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Supreme Court grapples with cellphone privacy in age of technology

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The Trump administration told the Supreme Court on Wednesday that cellphone records belong to telecom companies, not to their customers, as they sought to defend the ability of police to track Americans' whereabouts without having to obtain a warrant first.

The case is shaping up as one of this term's blockbusters, as the high court continues to grapple with the limits of privacy and clashes with government snooping powers in a world of changing technology.

Justices in recent years have ruled that police cannot go through someone's phone without a warrant and cannot place a tracking device on a vehicle without permission.

But the issue of phone data is more complex, with the government arguing that data belong to the companies, not the consumers, who don't have a reasonable expectation of privacy.

The justices struggled where to draw a line — if any — as technology continues to advance. "It's a very open question," said Justice Stephen G. Breyer.

The case involved Timothy Ivory Carpenter, who was convicted of a string of robberies after police tracked his location based on 127 days' worth of data from cell towers showing his general locations. The government obtained the location data from the phone company without a warrant.

Carpenter argued that tracking him without a warrant violated his Fourth Amendment rights. A lower appeals court disagreed and upheld his convictions.

The federal Justice Department argued in court Wednesday that since cellphone companies own the tracking data, there is no Fourth Amendment protection for individuals.
Justice Gorsuch seemed skeptical.

"Could we strip your property interests of any constitutional protections?" he asked.
Justice Samuel A. Alito Jr. wondered how a consumer had rights to data owned by a telephone company. He also suggested that consumers should be aware of how much of their information is collected.

“I mean, people know, there were all these commercials, ‘Can you hear me now? — our company has lots of towers everywhere.’ What do they think that’s about?” Justice Alito said. Michael R. Dreeben, the deputy solicitor general arguing for the government, said the cell companies are essentially the same as witnesses being interrogated about what they see in their interactions with their customers.

He said the information being asked about is “routing information,” not the contents of people’s phones or conversations or emails.

“People who dial phone numbers on calls know that they’re being routed through a cellphone or a landline provider,” he said. “Those records can be made available to the government.”
The justices and lawyers seemed to be grappling with competing precedents.

In cases dating back to the 1970s, the court allowed access to bank records and to track down phone numbers someone called without needing a warrant. But more recent cases carved out ground related to cellphones.

Privacy advocates say the case gives the justices an opportunity to update the Fourth Amendment, making it more current as technology advances.

“The court should seize this opportunity to extend Fourth Amendment protections to cellphone location information, which the majority of Americans considers to be sensitive information,” said Matthew Feeney, a policy analyst for the Cato Institute.

Justice Sonia Sotomayor appeared to worry about what could be next in the age of advancing technology.

“We need to look at this with respect to how the technology is developing,” she said. “I am not beyond the belief that someday a provider could turn on my cellphone and listen to my conversations.”

National security analysts, though, argue that the location information pinged off cellphone towers doesn’t reveal content of the communications, so the Fourth Amendment isn’t violated. Matthew Heiman, a former national security lawyer for the Justice Department, said if the court rules against the government, then a public stakeout following a suspect could require a warrant “because it provides the same information as cell location data.”

“That makes no sense and is not supported by the law,” said Mr. Heiman.