

NO. 11-20884

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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On Appeal from the United States District Court
for the Southern District of Texas
Houston Division, Civil No. 4:11-MC-00223

**Brief of the American Civil Liberties Union Foundation, the ACLU
Foundation of Texas, the Electronic Frontier Foundation, the Center
for Democracy and Technology, and the National Association of
Criminal Defense Lawyers as Amici Curiae in Support of Affirmance**

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Any information

§ 87(2)(b)

a record or other information

pertaining to a subscriber to or customer of such service (not including the contents of communications) ^{§ 87(2)(b)}

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D. The Doctrine Of Constitutional Avoidance Requires This Court To Construe § 2703(d) As Giving Judges Discretion To Require A Warrant.

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Id.

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Jones, 130 S.Ct. 1019

id. at 9

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130 S.Ct. 1019

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130 S.Ct. 1019

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Id. at 10

130 S.Ct. 1019

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130 S.Ct. 1019

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Id. at 10

130 S.Ct. 1019

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Id. at 10

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Id. at 10

130 S.Ct. 1019

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Katz v. United States, 389 U.S. 965

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Id. at 10

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130 S.Ct. 1019

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Id. ~~at~~ 9 . ~~See~~

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Id. at 11 F

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at 11 Id. at 11 r

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Id. at 11 ak

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Id. at 11 am

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Id. at 11 be

at 11 bf

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United States v. Karo, 432 U.S. 858 (1977)

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in a letter to

§ 87(2)(b)

Karo, 432 U.S. 858 (1977)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Id. at 860

§ 87(2)(b)

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§ 87(2)(b)

Id. at 860

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§ 87(2)(b)

Id. at 860

§ 87(2)(b)

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See also *Kyllo v. United States*, 533 U.S. 27 (2001).

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Third Circuit Opinion, 08-1318, 2008 WL 4811111

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Third Circuit Opinion, 08-1318, 2008 WL 4811111

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§ 17 ⁶ Id. at

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Semi-Annual Wireless Industry Survey 9

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§ 601

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See *Powell v. McCormack*, 392 U.S. 514 (1968).

See also *United States v. Powell*, 369 U.S. 578 (1962).

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§ 607

per se

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See *United States v. Gonzalez*, 353 U.S. 231 (1957).

overruled on other grounds by *United States v. O'Brien*, 391 U.S. 367 (1968).

§ 609

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Brinegar v. United States, 338 U.S. 160 (1950).

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U.S. Supreme Court		U.S. District Court
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U.S. District Court	U.S. District Court	U.S. District Court
U.S. District Court		U.S. District Court
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U.S. District Court		U.S. District Court

B. Cell Phone Providers' Ability To Access Customers' Location Data Does Not Eliminate Cell Phone Users' Reasonable Expectation Of Privacy In That Data.

U.S. District Court		U.S. District Court
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Third Circuit Opinion, 2011 WL 1111

Third Circuit Opinion, 2011 WL 1111

U.S. District Court		U.S. District Court
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Smith and Miller

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Smith Miller

Miller d Smith, 461 U.S. 574 (1983) per se

Miller d Smith, 461 U.S. 574 (1983)

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Miller d Smith, 461 U.S. 574 (1983)

Miller d Smith, 461 U.S. 574 (1983)

Miller d Smith, 461 U.S. 574 (1983)

Miller d Smith, 461 U.S. 574 (1983) Third Circuit Opinion

Miller d Smith, 461 U.S. 574 (1983)

Miller d Smith, 461 U.S. 574 (1983)

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Miller d Smith, 461 U.S. 574 (1983) collect

Miller d Smith, 461 U.S. 574 (1983) Id.

Miller d Smith, 461 U.S. 574 (1983)

Miller d Smith, 461 U.S. 574 (1983)

Miller d Smith, 461 U.S. 574 (1983) Katz'

Miller d Smith, 461 U.S. 574 (1983) Smith, 461 U.S. 574 (1983)

Miller d Smith, 461 U.S. 574 (1983) see also Jones, 389 U.S. 123 (1967)

Miller d Smith, 461 U.S. 574 (1983) Katz, 403 U.S. 584 (1971)

Miller d Smith, 461 U.S. 574 (1983)

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Third Circuit Opinion

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Hoffa v. United States, 385 U.S. 311

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United States v. Perrine, 11/1/12

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Donaldson v. United States, 11/1/12

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id., 11/1/12

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SEC v. Jerry T. O'Brien, 11/1/12

Inc., 11/1/12

Miller, 11/1/12

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Reporters Committee for Freedom of the Press, 11/1/12

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C. The Compulsory Process Cases Do Not Change The Result.

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See, e.g.

Donovan v. Lone Steer, Inc., 459 F.2d 1011 (10th Cir. 1971)

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Zurcher v. Stanford Daily, 436 U.S. 330 (1978)

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duces tecum, 11 F.3d 1011 (10th Cir. 1994)

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See, e.g.

Okla. Press Publ'g Co.

v. Walling, 431 U.S. 517 (1977)

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A. The Magistrate's Findings Of Facts Are Not Before This Court.

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See Magistrate Judge Opinion

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B. Since, As The Government Has Essentially Conceded, The Federal Rules Of Evidence Do Not Apply To § 2703(d) Proceedings, The Magistrate Judge’s “Findings of Facts” Did Not Violate FRE 201’s “Reasonable Dispute” Requirement.

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See, e.g., In re Application of U.S. for an Order: (1) Authorizing Use of a Pen Register and Trace Device; (2) Authorizing Release of Subscriber and Other Info.; (3) Authorizing Disclosure of Location-Based Servs.

id.

In Frazier, 663 F.3d at 1011

at 1011 n.10

id.

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In Frazier, 663 F.3d at 1011

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In Frazier, 663 F.3d at 1011

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Findings in

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§ 87(2)(b)

§ 87(2)(b)

Magistrate Judge Opinion, pp. 8-9

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Id. at 8-9

pp. 8-9

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CONCLUSION

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United States v. Di Rita, 359 U.S. 186

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