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August 10, 2015

Deborah S. Hunt, Clerk  
United States Court of Appeals for the Sixth Circuit  
540 Potter Stewart U.S. Courthouse  
100 E. Fifth Street  
Cincinnati, Ohio 45202-3988

RE: *United States v. Carpenter and United States v. Sanders*, Nos. 14-1572, 14-1805  
New Authority Submission, Fed. R. App. P. 28(j)

Dear Ms. Hunt:

Undersigned counsel submit the following to advise the Court of recent pertinent decisions.

This appeal involves whether law enforcement violated Defendants-Appellants' reasonable expectations of privacy under the Fourth Amendment by obtaining, without a warrant, months' worth of historical cell site location information ("CSLI") from their wireless carriers. On August 5, 2015, the Fourth Circuit Court of Appeals decided ***United States v. Graham*, No. 12-4659, 2015 WL 4637931 (4th Cir. 8/5/15)**. In *Graham*, as in this case, the government obtained a court order under 18 USC §2703(d) compelling a cellular service provider to disclose a large volume of historical CSLI. The Fourth Circuit held that people have a reasonable expectation of privacy in historical CSLI, and that a probable cause warrant is required. The case is similar in all relevant respects to the instant appeal.

The Fourth Circuit recognized the significant privacy interest that people have in their cell phone location information, explaining that "long-term location information disclosed in cell phone records can reveal both a comprehensive view and specific details of the individual's daily life." *Id.* at \*11. The court also rejected the argument, advanced by the government in this case, that people lose their reasonable expectation of privacy in cell phone location records merely by virtue of the fact that their cellular service provider has access to them. As the court explained, because people do not "volunteer to convey their location information simply by choosing to activate and use their cell phones and to carry the devices on their person," the so-called third-party doctrine does not apply. *Id.* at \*16. In other words, "[p]eople cannot be deemed to have volunteered to forfeit expectations of privacy by simply seeking active participation in society through use of their cell phones." *Id.*

On July 29, 2015, Judge Lucy H. Koh of the Northern District of California decided *In re Application for Telephone Information Needed for a Criminal Investigation, No. 15-XR-90304, 2015 WL 4594558 (ND Cal. 7/29/15)* (public redacted version). Judge Koh similarly held that under the Fourth Amendment, a warrant is required for access to historical CSLI.

Respectfully submitted,

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#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on August 10, 2015, the foregoing New Authority Submission was filed electronically through the Court's CM/ECF system. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system.

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