or the evolving role technology plays in our daily lives.

A. The Courts Of Appeals And State Courts Of Last Resort Are Divided.

"[S]tate and federal courts * * * are divided" over how to determine whether warrantless pole-camera surveillance violates the Fourth Amendment. Pet. App. 45a-46a (Jordan, J., concurring in part and concurring in judgment); *accord Tuggle*, 4 F.4th at 520. Five circuits treat the question of whether the area subject to pole-camera surveillance was exposed to public view as dispositive under the Fourth Amendment. One circuit and several State courts of last resort have rejected that position, while others have expressed doubts about its validity. Even if the Court leaves the *Katz* test in place, it should grant certiorari to resolve that entrenched split.

1. Five circuits, including the Eleventh Circuit below, hold that even partial public exposure is dispositive in finding a Fourth Amendment search. Pet. App. 16a-18a; *United States* v. *Bucci*, 582 F.3d 108, 116-117 (1st Cir. 2009); *United States* v. *Harry*, 130 F.4th 342, 348-351 (2d Cir. 2025); *United States* v. *Powell*, 847 F.3d 760, 773 (6th Cir. 2017); *United States* v. *Hay*, 95 F.4th 1304, 1313-17 (10th Cir. 2024). Relying on cases like *Ciraolo*, these courts hold that, if the area being surveilled is "exposed to the public," the suspect has no reasonable expectation of privacy in that space. Pet. App. 16a (citation omitted); *see, e.g.*, *Harry*, 130 F.4th at 349; *Hay*, 95 F.4th at 1313-14, 1317. Thus, where the camera views an area "visible from a public vantage point," *Powell*, 847 F.3d at 773, pole-camera surveillance does not amount to a search—even if the suspect otherwise took steps to shield the area from view.

The Fifth Circuit has adopted the inverse position: Government surveillance of enclosed curtilage can trigger Fourth Amendment protections, even if the public could theoretically view the area in question. In *United States* v. *Cuevas-Sanchez*, police used a pole camera to surveil the suspect's backyard, which was enclosed by a 10-foot fence. 821 F.2d 248, 250-251 (5th Cir. 1987). The government argued the yard was partially exposed because some activity was "visible from the street"; a passerby could see over other portions of the fence, which were "only five to six feet high"; and "power company lineman on top of the pole or a policeman on top of a truck could peer over the 10-foot rear fence." *Id.* at 250. The Fifth Circuit rejected those arguments, holding that the defendant's attempts to shield his yard from public view manifested a reasonable expectation of privacy. *Id.* at 251.

Still other circuits have expressed confusion about how to address partial obstructions in this context. The Seventh Circuit, for instance, has generally adhered to the public-exposure rule while recognizing that partial obstructions, like fencing, might change the outcome. Indeed, that court has reserved "the more difficult question whether the government could install a camera without a warrant to surveil over the top of the visual barrier created by a fence." *United States* v. *House*, 120 F.4th 1313, 1317 (7th Cir. 2024); *see Tuggle*, 4 F.4th at 513 (similar); *see also United States* v. *Moore-Bush*, 36 F.4th 320, 328-332 (1st Cir. 2022) (en banc) (Barron, C.J., concurring) (arguing public exposure is not dispositive when dealing with long-term surveillance).

2. Some courts, by contrast, treat the length of surveillance as dispositive, reasoning that extended monitoring fundamentally alters the nature of the intrusion and constitutes a search. As the Colorado Supreme Court explained in *People* v. *Tafoya*, which involved three months of continuous pole-camera surveillance, "society would not expect law enforcement to undertake this kind of 'pervasive tracking' of the activities occurring in one's curtilage." 494 P.3d 613, 622 (Colo. 2021). The South Dakota Supreme Court, too, clarified in *State* v. *Jones* that "the expectation of privacy changes" when officers can capture the "aggregate" of a person's "coming and going" from home and "all of his visitors." 903 N.W.2d 101, 111 (S.D. 2017) (quotation marks omitted); *see also Commonwealth* v. *Mora*, 150 N.E.3d 297, 306 (Mass. 2020) (finding a search under Article XIV of the Massachusetts Constitution, which mirrors the Fourth Amendment, because "[t]he traditional barriers to long term surveillance of spaces visible to the public have not been walls or hedges—they have been time and police resources").

These courts depart from the circuits finding no Fourth Amendment violation, recognizing "the above decisions by federal courts of appeal * * * do not bind" them. *Jones*, 903 N.W.2d at 109. They believe the long-term nature of pole-camera surveillance sets those cases apart from decisions like *Ciraolo*, which involved a single, warrantless fly-over at 1,000 feet. 476 U.S. at 215. That "brief" surveillance, *Tafoya*, 494 P.3d at 620, did not capture the "aggregate of all" happenings around the defendant's home, *Jones*, 903 N.W.2d at 111 (quotation marks omitted); *see also Moore-Bush*, 36 F.4th at 330 (Barron, C.J., concurring) ("even if a mere passerby" could have

happened upon "a vantage point * * * high enough to" see Ciraolo's yard, no "casual, accidental observ[er]" could watch a home for months unnoticed) (quoting *Ciraolo*, 476 U.S. at 212) (third alteration in original).

B. This Court Should Clarify That The Fourth Amendment Inquiry Focuses On The Surveillance's Intrusiveness.

In contrast to the lower courts' focus on public exposure to the exclusion of all else, this Court has provided several "basic guideposts" to determine when "an official intrusion" into our "expectations of privacy" crosses the constitutional line. *Carpenter*, 585 U.S. at 304-305. As this Court has explained, the Fourth "Amendment seeks to secure 'the privacies of life' against 'arbitrary power.' " *Id.* at 304-305 (quoting *Boyd*, 116 U.S. at 630). The Framers also aimed "to place obstacles in the way of a too permeating police surveillance." *Id.* at 305 (quotation marks omitted). Applying these principles, the Court has looked to four factors to determine how best to preserve "that degree of privacy against government that existed when the Fourth Amendment was adopted." *Ibid.* (quotation marks omitted).

First, the quantity and quality of the data collected plays a crucial role in evaluating whether government surveillance violates the Fourth Amendment. Compare *Jones* and *Knotts*: In one, police used a GPS device to monitor a suspect's location for 28 days, producing "more than 2,000 pages of data over the 4-week period." *Jones*, 565 U.S. at 403. In the other, police used a beeper for the "limited" purpose of tracking a suspect's "automotive journey" in a single instance. *Knotts*, 460 U.S. at 278-279, 284-285. But *Knotts* recognized the case might have come out

differently if it involved "twenty-four hour surveillance." *Id.* at 283-284 (quotation marks omitted). For good reason: "longer term" electronic monitoring "impinges on expectations of privacy" because society expects that law enforcement would not and cannot catalogue a vehicle's every movement "for a very long period." *Jones*, 565 U.S. at 430 (Alito, J., concurring in judgment).

And the longer police watch you, the more they learn. *Riley* stressed that same concern, noting a cell phone found on one's person during a search-incident-to-arrest has an "immense storage capacity" that "reveal[s] much more in combination than any isolated record." 573 U.S. at 393-394. That is also why collecting 127 days of historical cell-site location data—which "provides an intimate window into a person's life"—invades a "reasonable expectation of privacy." *Carpenter*, 585 U.S. at 310-313.

Second, the location of the surveillance is critical. "[W]hen it comes to the Fourth Amendment, the home is first among equals." *Jardines*, 569 U.S. at 6. Protections for the home and curtilage are "essentially a protection of families and personal privacy." *Ciraolo*, 476 U.S. at 213. Surveillance of one's home and curtilage is therefore more intrusive than surveillance of "open fields" or other publicly accessible spaces. *Ibid.*; *United States* v. *Dunn*, 480 U.S. 294, 300 (1987). The Court has relied on that principle to expand the Fourth Amendment to protect against warrantless searches that would reveal similarly sensitive information to that usually "found in the home." *Riley*, 573 U.S. at 396-397.

Third, this Court has long recognized that the government's intrusion into an individual's

reasonable expectation of privacy is a search—even if some activity has been publicly exposed. Individuals do "not surrender all Fourth Amendment protection by venturing into the public sphere." *Carpenter*, 585 U.S. at 310. For example, the five concurring Justices in *Jones* held the warrantless use of a GPS tracker to monitor the suspect's travel unconstitutionally invaded his reasonable expectation of privacy, even though the suspect was traversing "public streets." *Jones*, 565 U.S. at 430 (Alito, J., concurring in judgment); *id.* at 418 (Sotomayor, J., concurring); *see also Bond* v. *United States*, 529 U.S. 334, 337 (2000) (manipulation of defendant's bag on public bus); *Katz*, 389 U.S. at 351-352 (recording of conversation conducted in public phone booth). As part of the public-exposure analysis, the Court also considers whether the individual had a meaningful option to limit their exposure. *See Carpenter*, 585 U.S. at 315 (rejecting voluntary-exposure doctrine as applied to cell phones, which are "indispensable to participation in modern society").

Fourth, the type of technology matters in assessing the degree of intrusion. This Court has "rejected * * * mechanical interpretation" of older Fourth Amendment rules to cases involving the "power of technology to shrink the realm of guaranteed privacy." *Kyllo*, 533 U.S. at 34-35. The Court has declined to extend the public-exposure doctrine to thermal imaging of a home, *ibid.*, and GPS tracking of a car, *Jones*, 565 U.S. at 415-418 (Sotomayor, J., concurring); *id.* at 429-431 (Alito, J., concurring in judgment). *Carpenter*—which declined to extend the third-party doctrine to permit warrantless searches of cell-site location information—is yet more proof that courts must be

attentive to the risks that new technology poses to our privacy. 585 U.S. at 315.

Indeed, the ever-evolving nature of technology makes this multi-faceted approach especially important. Many modern surveillance techniques, including GPS monitoring and pole-camera surveillance, are "by design" "cheap[er]" and more "surreptitious[]" than conventional methods, which allows them to "evade[] the ordinary checks that constrain abusive law enforcement practices: limited police resources and community hostility." *Jones*, 565 U.S. at 415-416 (Sotomayor, J., concurring) (quotation marks omitted). These same techniques make it easier to surveil spaces that are nominally publicly exposed—like a car's movements or a partially obscured backyard—for longer periods of time. *Cf. Carpenter*, 585 U.S. at 310 (before "the digital age," society expected law enforcement would not monitor an individual's movements for long periods). Courts should take those factors into account in deciding whether such surveillance violates the Fourth Amendment.

C. The Eleventh Circuit Reached The Wrong Result By Focusing Exclusively On Public Exposure.

1. Applying the appropriate test reveals that, contrary to the Eleventh Circuit's conclusion, the pole-camera surveillance here constituted a warrantless search.

First, the camera overlooking Williamson's fence collected vast quantities of highly detailed and sensitive data for ten months. Unlike the approximate cell-site location information in *Carpenter*, which "merely reveals a dot on a map for a single person,"

pole-camera surveillance creates a "digital videologue that * * * provides an 'intimate window' " into an individual's life. *Moore-Bush*, 36 F.4th at 346 (Barron, C.J., concurring) (quoting *Carpenter*, 585 U.S. at 311).

Second, the information captured was "deeply revealing," particularly because the cameras were trained on Williamson's home and curtilage. *Carpenter*, 585 U.S. at 320. Here, officers used the pole camera to record when Williamson arrived and left home; which guests visited Williamson's house and when; what Williamson and his guests transported between his car, garage, and home; and even what Williamson wore. D. Ct. Dkt. 304-9 ¶¶ 10, 14, 16-17, 22, 29-30, 32, 70-73.

Third, officers stationed the backyard pole camera to evade Williamson's attempts to shield himself from public view with an eight-foot privacy fence. Short of remaining inside his home indefinitely and shutting off the world, Williamson could not escape the surveillance.

Fourth, the cameras were able to pan, tilt, and zoom, and officers could access the footage indefinitely at will. The ability to search and manipulate that data is particularly concerning when one considers the "more sophisticated [versions of this technology] that are already in use or in development," *Carpenter*, 585 U.S. at 313 (quoting *Kyllo*, 533 U.S. at 36)—such as facial recognition and other visual search technologies.

In short, the surveillance here was highly intrusive; there was nothing "incidental[]" about what the cameras captured. *Id.* at 316. And although parts of Williamson's backyard were exposed to the public, it is hard to imagine a casual observer "who could take in all that occurs in a home's curtilage over the course

of [ten] months and recall it perfectly and at a moment's notice"—let alone one who could do so unnoticed. *Moore-Bush*, 36 F.4th at 330 (Barron, C.J., concurring).

2. Even setting aside this Court's teachings that exposure alone is not dispositive, the Eleventh Circuit's exposure-only test suffers from significant flaws.

First, as a practical matter, many municipalities prohibit individuals from constructing tall privacy fences sufficient to keep out casual observers. Case in point: Bessemer, where Williamson lived, restricts front-yard fences to three-and-a-half feet. Bessemer Code app. B, § 8.7(2). And many homeowners cannot afford a longer fence or taller trees. Yet even "the most frail cottage in the kingdom is absolutely entitled to the same guarantees of privacy as the most majestic mansion." *United States* v. *Ross*, 456 U.S. 798, 822 (1982). An exposure-only test fails to account for these realities.

Second, the Eleventh Circuit failed to consider the capabilities of the technology. That court defended its approach on the theory that "the pole cameras' capacity to record non-stop does not transform the Fourth Amendment analysis" because the Constitution does not prohibit "using technology to conduct lawful investigations more efficiently." Pet. App. 18a. Judge Jordan correctly "urge[d] caution" about this approach. Pet. App. 47a (Jordan, J., concurring in part and concurring in judgment). If efficiency were the lodestar, *Carpenter* and *Jones* would have come out differently.

Third, the Eleventh Circuit dismissed *Carpenter* as wholly irrelevant on the premise that the Court there

"clarifi[ed] that 'conventional surveillance techniques and tools, such as security cameras,' are not searches just because they record large amounts of data." Pet. App. 23a-24a (quoting *Carpenter*, 585 U.S. at 316). *Carpenter* said nothing of the sort. The majority merely observed that it was "not express[ing] a view on matters not before" the Court, and so its decision did not "call into question conventional surveillance techniques and tools, such as security cameras." 585 U.S. at 316.

III. THIS CASE IS AN EXCELLENT VEHICLE.

1. It has been too long since this Court provided guidance regarding surveillance technology.

The last time this Court took up a case involving the Fourth Amendment's application to electronic surveillance was 2018. *Id.* at 300. The last time this Court considered law enforcement's use of a surveillance camera was a 1986 case involving "a standard 35mm camera" that offered only still shots of what could be seen with the "naked eye." *Ciraolo*, 476 U.S. at 209-210.

By contrast, today's pole cameras capture far more—they are "remarkably easy, cheap, and efficient" surveillance tools, *Carpenter*, 585 U.S. at 311, that allow police to "digitally aggregat[e] personal information and allow for retrospective searches by going back in time with the footage around the home," Andrew Guthrie Ferguson, *Persistent Surveillance*, 74 Ala. L. Rev. 1, 57 (2022). The time to grant certiorari is now.

2. Moreover, these questions are important. Whether to measure the Fourth Amendment's protections against exposure alone, the more nuanced intrusion inquiry, or the original-meaning test has

enormous consequences.

Under the Eleventh Circuit's exposure-only approach, investigators can "use pole cameras to target" virtually "any home, at any time, for any reason," rendering "the traditional security of the home * * * of little worth." *Mora*, 150 N.E.3d at 310. Officers will be able to spy indefinitely on suspects, ex-girlfriends, or even judges, in the hopes of catching them doing something illegal. Such "indiscriminate video surveillance" of everything a person does in their most private space "raises the spectre of the Orwellian state." *Cuevas-Sanchez*, 821 F.2d at 251. Meanwhile, the relative ease with which police can deploy pole cameras and their decreasing costs mean that using pole cameras to surveil homes is becoming increasingly common. *See* Matthew Tokson, *Telephone Pole Cameras Under Fourth Amendment Law*, 83 Ohio State L.J. 977, 1000 (2022).

Pole cameras exemplify the challenges presented by digital surveillance more broadly: They are one of many technologies that evolve faster than legal challenges to them can percolate through the courts. To "ensure that the 'progress of science' does not erode Fourth Amendment protections," *Carpenter*, 585 U.S. at 320 (citation omitted), this Court should announce a test the lower courts can apply prospectively as the government's exploitation of technology continues to accelerate—rather than wait to react until it's too late.

3. This is an excellent vehicle to decide these important, recurring questions.

There are no procedural hurdles complicating review. Williamson's objection to the pole-camera surveillance was well-preserved, and the case arises

on direct appeal following the trial. *See* Pet. App. 12a-15a. Unlike other courts considering warrantless pole-camera surveillance, the Panel did not reach the good-faith exception, so there is no alternate holding complicating review.

The question presented was also outcome-determinative. The search warrant was based on "the pole camera footage"; the record does not suggest there would have been sufficient probable cause absent that footage. Pet. App. 112a. Nor was there any alternative source of the footage in question. Moreover, it is undisputed that Williamson's backyard was partially obscured by a fence and shrubbery, and the pole camera was mounted at an angle designed to evade Williamson's privacy fence. And because officers continuously recorded Williamson's house for ten months, this case does not raise difficult line-drawing questions about how the Fourth Amendment might apply to days- or weeks-long surveillance.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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