No. 25-412

In the Supreme Court of the United States

ROLANDO ANTUAIN WILLIAMSON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

BRIEF OF THE CATO INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

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."

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INTEREST OF *AMICUS CURIAE*[1]

The Cato Institute is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Project on Criminal Justice was founded in 1999 and focuses on the scope of substantive criminal liability, the proper and effective role of police in their communities, the protection of constitutional and statutory safeguards for criminal suspects and defendants, citizen participation in the criminal justice system, and accountability for law enforcement officers.

Cato's interest in this case arises from its mission to support the rights that the Constitution guarantees to all citizens. *Amicus* has a particular interest in this case as it concerns the continuing vitality of the Fourth Amendment and meaningful restraints on the exercise of government power.

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[1] Rule 37 statement: All parties were timely notified before the filing of this brief. No part of this brief was authored by any party's counsel, and no person or entity other than *amicus* funded its preparation or submission.

SUMMARY OF ARGUMENT

In October 2018, law enforcement surreptitiously installed two video cameras near the top of utility poles to surveil Rolando Williamson's home. The first camera was aimed at Williamson's front yard and "could view only what was visible from the public street in front of the house." Pet App. 6a. The second camera, however, could see over the 8-foot privacy fence that enclosed most of Williamson's backyard. Pet. Br. 10. These cameras were used to continuously monitor Williamson's home for over ten months. The police never obtained a warrant to do this.

The resulting footage supplied probable cause to investigate and ultimately convict Williamson. Pet. App. 12a–14a. On appeal, he argued that the camera surveillance constituted an impermissible, warrantless search. The Eleventh Circuit disagreed, reasoning that because one side of Williamson's yard was "screened in by shrubbery" and not completely enclosed, he had no reasonable expectation of privacy in *any* of it. Pet. App. 16a–17a. In the court's view, the resulting partial visibility from an alleyway meant ten months of continuous monitoring did not count as a "search." *Id.*

Partial exposure does not automatically extinguish Fourth Amendment protections. Although this Court has held that warrantless flyovers by police do not violate the Fourth Amendment where officers conduct brief, naked-eye observations of a person's curtilage, it has never gone so far as to condone months of warrantless, uninterrupted video surveillance. On the contrary, this Court has held that observable conduct in public spaces retains Fourth Amendment protection when its collection would result in a "too permeating

police surveillance." *Carpenter v. United States*, 585 U.S. 296, 305 (2018) (citation omitted).

We write separately to say that, whether under the textual meaning of "search" under the Fourth Amendment or the *Katz* reasonable-expectation-of-privacy test,[2] targeted and prolonged surveillance of a person or their home constitutes a search. State tort law reinforces that understanding. Nearly every state recognizes the tort of intrusion upon seclusion, and many courts have held that persistent video surveillance—even of public or semi-public spaces—is wrongful, reflecting a broad consensus that extended monitoring violates a person's right to be secure in his home.

We also highlight that the practical stakes of the Eleventh Circuit's decision are profound. Modern surveillance tools—drones, security cameras, and other sensors—allow the government to monitor millions of people with ease. Law enforcement can track movements, identify faces, record conversations—and store that information indefinitely.

This Court "must take account of more sophisticated systems that are already in use or development." *Carpenter*, 585 U.S. at 313 (internal citation omitted). The decision below would invite the warrantless deployment of these technologies against any part of the

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[2] Though trespass was not briefed below, it may also be relevant to this case. "[T]he backyard pole camera was installed . . . on a utility pole next to [Williamson's] privacy fence." Pet. Br. 11. Williamson may own the land to the center line of the alley, including the land the pole sits on, in which case the utility company would have a mere easement. *See Ex parte Jones*, 669 So. 2d 161, 165 (Ala. 1995) (adopting the majority rule that "the grantor is presumed to have intended to pass title to the abutting landowners to the center line of the right-of-way").

home considered "exposed to the public." Such a result would enable "near perfect surveillance" and leave citizens defenseless against long-term government observation. *Id.* at 312.

ARGUMENT

I. THE COURT SHOULD CLARIFY THAT TARGETED AND LONG-TERM OBSERVATION OF A PERSON OR HOME IS A SEARCH.

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures." U.S. CONST. amend. IV. The Founders drew no strict line between searches of public and private places. For example, the First Congress required federal customs officials to obtain warrants not only to search homes for concealed goods, but also before searching commercial buildings, stores, and any "other place." Funding Act of 1790, Act of August 4, 1790, ch. 35, § 48, 1 Stat. 145 (codifying a warrant requirement before searching any "dwelling-house, store, building or other place"); *see also Buonocore v. Harris*, 65 F.3d 347, 355 (4th Cir. 1995) (noting that the First Congress was the same that adopted the Fourth Amendment).

This Court has therefore emphasized that the "basic guideposts" in resolving questions related to the scope of Fourth Amendment protections include securing "'the privacies of life' against 'arbitrary power'" and placing 'obstacles in the way of a too permeating police surveillance.'" *Carpenter*, 585 U.S. at 305 (internal citations omitted).

Despite this, some lower courts have adopted an expansive view of what counts as "publicly exposed" and

narrowed the meaning of "search." The Eleventh Circuit's decision below exemplifies both kinds of error. It held that ten months of continuous police surveillance of Mr. Williamson's home, visitors, and daily habits did not constitute a search. The court reached that conclusion by applying an ersatz version of the *Katz* reasonable-expectation test. *See* Pet. App. 16a–17a. In its view, the mere fact that a narrow strip of Williamson's backyard was visible to someone standing in the adjoining alleyway and peering past vegetation evaporated any Fourth Amendment protection Williamson might have:

> Because Williamson's backyard was open to public view from an observer standing on the street, we need not—and do not—address whether the use of a pole camera to record over a privacy fence into an otherwise enclosed backyard invades a reasonable expectation of privacy.

Id. at 17a.

But in common parlance and understanding—an understanding shared by Alabama law enforcement officers[3]—sustained, targeted observation is a *search*. By treating a sliver of obstructed visibility as dispositive, the decision below departs from both text and history. Lamentably, several other courts have followed the same approach, hollowing out core constitutional protections. This Court should make clear that long-

[3] Brian Lawson, *Alabama law bars unauthorized surveillance in private places, public spaces fair game*, AL.COM (Feb. 24, 2014), https://tinyurl.com/bddympbp (quoting Madison County District Attorney Rob Broussard's statement that if surveillance cameras "are able to see something plainly illegal, it's a good *search*.") (emphasis added).

term, continuous surveillance of a person or home constitutes a search under the Fourth Amendment.

A. Limited exposure does not constitutionalize long-term, continuous video surveillance.

The Eleventh Circuit upheld the warrantless surveillance of Williamson's property for the better part of a year on the ground that "the pole cameras surveilled areas exposed to the public." Pet. App. 4a. Its decision rests on the notion that "[w]hat a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." *Katz v. United States*, 389 U.S. 347, 351 (1967) (in obiter dicta). But the court extended that dictum far beyond its bounds—treating the visibility of a *single sliver* of a private space as license for ten months of continuous observation of the whole area. That view finds no support in this Court's precedents or in ordinary understanding. *Cf. Arizona v. Hicks*, 480 U.S. 321, 324–25 (1987) (holding that moving stereo equipment to read its serial number constituted a search, even if the stereo itself is in plain view). A person does not invite an officer's observation in a restroom because the keyhole is uncovered, nor lose privacy in a bedroom because of cracks between its Venetian blinds.

The panel cited no authority endorsing such a "sliver-of-visibility" rule. Instead, it relied on the broad notion that many backyards are "open to public view." *See* Pet. App. 17a. Yet this Court has never held that partial visibility justifies long-term, technology-assisted monitoring of the home or curtilage.

Its aerial-surveillance cases, often invoked in this context, involved brief, naked-eye inspections—not

continuous video recording. In *California v. Ciraolo*, 476 U.S. 207 (1986), this Court held that no search occurred when officers flew a plane over the defendant's property, glanced into a backyard, and photographed what was "readily discernible to the naked eye." *Id.* at 213–14. Likewise, in *Florida v. Riley*, 488 U.S. 445 (1989), an officer circled a helicopter "twice over respondent's property" and "[w]ith his naked eye" observed marijuana growing inside a greenhouse. *Id.* at 488.

Neither *Ciraolo* nor *Riley* suggested that partial exposure of a backyard authorizes prolonged and uninterrupted video surveillance of its entirety. On the contrary, both decisions stressed the brevity of the observations and the ordinary human perspective involved. Whether or not those cases were correctly decided, they do not justify continuous video surveillance.

Moreover, this Court has since recognized that the public nature of some information does not eviscerate all Fourth Amendment protections.[4] Consider *United States v. Jones*, 565 U.S. 400 (2012). There, police attached a GPS tracking device to the defendant's vehicle to track his movements. *Id.* at 402. This Court held that a search occurred even though the information gathered by police concerned the defendant's movements on "public roads, which were visible to all." *Id.* at 406.

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[4] *See* Interesting Times with Ross Douthat, *Amy Coney Barrett is Looking Beyond the Trump Era*, YOUTUBE, at 15:35 (Oct. 16, 2025) (Justice Barrett discussing *Kyllo v. United States*, 533 U.S. 27 (2001), and explaining how the use of sense-enhancing technology to see things not otherwise discernable to the naked eye crosses the line into a search). Available at https://tinyurl.com/5dr2fujr.

This Court extended *Jones*'s reasoning in *Carpenter v. United States*, holding that the government's warrantless collection of a suspect's cell-site location information was a search. 585 U.S. at 320. The Court emphasized that neither the public nature of the location data nor its disclosure to a third party was dispositive. *Id.* at 309–10. Instead, the "depth, breadth, and comprehensive reach" of the surveillance, and "the inescapable and automatic nature of its collection," made it constitutionally significant. *Id.* at 320. As the Court observed, geolocation technologies empower the government to track a person "every moment of every day for five years." *Id.* at 312. The Court rejected any rule that would "leave [individuals] at the mercy of advancing technology," as it would contravene the Framers' desire "to place obstacles in the way of a too permeating police surveillance." *Id.* at 305 (internal citations omitted).

Some courts have followed this Court's lead and recognized that even information theoretically and in some limited way exposed to the public or third parties can be protected by the Fourth Amendment. The Fifth Circuit recently held that police cannot seek voluminous geolocation records concerning Americans without a warrant. *United States v. Smith*, 110 F.4th 817, 836 (5th Cir. 2024). Citing *Carpenter*, the court explained that "it did not matter whether [the] defendant *happened* to stay outside of a constitutionally protected area during a search or not." *Id.* at 834 n.8. Rather, "[t]he question was whether the technology utilized by law enforcement had the *capability* of providing data that offered 'an all-encompassing record of [a person's] whereabouts,' regardless of whether that person actually entered spaces that are traditionally

considered protected under the Fourth Amendment." *Id.* (quoting *Carpenter*, 585 U.S. at 311).

"The present case involves officers . . . engaged in more than naked-eye surveillance of a home." *Kyllo v. United States*, 533 U.S. 27, 33 (2001). Long-term and continuous video surveillance provides the same "intimate window into a person's life" as the tracking technologies in *Jones*, *Carpenter*, and *Smith*. A pole camera is "ever alert, and [its] memory is nearly infallible." *Carpenter*, 585 U.S. at 314. No snooping neighbor—or even uncommonly vigilant police officer—could replicate what a pole camera does and capture the intimate details about a person's life 24 hours a day for nearly a year.

Lower courts err when they find that the constitutionality of warrantless surveillance turns on shrub height, the size of the gaps in a fence, or the density of foliage. *See* Pet. App. 16a–17a; *United States v. Dennis*, 41 F.4th 732, 740 (5th Cir. 2022) (explaining that the use of pole cameras directed at a defendant's property was not a search because "one can see through his fence"). The proper question is whether the surveillance was prolonged and targeted such that it empowered police to compile "a detailed chronicle of [his] physical presence." *Carpenter*, 585 U.S. at 315. The surveillance of Williamson did.

This rule does not bar brief, ordinary observation of what officers can see from public vantage points. It simply recognizes that sustained, technology-assisted surveillance of private life is a search, the reasonableness of which must be subjected to meaningful constitutional scrutiny.

B. State tort law confirms that continuous surveillance, even of publicly visible areas, is unreasonable.

This Court has often grounded its Fourth Amendment analysis in common-law principles and positive law, which "may help provide detailed guidance on evolving technologies without resort to judicial intuition." *Id.* at 402 (Gorsuch, J., dissenting). The "trespass test" itself draws from property law to determine whether a Fourth Amendment search has occurred. Consistent with that approach, the Court has looked to independent sources of law to ask whether the government's conduct exceeds what "any private citizen might do." *Florida v. Jardines*, 569 U.S. 1, 8 (2013) (relying on "background social norms that invite a visitor to the front door" in holding that police conducted a search by doing more); *Caniglia v. Strom*, 593 U.S. 194, 198 (2021) (analyzing "what a private citizen might have had authority to do if petitioner's wife had approached a neighbor for assistance instead of the police"); *see also Riley*, 488 U.S. at 451 (noting that the Court "would have a different case if flying [a helicopter] at that altitude had been contrary to law or regulation").

State tort law—like property law—offers similarly instructive guidance on when the American people regard their "privacies of life" as violated and, therefore, whether a search occurs. In particular, the tort of intrusion upon seclusion demonstrates that the law regards long-term observation or filming—even of their movements in public spaces or partly fenced yards—as unreasonable and tortious.

Nearly every state recognizes some form of intrusion upon seclusion, "either under common law or by

statute." Eli A. Meltz, *No Harm, No Foul: Attempted Invasion of Privacy and the Tort of Intrusion upon Seclusion*, 84 FORD. L. REV. 3431, 3440–42 (2015) (listing states). The Restatement (Second) of Torts recognizes that one who "intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns" is liable "if the intrusion would be highly offensive to a reasonable person." Restatement (Second) of Torts § 652B (Am. L. Inst. 1977).

Importantly, liability for intrusion upon seclusion is *not* limited to the surveillance of private or sensitive spaces. Numerous state courts have recognized that intrusion upon seclusion can happen outside of the home and in public, especially if the surveillance was prolonged or invasive. For example, Massachusetts's highest court held that pointing surveillance cameras at a neighbor's property is tortious, even if the recorded "conduct is observable by the public." *Polay v. McMahon*, 10 N.E.3d 1122, 1127 (Mass. 2014). Though the defendant argued that the cameras "only incidentally capture[d] parts of the plaintiffs' home observable from the public way," the court sustained the claim due to "the use of electronic surveillance that monitors and records such conduct for a continuous and extended duration." *Id.* at 1127–28.

Likewise, a Florida appellate court held that using a 25-foot-high rooftop camera to continuously record a neighbor's property is actionable. *Jackman v. Cebrink-Swartz*, 334 So. 3d 653, 657 (Fla. Dist. Ct. App. 2021). It found that "the position of the camera in this case—peering over a privacy fence into the curtilage of a neighbor's backyard—was dispositive." *Id.* Moreover, it rejected an argument that the ability to look into the

backyard defeats an invasion of privacy claim. *Id.* at 656–57.

Other states have also held that a claim for intrusion upon seclusion exists where surveillance is prolonged, even in situations where the surveilled area is partly or even completely visible to outsiders. *Wolfson v. Lewis*, 924 F. Supp. 1413, 1420 (E.D. Pa. 1996) ("Conduct that amounts to a persistent course of . . . unreasonable surveillance, even if conducted in a public or semi-public place, may nevertheless rise to the level of . . . intrusion upon seclusion."); *Nader v. Gen. Mot. Corp.*, 255 N.E.2d 765, 771 (N.Y. 1970) ("A person does not automatically make public everything he does merely by being in a public place . . . ."); *Golec v. Boring*, No. 23CA1218, 2024 Colo. App. LEXIS 1694, at *24–27 (Colo. App. Dec. 12, 2024) (allowing counterclaim for intrusion upon seclusion where plaintiffs installed video cameras throughout the neighborhood in order "to monitor [the defendants'] house for at least two years, making hundreds of videos").

The widespread recognition of this tort reflects a social consensus that continuous and targeted observation—whether in public or in private spaces—invades privacy. The Eleventh Circuit therefore erred when it held that Willamson lacked a constitutional privacy interest in his backyard because it was partially exposed to the public. *See* Pet. App. 17. Because a private citizen may not do what the police did here—use a camera to peer over Williamson's 8-foot privacy fence to spy on him all day, every day, for over ten months—this Court should find that the officers conducted a search. *See Jardines*, 569 U.S. at 8.

II. THE DECISION BELOW INVITES THE GOVERNMENT TO BUILD NETWORKS OF CONTINUOUS SURVEILLANCE.

Courts are "obligated . . . to ensure that the 'progress of science' does not erode Fourth Amendment protections." *Carpenter*, 585 U.S. at 320 (internal citation omitted). Yet the Eleventh Circuit's rule leaves ancient protections dependent on a lifeline severable by technology's ever-creeping advance. *See Kyllo*, 533 U.S. at 34. Law enforcement agencies are using or testing surveillance systems that, especially when combined, enable comprehensive and continuous tracking of citizens. The specter of such monitoring makes "the right of a man to retreat into his own home," and his own backyard, "and there be free from unreasonable governmental intrusion" all the more important. *Id.* at 31 (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961)).

A. Drones

"Drones have made surveillance cheaper, easier, and more effective." Jessica Dwyer-Moss, *The Sky Police: Drones and the Fourth Amendment*, 81 ALB. L. REV. 1047, 1049 (2017–2018). Varying in size from "business jets [to] small enough to fit into the palm of someone's hand," they can be "virtually undetectable." *Id.* at 1048. They can carry cameras, thermal imaging sensors, microphones, license plate readers, facial-recognition software, cell-site simulators, and even weapons. Beryl Lipton, *Drones as First Responder Programs Are Swarming Across the United States*, ELEC.

FRONTIER FOUND. (June 27, 2024).[5] And most concerning of all, they can and do "observe individuals in previously private and constitutionally protected spaces, like their backyards, roofs, and even through home windows." *Id.*

More than 1,400 police departments now use drones, a number that's growing as cities continue to adopt "drone as first responder" programs. Jay Stanley, *Eye-in-the-Sky Policing Needs Strict Limits* 1, ACLU (July 27, 2023).[6] These programs deploy drones to respond to 911 calls and other service requests, and they can help officers assess a situation before arriving at the scene. Lipton, *supra*. However, these programs also enable around-the-clock warrantless—and often, suspicionless—surveillance.

Consider what happened to Daniel Posada in Chula Vista, California—the city with the nation's first and longest-running drone-as-first-responder program. After Daniel argued with his girlfriend at a bus stop, a bystander called 911 and police deployed a drone from a police station to investigate. Dhruv Mehrotra & Jesse Marx, *The Age of the Drone Police is Here*, WIRED (June 5, 2024, 6:00 AM).[7] On its way to Daniel, the drone "cross[ed] the airspace of 23 blocks, potentially exposing thousands of Chula Vista residents to the gaze of law enforcement." *Id.* The drone located Daniel

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[5] Available at https://tinyurl.com/2wp67bz7. At least one company has starting developing Taser-equipped drones. Ese Olumhense, *Axon's Ethics Board Resigned Over Taser-Armed Drones. Then the Company Bought a Military Drone Maker*, WIRED (Sept. 8, 2023, 1:46 PM). Available at https://tinyurl.com/mkcwbauv.

[6] Available at https://tinyurl.com/yc37jpmd.

[7] Available at https://tinyurl.com/d9jve3db.

as he was riding his bike down the street, and "[w]ithin seconds, a police car pulled up alongside him, and an officer was soon rummaging through his pockets," even though no crime had occurred. *Id.*

Since Daniel's city began its drone-as-first-responder program in 2018, drones have "criss-cross[ed] the skies of Chula Vista daily—nearly 20,000 times." *Id.* These police drones have amassed hundreds of hours of video footage of the city's residents, and they routinely fly "over backyards and above public pools, high schools, hospitals, churches, mosques, immigration law firms, and even the city's Planned Parenthood facility." *Id.* While Chula Vista maintains that it does not use drones for routine surveillance, records from the city show that it's not uncommon for drones to be deployed in response to minor complaints such as "reports of 'loud music', a 'water leak,' and someone 'bouncing a ball against a garage.'" Stanley, *Eye-in-the-Sky Policing*, *supra*, at 2.

Further, not all cities have limited their use of drones to emergency response programs. In recent years, drones have been used to surveil public events[8]

[8] Cybele Mayes-Osterman & Josh Meyer, *Military parade is coming to DC soon. Officials gave a preview of what to expect*, USA TODAY (June 10, 2025, 8:13 AM), https://tinyurl.com/3e4xu6vu (using drones to surveil crowds at a parade in Washington, D.C.).

and protests,[9] search for zoning and code violations,[10] enforce social distancing during the COVID-19 pandemic,[11] and even monitor backyard parties.[12]

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[9] Tina Moore, *NYPD used drones for arrests in pro-Palestine protests in NYC*, N.Y. POST (Oct. 28, 2023, 11:45 AM), https://tinyurl.com/4j459k5n (discussing NYPD's use of drones to monitor pro-Palestine protests); Press Release, Rep. Jimmy Gomez, Los Angeles Times: Predator Drones Shift from Border Patrol to Protest Surveillance (Sept. 22, 2025), https://tinyurl.com/mr2439fj (discussing the use of MQ-9 Predator drones to monitor anti-ICE protests in Los Angeles); A.J. Vicens & Raphael Satter, *As 'No Kings' protests denounce Trump, surveillance worries emerge*, REUTERS (Oct. 19, 2025, 12:51 PM), https://tinyurl.com/2yy97r9t (discussing concerns about the government using drone surveillance to target protesters throughout the country).

[10] Hannah Fry, *Government drones used in 'runaway spying operation' to peek into backyards in Sonoma County, lawsuit says*, L.A. TIMES (June 6, 2025, 6:06 PM), https://tinyurl.com/2bjfuwz4 (discussing lawsuit accusing county of using drones to conduct illegal surveillance of residents' property to search for code violations); Matt Powers, *Michigan Supreme Court Creates Giant Loophole for Warrantless Surveillance*, INST. FOR JUST. (May 6, 2024), https://tinyurl.com/42knayye (discussing case involving a township's use of drones to look into residents' backyard for zoning violations).

[11] *NJ Town Resorts to Talking Drones to Enforce Social Distancing*, WNBC (Apr. 9, 2020 11:08 AM), https://tinyurl.com/mr3rmsk7 (discussing use of drones to enforce social distancing in Elizabeth, New Jersey); Chaim Gartenberg, *Social-distancing detecting 'pandemic drones' dumped over privacy concerns*, THE VERGE (Apr. 23, 2020, 10:51 AM), https://tinyurl.com/yaev57d9 (discussing public outrage over attempt to enforce social distancing with drones in Westport, Connecticut).

[12] Jake Offenhartz, *New York police will use drones to monitor backyard parties this weekend, spurring privacy concerns* ASSOC. PRESS (Aug. 31, 2023, 7:53 PM), https://tinyurl.com/bdf9k25z (discussing NYPD's use of drones to monitor backyard parties on Labor Day weekend).

The Eleventh Circuit's rule would bless even continuous operations throughout and above entire cities, so long as a drone camera captures anything partly visible from the air or the street.[13]

B. Security Cameras

Today's security cameras bear little resemblance to those of decades past. Many "are capable of 360-degree video, infrared vision, or the ability to pan, tilt, and zoom," and "can be equipped with real-time face recognition or license plate recognition software." *Street Level Surveillance: Surveillance Camera Networks*, ELEC. FRONTIER FOUND. (updated Oct. 1, 2023).[14] They are frequently linked with automated license plate readers,[15] smart streetlights,[16] gunshot

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[13] The recent deployment of military drones to monitor anti-ICE protests in California makes it more plausible that counterterrorism drones like the Gorgon Stare—which provide city-wide and high-definition imagery from 25,000 feet in the air—could soon be deployed to track American citizens. Sam Jaffe Goldstein, *'Nothing Kept Me Up at Night the Way the Gorgon Stare Did.'*, LONGREADS (June 21, 2019). Available at https://tinyurl.com/utfe65f2.

[14] Available at https://tinyurl.com/3za9mtbu.

[15] *Street Level Surveillance: Automated License Plate Readers*, ELEC. FRONTIER FOUND. (updated Oct. 1, 2023), https://tinyurl.com/3s9b79dj ("Automated license plate readers (ALPRs) are high-speed, computer-controlled camera systems that are typically mounted on street poles, streetlights, highway overpasses, mobile trailers, or attached to police squad cars. ALPRs automatically capture all license plate numbers that come into view, along with the location, date, and time. The data, which includes photographs of the vehicle and sometimes its driver and passengers, is then uploaded to a central server.").

[16] Michael Silberman, *Streetlights as Spyware*, TECH POL'Y PRESS (Aug. 30, 2023), https://tinyurl.com/4a8twrrn (discussing privacy concerns surrounding use of smart streetlights, which allow

detection systems,[17] cell-site simulators,[18] and drones, all of which "dramatically expand surveillance capabilities." Patrick Sisson, *Welcome to Chula Vista, where police drones respond to 911 calls*, MIT TECH. REV. (Feb. 27, 2023);[19] *see also* Lipton, *supra*.

Nowhere is surveillance technology more prevalent than in New York City. The NYPD relies on an extensive system of video surveillance to "track and profile millions of New Yorkers each day." Akela Lacy, *An NYPD Camera Points Directly into Their Bedroom. They're Suing the City Over it.*, THE INTERCEPT (Oct. 28, 2025, 5:00 AM).[20] These tens of thousands of cameras all feed into one centralized network: the Domain Awareness System. *Id.* This system "collects the identity, location, banking details, vehicle information, social media activity, and friend groups of all who live in or enter the city. It combines these entries with civil and criminal records and converts them into digital

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police to "quietly layer invisible surveillance technologies . . . once [the streetlights are] in place").

[17] Helen Webley-Brown et al., *ShotSpotter and the Misfires of Gunshot Detection Technology*, SURVEILLANCE TECH. OVERSIGHT PROJECT (July 14, 2022), https://tinyurl.com/bdd42rds. *See also* Dhruv Mehrotra & Joey Scott, *Here Are the Secret Locations of ShotSpotter Gunfire Sensors*, WIRED (Feb. 22, 2024, 8:18 PM), https://tinyurl.com/msdbuk7s.

[18] *Cell Site Simulators*, NAT'L ASSOC. OF CRIM. DEF. LAWS. (Apr. 28, 2016), https://tinyurl.com/4vx26fdz ("Cell Site Simulators, also known as IMSI catchers or Stingrays, mimic cell towers and trick phones within their radius into communicating with them instead, during which they are able to collect information about the device.").

[19] Available at https://tinyurl.com/454ndn84.

[20] Available at https://tinyurl.com/4wzzx7zn.

profiles, reconstructing, in effect, the private lives of millions." *Id.*

Two New York residents recently filed a federal lawsuit after discovering that an NYPD camera points directly into their home. *Id.* Whether intentional or not, the placement illustrates the danger of the Eleventh Circuit's rule: even targeted and prolonged recording of a family home would not constitute a "search." *See* Pet. App. 17a.

C. Auditory and Through-Wall Surveillance

Additionally, companies are developing new auditory surveillance systems. Matthew Guariglia, *Flock's Gunshot Detection Microphones Will Start Listening for Human Voices*, ELEC. FRONTIER FOUND. (Oct, 2, 2025).[21] While it's unclear exactly how these devices will work, it's likely that they will rely on microphones to listen "for human voices in distress" by eavesdropping on conversations. *Id.* Researchers have also developed systems that use radio waves to "see" through walls. Meg Duff, *How Wi-Fi sensing became usable tech*, MIT TECH. REV. (Feb. 27, 2024).[22] These technologies raise the possibility that law enforcement will increasingly be able to "see" and "hear" private activities without physical trespass.

As *Carpenter* cautioned, courts "'must take account of more sophisticated systems that are already in use or development.'" 585 U.S. at 313 (quoting *Kyllo*, 533 U.S. at 36). The decision below ignores that warning. Its sliver-of-visibility rule would permit warrantless video or audio monitoring of any home, commercial

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[21] Available at https://tinyurl.com/ydjj6x47.

[22] Available at https://tinyurl.com/fze7cxcc.

building, or yard so long as part of it is visible—or audible—from a public space. It would invite law enforcement to monitor and recreate someone's public movements via drone or video and audio sensors.

The Eleventh Circuit failed "to place obstacles in the way of a too permeating police surveillance." *Id.* at 305 (internal quotations omitted). If the decision below is allowed to stand, it's not clear what constitutional provision would prevent the creation of a permanent network of continuous surveillance that tracks Americans in public and private spaces alike. This Court is not the only voice that has warned of the consequences for the human spirit that will follow. *Cf.* GEORGE ORWELL, 1984 3 (1949) ("There was of course no way of knowing whether you were being watched at any given moment. How often, or on what system, the Thought Police plugged in on any individual wire was guesswork.").

CONCLUSION

For these reasons and those described by Williamson, this Court should grant the petition.

Respectfully submitted,

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