No. _____

IN THE

Supreme Court of the United States

DEMETRIUS GREEN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the D.C. Circuit

PETITION FOR A WRIT OF CERTIORARI

JON M. SANDS
Federal Public Defender
District of Arizona

* MOLLY E. RUNKLE
Assistant Federal Public Defender
250 North 7th Avenue, Suite 600
Phoenix, Arizona 85007
molly_runkle@fd.org
(602) 382-2700
* *Counsel of Record*

QUESTION PRESENTED

Whether a Fourth Amendment search occurs when law enforcement reviews footage captured by a pole camera that continuously surveilled the backdoor and backyard of a residence for approximately two days.

RELATED PROCEEDINGS

United States District Court (D.D.C.):

United States v. Green, No. 20-cr-222 (Sept. 7, 2022) (denying motion to suppress pole camera footage); (June 26, 2023) (judgment)

United States Court of Appeals (D.C. Cir.):

United States v. Green, No. 23-3100 (Aug. 12, 2025) (affirming convictions on direct appeal); (Oct. 6, 2025) (denying petition for rehearing en banc)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases:

Statutes and Constitution:

Other:

In the Supreme Court of the United States

No.

DEMETRIUS GREEN, PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the D.C. Circuit

PETITION FOR A WRIT OF CERTIORARI

Demetrius Green respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the D.C. Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the D.C. Circuit (App. A) is reported at 149 F.4th 733. The order of the United States District Court for the District of Columbia denying the motion to suppress (App. B) was delivered orally and is therefore unreported.

JURISDICTION

The court of appeals issued its opinion on August 12, 2025, and denied petitioner's petition for rehearing en banc on October 6, 2025. Apps. A; C. This Court extended the time to file this petition to March 5, 2025. *See* Application

(25A686). This petition is timely. *See* S. Ct. R. 13.5. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the U.S. Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

INTRODUCTION

This case concerns whether the federal government can mount a continuously-recording pole camera capturing the backdoor and backyard of a home and then access that video surveillance at any time without a warrant.

As this Court's decisions in *United States v. Jones*, 565 U.S. 400 (2012), and *Carpenter v. United States*, 585 U.S. 296 (2018), make clear, individuals have a reasonable expectation of privacy in the aggregate of their public movements. Like the GPS tracker and cell-site location information at issue in those cases, continuous pole-camera surveillance of a residence has the potential to reveal vast amounts of intimate information about how occupants live their lives. Indeed, such surveillance is even more intrusive than GPS or cell-site location data, as it documents individuals' movements and activities around the most protected space in Fourth Amendment jurisprudence: the home.

The federal courts of appeals and state supreme courts have divided over whether and how to apply *Carpenter*'s reasoning to pole-camera surveillance. And while the federal courts of appeals that have ruled on this issue generally have

concluded that the use of pole cameras is not a search, a growing number of federal judges—including half of the en banc First Circuit—have written separately disagreeing. *See, e.g.*, *United States v. Moore-Bush*, 36 F.4th 320, 320–73 (1st Cir. 2022) (en banc) (Barron, C.J., Thompson and Kayatta, JJ., concurring).

This Court's intervention is badly needed. The proliferation of hidden cameras monitoring our homes destroys the right "to dwell in reasonable security and freedom from surveillance." *Chapman v. United States*, 365 U.S. 610, 615 (1961) (quoting *Johnson v. United States*, 333 U.S. 10, 14 (1948)). And these concerns will only grow as tools like facial recognition and artificial intelligence improve. Given the federal courts of appeals' hesitation to apply *Carpenter* to pole-camera surveillance, it falls to this Court to protect the privacy interests such surveillance threatens. The Court should grant this petition to continue its recent project of adapting Fourth Amendment jurisprudence to modern advances in surveillance technology.

STATEMENT OF THE CASE

A. Legal Background

1. The Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]" U.S. Const. amend. IV. Historically, the question of whether a Fourth Amendment "search" occurred was tied to whether "[t]he Government physically occupied private property for the purpose of obtaining information"—in other words, whether there was a "common-law trespass." *Jones*, 565 U.S. at 404–05.

But in *Katz v. United States*, 389 U.S. 347, 351 (1967), this Court recognized that "the Fourth Amendment protects people, not places." Thus, it "expanded [its] conception of the Amendment to protect certain expectations of privacy as well." *Carpenter*, 585 U.S. at 304. In so-called "reasonable expectation of privacy" cases, courts ask whether the individual sought "'to preserve something as private,'" and then whether "his expectation of privacy is 'one that society is prepared to recognize as reasonable[.]'" *Id.* (quoting *Smith v. Maryland*, 442 U.S. 735, 740 (1979)). If so, "official intrusion into that private sphere generally qualifies as a search and requires a warrant supported by probable cause." *Id.*

2. Until somewhat recently, this Court had maintained 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*, 389 U.S. at 351. For example, the Court in *California v. Ciraolo*, 476 U.S. 207, 209 (1986), held that the Fourth Amendment is not "violated by aerial observation without a warrant from an altitude of 1,000 feet of a fenced-in backyard within the curtilage of the home." *See also id.* at 215. Because "[a]ny member of the public flying in th[at] airspace who glanced down could have seen everything that the[] officers observed[,]" the Court "conclude[d] that [the defendant's] expectation that his garden was protected from such observation [wa]s unreasonable and [wa]s not an expectation that society [wa]s prepared to honor." *Id.* at 213–14; *see also Florida v. Riley*, 488 U.S. 445 (1989) (applying *Ciraolo* to hold that observing the home's curtilage from a helicopter flying at 400 feet above the ground was not a search).

3. But as modern technologies allowed law enforcement to more efficiently monitor public activities, this Court began adapting its caselaw to address the unique privacy concerns such technologies raise. For example, in *Kyllo v. United States*, 533 U.S. 27, 29 (2001), the Court considered "whether the use of a thermal-imaging device aimed at a private home from a public street to detect relative amounts of heat within the home constitutes a 'search' within the meaning of the Fourth Amendment." It was not persuaded by the government's argument that the device was permissible because it captured only the heat radiating off the house, "reject[ing] such a mechanical interpretation of the Fourth Amendment[.]" *Id.* at 35. Instead, it held that when "the Government uses a device that is not in general public use, to explore details of the home that would previously have been unknowable without physical intrusion, the surveillance is a 'search' and is presumptively unreasonable without a warrant." *Id.* at 40.

Eventually, the Court began exploring whether aggregated recordings of an individual's public movements can implicate the Fourth Amendment. First, in *United States v. Jones*, it 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.'" 565 U.S. at 404. While the Court based its opinion on the government's trespass of the car when it attached the device, "five Justices agreed that related privacy concerns would be raised by, for example, 'surreptitiously activating a stolen vehicle detection system' in Jones's car to track Jones himself, or conducting GPS tracking of his cell phone." *Carpenter*, 585 U.S. at 307 ((quoting

Jones, 565 U.S. at 426, 428) (Alito, J., concurring in the judgment) and *id.* at 415 (Sotomayor, J., concurring)). In her concurrence, Justice Sotomayor explained that "GPS monitoring generates a precise, comprehensive record of a person's public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual associations." *Jones*, 565 U.S. at 415 (Sotomayor, J., concurring).

Then, in *Carpenter v. United States*, the Court addressed head-on whether aggregated recordings of an individual's public movements implicate Fourth Amendment concerns, even where there was no trespass. It held that when the government "accesses historical cell phone records that provide a comprehensive chronicle of the user's past movements," it has conducted a search. *Carpenter*, 585 U.S. at 300; *id.* at 309–10 ("Whether the Government employs its own surveillance technology as in *Jones* or leverages the technology of a wireless carrier, we hold that an individual maintains a legitimate expectation of privacy in the record of his physical movements as captured through [cell-site location information]."). In reaching that conclusion, the Court emphasized that "[a] person does not surrender all Fourth Amendment protection by venturing into the public sphere." *Id.* at 310. It reaffirmed "'society's expectation . . . that law enforcement agents and others would not—and, indeed, in the main, simply could not—secretly monitor and catalogue every single movement of an individual's car for a very long period.'" *Id.* (quoting *Jones*, 565 U.S. at 430 (Alito, J., concurring)). It then concluded that

"[a]llowing government access to cell-site records contravenes that expectation." *Id.* at 311.

4. While this Court's caselaw has evolved, one thing has remained constant: the essential nature of the home as the quintessential Fourth Amendment space. "'At the very core' of the Fourth Amendment 'stands the right of a man to retreat into his own home and there be free from unreasonable government intrusion.'" *Kyllo*, 533 U.S. at 31 (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961)). And "the area 'immediately surrounding and associated with the home'—what [Supreme Court] cases call the curtilage—" is "as 'part of the home itself for Fourth Amendment purposes.'" *Florida v. Jardines*, 569 U.S. 1, 6 (2013) (quoting *Oliver v. United States*, 466 U.S. 170, 180 (1984)). "This area around the home is 'intimately linked to the home, both physically and psychologically,' and is where 'privacy expectations are most heightened.'" *Id.* at 7 (quoting *Ciraolo*, 476 U.S. at 213).

B. Factual Background

1. Early in the morning of January 20, 2020, Metropolitan Police Department officers responded to a gunshot alert near 917 Wahler Place in Southeast Washington, D.C., a rowhouse in a public-housing complex. Appendix ("App.") at 3. Officers recovered spent shell casings near the back step of the residence, but they did not arrest any suspects at that time. *Id.*

Approximately two days earlier, however, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) had installed a pole camera in the area. *Id.* An ATF agent testified that the agency intended to film the courtyard behind the

rowhouses as part of a separate investigation. *Id.* The camera continuously recorded the backdoor and backyard area of 917 Wahler.

On the morning of January 20, the ATF agent received the same gunshot alert, and, knowing ATF had a camera in the area, reviewed the footage on her cellphone. The camera captured an individual walking out the backdoor of 917 Wahler at approximately 4:45 a.m. that day and discharging a firearm into the air before returning inside. The camera also recorded an individual standing inside the home (visible through a window) at 10:43 a.m. that same morning, and an individual (whom the ATF agent identified at trial as petitioner Demetrius Green) stepping out the backdoor at 12:25 p.m. The footage was reviewed without a warrant.

Police obtained a search warrant for 917 Wahler by relying, in significant part, on the pole-camera footage. *See* App. at 3–4. During the search, police recovered contraband, including oxycodone and hydromorphone pills, crack cocaine, and a firearm. *Id.* Police arrested Mr. Green, who was present in the home when the search was conducted. *Id.*

2. Mr. Green was charged in a six-count indictment with unlawful possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1); unlawful possession of a machinegun, in violation of 18 U.S.C. § 922(o); unlawful possession with intent to distribute cocaine base, oxycodone, and hydromorphone, in violation of 21 U.S.C. §§ 841(a)(1) & (b)(1)(C); and possessing a machinegun in furtherance of a drug trafficking offense, in violation of 18 U.S.C. § 924(c)(1)(B)(ii).

App. at 5. (The district court later dismissed the § 922(o) count on the government's motion. *Id.*)

Mr. Green moved to suppress the pole camera footage, arguing that accessing the footage constituted a warrantless search in violation of his Fourth Amendment rights. *Id.* The district court denied the motion, concluding that Mr. Green did not "have an expectation of privacy in the particular exposed, undifferentiated space captured on film in this case, particularly given the limited period of time of the surveillance and the manner in which the surveillance was being conducted." *Id.* at 92.

A jury convicted Mr. Green on four counts and hung on the § 924(c) count. *Id.* at 6. The district court sentenced Mr. Green to 84 months' imprisonment and 36 months of supervised release. *Id.* at 6–7.

3. On appeal, a panel of the D.C. Circuit affirmed. *Id.* at 2.[1] In considering whether the government's use of the pole camera constituted a Fourth Amendment "search," the court reviewed two different strands of Fourth Amendment law: the public-view doctrine, and the mosaic theory. *Id.* at 9.

The court described the public-view doctrine as the notion that "individuals have no reasonable expectation of privacy in areas exposed to the public." *Id.* The court then analyzed whether Mr. Green had a reasonable expectation of privacy in

[1] The court of appeals also rejected Mr. Green's arguments that the evidence was insufficient to show constructive possession of the drugs and that two of the government's exhibits were improperly admitted. *See* App. at 2. Mr. Green is not petitioning this Court on either of those issues.

the rear of 917 Wahler under the test established in *Katz v. United States*. As to the first prong of the *Katz* test—whether Mr. Green exhibited a subjective expectation of privacy in the rear of the home—the court held that he did not, as there was no fencing or hedges separating the back of 917 Wahler from its neighboring townhouses. *Id.* at 11–12. And as to the second *Katz* prong—whether the "expectation is one society is prepared to recognize as objectively reasonable[,]" *id.* at 9—the court held the camera recorded only what a passerby could have seen, and so any expectation of privacy in the rear of the home would be unreasonable. *Id.* 12–13.

But the court acknowledged that "[t]he crux of Green's challenge—indeed all of the of the recent challenges to the use of pole cameras—is that the aggregation of surveillance over time violates a reasonable expectation of privacy, even if any brief or isolated observation would not." *Id.* at 13. The court associated this argument with "the so-called 'mosaic theory,' which suggests that the government's collection of numerous discrete data points over time can create an impermissibly invasive picture of an individual's private life, even if any individual data point, standing alone, would not constitute a search." *Id.* at 13–14. It noted that this Court "has signaled a continuing willingness to consider the aggregation of data as distinctively problematic" since its decision in *United States v. Jones*. *Id.* at 15. And it explained that this Court, in *Carpenter v. United States*, held that "'individuals have a reasonable expectation of privacy in the whole of their physical movements,' even if exposed to public view, and that accessing the [cell-site location

information] data contravened that expectation." *Id.* (quoting *Carpenter*, 585 U.S. at 310–11).

The court then discussed how "[p]ole cameras pose a special challenge to the mosaic theory." *Id.* at 16. "In one sense," the court noted, "they are among the most common forms of surveillance. They rely on a public, unobstructed vantage point and off-the-shelf technology, not unlike an agent with binoculars perched atop a telephone pole." *Id.* "But unlike that unfortunate agent—who will get bored, blink or need to stretch—a pole camera never looks away. It records everything, 24/7, for weeks or months, even years, preserving everything it sees." *Id.* And "[b]y aggregating that data, critics worry, the government can reconstruct not only what happens at a location, but also the patterns and relationships of the individuals who pass through it." *Id.* But the court also considered differences between pole cameras and the type of data at issue in *Jones* and *Carpenter*—for example, that a pole camera records one fixed location, whereas GPS and cell-site location information monitor an individual when he is traveling. *See id.* at 17–18.

Ultimately, the court determined that the mosaic theory did not apply to the pole-camera footage here. It noted that the surveillance "spanned only two days—far shorter than the weeks or months involved in other cases where courts have had reservations about cumulative observation." *Id.* at 18. So, "[g]iven that brief duration, the government had no opportunity to compile a retrospective record of Green's movements or reconstruct his patterns of life." *Id.* It further reasoned that "the footage itself [did not] reveal much—the camera captured just two fleeting

moments in which Green stepped outside, offering no insight into his associations, routines or private conduct in the manner condemned in *Carpenter*." *Id.* The court "left for another day" the question of whether longer-term or more sophisticated pole-camera surveillance potentially could raise Fourth Amendment concerns. *Id.* at 18–19.[2]

4. Mr. Green petitioned for en banc review, which the court of appeals denied on October 6, 2025. *Id.* at 113. On December 12, 2025, this Court extended the time to file the instant petition to March 5, 2026. *See* Application (25A686).

REASONS FOR GRANTING THE PETITION

I. COURTS ARE DIVIDED OVER WHETHER POLE-CAMERA SURVEILLANCE OF THE HOME IS A FOURTH AMENDMENT SEARCH.

There is an entrenched split in authority on the question presented among federal courts of appeals and state high courts. *See, e.g.*, *United States v. Tuggle*, 4 F.4th 505, 510–11 (7th Cir. 2021) ("The answer [to the question of warrantless pole camera surveillance]—and even how to reach it—is the subject of disagreement among our sister circuits and counterparts in state courts.").[3] And within those

[2] The panel declined to consider the government's additional arguments that Mr. Green lacked Fourth Amendment standing, and that the good-faith exception to the exclusionary rule would apply if a Fourth Amendment search occurred. App. at 19 n.10.

[3] In addition to the cases about cameras surveilling the home described herein, in *United States v. Vankesteren*, 553 F.3d 286, 287 (4th Cir. 2009), the Fourth Circuit permitted warrantless pole-camera surveillance of open fields. And in *United States v. Harry*, 130 F.4th 342, 345 (2d Cir. 2025), the Second Circuit held that warrantless use of a pole camera outside of a business did not constitute a search.

federal circuits that have held that the use of a pole camera to surveil a home is not a search, a growing number of judges have written separately to express their misgivings.

A. Numerous federal courts of appeals have held that law enforcement's use of a pole camera to surveil a home is not a Fourth Amendment search.

1. In *United States v. Bucci*, 582 F.3d 108, 116–17 (1st Cir. 2009), the First Circuit concluded that the use of a pole camera that recorded the front of the defendant's home for eight months was not a Fourth Amendment search, because the front of the home was open to public view.

Bucci predated this Court's decisions in *Jones* and *Carpenter*. The en banc First Circuit therefore attempted to revisit the issue post-*Carpenter* in *United States v. Moore-Bush*, where it considered

> whether the Fourth Amendment places any limits on the use by law enforcement of the kind of surveillance – unimagined in 1789 – that it engaged in here: the continuous and surreptitious recording, day and night for eight months, of all the activities in the front curtilage of a private residence visible to a remotely-controlled digital video camera affixed to a utility pole across the street from that residence.

36 F.4th at 321 (Barron, C.J., and Thompson and Kayatta, JJ., concurring). On that question, the en banc Court divided evenly.[4] The two battling opinions that

[4] Ultimately, Chief Judge Barron and Judges Thompson and Kayatta concluded that the good-faith exception applied to the search, and on that ground agreed with the court's reversal of the district court's granting of the motion to suppress. *See United States v. Moore-Bush*, 36 F.4th 320, 321 (1st Cir. 2022) (en banc) (Barron, C.J., and Thompson and Kayatta, JJ., concurring); *see id.* at 320 (per curiam).

resulted well illustrate the competing approaches that judges have taken to the question presented in this petition.

In a lengthy concurring opinion, Chief Judge Barron and Judges Thompson and Kayatta concluded that the pole-camera surveillance was a search, "notwithstanding the government's contention that the record itself is merely a compendium of images of what had been exposed to public view." *Id.* (Barron, C.J., and Thompson and Kayatta, JJ., concurring). These judges interpreted *Carpenter* to mean that "one reasonably leaves one's home without expecting a perfect form of surveillance to be conducted over a long period of time[.]" *Id.* at 334. Although they acknowledged that a physical stakeout might have observed the same area before the digital age, they described how much more difficult it would have been to "conduct a stakeout that could effectively and perfectly capture *all* that visibly occurs in front of a person's home over the course of months – and in a manner that makes all of the information collected readily retrievable at a moment's notice[.]" *Id.*

These judges also stressed that the camera captured the home's curtilage, which "is often the center of our lives: it is where we always return to, where our friends, family, and associates visit, where we receive packages and mail, and where we spend a good deal of time." *Id.* at 346. "Observing the movements in front of a home for months, therefore, can reveal quite a lot about a person – at the very least 'familial, political, professional, religious, and sexual associations[.]'" *Id.* (quoting *Carpenter*, 585 U.S. at 311). These judges therefore concluded that

accessing the government's pole-camera footage constituted a "search" within the meaning of the Fourth Amendment. *Id.* at 355.

Judges Lynch, Howard, and Gelpí disagreed in a separate concurring opinion. *Id.* at 361 (Lynch, Howard, & Gelpí, JJ., concurring). Their concurrence asserted that "*Carpenter* did not upend the longstanding fundamental proposition of Fourth Amendment law, 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.'" *Id.* at 363 (quoting *Katz*, 389 U.S. at 351). They interpreted *Carpenter* narrowly, concluding that "[i]t left undisturbed the case law concerning use of pole cameras to capture what is in public view." *Id.* And they maintained that the type of data at issue in *Carpenter* was fundamentally different from pole-camera footage. *Id.* at 366–67.

Because the en banc court split evenly, *Bucci* remains good law in the First Circuit.

2. The Sixth Circuit agrees that the use of a pole camera to surveil a home is not a Fourth Amendment search. In *United States v. Houston*, 813 F.3d 282, 285 (6th Cir. 2016), a camera installed on a utility pole recorded the defendant possessing firearms at his farm over a ten-week period. The Sixth Circuit concluded that there was no Fourth Amendment violation, because the recorded area was exposed to public view. *Id.* at 287–88. One judge disagreed, explaining that long-term video surveillance of a home raises serious privacy concerns. *Id.* at 296 (Rose, J., concurring on harmless error grounds). In subsequent cases, the Sixth Circuit likewise has rejected arguments that pole-camera surveillance

implicates the Fourth Amendment. *See, e.g.*, *United States v. May-Shaw*, 955 F.3d 563, 567–69 (6th Cir. 2020).

3. In *United States v. Tuggle*, the Seventh Circuit also agreed. *Tuggle* involved almost eighteen months of continuous video surveillance by three pole cameras aimed at the defendant's home. 4 F.4th at 511. While the court expressed "unease about the implications" of such surveillance, *id.* at 526, it found that "the stationary cameras placed around Tuggle's house captured an important sliver of Tuggle's life, but they did not paint the type of exhaustive picture of his every movement that the Supreme Court has frowned upon[,]" *id.* at 524.

While the Seventh Circuit has reaffirmed *Tuggle*, Judge Rovner recently called for its overruling, agreeing with the three concurring judges in *Moore-Bush*. *See United States v. House*, 120 F.4th 1313, 1314 (7th Cir. 2024), *cert. denied*, 145 S. Ct. 2762 (2025); *id.* at 1323 (Rovner, J., concurring). "Whatever the Supreme Court and this court have said about a reasonable person's expectation of privacy in the situation where officers watch one discrete activity viewed at one particular time," Judge Rovner wrote, "the analysis is unquestionably different when the police observe every movement, activity, and association over the course of one month at one of the more intimate and protected of locations—the curtilage of one's home." *Id.*

4. In *United States v. Hay*, 95 F.4th 1304, 1313–18 (10th Cir. 2024), *cert. denied*, 145 S. Ct. 591 (2024), the Tenth Circuit followed suit. There, law enforcement installed a pole camera on a school rooftop across the street from the

defendant's home. *Id.* at 1309. "All told, the camera captured 15 hours of footage per day for 68 days." *Id.* The court held that it was bound by its precedent to hold that the surveillance was not a search. *Id.* at 1316 (citing *United States v. Jackson*, 213 F.3d 1269, 1280 (10th Cir. 2000)). It rejected the argument that *Carpenter* required a different result, reasoning that pole-camera surveillance does not track the whole of an individual's public movements. *Id.* at 1316–17. The court found that "[a]s video cameras proliferate throughout society, regrettably, the reasonable expectation of privacy from filming is diminished." *Id.* at 1317.

5. The Eleventh Circuit agreed in *United States v. Gregory*, 128 F.4th 1228 (11th Cir. 2025), *petition for cert. filed* (U.S. Oct. 6, 2025) (No. 25-412). There, the government mounted pole cameras capturing the front and back of the defendant's home continuously for about ten months. *Id.* at 1236. The court held that the cameras did not invade the defendant's reasonable expectation of privacy because both areas were exposed to the public. *Id.* at 1241. It concluded that "[n]othing in the Constitution forbids the government from using technology to conduct lawful investigations more efficiently[,]" and that this Court's opinions in *Jones* and *Carpenter* did not change that principle. *Id.*

Judge Jordan wrote separately, "urg[ing] 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." *Id.* at 1254 (Jordan, J., concurring on good-faith exception grounds). He continued: "We simply do not know, and cannot accurately predict, how the Supreme Court will

deal with the use of long-term pole cameras (or other similar means of video surveillance) and their impact on privacy, particularly in light of the current debate about the so-called 'mosaic' theory of the Fourth Amendment." *Id.*

6. The Fifth Circuit has issued opinions cutting both ways. In *United States v. Dennis*, 41 F.4th 732, 738 (5th Cir. 2022), the Fifth Circuit considered pole cameras directed at the front and back of the defendant's properties for about two months. The court, in a one-paragraph analysis, held that "[s]urveillance of areas open to view of the public without any invasion of the property itself is not alone a violation[,]" and "[a]ll that was surveilled . . . was from the view from the street, continuously visible to individuals." *Id.* at 741. *Dennis*, however, was decided on plain-error review, and so the defendant had to show that any error was clear or obvious. *Id.* at 740.

The court distinguished another pole-camera case, *United States v. Cuevas-Sanchez*, 821 F.2d 248 (5th Cir. 1987). In *Cuevas-Sanchez*, the Fifth Circuit held that approximately two months of pole-camera surveillance of a defendant's fenced-in backyard was a search. *Id.* at 250–51. The court explained that "a camera monitoring all of a person's backyard activities" is the "type of surveillance [that] provokes an immediate negative visceral reaction: indiscriminate video surveillance raises the spectre of the Orwellian state." *Id.* at 251. Thus, the defendant's "expectation to be free from this type of video surveillance in his backyard is one that society is willing to recognize as reasonable." *Id.* But in *Dennis* (again, on plain error review), the court distinguished *Cuevas-Sanchez* on the basis that "one

can see through [Dennis's] fence and that the cameras captured what was open to public review from the street[.]" 41 F.4th at 740.

7. Finally, the D.C. Circuit here held that the pole-camera surveillance did not constitute a search. App. at 19. It relied primarily on the period of time that the camera operated. *Id.* at 18. But the court stressed "the limits of [its] holding[,]" explaining that it did "not suggest that pole-camera surveillance could never amount to a Fourth Amendment search." *Id.* The court continued: "In another case, the technology might be used over longer periods, with more cameras, or in combination with other tools—such as facial recognition, automated tracking or artificial intelligence—to build a far more comprehensive portrait of an individual's life." *Id.* at 18–19. The court "left for another day" whether such a case would raise Fourth Amendment concerns. *Id.*

B. The high courts of Colorado and South Dakota have held that law enforcement's use of pole cameras can qualify as a search.

1. The Colorado Supreme Court held that three months of warrantless pole camera surveillance of a defendant's fenced-in curtilage violated the Fourth Amendment. *People v. Tafoya*, 494 P.3d 613, 615 (Colo. 2021) (en banc). It concluded that, "[t]ogether, *Jones* and *Carpenter* suggest that when government conduct involves continuous, long-term surveillance, it implicates a reasonable expectation of privacy." *Id.* at 620. And it read *Carpenter* to mean that "public exposure is not dispositive[.]" *Id.* at 619.

The court explained that pole-camera surveillance of the home "would show [the subject's] everyday habits and routines[,]" as well as "who came to [his] home

and how long they stayed." *Id.* at 622–23. The court was troubled by the fact that the government could store the surveillance indefinitely and review it at any time. *Id.* at 623. And it noted that, "because it was cheap and surreptitious," this type of pole-camera surveillance would evade "'the ordinary checks that constrain abusive law enforcement practices[.]'" *Id.* (quoting *Jones*, 565 U.S. at 416 (Sotomayor, J., concurring)). The court also stressed that the area surveilled was "curtilage, which is considered part of [the] home for Fourth Amendment purposes, an area first among equals and whose historical significance should not be overlooked." *Id.* Thus, the court concluded, the police's use of the pole camera constituted a warrantless search in violation of the Fourth Amendment. *Id.*

2. The South Dakota Supreme Court has also held that pole-camera surveillance constituted a Fourth Amendment search. In *State v. Jones*, 903 N.W.2d 101, 103–04, that court considered a pole camera that recorded video of the defendant's home for two months, which law enforcement then used to obtain a search warrant for the home. The court explained that "information gathered through the use of targeted, long-term video surveillance will necessarily include a mosaic of intimate details of the person's private life and associations." *Id.* at 110. Additionally, "this type of surveillance does not grow weary, or blink, or have family, friends, or other duties to draw its attention." *Id.* at 112. It therefore

concluded that law enforcement's use of the pole camera affected a reasonable expectation of privacy and was a Fourth Amendment search. *Id.* at 113.[5]

II. The Question Presented Is Important.

In recent years, this Court has undertaken the critical task of reconciling Fourth Amendment principles with law enforcement's use of modern surveillance technologies. From the thermal imaging at issue in *Kyllo* to the GPS tracking in *Jones* and cell-site location information in *Carpenter*, the Court has evolved its Fourth Amendment jurisprudence to address the serious privacy concerns raised by modern technologies. In fact, later this Term, the Court will address a question somewhat related to this one: whether the execution of a geofence warrant violates the Fourth Amendment. *See* Pet. at i, *Chatrie v. United States*, No. 25-112. (If appropriate, the Court may wish to hold this petition pending its resolution of *Chatrie*.)

Pole-camera surveillance presents yet another pressing question about whether the police can use modern technology to continuously surveil individuals and indefinitely store and access that surveillance without a warrant. Absent this Court's intervention, little prevents "the government [from] accessing a database containing continuous video footage of every home in a neighborhood, or for that matter, in the United States as a whole." *Moore-Bush*, 36 F.4th at 340 (Barron,

[5] Additionally, the Massachusetts Supreme Judicial Court has held that long-term pole-camera surveillance of a home is a search under the state constitution, without reaching the same question under the federal constitution. *Commonwealth v. Mora*, 150 N.E.3d 297, 302 (Mass. 2020).

C.J., and Thompson and Kayatta, JJ., concurring); *see also Commonwealth v. Mora*, 150 N.E.3d 297, 312 (Mass. 2020) ("Without the need to obtain a warrant, investigators could use pole cameras to target any home, at any time, for any reason.").

Additionally, as surveillance technology improves and cameras become less expensive, police surely will increase their use.[6] As the D.C. Circuit explained, "as other technologies like artificial intelligence and facial recognition improve, the potential capabilities of ubiquitous cameras may grow exponentially." App. at 16. Indeed, police departments are already using facial recognition technology.[7] The ongoing development of such technologies makes this Court's intervention all the more urgent. *Cf. Kyllo*, 533 U.S. at 36 ("While the technology used in the present case was relatively crude, the rule we adopt must take account of more sophisticated systems that are already in use or in development.").

---

[6] *See, e.g.*, Matthew Tokson, *Telephone Pole Cameras Under Fourth Amendment Law*, 83 Ohio St. L.J. 977, 1000 (2022) ("The exact costs of pole camera surveillance will depend on the facts of a given case. But under virtually any set of assumptions, the cost will be relatively low, especially compared to the cost of employing police officers to gather the same information in person.").

[7] *See, e.g.*, MacMillan, Douglas, et al., *Arrested by AI: Police ignore standards after facial recognition matches*, Wash. Post (Jan. 13, 2025), available at https://www.washingtonpost.com/business/interactive/2025/police-artificial-intelligence-facial-recognition/ ("A Washington Post investigation into police use of facial recognition software found that law enforcement agencies across the nation are using the artificial intelligence tools in a way they were never intended to be used: as a shortcut to finding and arresting suspects without other evidence.").

Finally, to the extent the federal courts of appeals are coalescing around the opinion that pole cameras generally do not raise Fourth Amendment concerns, only this Court can intervene and correct them. Courts have struggled with how to apply *Carpenter* to pole cameras. *See* Matthew Tokson, *Telephone Pole Cameras Under Fourth Amendment Law*, 83 Ohio St. L.J. 977, 979 (2022) ("Pole camera surveillance raises important constitutional questions that have confused courts and perplexed scholars."). They have applied a cramped version of *Katz*'s reasonable-expectation-of-privacy test and have been unduly hesitant to extend *Carpenter* beyond its precise holding. *See, e.g.*, *Tuggle*, 4 F.4th at 525 ("Until the Supreme Court or Congress instructs otherwise, we will read *Carpenter* as limited to the unique features of the historical [cell-site location information] at issue there, as distinct from the real-time video footage here."). The issue has percolated through the federal circuits, as reflected in the cases discussed above. This Court should grant certiorari to break the jurisprudential logjam in this important area of law, and to ensure that Americans' privacy rights are protected in the face of developing technology.

III. This Case is an Appropriate Vehicle for Deciding the Question Presented.

1. This case is an excellent vehicle for the Court to decide the question presented. Petitioner fully preserved the issue in the lower courts, so the question is squarely before the Court. The D.C. Circuit thoughtfully surveyed the relevant caselaw and arguments in its published opinion. The government did not argue that its search of the pole-camera footage was harmless, and it plainly was not.

The government used the footage to obtain the search warrant that resulted in Mr. Green's arrest, and it used it again in its case-in-chief to try to prove that Mr. Green was the individual who fired the weapon.

2. The government did argue the good-faith exception to the exclusionary rule—but because the D.C. Circuit did not reach that issue, this Court may leave it to the circuit court to decide on remand, as it did in *Carpenter*. *United States v. Carpenter*, 926 F.3d 313, 314 (6th Cir. 2019) (holding, on remand from this Court, that the good-faith exception applied). This Court's disposition of the petition for certiorari in *Chatrie v. United States*, No. 25-112, is to the same effect. That petition presented two questions: (1) whether execution of the geofence warrant violated the Fourth Amendment, and (2) whether the exclusionary rule should apply to the evidence derived from the geofence warrant. Pet. at i, *Chatrie v. United States*, No. 25-112. The Court granted the petition as to Question 1 only, indicating that if the Court reverses on that question, the good-faith exception issue may be addressed by the circuit court on remand. In any event, as argued below, the good-faith exception has no applicability here because the D.C. Circuit had not previously ruled on this issue. *See Davis v. United States*, 564 U.S. 229, 250 (2011) (Sotomayor, J., concurring in the judgment) ("This case does not present the markedly different question whether the exclusionary rule applies when the law governing the constitutionality of a particular search is unsettled.").

3. The duration of the surveillance here—approximately two days—further bolsters this case's suitability as a vehicle for addressing this important question.

Cases that involve many months of continuous recording are less useful, as the Court's holding would provide little guidance in cases like this one, still involving a significant period but not months.

4. Finally, the D.C. Circuit did not address the government's argument that Mr. Green lacked Fourth Amendment standing. App. at 19 n.10. This Court likewise should assume that Mr. Green has Fourth Amendment standing and leave that issue for remand. *Cf. Jones*, 565 U.S. at 404 n.2 (declining to consider the Fourth Amendment significance of the fact that the vehicle was registered to Jones's wife because the court of appeals concluded that it did not affect his ability to make a Fourth Amendment objection and the government did not challenge that determination in this Court).

In any event, as Mr. Green argued in the court of appeals, the government forfeited the standing issue by failing to raise it in the district court. *See United States v. Sheffield*, 832 F.3d 296, 303 (D.C. Cir. 2016) ("[T]he government argues that Sheffield lacks Fourth Amendment 'standing' to challenge the search of the vehicle because he was just a passenger in a car that did not belong to him. But that argument is forfeited because the government failed to raise it in district court."). Additionally, Mr. Green has Fourth Amendment standing because there was sufficient evidence that Mr. Green was at least an overnight guest at 917 Wahler. *See Minnesota v. Olson*, 495 U.S. 91, 96–97 (1990) ("We need go no further than to conclude, as we do, that Olson's status as an overnight guest is alone

enough to show that he had an expectation of privacy in the home that society is prepared to recognize as reasonable.").

IV. The Decision Below Is Wrong.

1. Pursuant to the principles articulated in *Carpenter* and *Jones*, allowing the government to point a continuously-recording camera at the back of 917 Wahler contravened Mr. Green's reasonable expectation that the government was not tracking and recording his movements in relation to this quintessential Fourth Amendment space. In *Carpenter* and *Jones*, the Court addressed technologies that transformed a traditional form of police surveillance (following someone to track his movements) into a supercharged form of surveillance that could be employed with minimal expenditure of time and resources, and produced data readily available for police review. *See Carpenter*, 585 U.S. at 311 ("And like GPS monitoring, cell phone tracking is remarkably easy, cheap, and efficient compared to traditional investigative tools. With just the click of a button, the Government can access each carrier's deep repository of historical location information at practically no expense."); *Jones*, 565 U.S. at 415–16 (Sotomayor, J., concurring) ("And because GPS monitoring is cheap in comparison to conventional surveillance techniques and, by design, proceeds surreptitiously, it evades the ordinary checks that constrain abusive law enforcement practices[.]").

The same principles apply here. The pole camera in this case transformed an accepted police practice (a stakeout) into a perfect form of digital surveillance, likely at little cost. *See* App. at 16 (Pole cameras "rely on a public, unobstructed vantage point and off-the-shelf technology, not unlike an agent with binoculars

perched atop a telephone pole. But unlike that unfortunate agent—who will get bored, blink or need to stretch—a pole camera never looks away.").

Moreover, while *Carpenter* and *Jones* concerned defendants' public movements generally, the pole camera directed at 917 Wahler presents a heightened Fourth Amendment concern. As explained, "when it comes to the Fourth Amendment, the home is first among equals." *Jardines*, 569 U.S. at 6. And the Court considers the curtilage to be part of the home for Fourth Amendment purposes. *Id.*; *cf. Moore-Bush*, 36 F.4th at 346 (Barron, C.J., and Thompson and Kayatta, JJ., concurring) ("Observing the movements in front of a home for months, therefore, can reveal quite a lot about a person . . . and perhaps to a greater extent than even a substantial swath of one's historical [cell-site location information].").

2. The D.C. Circuit reasoned that "this case is a poor candidate for applying the mosaic theory to pole-camera surveillance" because "[t]he footage here spanned only two days[,]" and thus "the government had no opportunity to compile a retrospective record of Green's movements or reconstruct his patterns of life." App. at 18. "Nor did the footage itself reveal much—the camera captured just two fleeting moments in which Green stepped outside, offering no insight into his associations, routines or private conduct in the manner condemned in *Carpenter*." *Id.* "Whatever the outer bounds of the mosaic theory may be," the Panel held, "they are not approached here." *Id.*

Contrary to the D.C. Circuit's opinion, accessing two days of pole-camera footage requires a warrant. By expending hardly any officer time or conventional

resources ex ante, police conducted hours and hours of warrantless surveillance of the activities around a home. And the digital video recording memorializing this surveillance, unlike human memory, was a perfect record of everything police wished to observe that allowed easy and potentially indefinite access. *See Jones*, 565 U.S. at 415 (Sotomayor, J., concurring) ("The government can store such records and efficiently mine them for information years into the future.").

Aggregating two days of continuous recording of a residence has the potential to reveal deep intimacies about a person's life. For example, it could reveal who the resident invites into his home, whether he is in a relationship, the gender and sexual orientation of his associates, whether he is having an affair, whether he fights with his family, whether he carries a firearm, or whether he carries a prayer shawl or rug with him. *See Carpenter*, 585 U.S. at 311 ("As with GPS information, the time-stamped data provides an intimate window into a person's life, revealing not only his particular movements, but through them his 'familial, political, professional, religious, and sexual associations.'") (quoting *Jones*, 565 U.S. at 415 (Sotomayor, J., concurring)).

3. Furthermore, that this camera happened to capture an individual only a few times is irrelevant. As Justice Sotomayor explained in *Jones*, simple "[a]wareness that the government may be watching chills associational and expressive freedoms." *Jones*, 565 U.S. at 416 (Sotomayor, J., concurring). This Court rejected a similar argument in *Kyllo*, where the government argued that its thermal-imaging surveillance was constitutional because it did not actually detect

any private or intimate activities that occurred inside the home. 533 U.S. at 37. As this Court explained, "[t]he Fourth Amendment's protection of the home has never been tied to measurement of the quality or quantity of information obtained." *Id.* Moreover, it found that such a rule would be impractical: "[N]o police officer would be able to know *in advance* whether his through-the-wall surveillance picks up 'intimate' details—and thus would be unable to know in advance whether it is constitutional." *Id.* at 39 (emphasis in original). The same is true of pole cameras—when ATF mounted the camera here, the government did not know how many times it would capture activity around the home. It was pure chance that it recorded the relevant material here after only two days.

The sensitivity of the sort of information that may be captured through continuous surveillance of a home and its curtilage is why the "area around the home is 'intimately linked to the home, both physically and psychologically,' and is where 'privacy expectations are most heightened.'" *Jardines*, 569 U.S. at 7 (quoting *Ciraolo*, 476 U.S. at 213). Two days of unfettered, warrantless access to this type of information is too much to escape Fourth Amendment scrutiny. This Court should grant certiorari and reverse.

CONCLUSION

The petition for a writ of certiorari should be granted.

RESPECTFULLY SUBMITTED this 3rd day of March, 2026.

JON M. SANDS
Federal Public Defender
District of Arizona

s/ *Molly Runkle*
MOLLY RUNKLE
Assistant Federal Public Defender
Counsel of Record for Petitioner