# US Supreme Court rejects unlimited warrantless cell phone searches

**By Ed Hightower**
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In a decision involving two cases of police searches of cellular phone contents, the US Supreme Court ruled Wednesday that, as a general rule, individual privacy rights require law enforcement officers to obtain a search warrant before searching through a phone's "contacts" list or other data, such as photographs or videos.

Chief Justice John Roberts authored the opinion, finding that the arguments put forth by the Obama administration were without merit. The administration directly participated in one of the two cases, *United States v. Wurmie*, arguing through its solicitor general that all contents of an arrested person's cell phone could be viewed and copied without a warrant, in flagrant violation of the Fourth Amendment to the US Constitution's ban on warrantless searches and seizures.

The Supreme Court's unanimous decision, controlling the *Wurmie* case and also *Riley v. California*, found that the usual rationales relieving police from the warrant requirement were absent in the case of cell phones. For our summary of the oral arguments in *Riley* and *Wurmie* and the legal issues involved (see: US Supreme Court may permit unwarranted search of cellular phone contents).

The decision in *Riley* and *Wurmie* may appear to be a triumph for democratic rights and electronic privacy, but this interpretation is erroneous. One has to consider exactly what the state of California and the Obama administration, in *Riley* and *Wurmie*, respectively, were asking the US Supreme Court to do. Both argued that police placing someone under arrest for virtually any offense, including traffic infractions, should be allowed to search and store any data on a cell phone obtained from the person under arrest. As the Court noted, this potentially meant physical location data from GPS-enabled phones, banking data, call logs, photographs, videos, music, news stories, text messages, sound recordings and internet browser and search history. Thus, the case argued by the government was extremely broad, intrusive and reactionary in its political aims.

At the same time, the decision does not impose a great hurdle on law enforcement in the realm of evidence gathering. It appears that a significant factor in the Supreme Court's reasoning was in fact the relative ease of obtaining a search warrant, which in some cases can take as little as fifteen minutes and can be effected by purely electronic means.

At oral arguments and in their legal briefs, the state of California and the Obama administration suggested that suspects under arrest could destroy the data on their phones or use their phones to summon their co-conspirators to the scene, creating a danger to law enforcement. The Supreme Court found neither argument convincing. In both cases, the Court pointed out that there were almost no reported incidences of "remote wiping" i.e., the destruction of cell phone data, and that both remote wiping and communicating with co-conspirators could be effectively prevented by placing the phone in a Faraday bag, which blocks radio signals.

The Supreme Court also rejected the argument that cell phones and the data in them are no different from the types of information contained in a wallet or a purse, which, under existing precedent, are not subject to Fourth Amendment protection in the case of an arrested individual. In a strongly worded passage, the Court's opinion refutes the Obama administration's argument that a wallet, purse, or even an address book is "materially indistinguishable" from cell phone data, using the following language:

“That is like saying a ride on horseback is materially indistinguishable from a flight to the moon. Both are ways of getting from point A to point B, but little else justifies lumping them together. Modern cell phones, as a category, implicate privacy concerns far beyond those implicated by the search of a cigarette pack, a wallet, or a purse.”

Because of the many different types of highly personal information that can be stored on a phone, the court likened the search of a phone to the search of a house, the place afforded the most protection under Fourth Amendment jurisprudence.

There was a reactionary concurring opinion, by associate Justice Samuel Alito, which left the door open for Congress and the state legislatures to craft their own more detailed rules—and presumably more intrusive rules—governing unwarranted searches of cell phone data. Alito declared that the legislative branch would be better tasked with understanding both the privacy interests of the citizenry and the evidence-gathering needs of law enforcement.

“In light of these developments, it would be very unfortunate if privacy protection in the 21st century were left primarily to the federal courts using the blunt instrument of the Fourth Amendment,” he wrote.

Ellen Canale, a spokesperson for the Department of Justice, made a statement acknowledging the ruling on Wednesday, if in a limited fashion. She said, “We will make use of whatever technology is available to preserve evidence on cell phones while seeking a warrant, and we will assist our agents in determining when exigent circumstances or another applicable exception to the warrant requirement will permit them to search the phone immediately without a warrant.”

“Exigent circumstances” refers to the language in the opinion itself, which clearly allows for other exceptions to the general warrant requirement. There is a saying in the law that “each case turns on its own facts,” that is, no two cases are alike and a slightly different factual scenario might yield a very different legal result. If there were reason for the arresting officer to believe that information on a suspect’s phone would have immediate life-saving utility, perhaps in saving a hostage, then the exigent circumstances exception to the warrant requirement would apply. It seems that the DOJ has latched onto the prospect of expanding the exigent circumstances doctrine before the ink in the *Riley*and *Wurmie* opinion is dry.