SCOTUS Will Decide If Police Need Warrant for Cellphone Location Data

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The Supreme Court of the United States announced Monday that it would review a lower court ruling in *Carpenter v. United States* that police do not need a search warrant to obtain customer location data from cellphone providers.

Headed by the American Civil Liberties Union (ACLU), a group of lawyers representing a Michigan man convicted of robbery based largely on geographic information provided to police by his cell phone provider is asking the Supreme Court to overturn that conviction based on the U.S. Constitution's Fourth Amendment's protection against unreasonable searches and seizures.

The U.S. Court of Appeals for the Sixth Circuit, over a dissent, upheld the conviction last April despite the fact police did not obtain a search warrant. Instead, the authorities secured a court order under a law called the Stored Communications Act. This order compelled Carpenter's cell phone provider to send police the information on his whereabouts which they gleaned from their cell towers.

The Stored Communications Act has a much lower standard than the "probable cause" required for a search warrant. Police need only show "specific and articulable facts showing that there are reasonable grounds to believe" information stored on service providers' systems are relevant to a criminal investigation to have a court compel companies to provide that information.

The ACLU and other groups, including the free-internet fundamentalist Electronic Frontier Foundation and libertarian Cato Institute, who filed amicus briefs in support of Carpenter's petition, are challenging the constitutionality of this system. They point out that in a world where almost everyone carries a cellphone and ever greater numbers of cell towers allow companies to collect ever more precise information about customers' whereabouts, the Stored Communications Act could be transformed into a warrantless tracking program for American citizens.

Data like cellphone location information was held, by the Sixth Circuit and other courts around the country, to be exempt from the Fourth Amendment's warrant requirement under the so-called "third-party doctrine." Simply put, the third-party doctrine holds that people do not have a reasonable expectation of privacy in information they voluntarily give out to other parties, like phone companies.

In the realm of electronic communication, it was solidified in the 1979 Supreme Court decision *Smith v. Maryland*, which held that "PEN registers," the phone company records of the phone numbers customers make and receive calls from, do not require a warrant to obtain because customers voluntarily provide that information to the phone company. To this day, police routinely request PEN registers of suspects and other relevant parties in criminal investigations.

The ACLU and the other groups involved are effectively arguing that the world has changed since 1979 and that the location data we provide phone companies is much more personal and extensive than the PEN-registers of 40 years ago. At least one federal appeals court, the Third Circuit, has entertained this notion, and Carpenter's lawyers are arguing there is a circuit split on the matter. In 2012's *United States v. Jones*, the Supreme Court also unanimously ruled against the constitutionality of using a GPS device to track a suspect's car for days without a warrant, a decision to which the ACLU made frequent reference in their petition.

Monday's decision to accept that petition and consider the case indicates at least four of the nine justices believe the case is worth hearing. The Court is, under normal circumstances, done hearing cases for the term in June. *Carpenter v. United States* is, therefore, likely to be heard in the fall, with a decision coming in early 2018.