

Can police obtain your cell phone records without a warrant?

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Usually overshadowed by the First Amendment, the Fourth Amendment is having its day in court. On November 29, 2017, the U.S. Supreme Court heard arguments in a case that will decide whether police need a warrant to obtain suspects' data from cell phone providers.

Digital evidence and the Fourth Amendment

Cell phone data is becoming increasingly significant as evidence in criminal trials. Text messages have supported [manslaughter](#) charges, cell phone photos have been used against [poachers](#), and in the current Supreme Court [case](#), call records placed a suspect near the scene of a series of armed robberies.

No one wants armed robbers and poachers to go free, but these cases raise significant questions about how the Fourth Amendment should be applied to technology that the Constitution's authors could never have imagined.

The Fourth Amendment states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Carpenter v United States

In 2012, the Supreme Court determined that GPS tracking requires a warrant, in [United States v Jones](#). Two years later, in [Riley v California](#), the Court ruled that data on a cell phone also requires a warrant.

The problem with this piecemeal approach is that technology advances faster than court cases can proceed. At issue in the current case, [Carpenter v United States](#), is whether the warrantless seizure and search of historical cell phone records over an extended time period is permitted by the Fourth Amendment.

In *Carpenter*, police obtained the suspect's cell phone records through a court order – not a warrant – issued under the federal [Stored Communications Act](#), which allows police to access cell phone transaction records from third-party service providers. Using the records secured via this so-called third-party doctrine, the police matched the suspect's calls to the locations of the cell phone towers that relayed them. This data, the most precise available seven years ago, placed him near each of the robberies at the times they occurred.

Today the amount and quality of data individuals must give up to [conveniently](#) perform mundane tasks has expanded so dramatically, the third-party doctrine enshrined in the Stored Communications Act seems almost glib. Justice Sonia Sotomayor seems to be a particularly ardent defender of the Fourth Amendment. In the *Jones* case, she questioned whether the third-party doctrine the Court has followed since the wire-tapping cases of the 1970s is appropriate in today's digital environment. So far, however, the Court has been reluctant to develop a new privacy paradigm. Will *Carpenter* be the case that redefines the Fourth Amendment for the modern age?