Historical Cell Tower Data and the Fourth Amendment: Is Big Brother Watching?

I. Introduction

In the novel 1984 by George Orwell, the slogan “Big Brother is Watching You” is on constant display to ensure that the citizens of Oceania know that they are always under surveillance. This slogan is in contrast to the view Americans have of privacy: a nation where privacy is premium and considered a right. However, privacy in this digitalized society can be difficult to maintain because of the overwhelming use of cellphones and cellular applications that constantly connect to the nearest cellular tower.\(^1\) Cellphones were not in the forethought of the Framers when they penned the Fourth Amendment. The Fourth Amendment ensures “[t]he right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . . .”\(^2\) Today, a discussion about unreasonable searches and seizures must consider the dicey topic of cellphones having the capability to identify exactly where a person is.\(^3\)

The Supreme Court, over the years, has both expanded and diminished protections under the Fourth Amendment. For example, the Supreme Court has decided cases involving pen registers,\(^4\) banking records,\(^5\) GPS tracking,\(^6\) and the contents of a cellphone.\(^7\) However, the lower courts are now being confronted with a brand new issue: the use of historical cell tower location information (“CTLI”), produced by third-party telephone companies, to investigate and prosecute crimes.\(^8\) Historical CTLI, at its most basic, is “data communicated by a cellular phone to a cellular network, which identifies the location of that phone at a particular time.”\(^9\) Historical CTLI can be obtained by a court order under the Stored Communications Act (“SCA”).\(^10\) The major issue with the obtainment of historical CTLI is that the statute, as written, allows law enforcement to judicially subpoena the records without a warrant based on probable cause.\(^11\)
The Supreme Court has yet to tackle this issue; but recently, the Eleventh Circuit sitting \textit{en banc}, in \textit{United States v. Davis}, considered whether court ordered production of a telephone company’s business records containing historical CTLI violated an individual’s Fourth Amendment Rights.\textsuperscript{12} Answering in the negative, the Eleventh Circuit held that obtaining historical CTLI by court order was not a search because of the infamous third-party doctrine and, even if it were, the search would be reasonable under the Fourth Amendment.\textsuperscript{13} This decision goes a step further than a prior Fifth Circuit decision that found production of historical CTLI records under a “reasonable grounds basis” to not be “per se unconstitutional.”\textsuperscript{14} Further, the \textit{Davis} decision is in contention with the Third Circuits conclusion that a magistrate judge has the option to require a warrant based on probable cause.\textsuperscript{15} The Eleventh Circuit’s approach, under the third-party doctrine, has eroded privacy rights that the Supreme Court has recently been progressive in protecting.\textsuperscript{16}

This note will address the Eleventh Circuit’s erroneous application of the third-party doctrine under the Fourth Amendment in \textit{Davis}.\textsuperscript{17} Part II briefly discusses the development of privacy rights, third-party doctrine cases, as well as other circuit court decisions that have decided CTLI cases. Part III will summarize \textit{Davis} and discuss the issues the majority, concurrences, and dissent present. Part IV analyzes the majority’s flawed conclusion in \textit{Davis} and then suggests possible solutions to ensure the protection of Fourth Amendment rights. Part V will offer concluding thoughts about the impact of \textit{Davis}.

\textbf{II. A Change of Pace: The Rise and Fall of Privacy}

\textbf{A. Start Me Up! - Katz and Reasonable Expectations of Privacy}

Fourth Amendment discussions begin first with the amendment itself\textsuperscript{18} and then shifts to the modern analysis that is derived from Justice Harlan’s concurrence in \textit{Katz v. United States}.\textsuperscript{19}
In *Katz*, the two-pronged test first asks “if the defendant ‘exhibited an actual (subjective) expectation of privacy,’ and second, whether ‘the expectation [is] . . . one that society is prepared to recognize as reasonable.’” The government in *Katz* attached a recording device outside of a public phone booth, without a warrant, to listen in on Katz’s calls. The Supreme Court held that “the government’s conduct in ‘electronically listening to and recording the petitioner’s words violated the privacy upon which he justifiably relied while using the telephone booth,’ and thus constituted a ‘search and seizure’ under the Fourth Amendment.” This case enlarged Fourth Amendment privacy rights to encompass more than just a property based focus.

**B. A Change Is Gonna Come: Third Party Doctrine And Diminishing Rights**

After expanding Fourth Amendment protections, the Supreme Court subsequently decided that “individuals have no reasonable expectation[s] of privacy in certain business records owned and maintained by a third-party business.” The Supreme Court developed this third-party doctrine in *United States v. Miller*. In *Miller*, the government subpoenaed the defendant’s banks seeking his bank account records. The Court held that Miller’s bank records did not have Fourth Amendment protection because he voluntarily conveyed the information to his bank and the documents were the bank’s business records. Specifically, the court added:

> [T]hat the Fourth Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to the Government authorities, even if the information is revealed on the assumption that it will be used only for a limited purpose and the confidence placed in the third party will not be betrayed.

The Supreme Court further elaborated on the third-party doctrine in *Smith v. Maryland*. The defendant in *Smith* asserted an expectation of privacy in the phone numbers he dialed after the police had installed a pen register on his phone line. The Supreme Court found that Smith had no actual expectation of privacy in the numbers he dialed because telephone users “typically know that they must convey numerical information to the phone company; that the phone
company has facilities for recording this information; and that the phone company does in fact record this information for a variety of legitimate business purposes. Overall, the Supreme Court has regularly held that information voluntarily turned over to a third-party does not have reasonable expectation of privacy.

C. It’s The End Of The World As We Know It: The Rise Of New Technology

Recently, the Supreme Court has been confronted with cases involving new technological advances. In United States v. Jones, the government installed a GPS device on Jones’ car in order to track his movements. The GPS was active for twenty-eight days and generally established the location of Jones’ car within 50 to 100 feet. The majority found a Fourth Amendment violation through a trespass-based rule because of the warrantless physical intrusion of the car. However, Justice Sotomayor’s concurrence noted that an abundance of surveillance can be done without physical intrusion and that it may be time to reassess privacy expectations in regard to what is voluntarily disclosed to third parties. Furthermore, Justice Alito’s concurrence focused on violations of a person’s reasonable expectation of privacy due to long term monitoring. Considerably, Justice Alito pointed to cellphones as the “most significant” technology with possible Fourth Amendment implications.

D. Back to the Basics: The Stored Communications Act

Congress passed the Stored Communications Act in 1986 “to provide statutory protection of personal information.” The SCA limited the government’s ability to compel companies to disclose subscriber information and limited a private companies ability to voluntarily turn over information about the subscriber. To obtain electronic communications information, the government must either obtain a warrant pursuant to 18 U.S.C. § 2703(c)(1)(A) or obtain a court order pursuant to 18 U.S.C. § 2703(d). Through section 2703(d), the government is only
required to show “specific articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication . . . are relevant and material to an ongoing criminal investigation.”43 Significantly, this standard is less than the probable cause standard for a search warrant.44

Two relevant cases have arisen from the SCA concerning CTLI records. Under the third-party doctrine, the Fifth Circuit recently held that historical cell site data is the corresponding third-party’s business records;45 thus, orders authorized by the SCA for historical CTLI do not need to be analyzed under the Fourth Amendment probable cause standard and instead meets the lesser standard of the statute.46 Conversely, the Third Circuit analyzed section 2703(d) and held that CTLI data production had a lesser burden than probable cause; but the court has the discretion to require a warrant for obtaining the records.47

III. The Things They Carried: Cellular Tower Location Data and Davis

Quatavius Davis committed seven separate armed robberies in a two-month period.48 At trial, the government introduced DNA evidence, accomplice testimony, eye-witness testimony, and surveillance video.49 In addition, the government also introduced telephone records “obtained from MetroPCS for the 67-day period from August 1, 2010, through October 6, 2010, the time period spanning the first and last of the seven armed robberies.”50

The government applied to a federal magistrate judge for a court order requesting production of Davis’s cell site data pursuant to the Stored Communications Act, 18 U.S.C. § 2703(d).51 Under this subsection, probable cause is not required and the government only needs to allege “specific and articulable facts” and “that there are reasonable grounds to believe that the . . . records or other information sought, are relevant and material to an ongoing criminal investigation.”52 The government’s application in this case “requested production of stored
‘telephone subscriber records’ and ‘phone toll records,’ including the ‘corresponding geographic location data (cellsite),’ for ‘the period between August 1, 2010 through October 6, 2010.’”

MetroPCS complied. Before the trial, Davis moved to suppress MetroPCS’s business records because “the § 2703(d) production of the records constituted a search under the Fourth Amendment and thus required probable cause and a search warrant.” The motion was denied.

At trial, the historical CTLI data showed the numbers Davis dialed, the numbers from which he received calls, and the cell tower that connected each call.

Also, Michael Bosillo, a custodian of MetroPCS, testified at the trial that MetroPCS, throughout its regular course of business, maintains and creates its toll records. Bosillo further explained that a cell towers generally have a one-and-a-half mile coverage radius in which “an individual cell phone user could ‘be anywhere’ in that specified sector.” However, he explained that the concentration of cell towers in Miami would make the coverage of “any given tower smaller.” Specifically, the toll records for Davis’s cell number showed “the number of the cell tower used to route Davis’s call and the sector number associated with that tower.”

The government used the historical CTLI evidence on maps depicting the location of the robberies and the location of the cell towers that routed calls from Davis’ phone to show that “Davis was near the robberies when they occurred.” The jury convicted Davis.

A. For the First Time: Warrant Based On Probable Cause Needed

Davis appealed his conviction. The Eleventh Circuit Court affirmed his convictions, but held that the government violated Davis’s rights under the Fourth Amendment when they obtained cell site location information without a warrant because Davis had a reasonable expectation of privacy in that information. However, Davis’s convictions were affirmed based
on the good-faith exception to the exclusionary rule. The Eleventh Circuit then vacated the decision and granted the government’s petition for rehearing en banc.

B. Here We Go Again: Third-Party Doctrine Prevails

The Eleventh Circuit’s en banc majority ultimately decided the case through a third-party doctrine analysis. The Court held that a court order pursuant to § 2703(d) compelling production of a third-party telephone company’s business records did not constitute a search and did not violate Davis’s Fourth Amendment rights. The majority came to this conclusion by relying extensively on Miller and Smith to assert that MetroPCS’s CTLI data was the company’s business records; thus, Davis could not assert possession or a legitimate expectation of privacy in the records owned and maintained by a third party.

The majority went even further and held that even if it was a search, the collection of historical CTLI was reasonable under the Fourth Amendment because any intrusion on Davis’s privacy expectations was minimal. The Court discussed compelling governmental interests, diminished expectations of privacy in third-party business records, and a strong presumption of constitutionality for Congressional statutes to conclude that the “balancing of interests amply supports the reasonableness the § 2703(d) order.”

C. The Other Side: Davis’s Concurring and Dissenting Opinions

The Davis case had multiple concurring opinions. Justice William Pryor’s concurrence emphasized that even without the extra protections afforded by the SCA, a court order compelling historical CTLI data would not violate a person’s rights under the Fourth Amendment because that information was voluntarily turned over to a third party. On a different note, Judge Jordan would have decided the case on reasonableness grounds without discussing privacy issues because “holding that Mr. Davis lacked an expectation of privacy in
service provider records . . . may have implications going forward.” The last concurrence, by Judge Rosenbaum, discussed limiting the third-party doctrine to cases that do not implicate historically recognized reasonable privacy interests.

Writing for the dissent, Justice Martin took issue with the erosion of our constitutional protections. Because of the “ubiquity of technology” and the possible governmental abuse, the dissent would have required a warrant based on probable cause “before accessing 67 days of near-constant cell site location data transmitted from Mr. Davis’s phone.” The dissent disparages the majority’s reliance on the third-party doctrine because, in the end, the government may well be permitted to access “our entire digital lives.”

IV. The Times They Are A Changin’ – The Court’s Erosion of Privacy Rights

“People buy [cellular telephones] to communicate with others, to use the Internet, and for a growing number of other reasons. But no one buys a [cellular phone] to share detailed information about their whereabouts with the police.” Quartavius Davis’s Fourth Amendment rights were violated when the government judicially subpoenaed his cellphone’s CTLI records without a warrant based on probable cause. The growing trend in the circuit courts seems to imply that CTLI records are third-party business documents; thus, an individual does not have a legitimate expectation of privacy in said documents. However, with the Supreme Court’s instructive decision in United States v. Jones, the future of historical CTLI records could still be ushered in the direction of protecting privacy interests.

A. Change Your Mind: Third-Party Doctrine’s Inapplicability

The Eleventh Circuit rested their decision on the third-party doctrine. While the argument has certain valid points, the overwhelming factor of “voluntarily” sharing information with third-party telephone companies does not apply to historical CTLI records. The antiquated
third-party doctrine arose out of bank records in *Miller* and a pen register in *Smith*.\(^8^4\) During that time, it was necessary for a person to “voluntarily convey numerical information” to a phone company;\(^8^5\) but, CTLI data is distinguishable because “cell phone users do not affirmatively enter their location in order to make a call.”\(^8^6\)

Further, most people do not know that they are conveying to the phone company their location when they call someone on their cellphone, much less that the phone company is collecting and storing that information.\(^8^7\) The *Davis* majority emphasized that Davis could not assert privacy expectations in the information he voluntarily gave to MetroPCS, that the cell tower records were a part of MetroPCS’s business records, and that Davis understood CTLI data could be used to incriminate him because he registered his phone under a fictitious alias.\(^8^8\) Yet, all of these assertions do not consider the extensive change in technology and the possibility of what is yet to come.

In today’s modern world, most people share a significant amount of information about themselves with third-parties like Google, Facebook, or Twitter.\(^8^9\) This begs the question: what stops the government from requesting the information a person “voluntarily” gave to other third-party businesses, websites, or applications? People disclose all kinds of information to third-parties who collect the information for legitimate business purposes;\(^9^0\) however, just because it was disclosed does not mean it is not entitled to Fourth Amendment privacy rights.\(^9^1\) The third-party doctrine is “ill suited to the digital age, in which people reveal a great deal of information about themselves to third parties in the course of carrying out mundane tasks.”\(^9^2\) The only way to stop the “voluntary” transmission of CTLI data is to turn off the cellphone;\(^9^3\) but, if a cellphone is turned off, what use does it have? Because of the lack of “voluntarily” sharing information with a third-party, the third-party doctrine cases should not have controlled the decision in *Davis*. 


B. I Can See Clearly Now: Warrants Based On Probable Cause

The *Davis* court should have applied higher Fourth Amendment standards, requiring a warrant based on probable cause to obtain historical CTLI, because of the extensive nature of society’s digital and cellular imprint.\(^94\) The Fourth Amendment’s reasonableness\(^95\) and a person’s reasonable expectation of privacy (both subjective and objective),\(^96\) when applied to CTLI and the abundance of information that can be ascertained from it, shows the necessity of a warrant based on probable cause.\(^97\)

A person cannot walk down the street without seeing someone using a cellphone.\(^98\) However, most people using a cellphone expect that their call will be private. Accordingly, the dissent in *Davis* argued that cellphone users have a subjective expectation of privacy in their historical CTLI because most individuals do not intend to disclose their location to the government every time they make or receive calls.\(^99\) Further, the dissent contends that Davis also had an objective reasonable expectation of privacy because of the pervasiveness of cellphones.\(^100\)

Lastly, the dissent acknowledged that the amount of location data the government collected in *Davis* revealed “Davis’s comings and goings around Miami with an unnerving level of specificity.”\(^101\) The majority countered that Davis had no subjective or objective expectation of privacy because cell users know that “cell phone companies make records of cell-tower usage.”\(^102\)

Regardless of that contention, individuals expect privacy in their cell tower data because that data can reveal “so much information about” a person’s “day-to-day life that most of us would consider quintessentially private.”\(^103\) Justice Sotomayor, in *Jones*, warned that electronic “monitoring generates a precise, comprehensive record of a person’s public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual
This “monitoring” is comparable to historical CTLI data. Although CTLI data is currently not as precise as GPS monitoring and only communicates a person’s location at some point in the past, historical CTLI can usually “indicate the location of a cellphone within about 200 feet.” This precision is sufficient to expect privacy rights because a person’s day to day travels is private in nature and warrants protection when assembly of that data creates an ample mosaic to depict that which would otherwise be private.

To ensure that a person’s fundamental Fourth Amendment rights are protected, a warrant based on probable cause should be the standard procedure when obtaining historical CTLI. This would continue the trend of multiple state courts jurisprudence that have expanded protections in favor of a warrant requirement. In addition, the previous section of the SCA requires a warrant based on probable cause. As the dissent in *In Re U.S. For Historical Cell Site Data* discussed, the best way to interpret the statute is to “read subsections 2703(c) and (d) together as implicitly directing that the warrant procedures incorporated into subsection 2703(c)(1)(A) are to be followed when law enforcement seeks records that may be protected by the Fourth Amendment.” Interpreting the statute in this way ensures that subsection 2703(c)(1)(A) is not rendered superfluous because the government will instead seek to always use subsection 2703(d), instead of subsection 2703(c)(1)(A), to circumvent the warrant requirement.

The majority in *Davis* contends that requiring a warrant for historical CTLI would hamper the government’s valuable investigative tool that is routinely used to investigate kidnappings, terrorism, and child abductions on an already limited budget. However, getting a warrant is “no great burden” and warrants are easier to obtain now because of recent “technological advances.” The less than probable cause standard of § 2703(d) would “subject the citizenry to constant location tracking of their cellphones without requiring the government
to get a warrant.”  Unquestionably the Framers never intended such an “irretrievable impairment of substantial liberties.”

V. Conclusion

The Eleventh Circuit’s, en banc, decision in Davis continued the recent circuit court trend of diminishing Fourth Amendment privacy rights by allowing the government to obtain historical CTLI data without first obtaining a warrant. Cellphone’s are an ever-present object in most American’s lives and technology is constantly advancing. This advancement could eventually reveal a person’s location “to the nearest mile, or the nearest block, or the nearest foot.” Historical CTLI data will continue to be a hot topic that will surely reach the highest court in this nation. Until then, with the government’s ability to track a person’s movements through historical cell tower data without first obtaining a warrant, Americans can now worry that they are living in a nation where “Big Brother is Watching.”
Nathaniel Wackman, *Historical Cellular Location Information And The Fourth Amendment*, 1 U. ILL. L. REV. 263, 299 (2015) ("Today, adult smartphone owners comprise fifty-six percent of the total cellular phone users in the United States. Moreover, nearly sixty percent of smartphone users employ apps that access their location data.").

2 U.S. Const. amend. IV.

3 *See* United States v. Davis, 754 F.3d 1205 (11th Cir. 2014), *vacated*, 785 F.3d 498, 542 (2015) (en banc) ("Historic location information is a standard feature on many smart phones and can reconstruct someone’s specific movements down to the minute, not only around town but also within a particular building." (quoting Riley v. California, 134 S.Ct. 2473, 2490 (2014))).

4 *See* Smith v. Maryland, 442 U.S. 735 (1979).


7 *See* Riley v. California, 134 S.Ct. 2473, 2490 (2014).

8 *See Davis*, 785 F.3d at 501; *see also* In re Application of the United States for Historical Cellular Site Data ("Fifth Circuit"), 724 F.3d 600, 602 (5th Cir. 2013).

9 *See* Wackman, *supra* note 1, at 269.

10 *Davis*, 785 F.3d at 502.

11 *See Id.* ("The court order under subsection (d) does not require the government to show probable cause.").

12 *Id.* at 500.

13 *Id.* at 513, 518.

14 *See* In re Application (Fifth Circuit), 724 F.3d 600, 615 (5th Cir. 2013).

15 In re Application of the United States for an Order Directing a Provider of Elec. Commc’n
Serv. to Disclose Records to Gov’t (“Third Circuit”), 620 F.3d 304, 319 (3d Cir. 2010).

16 See United States v. Jones, 132 S.Ct. 945, 949 (2012) (holding that the attachment of a GPS device on a vehicle to monitor the vehicle’s movements constituted a “search.”).

17 Davis, 785 F.3d at 512.

18 U.S. Const. amend. IV.


20 See Wackman, supra note 1, at 281 (citing Katz, 389 U.S. at 361) (Harlan, J., concurring)).

21 Davis, 785 F.3d at 507 (discussing Katz, 389 U.S. at 351-6).

22 Id. (quoting Katz, 389 U.S. at 361) (Harlan, J., concurring)).

23 Id. at 530 (Rosenbaum, concurring) (“For the Fourth Amendment protects people, not places.”) (quoting Katz, 389 U.S. at 351)).

24 Id. at 507.


26 Id. at 438.

27 Id. at 440-43.

28 Id. at 443.


30 Id. at 741.

31 Id. at 742.

32 See Id. at 744 (“This Court consistently has held that a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties.”).


34 Id.
35 *Id.* at 949.

36 *See Id.* at 955 (Sotomayor, J., concurring) ("More fundamentally, it may be necessary to reconsider the premise that an individual has no reasonable expectation of privacy in information voluntarily disclosed to third parties.").

37 *Id.* at 958 (Alito, J., concurring in the judgment) ("reasonable expectations of privacy were violated by the long-term monitoring of the movements of the vehicle he drove.").

38 *Id.* at 963 (Alito J. concurring in the judgment) ("cell phones . . . now permit wireless carriers to track and record the location of users – and as of June 2011, it has been reported, there were more than 322 million wireless devices in use in the United States.").


40 *Id.* at 716-17.


43 *Id.*


45 In re Application (Fifth Circuit), 724 F.3d 600, 615 (5th Cir. 2013).

46 *Id.*

47 In re Application (Third Circuit), 620 F.3d 304 (3d Cir. 2010).

48 *Davis*, 785 F.3d at 500.

49 *Id.* at 500-01.
50 *Id.* at 501.


53 *Davis*, 785 F.3d at 502.

54 *Id.*

55 *Id.* at 503.

56 *Id.*

57 *Id.* at 501-02.

58 *Id.* at 503.

59 *Id.*

60 *Id.*

61 *Id.* at 504.

62 *Id.*

63 *Id.* at 500.

64 *Id.* at 505.

65 *Id.*

66 *Id.*

67 *Id.*

68 See *id.* at 512 (“The longstanding third-party doctrine plainly controls the disposition of this case.”).

69 See *Id.* at 513.

70 See *Id.* at 511 (“More importantly, like ... the phone customer in *Smith*, Davis has no subjective or objective reasonable expectation of privacy in MetroPCS’s business records . . . .”).
See Id. at 517-18 (“First, there was no overhearing or recording of any conversations. Second, there is no GPS real-time tracking of precise movements of a person or vehicle.”).

Id. at 518.

Id. at 519 (Pryor, J., concurring).

Id. at 521 (Jordan, J., concurring).

Id. at 525 (Rosenbaum, J., concurring).

Id. at 533 (Martin, J., dissenting).

Id.

See Id. (“the third-party doctrine may well permit the government to access our precise location at any moment, and in the end, our entire digital lives.”).


See Davis, 785 F.3d at 511; see also In re Application (Fifth Circuit), 724 F.3d 600, 615 (5th Cir. 2013).

See United States v. Jones, 132 S.Ct. 945, 957 (2012) (Sotomayor, J., concurrence) (“it may be necessary to reconsider the premise that an individual has no reasonable expectation of privacy in information voluntarily disclosed to third parties.”).

See Davis, 785 F.3d at 512.

See In re Application (Third Circuit), 620 F.3d 304, 317 (3d Cir. 2010) (“A cell phone customer has not ‘voluntarily’ shared his location information with a cellular provider in any meaningful way.”).


See Smith, 42 U.S. at 744.
See Davis, 785 F.3d at 534 (Martin, J., dissenting); but c.f. Davis, 785 F.3d at 525 (Rosenbaum, J., concurring) (“Today’s world, with its total integration of third-party-provided technological services into everyday life, presents a steroidal version of the problems that Justices Marshall and Brennan envisioned when they dissented in United States v. Miller.”).

See In re Application (Third Circuit), 620 F.3d at 317.

See Davis, 785 F.3d at 511.

See Id. at 536 (Martin, J., dissenting); see also id. at 525 (Rosenbaum, J., concurring) (“unless a person is willing to live ‘off the grid,’ it is nearly impossible to avoid disclosing the most personal of information to third-party service providers. . . .”).

See id. at 536 (Martin, J., dissenting).

See United States v. Jones, 132 S.Ct. 945, 957 (2012) (Sotomayor, J., concurring) (“I would not assume that all information voluntarily disclosed to some member of the public for a limited purpose is, for that reason alone, disentitled to Fourth Amendment protection.”).

Id. at 957 (Sotomayor, J., concurring).

See Malone, supra note 39, at 740.

See Wackman, supra note 1, at 311 (“cellular phones provide ‘an intimate picture of one’s daily life’ and are an ‘indispensable part of modern life.’” (quoting State v. Earls, 70 A.3d 630, 644 (N.J. 2013))).

See Davis, 785 F.3d at 538 (Martin, J., dissenting) (“As the text makes clear, the ultimate touchstone of the Fourth Amendment is reasonableness.” (quoting Riley v. California, 134 S.Ct. 2473, 2482 (2014))).

See Davis, 785 F.3d at 544 (Martin, J., dissenting) (“I would simply require the government do what it has done for decades when it seeks to intrude upon a reasonable expectation of privacy. That is, ‘get a warrant.’”) (citations omitted).

See Wackman, supra note 1, at 299 (“Today, adult smartphone owners comprise fifty-six percent of the total cellular phone users in the United States.”).

See Davis, 785 F.3d at 538 (Martin, J., dissenting) (“polling data tells us that 82% of adults feel as though the details of their physical location gathered over a period of time’ is ‘very sensitive’ or ‘somewhat sensitive.’”); but see In re Application (Fifth Circuit), 724 F.3d 600, 614 (5th Cir. 2013) (“the user is aware . . . that he is conveying that information to the service provider and voluntarily does so when he makes the call.”).

See Davis, 785 F.3d at 539 (Martin, J., dissenting) (“nearly three-quarters of smart phone users report being within five feet of their phones most of the time, with 12% admitting that they even use their phones in the shower.” (quoting Riley, 134 S.Ct. 2473, 2482 (2014))).

Id. at 540 (Martin, J., dissenting).

Id. at 511.

Id. at 540 (Martin, J., dissenting).


See Davis, 785 F.3d at 540 (Martin, J., dissenting) (“For instance, on August 13, 2010, Mr. Davis made or received 108 calls in 22 unique cell site sectors, showing his movements throughout Miami during that day.”).

See Malone, supra note 39, at 737.
See United States v. Davis, 754, F.3d 1205, 1216 (11th Cir. 2014), vacated, 785 F.3d 498 (2015) (en banc) (“That information obtained by invasion of privacy may not be entirely precise does not change the calculus as to whether obtaining it was in fact an invasion of privacy.”)


18 U.S.C § 2703(c)(1)(A).

In re Application (Fifth Circuit), 724 F.3d 600, 625 (5th Cir. 2013) (Dennis, J., dissenting).

Id. at 625 (Dennis, J., dissenting); 18 U.S.C § 2703(c)(1)(A).

See Davis, 785 F.3d at 518.

Id. at 543 (Martin, J., dissenting).

Id. (Martin, J., dissenting).

Id. at 544 (Martin, J., dissenting).

Id. (Martin, J., dissenting) (quoting Glasser v. United States, 315 U.S. 60, 86 (1942)).

Id. at 513.

Id. at 542 (Martin, J., dissenting).

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Signed 619371