

White Collar Criminal Defense Privacy & Cybersecurity

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U.S. Supreme Court Rules for Privacy Protections in Requiring a Warrant to Access Cell Tower Location Data

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On June 22, 2018, the United States Supreme Court ruled in *Carpenter v. United States* that the federal government needs a warrant to collect location data about cellphone users. Authored by Chief Justice John G. Roberts for the majority,¹ the 5-to-4 decision provides that law enforcement will in most circumstances need to obtain a judicial warrant for individuals' location information obtained from cellphone towers, finding that individual customers have a legitimate expectation of privacy in the records that third-party providers make of the location of cell towers used to route cellphone calls.

Background

In *Carpenter v. United States*, the Supreme Court considered petitioner Timothy Carpenter's Fourth Amendment challenge to the government's assertion that individuals such as Carpenter (whose criminal conviction was in part based on evidence resulting from the government's use of cellular tracking that placed Carpenter at the scene of a crime) do not have a legitimate expectation of privacy as to their cellphone location data. In particular, the government argued the "third-party doctrine" governed the case (i.e., that an individual has a reduced expectation of privacy in information knowingly shared with another), emphasizing that cellphone location records are business records held by third-party service providers. However, the majority disagreed: "[A] majority of the

court has already recognized that individuals have a reasonable expectation of privacy in the whole of their physical movements," adding that "the fact that the government obtained the information from a third party does not overcome Carpenter's claim to Fourth Amendment protection." In essence, the Court "decline[d] to grant the state unrestricted access to a wireless carrier's database of physical location information."

Potential Implications

While Roberts underscored that the decision is "narrow" and does not "call into question conventional surveillance techniques and tools" or "address other business records that might incidentally reveal location information," the ruling nevertheless has important legal implications. Not only will prosecutors need to establish probable cause before obtaining cellphone location data from providers, but the decision also may be taken to apply beyond the context of tracking cellphone locations to other types of personal information held by third parties. For example, the manner in which private social media platforms currently use and share user information could be implicated, at least with respect to location information. The decision may also create a basis to further challenge the federal government's investigative techniques in other contexts.

While the Court's ruling sets new federal precedent, some state courts previously reached similar conclusions. In *State v. Earls*, a 2013 decision relying on the state's constitution, New Jersey became the first state to rule that law enforcement is required to obtain a warrant to secure cellphone location data.

data – for cybercriminals and for prosecutors – the Supreme Court's decision is a reminder that the Constitution still provides a measure of privacy protection for individuals, in spite of our best efforts to post and tweet it away.

Conclusion

In an age where ever-advancing technology and increasingly integrated personal and home smart devices can represent a treasure trove of stored

¹ Separate dissenting opinions were issued by Justices Kennedy, Thomas, Alito, and Gorsuch. Justices Ginsburg, Breyer, Sotomayor, and Kagan joined in the Roberts majority.

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