No. 25-412

In the Supreme Court of the United States

ROLANDO ANTUAIN WILLIAMSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner's Fourth Amendment rights were violated by the law-enforcement use of two video cameras on public utility poles that viewed the front and back yards of his home, which the courts below found were exposed to public observation.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-48a) is reported at 128 F.4th 1228. The order of the district court (Pet. App. 49a-50a) and the report and recommendation of the magistrate judge (Pet. App. 55a-134a) are unreported.

JURISDICTION

The opinion of the court of appeals was entered on February 13, 2025. A petition for rehearing was denied on April 22, 2025 (Pet. App. 52a). The petition for a writ of certiorari was filed on July 21, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Northern District of Alabama, petitioner was convicted on one count of engaging in a continuing criminal enterprise, in violation of 21 U.S.C. 848(b); one

count of conspiring to distribute heroin, methamphetamine, fentanyl, and marijuana, in violation of 21 U.S.C. 841(a)(1), (b)(1)(A), and (B), and 846; one count of possessing marijuana with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(D); one count of possessing heroin, methamphetamine, fentanyl, and marijuana with intent to distribute, in violation of 21 U.S.C. 841(a)(1), (b)(1)(A), (B), and (D); one count of possessing heroin, methamphetamine, fentanyl, and marijuana with intent to distribute, in violation of 21 U.S.C. 841(a)(1), (b)(1)(B) and (D); one count of distributing heroin and fentanyl, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C); and five counts of using a communication facility to commit a drug-trafficking crime, in violation of 21 U.S.C. 843(b). Judgment 1. Petitioner was sentenced to life imprisonment. Pet. App. 13a-14a. The court of appeals vacated petitioner's conspiracy conviction but otherwise affirmed. *Id.* at 38a.

1. In 2016, law enforcement began investigating petitioner for his suspected role in an extensive drug-trafficking operation in and around Birmingham, Alabama. Pet. App. 5a; Magistrate Judge Report & Recommendation (R&R) 2.* Petitioner in fact led that trafficking operation, supplying drugs to at least 15 other drug dealers. Presentence Investigation Report (PSR) ¶¶ 54, 56. And he was ultimately found responsible for offenses involving 400 kilograms of cocaine, 24 kilograms of heroin, 150 grams of fentanyl, 10 kilograms of methamphetamine, and 9072 kilograms of marijuana. PSR ¶ 157.

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* The magistrate judge's report and recommendation is reproduced in a sealed appendix to the petition (Pet. App. 55a-134a). This brief cites the unsealed version of the same report, as filed in the district court.

As part of the investigation, an FBI special agent warrantlessly installed two video cameras on public utility poles near petitioner's house. Pet. App. 6a. Both cameras "could view only what was visible from the public street in front of the house and the public alley behind it." *Ibid.* The cameras collected soundless video from October 2018 to August 2019. *Ibid.* Although the cameras could tilt and zoom, "the quality of the footage degraded as the camera zoomed in." R&R 26.

In June 2019, a confidential informant wearing an audio device purchased heroin and fentanyl inside petitioner's home. Pet. App. 6a. The pole cameras recorded the informant's arrival at the home. *Ibid.* Afterward, agents obtained authorization to intercept communications from petitioner's cell phone. *Ibid.* In August 2019, officers arrested petitioner and seized two firearms, marijuana, and $13,968 in cash. *Ibid.*

Officers also executed a search warrant at petitioner's home and seized a pistol, ammunition, marijuana, methamphetamine, and drug paraphernalia. Pet. App. 6a. The search-warrant application relied in part on the pole-camera footage, along with the June 2019 controlled buy, intercepted phone calls, and abandoned trash revealing other drug transactions. *Id.* at 7a; see R&R 18-26 (documenting evidence supporting warrant).

Police later searched petitioner's separate apartment pursuant to a warrant and seized 5700 grams of marijuana, 135 grams of mixed fentanyl and heroin, four firearms, 1400 rounds of ammunition, $95,000 in cash, and $45,000 worth of jewelry. Pet. App. 7a. The warrant application for the apartment did not rely on the pole-camera footage. See *ibid.*

2. A grand jury in the Northern District of Alabama indicted petitioner on one count of engaging in a contin-

uing criminal enterprise, in violation of 21 U.S.C. 848(a)-(c); one count of conspiring to distribute heroin, cocaine, methamphetamine, fentanyl, and marijuana, in violation of 21 U.S.C. 841(a)(1), (b)(1)(A), (b)(1)(B), and 846; one count of possessing marijuana with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(D); two counts of possessing a firearm in relation to or furtherance of a drug-trafficking crime, in violation of 18 U.S.C. 924(c)(1)(A); two counts of possessing heroin, methamphetamine, fentanyl, and marijuana with intent to distribute, in violation of 21 U.S.C. 841(a)(1), (b)(1)(A), (B), and (D); one count of distributing heroin and fentanyl, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C); 17 counts of using a communication facility to commit a drug-trafficking crime, in violation of 21 U.S.C. 843(b); and one count of conspiring to conduct a financial transaction involving the proceeds of unlawful activity, in violation of 18 U.S.C. 1956(a)(1)(B)(i) and (h). Superseding Indictment 1-23.

Before trial, petitioner moved to suppress the evidence from the house on the theory that that the pole cameras violated his reasonable expectation of privacy and thus constituted a warrantless search in violation of the Fourth Amendment. R&R 32. The district court referred the motion to a magistrate judge. The magistrate judge held an evidentiary hearing at which he heard "length[y]" testimony "concerning the pole cameras" from an FBI special agent. R&R 26. The special agent explained that one camera faced the unfenced front of petitioner's house while the other overlooked petitioner's back yard. R&R 26-27.

Although the back yard was fenced on one side, an observer standing in the adjacent alley "could see into the * * * House's back yard, with her view obstructed

only by some overgrown vegetation." R&R 27. In particular, the house's garage and vehicles parked in the yard were "clearly visible through the overgrowth." *Ibid.*; see Pet. App. 54a (photo). The magistrate judge recognized that the pole camera viewing the back yard offered "a different view" than from the alley but credited the special agent's testimony that "he had personally reviewed each of the references to pole camera footage in the [warrant] affidavit and determined that what was observed could also have been seen by an officer stationed at a public vantage point." R&R 27.

The magistrate judge recommended that the motion to suppress be denied. R&R 31-50. The magistrate judge observed that "[l]ongstanding case law holds that 'the police may see what may be seen "from a public vantage point where they have a right to be."'" R&R 32 (quoting *Florida* v. *Riley*, 488 U.S. 445, 449 (1989) (plurality opinion)) (brackets omitted). Here, the magistrate judge noted that there was "no question" that the cameras were placed in locations where an officer could lawfully be. R&R 40. And the magistrate judge found that petitioner had "no objectively reasonable expectation of privacy" in the portions of his yards that were visible from the street and discussed in the warrant application. R&R 41.

While petitioner emphasized the length of the surveillance, the judge explained that a fixed pole camera observing the exterior of a residence is "qualitatively different" from certain tracking technologies that this Court has treated as Fourth Amendment searches. R&R 35. The magistrate judge also noted that his recommendation was in line with the decisions of the only federal courts of appeals to consider the question. R&R 35-36. And in the alternative, the magistrate judge rec-

ommended that the motion to suppress be denied because, even if the "the pole camera footage was unconstitutionally obtained," the agents relied in good faith on the warrant in searching petitioner's house. R&R 49.

The district court denied petitioner's motion to suppress and adopted the magistrate judge's report and recommendation. Pet. App. 49a-50a. Following a jury trial, petitioner and three co-conspirators were convicted on most counts. *Id.* at 12a-13a. The court sentenced petitioner to a term of life imprisonment. *Id.* at 13a.

3. The court of appeals affirmed except as to petitioner's conspiracy conviction, which the court vacated as a lesser included offense of his continuing-criminal-enterprise conviction. Pet. App. 1a-48a.

The court of appeals rejected petitioner's claim that the pole-camera footage used to support probable cause constituted a warrantless search that violated the Fourth Amendment. Pet. App. 15a-24a. The court read this Court's precedents to identify two ways for a defendant to establish a "search" within the meaning of a Fourth Amendment: a physical trespass on a constitutionally protected area and the violation of a reasonable expectation of privacy. *Id.* at 16a. Petitioner did "not contend that a trespass occurred" and claimed only "that the pole cameras invaded his reasonable expectation of privacy." *Ibid.*

The court of appeals then explained that petitioner lacked any reasonable expectation of privacy given that his front yard "was entirely visible to the public" and petitioner had not challenged the magistrate judge's "factual finding" that the relevant portions of the back yard were also visible from the street. Pet. App. 16a-17a. And "[b]ecause [petitioner's] backyard was open to public view from an observer standing on the street,"

the court did 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-18a.

The court of appeals rejected petitioner's argument that "the pole cameras' capacity to record non-stop" altered the Fourth Amendment analysis. Pet. App. 18a. The court explained that a fixed pole camera facing the exterior of a house "does not track movement" and is "very similar to security cameras" that the government has used to observe suspected illegal activity for decades. *Id.* at 19a-20a. The court accordingly observed that pole cameras are "meaningfully different" from the GPS tracking of a vehicle deemed a search in *United States* v. *Jones*, 565 U.S. 400 (2012), and the use of certain cell-site location data deemed a search in *Carpenter* v. *United States*, 585 U.S. 296 (2018). Pet. App. 19a-20a. The court noted that other federal courts of appeals to consider the issue have likewise held that long-term pole-camera surveillance of a publicly viewable area is not a search. *Id.* at 21a-23a (discussing *United States* v. *Houston*, 813 F.3d 282 (6th Cir.), cert. denied, 580 U.S. 1021 (2016), and *United States* v. *Tuggle*, 4 F.4th 505 (7th Cir. 2021), cert. denied, 141 S. Ct. 1107 (2022)). And the court rejected the contrary analysis of the South Dakota Supreme Court as "not persua[sive]" and lacking the benefit of later guidance from this Court's decision in *Carpenter*. *Id.* at 23a.

Judge Jordan concurred in the judgment in relevant part. Pet. App. 44a-48a. He would have affirmed the denial of the suppression motion on the alternative ground that the officers relied in good faith on the search warrant, given that the court of appeals had not itself previously addressed the constitutionality of pole

cameras and every federal court of appeals to address them had rejected similar Fourth Amendment challenges. *Id.* at 45a-46a.

ARGUMENT

Petitioner contends (Pet. 16-37) that FBI agents violated the Fourth Amendment by using cameras on public utility poles to video-record areas of his yard that were exposed to public view. The court of appeals correctly rejected that contention, and petitioner identifies no conflict with any decision of another court of appeals or a state court of last resort that would warrant this Court's review. In addition, this case would be an unsuitable vehicle to address the constitutionality of pole cameras since petitioner appears to dispute the magistrate judge's factual findings, and the agents' good-faith reliance on the warrant would require denial of the motion to suppress in any event. This Court has recently and repeatedly denied petitions for writs of certiorari in cases challenging the use of pole cameras on Fourth Amendment grounds. See, *e.g.*, *Hay* v. *United States*, 145 S. Ct. 591 (2024) (No. 24-72); *Dennis* v. *United States*, 143 S. Ct. 2616 (2023) (No. 22-6473); *Moore* v. *United States*, 143 S. Ct. 2494 (2023) (No. 22-481); *Tuggle* v. *United States*, 142 S. Ct. 1107 (2022) (No. 21-541); *May-Shaw* v. *United States*, 141 S. Ct. 2763 (2021) (No. 20-6905). It should follow the same course here.

1. Petitioner principally urges (Pet. 16-25) this Court to overrule its precedent under which the Court has long looked to reasonable expectations of privacy to inform the inquiry into whether a Fourth Amendment search occurred. See *Katz* v. *United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring); *Carpenter* v. *United States*, 585 U.S. 296, 304 (2018). Petitioner contends that the Court should discard that longstanding

approach and instead define (Pet. i, 17) a search as a "purposeful, investigative act directed toward an individual's home and curtilage." That contention does not warrant this Court's review.

a. As a threshold matter, the contention is forfeited. In district court, petitioner argued that the government violated his reasonable expectation of privacy in the exterior of his home. R&R 32; see D. Ct. Doc. 291, at 7 (Dec. 15, 2020). And as the court of appeals noted, petitioner did "not contend that a trespass occurred," but asserted only "that the pole cameras invaded his reasonable expectation of privacy." Pet. App. 16a; see, *e.g.*, Pet. C.A. Br. 21 ("The filming of the * * * house violated Mr. Williamson's reasonable expectations of privacy under the Fourth Amendment."). Having urged the lower courts to apply a reasonable-expectation-of-privacy standard and lost under that standard, petitioner cannot now be heard to complain that the framework he affirmatively embraced is fundamentally flawed.

Further review is unwarranted on that basis alone. See *Zobrest* v. *Catalina Foothills Sch. Dist.*, 509 U.S. 1, 8 (1993) ("Where issues are neither raised before nor considered by the Court of Appeals, this Court will not ordinarily consider them.") (citation omitted). While the court of appeals was of course bound by this Court's precedent, nothing stopped petitioner from making an alternative argument that the pole cameras constituted a search under what he styles "the Fourth Amendment's original meaning." Pet. 16. Criminal defendants can, and frequently do, preserve challenges to this Court's precedents notwithstanding that courts of appeals are bound by them. And had petitioner done so here, it might have given the court of appeals the opportunity to say something about other aspects of his

Fourth Amendment claim that would obviate any need for the further proceedings that he seeks, see Pet. 24-25.

b. In any event, petitioner's challenge to the reasonable-expectation-of-privacy test is unsound. On petitioner's own recounting, "[w]hether a 'search' occurred was historically 'tied to common-law trespass.'" Pet. 5 (quoting *United States* v. *Jones*, 565 U.S. 400, 405 (2012)). And all of his historical examples of searches involve trespasses to chattels or land. See Pet. 17-18. Eliminating the "reasonable-expectation-of-privacy test," which the Court "added to * * * the common-law trespassory test," would not help petitioner here. *United States* v. *Jones*, 565 U.S. at 409 (emphasis omitted). "[O]rdinary visual surveillance of a home" is "unquestionably" not a "common-law trespass," *Kyllo* v. *United States*, 533 U.S. 27, 31 (2001), and petitioner did not claim otherwise below, see Pet. App. 16a.

What petitioner therefore seeks is not to eliminate *Katz*, but to wholly redefine (Pet. 23) a "search" as "a purposeful, investigative act." Petitioner purports (*ibid.*) to derive that approach from the Fourth Amendment's "original meaning." But as just observed, he fails to identify any grounding for that approach in jurisprudence about searches at the time of the Founding. Unlawful rummaging through physical items and spaces like letters, cellars, and the like, see Pet. 17-18, does not provide any meaningful support for an approach that would encompass mere observation from a distance.

It is accordingly far from clear why the use of pole cameras to surveil the publicly visible exterior of petitioner's home would constitute a "search" even looking to the sources petitioner invokes. As petitioner observes, the dictionary definition of "search" at the Founding was "[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." Pet. 16-17 (quoting *Kyllo*, 533 U.S. at 32 n.1) (emphases altered; brackets in original). Simply watching the exterior of a home is not analogous to the physical examinations that petitioner's sources contemplate.

Moreover, petitioner does not explain how his test would interact with other features of the Fourth Amendment, urging this Court to leave the many questions his new approach would raise for remand given the lack of "academic consensus." Pet. 24. Particularly given the number of questions that his approach would raise—and the confusion it would sow in the hundreds of thousands of state and federal law-enforcement personnel who would no longer know whether even basic techniques are a search—the Court should not embrace petitioner's suggestion to revisit its well-entrenched jurisprudence on the definition of a search.

2. Petitioner also contends (Pet. 29-35) that the use of pole cameras violated a reasonable expectation of privacy in the publicly visible exterior of his home. The court of appeals correctly rejected that contention, Pet. App. 16a-24a, which likewise does not warrant this Court's review.

a. The court of appeals correctly recognized that the cameras here—which, the lower courts found, were only used to view areas exposed to public observation, Pet. App. 16a; R&R 27—did not intrude on any reasonable expectation of privacy. Pet. App. 11a-21a. This Court has repeatedly explained that activities that a person "knowingly exposes to the public" are "not a subject of Fourth Amendment protection." *Katz*, 389 U.S. at 351. The prohibition on unreasonable searches "has never been extended to require law enforcement officers to

shield their eyes when passing by a home on public thoroughfares." *California* v. *Ciraolo*, 476 U.S. 207, 213 (1986). Instead, surveillance of activities that are "clearly visible" "from a public vantage point" does not violate any expectation of privacy "that society is prepared to honor" as "reasonable." *Id.* at 213-214.

Even as this Court has held that other tools, such as thermal imaging, may constitute a search, the Court has reaffirmed "the lawfulness of warrantless visual surveillance of a home." *Kyllo*, 533 U.S. at 32; see *United States* v. *Jones*, 565 U.S. at 412 ("This Court has to date not deviated from the understanding that mere visual observation does not constitute a search."). In *California* v. *Ciraolo*, for example, the Court held that a flyover from 1000 feet to observe marijuana plants in a fenced back yard did not constitute a Fourth Amendment search because "[a]ny member of the public flying in this airspace who glanced down could have seen everything that these officers observed." 476 U.S. at 213-214. The Court later applied *Ciraolo* to uphold the warrantless use of a helicopter flying at 400 feet to observe a partially covered greenhouse in a back yard. *Florida* v. *Riley*, 488 U.S. 445, 448-450 (1989) (plurality opinion); see *id.* at 453-455 (O'Connor, J., concurring in the judgment). And the Court has upheld the warrantless aerial photography of a manufacturing complex, even where the technology provided "more detailed information than naked-eye views." *Dow Chem. Co.* v. *United States*, 476 U.S. 227, 238 (1986). The use of video cameras to record areas of petitioner's yard visible to the public likewise did not constitute a search implicating the Fourth Amendment.

b. Petitioner errs in contending (Pet. 29-35) that the court of appeals' decision is inconsistent with this Court's

decisions in *United States* v. *Jones* and *Carpenter* v. *United States*. Pole-camera observation of publicly visible areas is meaningfully different—and less intrusive—than the technological monitoring in those cases.

In *Jones*, this Court held "that the Government's installation of a GPS device on a target's vehicle, and its use of that device to monitor the vehicle's movements, constitutes a 'search,'" based on the government's "physical intrusion" into "private property for the purpose of obtaining information." 565 U.S. at 404 (footnote omitted). Four Justices would have deemed the use of a GPS tracking device a Fourth Amendment search under the reasonable-expectation-of-privacy test. See *id.* at 418-431 (Alito, J., concurring in the judgment). Justice Sotomayor, in turn, noted "unique attributes of GPS surveillance," including its ability to "generate[] a precise, comprehensive record of a person's public movements" that raised questions under a privacy-based approach, but ultimately joined the majority's property-based holding. *Id.* at 415 (Sotomayor, J., concurring); see *id.* at 418.

In *Carpenter*, the Court concluded that an individual has a "legitimate expectation of privacy in the record of his physical movements as captured through" cell-site location information, such that "accessing seven days of [such information] constitutes a Fourth Amendment search." 585 U.S. at 310 & n.3. In reaching that conclusion, the Court emphasized "the unique nature of cell phone location records" and the "increasingly vast amounts of increasingly precise" data collected by modern phones that can yield "a comprehensive chronicle of the user's past movements." *Id.* at 300-301, 309. At the same time, the Court expressly declined to "call into

question conventional surveillance techniques and tools, such as security cameras." *Id.* at 316.

The video cameras here are not analogous to the technologies this Court deemed to effectuate a search in *Jones* and *Carpenter*. Unlike GPS tracking or historical cell-site location information, a camera affixed to a stationary pole cannot track a person's location or capture a person's activities outside the camera's field of vision. Furthermore, the cameras were not—and could not have been—used to peer into the unexposed interior of petitioner's home or otherwise uncover intimate details of his private life. See Pet. App. 16a-17a. Far from "generat[ing] a precise, comprehensive record of a person's public movements that reflects a wealth of detail," *United States* v. *Jones*, 565 U.S. at 415 (Sotomayor, J., concurring), the cameras simply captured petitioner's movements at the front and the back of his residence, which were "both exposed to the public." Pet. App. 16a. As the court of appeals recognized, that "conventional surveillance technique" is indistinguishable from the security cameras that investigators have used for decades and that *Carpenter* expressly declined to disturb. *Id.* at 20a.

3. Petitioner identifies no conflict in the lower courts that would warrant this Court's review. As petitioner recognizes (Pet. 26), many federal courts of appeals have rejected Fourth Amendment challenges to the use of pole cameras. See, *e.g.*, *United States* v. *Green*, 149 F.4th 733, 749 (D.C. Cir. 2025); *United States* v. *Harry*, 130 F.4th 342, 348 (2d Cir. 2025); *United States* v. *Hay*, 95 F.4th 1304, 1314, 1316 (10th Cir.), cert. denied, 145 S. Ct. 591 (2024); *United States* v. *Tuggle*, 4 F.4th 505, 524 (7th Cir. 2021), cert. denied, 142 S. Ct. 1107 (2022); *United States* v. *May-Shaw*, 955 F.3d 563, 567 (6th Cir.

2020), cert. denied, 141 S. Ct. 2763 (2021); *United States* v. *Vankesteren*, 553 F.3d 286, 291 (4th Cir.), cert. denied, 556 U.S. 1269 (2009). Indeed, just in the short time since this Court last denied certiorari on this issue, three circuits (including the court below) have joined the consensus. See Pet. App. 16a; *Green*, 149 F.4th at 749; *Harry*, 130 F.4th at 348.

Petitioner asserts (Pet. 27) that the Fifth Circuit took a contrary view nearly 40 years ago in *United States* v. *Cuevas-Sanchez*, 821 F.2d 248 (1987). There, the Fifth Circuit rejected a Fourth Amendment challenge to the government's use of a pole camera, concluding that "the government followed the proper procedures in obtaining a court order for video surveillance." *Id.* at 252. And, although the court stated that the use of the camera qualified as a search, *id.* at 251, the defendant in *Cuevas-Sanchez* erected a ten-foot-high fence around his backyard, which "screen[ed] the activity within from views of casual observers." *Ibid.* But as the Fifth Circuit has since explained on plain-error review, *Cuevas-Sanchez* does not clearly apply to a pole camera that captures only "what was open to public view from the street." *United States* v. *Dennis*, 41 F.4th 732, 740 (2022), cert. denied, 143 S. Ct. 2616 (2023).

The Fifth Circuit's precedent is thus consistent with the decision below. And other courts rejecting Fourth Amendment challenges to pole cameras count the Fifth Circuit as part of the circuit consensus. *E.g.*, *Green*, 149 F.4th at 744 n.3; *Hay*, 95 F.4th at 1316. Petitioner does not identify any federal court of appeals to have held that pole-camera observation is a search when, as here, it views an area "open to public view from an observer standing on the street." Pet. App. 17a.

Nor is he correct in asserting (Pet. 28) that the Colorado Supreme Court did so in *People* v. *Tafoya*, 494 P.3d 613 (2021). The court there found a Fourth Amendment violation only on "specific facts" in which a pole camera overlooked a "six-foot-high privacy fence" that ensured that "a person standing on the street could not see into the backyard" and "any typical public exposure of the area would be fleeting." *Id.* at 622-623. The court distinguished "the facts in" a recent Seventh Circuit decision upholding the use of public cameras where, as here, the area was "plainly visible" to the public. *Id.* at 621 n.6.

Petitioner's reliance (Pet. 28-29) on *State* v. *Jones*, 903 N.W.2d 101 (S.D. 2017), cert. denied, 583 U.S. 1130 (2018), is likewise misplaced. There, a bare majority of the South Dakota Supreme Court took the view that the "amassed nature of [the] surveillance" violated the defendant's reasonable expectation of privacy, *id.* at 111, but nevertheless affirmed the denial of suppression under the good-faith exception to the exclusionary rule, *id.* at 115. To the extent that analysis was based on this Court's 2012 decision in *United States* v. *Jones*, see *State* v. *Jones*, 903 N.W.2d at 107, the court lacked the benefit of this Court's subsequent opinion in *Carpenter*, which makes clear that the Court was not "call[ing] into question conventional surveillance techniques and tools, such as security cameras," 585 U.S. at 316. At a minimum, any review by this Court would be premature in the absence of a more up-to-date decision that, unlike the one cited by petitioner, actually suppresses evidence.

Petitioner also points (Pet. 28, 36) to *Commonwealth* v. *Mora*, 150 N.E.3d 297 (Mass. 2020). That case likewise shows no conflict because, as petitioner acknowledges (Pet. 28), the court rested its decision on the state

constitution and did "not reach" the question whether a search occurred under the Fourth Amendment. *Mora*, 150 N.E.3d at 302.

4. In any event, this case would be an inappropriate vehicle to resolve the constitutionality of pole cameras for two reasons.

First, petitioner appears to resist the factual predicates of the decision below. Petitioner describes his back yard as "largely shielded from public view by an eight-foot privacy fence and overgrown vegetation." Pet. 1; see Pet. 37 (stating that petitioner's "backyard was partially obscured by a fence and shrubbery"). He asserts that the camera had "a view of [petitioner's] home and backyard that no passerby on the street or agent in a squad car could obtain." Pet. 1. He claims that an officer would have need to "peer through the bushes" to see into the yard. Pet. 2; accord Pet. 10; but see Pet. App. 54a (showing clear view of vehicles in the yard from the street). And he argues that he had no way to "escape the surveillance" "[s]hort of remaining inside his home indefinitely." Pet. 33.

But the court of appeals decided this case based on the magistrate judge's unchallenged finding that the relevant areas of petitioner's property were "exposed to the public" because his back yard was "not fully enclosed." Pet. App. 16a. The court thus reserved judgment on whether petitioner would have established a reasonable expectation of privacy by fencing the side of his yard to block a passerby's view. *Id.* at 17a-18a. To the extent petitioner now seeks to litigate this case as if his back yard *was* hidden from public view, that approach is unsound. This Court does not ordinarily disregard the factual findings of both courts below, *e.g.*,

Exxon Co., U.S.A. v. *Sofec, Inc.*, 517 U.S. 830, 841 (1996), and petitioner provides no reason to do so here.

Second, even if the use of the pole cameras here constituted a search, the denial of petitioner's motion to suppress would still properly be affirmed under the good-faith exception to the exclusionary rule. The exclusionary rule is a "'judicially created remedy'" that is "designed to deter police misconduct rather than to punish the errors of judges and magistrates." *United States* v. *Leon*, 468 U.S. 897, 906, 916 (1984) (citation omitted). To justify suppression, a case must involve police conduct that is "sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system" in suppressing evidence. *Herring* v. *United States*, 555 U.S. 135, 144 (2009). Suppression may be warranted "[w]hen the police exhibit 'deliberate,' 'reckless,' or 'grossly negligent' disregard for Fourth Amendment rights." *Davis* v. *United States*, 564 U.S. 229, 238 (2011) (citation omitted). "But when the police act with an objectively reasonable good-faith belief that their conduct is lawful, * * * the deterrence rationale loses much of its force, and exclusion cannot pay its way." *Ibid.* (citations and internal quotation marks omitted).

As the magistrate judge and the concurring judge in the court of appeals both explained, there is no basis for applying the exclusionary rule here. R&R 49-50; Pet. App. 45a-48a. When the warrant issued, the court of appeals had not yet weighed in on the constitutionality of pole cameras. But every other federal court of appeals to consider the question in analogous circumstances had affirmed their constitutionality. See pp. 14-15, *supra*. The FBI agents could therefore hold an "objectively 'reasonable good-faith belief' that their con-

duct [wa]s lawful," *Davis*, 564 U.S. at 238 (citation omitted), which should alone foreclose petitioner's request for suppression.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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FEBRUARY 2026