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

REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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INTRODUCTION

This case presents an ideal opportunity for the Court to restore the Fourth Amendment to its original meaning and to bring coherence to a doctrine that has drifted badly off course. Law enforcement officers deliberately trained cameras on Rolando Williamson's partially enclosed backyard, recorded months of footage of his private interactions, and reviewed that footage to develop evidence against him as part of a criminal investigation. Any layman would call that a search. But the Eleventh Circuit held it was not. This Court should grant certiorari to correct that view.

First, certiorari is warranted to overrule *Katz*, which is egregiously wrong and deeply unworkable. Even

the government concedes that *Katz* departed from original meaning. That is enough to warrant certiorari. The government's quibbles regarding what should replace *Katz* are better addressed at the merits stage.

Second, certiorari is independently warranted to clarify when pole-camera surveillance becomes a Fourth Amendment search. The government attempts to mask the conflict on this issue by omitting key facts from difficult cases. But the federal courts of appeals and state courts are openly divided—with some treating partial public exposure as dispositive, others focusing on the duration and continuity of surveillance, and still others signaling that prolonged monitoring may be unconstitutional without explaining where that line lies.

This case is an excellent vehicle for resolving the questions presented. The facts are settled. The Fourth Amendment issue was outcome-determinative. The panel did not rely on the good-faith exception. And the questions presented are in urgent need of resolution as advancing surveillance technology exposes the home to monitoring at a scale and duration the Fourth Amendment was meant to forbid.

Certiorari should be granted.

ARGUMENT

I. THIS COURT SHOULD GRANT CERTIORARI TO OVERRULE *KATZ*.

A. The Government Does Not Defend *Katz*.

1. The government does not dispute that *Katz* deviates from the Fourth Amendment's original meaning. The government does not suggest that "the miasma created by" *Katz* is somehow workable. *Case*

v. *Montana*, 146 S. Ct. 500, 513 (2026) (Gorsuch, J., concurring). Nor does the government contend that *stare decisis* otherwise warrants maintaining that amorphous and ill-founded test.

That is reason enough to grant the petition. "This Court has constantly reiterated that the language of the Constitution where clear and unambiguous must be given its plain evident meaning." *Solorio* v. *United States*, 483 U.S. 435, 454 n.3 (1987) (Marshall, J. dissenting) (citation omitted). *Katz*'s reasonable-expectation-of-privacy test, which is unmoored from the Fourth Amendment's text, violates that command. *See, e.g.*, *Minnesota* v. *Carter*, 525 U.S. 83, 97 (1998) (Scalia, J., concurring). The fact that each *stare decisis* factor also militates in favor of overruling *Katz* should be the nail in its coffin. *See* Pet. 20-23.

2. Instead of defending *Katz*, the government debates *Katz*'s replacement. The government contends (at 10-11) that the original meaning of "search" covers only "rummaging through physical items and spaces." That dispute can and should be resolved through a grant of certiorari and full briefing on the merits.

But even a cursory historical examination reveals the government is wrong. At the Founding, "search" meant to "look over or through for the purpose of finding something." *Kyllo* v. *United States*, 533 U.S. 27, 32 n.1 (2001) (citation omitted); Pet. 16-19. That remains true today. Pet. 17-18.

The government argues that because Founding-era searches usually involved a physical trespass, the original meaning of "search" must *require* as much. BIO 10-11. But as Judge Thapar has explained, although "[t]his property-based approach is closer to

the ordinary and original meaning than *Katz*," "it, too, imposes an artificial limit." *Morgan* v. *Fairfield County*, 903 F.3d 553, 571 (6th Cir. 2018) (Thapar, J., concurring in part and dissenting in part).

In other words, a physical trespass is sufficient, but not necessary. *Id.* "[R]ifling through a person's garbage" is a search under the ordinary meaning, whether or not the officer has "permission." *Id.* The same goes for "flying a helicopter four-hundred-feet over a person's greenhouse to look through an opening in its roof" or "traipsing through somebody's farm." *Id.* Each involves "a purposeful, investigative act" and would thus qualify as a search. *Id.* at 571-572; *see United States* v. *Fellmy*, 165 F.4th 501, 511 (6th Cir. 2026) (Thapar, J., concurring) (explaining this matches "the first part of the *Jones* test, which treats an official's act as a 'search' only if it was intended to discover information").

Here, officials installed a camera, pointed it at Williamson's enclosed backyard, and surveilled him for months to gather information about him. Pet. 11-12. That is a purposeful, investigative act—i.e., a "search." The Court need go no further to resolve the first question presented. *See* Pet. i, 24.

3. The government protests (at 11) that stopping at "search" would leave too many questions unanswered. Far from it; a "search" is "easier to identify when we are faithful to the ordinary and original meaning of the term." *Morgan*, 903 F.3d at 572 (Thapar, J., concurring in part and dissenting in part). As for the other steps, Williamson does not object to the Government's suggestion that the Court could reformulate the first question presented to encompass the entirety of the Fourth Amenmdent's text. If the

Court were inclined to address the remaining questions—(a) whether the search was of a constitutionally protected zone, and (b) whether it unreasonably violates the right to be secure—Williamson would prevail.

Williamson's home and curtilage are plainly a constitutionally protected zone. *See, e.g.*, *California* v. *Ciraolo*, 476 U.S. 207, 213 (1986) (curtilage is "intimately linked to the home, both physically and psychologically, where privacy expectations are most heightened").

As for the unreasonableness inquiry, Williamson could prevail under any of several potential applicable tests. *See* Pet. 24-25. To take one example, a member of this Court has suggested that "application of the Fourth Amendment ought to be informed by the common law's lessons." *Case*, 146 S. Ct. at 513 (Gorsuch, J. concurring). Evidence indicates the original meaning of "unreasonable" in the Fourth Amendment is "against the reason of the common law." Laura K. Donohue, *The Original Fourth Amendment*, 83 U. Chi. L. Rev. 1181, 1270 (2016). Williamson would have prevailed under that approach.

A centuries-old legal norm prohibits eavesdropping and peering around the outskirts of houses. "Eavesdroppers [who] stood outside other people's houses, * * * listening to their conversations or sometimes observing their private acts" could be indicted at common law. Marjorie Keniston McIntosh, *Controlling Misbehavior in England, 1370–1600*, at 65 (Cambridge Univ. Press 1998). As Blackstone explained, "the law of England has so particular and tender a regard to the immunity of a man's house, that

it stiles it his castle," hence "the animadversion of the law upon eaves-droppers." 4 Blackstone, *Commentaries* 223.

American courts carried that rule forward to hold individuals liable in tort for "eavesdropping" and "peering." William L. Prosser, *Privacy*, 48 Calif. L. Rev. 383, 390 (1960). As technology advanced, courts applied the same "ancient principles." *Carpenter* v. *United States*, 585 U.S. 296, 400 (2018) (Gorsuch, J., dissenting). Today, courts impose tort liability for prolonged video surveillance of another's enclosed (or partially enclosed) yard. *See* Cato Amicus Br. 10-12. The government's conduct thus violated a common law norm that has persisted "[f]rom before the founding through the present day." *Case*, 146 S. Ct. at 512 (Gorsuch, J., concurring). It was therefore unreasonable under the Fourth Amendment's original meaning.

B. This Case Is An Excellent Vehicle To Reconsider *Katz*.

The government contends that Williamson's challenge to *Katz* is forfeited. BIO 9-10. That is wrong; Williamson has preserved his challenge to the pole-camera surveillance at every stage of litigation.

"Once a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below." *Lebron* v. *National R.R. Passenger Corp.*, 513 U.S. 374, 379 (1995) (citation omitted). The petition in *Lebron*, for example, "consistent[ly]" argued the respondent had violated his First Amendment rights. *Id.* The Court held that he could make a "new argument" to support his First Amendment claim. So too here.

Reaching Williamson's challenge to *Katz* is especially appropriate because it is a recurring, substantial question. *See* Pet. 16-19. Further percolation would serve no purpose. Lower courts are unlikely to engage in any substantive way with an objection to *Katz* because, as the government itself explains (at 9), any challenge to *Katz* below is foreclosed. Though *Katz* is egregiously wrong, unworkable, and has been criticized by individual Justices for decades, lower courts remain bound. *See Rodriguez de Quijas* v. *Shearson/Am. Exp., Inc.*, 490 U.S. 477, 484 (1989). Only this Court can overrule its own erroneous precedent.

II. ALTERNATIVELY, THIS COURT SHOULD GRANT CERTIORARI TO CLARIFY WHEN POLE-CAMERA SURVEILLANCE IS A SEARCH.

A. Lower Courts Are Divided On This Recurring And Important Question.

1. Contrary to the government's contention (at 14-17), this issue is far from settled. Five federal courts of appeals, including the Eleventh Circuit below, hold that partial public exposure is dispositive. The Fifth Circuit disagrees. And the Seventh Circuit has expressed confusion on that score. Pet. 26-27. Several state courts, meanwhile, focus on the surveillance's duration, rather than exposure alone. Pet. 27-29.

Although courts regularly grapple with this question, none have wrestled it to the ground. Indeed, shortly after the petition was filed, the D.C. Circuit opined that pole-camera surveillance may raise "constitutional concerns" depending on the "duration" and overall intrusiveness. *United States* v. *Green*, 149 F.4th 733, 749 (D.C. Cir. 2025). The D.C. Circuit found

no search occurred in that case because the footage "captured just two fleeting moments" across two days, but the court suggested it would have reached a different conclusion if the surveillance offered "insight into [a defendant's] associations, routines or private conduct." *Id.*[1]

The government tries—and fails—to downplay this deep division by omitting key facts. *See* BIO 14-17. For example, the government protests (at 15) that the suspect's backyard in *United States* v. *Cuevas-Sanchez* was "screen[ed]" from public view. 821 F.2d 248, 251 (5th Cir. 1987). But there, as here, portions of the backyard were "visible from the street" over the privacy fence—yet the Fifth Circuit found the defendant nevertheless had a reasonable expectation of privacy. *Id.* at 250.

The government similarly trumpets (at 16) the defendant's "six-foot-high privacy fence" in *People* v. *Tafoya*, 494 P.3d 613 (Colo. 2021), but omits that "the area surveilled was visible through gaps in Tafoya's fence," *id.* at 622-623. The Colorado Supreme Court concluded that Tafoya nevertheless had a "reasonable expectation of privacy" because "any typical public exposure of the area would be fleeting," and three-month long surveillance " 'involved a degree of intrusion that a reasonable person would not have anticipated.' " *Id.* at 623 (quoting *United States* v. *Jones*, 565 U.S. 400, 420 (2012) (Alito, J., concurring in the judgment)).

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[1] *Compare, e.g.*, D. Ct. Dkt. 304-9 ¶¶ 15-16 (police acknowledging Williamson asked a guest to park in his backyard to protect their "privacy as the back yard is surrounded by a wooden privacy fence," and noting that police nevertheless observed the interaction through the pole camera).

The government discounts (at 16) *State* v. *Jones*, because the court ultimately applied the good-faith exception. 903 N.W.2d 101, 114-115 (S.D. 2017). But the court's constitutional holding was clear, *id.* at 113, and squarely placed South Dakota on the opposite side of the split from five federal circuits, as other courts have recognized, *see, e.g.*, *United States* v. *Tuggle*, 4 F.4th 505, 522-523 n.14 (7th Cir. 2021); *United States* v. *Salaman*, 742 F. Supp. 3d 221, 229 (D. Conn. 2024).

2. *Katz*'s application to pole-camera surveillance presents a recurring and important question. Lower courts have struggled with this for years, and the debate has only intensified as technology has advanced, allowing for "constant, covert surveillance" for weeks or months on end. *United States* v. *Vargas,* No. CR-13-6025, 2014 WL 12982411, at *6-8 (E.D. Wash. Dec. 15, 2014) ("Electronic surveillance by the government is increasing, and the need to balance this government tool with the Fourth Amendment is required.").

The government does not meaningfully contest these points. It instead notes that this Court has previously declined certiorari in other pole-camera cases. *See* BIO 8. But those petitions suffered from infirmities not present here: *Dennis* v. *United States* arose on plain-error review. 143 S. Ct. 2616 (2023). *Moore* v. *United States* was in an interlocutory posture. 143 S. Ct. 2494 (2023). *May-Shaw* v. *United States* involved pole-camera surveillance of a fully exposed space—a carport in an apartment complex—not a partially-obscured home. 141 S. Ct. 2763 (2021). And the petitioners in *Hay* v. *United States*, 145 S. Ct. 591 (2024), and *Tuggle* v. *United States*, 142 S. Ct.

1107 (2022), made no effort to shield their homes from public view.

B. This Case Is An Excellent Vehicle.

In contrast to prior petitions challenging pole-camera surveillance, the issue is preserved, the case is final, the cameras were trained on a person's home and curtilage, and overlooked an eight-foot privacy fence. Pet. 37. This is an excellent vehicle.

The government raises two other supposed hurdles, neither of which are a barrier to review.

First, Williamson is not "resist[ing]" any "factual predicates." BIO 17. The petition recounts undisputed facts: An eight-foot privacy fence fully obscures Williamson's backyard from public view on two sides, and shrubbery partially obscures the remaining side. Pet. App. 53a-54a, 90a-92a. Thus, a law enforcement officer standing on the shrubbery side could see portions—but not all—of the backyard through gaps in the shrubbery. Pet. 10-11. The pole camera had a better vantage point than someone hiding in the shrubbery; the camera was mounted on a utility pole overlooking the fence. Photos taken from the pole-cameras (reproduced at Pet. 11) confirm that superior view.

The government points to "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*.' " BIO 17 (emphasis added) (quoting Pet. App. 16a). But, of course, that finding means the backyard was *not fully exposed* either. *See, e.g.*, Pet. App. 109a (magistrate judge finding that Williamson's backyard was "*partially* shielded by his privacy fence") (emphasis added).

There is accordingly no need to "disregard" any "factual findings." BIO 17. Indeed, the fact that the public's view of Williamson's backyard was partially—but not fully—obscured is precisely what makes this an excellent vehicle, particularly as to the second question presented regarding whether even *partial* exposure is dispositive under *Katz*.

Second, whether the good-faith exception might apply on remand has no bearing on the questions presented. BIO 18. The Eleventh Circuit did not reach that issue below. *See* Pet. App. 44a (Jordan, J., concurring in part and concurring in the judgment). This Court's "usual practice" in that situation is to decide the question presented and reserve subsidiary issues "for resolution on remand." *Maslenjak* v. *United States*, 582 U.S. 335, 353 (2017). Indeed, the government unsuccessfully advanced the same objection to certiorari in *Carpenter* and *Chatrie*. *See* BIO 29-31, *Carpenter*, No. 16-402 (U.S. Jan. 27, 2017); BIO 9, 13-15, *Chatrie* v. *United States*, No. 25-112 (U.S. Nov. 24, 2025). There is no reason for a different result here.

C. The Government Is Wrong On The Merits.

The government's retreat to this Court's "fly-over" cases, and its attempts to distinguish *Jones* and *Carpenter* both miss the mark.

The government maintains (at 11-12) that the surveillance of Williamson's home for over 438,000 minutes is no different than the fly-overs cases. Those cases involved isolated, technologically unsophisticated observations: *Ciraolo* involved a single fly-over at 1,000 feet. 476 U.S. 207. In *Florida* v. *Riley*, an officer circled twice at 400 feet. 488 U.S. 445, 448 (1989) (plurality op.). And *Dow Chemical Co.*

v. *United States* rested on the Court's conclusion that the industrial plant being surveilled from 1,200 to 12,000 feet was "more comparable to an open field" than a home's curtilage. 476 U.S. 227, 229, 239 (1986).

The intrusion on Williamson's privacy was meaningfully different. The detailed and sensitive data collected over ten-plus months differs fundamentally from the fleeting glimpses in the fly-over cases. Unlike *Dow*, the surveillance here was "deeply revealing" because it focused on Williamson's home and curtilage. *Carpenter*, 585 U.S. at 320. And the cameras—which could pan, tilt, and zoom, and whose footage officers could access at any time for months on end—are a far cry from the "brief, naked-eye inspections" in *Ciraolo* and *Riley*, and the grainy still frames in *Dow*. Cato Amicus Br. 6-7; *see* Pet. 32-34. Plus, a person would inevitably notice a plane hovering above their home for months on end—just like they would inevitably notice an officer continuously clinging to a utility pole. Pole cameras are altogether different because they are small, cheap, discreet, and "always-on." Scholars Amicus Br. 15-17.

For this reason, GPS trackers and cell-site records are the better analogues. Particularly when trained on a person's home, pole cameras capture a "digital videologue" revealing "an 'intimate window' " into an individual's life. *United States* v. *Moore-Bush*, 36 F.4th 320, 346 (1st Cir. 2022) (en banc) (Barron, C.J., concurring) (quoting *Carpenter*, 585 U.S. at 311); *see* Pet. 32-33. The cameras see everything someone does in their yard, their coming and going, and all their visitors, Scholars Amicus Br. 17-19, revealing far more than the mere "dot on a map" captured by GPS

or cell-site data, *Moore-Bush*, 36 F.4th at 346 (Barron, C.J., concurring).

Nor did *Carpenter* settle this question. The government repeatedly invokes (at 7, 14, 16) the Court's statement that it did not "call into question conventional surveillance techniques and tools, such as security cameras." 585 U.S. at 316. Understandably, as *Carpenter* involved cell-site records. But the fact remains that *Carpenter*'s approach to these issues can—and should—provide a useful guide in cases that *do* involve pole cameras. *See* Cato Amicus Br. 8; Pet. 29-32. Certiorari is warranted to clarify how that test applies in this context.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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