

# Carpenter v. U.S. - A New 4<sup>th</sup> Amendment Standard?



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# Quick Intro



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# Roadmap

Part 1. History of 4th Amendment search and seizure rules

Part 2. Carpenter v. United States

Part 3. New Cases coming up and LEO reaction to secure investigations

# Part 1

## The 4<sup>th</sup> Amendment and Searches

# FOURTH AMENDMENT:

**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.

# The Fourth Amendment

- Government searches & seizures must be reasonable
- “Reasonable” requires warrant or judicially recognized exception
- What constitutes a search is developing

# What is a search?

Katz v. United States (1967)





# What is a search?

Government intrusion into an area where a person has a reasonable expectation of privacy for the purpose of obtaining information.





# United States v. Jones (2012)

Drug Kingpin

Tracking Warrant that expired  
Warrant served in wrong district

Ultimately attached to car in  
Maryland on public roadway



Released 02-22-2019

# U.S. v Jones Ruling

- Traditional approach still exist
- Katz supplemented traditional approach
- Warning - Hon. Judge Alito's opinion ... the Future ?

# What is a search?

1. Government intrusion into an area where a person has a reasonable expectation of privacy for the purpose of obtaining information.

OR

2. Government trespass on a person, house, paper, or effect for the purpose of obtaining information.



# U.S. v Jones - Aftermath



# United States v. Richmond (5<sup>th</sup> Cir. 2019)



???





# Part 2

*United States v. Carpenter (2018)*



# Cell Site Location Information



# *U.S. v. Carpenter (2018)*



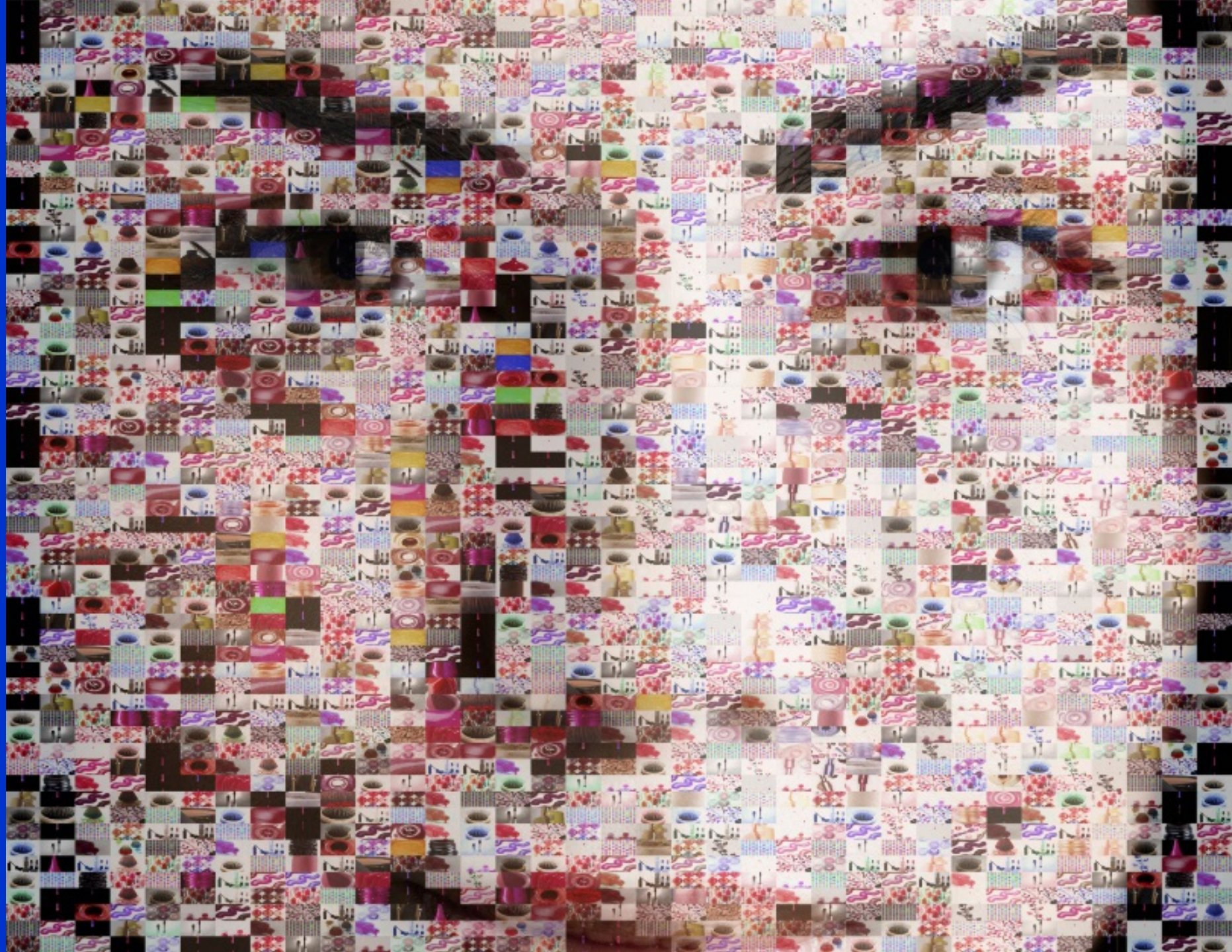
# U.S. v. Carpenter Ruling

- REP in whole of their physical movements
  - 7 days or more...need warrant
- New test for when one loses REP?
  - Extent knowingly shared with another
  - Nature of the information sought
- No mechanical application

**The whole is more than the sum of its parts?**









# U.S. v. Carpenter – the Aftermath

## Three Part Analysis

- 1) Intrusion into an area of REP (Katz)
- 2) Trespass onto persons, houses, papers & effects (Jones)
- 3) REP in type or quantity of private information (Carpenter)

If Yes => It is a SEARCH



# U.S. v. Carpenter – the Aftermath

- Generally need search warrant to track individual
  - Less than 7 days, maybe not
  - Judicially Recognized Exceptions apply (exigent circumstances, Network Banners, consent)

# Part 3

New Cases coming up and LEO  
reaction to secure investigations

# Implications

## Retroactivity?

- No
- Good Faith applies?
  - In every case so far
- Reviewed by every circuit in many districts thus far over 400 cases

# Implications

## 6 Days?

- No cases yet.
- Cited 450 times in courts all across the U.S.
  - Cited 214 in unpublished opinions
- 393 other citing references
- Facts of Carpenter:
  - 7 days vs. 2 Days

# Implications -Beyond Tracking

- Video Surveillance
  - Pole Cameras
- 9 district court cases
  - One suppressed – (U.S. v. Moore-Bush)
- Still no controlling guidance



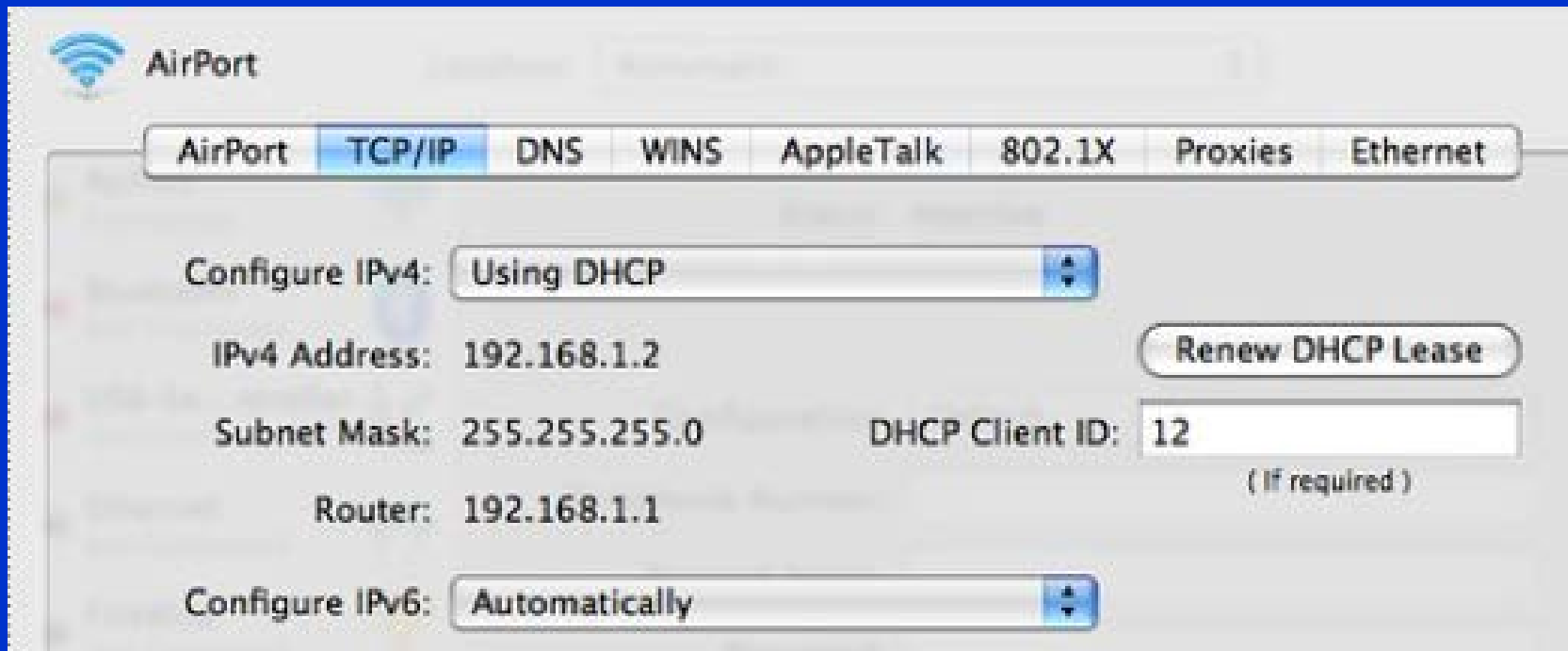
# *United States v. Moore-Bush* (D. Mass. June 2019)

- Warrantless Pole Camera on front of Defendant's residence
- Completely exposed to public
- Eight months of Surveillance
- Pan and zoom
- Created digital log of activity



# Implications -Beyond Tracking

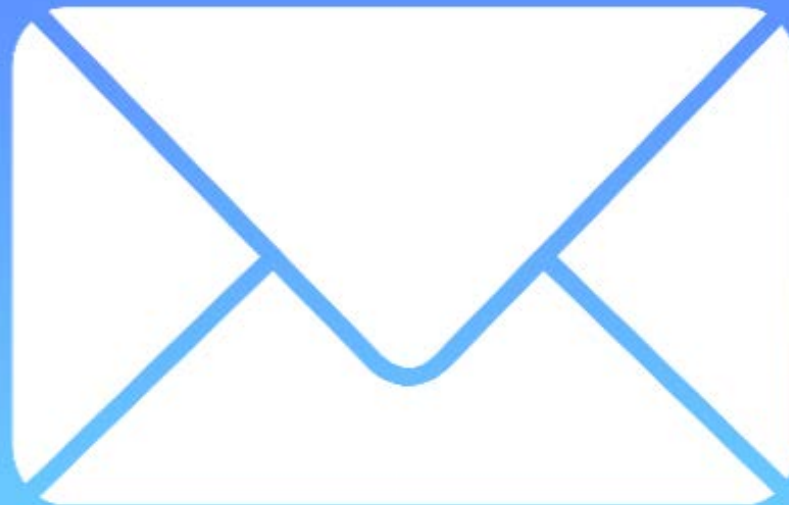
- Subscriber info and IP Addresses
- Carpenter Not Applicable
- Multiple court cases district and circuit





# Implications -Beyond Tracking

- Searching someone else's email account
- Defendant wanted to Challenge Warrant
- Court found no Standing



# Implications -Beyond Tracking

- Warrantless Tower Dumps
  - One court ruled Carpenter did not apply.
- Border Searches
  - Sidestepped the issue by finding good faith



# Protecting Your Evidence

- Hard to predict what is next!
- Risk –
  1. using technology
  2. to gather lots of info
  3. without a search warrant.
- Solutions:
  1. Get a Warrant
  2. Get Consent (good clear consent)
  3. Collect less information / narrow your search

# Questions?

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