

# U.S. Supreme Court to Consider Whether Fourth Amendment Protects Cell-Location Data

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Today, June 6th 2017, the **Supreme Court** granted certiorari in ***Carpenter v. United States***, a case addressing Americans' privacy rights in cell phone tracking data. The Court will consider whether a warrantless search and seizure of cell phone records revealing the location and movements of a cell phone user over the course of several months is permitted by the Fourth Amendment. The case raises number of critical questions with respect to Fourth Amendment protections for location data in the digital age, which we have discussed [here](#).

The case stems from a criminal investigation in Detroit in 2011, where the government acted without a warrant in obtaining 127 days' worth of cell phone location records for two suspects. The government obtained the data under the Stored Communications Act, 18 U.S.C. §§ 2703(c)(1)(B), (d), which requires a showing of reasonable suspicion and not probable cause. For one suspect, the records revealed 12,898 points of location data; for another, 23,034 location points. Both suspects were convicted, based in part on cell phone location evidence that placed them near the crime scenes, and they challenged their convictions in the Sixth Circuit.

A panel of the Sixth Circuit held that the Fourth Amendment does not require a warrant for law enforcement officers to request historical "cell-site location information." Writing for the majority, Judge Kethledge determined that a warrant was not needed for the records under the [third-party doctrine](#), under which people have no legitimate expectation of privacy in information voluntarily turned over to third parties, such as telephone companies and internet service providers. Judge Stranch concurred in the judgment in part, and wrote separately to note that the court's "precedent suggests the need to develop a new test to determine when a warrant may be necessary" for personal location information that is neither "relatively innocuous routing information nor precise GPS locator information," the latter of which was held to implicate the Fourth Amendment in *United States v. Jones*, 132 S. Ct 945 (2012).

The Sixth Circuit joined the Fourth, Fifth, and Eleventh Circuits in holding that the Fourth Amendment does not require a warrant for law enforcement to seek historical cell-site location data. Neither the government nor the petitioner sought review of whether the good-faith exemption to the Fourth Amendment's exclusionary rule applied. Accordingly, the significant case will afford the Court the opportunity to weigh in on the third-party doctrine, which lies at the foundation of modern surveillance law. The Court's decision to consider the Fourth Amendment's protection of location data comes

after [years](#) of calls upon Congress to modernize the 1986 law governing the protection of electronic information.

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