

No. 26-5272

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IN THE

**Supreme Court of the United States**

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CAMERON WATKINS,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

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

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**PETITIONER'S REPLY BRIEF**

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## REPLY BRIEF

The government offers no sound argument against review. On the split, the government points to supposed factual distinctions. But the Tenth Circuit's rule is indifferent to factual variation: If the police are lawfully present and use no technological aids, their observations into a dwelling are *never* a search, no matter how unnatural or intrusive. That rule flips the result in almost every cited case. The converse is true too: Other courts would find a search here because Officer McNally peered through a tiny gap into an intentionally obscured private dwelling.

And those courts are right: As the leading Fourth Amendment treatise affirms, “looking through minute openings in covered windows” into a dwelling is a search. 1 LaFare, Search & Seizure § 2.3(c) n.150 (6th ed.). That is true even accepting the district court's factual findings here, which (contra the government) Mr. Watkins does not challenge. Nor is Mr. Watkins raising a new claim by noting that positive law broadly prohibits such peeping; even if this argument needed exhausting, the judges below addressed it. And the panel's brief musing about the good-faith exception is no bar to review, as *Chatrue* confirms (and the government ignores). The petition should be granted.

### **I. Courts are divided on the question presented.**

The government tries to explain away the split by pointing to minor factual differences—the landscape just outside the window, the size of the gap, and so on. Opp. 12. That effort fails.

To start, the whole conflict is about *whether these kinds of facts matter*. The Tenth Circuit held that “a person in a dwelling has no reasonable expectation of

privacy” in anything that a lawfully present person can perceive with his natural senses. Pet. App. 9a. This rule is categorical: A person “has no reasonable expectation of privacy with respect to visual observations from a public place,” so a “police observation ... from a place available to all” is *never* a search. *Id.* at 14a–15a. Indeed, the government defends the decision below on the same terms. Opp. 8. In other words, under the Tenth Circuit’s and the government’s rule, the inquiry starts and ends with (i) lawful presence and (ii) lack of technological enhancement.

By contrast, the petition’s cited cases analyze whether a search occurred by examining the *manner* of the officer’s observation, including whether she “position[ed] herself in any way that would be unexpected” or “peer[ed] in ‘knothole fashion’ through [a tiny] gap.” See *United States v. White*, 890 F.2d 1012, 1015 (8th Cir. 1989). If the officer behaved in such an unnaturally intrusive fashion, these courts find a search; if not, they don’t. See Pet. 9–13. These cases therefore apply a very different legal rule than the Tenth Circuit adopted, with dispositive effect.

And these courts would reach a different result here. The government emphasizes that the officer in *State v. Carter* left the sidewalk, crossed grass and bushes, and crouched down to put his face 12 to 18 inches from the window. Opp. 12. But *Carter* assumed that the officer’s “presence just outside the apartment window was legitimate” because he “was on a common area and not the curtilage.” 569 N.W.2d 169, 177 & n.10 (Minn. 1997) *rev’d sub nom. Minnesota v. Carter*, 525 U.S. 83 (1998). And the officer used only his naked eyes to “peer[]” into the window. *Id.* at 178. Under the Tenth Circuit’s rule, that would mean no search occurred. But the Minnesota Supreme Court held that “the state *cannot* rely on [the officer’s] position alone to

justify his subsequent observation.” *Id.* at 177 (emphasis added). Rather, a court must consider “the precise manner in which the view was achieved”—and the officer’s “extraordinary measures to enable himself to view the inside of a private dwelling” established a search. *Id.* at 177–78.

So too here. Just as the officer in *Carter* left the sidewalk and crossed the common yard, Officer McNally was not on a public street or sidewalk; he was standing on the dead-end of a privately owned second-story walkway that only “motel patrons and staff” had any reason to use. Cf. Opp. 10. And just as the *Carter* officer could not see into the apartment until he “placed his face 12 to 18 inches from the window,” 569 N.W. 2d at 177, Officer McNally “must have pressed his face up to Mr. Watkins’s window to see” what he saw, Pet. App. 22a. *Carter* would dictate the opposite result on these facts.

That *Carter* was “reversed *on other grounds*,” Opp. 12 (emphasis added), is irrelevant. The government nowhere disputes that Minnesota courts still treat *Carter*’s search holding as binding precedent. See Pet. 10. Nor does it matter that *Carter* “pre-dated” *Kyllo v. United States*, 533 U.S. 27 (2001). *Contra* Opp. 12. Unlike *Carter* or this case, *Kyllo* involved technologically enhanced surveillance—“the use of a thermal-imaging device.” 533 U.S. at 29. And when *Kyllo* mused about “visual observation” not being a search, it was discussing “examining the portion of a house that is in plain public view” to “officers on a public street.” *Id.* at 32–33. That dictum neither overrides *Carter* nor supports the decision below. Indeed, *Carter* still enjoys the leading Fourth Amendment treatise’s imprimatur. See 1 LaFare, *supra*, § 2.3(c) n.150.

For similar reasons, the government can’t distinguish *State v. Kaaheena*, 575 P.2d 462 (Haw. 1978).

That case, too, involved a one-inch gap in a window covering; the area just outside was “open to the public as a common use area”; and the officer used only his “unaided eye.” *Id.* at 464, 466–68. The government emphasizes *Kaaheena*’s statement that the result could differ if the aperture were at the eye level of someone merely standing on the sidewalk. Opp. 12–13. But again, Officer McNally was not on the sidewalk. And even treating the second-story motel walkway as a sidewalk equivalent, the conflict remains: Under *Kaaheena*, the question is whether the dwelling’s interior was “visible to the glance of the curious passerby.” 575 P.2d at 467. Under the decision below, the question is only whether the officer could lawfully stand where he stood. That distinction is dispositive: In both cases, the police were lawfully present, and in both cases, they had to maneuver to see what a passerby could not.

So too in *State v. Tarantino*, 368 S.E.2d 588 (N.C. 1988). The government points out that the officer there maneuvered his body, bent down, and used a flashlight to look through quarter-inch cracks. Opp. 12. Again, those facts do not erase the conflict; they illustrate it. *Tarantino* held that the inquiry did “not end” merely because the officer was standing in an open field. 368 S.E.2d at 591. A court must examine “the nature of the opening” and whether the officer engaged in a “probing examination” to see what the occupant had attempted to conceal. *Id.* at 591–92. Though the court expressly assumed the officer “rightfully entered the porch,” it still held that his peering into the building was a search. *Id.* at 592 n.\*. *Tarantino* thus conflicts with a rule under which lawful location plus unaided observation ends the analysis. And nothing about the court’s analysis suggests that a quarter-inch

crack and a one-inch gap are materially different for these purposes.

The government similarly misunderstands *White*. True, the Eighth Circuit found the defendant's expectation of privacy "not violated." Opp. 13. But the expectation was "not violated *in this case because*" the officer did not "peer in 'knothole' fashion" or position herself in an unexpected manner. 890 F.2d at 1015 (emphasis added). Had the Eighth Circuit applied the Tenth Circuit's rule, it would have stopped after observing that the officer stood in a public restroom and used no sense-enhancing technology. And had the Tenth Circuit applied the Eighth Circuit's rule, it would have found a search because Officer McNally peered in "knothole" fashion through the tiny curtain gap.

Finally, the age of these precedents is irrelevant. *Contra* Opp. 13. "Legal precedent does not come with an expiration date; it endures until a court with the authority to do so abrogates it." *Chartis Specialty Ins. Co. v. Queen Anne HS, LLC*, 867 F. Supp. 2d 1111, 1120 (W.D. Wash. 2012). That has not happened here. The government's contrary insinuation relies entirely on *Kyllo*, but that decision is inapt for the reasons already explained. The conflict persists.

## **II. The decision below is wrong.**

Like the Tenth Circuit, the government contends that Officer McNally committed no search because he stood on a "freely accessible" walkway, without trespassing on "curtilage," and "used only his unaided eyes." Opp. 9 (cleaned up). This view makes property rights dispositive. In turn, it puts "the tenant in a hotel or apartment building . . . to the choice of papering

over his transom and stuffing his keyhole or else having a policeman look in.” 1 LaFave, *supra*, § 2.3(c). That is not the law.

A. This Court has “repeatedly emphasized that privacy interests do not rise or fall with property rights.” *Carpenter v. United States*, 585 U.S. 296, 304 n.1 (2018). An “official intrusion” that offends a reasonable privacy expectation is a search too. *Id.* at 304. Whether a naked-eye observation into a dwelling rises to that level turns on “(1) the location of the officer at the time of the viewing; and (2) the precise manner in which the view was achieved.” 1 LaFave, *supra*, § 2.3(e). The second factor matters because, “when a citizen does as much as ordinary care requires to shield his sanctuary from strangers[,] his constitutional right to maintain his privacy should not be made to depend upon the resources of skillful peepers and eavesdroppers who can always find ways to intrude.” *Id.*

The government nowhere disputes that locking the door and drawing the curtains is a universal, reasonable step to preserve privacy. See Pet. 13. That is no less true for motel guests. While “apartment and hotel dwellers . . . live under conditions requiring that others must be allowed to pass their door”—which may practically result in less privacy than a standalone home with a generous yard—the Fourth Amendment’s “limit is reached when the conduct in question is keyhole-peeping, transom-peeping, or looking through minute openings in covered windows.” 1 LaFave, *supra*, § 2.3(c) (footnotes omitted). Such conduct offends the “reasoned value judgment” that *Katz* requires. *Id.*; Pet. App. 40a–41a.

The government does not engage directly with the *Katz* analysis. Instead, it leans on *Kyllo* and *California v. Ciraolo*, 476 U.S. 207 (1986). But *Ciraolo* merely

holds (and *Kyllo* just reiterates in dicta) that “an officer’s observations from a public vantage point” are not a search if the observed “activities [are] *clearly visible*.” *Ciraolo*, 476 U.S. at 209, 211–15 (emphasis added). Indeed, *Ciraolo* did not even involve a dwelling’s interior; the defendant claimed a privacy interest in the ten-foot-tall marijuana plants growing in his backyard. *Id.* at 214. In rejecting that claim, the Court ruled simply that a person is not “entitled” to privacy for things he “exposes to the ‘plain view’ of outsiders.” *Id.* at 215; see also *Kyllo*, 533 U.S. at 32 (discussing “the portion of a house that is in plain public view”).

The government does not claim the interior of Mr. Watkins’s motel room, where he was undressing for the night, was “clearly visible” or exposed to “plain public view.” That suffices to distinguish *Ciraolo*. As Judge Moritz put it, “this is not a plain-view case—the drapes were closed.” Pet. App. 22a; see Pet. 14–15. Even Justice Breyer’s solo concurrence in *Minnesota v. Carter*—the government’s only authority involving observation through closed blinds—asked whether the occupants’ precautions “would have failed *in respect to an ordinary passerby* standing in that place.” 525 U.S. 83, 104–05 (1998). The Tenth Circuit majority, by contrast, focused solely on lawful presence and naked-eye observation. And again, Officer McNally “must have pressed his face up to Mr. Watkins’s window”—something ordinary passersby don’t do. Pet. App. 22a (Moritz, J., dissenting).

The government rejoins that Officer McNally might have been able to see inside just by standing on the walkway. Opp. 11. But “simple geometry” shows otherwise: The officer couldn’t have seen “the entire room . . . through a one-inch gap” unless he had “pressed” himself against the window. Pet. App. 22a–

23a. The government doesn't claim otherwise. True, Judge Hartz questioned how close the officer got, but he suggested only that McNally could have seen Mr. Watkins "on the bed" without getting unnaturally close—not that he could have seen the whole room, as the record indicated he did. Compare Pet. App. 39a (Hartz, J.), with *id.* at 22a–23a (Moritz, J.).

**B.** Positive law confirms that Mr. Watkins's privacy expectation was reasonable. Pet. 17–18 & n.1. The government responds that this is a new argument the court below "did not address." Opp. 11. But "[o]nce 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." *Yee v. City of Escondido*, 503 U.S. 519, 534 (1992). Anyway, this is not a new issue: Judge Moritz's panel dissent pointed to Oklahoma's "Peeping Tom statute," Pet. App. 27a n.5, and Judge Hartz's rehearing-denial concurrence broadly surveyed such laws, *id.* at 38a & n.\*.

The government also says "only a minority of jurisdictions might prohibit looking into the window here." Opp. 11. But it doesn't dispute that Oklahoma is one of those jurisdictions. Pet. 18. And more broadly, nearly every jurisdiction distinguishes ordinary seeing from clandestine peeping into spaces people have tried to shield from view. These statutes thus confirm that society recognizes as reasonable a person's privacy interest in his dwelling, even if not every crack is sealed against prying eyes. The decision below is wrong.

### **III. This case is a good vehicle.**

The government's vehicle objections fail for reasons already explained. Again, no factual dispute prevents review. Mr. Watkins does not dispute that motel patrons could use the dead-end exterior walkway. Cf.

Opp. 10. But that finding concerns only Officer McNally’s general location, not the manner in which he peered through a tiny gap in drawn curtains. So this Court can accept the district court’s factual finding and still decide the question presented in Mr. Watkins’s favor.

Next, as just explained, the Peeping Tom statutes do not inject an unpreserved issue. Mr. Watkins has always maintained that Officer McNally’s peeping violated his reasonable expectation of privacy. The statutes are simply additional evidence that his expectation is reasonable—not a different claim. And the issue is not new anyway.

Finally, good faith does not block review. Even assuming the panel’s one-sentence musing about an unargued issue qualifies as an alternative holding, *Chatrie* explains that possible application of the good-faith exception does not bar review of the underlying Fourth Amendment question. *Chatrie v. United States*, 146 S. Ct. 2193, 2204 n.4 (2026). The government ignores that point.

In all events, *Reeves* did not “specifically authorize” the practice here. *Contra* Opp. 15. As Judge Moritz explained, the *Reeves* plaintiffs alleged a search based on the officer’s rifle crossing the threshold; they did not argue that the preceding visual observation itself was a search. Pet. App. 23a–24a. And the observation there occurred through an open window whose blinds had been left open. *Id.* at 24a n.4; see also *Reeves v. Churchich*, 484 F.3d 1244, 1253 (10th Cir. 2007) (analyzing “Whether Churchich’s insertion of his rifle into [the window] constituted an unlawful search”); *id.* at 1255 n.20 (officer did not have to open the blinds). Indeed, the majority below treated *Reeves* only as “informative,” not controlling. Pet. App. 10a n.3. No

“binding appellate precedent” authorized the search here.

### CONCLUSION

For these reasons, the petition should be granted.

Respectfully submitted,

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