No. 25-412

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

BRIEF OF FOURTH AMENDMENT SCHOLARS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

DEANNA M. RICE
Counsel of Record
CATHERINE A. WARD
TIMUR AKMAN-DUFFY
O'MELVENY & MYERS LLP
1625 Eye Street, NW
Washington, DC 20006
(202) 383-5300
derice@omm.com

Attorneys for Amici Curiae

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INTEREST OF *AMICI CURIAE*

Amici are legal scholars who teach and write on Fourth Amendment law.[1] Professor Matthew Tokson's research focuses on the Fourth Amendment, and specifically its application to new technologies and social contexts. Professor Andrew Guthrie Ferguson is a Fourth Amendment expert likewise focused on police surveillance in the context of new technologies.

Amici have an interest in ensuring that lower courts have a proper understanding of how to apply Fourth Amendment principles in the face of new and emerging technologies.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court has made clear that Fourth Amendment protections must not become a dead letter as technology evolves. This case presents an opportunity for the Court to provide lower courts with much-needed guidance regarding application of the Fourth Amendment in the context of one such rapidly evolving technology—pole camera systems. Pole camera systems involve tiny digital cameras mounted by law enforcement on utility poles and aimed at houses

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[1] Pursuant to Rule 37.6, counsel for *amici curiae* states that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae* or their counsel made a monetary contribution to the preparation or submission of the brief. Pursuant to Rule 37.2, counsel of record for all parties received notice of *amici*'s intent to file this brief at least 10 days prior to due date.

over extended periods of time for purposes of surveillance. These systems allow for far more probing policing than traditional surveillance systems, enabling law enforcement to extensively monitor anyone as they enter and leave their home, at any time, and for any reason. In doing so, these systems raise precisely the types of issues this Court has recognized may call for approaches that can "assure[] preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted." *Carpenter v. United States*, 585 U.S. 296, 305 (2018) (quoting *Kyllo v. United States*, 533 U.S. 27, 34 (2001)).

The Eleventh Circuit panel below held that law enforcement officers' continuous, warrantless surveillance of Petitioner's backyard over a period of ten months, using a camera mounted high on a utility pole to overlook a fence that blocked the yard from view at ground level, was not a "search" for purposes of the Fourth Amendment. Pet. App. 4a. Judge Jordan, however, concurred only in part and in the judgment, 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. 47a (citation omitted). "A pole camera placed on the corner of a public commercial intersection in a large city may not trigger Fourth Amendment protections," he explained, "[b]ut 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.

The disagreement among the members of the panel below reflects a broader pattern in the lower

courts. Courts have struggled to apply existing Fourth Amendment precedent in the context of pole cameras, in several instances expressing concerns about how to preserve privacy and security in the home as video surveillance becomes capable of more intensive monitoring. Some of those courts have expressly called for this Court to step in and provide additional guidance on how to analyze critical Fourth Amendment issues in this novel context. This Court should grant *certiorari* to provide that essential guidance and articulate limiting principles for pole camera-based searches that ensure the Fourth Amendment continues to protect against unfettered government power and to preserve the long-recognized sanctity of the home and curtilage.

ARGUMENT

I. LOWER COURTS NEED DIRECTION ON HOW TO APPLY THE FOURTH AMENDMENT TO DIGITAL SURVEILLANCE, INCLUDING POLE CAMERAS

A. Lower Courts Are Struggling To Determine Fourth Amendment Standards For Pole Cameras

In a time of ongoing technological advancement, courts and law enforcement need guidance regarding the scope of Fourth Amendment protections in the digital age. Although this Court has recognized that modern technology presents new challenges under the Fourth Amendment, it has not provided a comprehensive framework for how lower courts should analyze Fourth Amendment issues as applied to digital surveillance, instead tackling those issues on a case-by-case basis. *See United States v. Jones*, 565

U.S. 400 (2012); *Carpenter v. United States*, 585 U.S. 296 (2018); *Riley v. California*, 573 U.S. 373 (2014). Lower courts have struggled to chart their own path under existing precedent, and some have specifically questioned whether current doctrine adequately addresses constitutional issues presented by long-term pole camera surveillance.

For example, in *United States v. Tuggle*, 4 F.4th 505 (7th Cir. 2021), the Seventh Circuit concluded that the prolonged use of pole cameras around the defendant's home was not a "search" under the Fourth Amendment. *Id.* at 526. The court, however, noted that it was "not without unease about the implications" of its holding "for future cases." *Id.* The court found the duration of the surveillance—eighteen months—"concerning, even if permissible," and, in the panel's view, that raised "an obvious line-drawing problem: How much pole camera surveillance is too much?" *Id.* "Despite the inherent problems with drawing an arbitrary line," the court feared that "the status quo in which the government may freely observe citizens outside their homes for eighteen months challenges the Fourth Amendment's stated purpose of preserving people's right to 'be secure in their persons, houses, papers, and effects.'" *Id.* And "[b]eyond the line-drawing issues," the court voiced concern "regarding the current trajectory of Fourth Amendment jurisprudence," noting that "[a]s technological capabilities advance," the court's "confidence that the Fourth Amendment (as currently understood by the courts) will adequately protect individual privacy from government intrusion diminishes." *Id.* at 527. The panel thus proposed that "it might soon be time to revisit the

Fourth Amendment test established in *Katz*." *Id.* at 528.

The opinions in *United States v. Moore-Bush*, 36 F.4th 320 (1st Cir. 2022) (en banc), similarly demonstrate lower courts' confusion about how to apply this Court's Fourth Amendment precedent in the context of pole cameras. In *Moore-Bush*, the en banc court split over whether use of pole cameras constitutes a "search." A three-judge concurrence authored by Chief Judge Barron expressed concern with the view that reliance on "the kind of suspicionless, long-term digital video surveillance at issue [in a pole camera case] does not constitute a Fourth Amendment search." *Id.* at 322 (Barron, C.J., concurring, joined by Thompson, J. and Kayatta, J.). "Mindful of the brave new world that the routine use of such all-encompassing, long-term video surveillance of the front curtilage of a home could bring about," the concurring judges were "convinced that the government does conduct a search within the meaning of the Fourth Amendment when it accesses the record that it creates through surveillance of that kind and thus that law enforcement, in doing so, must comply with that Amendment's limitations." *Id.* The contrary view would "close the door to a Fourth Amendment claim that could stem from the government accessing a database containing continuous video footage of every home in a neighborhood, or for that matter, in the United States as a whole." *Id.* at 340. Still, a separate three-judge concurrence took the position that because the pole cameras only captured views that "were totally exposed to public observation," "[t]he [warrantless] actions of the law enforcement officers did not . . . vio-

late the Fourth Amendment." *Id.* at 361 (Lynch, J., concurring, joined by Howard, J., and Gelpí, J.).

Other federal and state courts have wrestled with the same issues, coming out in different places after analyzing this Court's Fourth Amendment precedents, including *Carpenter* and *Jones*. A court in the District of Connecticut, for example, recognized that "multiple federal appeals courts . . . have ruled that the prolonged use of a pole camera to surveil the outside of a person's home does not amount to a 'search,'" yet disagreed with those decisions in light of *Carpenter*, siding instead with decisions "from state supreme courts and federal district courts" that have reached the opposite conclusion. *United States v. Salaman*, 742 F. Supp. 3d 221, 229–31 (D. Conn. 2024). The Supreme Court of Colorado similarly read *Jones* and *Carpenter* to "suggest that when government conduct involves continuous, long-term surveillance, it implicates a reasonable expectation of privacy." *People v. Tafoya*, 494 P.3d 613, 620 (Colo. 2021). But other courts have reached a different conclusion, holding, for example, that the privacy interests implicated by pole camera surveillance "fall outside *Carpenter*'s rationale." *United States v. Hay*, 95 F.4th 1304, 1316 (10th Cir.), *cert. denied,* 145 S. Ct. 591 (2024). This Court's intervention is needed to address the disagreement in the lower courts and provide those courts with essential guidance about how to analyze pole camera surveillance under the Fourth Amendment.

B. This Case Presents An Opportunity For The Court To Provide Much-Needed Guidance On Pole Cameras And Other Forms Of Long-Term Digital Surveillance

Review of the lower court decisions addressing long-term pole camera surveillance under the Fourth Amendment reveals at least three key issues on which those courts could benefit from additional guidance: (1) duration and intensity; (2) technological enhancement; and (3) public versus private view. This case presents an opportunity for this Court to clarify each.

Duration and Intensity. Lower courts are struggling to understand what effect, if any, the duration and intensity of pole camera surveillance has on the Fourth Amendment analysis. Some courts have concluded that the duration of the surveillance does not matter so long as the view is public. *See United States v. Houston*, 813 F.3d 282, 287–88 (6th Cir. 2016) (defendant "had no reasonable expectation of privacy in video footage recorded by a camera that was located on top of a public utility pole and that captured the same views enjoyed by passersby on public roads"); *State v. Thomas*, 91 N.E.3d 1273, 1290 (Ohio Ct. App. 2017) (no search where cameras only observe what is visible to the public). But others have expressed concern with long-term surveillance that can create a comprehensive view of the target's associates and habits. *See State v. Jones*, 903 N.W.2d 101, 112 (S.D. 2017) ("The indiscriminate nature in which law enforcement can intrude upon citizens with warrantless, long-term, and sustained video surveillance raises substantial privacy concerns."); *Tafoya*, 494 P.3d at 622 ("[T]he pole

camera surveillance at issue here—continuous surveillance of Tafoya's curtilage for more than three months—shares many of the troubling attributes of GPS tracking that concerned Justice Sotomayor in *Jones*."); *Salaman*, 742 F. Supp. 3d at 231 ("Any reasonable person would feel it to be immensely invasive" to be surveilled 24/7 for weeks or months at a time, and could sue a neighbor doing the same thing for money damages.").

The Court's decision in *Carpenter* suggests that duration does—or at least can—matter under the Fourth Amendment, as the Court noted that "[m]apping a cell phone's location over the course of 127 days provides an all-encompassing record of the holder's whereabouts." 585 U.S. at 311. But it did so in a case concerning devices that allowed law enforcement to monitor a person's movements.

Since pole cameras are stationary, lower courts have been unsure whether and to what extent *Carpenter*'s observations about cumulative information gathering carry over to pole cameras. For example, the Seventh Circuit panel in *Tuggle* recognized that "the stationary cameras placed around Tuggle's house captured an important sliver of Tuggle's life," but concluded "they did not paint the type of exhaustive picture of his every movement that the Supreme Court has frowned upon." *Tuggle*, 4 F.4th at 524; *see also, e.g.*, *Houston*, 813 F.3d at 290 (reasoning that pole camera surveillance did not implicate concerns raised by GPS tracking in *Jones* because "the surveillance here was not so comprehensive as to monitor Houston's every move; instead, the camera was stationary and only recorded his activities outdoors on the farm"). But other courts have considered that

analysis and concluded it "do[es] not give enough weight to the ways that non-stop pole camera surveillance . . . is even more intrusive than tracking . . . various locations outside the home." *Salaman*, 742 F. Supp. 3d at 230; *see also, e.g.*, *Moore-Bush*, 36 F.4th at 333 (Barron, C.J., concurring, joined by Thompson, J., and Kayatta, J.) ("The government contends that while society may be prepared to accept as reasonable one's expectation of privacy in the whole of one's public movements from place to place over a substantial stretch of time, society is not prepared to accept as reasonable one's expectation of privacy in the whole of what one exposes to public view during such a period in a single place. We cannot agree—at least given the place that we are talking about here."); *Tafoya*, 494 P.3d at 621–22 (collecting cases that have taken different views of the role that continuity of surveillance plays in whether surveillance constitutes a search).

Technological Enhancement. Lower courts have also struggled to understand the extent to which law enforcement officers' ability to pan, zoom, and record and mine data over time fits into the Fourth Amendment search inquiry. For example, the three-judge concurrence authored by Chief Judge Barron in *Moore-Bush* thought these features of pole camera surveillance were significant, explaining that "[t]he ease with which a voluminous digital record may be mined to yield otherwise hidden information, when combined with the capacity for that record to be stored (given cloud-based computing), makes it distinct from its analog analogues." *Moore-Bush*, 36 F.4th at 347 (Barron, C.J., concurring, joined by Thompson, J., and Kayatta, J.). Other courts have

similarly found law enforcement's ability to retrospectively search pole camera video footage to be an important consideration in the Fourth Amendment analysis, echoing Justice Sotomayor's observation in *Jones* that law enforcement's ability to "store . . . records and efficiently mine them for information years into the future" should be taken into account. *Jones*, 565 U.S. at 415 (Sotomayor, J., concurring); *see also, e.g.*, *Tafoya*, 494 P.3d at 622–23 (noting, in holding that pole camera surveillance constituted a "search," that the surveillance at issue "share[d] many of the troubling attributes of GPS tracking that concerned Justice Sotomayor in *Jones*," including that "the information was stored, allowing the government to 'efficiently mine [the record] for information years into the future'" (quoting *Jones*, 565 U.S. at 415)).

Again, however, other courts and judges have come to a different conclusion. For example, the other concurrence in *Moore-Bush* found "[i]t is not determinative for the expectation of privacy analysis" that the record generated by more traditional surveillance techniques "is in some respects less complete and less searchable than digital video," because "[i]t is not objectively reasonable to expect privacy in the whole of your movements when you know many of those movements, even if not all, can and will be observed by the same people day in and day out." 36 F.4th at 369 (Lynch, J., Howard, J., and Gelpí, J., concurring). And rather than focusing on the fact that law enforcement could go back and reexamine pole camera footage at any time, the Seventh Circuit in *Tuggle* found it significant that, unlike with the cell-site location information at issue in

Carpenter, "[t]he government had to decide *ex ante* to collect the video footage by installing the cameras," rather than "tap[ping] into an expansive, pre-existing database of video footage." *Tuggle*, 4 F.4th at 525.

Public Versus Private View. When determining whether a pole camera infringes on an individual's Fourth Amendment rights, most lower courts have drawn a line at whether the camera sees only what is visible to the public, but some have questioned if this approach provides sufficient protection against invasive digital surveillance. For example, the Sixth Circuit reasoned that no Fourth Amendment violation exists where "video footage [is] recorded by a camera that was located on top of a public utility pole and that captured the same views enjoyed by passersby on public roads." *Houston*, 813 F.3d at 288; *see also Moore-Bush*, 36 F.4th at 365 (Lynch, J., Howard, J., and Gelpí, J., concurring) ("*Carpenter* . . . did not disturb the fundamental principle that observing what is knowingly exposed to public view is not a search. *Katz*'s rule reflects the common and commonsense understanding of privacy as 'the state of being alone and not watched or interrupted by other people.'" (citation omitted)).

Still, other courts have recognized that "the *Carpenter* decision set aside the notion that—standing alone—the fact that a person exposes information to a third party or to the public *necessarily* means that the person has no subjective or reasonable expectation of privacy against the government's use of relentless electronic surveillance." *Salaman*, 742 F. Supp. 3d at 230. That is, "under *Carpenter*, evidence of such infrequent surveillance does nothing to un-

dermine the reasonableness of a claimed expectation of privacy in the whole of what transpires in a publicly visible manner over a sustained expanse of time in a single place, at least insofar as what does transpire there over that expanse of time reveals the 'privacies of life' when considered in the aggregate." *Moore-Bush*, 36 F.4th at 334 (Barron, C.J., concurring, joined by Thompson, J., and Kayatta, J.) (quoting *Carpenter*, 585 U.S. at 311).

* * *

The differing perspectives in the lower court opinions stem from contrasting interpretations of this Court's precedents and differing views on how Fourth Amendment principles developed in other law enforcement contexts apply to pole camera surveillance. This case presents an ideal opportunity for the Court to clarify how these different strains of Fourth Amendment jurisprudence fit together in the context of long-term pole camera surveillance of private homes.

II. RISING USE OF POLE CAMERAS IN THE DIGITAL AGE PRESENTS UNIQUE FOURTH AMENDMENT CHALLENGES

As the lower court decisions reflect, digital policing presents new challenges for balancing privacy and security, and courts have struggled to apply traditional Fourth Amendment frameworks in a way that provides a meaningful constraint on law enforcement's ability to put up pole camera systems to monitor every house, forever, as if the Constitution has nothing to say about it. The importance of the core Fourth Amendment principles implicated by

pole cameras underscores the need for this Court's intervention.

A. Pole Camera Systems Are Markedly Different From Traditional Surveillance Tools

Use of pole camera systems presents the same types of concerns this Court has articulated when confronted with application of the Fourth Amendment to emerging digital technologies. *See, e.g.*, *Riley*, 573 U.S. at 393 (explaining that comparing "a search of all data stored on a cell phone" to searching a physical item "is like saying a ride on horseback is materially indistinguishable from a flight to the moon"); *Carpenter*, 585 U.S. at 320 (explaining that 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" (citations omitted)); *see also, e.g.*, *Jones*, 565 U.S. at 427 (Alito, J., concurring) ("Dramatic technological change may . . . provide increased convenience or security at the expense of privacy."). It entails a type of digital policing that exceeds human senses, enabling "[s]ystemic surveillance, fueled by artificial intelligence, pattern matching, and other automated algorithmic suspicion."[2]

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[2] Andrew Guthrie Ferguson, *Why Digital Policing is Different*, 83 Ohio State L.J. 817, 854 (2022); *see also* David Gray & Danielle Citron, *The Right to Quantitative Privacy*, 98 Minn. L. Rev. 62, 75 (2013) ("Information gathering is faster, cheaper, and more comprehensive than ever before. Whereas information gathered by public and private entities once tended to remain in information silos, it is now seamlessly shared with countless organizations via the Internet."); Meg Leta Jones,

While human observers are incapable of aggregating or recalling every detail of what they see over time, use of digital pole cameras allows for the aggregation of vast amounts of data, making it possible for police to conduct after-the-fact searches of footage to identify patterns and reconstruct timelines.[3] With the help of pole cameras, police can go back in time and review anything from the license plates on cars parked near or passing by a residence, to visitors in, outside, or near property, to residents' daily routines and sleep patterns. They can observe who someone associates with, how often, and what their interactions look like, and when any aspect of their relationship appears to change. In other words, once a pole camera system is installed, it allows for a highly invasive form of rummaging into many aspects of someone's life. And this type of invasive digital "tracking is remarkably easy, cheap, and efficient compared to traditional investigative tools." *Carpenter*, 585 U.S. at 311.

The precise details of how pole cameras are used in different cases vary—some cases involve covert cameras, while in others the cameras are obvious; some cameras are situated so as to observe all of a suspect's yard, while others are more targeted; some record video over a period of days, while others may run for months. *See* Matthew Tokson, *The Next Wave of Fourth Amendment Challenges After* Car-

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The Ironies of Automation Law: Tying Policy Knots with Fair Automation Practices Principles, 18 Vand. J. Ent. & Tech. L. 77, 85 (2015) ("Digital automation utilizes elegant algorithms to process piles and piles of data to some end.").

[3] *See* Andrew Guthrie Ferguson, *Persistent Surveillance*, 74 Ala. L. Rev. 1, 29 (2022).

penter, 59 Washburn L.J. 1, 19 (2020). But in any case, use of pole cameras entails a level of data aggregation "of a different sort" than is possible with non-digital surveillance techniques, "not connecting locational data from different public places but connecting personal data from the same private place to other sources of police data." Andrew Guthrie Ferguson, *Persistent Surveillance*, 74 Ala. L. Rev. 1, 62 (2022). "The always-on cameras seep through the ordinary protections of physical obstructions, time, obscurity, and implicit licenses to reveal things that would not be seen without the cameras." *Id.*

The always-on nature of pole cameras—and their ability to capture detailed information about the home and everything that enters or leaves it without any physical intrusion onto private property—amplifies the risk of government overreach when this technology is employed. The core of the Fourth Amendment is "the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Silverman v. United States*, 365 U.S. 505, 511 (1961). But "the right to retreat would be significantly diminished if the police could enter a man's property to observe his repose from just outside the front window"—and this is no less true if the police closely observe his home and curtilage via a zoom lens rather than the naked eye. *See Florida v. Jardines*, 569 U.S. 1, 6 (2013). The government could not lawfully "trawl for evidence with impunity" in "a home's porch or side garden," *id.* at 6, and neither should it be able to do so via electronic means, *see Kyllo*, 533 U.S. at 34. Allowing the government to monitor anyone's porch or side garden or back yard for months or years to see everything they

might place there or anything else they might do there contravenes Americans' fundamental rights to security in their homes and curtilage.

B. The Scope Of Surveillance Made Possible By Pole Camera Systems Implicates Core Fourth Amendment Concerns

The intrusive nature of pole camera surveillance raises substantial Fourth Amendment concerns that warrant this Court's attention.

Protection from arbitrary, suspicionless, or overbroad government searches has long been a foundational principle of the Fourth Amendment. In *Carpenter*, this Court recognized two basic Fourth Amendment "guideposts": "[f]irst, that the Amendment seeks to secure 'the privacies of life' against 'arbitrary power,'" and "[s]econd, and relatedly, that a central aim of the Framers was 'to place obstacles in the way of a too permeating police surveillance.'" *Carpenter*, 585 U.S. at 305 (quoting *Boyd v. United States*, 116 U.S. 616, 630 (1886), and *United States v. Di Re*, 332 U.S. 581, 595 (1948)). In service of those principles, the Fourth Amendment "impose[s] a standard of 'reasonableness' upon the exercise of discretion by government officials, including law enforcement agents, in order 'to safeguard the privacy and security of individuals against arbitrary invasions.'" *Delaware v. Prouse*, 440 U.S. 648, 653–54 (1979) (footnote omitted) (quoting *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 312 (1978))).

Without robust Fourth Amendment protection against the incursions of the digital age, the "security of one's privacy against arbitrary intrusion by the police" is in danger. *Schneckloth v. Bustamonte*, 412

U.S. 218, 242 (1973) (quotations omitted). If warrantless use of pole cameras is broadly permitted, anyone—any journalist, judge, dissident, or anyone else—could be surveilled for any reason, or for no reason at all. As cameras become cheaper, this type of arbitrary surveillance—with a near-limitless scope—only becomes easier for police to implement, and Fourth Amendment constraints are crucial to avoid government overreach and abuse. Indeed, warrantless use of pole cameras in many respects resembles a virtual general warrant system, and raises many of the same concerns about the arbitrary exercise of government power that led the Founders to reject general warrants.[4]

The use of warrantless pole cameras to surveil the area around an individual's home is particularly concerning from a Fourth Amendment perspective. The home is at the heart of Fourth Amendment protection, and the curtilage is considered part of the home for Fourth Amendment purposes. As this

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[4] *See* James J. Tomkovicz, *California v. Acevedo: The Walls Close in on the Warrant Requirement*, 29 Am. Crim. L. Rev. 1103, 1134 (1992) ("The Framers objected to general warrants and writs of assistance because they resulted in arbitrary deprivations of privacy, property, and liberty. Those deprivations were arbitrary in part because officers were authorized to search and seize upon bare suspicion. They were also arbitrary and dangerous because agents of the executive were given 'unlimited discretion' to choose whom, where, and what to search and seize." (footnotes omitted)); *see also, e.g.*, *United States v. Zemlyansky*, 945 F. Supp. 2d 438, 452 (S.D.N.Y. 2013) ("The Fourth Amendment requires that warrants state with particularity the items to be searched and seized. This requirement traces directly back to the Framers' experience of tyranny before this Nation's founding . . . .").

Court has explained, "[i]n no quarter does the Fourth Amendment apply with greater force than in our homes, our most private space which, for centuries, has been regarded as 'entitled to special protection.'" *Kentucky v. King*, 563 U.S. 452, 474 (2011) (quotations omitted); *see also* Thomas P. Crocker, *The Fourth Amendment at Home*, 96 Ind. L.J. 167, 168, 177 (2020) ("Fourth Amendment text places special emphasis on securing protections for the home—in addition to persons, papers, and effects—against unwarranted government intrusion."). And "[t]he protection afforded the curtilage is essentially a protection of families and personal privacy in an area intimately linked to the home, both physically and psychologically, where privacy expectations are most heightened.'" *Collins v. Virginia*, 584 U.S. 586, 592–93 (2018) (quoting *California v. Ciraolo*, 476 U.S. 207, 212–13 (1986))).[5]

Persistent video surveillance of the curtilage can reveal intimate details of home life, associations, and routines, undermining the Fourth Amendment's traditional guarantee of sanctity and security in this space. As Justice Sotomayor noted in *Jones*, "[a]wareness that the government may be watching chills associational and expressive freedoms." *Jones*, 565 U.S. at 416 (Sotomayor, J., concurring). "[B]y

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[5] *See* Andrew Guthrie Ferguson, *Personal Curtilage: Fourth Amendment Security in Public*, 55 Wm. & Mary L. Rev. 1283, 1313–16 (2014) (discussing the history and law of curtilage); Brendan Peters, *Fourth Amendment Yard Work: Curtilage's Mow-Line Rule*, 56 Stan. L. Rev. 943, 952 (2004) ("At common law, the curtilage concept was a boundary within which structures were granted the same protection under the law of burglary as afforded to the house itself."); *id.* at 952 n.56 (collecting related cases).

making available at a relatively low cost such a substantial quantum of intimate information about any person whom the government, in its unfettered discretion, chooses to track," digital surveillance techniques "may 'alter the relationship between citizen and government in a way that is inimical to democratic society.'" *Id.* (quoting *United States v. Cuevas-Perez*, 640 F.3d 272, 285 (7th Cir. 2011) (Flaum, J., concurring), *vacated*, 565 U.S. 1189 (2012)).

The aggregation of details regarding activities in and around the home is a different, but in some ways even greater invasion of privacy expectations than, for example, the aggregation of locational details about where an individual travels by car. *See id.* at 416. After all, a pole camera system can see everything someone does in their yard, each time they arrive and leave, and everything that is brought into or taken out of the house. These systems also record everyone who visits a home, along with how often they come, on what days and at what times, how long they stay, and who they are with. Long-term use of pole cameras accordingly has the potential to chill First Amendment-protected activities by deterring people from visiting certain homes, associating with others, or engaging in expressive conduct out of fear of being recorded and scrutinized by the government. *See* Matthew B. Kugler & Lior Jacob Strahilevitz, *Actual Expectations of Privacy, Fourth Amendment Doctrine, and the Mosaic Theory*, 2015 Sup. Ct. Rev. 205, 206 (2016); *see also* Andrew Guthrie Ferguson, *supra*, 74 Ala. L. Rev. at 56.

CONCLUSION

The Court should grant *certiorari* to provide the lower courts with much-needed guidance on the important Fourth Amendment issues raised by pole camera surveillance.

Respectfully submitted,

DEANNA M. RICE
(Counsel of Record)
CATHERINE A. WARD
TIMUR AKMAN-DUFFY
O'MELVENY & MYERS LLP
1625 Eye Street, NW
Washington, DC 20006
(202) 383-5300
derice@omm.com

Attorneys for Amici Curiae

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