

No. 25-112

IN THE
Supreme Court of the United States

OKELLO T. CHATRIE,
Petitioner,
v.
UNITED STATES,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

**BRIEF *AMICUS CURIAE* OF THE
NEW CIVIL LIBERTIES ALLIANCE
IN SUPPORT OF PETITIONER**

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INTEREST OF *AMICUS CURIAE*¹

The New Civil Liberties Alliance (“NCLA”) is a nonpartisan, nonprofit civil-rights organization and public-interest law firm devoted to defending constitutional freedoms from the administrative state’s depredations. Professor Philip Hamburger founded NCLA to challenge multiple constitutional defects in the modern administrative state through original litigation, *amicus curiae* briefs, and other advocacy.

The “civil liberties” of the organization’s name include rights at least as old as the U.S. Constitution itself, such as the right to a jury trial, to due process of law, and to be free from unreasonable searches and seizures. These selfsame civil rights are also very contemporary—and in dire need of renewed vindication—precisely because Congress, executive branch officials, administrative agencies, and even some courts have neglected them for so long.

NCLA aims to defend civil liberties—primarily by asserting constitutional constraints against the modern administrative state. Although Americans still enjoy the shell of their Republic, a very different sort of government has developed within it—a type that the Constitution was designed to prevent. This unconstitutional state within the Constitution’s United States is the focus of NCLA’s concern.

¹ No party’s counsel authored any portion of this brief, and no party, party counsel, or other person other than *amicus curiae* made a monetary contribution intended to fund this brief’s preparation or submission. *See* S. Ct. R. 37.6.

Federal and State governments' increasing efforts to surveil the American public through automated information-collection technologies causes particular concern for NCLA. All too often, executive officers seize upon technological innovation to carry out unprecedented and dangerous intrusions into Americans' private lives. NCLA seeks to ensure that executive officers are prohibited from exploiting the character of constantly modernizing surveillance technology to evade the clear constraints the Fourth Amendment places on them.

NCLA was founded to restore constitutional limits on administrative power and to protect the civil liberties of all Americans, including the right to be free from unreasonable searches and seizures. Geofence warrants—which function identically to the general warrants of the colonial era—flout the very purpose of the Fourth Amendment: to secure the people in their persons and property against arbitrary government intrusion. By authorizing sweeping, suspicionless dragnets untethered to individualized probable cause, geofence warrants effectively grant the Executive a license to search first and justify later. This structural inversion of the Fourth Amendment's warrant requirement violates the Constitution.

SUMMARY OF ARGUMENT

This case asks whether the Constitution imposes any barriers to the government's use of highly advanced technology to collect, without individualized suspicion or probable cause, the detailed location history of individuals who happened to be near the location of a suspected crime on a particular day. More specifically, does the use of a geofence warrant

constitute an unreasonable Fourth Amendment “search” in the first instance? And more broadly, do geofence warrants resemble the “reviled” general warrants of the colonial period—which motivated the Fourth Amendment’s adoption?

This Court’s holding in *Carpenter* that individuals have a reasonable expectation of privacy “in the whole of their physical movements” resolves the first question. *Carpenter v. United States*, 585 U.S. 296, 310 (2018). Geofence warrants allow the government to collect granular location data from all cell phone users within a specified geographical area over a particular span of time. *See United States v. Chatrue*, 590 F. Supp. 3d 901, 905 (E.D. Va. 2022). Location data collection through a geofence is so detailed and precise that even a short snippet can allow law enforcement to retrace an individual’s physical movements. Geofenced location data is thus capable of revealing the “privacies of life.” *Carpenter*, 585 U.S. at 311. And because it is remarkably fast, easy, and cheap to collect, geofence data effectuates the very sort of “too permeating police surveillance” that runs counter to the entire logic of the Fourth Amendment. *Id.* at 305.

In effect, geofence warrants are also unconstitutional general warrants. They dispense with the Fourth Amendment’s requirement that warrants only issue upon probable cause and particularly describe “the place to be searched, and the persons or things to be seized.” U.S. Const. amend. IV. Their structure mirrors the “reviled” general warrants and writs of assistance the Founding generation repudiated. In doing so, geofence warrants give to the Executive broad

discretion to request and obtain sweeping location data about numerous people, entirely unchecked by a neutral magistrate. *See United States v. Smith*, 110 F.4th 817, 837-37 (5th Cir. 2024).

The Court should hold that the government’s collection of location data via a geofence constitutes a search subject to the Fourth Amendment, and that geofence warrants are unconstitutional general warrants. The Court should reaffirm that *Carpenter* is not narrowly confined to the unique set of facts in that case and instead applies with equal force whenever the government uses advanced surveillance technology to arbitrarily intrude on privacy rights, as it has done here. The judgment of the Fourth Circuit should thus be reversed.

ARGUMENT

I. THE COLLECTION OF LOCATION HISTORY VIA A GEOFENCE CONSTITUTES A FOURTH AMENDMENT “SEARCH” UNDER *CARPENTER*

Although no single rubric defines which expectations of privacy are entitled to protection, the analysis is anchored in historical understandings “of what was deemed an unreasonable search and seizure” at the Founding. *Carpenter*, 585 U.S. at 305 (citation omitted). Even “[a]s technology has enhanced the Government’s capacity to encroach upon areas normally guarded from inquisitive eyes,” the Supreme Court “has sought to assure [] preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted.” *Id.* (citing *Kyllo v. United States*, 533 U.S. 27, 34 (2001)). After all, “a central aim of the Framers was

‘to place obstacles in the way of a too permeating police surveillance.’” *Id.* (citation omitted).

The “guideposts” the Court followed in reaching its decision that the government’s warrantless access of cell-site location information (CSLI) violated the Fourth Amendment in *Carpenter v. United States* must likewise guide the analysis of geofence warrants, which intrude even more severely on privacy rights. As the Court in *Carpenter* explained, whether the government has violated one’s reasonable expectation of privacy in the whole of their physical movements turns on two key factors: (1) whether the government used a digital technology to obtain information that would have historically been impossible to obtain without that technology, and (2), whether that information tends to reveal the “privacies of life.” *Carpenter*, 585 U.S. at 311-13; see also Orin S. Kerr, *The Digital Fourth Amendment: Privacy and Policing in Our Online World*, 155 (2025) (Explaining that *Carpenter* works at a high level of generality and asks whether “police traditionally have easy access to detailed location tracking records” and whether they “have that access today.”). Each of these factors is satisfied here, compelling the conclusion that Fourth Amendment protection extends to geofenced location history.

The information that law enforcement can collect through a geofence would have been impossible to collect prior to the digital age and before the advent of cell phones. And cell phone location history is extraordinarily detailed and precise, such that even two hours of this data gathered pursuant to a geofence warrant is capable of revealing the “privacies of life.” *Carpenter*, 585 U.S. at 311-13. For these reasons, the

Court should conclude that the use of a geofence to collect Chatrie’s location history constituted a search within the meaning of the Fourth Amendment, because, per *Carpenter*, the collection of location information through geofences intrudes on one’s expectation of privacy in the “whole of their physical movements.” *Id.* at 310.

A. Geofenced Location History Is Precise, Detailed, and Encyclopedic and Thus Capable of Revealing the “Privacies of Life”

Starting with the “privacies of life” prong, *Carpenter* expounded the principle that an individual “does not surrender all Fourth Amendment protection by venturing into the public sphere.” *Carpenter*, 585 U.S. at 310. As lower courts have recognized, the Fourth Amendment does not protect a single viewing of a person nor effect what is publicly visible. See *United States v. Knotts*, 460 U.S. 276, 281-82 (1983). But the sum of an individual’s public movements can provide “an intimate window into [that] person’s life, revealing not only his particular movements, but through them his ‘familial, political, professional, religious, and sexual associations.” *Carpenter*, 585 U.S. at 311 (citing *Jones*, 565 U.S. at 415 (Sotomayor, J., concurring)). That is why the government’s use of technology to monitor public movements more pervasively can trigger the warrant requirement even if an officer could have, conceivably, conducted the same search in a single instance.

Carpenter made clear that whether the government’s particular use of a digital surveillance tool tends to reveal the privacies of life is fact-

intensive and requires an assessment of both the quantity *and* quality of the information collected. The Court assessed factors including the scope, duration, invasiveness, precision, and the length of time gathered information is kept. *Carpenter*, 585 U.S. at 320 (explaining that CSLI is entitled to Fourth Amendment protection in light of its “deeply revealing nature” and its “depth, breadth, and comprehensive reach.”). Each of these factors informed the Court’s analysis as to whether the location data at issue could allow law enforcement to draw certain inferences about Carpenter himself. *Id.* And it is precisely the *capability* of collected data to enable “deductions from the whole of individuals’ movements” that is constitutionally suspect because it is those deductions that reveal the “privacies of life.” *Leaders of a Beautiful Struggle v. Baltimore Police Dep’t*, 2 F.4th 330, 345 (4th Cir. 2021).

Thus, the fact that CSLI data in *Carpenter* spanned a period of seven days was not dispositive. Rather, it was just one factor the court considered in its multifactor analysis of whether the collection of this information violated Carpenter’s reasonable expectation of privacy in the “whole” of his physical movements. *Carpenter*, 585 U.S. at 311; *see also* Joshua L. Wagner, *The Qualitative Fourth Amendment: The Case for a Refined, Information-Focused Approach to Fourth Amendment Cases Involving Non-Trespassatory Government Surveillance*, 62 WM. & MARY L. REV. 1727, 1740 (2021).

The Fourth Circuit panel mistakenly treated quantity as dispositive. It concluded that the two hours’ worth of Chatrie’s location history glimpsed

only a “single trip in isolation,” and thus “could not itself enable sound deductions about [his] habits, routines, and associations.” *United States v. Chatrie*, 107 F.4th 319, 335 (4th Cir. 2024). That reasoning mischaracterizes *Carpenter*’s analytical framework and disregards the qualitative power of geofence data, dramatically understating what such information can reveal about a person’s life.

The “potential intrusiveness of even a snapshot of precise location data” collected via a geofence “should not be understated.” *United States v. Smith*, 110 F.4th 817, 833 (5th Cir. 2024). As the district court recognized, geofenced location history, even spanning just two hours, is “detailed, encyclopedic, and effortlessly compiled.” *United States v. Chatrie*, 590 F. Supp. 3d 901, 936 (E.D. Va. 2022). Location history “can often reveal a user’s location and movements with a much higher degree of precision than [CSLI].” *Id.* at 907 n. 5. This precision stems from the fact that it “is determined based on ‘multiple inputs,’ including GPS signals, signals from nearby Wi-Fi networks, Bluetooth beacons, and cell towers.” *United States v. Rhine*, 652 F. Supp. 3d 38, 67 (D.D.C. 2023) (citation omitted). Indeed, location history has been described as “the most sweeping, granular, and comprehensive tool—to a significant degree—when it comes to collecting and storing *location* data.” *Chatrie*, 590 F. Supp. 3d at 907 (emphasis in original). And because a cell phone “faithfully follows its owner beyond public thoroughfares,” *Carpenter*, 585 U.S. at 311, location history can reveal an individual’s movements in areas “considered some of the most private and intimate, particularly residences.” *Smith*, 110 F.4th at 833.

That Chatrie did not “contend that the warrant revealed his own movements” does not automatically mean there was no Fourth Amendment search. See *Chatrie*, 107 F.4th at 330 n.17. That conclusion is not what *Carpenter* instructs. The *Carpenter* inquiry focuses on whether collected data, taken as a whole, *could* open an “intimate window” into an individual’s life and does not necessitate a retroactive examination based on the actual results of a particular search. *Smith*, 110 F.4th at 832; see also *id.* at n. 8 (explaining that, under *Carpenter*, the question is whether the data “has the *capability* of revealing intimate, private details about a person’s life, thus conferring a reasonable ‘expectation of privacy.’”) (emphasis added) (citation omitted)). Because the location history collected through a geofence here *could* allow the government to deduce information about Chatrie’s “associations and activities,” it violates his “reasonable expectation of privacy in the whole of his physical movements.” *Carpenter*, 585 U.S. at 313; see also *Beautiful Struggle*, 2 F.4th at 345.

B. Geofence Warrants Violate the Fourth Amendment by Effectuating a “Too Permeating Police Surveillance”

Consistent with *Carpenter*, the Court must consider whether geofenced location history effectuates “a too permeating police surveillance,” which the Fourth Amendment was designed to impede. *Carpenter*, 585 U.S. at 305 (quoting *United States v. Di Re*, 332 U.S. 581, 595 (1948)). After all, the privacy-based approach of the Fourth Amendment “limits the government’s ability to exploit technological advances.” *United States v. Lewis*, 38 F.4th 527, 534 (7th Cir. 2022) (citing *Kyllo*, 533 U.S.

at 34-35). This characteristic of modern technology—its lower and sometimes negligible cost combined with 24-hour surveillance capability—creates the Fourth Amendment violation. *See e.g., United States v. Jones*, 565 U.S. 400, 415-16 (2012) (Sotomayor, J., concurring).

In *Knotts*, this Court held that the government’s use of a “beeper” to aid in tracking a single vehicle through traffic did not constitute a “search” under the Fourth Amendment. 460 U.S. at 281. While the beeper augmented police’s visual surveillance of *Knotts*’s vehicle, the vehicle’s route had been “voluntarily conveyed to anyone who wanted to look” at the public roads—and thus *Knotts* could not assert a privacy interest in the information obtained from the beeper. *Id.* But the Court in *Knotts* recognized that “twenty-four-hour surveillance of any citizen of this country[’s]” public movements would present an entirely different constitutional question. *Id.* at 283-84. And when confronted with that question, *Carpenter* readily saw the Fourth Amendment violation: “[W]hen the Government tracks the location of a cell phone it achieves near perfect surveillance, as if it had attached an ankle monitor to the phone’s user.” *Carpenter*, 585 U.S. at 311-12; *see also Mexican Gulf Fishing Co. v. United States Dep’t of Com.*, 60 F.4th 956, 970 (5th Cir. 2023) (holding that government’s 24-hour warrantless tracking of chartered fishing boats via a device raises serious Fourth Amendment concerns).

“In the past, attempts to reconstruct a person’s movements were limited by a dearth of records and the frailties of recollection.” *Carpenter*, 585 U.S. at 312; *see also Jones*, 565 U.S. at 415-16 (Sotomayor, J.,

concurring). The ability to reconstruct one's physical movements through geofenced location data, however, gives law enforcement access to information "otherwise unknowable." *Carpenter*, 585 U.S. at 312 ("With access to CSLI, the Government can now travel back in time to retrace a person's whereabouts."). Even more concerning is the fact that cell phone location history "runs against everyone." *Id.* "Unlike with the GPS device in *Jones*, police need not even know in advance whether they want to follow a particular individual, or when." *Id.* The Supreme Court has imposed guardrails previously on this type of widespread public surveillance by rejecting "dragnet type law enforcement," *Knotts*, 460 U.S. at 283-284. It should do so again, here.

Historically, a government that wished to track its citizens had to devote significant resources to having them followed. That is no longer the case: While a police officer needs to be paid and to sleep, eat, and take breaks, cell phones do not. They are constantly tracking and logging the user's location—which would be impossible to effectuate using traditional tools of surveillance and would certainly have been impossible even to imagine at the time the Fourth Amendment was adopted.

Perhaps, near the Founding era, only Jeremy Bentham imagined this level and degree of surveillance. He coined the term "Panopticon" to denote a prison wherein all inmates would be subject to 24-hour surveillance by an unseen observer. *See* JEREMY BENTHAM, PANOPTICON, OR THE INSPECTION HOUSE (1791). But even he never suggested such a

system for free men as a routine part of everyday life.² The Court should thus adhere to its prior decision in *Carpenter* and hold that the government’s collection of geofenced location history effectuates a “too permeating police surveillance” of the kind the Fourth Amendment was designed to impede. *Carpenter*, 585 U.S. at 305; *see also Smith*, 110 F.4th at 841 (Ho, J., concurring).

In the years after this Court’s decision in *Carpenter*, lower courts have rigidly confined the decision to its specific facts, regarding it as a limited departure from settled Fourth Amendment doctrine rather than new controlling precedent. *See, e.g., United States v. Tuggle*, 4 F.4th 505, 525 (7th Cir. 2021) (“Until the Supreme Court or Congress instructs otherwise, we will read *Carpenter* as limited to the unique features of the historical CSLI at issue there, as distinct from the real-time video footage here.”). And while the application of the Fourth Amendment is highly fact specific, lower courts cannot disregard the holding of *Carpenter*, which instructs that the government violates an individual’s reasonable expectation of privacy in the whole of their physical movements when it uses advanced technology to uncover information capable of

² Indeed, geofence warrants are just one example of the government’s increasing efforts to use modern surveillance technology to effectuate the continuous tracking of citizens. Other surveillance technologies such as automated license plate readers (ALPRs), pole cameras, and drones are likewise capable of revealing the “privacies of life.” *See, e.g., Beautiful Struggle*, 2 F.4th at 346 (holding that City’s use of advanced aerial surveillance technology constituted a Fourth Amendment search).

revealing the privacies of that individual's life—information otherwise unknowable. Because law enforcement did exactly that with respect to Chatrie, this case is easily resolved by the framework in *Carpenter*. The Court should reaffirm that *Carpenter* established new Fourth Amendment doctrine, and it does not represent an outlier confined to its unique facts.

II. GEOFENCE WARRANTS AUTHORIZE SWEEPING SEARCHES WITHOUT PROBABLE CAUSE AND ARE THUS GENERAL WARRANTS THAT VIOLATE THE FOURTH AMENDMENT

When the government undertakes a search without first obtaining a warrant, its search is presumptively unreasonable. *See Katz v. United States*, 389 U.S. 347, 360-61 (1967) (Harlan, J., concurring). The Fourth Amendment provides that “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.” U.S. Const. amend. IV. By working in reverse from traditional search warrants and without individualized probable cause, geofence warrants function as general warrants and offend the very core of what the Amendment was designed to protect: the right to be secure in one's person and property.

General warrants are constitutionally infirm because they “specif[y] only an offense, leaving to the discretion of the executing officials the decision as to which persons should be arrested and which places should be searched.” *Smith*, 110 F.4th at 836 (quoting *Steagald v. United States*, 451 U.S. 204, 220 (1981))

(cleaned up). The use of general warrants in colonial times—and the sweeping rejection of them by the Founding generation—is what, by many accounts, first sparked the American Revolution. As Justice John Paul Stevens observed, “in the colonial period, the oppressive British practice of allowing courts to issue ‘general warrants’ or ‘writs of assistance’ was one of the major catalysts of the struggle for independence.” *United States v. N.Y. Tel. Co.*, 434 U.S. 159, 180 (1977) (Stevens, J., dissenting in part).

The general warrants of the colonial era essentially allowed the executive to freely harass the citizenry in search of potential lawlessness. “The practice had obtained in the colonies of issuing writs of assistance to the revenue officers, empowering them, in their discretion, to search suspected places for smuggled goods” *Boyd v. United States*, 116 U.S. 616, 625 (1886). So, too, did the colonies issue general warrants that authorized “searching private houses for the discovery and seizure of books and papers that might be used to convict their owner of the charge of libel.” *Id.* at 626.

The founding generation recognized that general warrants, despite being signed by judges and thus purportedly “judicial” in nature, “had been used as a subterfuge to shift search and seizure decisions to administrative officers.” Philip Hamburger, *Is Administrative Law Unlawful?* 190 (2014). It was not necessarily the means of execution of these general warrants that drew the ire of the colonists. Rather, it was the diminishment of individuals and their private effects into mere objects for inspection at the discretion of the government that was offensive to liberty. *See Andresen v. Maryland*, 427 U.S. 463, 480

(1976) (“The problem posed by the general warrant is “not that of intrusion [p]er se, but of a general, exploratory rummaging in a person’s belongings[.]”) (cleaned up).

Indeed, in the aftermath of the American Revolution, the Framers designed the Fourth Amendment for the express purpose of banishing general warrants. By requiring a “particular description” of the place to be searched and persons or things to be seized, the Fourth Amendment takes that discretion away from the administrative officer executing the warrant. *See Andresen*, 427 U.S. at 480 (citing *Stanford v. Texas*, 379 U.S. 476, 485 (1965)). “Absent some grave emergency, the Fourth Amendment has interposed a magistrate between the citizen and the police.” *Chimel v. California*, 395 U.S. 752, 761 (1969). The Framers made the magistrate’s role central to searches and seizures because of the importance of the rights they implicate: “The right of privacy was deemed too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals.” *Id.*

Contrary to these foundational principles, geofence warrants “present the exact sort of ‘general, exploratory rummaging’ that the Fourth Amendment was designed to prevent.” *Smith*, 110 F.4th at 837. Geofence warrants authorize the search of millions of people’s location history without suspicion or probable cause. As the Fifth Circuit explained, when law enforcement submits a geofence warrant, it forces Google to search “through the entirety of its Sensorvault—all 592 million individual accounts—for *all* of their locations at a given point in time.” *Id.* at 837. More concerning, though, is that this search

happens “while law enforcement officials have *no idea* who they are looking for, or whether the search will even turn up a result.” *Id.*

Geofence warrants do not begin with the individual to be searched. Rather, they “work in reverse from traditional search warrants” by “conduct[ing] sweeping searches of [] location databases and provid[ing] a list of cell phones and affiliated users found at or near a specific area during a given timeframe, both defined by law enforcement.” *Id.* at 822 (internal citations omitted). Geofence warrants are thus “uncomfortably akin” to the “reviled” general warrants the Fourth Amendment forbade. *Chatrue*, 107 F.4th at 353 (Wynn, J., dissenting).

The specific requirements of the Fourth Amendment work together toward a single goal: eliminating all potential for the unfettered discretion of an executive officer to search the private papers and effects of his fellow citizens. Geofence warrants restore that discretion to the very officials the Fourth Amendment meant to preclude, effectively granting them the “decision as to which persons should be arrested and which places should be searched.” *Steagald*, 451 U.S. at 220 (1981). Such a regime cannot be reconciled with the Constitution. Without a particularized probable cause at the outset, the use of geofence warrants undermine the fundamental premise that “any intrusion in the way of search or seizure is an evil, so that no intrusion at all is justified without a careful prior determination of necessity.” *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971).

The Court should hold that geofence warrants are unconstitutional general warrants prohibited by the Fourth Amendment.

CONCLUSION

For the foregoing reasons, *amicus curiae* respectfully requests that the Court reverse the judgment of the Fourth Circuit and hold that geofence warrants violate the Fourth Amendment.

March 2, 2026

Respectfully submitted,

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