US Government Must Obtain Warrant To Access Cell Phone Location Records

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Go ahead and keep clicking "I agree" when your phone asks permission to use your location - the US Supreme Court held on June 22, 2018 that this data is not accessible by the government without a warrant. In *Carpenter v. United States*, No. 16-402, 585 *U.S.* ____ (2018), Chief Justice John Roberts authored the 5-4 ruling holding that the government's acquisition of historical cell phone records constituted a Fourth Amendment search. In other words, these records must be obtained via warrant in order to be permissible in court. This was good news for Petitioner, Timothy Carpenter, whose historical cell phone location data was obtained without a warrant and used to charge and arrest him.

This ruling is historical because it raised a Fourth Amendment issue that had not been addressed in the Supreme Court since the 1970s; an individual's expectation of privacy in certain records voluntarily shared with and held by third party service providers. In the 1970s, third party records referred to things such as bank statements (*United States v. Miller*, 425 U.S. 435 (1976)) and pen registers, which would log the phone numbers dialed on a particular phone line (*Smith v. Maryland*, 422 U.S. 735 (1979)). These cases stood for the proposition that there is no reasonable expectation of privacy for information shared with third parties. But, the foregoing records seem insignificant compared to the voluminous amount of data collected from our cell phones. For instance, obtaining my bank records or a list of my outgoing calls cannot pinpoint my geographic location with much accuracy. But, the data from my cell phone can tell you my exact location for the last ten years.

Clearly, "there is a world of difference between the limited types of personal information addressed in Smith and Miller and the exhaustive chronicle of location information casually collected by wireless carriers." *Carpenter v. United States*, No. 16-402, 585 U.S. ____ (2018). Justice Roberts quoted Justice Brandeis's famous dissent in *Olmstead v. United States*, 227 U.S. 438, 473-474 (1928) when he wrote, "the Court is obligated—as '[s]ubtler and more far-reaching means of invading privacy have become available to the Government'—to ensure that the 'progress of science' does not erode Fourth

Amendment protections." *Id.*

Although the four dissenting justices share the majority's concern about the effect of new technology on our individual right to privacy, each disagrees with the ultimate holding. In Justice Alito's dissenting opinion, joined by Justice Thomas, he cited to a guaranteed "blizzard of litigation" and a threat to "many legitimate and valuable investigative practices upon which law enforcement has rightfully come to rely." *Id.*