



# Geofence Warrants: The Modern-Day General Warrant

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Ofentimes when we look back at the Founding Era of our country, we see a world completely foreign to the one we now live in—and in many ways, it truly is. On the other hand, we are still fighting the same battles as our predecessors to preserve the basic civil liberties that inspired this Nation's founding. Namely, our

right to be free from constant government surveillance or subject to broad, warrantless searches and seizures by law enforcement.

One of the most glaring examples of this can be seen in the British writs of assistance, also known as general warrants. These writs gave British soldiers limitless permission to search any person's home and

all their belongings for smuggled (untaxed) goods. No specifics were required for what they were looking for or where they could search. The broad nature of these warrants made them ripe for abuse and weaponization. Thanks to the Fourth Amendment, we no longer need to worry about this threat, right? Wrong.

One of the most notable differences between the 21st and 18th centuries is that our world is now overwhelmingly digital and exists online. Nearly every aspect of our lives is turned into data that is collected, stored, analyzed, and shared by third-party service providers. Thanks to not only our phones but also the apps we store on them, every step we take can be traced through location data, making the term “digital footprint” a much more literal one. And reverse-location searches are the constitutionally dubious method police use to track those prints.

Geofence warrants have become a very popular tool across the country as a way for police to try and dig up suspects for crimes in which they have no clear leads.<sup>1</sup> While this might seem reasonable to some, the nature of these searches raises major Fourth Amendment concerns.

When police submit a geofence warrant to Google, the main service provider capable of carrying out a reverse-location search, they’re demanding that the tech giant use its databases to pull up anyone in a specified geographic area within a window of time where a crime was committed. Anyone using a Google device or application of any sort will appear in this digital dragnet. Like the British soldiers using broad writs of assistance to search for “contraband” in

the homes of anyone they deemed as “suspicious”, these searches have no particularity about who they’re looking for.

Anyone whose data simply appears in the search is then a potential subject. For Florida resident Zachary McCoy, a simple bike ride around his neighborhood turned him into a potential lead suspect in a home burglary case.<sup>2</sup> The location data from an exercise app he used to track his miles pinged him in the area of the crime, which was enough for police to demand that Google deanonymize the data and hand it over. McCoy was only made aware of the investigation thanks to Google’s legal team alerting him that unless he went to court to challenge the request by law enforcement, they would release his information. After dipping into his family’s savings for an attorney, he later found out that a lawyer representing the police determined he was no longer a likely suspect, leading to the warrant being withdrawn.

While McCoy’s case fortunately came to an end before it could become truly disastrous, Arizona resident Jorge Molina wasn’t so lucky. A similar reverse-location search requested by police in Avondale, AZ pinned Molina at the scene of a murder he was nowhere near.<sup>3</sup> Despite text messages and Uber receipts revealing Molina to be at a movie with his friends at the time of the murder, he ended up spending 6 days in jail.

To make matters worse, the police put out a press release which ended up destroying his reputation, despite evidence proving his innocence. Eventually Molina was released but the damage was done. He lost his job, would continually fail background checks for future jobs, had his car

impounded, and was unable to finish his schooling. The damage that these digital dragnets can and have caused cannot be understated.

To describe geofence warrants as a general warrant is not hyperbole or an exaggeration. It's exactly what the Fifth Circuit Court of Appeals called them in a recent decision. "*We hold that geofence warrants are modern-day general warrants and are unconstitutional under the Fourth Amendment,*" was the concluding statement in their opinion from this past August.<sup>4</sup> While the ruling is a stern one, Judge James C. Ho reminds us that the rights described in our founding charter are inalienable and should not be traded for mere convenience,

*"I fully recognize that our panel decision today will inevitably hamper legitimate law enforcement interests. But hamstringing the government is the whole point of our Constitution...Our decision today is not costless. But our rights are priceless."*

These sentiments echo the sobering words of great American economist, Thomas Sowell, that the harsh reality is there are no solutions, only tradeoffs.

Utah legislators saw the major risks that this practice posed and took swift action last year by passing the nation's first official law codifying warrant requirements for a reverse-location search as well as limiting the cases in which police may obtain a geofence warrant. Now, with the recent precedent set by the Fifth Circuit, future groups working on this issue may have an even stronger case for prohibiting the dangerous surveillance tactic and could even go further than Utah by banning its use entirely.

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## ENDNOTES

- 1 Jon Schuppe, "Police used Google location data to find an accused bank robber. He says that's illegal." NBC News, November 20, 2019. Available Online: <https://www.nbcnews.com/news/us-news/police-used-google-location-data-find-accused-bank-robber-he-n1086836>
- 2 Jon Schuppe, "Google tracked his bike ride past a burglarized home. That made him a suspect." NBC News, November 7, 2020. Available Online: <https://www.nbcnews.com/news/us-news/google-tracked-his-bike-ride-past-burglarized-home-made-him-n1151761>
- 3 Meg O'Connor, "Avondale Man Sues After Google Data Leads to Wrongful Arrest for Murder," *Phoenix New Times*, January 16, 2020. Available Online: <https://www.phoenixnewtimes.com/news/google-geofence-location-data-avondale-wrongful-arrest-molina-gaeta-11426374>
- 4 United States of America Vs. Jamarr Smith; Thomas Iroko Ayodele; Gilbert McThunel, II., No. 23-60321 (5th Cir, 2024). Available Online: <https://www.ca5.uscourts.gov/opinions/pub/23/23-60321-CR0.pdf>