No. 16-6308

IN THE SUPREME COURT OF THE UNITED STATES

AARON GRAHAM, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the government's acquisition, pursuant to a court order issued under 18 U.S.C. 2703(d), of historical cell-site records created and maintained by a cellular-service provider violates the Fourth Amendment rights of the individual customer to whom the records pertain.

2. Whether the good-faith exception to the Fourth Amendment exclusionary rule applies when the government relies on a court order issued under 18 U.S.C. 2703(d) to obtain historical cell-site records from a cellular-service provider and when no binding appellate decision has held that such orders violate the Fourth Amendment.

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OPINIONS BELOW

The en banc opinion of the court of appeals (Pet. App. 1a-66a) is reported at 824 F.3d 421. The panel opinion of the court of appeals (Pet. App. 67a-200a) is reported at 796 F.3d 332. The opinion of the district court denying petitioner's motion to suppress (Pet. App. 201a-240a) is reported at 846 F. Supp. 2d 384.

JURISDICTION

The judgment of the court of appeals was entered on May 31, 2016. On August 5, 2016, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and

including September 26, 2016, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the District of Maryland, petitioner was convicted on one count of conspiracy to commit Hobbs Act robbery, in violation of 18 U.S.C. 1951; six counts of Hobbs Act robbery, in violation of 18 U.S.C. 1951; six counts of possessing and brandishing a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. 924(c); and one count of possession of a firearm by a convicted felon, in violation of 18 U.S.C. 922(g). Judgment 1. The district court sentenced petitioner to 1764 months in prison, to be followed by three years of supervised release. Id. at 2-3. A panel of the court of appeals affirmed. Pet. App. 67a-200a. The en banc court of appeals granted rehearing and vacated the panel opinion. 624 Fed. Appx. 75; Pet. App. 4a. The en banc court subsequently issued an opinion reinstating the affirmance of petitioner's convictions and adopting the panel opinion with respect to all issues not addressed in the en banc opinion. Pet. App. 5a n.1; see id. at 1a-66a.

1. In January and February 2011, petitioner committed six armed robberies of businesses in and around Baltimore, Maryland. Pet. App. 70a. During one of the robberies, petitioner entered

a cashier's booth at a gas station, pushed the clerk to the floor, began punching and kicking him, and then brandished a gun, placing it near the clerk's ear. Id. at 72a. An accomplice stood near the door with a sawed-off shotgun and forced a customer who had attempted to leave to the ground, beating him in the head with the shotgun. Ibid. During another robbery, petitioner, accompanied by several accomplices, entered a jewelry store, pointed a gun at a clerk, and ordered the clerk to give him everything in the store. Id. at 70a-71a. Petitioner committed the other four robberies by entering a store or fast-food restaurant, brandishing a gun or holding his hand inside his jacket, and demanding that employees give him money from the cash registers. Id. at 70a-73a. During one of those robberies, when an employee did not immediately comply with petitioner's demands, petitioner struck the employee in the head with his gun. Presentence Investigation Report ¶ 9.

2. a. Petitioner was indicted on multiple counts of Hobbs Act robbery, possessing and brandishing a firearm in furtherance of a crime of violence, conspiracy to commit Hobbs Act robbery, conspiracy to possess and brandish a firearm in furtherance of a crime of violence, and possession of a firearm by a convicted felon. Pet. App. 76a.

b. In March 2011, after petitioner's arrest, the government applied to federal magistrate judges for two court

orders pursuant to the Stored Communications Act (SCA), 18 U.S.C. 2701 et seq. Pet. App. 75a-76a, 203a-204a. Those applications sought orders directing Sprint/Nextel to disclose specified records for petitioner's cellular-telephone number. Ibid.

The SCA generally prohibits communications providers from disclosing certain records pertaining to their subscribers to a governmental entity, but permits the government to acquire such records in certain circumstances. 18 U.S.C. 2510(1), 2702(a), 2703, 2711(1). As relevant here, the government may obtain "a record or other information pertaining to a subscriber * * * (not including the contents of communications)" either through a warrant or through "a court order for such disclosure under [18 U.S.C. 2703(d)]." 18 U.S.C. 2703(c)(1)(A) and (B). To obtain a court order, the government must "offer[] specific and articulable facts showing that there are reasonable grounds to believe that * * * the records or other information sought[] are relevant and material to an ongoing criminal investigation." 18 U.S.C. 2703(d). The records that the government may obtain under such an order include a subscriber's name and address, "telephone connection records," and "records of session times and durations." 18 U.S.C. 2703(c)(2)(A)-(C).

The records that the government sought for petitioner's cell phone included data known as historical "cell-site"

records, which show the cell towers with which a cell phone has connected while in use. Pet. App. 4a. Cellular-service providers create and retain cell-site records in the ordinary course of business for their own purposes, including to find weak spots in their cellular networks and to determine whether to charge customers roaming charges for particular calls. Id. at 7a & n.2. Whenever a cell phone is used to place or receive a call, the phone establishes a radio connection "to the cell site with which it shares the strongest signal, which is typically the nearest cell site." Id. at 81a. Cell-site records accordingly "can be used to approximate the whereabouts of the cell phone at the particular points in time in which transmissions are made." Id. at 82a. By requesting "historical" cell-site records, the government sought data pertaining only to past calls and did not seek to monitor the connections of petitioner's phone to cell towers in real time. Id. at 7a.

In support of its applications for historical cell-site data, the government provided detailed summaries of the evidence implicating petitioner in several of the armed robberies. D. Ct. Doc. 49-9, at 3-6 (Oct. 11, 2011); D. Ct. Doc. 49-10, at 3-6 (Oct. 11, 2011). The magistrate judges granted the government's applications and issued the requested orders. Pet. App. 84a. Sprint/Nextel then produced 221 days of historical cell-site

records for petitioner's phone number, which Sprint/Nextel had made in the ordinary course of business for billing and other purposes. Id. at 7a, 84a.

From the historical cell-site records as well as Sprint/Nextel records identifying the locations of its cell towers, the government was able to infer the approximate location of petitioner's phone at the time it made and received calls. See Pet. App. 4a.[1] Each of the cell towers at issue in petitioner's case covered "an area with a radius of up to two miles," and the cell-site records identified the "roughly 120-degree sector of [the] cell site's coverage area" that was used to connect petitioner's calls. Id. at 9a n.3. The government ultimately determined that petitioner's cell phone communicated with cell towers in the general vicinity of the sites of five of the six armed robberies. Gov't C.A. Br. 38-41 (describing evidence).

c. Before trial, petitioner moved to suppress the historical cell-site records, claiming that the government had obtained them from Sprint/Nextel in violation of the Fourth

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[1] The court of appeals appeared to assume that the records contained cell-site information for text messaging. See, e.g., Pet. App. 4a. Although the government sought cell-site information for text messaging, Sprint/Nextel's historical cell-site records did not include cell-site data for text messages. See C.A. App. 1974-1975. The records also did not contain cell-site data for times when petitioner's cell phone was turned on but was not making or receiving a call.

Amendment. Pet. App. 205a. Petitioner argued that Sprint/Nextel's production of its business records constituted a search of petitioner that could be conducted only pursuant to a search warrant supported by probable cause. Ibid.

The district court denied the motion. Pet. App. 201a-240a. The court emphasized that petitioner had "voluntarily transmitted signals to cellular towers in order for [his] calls to be connected," and "[t]he cellular provider then created internal records of that data for its own business purposes." Id. at 226a. The court concluded that "no Fourth Amendment violation occurred" because petitioner had "no legitimate expectation of privacy" in "business records kept in the ordinary course of business by [his] cellular provider." Id. at 234a (citations omitted). The court ruled in the alternative that, even if the government's acquisition of the cell-site data violated petitioner's Fourth Amendment rights, suppression would not be warranted because the records were obtained "in good faith reliance on a constitutional statute and valid Orders issued" pursuant to the SCA. Id. at 239a.

d. The case proceeded to trial, where several eyewitnesses testified about petitioner's involvement in the robberies. Pet. App. 70a-73a. The government also presented evidence linking petitioner's car and clothes to the robberies. Ibid. In addition, the government presented the Sprint/Nextel

historical cell-site records that it had obtained under the SCA court order. Id. at 4a.

At the end of trial, the government dismissed the firearm conspiracy count, and the jury convicted petitioner on all remaining counts. C.A. App. 2178-2179; id. at 3225-3229; see Pet. App. 70a. The district court sentenced petitioner to 1764 months in prison. Judgment 2.

3. a. A panel of the court of appeals affirmed. See Pet. App. 67a-167a. As relevant here, the panel held that the government's acquisition of Sprint/Nextel's historical cell-site records violated petitioner's Fourth Amendment rights. See id. at 84a-126a. The court held first that "[c]ell phone users have an objectively reasonable expectation of privacy in" cell-site records created and maintained by their cellular-service providers, such that "the government conducts a search under the Fourth Amendment when it obtains" those records from the providers. Id. at 85a. Without analyzing whether the asserted search was nevertheless reasonable, and so consistent with the Fourth Amendment on that basis, the panel concluded that the search violated the Fourth Amendment because it was conducted without a warrant. See id. at 85a-86a & n.2, 124a-126a.

The panel nevertheless affirmed the district court's denial of petitioner's suppression motion based on the good-faith exception to the exclusionary rule. Pet. App. 126a-131a. The

panel observed that "the government is entitled to the good-faith exception because, in seeking [the historical cell-site records], the government relied on the procedures established in the SCA and on two court orders issued by magistrate judges in accordance with the SCA." Id. at 127a.

b. Judge Motz filed an opinion concurring in the judgment but dissenting from the holding that the government violated petitioner's Fourth Amendment rights. Pet. App. 172a-200a.

4. a. The court of appeals granted rehearing en banc and held that the government's acquisition of Sprint/Nextel's historical cell-site records for petitioner's cell phone was not a Fourth Amendment search of petitioner. See Pet. App. 1a-37a.[2] The court concluded that petitioner "did not have a reasonable expectation of privacy" in the records, which the government had "acquir[ed] from a phone company" that had "created and maintained [the records] in the normal course of [its] business." Id. at 7a, 11a. The court emphasized that the government "did not surreptitiously view, listen to, record, or in any other way engage in direct surveillance of [petitioner] to obtain th[e cell-site] information," and it concluded that "the nature of the governmental activity here * * * critically distinguishes this case from those in which the government did

[2] The en banc court of appeals adopted the panel opinion with respect to all issues not addressed in the en banc court's opinion. See Pet. App. 5a n.1.

unconstitutionally collect private information." Id. at 7a-8a (emphasis omitted).

Relying on this Court's decisions in Smith v. Maryland, 442 U.S. 735 (1979), and United States v. Miller, 425 U.S. 435 (1976), the court of appeals explained that "an individual can claim 'no legitimate expectation of privacy' in information that he has voluntarily turned over to a third party." Pet. App. 10a (quoting Smith, 442 U.S. at 743-744). In Smith, the court observed, this Court rejected a defendant's challenge to the government's use of a pen register to record the phone numbers dialed from his home telephone because "he had 'voluntarily conveyed' those numbers to the phone company by 'expos[ing] that information to' the phone company's 'equipment in the ordinary course of business.'" Id. at 11a (brackets in original; internal quotation marks omitted) (quoting 442 U.S. at 744). Miller likewise held that a bank customer who voluntarily conveyed financial information to his bank had no Fourth Amendment privacy interest in bank records reflecting those financial transactions because, the court of appeals emphasized, "the third-party doctrine * * * applies even when '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.'" Id. at 5a (quoting Miller, 425 U.S. at 443).

"Applying the third-party doctrine to the facts of this case," the court of appeals concluded that petitioner "did not have a reasonable expectation of privacy in the historical [cell-site information]." Pet. App. 11a. Just as the defendants in Smith and Miller voluntarily conveyed information to third parties, the court explained that petitioner voluntarily exposed his location information to Sprint/Nextel when he used his cell phone to engage the company's cell towers to route his calls. Id. at 11a-12a; see id. at 18a (observing that "[a] cell phone user voluntarily enters an arrangement with his service provider in which he knows that he must maintain proximity to the provider's cell towers in order for his phone to function," and that "[w]henever he expects his phone to work" he "permit[s] -– indeed, request[s] –- his service provider to establish a connection between his phone and a nearby cell tower"). Petitioner, the court concluded, "'assumed the risk' that the phone company would disclose * * * to the government" the business records it created and maintained reflecting the historical cell-site data. Id. at 12a (quoting Smith, 442 U.S. at 744). The court noted that its "holding accords with that of every other federal appellate court that has considered the Fourth Amendment question." Ibid.; see id. at 15a (stating that petitioner's "preferred holding lacks support from all relevant authority and would place [the court] in conflict with the

Supreme Court and every other federal appellate court to consider the question").

The court of appeals also observed that "application of the third-party doctrine does not render privacy an unavoidable casualty of technological progress." Pet. App. 34a. The court explained that this Court has "forged a clear distinction between the contents of communications," which implicate Fourth Amendment protections, "and the non-content information that enables communications providers to transmit the content." Id. at 26a. In addition, the court of appeals stated that "Congress remains free to require greater privacy protection if it believes that desirable." Id. at 34a. The court noted that the SCA itself "demonstrates that Congress can -– and does –- make these judgments," because the SCA "requires the government to meet a higher burden when acquiring 'the contents of a wire or electronic communication'" pertaining to an individual subscriber and also "requires the executive to obtain judicial approval, as the Government did here, before acquiring even non-content information." Id. at 34a-35a (quoting 18 U.S.C. 2703(a) and (c)). The court further observed that "Congress has been actively considering changes to [the Electronic Communications Privacy Act of 1986, 18 U.S.C. 2510 et seq.]" -- of which "the SCA is part" -- "in recent years based on advances in technology." Pet. App. 35a & n.17. The court concluded that

"[l]egislatures manifestly can and are responding to changes in the intersection of privacy and technology." Id. at 35a n.17.

b. Judge Wilkinson filed a concurring opinion. Pet. App. 38a-46a. He stated that the court of appeals had "rightly h[eld] that obtaining historical cell site location information * * * from a third party cell phone provider is not a search under the Fourth Amendment." Id. at 38a. He "wr[ote] separately to emphasize [his] concern that requiring probable cause and a warrant in circumstances such as these needlessly supplants the considered efforts of Congress with an ill-considered standard of [the court's]." Ibid. Judge Wilkinson stated that petitioner's "approach not only aspires to overturn Supreme Court rulings but [also] to scuttle the laborious efforts of the Congress to balance privacy and law enforcement interests in a responsible way." Id. at 41a.

c. Judge Wynn filed an opinion dissenting in part and concurring in the judgment, which Judges Floyd and Thacker joined. Pet. App. 47a-66a. Judge Wynn believed that the government's acquisition of the historical cell-site data in this case "infringed [petitioner's] reasonable expectation[] of privacy" and therefore constituted a warrantless search in violation of the Fourth Amendment. Id. at 63a. Judge Wynn stated that he would nevertheless "affirm [petitioner's]

convictions under the exclusionary rule's good-faith exception." Id. at 47a n.1.

ARGUMENT

Petitioner renews his claim (Pet. 8-34) that the government's acquisition of Sprint/Nextel's historical cell-site records pursuant to SCA court orders violated his Fourth Amendment rights. Petitioner further asserts (Pet. 20-29) that lower courts are divided on the Fourth Amendment question. Those claims lack merit. The court of appeals correctly concluded that the Fourth Amendment permits the government to obtain historical cell-site data under the standard set forth in the SCA, and no conflict exists on that question. This Court has recently denied other petitions for writs of certiorari raising Fourth Amendment challenges to the government's acquisition of historical cell-site data pursuant to SCA court orders,[3] and no reason exists for a different result here.

In any event, this case would be an unsuitable vehicle to address the Fourth Amendment question because the en banc court of appeals adopted the original panel's holding that the relevant evidence was admissible under the good-faith exception to the exclusionary rule. Petitioner's challenge (Pet. 34-40) to the court's good-faith ruling is unfounded and has not been

[3] See Davis v. United States, 136 S. Ct. 479 (2015) (No. 15-146); Guerrero v. United States, 135 S. Ct. 1548 (2015) (No. 14-7103).

accepted by any court of appeals. In addition, any error in the admission of the historical cell-site data was harmless because other evidence conclusively established petitioner's guilt. Petitioner thus could not benefit from a ruling in his favor on the Fourth Amendment question. Further review of that question is unwarranted.

1. The court of appeals correctly held that the government's acquisition of Sprint/Nextel's cell-site records pursuant to court orders authorized by the SCA did not violate petitioner's Fourth Amendment rights. Petitioner has no interest protected by the Fourth Amendment in those business records. And even if he did have such an interest, the SCA procedure is constitutionally reasonable.

a. A person has no Fourth Amendment interest in records created by a communications-service provider in the ordinary course of business that pertain to the individual's transactions with the service provider.

i. The Fourth Amendment's prohibition on unreasonable searches was originally understood to be "tied to common-law trespass." United States v. Jones, 565 U.S. 400, 405 (2012). Since this Court's decision in Katz v. United States, 389 U.S. 347 (1967), however, the Court has held that a Fourth Amendment search may also "occur[] when the government violates a

subjective expectation of privacy that society recognizes as reasonable." Kyllo v. United States, 533 U.S. 27, 33 (2001).

The Fourth Amendment permits the government to obtain business records through a subpoena, without either a warrant or a showing of probable cause. See Oklahoma Press Publ'g Co. v. Walling, 327 U.S. 186, 194-195 (1946); see also United States v. Miller, 425 U.S. 435, 445-446 (1976). In its decisions in Miller and Smith v. Maryland, 442 U.S. 735 (1979), this Court further concluded that the acquisition of a business's records does not constitute a Fourth Amendment "search" of an individual customer even when the records reflect information pertaining to that customer.

In Miller, the government had obtained by subpoena records of the defendant's accounts from his banks, including copies of his checks, deposit slips, financial statements, and other business records. 425 U.S. at 436-438. The banks were required to keep those records under the Bank Secrecy Act, 12 U.S.C. 1829b(d). 425 U.S. at 436, 440-441. The Court held that the government's acquisition of those records was not an "intrusion into any area in which [the defendant] had a protected Fourth Amendment interest." Id. at 440. The Court explained that the defendant could "assert neither ownership nor possession" of the records; rather, they were "business records of the banks." Ibid. The Court further rejected the defendant's argument that

he had "a reasonable expectation of privacy" in the records because "they [were] merely copies of personal records that were made available to the banks for a limited purpose." Id. at 442. As the Court explained, it had "held repeatedly that the Fourth Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to Government authorities, even if the information is revealed on the assumption that it will be used only for a limited purpose." Id. at 443. Because the records obtained from the banks "contained only information voluntarily conveyed to the banks and exposed to their employees in the ordinary course of business," the Court concluded that the defendant had "take[n] the risk, in revealing his affairs to another, that the information w[ould] be conveyed by that person to the Government." Id. at 442, 443.

In Smith, the Court applied the same principles to records created by a telephone company. There, the police requested that the defendant's telephone company install a pen register at its offices to record the numbers dialed from the defendant's home phone. 442 U.S. at 737. The defendant argued that the government's acquisition of the records of his dialed numbers violated his reasonable expectation of privacy and therefore qualified as a Fourth Amendment search. Id. at 741-742. The Court rejected that contention, concluding both that the

defendant lacked a subjective expectation of privacy and that any such expectation was not objectively reasonable. Id. at 742-746.

The Smith Court first expressed "doubt that people in general entertain any actual expectation of privacy in the numbers they dial," given that "[a]ll telephone users realize that they must 'convey' phone numbers to the telephone company, since it is through telephone company switching equipment that their calls are completed." 442 U.S. at 742. The Court further emphasized that "the phone company has facilities for recording this information" and "does in fact record this information for a variety of legitimate business purposes." Id. at 743.

The Smith Court went on to explain that "even if [the defendant] did harbor some subjective expectation that the phone numbers he dialed would remain private, this expectation is not one that society is prepared to recognize as reasonable." 442 U.S. at 743 (citation and internal quotation marks omitted). That was because "a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties." Id. at 743-744 (citing, inter alia, Miller, 425 U.S. at 442-444). "When [the defendant] used his phone," the Court continued, he "voluntarily conveyed numerical information to the telephone company and exposed that information to its equipment in the ordinary course of business." Id. at 744 (internal

quotation marks omitted). The Court found no more persuasive the defendant's argument that he reasonably expected the local numbers he dialed to remain private because "telephone companies, in view of their present billing practices, usually do not record local calls" or include those numbers on their customers' monthly bills. Id. at 745. Because the defendant "voluntarily conveyed to [the phone company] information that it had facilities for recording and that it was free to record," the Court concluded that he had "assumed the risk that the information would be divulged to police." Ibid.

ii. The court of appeals correctly held that the principles set forth in Miller and Smith resolve this case. See Pet. App. 7a-12a, 20a-25a.

Petitioner lacks any subjective expectation of privacy in phone-company records of historical cell-site data because they are business records that Sprint/Nextel creates for its own purposes. See Pet. App. 7a & n.2, 12a. As with the bank records in Miller, petitioner "can assert neither ownership nor possession" of the cell-site records. 425 U.S. at 440. Rather, Sprint/Nextel "created and maintained [the records] in the normal course of [its] business" as part of the process of providing telephone service to customers. See Pet. App. 7a.

As in Smith, moreover, cell-phone users presumably understand that their phones emit signals that are conveyed to

their service providers, through facilities close to the area of the phone's use, as a necessary incident of making or receiving calls. See, e.g., United States v. Carpenter, 819 F.3d 880, 888 (6th Cir. 2016), petition for cert. pending, No. 16-402 (filed Sept. 26, 2016); United States v. Davis, 785 F.3d 498, 511 (11th Cir.) (en banc), cert. denied, 136 S. Ct. 479 (2015); In re Application of the U.S. for Historical Cell Site Data, 724 F.3d 600, 613 (5th Cir. 2013) (Fifth Circuit In re Application). "[A]ny cellphone user who has seen her phone's signal strength fluctuate must know that, when she places or receives a call, her phone 'exposes' its location to the nearest cell tower and thus to the company that operates the tower." Carpenter, 819 F.3d at 888. That is why, for example, cell phones often cannot receive a signal in sparsely populated areas or underground. See Fifth Circuit In re Application, 724 F.3d at 613. "Although subjective expectations cannot be scientifically gauged," cell-phone users, like landline users, do not have a "general expectation" that data generated when they use telephone-company equipment "will remain secret." Smith, 442 U.S. at 743.

Additionally, any subjective expectation of privacy in information transmitted to a cellular-service provider by engaging its cellular network would not be objectively reasonable because "a person has no legitimate expectation of privacy in information he voluntarily turns over to third

parties." Smith, 442 U.S. at 743-744. Just as a person who dials a number into a phone "voluntarily convey[s] numerical information to the telephone company and expose[s] that information to its equipment in the ordinary course of business," id. at 744 (internal quotation marks omitted), a cell-phone user must reveal his general location to a cell tower in order for the cellular-service provider to connect a call. And a cell-phone user thus "takes the risk, in revealing his affairs to [the cellular-service provider], that the information" he transmits in engaging the cellular network "will be conveyed by [the cellular-service provider] to the Government." Miller, 425 U.S. at 443. Because petitioner "voluntarily conveyed to [his cellular-service provider] information that it had facilities for recording and that it was free to record," he "assumed the risk that the information would be divulged to police." Smith, 442 U.S. at 745. The court of appeals therefore correctly concluded that the government's acquisition of the historical cell-site records did not constitute a Fourth Amendment search.

iii. Petitioner's arguments (Pet. 9-20) to the contrary lack merit.

Petitioner seeks (Pet. 10-20) to avoid the principles set forth in Miller and Smith by contending that cell-site data "implicates privacy issues far beyond" the privacy interests at

stake in those decisions. Pet. 12. Petitioner provides no support for his contention that records of the cell towers to which a phone connected when placing or receiving a call are more private than, for example, the financial information contained in the "checks, deposit slips, * * * financial statements, and * * * monthly statements" the government acquired in Miller. 425 U.S. at 438; see Pet. App. 16a n.8 ("The third-party doctrine clearly covers information that is also considered 'highly private,' like financial records, Miller, 425 U.S. at 441-43, phone records, Smith, 442 U.S. at 743-745, and secrets shared with confidants, United States v. White, 401 U.S. 745, 749 (1971).") Although the records in Miller were "copies of personal records that were made available to the banks for a limited purpose," this Court nevertheless concluded that no Fourth Amendment search had occurred because the records "contain[ed] only information voluntarily conveyed to the banks and exposed to their employees in the ordinary course of business." 425 U.S. at 442. That analysis applies with even greater force in this case because, unlike in Miller, the records at issue here are not even copies of documents that petitioner submitted to the cellular-service provider, and the government did not require the provider to keep those records. See ibid.

Petitioner's argument also overlooks the "core distinction" between "the content of personal communications" and "the information necessary to get those communications from point A to point B." Carpenter, 819 F.3d at 886. "The business records here fall on the unprotected side of this line" because they "say nothing about the content of any calls" but instead contain only "routing information." Id. at 887; see Pet. App. 25a (emphasizing the distinction between "the content of communication" and "non-content information, i.e., information involving addresses and routing").

Petitioner's objection flows from the ability of law-enforcement officers to infer from Sprint/Nextel's records that petitioner was within a particular radius of a cell tower at particular points in time. But "an inference is not a search." Kyllo, 533 U.S. at 33 n.4. Law-enforcement investigators regularly deduce facts about a person's movements or conduct from information gleaned from third parties. Indeed, that is a central feature of criminal investigations. See Donaldson v. United States, 400 U.S. 517, 522 (1971) (explaining that the lack of Fourth Amendment protection for third-party business records was "settled long ago"); id. at 537 (Douglas, J., concurring) ("There is no right to be free from incrimination by the records or testimony of others."). For example, law-enforcement officers can infer from an eyewitness statement that

a suspect was in a particular location at a particular time, from a credit-card slip that she regularly dines at a certain restaurant and was there at a specific time, and from a key-card entry log her routine hours at a gym. But merely because facts about a person can be deduced from records or other information in the possession of third parties does not make the acquisition of that information a Fourth Amendment search of the person. Indeed, the pen-register records in Smith allowed a far more specific inference about the defendant's whereabouts -- his presence in his home -- but the Court nevertheless concluded that no Fourth Amendment search had occurred. See Pet. App. 27a (observing that "all routing information" may reveal information about an individual's location "when aggregated over time," and providing examples of "a pen register," which "records every call a person makes and allows the government to know precisely when he is at home and who he is calling," and credit-card records that "track a consumer's purchases, including the location of the stores where he made them").

Petitioner suggests (Pet. 9-20) that the Fourth Amendment principles recognized in Smith and Miller should not apply to new technologies. Although petitioner relies (Pet. 11-14, 16-17) on Jones and Riley v. California, 134 S. Ct. 2473 (2014), those decisions did not address -- much less disavow -- this Court's precedents recognizing that an individual does not have

a Fourth Amendment interest in a third party's records pertaining to him or in information that he voluntarily conveys to third parties. In Jones, the Court held that the warrantless installation and use of a Global-Positioning-System (GPS) tracking device on a vehicle to continuously monitor its movements over the course of 28 days constituted a Fourth Amendment search. 565 U.S. at 402-404. In reaching that conclusion, the Court relied on the fact that the government had "physically intrud[ed] on a constitutionally protected area" -- the suspect's automobile -- to attach the device. Id. at 407 n.3. In this case, by contrast, no such physical occupation occurred. Because the Court in Jones concluded that the attachment of the device constituted "a classic trespassory search," id. at 412, it did not reach the Katz inquiry or hold that tracking a person's vehicle on public streets violates a reasonable expectation of privacy, which would represent a significant qualification of the Court's prior holding in United States v. Knotts, 460 U.S. 276, 281-282 (1983). See Jones, 565 U.S. at 411-413.

This Court's decision in Riley likewise does not aid petitioner's argument. Riley held that a law-enforcement officer generally must obtain a warrant to search the contents of a cell phone found on an arrestee. 134 S. Ct. at 2485. No question existed in Riley that the review of the contents of a

cell phone constitutes a Fourth Amendment search; the question was whether that search fell within the traditional search-incident-to-arrest exception to the warrant requirement. See id. at 2482 ("The two cases before us concern the reasonableness of a warrantless search incident to a lawful arrest."); see also id. at 2489 n.1 (noting that "[b]ecause the United States and California agree that these cases involve searches incident to arrest, these cases do not implicate the question whether the collection or inspection of aggregated digital information amounts to a search under other circumstances"). Riley thus presented no occasion for this Court to reconsider its longstanding view that an individual has no Fourth Amendment interest in records pertaining to the individual that are created by third parties or in information he voluntarily conveys to third parties.

Even putting aside the specific holdings of Jones and Riley, the broader privacy concerns raised in those cases (and discussed in the concurrences by Justice Alito and Justice Sotomayor in Jones, see 565 U.S. at 413-417 (Sotomayor, J., concurring); id. at 427-431 (Alito, J., concurring in the judgment)) do not justify creating a novel Fourth Amendment rule here. The GPS tracking device in Jones allowed law-enforcement officers to use "signals from multiple satellites" to continuously track the movements of the defendant's vehicle over

the course of 28 days, accurate to "within 50 to 100 feet." Id. at 403 (majority opinion). The information the government acquired in this case, by contrast, consisted of records indicating which of Sprint/Nextel's antennas communicated with petitioner's phone only when the phone was making or receiving calls, not continuously. See Pet. App. 7a. And although these records contained historical cell-site information for a 221-day period, id. at 84a, the information revealed only that petitioner was somewhere within the specified sector of a cell tower when he made or received calls, id. at 9a n.3. According to the court of appeals' calculations, that information "could only determine the four-square-mile area within which [petitioner] used his cell phone" and so did "not provide location information anywhere near [as] specific" as the GPS data obtained in Jones. Ibid. This case thus presents no occasion to consider the legal implications of technology capable of "secretly monitor[ing] and catalog[ing] every single movement" an individual makes continuously "for a very long period." Jones, 565 U.S. at 430 (Alito, J., concurring in the judgment); see id. at 415-416 (Sotomayor, J., concurring).

Likewise, this case does not touch on a central concern in Riley: that cell phones may contain "vast quantities of personal information" that could be used to discern "[t]he sum of an individual's private life," including information about

the user's health, family, religion, finances, political and sexual preferences, and shopping habits, as well as GPS records of the user's "specific movements down to the minute, not only around town but also within a particular building." 134 S. Ct. at 2485, 2489, 2490. As explained, the historical cell-site records obtained in this case revealed only that petitioner (or someone using his phone) was in a four-square-mile area when placing or receiving a call, and that data therefore could "not enable the government to place [petitioner] at home or at other private locations." Pet. App. 9a n.3 (internal quotation marks omitted). The records did not (and could not) reveal any information stored on petitioner's phone or permit law-enforcement officers to learn the sort of detailed personal facts that the Court identified in Riley.

Petitioner essentially seeks a rule that he has a personal Fourth Amendment interest in the record of his transaction with a business from which his location can be approximately inferred. No recognized Fourth Amendment doctrine supports that contention. The court of appeals therefore correctly held that under this Court's precedents, petitioner has no valid Fourth Amendment interest in records of his calls created by Sprint/Nextel for its own business purposes.

b. Even if petitioner could establish that he has a novel Fourth Amendment interest in the records created and held by

Sprint/Nextel, the government's acquisition of those records was reasonable and therefore complied with the Fourth Amendment.

"As the text of the Fourth Amendment indicates, the ultimate measure of the constitutionality of a governmental search is 'reasonableness.'" Maryland v. King, 133 S. Ct. 1958, 1969 (2013) (citation omitted). A "warrant is not required to establish the reasonableness of all government searches; and when a warrant is not required (and the Warrant Clause therefore not applicable), probable cause is not invariably required either." Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 653 (1995). In deciding whether a warrantless search is permissible, this Court "balance[s] the privacy-related and law enforcement-related concerns to determine if the intrusion was reasonable." King, 133 S. Ct. at 1970 (citation omitted). In addition, in a case that challenges a federal statute under the Fourth Amendment, this Court applies a "strong presumption of constitutionality" to the statute, "especially when it turns on what is 'reasonable'" within the meaning of the Fourth Amendment. United States v. Watson, 423 U.S. 411, 416 (1976) (citation omitted). In light of those principles, even if the acquisition of Sprint/Nextel's records pertaining to petitioner's calls qualified as a Fourth Amendment search, that acquisition would be constitutionally reasonable. That follows for two independently sufficient reasons.

First, as discussed above, this Court has held that subpoenas for records do not require a warrant based on probable cause, even when challenged by the party to whom the records belong. See Miller, 425 U.S. at 446 (reaffirming the "traditional distinction between a search warrant and a subpoena"); see also Oklahoma Press Publ'g Co., 327 U.S. at 209. It follows that the SCA procedure for obtaining the business records at issue here is constitutionally reasonable, because the SCA provides more substantial privacy protections than an ordinary judicial subpoena. See Davis, 785 F.3d at 505-506 (describing SCA privacy-protection provisions). In particular, the SCA "raises the bar" for obtaining historical cell-site records, id. at 505, by requiring the government to establish "specific and articulable facts showing that there are reasonable grounds to believe that * * * the records or other information sought[ ] are relevant and material to an ongoing criminal investigation," 18 U.S.C. 2703(d) (emphasis added).[4] In contrast, an ordinary subpoena requires only a "court's

[4] Petitioner briefly contends (Pet. 29-30) that the SCA is "ambiguous" and "contradictory" because it authorizes the government to use either a search warrant or a court order under 18 U.S.C. 2703(d) to obtain a cellular-service provider's historical cell-site records for a particular phone number. As the original panel recognized, the statute "unambiguously offers law enforcement a choice between" those options, and the existence of "options that set different requirements on law enforcement does not amount to a contradiction." Pet. App. 129a.

determination that the investigation is authorized by Congress, [that it] is for a purpose Congress can order, [that] the documents sought are relevant to the inquiry," and that the "specification of the documents to be produced [is] adequate, but not excessive, for the purposes of the relevant inquiry." Oklahoma Press Publ'g Co., 327 U.S. at 209. Given that "[a] legislative body is well situated to gauge changing public attitudes, to draw detailed lines, and to balance privacy and public safety in a comprehensive way," Jones, 565 U.S. at 429-430 (Alito, J., concurring in the judgment), Congress's considered effort in the SCA to augment the privacy protections that this Court has found sufficient for judicial subpoenas complies with the Fourth Amendment. See Pet. App. 34a-35a; see also id. at 38a-46a (Wilkinson, J., concurring).

Second, traditional standards of Fourth Amendment reasonableness independently confirm that a Section 2703(d) court order is a reasonable mechanism for obtaining a cellular-service provider's historical cell-site records. As discussed above, under traditional Fourth Amendment standards, petitioner had no legitimate expectation of privacy in the third-party business records at issue here. But even if this Court were to depart from that settled framework and hold that an individual can assert a Fourth Amendment interest in records created by a third party that pertain to a transaction he engaged in with the

third party, petitioner could at most assert only a diminished expectation of privacy in those records. That is a factor that this Court has said "may render a warrantless search or seizure reasonable." King, 133 S. Ct. at 1969 (citation omitted). And any invasion of petitioner's assumed privacy interest was minimal, given the imprecise nature of the location information that could be inferred from the historical cell-site records at issue here, which could not have enabled law-enforcement officers to pinpoint petitioner's location and could not have revealed other personal facts about him. See Pet. App. 9a n.3; see also Davis, 785 F.3d at 516.

On the other side of the reasonableness balance, the government has a compelling interest in obtaining historical cell-site records using a Section 2703(d) court order, rather than a warrant, because, like other investigative techniques that involve seeking information from third parties about a crime, this evidence is "particularly valuable during the early stages of an investigation, when the police [may] lack probable cause and are confronted with multiple suspects." Davis, 785 F.3d at 518. Society has a strong interest in both promptly apprehending criminals and exonerating innocent suspects as early as possible during an investigation. See United States v. Salerno, 481 U.S. 739, 750-751 (1987); King, 133 S. Ct. at 1974. In addition, the SCA ensures judicial scrutiny of the

government's basis for obtaining an order, so the government may obtain such orders only in circumstances where the asserted governmental interest in acquiring the records has been examined by a neutral magistrate.

In short, "a traditional balancing of interests amply supports the reasonableness of the [SCA] order[s] at issue here." Davis, 785 F.3d at 518.

2. Petitioner contends (Pet. 20) that, although lower courts "have not split in result, they have split in reasoning" when considering whether the Fourth Amendment requires the government to obtain a warrant before acquiring a cellular-service provider's historical cell-site records pertaining to a particular user. But the decision below does not conflict with any other decision of another circuit or state high court.

a. As petitioner appears to recognize (Pet. 20), all courts of appeals to have considered the question presented have concluded, in accordance with the Fourth Circuit below, that no Fourth Amendment violation occurs when the government acquires historical cell-site data pursuant to an SCA order. See Carpenter, 819 F.3d at 886-890 (6th Cir.); Davis, 785 F.3d at 506-516 (11th Cir.); Fifth Circuit In re Application, 724 F.3d at 609-615 (5th Cir.); Pet. App. 4a-5a.[5] The court of appeals

[5] A petition for a writ of certiorari from the Sixth Circuit's decision in Carpenter is currently pending. See No. 16-402 (filed Sept. 26, 2016). That petition raises a similar

thus correctly observed that its "holding accords with that of every other federal appellate court that has considered the Fourth Amendment question." Pet. App. 12a; see id. at 15a (explaining that petitioner's "preferred holding lacks support from all relevant authority and would place [the court] in conflict with the Supreme Court and every other federal appellate court to consider the question").[6]

b. Petitioner asserts (Pet. 21-23) that the decision below conflicts with the Third Circuit's decision in In re Application of the United States for an Order Directing a Provider of Electronic Communication Service to Disclose Records to the Government, 620 F.3d 304 (2010) (Third Circuit In re Application). But the Third Circuit addressed only the statutory standard for obtaining cell-site records under the SCA. Id. at 308-319. The Third Circuit "h[eld] that [historical cell-site data] from cell phone calls is obtainable under a [Section] 2703(d) order and that such an order does not require the traditional probable cause determination." Id. at 313. The court further interpreted the SCA to grant judges

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Fourth Amendment challenge to the government's acquisition of historical cell-site data.

[6] Petitioner refers (Pet. 27-29) to decisions by magistrate judges denying SCA applications for historical cell-site records. Any asserted conflict with those decisions, which have either been overturned by reviewing courts or have not been reviewed by the relevant courts of appeals, does not warrant this Court's review.

discretion "to require a warrant showing probable cause" pursuant to Section 2703(c)(1)(A), although the court stated that such an option should "be used sparingly because Congress also included the option of a [Section] 2703(d) order." Id. at 319. But the court did not consider -- let alone adopt -- petitioner's proposed rule that the Fourth Amendment requires the government to obtain a warrant to acquire historical cell-site data.

Petitioner emphasizes (Pet. 22) the Third Circuit's statement that "[a] cell phone customer has not 'voluntarily' shared his location information with a cellular provider in any meaningful way." Third Circuit In re Application, 620 F.3d at 317. But the Third Circuit made that observation simply to support its interpretation of the SCA. And while the court noted "the possibility" that the disclosure of historical cell-site data could "implicate the Fourth Amendment * * * if it would disclose location information about the interior of a home," ibid., that suggestion would not aid petitioner here, because the evidence he sought to suppress did not (and could not) disclose anything about the interior of his home. In any event, the Third Circuit's suggestion does not amount to a

constitutional holding that would place it in conflict with the Fourth, Fifth, Sixth, and Eleventh Circuits.[7]

c. Petitioner also contends (Pet. 25-26) that the court of appeals' decision conflicts with the D.C. Circuit's decision in United States v. Maynard, 615 F.3d 544 (2010), aff'd in part on other grounds sub nom. Jones, supra. But Maynard involved the government's installation and use of a GPS tracking device on the defendant's car, not the acquisition of records that a third party had created and stored for its own business purposes. See id. at 555; see also Pet. App. 9a (emphasizing that "[n]o government tracking is at issue" in this case, which involves only a "third party's records" that "permit[ted] the government to deduce location information"). Indeed, Maynard specifically recognized the continuing validity of the principles applied in Smith. See 615 F.3d at 561; see also Reporters Comm. for Freedom of the Press v. American Tel. & Tel.

[7] The Third Circuit recently heard oral argument in a case that involves a Fourth Amendment challenge to the government's acquisition of historical cell-site data pursuant to an SCA order under Section 2703(d). See United States v. Stimler, Nos. 15-4053, 15-4094, and 15-4095 (argued Jan. 25, 2017). That case may provide the Third Circuit with an opportunity to revisit its empirical assumption from six years ago that "it is unlikely that cell phone customers are aware that their cell phone providers collect and store historical location information." Third Circuit In re Application, 620 F.3d at 317 (emphasis omitted).

Co., 593 F.2d 1030, 1043 (D.C. Cir. 1978), cert. denied, 440 U.S. 949 (1979).

d. Petitioner also relies (Pet. 23-24, 26-27) on a handful of cases from state high courts, but, as the court of appeals recognized, they are "inapposite" because they "either interpret broader state constitutional provisions instead of the Fourth Amendment, or do not consider historical [cell-site] records, or both." Pet. App. 14a-15a.[8] Two state-court decisions petitioner cites (Pet. 23-24) required warrants to obtain cell-site records, but relied expressly on state law in reaching those holdings. See Commonwealth v. Augustine, 4 N.E.3d 846, 858, 865-866 (Mass. 2014) (Massachusetts Declaration of Rights); State v. Earls, 70 A.3d 630, 644 (N.J. 2013) (New

[8] Petitioner also cites (Pet. 23-24) a decision from the Indiana Court of Appeals, but that decision was recently vacated when the Supreme Court of Indiana granted discretionary review. See Zanders v. State, 58 N.E.3d 254, vacated and transfer granted, 62 N.E.3d 1202 (Ind. 2016). In any event, a conflict with a decision of an intermediate state appellate court does not warrant this Court's review. And the other cases from state intermediate appellate courts that petitioner cites (Pet. 24, 26) do not aid his argument. See Ford v. State, 477 S.W.3d 321, 335 (Tex. Crim. App. 2015) (stating that the cell-site location records at issue in that case "f[ell] squarely inside the third-party-doctrine ball-park"), cert. denied, 136 S. Ct. 2380 (2016); Wertz v. State, 41 N.E.3d 276, 278 (Ind. Ct. App.) (analyzing a warrantless search of the defendant's personal Garmin GPS device, rather than the acquisition of a third party's business records), transfer denied, 40 N.E.3d 856 (Ind. 2015).

Jersey Constitution).[9] Petitioner's reliance (Pet. 23) on the Supreme Court of Florida's decision in Tracey v. State, 152 So. 3d 504 (2014), likewise is misplaced. The court in Tracey held that the use of prospective, "real time cell site location information" to continuously monitor an individual's movements requires a warrant under the Fourth Amendment, id. at 515 (emphasis added); see id. at 525-526, but the court made clear that its holding did not encompass historical cell-site records like those at issue here. Id. at 508, 515, 516, 526. Accordingly no division in the lower courts exists that would warrant this Court's review.

3. In any event, this case is not a suitable vehicle to consider whether the government's acquisition of historical cell-site data violated the Fourth Amendment, for two independent reasons. First, the en banc court of appeals adopted the original panel's holding that the district court correctly denied petitioner's suppression motion based on the good-faith exception to the exclusionary rule. See Pet. App. 5a n.1, 126a-131a. Although petitioner briefly challenges that ruling (Pet. 34-40) and includes the good-faith-exception issue

[9] Petitioner also relies on (Pet. 26) People v. Weaver, 909 N.E.2d 1195 (N.Y. 2009), but that case addressed the use of GPS tracking rather than the acquisition of a third party's business records, and it held that the warrantless use of the GPS device was unlawful under state law, not under the Fourth Amendment. Id. at 1202 (New York State Constitution).

as a second question presented (Pet. i), the court of appeals' holding is correct and does not warrant further review. Second, any error in admitting the cell-site data was harmless because other evidence conclusively established petitioner's guilt and presence at the scene of the crimes.

a. As this Court has explained, the exclusionary rule is a "judicially created remedy" that is "designed to deter police misconduct rather than to punish the errors of judges and magistrates." United States v. Leon, 468 U.S. 897, 906, 916 (1984) (citation omitted). "As with any remedial device, application of the exclusionary rule properly has been restricted to those situations in which its remedial purpose is effectively advanced." Illinois v. Krull, 480 U.S. 340, 347 (1987). The rule therefore does not apply "where [an] officer's conduct is objectively reasonable" because suppression "cannot be expected, and should not be applied, to deter objectively reasonable law enforcement activity." Leon, 468 U.S. at 919. For that reason, "evidence obtained from a search should be suppressed only if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment." Ibid. (citation omitted).

As the original panel decision correctly held, even if the government's collection of the historical cell-site data

constituted a search in violation of the Fourth Amendment, the evidence was properly admitted at trial pursuant to the good-faith exception to the exclusionary rule. Pet. App. 126a-131a; see id. at 5a n.1 (en banc opinion adopting panel opinion's ruling on the good-faith issue); id. at 47a n.1 (Wynn, J., dissenting in part and concurring in the judgment) ("I would affirm [petitioner's] convictions under the exclusionary rule's good-faith exception."); id. at 238-239 (district court decision holding in the alternative that the evidence was admissible under the good-faith exception). This Court has held that the good-faith exception applies to "officer[s] acting in objectively reasonable reliance on a statute," later deemed unconstitutional, that authorizes warrantless administrative searches. Krull, 480 U.S. at 349; see id. at 342.[10] It follows a fortiori that officers act reasonably in relying on a statute that authorizes the acquisition of records pursuant to an order issued by a neutral magistrate. As the panel emphasized, efforts to "assess[] the deterrent value of suppression" must "focus * * * on culpable police conduct and not on the actions of legislators and judicial officers." Pet. App. 127a.

[10] Petitioner therefore is wrong to suggest (Pet. 36) that the good-faith exception can only apply when police officers believe they have received "a technically sufficient warrant based on probable cause."

At the time the records were acquired in petitioner's case, moreover, no binding appellate decision (or holding of any circuit) had suggested, much less held, that the SCA was unconstitutional as applied to historical cell-site records. Given that, officers were entitled to rely on the presumption that acts of Congress are constitutional. Cf. Davis v. United States, 564 U.S. 229, 241 (2011) ("Evidence obtained during a search conducted in reasonable reliance on binding precedent is not subject to the exclusionary rule."). The panel accordingly correctly concluded that "the government is entitled to the good-faith exception because" it "relied on the procedures established in the SCA and on two court orders issued by magistrate judges in accordance with the SCA." Pet. App. 127a.

Petitioner suggests (Pet. 38) that the good-faith exception can apply only when binding precedent permits a search that is later declared unlawful.[11] But the cases petitioner cites (Pet. 38-40) did not involve a statute that authorized the government

[11] Petitioner contends (Pet. 38) that the law could not "have been deemed to clearly authorize the government's" acquisition of the cell-site records in this case, and cites (Pet. 35) the original panel's statement that, "at the time the government obtained the [cell-site location records] at issue here, court rulings outside of this Circuit were in conflict as to the constitutionality of obtaining this information without a warrant." Pet. App. 131a. Neither petitioner nor the original panel identified the rulings that form the basis for that assertion. In any event, no court of appeals had issued such a ruling when the magistrate judges authorized the SCA orders in this case.

to obtain records without a warrant or court orders directing disclosure of the records in reliance on such a statute. And no court of appeals has held that government officials may not act in good-faith reliance on a court order issued by a neutral magistrate under the SCA procedures established by Congress. Because the good-faith question does not implicate any division of authority, and because petitioner could not obtain relief without reversing the court of appeals' good-faith holding, this case is not a suitable vehicle to take up the Fourth Amendment issue.

b. In addition, even if the historical cell-site data should have been suppressed, any error in admitting that evidence at trial was harmless. See Neder v. United States, 527 U.S. 1, 18 (1999) (observing that constitutional error is harmless when it is "clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error"). The information provided by the historical cell-site data was merely cumulative of other uncontroverted evidence at trial that placed petitioner near the robbery scenes. See Gov't C.A. Br. 4-46, 72-73 (describing evidence); see also Pet. App. 70a-73a (same). That evidence included surveillance footage showing petitioner at the crime scenes, testimony from numerous eyewitnesses, and fingerprint evidence. See Gov't C.A. Br. 5-18, 35-36. In its case-in-chief, "[t]he government introduced

the testimony of 39 witnesses * * * including victims, police officers, crime scene technicians, and forensic and firearms experts." Id. at 35. In addition, "[m]ore than 200 physical exhibits, in the form of photographs, videos, clothing, firearms, ammunition, reports and records, latent print cards, maps, and stipulations, were introduced into evidence." Ibid. In light of the overwhelming evidence establishing petitioner's involvement in the robberies and his location at the relevant times, it is clear that the jury would have returned a guilty verdict even if the historical cell-site data had not been admitted at trial. Indeed, the jury convicted petitioner on one robbery count for which the government had not introduced any historical cell-site data.

Because petitioner would not obtain relief even if this Court were to rule in his favor on the Fourth Amendment question, review of that question is not warranted in this case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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