

No. 17-950

In the Supreme Court of the United States

ROSS WILLIAM ULBRICHT, PETITIONER

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT*

SUPPLEMENTAL BRIEF FOR THE PETITIONER

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Earlier today, this Court issued its decision in *Carpenter v. United States*, No. 16-402, holding that obtaining location information from a defendant’s wireless carriers pursuant to a statutory court order constitutes a Fourth Amendment search subject to the warrant requirement. Slip op. 17-18. The Court made clear that a warrant is required where “the suspect has a legitimate privacy interest in records held by a third party.” *Id.* at 21. In reaching that conclusion, the Court expressly rejected the government’s “primary contention” that the third-party doctrine adopted by the Court in the context of telephone

calls in *Smith v. Maryland*, 442 U.S. 735 (1979), should be applied to new categories of information made available by “seismic shifts in digital technology.” Slip op. 15-17.

The first question presented in this case is closely related to the question the Court resolved in *Carpenter*. In addressing that question in the decision below, the Second Circuit relied heavily on *Smith*’s third-party doctrine. The Second Circuit reasoned that, under *Smith*, “a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties,” and it deemed itself “bound” to apply *Smith* to modern technology absent this Court’s intervention. Pet. App. 32a-33a (internal quotation marks and citation omitted).

In light of this Court’s refusal to apply *Smith* in *Carpenter*, reconsideration of the Second Circuit’s reasoning is plainly warranted. Accordingly, the Court should grant the petition for certiorari, vacate the judgment below, and remand the case for further consideration in light of *Carpenter*. In the alternative, the Court may wish to grant the petition as to the second question (and thereby defer the first question for any subsequent proceedings on remand).

Respectfully submitted.

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