CDT Asks Supreme Court to Bar Warrantless Search of Cell Phones

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For decades the law has held that, while a warrant is needed to search a building, police can seize and search items on a person during an arrest without a warrant. But can this premise stand when the phone in one’s pocket can contain more private information than an entire warehouse? In the face of evolving technology, the Supreme Court may soon consider this question.

Two petitions on the issue of searching through phones seized during arrests have been filed at the Supreme Court. The cases are subtly but significantly different. *Riley v. California* involves the search of a smartphone, while the facts of *Wurie v. United States* focus on the increasingly outdated traditional “feature phone,” which stores a much narrower range of data. Last week, CDT, along with EFF, filed an amicus brief [2] urging the Court to hear the *Riley* case and to make it clear that the search-incident-to-arrest doctrine does not allow warrantless searches of cell phones seized during an arrest. Andrew Pincus, a leading Supreme Court advocate, wrote the brief.

We believe the court should take up *Riley* because it effectively exemplifies the current state of technology and its likely future. Smartphones, like the one at issue in *Riley*, contain huge amounts of data and a variety of private information such as emails, documents, photos, financial records, web activity, and personal notes. As we noted in our amicus brief, a modern smartphone contains more data than a desktop computer from less than a decade ago. In contrast, the traditional feature phones, like the one in the *Wurie* case, have a small storage capacity and can only contain limited categories of information, such as a call log and text messages.

The kind of phone at issue in *Wurie* is already outdated and increasingly rare in the U.S. Already, the majority of mobile phones used in the U.S. are smartphones, and the percentage will only continue to grow. If the Court were to set a rule based on the older type of phone used in *Wurie*, it would be immediately outdated, depriving citizens and law enforcement officers alike of clarity regarding proper procedure. *Riley* sets forth the question of mobile phone searches during arrests both as it exists now and as it will exist in the future.

If the Court does take either or both cases, CDT will likely file a brief on the merits, in which we will be able to explore in greater depth why smartphones fall far outside the boundaries of the search-incident-to-arrest doctrine.

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