

Samuelson Law, Technology & Public Policy Clinic

## Cellphone Data Discovery and Fourth Amendment Privacy

Megan Graham  
August 4, 2021

Berkeley Law

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## Searches of Cell Phones Location Information

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### Cross-Cutting Questions

- **WHERE** is the information from? How did the government get it?
- **WHAT** statutory or constitutional authority did the government invoke?
- Is there a **WARRANT** or a clear warrant exception?
- Do you have **EVERYTHING** the government has access to or only a report/summary?

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# Searches of Cell Phones

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## Riley v. California

• 573 U.S. 373 (2014)




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## Post-Riley Practices

**APPLICATION FOR A SEARCH WARRANT**

I, John Richardson, a federal law enforcement officer or attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property:

**See Attachment A**

located in the State and District of Minnesota, there is now concealed:

See Attached List of Items to be Searched

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):


- evidence of a crime;
- contraband, fruits of crime, or other items illegally possessed;
- property designed for use, intended for use, or used in committing a crime;
- a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

<small><u>Code Section</u></small>	<small><u>Offense Description</u></small>
<small>Title 18 United States Code, Section 843(f)</small>	<small>damaging property used in interstate commerce by user or employees, etc.</small>
<small>Title 18 United States Code, Section 1461</small>	

**SEARCH WARRANT ADDENDUM**

1. In conducting the search authorized by this warrant, the government shall make reasonable efforts to utilize search methodology that avoids searching files, documents or other electronically stored information which is not identified in the warrant.
2. If electronically stored data, information, documents or other records have been identified and seized by the government pursuant to this warrant, the government may retain the electronic storage device (e.g., computer, hard drive, mobile device, smartphone, cell phone). The person from whom the electronic storage device was seized may request that the government provide him or her with electronic copies of the data, information, documents or other records by making a written request to the United States Attorney's Office, identifying with specificity the data, information, documents or other records sought to be copied. The government must respond to all such requests within a reasonable amount of time, and must provide a copy of the electronically stored data, information, documents or other records requested unless the copies requested constitute contraband, instruments of crime, or property subject to forfeiture.
3. Nothing in this warrant shall limit or prevent the government from seizing the electronic storage device as contraband or an instrumentality of a crime or commencing forfeiture proceedings against the electronic storage device and the data contained in the device. Nothing in this warrant shall limit or prevent the owner of the electronic storage device, files, software, hardware, data, information, documents or other records from (a) filing a motion with the Court pursuant to Rule 41(e) of the Federal Rules of Criminal Procedure for the Return of Property, or (b)

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**Post-Riley Practices**



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**Location Information**

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**Where is the data from?**



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***Carpenter v. United States***

- 138 S. Ct. 2206 (2018)



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**Post-Carpenter Practices**

- Narrow holding
- Broad reasoning



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### Jones v. United States

• 565 U.S. 400 (2012)



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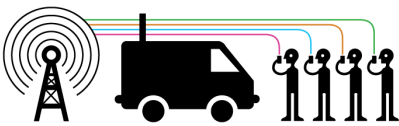
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### Post-Jones Cell Phone Tracking Issues

#### CELL-SITE SIMULATOR SURVEILLANCE

Cell-site simulators trick your phone into thinking they are base stations.



Depending on the type of cell-site simulator in use, they can collect the following information:

- 1. identifying information about the device like International Mobile Subscriber Identity (IMSI) number
- 2. metadata about calls like who you are dialing and duration of call
- 3. intercept the content of SMS and voice calls
- 4. intercept data usage, such as websites visited.

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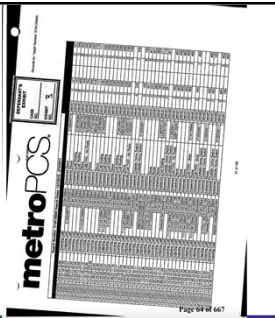
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### Data You Get in Discovery

Case No.	Case Name	Case Type	Case Status	Case Date	Case Location	Case Description
1	...	...	...	...	...	...
2	...	...	...	...	...	...
3	...	...	...	...	...	...
4	...	...	...	...	...	...
5	...	...	...	...	...	...
6	...	...	...	...	...	...
7	...	...	...	...	...	...
8	...	...	...	...	...	...
9	...	...	...	...	...	...
10	...	...	...	...	...	...



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