No. 25-112

In the Supreme Court of the United States

OKELLO T. CHATRIE, *Petitioner,*

v.

UNITED STATES

On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Fourth Circuit

BRIEF OF *AMICUS CURIAE*
PROJECT FOR PRIVACY & SURVEILLANCE ACCOUNTABILITY, INC.
SUPPORTING PETITIONER

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QUESTIONS PRESENTED

1. Can the government demand a multi-hour slice of a comprehensive database of numerous individuals' movements using a geofence warrant in an effort to track all persons within a specified geographic area and time?

2. Should the exclusionary rule apply to the evidence derived from the geofence warrant?

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INTRODUCTION, SUMMARY, AND INTEREST OF *AMICUS CURIAE*[1]

This case presents an exceptionally important Fourth Amendment question: Can the government demand, without a warrant, a multi-hour slice of a comprehensive database of numerous individuals' movements in an effort to track all persons within a specified geographic area and time? The principles underlying this Court's Fourth Amendment caselaw strongly suggest this increasingly widespread practice violates the Constitution because it is incompatible, as this Court put it in *Carpenter* v. *United States*, 585 U.S. 296 (2018), with "that degree of privacy against government that existed when the Fourth Amendment was adopted." *Id.* at 305. But federal and state courts—including the Fourth Circuit here—continue to treat *Carpenter* as the exception rather than the rule. This Court should grant certiorari to clarify the core rules that (1) customer data stored with third parties still carries a reasonable expectation of privacy and remains protected by the Fourth Amendment, and (2) *Carpenter* is not limited merely to *long-term intervals* of such long-term data held by third parties.

Carpenter correctly recognized that the Fourth Amendment protects privacy interests that would have been recognized as reasonable at the Founding. Such expectations set the baseline for measuring

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[1] This brief was not authored in whole or in part by counsel for any party and no person or entity other than *amicus curiae* or its counsel has made a monetary contribution toward the brief's preparation or submission. Counsel of record for all parties received timely notice of *amicus'* intent to file this brief.

modern encroachments on privacy, notwithstanding advances in technology that make it easier to invade that privacy. Under such baseline expectations, merely storing property or information with third parties, under contractual assurances of privacy and security, does not vitiate reasonable expectations of privacy, particularly as against the government. Nor do those privacy expectations cease because the government demands a shorter view of the comings-and-goings of the persons within a geofence: The government is still demanding surveillance of *each person* within that fence, essentially amounting to a general warrant.

The Fourth Circuit ignored these basic principles and this Court's guidance. It mistakenly treated temporal and geographic limits on what is essentially a general search warrant and limited-purpose disclosure to and storage by a third party—here Google—as sufficient to destroy any expectation of privacy that Petitioner Okello Chatrie had in his location data. Of course, Chatrie was not the only person whose privacy interests were violated here: As with any geofence warrant, innocent bystanders were also subject to the government's retroactive surveillance of their movements. The Fourth Circuit's decision was both wrong and dangerous, and it should not be allowed to stand.

Because of the serious privacy issues geofence warrants raise, they are of particular concern to *Amicus Curiae* Project for Privacy & Surveillance Accountability, Inc. (PPSA), a nonprofit, nonpartisan organization dedicated to protecting privacy rights. PPSA files this brief to urge this Court to reverse the

Fourth Circuit's decision, hold that Americans have a reasonable expectation of privacy in even short-term portions of long-term tracking databases, and thus ensure that Fourth Amendment rights are not left "at the mercy of advancing technology." *Carpenter*, 585 U.S. at 305 (citation omitted).

STATEMENT

In the underlying case, a detective attempting to solve a bank robbery applied for a "geofence warrant" requiring Google to identify all individuals passing within a 300-meter circle centered on the bank during a one-hour period. Pet.292a-294a. This search included a swath of urban Midlothian, the bank, and a nearby church. Pet.294a. Ultimately, the detective settled on Chatrie, who was indicted on charges related to the bank robbery.

When Chatrie moved to suppress the fruits of the geofence warrant, the district court held the warrant violated the Fourth Amendment because the government lacked "any semblance of *** particularized probable cause" to search every one of the nineteen users swept into the geofence. Pet.312a. And the district court recognized that under *Carpenter* "a user simply cannot forfeit the protections of the Fourth Amendment for years of precise location information by selecting 'YES, I'M IN'," and that Google's warnings were insufficient to provide for voluntary consent. Pet.333a. Yet the district court declined to suppress the evidence based on the good-faith exception.

On appeal, a divided panel of the Fourth Circuit affirmed on alternative grounds, holding that no

warrant was even required. The court reasoned that the limits on location tracking from *Carpenter* applied only to longer-term tracking and that Chatrie had voluntarily exposed his information to Google. Pet.148a. The dissent concluded that, under *Carpenter*, the geofence warrant here resulted in a Fourth Amendment search. Pet.187a.

The *en banc* Fourth Circuit agreed to rehear the case but hopelessly fractured. The court divided 7-7 on whether a Fourth Amendment search had even occurred, with one judge declining to reach the issue. Nine separate opinions sought to resolve the issue now before this Court, and the *en banc* court ultimately affirmed in a one-sentence per curiam opinion without any reasoning. Pet.4a.

ADDITIONAL REASONS FOR GRANTING THE PETITION

This case presents an enormously important Fourth Amendment question that has divided federal and state courts, generating splits between the Fourth and Eleventh Circuits on one side and the Fifth Circuit on the other. In contrast to the Fourth Circuit's decision, the Fifth Circuit correctly held that, not only is there an expectation of privacy in location data, but broad geofence warrants are inherently unconstitutional. Compare *United States* v. *Davis*, 109 F.4th 1320, 1330 (11th Cir. 2024) with *United States* v. *Smith*, 110 F.4th 817, 835-838 (5th Cir. 2024). This intercircuit split now also includes a state-federal split between the Fifth Circuit and the Texas Court of Criminal Appeals. And these splits should be resolved now.

In that regard, *Amicus* agrees with Petitioner (at 2-3) that the "privacy concerns arising from geofence warrants are even greater than the privacy concerns at issue in *Carpenter*." That is because the location data at issue in *Carpenter* involved only "the movements of a single individual suspected of a crime based on the movements of his cell phone," whereas geofence warrants involve such data for "*all* people who were at a sensitive location"—in this case a bank, but just as easily "an abortion clinic, a protest, [or] a political party's convention—at a particular time." Pet.3. The Fourth Circuit's erroneous application of *Carpenter* is but one of many examples of federal and state courts abandoning all semblance of Founding Era privacy and concluding that Americans have no Fourth Amendment protections against a host of intrusive surveillance practices. That conclusion and similar holdings will continue to drastically undermine Americans' privacy as third-party storage becomes increasingly common and inescapable.

Amicus writes separately to emphasize that, as *Carpenter* clarified, Fourth Amendment protections are not categorically lost when a person shares or stores his data with a third party while maintaining reasonable expectations and assurances of privacy. The Court should grant review to prevent a contrary understanding of *Carpenter* from continuing to erode Americans' privacy—especially now, as third-party storage becomes more ubiquitous and artificial intelligence becomes powerful enough to piece together intimate information from seemingly innocuous details about a target's life.

I. This Court Should Correct Erroneous Misinterpretations of the Post-*Carpenter* Third-Party Doctrine.

The Fourth and Eleventh Circuit's decisions contravene this Court's repeated holdings that the Fourth Amendment protects "that degree of privacy against government that existed when [it] was adopted." *Carpenter*, 585 U.S. at 305 (quoting *Kyllo* v. *United States*, 533 U.S. 27, 34 (2001)). This is true in the context of the third-party doctrine as well, especially regarding the location data at issue here—that of *all users* entering a specific area during a particular period.

A. The use of geofence warrants is exploding.

The warrants here present a significant Fourth Amendment issue and may determine the geofence policies of law enforcement agencies throughout the nation for many years. Far from a minor or occasional concern, such warrants "have become increasingly common," Haley Amster & Brett Diehl, *Against Geofences*, 74 Stan. L. Rev. 385, 388 (2022). While the true number of requests is not known given their issuance to multiple companies, the burden imposed by them has become so severe that Google recently changed its location tracking system to protect itself and its customers. See *Smith*, 110 F.4th at 822 n.3.

Beyond the increasing use of such warrants, this Court has emphasized that courts and law enforcement personnel have a constitutional duty to ensure they do not leave the public's Fourth Amendment rights "'at the mercy of advancing

technology.'" *Carpenter*, 585 U.S. at 305 (citation omitted). Rulings made about current technology should be forward looking regarding the rule's impact on privacy, and "the rule the Court adopts 'must take account of more sophisticated systems that are already in use or in development.'" *Id.* at 313 (quoting *Kyllo*, 533 U.S. at 36).

Here, systems already in development could enable even more intrusive forms of geofenced data searches and seizures. For instance, instead of requesting the location history of all individuals within a geofence for further scrutiny, it may soon be possible to request all photos that seemingly were taken within the geofence. Even photos that do not ordinarily contain geolocation data could be scanned for other locational clues and turned over to law enforcement. Indeed, researchers have demonstrated artificial intelligence that can estimate—with surprisingly high accuracy—locations from photographs.[2]

And those demonstrations are now operational and in use by law enforcement. Enter GeoSpy, an AI tool that can examine a photograph and extrapolate its location in seconds using only visual data, not metadata. GeoSpy's abilities are not limited to outdoor photographs with identifiable public landmarks. Its visual model has become so advanced that GeoSpy has

[2] See Lukas Haas et al., *PIGEON: Predicting Image Geolocations*, *in* 2024 IEEE/CVF Conference on Computer Vision and Pattern Recognition (CVPR) 12893 (2024), https://tinyurl.com/5azmd2fa.

learned "regional architectural cues," and can identify locations for *indoor photographs*.[3]

The Fourth Circuit's reasoning that no warrant is required to request or seize limited-time geofence data could easily justify demands for still more limited-time slices of geofenced information, such as all photos or videos in Google's or Apple's cloud that match particular locations and times. The danger to constitutionally protected privacy, both under present and future technology, makes the Fourth Circuit's decision ripe for review.

B. Lower courts are split.

A split between circuits and between the Fifth Circuit and Texas state courts on this issue also warrants review. The Fourth Circuit held a warrant is not even required for certain geofence data seizures. A few weeks later, the Eleventh Circuit agreed. *Davis*, 109 F.4th at 1330. But then the Fifth Circuit split from those courts and held that geofence warrants and search requests are unconstitutional in nearly all cases. *Smith*, 110 F.4th at 835-838. The Texas Court of Criminal Appeals disagreed, badly fracturing into multiple non-majority opinions. *Wells* v. *Texas*, 714 S.W.3d 614 (Tex. Crim. App. 2025). The court agreed, however (save for one Justice), that either no search occurred, *id.* at 627 (opinion of Finley, J.) (finding no search); *id.* at 630 (opinion of Newell, J.) (same for first two geofence warrant steps), or that a search occurred but was supported by probable cause and was

[3] Proj. for Priv. & Surveillance Accountability, Inc., *Meet America's Latest Mass Surveillance Tool: GeoSpy* (Aug. 18, 2025), https://tinyurl.com/mtwf8cky.

sufficiently particularized, *id.* at 626 (opinion of Yeary, J.).

The consequences of this split are exacerbated by the possibility of "spillover" between conflicting circuits: A warrant issued in one circuit could lead to an arrest and trial of a defendant in another circuit. See, *e.g.*, Fed. R. Crim. Proc. 20 (noting that a "prosecution may be transferred from the district *** from which a warrant on a complaint has been issued, to the district where the defendant is arrested"). Similarly, a warrant issued in the Texas state system could lead to an arrest and trial in the federal system. The existing split and its significant cross-circuit and state-federal implications are yet further strong grounds for this Court's review.

II. Geofenced Data Seizures Are a Fourth Amendment Search.

On the merits, this Court should reverse the Fourth Circuit's decision. A Fourth Amendment search or seizure occurs when information or items are obtained or seized, the person has a subjective expectation of privacy in the information or items searched or seized,[4] and the expectation would have been recognized as reasonable at the time of the Founding or is necessary to preserve Founding Era levels of privacy. See *Carpenter*, 585 U.S. at 304-305; *Katz* v. *United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring). *Carpenter*, moreover, explained that the reasonableness of an expectation of

[4] A subjective expectation of privacy merely requires "seek[ing] to preserve something as private." *Smith* v. *Maryland*, 442 U.S. 735, 740 (1979) (cleaned up). This is easily satisfied here.

privacy should be evaluated using the totality of the circumstances, and disclosure to a third party is simply one among multiple circumstances affecting reasonableness. Nor is *Carpenter* restricted to seizures of longer-term "slices" or "windows" of movement history: That decision expressly declined to approve seizures of short-term windows of information, 585 U.S. at 310 n.3, and there are ample other factors supporting application of the Fourth Amendment's requirements here.

A. *Carpenter*'s totality-of-the-circumstances analysis should be applied in every case.

Carpenter lies "at the intersection of two lines of cases," 585 U.S. at 306, that both ultimately address the same question: Does a reasonable expectation of privacy exist? *Carpenter* explains that an expectation of privacy is reasonable when it would have been recognized as reasonable at the Founding or is necessary to preserve a Founding Era degree of privacy. See, *e.g., id.* at 305 ("As technology has enhanced the Government's capacity" to surveil, "this Court has sought to 'assure * * * preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted.'" (quoting *Kyllo*, 533 U.S. at 34)).[5]

To achieve that end, *Carpenter* evaluates reasonableness using a totality-of-the-circumstances formula, with history and certain "guideposts" to be considered. *Id.* at 304-305. Just as with other totality-

[5] See also *Carpenter*, 585 U.S. at 304-305 (quoting *Carroll* v. *United States,* 267 U.S. 132, 149 (1925) (footnote omitted)); *id.* at 320.

of-the-circumstances tests—such as *Miranda* analysis—circumstances in individual cases are factor-like, even if they do not generate a traditional balancing test. See, *e.g.*, *Maryland* v. *Shatzer*, 559 U.S. 98, 103, 106-107 (2010) (citing *Miranda* v. *Arizona,* 384 U.S. 436, 456-457 (1966)) (comparing to specific facts in *Miranda*).

The Fourth Circuit thus erred by reducing the relevant circumstances in *Carpenter* to mere supporting observations for a more limited rule restricting Fourth Amendment protections to long-term tracking data, rather than factor-like circumstances to apply prospectively to any type of personal data the government seeks to access, long-term, short-term, or otherwise.[6] Indeed, the *Carpenter* court explicitly declined the "parties['] suggest[ions]" that tracking "becomes a search only if it extends beyond a limited period" such as "a 24-hour cutoff." *Carpenter,* 585 U.S. at 310 n.3. And it is unlikely that a 24-hour period would be qualitatively different than the 2-hour period here in terms of its ability "in isolation" to reveal private information, such as who a person might have visited, what meetings they might have gone to, or any other private information that could easily be revealed by a two-hour window into a person's movements. Pet.177a-178a. And the *Carpenter* Court, despite addressing Justice Kennedy's dissent at length, did not challenge his characterization of the decision as a "multifactor analysis—considering intimacy, comprehensiveness,

[6] See *Chatrie*, 107 F.4th at 333 (quoting *Carpenter*, 585 U.S. at 310-311).

expense, retrospectivity, and voluntariness." *Carpenter*, 585 U.S. at 340 (Kennedy, J., dissenting).

In all events, the varying interpretations of *Carpenter* cry for this Court's review of the questions presented here.

B. *Carpenter* clarifies that turnover to a third party is only one consideration affecting expectations of privacy.

As to whether third-party access to data vitiates any reasonable expectation of privacy, the Fourth Circuit is technically correct that *Carpenter* itself "did not reduce the [third-party] doctrine to one factor in a totality-of-the-circumstances balancing inquiry." Pet.182a. Instead, *Carpenter* clarified that the third-party line of cases *always* viewed disclosure to a third party as merely one factor in that inquiry. 585 U.S. at 314 ("*Smith* and *Miller,* after all, did not rely solely on the act of sharing. Instead, they considered 'the nature of the particular documents sought' to determine whether 'there is a legitimate "expectation of privacy" concerning their contents.'" (quoting *United States* v. *Miller*, 425 U.S. 435, 442 (1976))).

This is true even if information is knowingly or voluntarily given to a third party. *Id.* at 314 ("The third-party doctrine partly stems from the notion that an individual has a reduced expectation of privacy in information knowingly shared with another. But the fact of 'diminished privacy interests does not mean that the Fourth Amendment falls out of the picture entirely.'" (quoting *Riley* v. *California,* 573 U.S. 373, 392 (2014))). Indeed, *Carpenter* discussed the issue of involuntary disclosure only as an alternative

argument, *after* concluding there was a reasonable expectation of privacy in the data at issue despite being stored by a third party. See *id.* at 315 ("Neither does the second rationale underlying the third-party doctrine—voluntary exposure—hold up when it comes to [cell-site location information].").

In short, under *Carpenter,* the mere fact that individuals allow some third parties access to data for particular purposes hardly suggests abandonment of a reasonable expectation of privacy as to access by others—especially the government. Letting a plumber into your house to fix a sink does not mean you have no expectation of privacy when the police come knocking.

Here again, the lower courts' confusion about this aspect of *Carpenter* likewise cries out for this Court's review.

C. Seizure of even short-term slices of comprehensive cell-phone-location records is incompatible with Founding Era levels of privacy.

Applying *Carpenter*'s totality of the circumstances test shows there is clearly an expectation of privacy in the data here, which is nearly identical to that in *Carpenter*. Such data allows easy and inexpensive access to a "deep repository of historical location information at practically no expense." *Carpenter*, 585 U.S. at 311. It "achieves near-perfect surveillance," "runs against everyone," and allows the government to "travel back in time to retrace a person's whereabouts." *Id.* at 312.

The only differences here are nominal knowledge, nominal supposed consent, and the use of a shorter slice of an extraordinarily long-term tracking program. But it is hard to imagine, either at the Founding Era or even before the digital age, any ordinary citizen feeling comfortable giving a government official the ability to glimpse back at a near-perfect record of years' worth of the individual's movements—even if the window in some cases is only a few hours, and even if it was nominally voluntarily disclosed to a corporation.

This Court should thus grant review and then hold there is a reasonable expectation of privacy in such data.

III. Geofence Warrants Are Unconstitutional Because They Are Not Based on Probable Cause for Most Individuals Surveilled.

Geofence warrants inherently lack the particularity required by the Fourth Amendment in all but the most extreme circumstances, *e.g.*, when every person within the specified geofence satisfies probable cause for the crime.

As this Court has recognized, cellphones are now so "pervasive and insistent" in modern life that to an extraterrestrial visitor, they might be mistaken for a "feature of human anatomy." *Riley*, 573 U.S. at 385. Most Americans "compulsively" carry their phones constantly. *Carpenter*, 585 U.S. at 311.

The record, moreover, reflects that there are 1.5 billion Google users, of which about one third—hundreds of millions—have enabled Location History. Pet.274a. As with the cell-site location information

this Court addressed in *Carpenter*, those phones' location-tracking capabilities produce a "deep repository of historical location information" of users' daily movements accessible with "just the click of a button" and at "practically no expense." *Carpenter*, 585 U.S. at 311-312. And just as in *Carpenter*, because this information is collected for nearly all users at all times, "police need not even know in advance whether they want to follow a particular individual, or when." *Id.* at 312. The resulting system of "near perfect surveillance" is as if the government had "attached an ankle monitor" to tens of millions of Americans. *Ibid.*

The Fifth Circuit reasoned that barging into this trove of intimate information is a modern incarnation of the "reviled 'general warrants' and 'writs of assistance' of the colonial era." *Smith*, 110 F.4th at 836. General warrants specify an offense but allow officers the discretion to determine which persons to arrest and which places to search. *Ibid.* The Fifth Circuit drew a parallel to the first step of Google's geofence response protocol, which is to search the entire Google database—all 592 million individual accounts—for users who were at a particular location at a given moment, even though law enforcement does not yet know—and may never know—who they are looking for. *Id.* at 837. Accordingly, the Fifth Circuit correctly held that "geofence warrants fail at Step-1—they allow law enforcement to rummage through troves of location data from hundreds of millions of Google users without any description of the particular suspect or suspects to be found." *Id.* at 837-838.

The Founders would have been shocked to see privacy brought to this sorry state. And they doubtless

would have considered such warrants part of that "long train of abuses" tending to "reduce [the People] under absolute Despotism." See Decl. of Independence para. 2 (U.S. 1776). That too is a powerful reason supporting this Court's review of the decision below.

CONCLUSION

Geofence warrants combine previously unimaginable and precise retrospective surveillance with something akin to a general warrant. This Court should enforce the Fourth Amendment against geofence warrants and similar advances in technology by granting review and then holding that there is a reasonable expectation of privacy in cell-phone location data, even for short-term snippets taken from a long-term compilation.

Respectfully submitted,

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