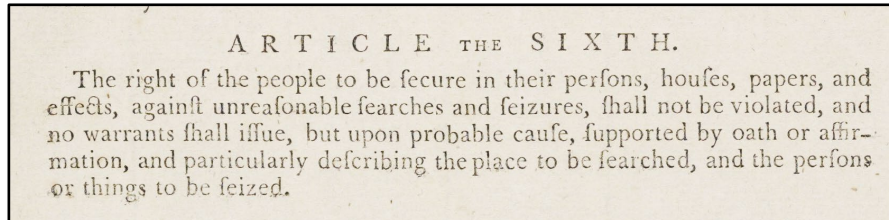


Mapp v. Ohio / Fourth Amendment Analysis— Answer Key

The Fourth Amendment to the Constitution as proposed and ratified:



“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 warrant 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.”

Source: United States Congress (1789), Thomas Greenleaf, and James Madison Pamphlet Collection.
<https://www.loc.gov/item/92838253/>.

Vocabulary

1. Define the following terms below and others you are not familiar with in your own words. You may wish to consult a legal dictionary at <https://dictionary.law.com/> or <https://www.nolo.com/dictionary>.
 - a. affirmation: [a solemn declaration](#).
 - b. probable cause: [facts that allow a reasonable person to believe evidence of a crime will be found in that location](#).
 - c. searches: [when the government looks carefully in order to find evidence of a crime](#).
 - d. secure: [free from danger, safe](#).
 - e. seizures: [when the government takes someone's property, often to use it as evidence in a criminal trial](#).
 - f. unreasonable: [not supported by a warrant or by a valid exception to a warrant requirement \(as when there is reasonable suspicion\) and therefore unconstitutional; not reasonable](#).
 - g. violated: [to have broken or disregarded \(a law or promise, for example\)](#).
 - h. warrant: [document giving authority to do something \(for example, arrest, search\)](#).
 - i. Other words you need to define: [Student answers will vary](#).

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Observe

2. What do you notice first about this 1789 printing of the proposed Bill of Rights?

Student answers will vary but may include that the Fourth Amendment was originally named “Article the Sixth,” the strange formation of the letter “s,” or the aged look of the paper.

3. What do you notice first about the words in this amendment?

Student answers will vary but may include that the 4th Amendment was originally named “Article the Sixth,” the strange formation of the letter “s,” or the very long sentence (all one sentence).

Reflect

4. Who is protected by the Fourth Amendment?

The “people.”

5. Whose actions are limited by the Fourth Amendment?

The government (implied as part of the Bill of Rights).

6. What rights does the Fourth Amendment guarantee in your own words?

Student answers will vary but should include a right to be protected from searches and seizures from the government without a very good reason.

7. Why do you think the Framers of the Bill of Rights included the Fourth Amendment?

The Framers wanted to guarantee that people would not suffer from the same kind of unreasonable searches and seizures that happened under King George III (writs of assistance).

Question

8. What do you still wonder about this source?

Student answers will vary.

Mapp v. Ohio / Opinion Analysis—Answer Key

Justice Clark wrote the Majority Opinion of the Court:

V.

Moreover, our holding that the exclusionary rule is an essential part of both the Fourth and Fourteenth Amendments is not only the logical dictate of prior cases, but it also makes very good sense. There is no war between the Constitution and common sense. Presently, a federal prosecutor may make no use of evidence illegally seized, but a State's attorney across the street may, although he supposedly is operating under the enforceable prohibitions of the same Amendment. Thus the State, by admitting evidence unlawfully seized, serves to encourage disobedience to the Federal Constitution which it is bound to uphold. Moreover, as was said in

The exclusionary rule was established in *Weeks v. United States* (1914) when the Supreme Court decided evidence seized in violation of the Fourth Amendment could not be admitted as evidence in a federal trial.

Source: Clark, Tom Campbell Clark and Supreme Court of the United States, "U.S. Reports: Mapp v. Ohio, 367 U.S. 643. 1960," Periodical, <https://www.loc.gov/item/usrep367643/>.

Constitutional Provisions

Fourth Amendment to the U.S. Constitution

"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."

14th Amendment to the U.S. Constitution, Section 1

"... nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

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Vocabulary

1. Define the following terms below and others you are not familiar with in your own words. You may wish to consult a legal dictionary at <https://dictionary.law.com/> or <https://www.nolo.com/dictionary>.
 - a. federal: the level of government that controls the United States as a whole rather than just a single state.
 - b. prohibitions: acts not allowed (prohibited) by law.
 - c. prosecutor: person who starts and carries out legal criminal proceedings.
 - d. seized: took possession of.
 - e. Other words you need to define: Student answers will vary.

Observe

2. What do you notice first about the words in this text?

Student answers will vary but may include that the vocabulary is difficult, that it starts with “moreover” a word that is not used in everyday language, that it begins with the Roman numeral V.

Reflect

3. Put this part of the opinion in your own words:

Student answers will vary but should include that the exclusionary rule now will apply to the states (through the Fourth and 14th Amendments).

4. What is the purpose of this piece of the opinion?

The purpose is to explain the decision of the Court regarding the exclusionary rule.

5. Who is the primary audience for this opinion?

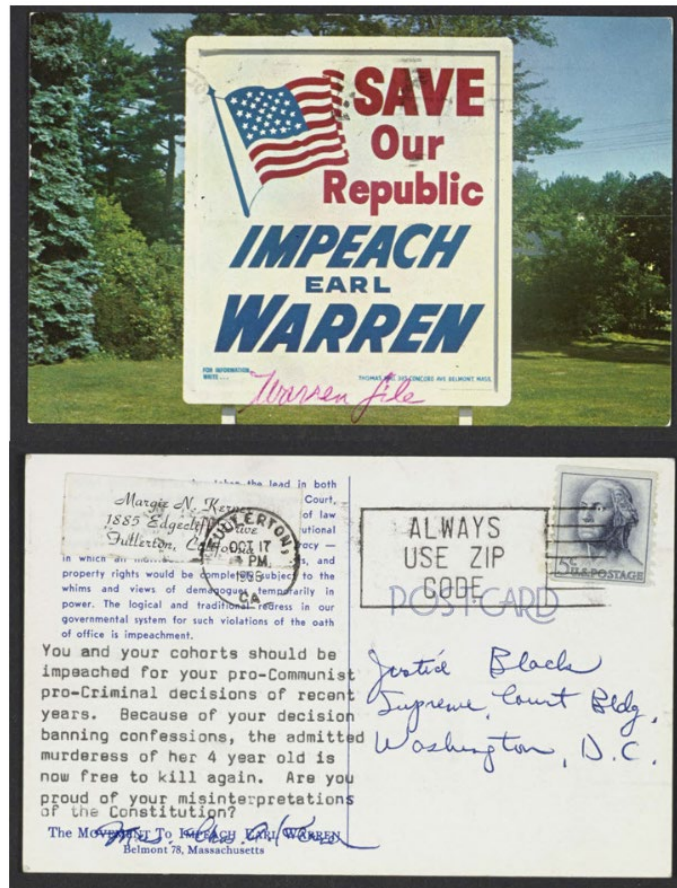
The primary audiences for this opinion are the parties in the case and judges and attorneys who will apply this ruling to future cases.

Question

6. What do you still wonder about this source?

Student answers will vary.

Mapp v. Ohio / Document Analysis—Answer Key



“Save Our Republic: Impeach Earl Warren,” October 17, 1966, Postcard, Hugo L. Black Papers, Manuscript Division, Library of Congress, <https://www.loc.gov/law/help/digitized-books/miranda-v-arizona/miranda-documents.php>.

Background

Earl Warren was the Republican governor of California. He was nominated by President Dwight D. Eisenhower (also a Republican) to be Chief Justice of the United States. In 1954, he was confirmed by the Senate. President Eisenhower expected Chief Justice Warren to make conservative decisions; however, in his first term on the Supreme Court he wrote the unanimous opinion in *Brown v. Board of Education of Topeka, Kansas*, which desegregated public schools. By the mid-1960s the Warren Court made many decisions to protect the rights of the accused including *Mapp v. Ohio* (1961), which extended the exclusionary rule to states; *Gideon v. Wainwright* (1963), which required states to provide attorneys for poor defendants; and *Miranda v. Arizona* (1966), which required police to inform people in custody of their right to stay silent in order to not incriminate themselves and their right to have an attorney provided.

An “Impeach Earl Warren” movement was started by people who opposed the Warren Court’s decisions. However, as stated in Article III of the U.S. Constitution, justices “*shall hold their Offices during good Behaviour*” meaning they have life terms. Article II states that civil officers, including justices, may only be impeached for “*Treason, Bribery, or other high Crimes and Misdemeanors.*”

Observe

1. What do you notice first about the front of the postcard?
Student answers will vary but may include the flag, “SAVE Our Republic,” “IMPEACH EARL WARREN,” or the signature.
2. What do you notice first about the back of the postcard?
Student answers will vary but may include the postmark, the return address, the typed text of the message, the signature, the lack of a street address, or the George Washington stamp.

Reflect

3. Why do you think someone sent this postcard?
Student answers will vary but may include because they were angry about “pro-Criminal” decisions made by the Warren Court like *Mapp v. Ohio*. They may have been hoping to influence Justice Black’s decisions in the future.
4. What can you tell about the point of view of the person who sent the postcard?
Student answers will vary but may include because they were angry enough to want to impeach Chief Justice Warren. This person thinks that Justice Black and Chief Justice Warren have misinterpreted the Constitution.
5. What do you learn about the reaction of some people to the decision in *Mapp v. Ohio* (1961) and others that protected the rights of the accused from this postcard?
Student answers will vary but may include that many people disagreed with the decision in *Mapp v. Ohio*. They may cite that fact that there were enough people who were angry and wanted to impeach Chief Justice Warren to have postcards printed.
6. Do you think everyone had this reaction to the decisions?
Student answers will vary but may include that it is likely that some people supported this decision as well.
7. Article III of the U.S. Constitution states this about the life terms of Supreme Court justices: “The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour.” Article II states that public officers such as justices “shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.” Considering these two constitutional provisions, do you think Chief Justice Earl Warren could be impeached?
Considering these two constitutional provisions it is not likely that Chief Justice Earl Warren could be impeached. There are not provisions to impeach a justice because their decisions are unpopular or even wrong. There is no evidence that the Chief Justice committed “Treason, Bribery, or other high Crimes and Misdemeanors.”

Question

8. What do you still wonder about?
Student answers will vary.

***Mapp v. Ohio* / Inquiry-based Task: What's Your Opinion?—Answer Key**

Before you begin:

- Read *Mapp v. Ohio* case summary
- Complete Fourth Amendment Analysis (Activity 1)
- Complete Opinion Analysis (Activity 2)
- Complete Primary Source Analysis (Activity 3)

Background:

After cases are accepted by the Supreme Court, attorneys, often called advocates, file written briefs that explain their legal reasoning and present their side of the case in oral arguments. During oral arguments, each advocate has 30 minutes to outline their case and answer questions from the justices.

On the Friday after the justices have heard oral arguments in a case, they meet in conference to vote on the outcome. The side with the most votes will write the opinion of the Court or the majority opinion. The side with the least votes will write the dissenting opinion, which outlines the reasons those justices disagree with the decision. The actual writing of these opinions will be assigned to a justice by the chief justice or the most senior justice on each side. These opinions are then circulated to the other justices who will “sign on” to the opinions. Sometimes justices change sides during this process or decide to write their own concurring opinion, which agrees with the outcome of the case but states a different legal reasoning.

Your task:

As a Supreme Court justice, you will hear the arguments in *Carpenter v. United States*, a case about the location data generated by cell phones and whether it is an unreasonable search for the government to collect that data.

Directions:

1. Read the *Carpenter v. United States* (2018) **case summary** (page 2).
2. Complete the **What's Your Opinion** activity (page 7).

Carpenter v. United States (2018)

Argued: November 29, 2017

Decided: June 22, 2018

Background

The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]” The Fourth Amendment prohibits searches and seizures that are unreasonable. A search occurs when the government looks through someone’s property or belongings, as long as that person had a reasonable expectation of privacy.

“The government” could be any agent or officer of the federal, state, or local governments. “A reasonable expectation of privacy” is a legal term. It means that 1) the person whose belongings are being searched expected those belongings to be private, and 2) society recognizes that expectation as being reasonable.

The second part of the Fourth Amendment is about warrants: “...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.”

A warrant is a legal document that authorizes a search. Probable cause is an officer’s reasonable belief, supported by personal knowledge or reliable sources, that a crime has been committed and items connected to the crime are likely to be found in a certain place. A search authorized by a warrant is considered a “reasonable” search.

This is a case about the location data generated by cell phones and whether it is an unreasonable search for the government to collect that data.

Cell phones work by establishing radio connections with nearby cell towers. Phones are constantly searching for the strongest signal from nearby towers. Whenever someone’s cell phone establishes a connection with a tower, the wireless company can log certain details about that connection. These details might include the date, time, and length of each call; the phone numbers engaged in the call; and the location of the cell towers the phone was connected to when the call began and ended. This information can give some clues to where a phone was located on certain days and times. Law enforcement officials sometimes find it helpful to use this information from the wireless companies to help confirm whether a suspect was in a certain area at a specific time.

Facts

The FBI suspected that Timothy Carpenter was participating in armed robberies, and agents wanted to review data about the location of Carpenter’s cell phone. A federal law, the Stored Communications Act, allows law enforcement officers to request an order from a judge that requires a telecommunications company to turn over such records. To get that order (which is not a warrant), the officers must show the judge that the records they want are relevant to an active

criminal investigation. “Relevant to a criminal investigation” is a lower standard than “probable cause,” which must indicate that a crime has been committed and the information being sought is connected to the crime.

The FBI showed a judge that the records they wanted were related to a criminal investigation, and they received records about Carpenter’s cell phone from his wireless phone company. The records included information about which cell phone towers Carpenter’s phone sent signals to at the beginning and end of each call he made or received over a 127-day period.

The government used the location data at Carpenter’s trial to show that Carpenter used his cell phone within a mile or two of several robberies around the time the robberies occurred. The trial also included testimony from several accomplices who said that Carpenter organized most of the robberies. Carpenter was convicted of nine armed robberies.

Carpenter appealed that ruling, arguing that the prosecution should not have been allowed to present the cellphone location data at his trial. He said that the government’s collection of that information was an unconstitutional search under the Fourth Amendment. Such records, he argued, should only be seized with a warrant, supported by probable cause.

The U.S. Court of Appeals for the Sixth Circuit ruled that the government’s collection of cell-site records was not legally a search, because Carpenter did not have a reasonable expectation that the location data from his cell phone was private. If it is not a search, the government did not need a warrant.

Issue

Did the government need to get a warrant before gathering location data about Carpenter’s cell phone from his wireless company?

Constitutional Amendment, Statute, and Supreme Court Precedents

– Fourth Amendment to the U.S. Constitution

“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.”

– Stored Communications Act (1986)

The Stored Communications Act authorizes a judge to issue an order to a telecommunications company to hand over user records to the government. The government must “offer specific and articulable facts showing that there are reasonable grounds to believe” that the records sought “are relevant and material to an ongoing criminal investigation.”

– ***Mapp v. Ohio (1961)***

This case extended the exclusionary rule, as created by *Weeks v. United States*, to cases arising in state courts. The Court decided that the right to privacy is a crucial element of the Constitution and the Fourth Amendment, and that the Mapp decision was necessary to “close the only courtroom door remaining open to evidence secured by official lawlessness in flagrant abuse of that basic right.”

– ***Smith v. Maryland (1979)***

The Supreme Court ruled that the police’s installation of a device that tracked the phone numbers a person dialed from his home phone was not a search because the caller could not reasonably expect those numbers, which he had disclosed to his phone company, to remain private. The Court reasoned that it had “consistently . . . held that a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties.” The Court relied on a prior case that had held that the government does not conduct a search by obtaining an individual’s bank records from his bank. The Court also noted that the device “did not acquire the contents of communications” and that it was not installed in Smith’s home, so the police had not entered his home without authorization.

– ***United States v. Jones (2012)***

The Supreme Court ruled that the installation of a GPS tracking device on someone’s vehicle, without a warrant, is an unlawful search under the Fourth Amendment. The Court said that the GPS tracking in this case was unconstitutional because the government had trespassed onto Jones’ personal property to install the device. Although the majority opinion did not say so, five justices agreed, through concurring opinions, that such long-term GPS monitoring (the police had monitored Jones’s location for more than a month) also violates someone’s reasonable expectation of privacy.

– ***Riley v. California (2014)***

The Supreme Court decided that a warrantless search of data on an arrestee’s cell phone is generally unconstitutional. The justices said that police officers should get a warrant if they want to search through someone’s cell phone when they are arrested (unless it is an emergency). The Court said that people have strong privacy interests in their phones, which can store more personal information than a person in the past would have ever been able to carry on them.

Arguments for Carpenter (petitioner)

- The government should have gotten a warrant before collecting Carpenter’s cellphone location data. It was a search, because Carpenter reasonably expected that the government would not pry into records that could document his movements, locations, and activities over a period of months. Most people would agree that such data should be private.

- It is almost impossible to live in today's society without using a cellphone. Most people carry phones with them everywhere they go. Cell phone location records can show where someone was, and when, and who they were with, at virtually all times.
- The government argues that, since the data was produced by the cell phone company, Carpenter did not have a reasonable expectation that it would be private. But the cases the government relies on were decided before the advent of the digital age. Today, it is hard to function in society without sharing information with third parties. Just because another person or company has access to or control over private records, it should not mean that they are no longer considered private.
- This case is like *United States v. Jones* because the government is gathering sensitive location data, without a warrant, over a long period of time.
- This case is not like *Smith v. Maryland*, because the information the government gathered is so much more detailed and sensitive than when just phone numbers were dialed. Also, cell phone users are likely not even aware that their wireless companies store—and can give to the government—such intensive information about the location of their phones.
- There are other ways companies track people's digital information too—for example, internet service providers maintain copies of lots of information about websites their customers visit, and search engines record logs of individuals' searches. This information reveals a lot about innocent people's lives. If the government can obtain cellphone location data without a warrant, what would prevent it from gathering this sort of information about everyday Americans?

Arguments for the United States (respondent)

- The government did not need a warrant to gather the cellphone location data. People have no reasonable expectation of privacy in information they freely give to a third party like a cell phone company. This case is a lot like *Smith v. Maryland* and the bank records case.
- The government would have needed a warrant to record the words spoken in Carpenter's phone calls because the content of someone's communications is private. But cell phone location data is more like an address on an envelope or the phone numbers they dialed; it is information that gets the message from point A to point B. Those records say nothing about the content of any calls.
- This case is different from *United States v. Jones* where the government secretly attached a GPS tracking device to someone's car. In *Jones* the government itself conducted surveillance—which constituted a search—rather than merely acquiring a third party's business records. And GPS tracking is different from cell-site location information because it is very precise and can locate a person within about 50 feet. The data the government obtained here is far less precise, as it can only suggest a person's location within a number of miles. Also, the

government did not have to trespass or invade Carpenter's personal property to get this information.

- This case is different from *Riley v. California*. There, everyone agreed that a search had occurred, and the only question was whether an exception to the warrant requirement for searches occurring during arrests should apply. The question in this case is whether a search occurred in the first place, given that Carpenter voluntarily conveyed information about the location of his phone to his cell phone provider.
- Any cellphone user should know that their phone “exposes” its location to their cell phone provider. Users also know that the phone companies record this information for a variety of legitimate business purposes.
- The American people have expressed their expectation of privacy with regard to digital information through their Congressional representatives who passed the Stored Communications Act. That law stakes out a middle ground between full Fourth Amendment protection and no protection at all, requiring that the government show “reasonable grounds” but not “probable cause” to obtain the cell-site data at issue here.

What's Your Opinion?

After you understand the decision and impact of *Mapp v. Ohio*, read the excerpts below from the opinions¹ for *Carpenter v. United States* (2018). These cases are both about a government search and whether it is unreasonable. You will apply the precedent in *Mapp v. Ohio* and choose the opinion that best reflects your opinion in this case.

As you read, **underline** the ideas you agree with and **strike through** those with which you disagree. When you are finished reading, review the underlined ideas and **circle** the ones you feel are the strongest arguments. You should choose the opinion with the most circled ideas. Answer the **Questions to Consider** (page 8). **Student answers will vary.**

Opinion A

This case presents the question whether the Government conducts a search under the Fourth Amendment when it accesses historical cell phone records that provide a comprehensive chronicle of the user's past movements.

As Justice Brandeis explained in his famous dissent, the Court is obligated—as “[s]ubtler and more far-reaching means of invading privacy have become available to the Government”—to ensure that the “progress of science” does not erode Fourth Amendment protections. Here the progress of science has afforded law enforcement a powerful new tool to carry out its important responsibilities. At the same time, this tool risks Government encroachment of the sort the Framers, “after consulting the lessons of history,” drafted the Fourth Amendment to prevent.

We decline to grant the state unrestricted access to a wireless carrier's database of physical location information. In light of the deeply revealing nature of CSLI [cell-site location information], its depth, breadth, and comprehensive reach, and the inescapable and automatic nature of its collection, the fact that such information is gathered by a third party does not make it any less deserving of Fourth Amendment protection. The Government's acquisition of the cell-site records here was a search under that Amendment.

Opinion B

The concept of reasonable expectations of privacy ... sought to look beyond the “arcane distinctions developed in property and tort law” in evaluating whether a person has a sufficient connection to the thing or place searched to assert Fourth Amendment interests in it. First... individuals often have greater expectations of privacy in things and places that belong to them, not to others. And second, the Fourth Amendment's protections must remain tethered to the text of that Amendment, which, again, protects only a person's own “persons, houses, papers, and effects.”

¹ *Carpenter v. United States*, 585 US _ (2018).

Cell-site records, however, are no different from the many other kinds of business records the Government has a lawful right to obtain... Customers like petitioner [Carpenter] do not own, possess, control, or use the records, and for that reason have no reasonable expectation that they cannot be disclosed...

This case should be resolved by interpreting accepted property principles as the baseline for reasonable expectations of privacy. Here the Government did not search anything over which Carpenter could assert ownership or control. Instead, it issued a court-authorized subpoena to a third party to disclose information it alone owned and controlled. That should suffice to resolve this case.

Questions to Consider

1. How is the precedent *Mapp v. Ohio* (1961) similar to *Carpenter v. United States* (2018)?
In both *Mapp v. Ohio* (1961) and *Carpenter v. United States* (2018) the Court's decision would determine if the evidence against the defendant would be excluded (suppressed) from being used at trial.
2. How is the precedent *Mapp v. Ohio* (1961) different from *Carpenter v. United States* (2018)?
In *Mapp v. Ohio* (1961) the case centered on whether the exclusionary rule applied to trials in state courts, whereas in *Carpenter v. United States* (2018) the case centered on whether the search was unreasonable (based on whether Carpenter had a reasonable expectation of privacy in the third-party cellphone location data).
3. As a Supreme Court justice, consider the above questions and review the ideas you circled. Decide which opinion would you sign on to (agree with)? State your reasoning for choosing this opinion by incorporating the ideas you circled in the opinion. If you do not agree with either opinion you may write your own concurring opinion.
Student answers will vary but should be based on the excerpts from the two opinions.
4. **Optional extension question:** After you learn which opinion was the majority and which was the dissenting opinion, does the Supreme Court's decision surprise you? Why or why not?

After students complete the You Decide Activity, consider sharing the complete [case summary of *Carpenter v. United States* \(2018\)](#).