

Carpenter v. United States Privacy Case Pushes Supreme Court to Decide Fourth Amendment Protections of Cell Phone Metadata

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The U.S. Supreme Court heard oral arguments in what may become one of the defining consumer privacy cases of our generation. The central question in [*Carpenter v. United States*](#) asks whether the government violates the Fourth Amendment by accessing an individual's historical cell phone locations records without a warrant. The Court's decision, expected by June 2018, could draw a more concrete legal line for what constitutes "reasonable search and seizure" when government agencies seek to gather potentially incriminating smartphone data from third-party communication providers. The outcome of the case may significantly reshape consumer expectations of electronic privacy, and even alter the disclosures companies across all sectors must make in their privacy policies.

The case begins in April 2011, when police arrested four men in connection with a series of armed robberies in Michigan and Ohio. This group did not originally include complainant Timothy Carpenter; he was later targeted by law enforcement when one of the arrestees confessed and handed over his cell phone number to the FBI. Federal investigators used the number to obtain "transactional records" from a cell phone company, which included the date, time, and location of calls based on proximity to nearby cell towers ("cell-sites"). Using this information, the government determined that Carpenter's cell phone also communicated with cell towers nearby and at the time of the four robberies. He was convicted of aiding and abetting robbery that affected interstate commerce, and sentenced to 116 years in federal prison.

Carpenter appealed his case on the grounds that because the FBI did not have a warrant based on probable cause in order to obtain the phone records that led to his arrest, the cell-site evidence violates his Fourth Amendment rights. The FBI originally received authorization to obtain these records by way of three orders from magistrate judges granted under the [Stored Communications Act](#), which provides that the government may require the disclosure of certain telecommunications records when "specific and articulable facts show[] that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation." The Sixth Circuit Appeals Court denied Carpenter's appeal, claiming that the Fourth Amendment may apply to the content of personal phone

calls but does not protect metadata about the calls, including location data. The case has already drawn a number of parallels with the 2012 case of [United States v. Jones](#), which involved the warrantless tracking of a vehicle with a planted GPS device.

Several amicus briefs have been submitted to the Court, [including](#) statements from tech giants Apple, Google, Facebook, Microsoft, Twitter, Verizon, and several others. These companies have historically taken a hard stance when responding to government requests for consumer data (e.g. Apple's [refusal](#) of an FBI request to unlock a gunman's iPhone in 2016). As privacy concerns continue to occupy public dialogue in light of [wide-scale data breaches](#) and concerns about [government surveillance](#), consumers are increasingly opting to do business with companies that offer stronger data and privacy protections by design (such as [WhatsApp's end-to-end encrypted](#) text message service). A ruling against Carpenter would exacerbate public confusion about who "owns" their call and text records, and could place the burden on telecommunications companies to inform users that their personal data may not be so "personal" in the eyes of the law even if it is not obtained directly.

Carpenter may be decided narrowly or broadly, based on the justices' decision to emphasize the geolocation data provided by cell-site evidence or the overarching expectation of privacy when using personal devices. Either way, the case offers the Supreme Court to harmonize our interpretation of the Fourth Amendment with the new realities of the digital age. Consumers and companies alike will be watching closely to see how the government's stance will shape the technological landscape and the economy that surrounds it.

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National Law Review, Volume VIII, Number 30

Source URL: <https://natlawreview.com/article/carpenter-v-united-states-privacy-case-pushes-supreme-court-to-decide-fourth>