VillalobosWatkinsPetitionerBrief

**Petitioner Brief -Villalobos & Watkins**

**To be in the supreme Court of the United States**

*February term 2018*

**CARPENTER, PETITIONER**

**V.**

**U.S. , RESPONDENT**

**PETITIONER'S OPENING BRIEF**

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Room E301

Counsel for petitioner

## QUESTIONS PRESENTED

Does the warrantless search and seizure of cell phone records including location data over the course of 127 days violate the fourth amendment?

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## Statement of Argument

In our time before the court we will demonstrate how there was a violation of Mr. Carpenters Fourth amendment right by addressing. One, the Fourth Amendment and how we should apply the test from *Katz V. United States*,389 U.S. 347 (1967) to today's case to see if there is a expectation of privacy and if there was a search. Second, by passing this test we look to the Stored Communications Act and how it should not apply in todays case because of the wording. Third, we look at Mr.James Otis and how him and his conditions are very similar to the one in todays case. Fourthly, how the Third Party Doctrine and how it shouldn't be applied if it isn't updated and how one of our own supreme court justices has said that the Third Party Doctrine shouldn't apply when it come to technology and location data.

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**Argument 1:** 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. Seeing as the FBI did not get a warrant to get the cell phone data from Mr.Carpenters and since we must update with the times. his phone is one his property and two the location of the phone and anything transmitting out of his phone would be his effects. When looking into these circumstances we can clearly see that Mr.Carpenter was deprived of his fourth amendment right.
We may also look to *Katz V. United States*,389 U.S. 347 (1967) where there is a two prong test to see when it comes to the fourth amendment searches. If there indeed was one. The test consist of.

1. The parties "have exhibited an actual expectation of privacy"
2. expectation must be one that society is prepared to recognize as reasonable

According to the Supreme Court in *Rakas v. Illinois*, 439 U.S. 128 (1978), "the expectation of privacy must have a source outside of the Fourth Amendment either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society." this tells us that Mr.carpenter phone and anything in his phone or transmitted out is phone his property because it is acceptable in society. Also we may look to santander from *Riley V. California*, 134 S.CT 2473, 2485 (2014)when looking in to this currant this digital age where most things aren't as tangible as they used to be. Riley helps set a president for phones and what police may and may not get from the phone without a warrant. but this also can creates a backdoor when added to the third party doctrine which allows that as long as the police get the information from a third party. In Riley it helps with some things but it leaves a blurry line for anything else that is not stated like cell site data. it also allows the evidence to be used in court no matter if they were gave consent on the

information that is in discussion.

We need to look at the Stored Communications Act is not applicable in today's case because when looking at it, what it states " specific and articulable facts show [] that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and mearital to an ongoing criminal investigation," when it states reasonable grounds it is making it so the police don't need to get a warrant when it comes to how something might have some relevance in a case.since a crime is being committed then the fourth amendment in. reasonable grounds since it does not require a warrant or written proof for what crime committed it just requires that it could have to do with in investigating.a crime is being committed then the fourth amendment if there has been no oath then there is no factual evidence to say it is true and a when it comes to an oath which then afterwards they can lie and change up what was previously said or given, facing consequences .This is making the Stored Communication Act unconstitutional since it is by passing the constitution and putting it on a higher pedestal. Our founding fathers gave us the fourth amendment to protect us from this exact thing. "Thus, government agents violated his Fourth Amendment rights by compelling NuVox to turn over the emails without first obtaining a warrant based on probable cause. However, because the agents relied in good faith on provisions of the Stored Communications Act, the exclusionary rule does not apply in this instance. *See Illinois v. Krull,* 480 U.S. 340, 107 S.Ct. 1160, 94 L.Ed.2d 364 (1987)." And if we are to use the Stored Communications Act we must put into different word so that it does not give cops free will to go through our phones whenever they please and seeing as most people's lives are on there phones that would allow the police to almost be figurative stalkers. And the Stored Communication act is unconstitutional until we change the words and if we do not change the words then the document is not to be used as evidence.

James Otis is a very prominent person when it comes to this case. He stood in front of parliament and gave a speech on how the people were being deprived their rights, inspiring the Founding Fathers in creating the Fourth Amendment. "In this speech James Otis Planted part Of the idea for American democracy evidenced by the Fourth Amendment to the United States Constitution." when looking into today's case we should look at one of Otis's points, "that the writs were too general because they did not specify who is being searched what is being looked for and in what place the searcher is looking." This court can apply it to this case, where the FBI asked for such a broad variety of things from the judges but they should have been more specific. What they asked for entailed " the data requested included subscriber information, toll records, cell detail records that showed the phone numbers of incoming and outgoing calls, and cell site information at the beginning and the end of each call for numbers in questions."

When looking into the third party doctrine, the doctrine states "As Sotomayor noted in *United States v .Jones* 565 U.S.400 (2012), the third-party doctrine "is ill suited to the

digital age." This is because, as she also noted, we live in an era "in which people reveal a great deal of information about themselves to third parties in the course of carrying out mundane tasks." We use cellphones to stay in touch with friends and family on the go, store data in the cloud to be able to access it anywhere later, rely on GPS mapping technologies to find our way about town, and wear activity trackers to try to improve our health. It's impossible to use any of these technologies without sharing data with third parties." when looking into what Justice Sotomayor states and how in this case the fact that the third party has all the control and the person being accused has no word in what is going on because this doctrine states that basically we must never give any one any information because they can do whatever they please with it. This doctrine is setting this impossible stander that along with the Stored communications act is making it so that police may do whatever they please and is making it so that because a specific word is not used or the wording is too general police officers to what they please because the line between what they can do wand what they have to do is so blurry.

## V

In today's case the fourth amendment of mr carpenter has been violated since the FBI had seized mr carpenters cell phone location data without a warrant. Mr.Carpenters has an expectation of privacy according to the fourth amendment, since mr carpenters cell phone is his property and anything having to do with his cell phone is his property as well, and the FBI acquiring the cell phone location data without a warrant but simply with several magistrates permission which is not a warrant.

When looking into expectation of privacy there was one seeing as the public norms are what we should be comparing and updating with any documents. "The Court rests its doctrinally flawed opinion upon a double standard of reasonableness which unjustifiably and unnecessarily upsets the delicate balance between respect for individual privacy and protection of the public servants who enforce our laws."*ANDERSON V. CREIGHTON ET AL*. 483 U.S. 635 (1987)

Since in this time period lots of thing have changed from the past twenty years we must be able to accommodate and not just look at this word for word. When looking in to phones and how they are used in the modern era most people's lives are on there phones, like people pay bills on there phones, they buy things on there phones, and anything else that is important is on there phone. So most people would think that when they put all that stuff on there phones that they are protected from outside eyes. Also when looking into cell site located although it is very different from GPS. When the police got the information for 127 days for Mr.Carpenter and 88 days for Mr.Sanders them looking at every single time there phone was opened and connected to a cell site tower. If someone was to do that in person

that would be counted as stalking. But the fact they only did it through papers they got from a third party made it acceptable. But it is not when looking in the totality of the circumstance there was a big privacy right taken away from these two men. When the police got the information and had to probably go through hundreds of papers when all they really needed was one paper and that paper is called a warrant. In these documents there are too many blurry lines and today we need to make these clearer. Using the correct wording in documents such as the Stored Communication act and we need to shut all back doors when it comes to phones and yes Riley does put something in perspective but it leaves other things out in the open.

## Conclusion

Your honor when looking into all we have discussed with The katz test and how there was a search, the stored communication act and how it is unconstitutional, Mr.Otis and how his circumstances are so similar to ours, when it comes the expectation of privacy in the modern era, and how the third party doctrine just should not be implemented in modern times. Your honor with all that we have put in front of the court today and if even one of the point we made you find to be true you should rule in favor of petitioner, Mr.Carpenter

## Prayer

- We pray the this court over turn the lower court's ruling and rule in favor of us the petitioner.

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