

Geofence warrants

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What is a search warrant?

- A court order authorizing law enforcement to search and seize (i.e., take possession of) a place or things, including digital records.
- The Fourth Amendment often (but doesn't always) require a warrant before police start a search or seizure. This is because privacy is important, and a judge (who can act as a neutral third party) is better able to evaluate whether police have met the relevant legal standard than police themselves.

What is a geofence warrant?

- Allows law enforcement to search digital records to identify people whose smart phones were inside a specified set of places and times, called a “geofence.”
- Google has said that it receives large numbers of geofence warrants and has an established process for responding to them. However, many other companies track location history, and may have received and responded to geofence warrants without disclosing the existence of the warrants.

Traditional warrants vs. Geofence warrants

Traditional search warrants

- Based on particular suspicion about a specific person and crime, where there is probable cause to believe the search will uncover evidence of that crime.
- Can impact the privacy of others, but searches must be limited in scope.

Geofence warrants

- Based on a location and time of interest, not a specific person.
- Impacts the privacy of everyone in that location—regardless of whether probable cause exists to believe anyone committed a crime being investigated.

Historical context

- During the colonial period, “writs of assistance” and other general warrants empowered colonial officials to search anywhere, at their discretion, to find contraband goods.
- Colonists’ objections to such general warrants helped lead to the American Revolution, and were a major reason for the adoption of the Fourth Amendment.

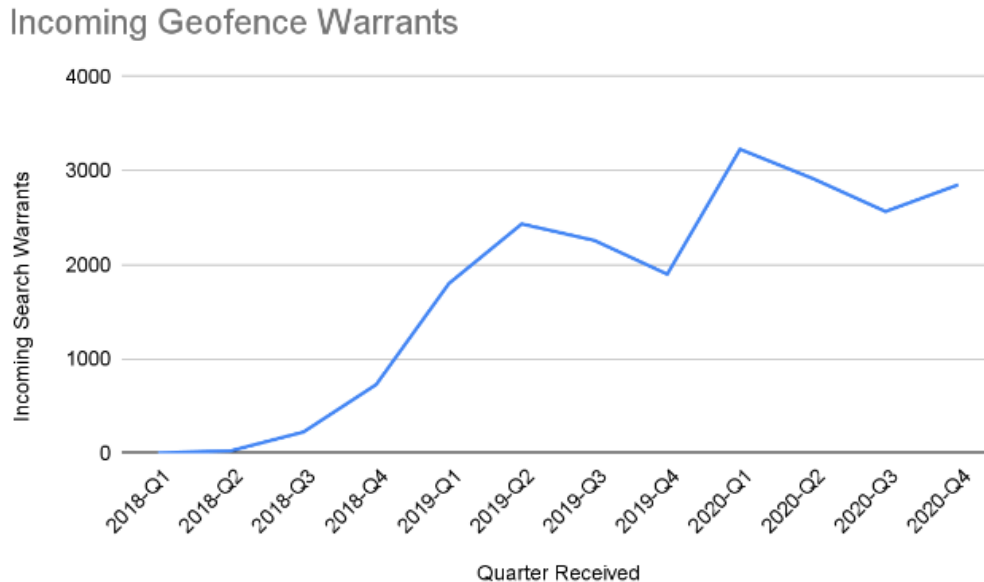


James Otis Arguing Against Writs of Assistance in the Old Towne House (oil painting by Robert Reid, 1901)

Geofence warrants can chill the right to free speech

- Use of geofence warrants to target the time and location of a mass protest invades the privacy of protest participants.
- This invasion of privacy can deter people from exercising their First Amendment rights—because it means that merely going to a particular place and time will catch you and your phone in the dragnet of a geofence warrant.

Use of geofence warrants is on the rise nationally



Source: Google Transparency Report, Supplemental Information on Geofence Warrants in the United States (2021)

How did law enforcement use geofence warrants in Kenosha in 2020?

- Multiple geofence warrants for areas near protests, including the Dinosaur Museum, Library Park, and businesses along Sheridan Road.

- Date: August 24, 2020
 - Time Period: 9:25 PM to 9:45 PM (CST)
 - Target Location: Geographical area identified as: 42.583837, -87.820932; 42.583017, -87.820777; 42.582916, -87.821706; 42.583713, -87.821875
- Also approximately depicted using the following image:



- Date: August 23, 2020
- Time Period: 8:27 PM to 9:45 PM (CST)
- Target Location: Geographical area identified as: 42.580916, -87.821792; 42.580995, -87.821710; 42.58142 42.581384, -87.822171; 42.580901, -87.822082; 42.58091

Also approximately depicted using the following image:



- Date: August 25, 2020
 - Time Period: 01:00 AM to 03:00 AM (CST)
 - Target Location: Geographical area identified as: 42.580802, -87.820086; 42.580940, -87.818942; 42.580243, -87.818733; 42.580146, -87.819945
- Also approximately depicted using the following image:



- Date: August 24, 2020
- Time Period: 12:30 AM to 12:55 AM (CST)
- Target Location: Geographical area identified as: 42.584020, -87.823760; 42.583678, -87.823688; 42.583727, -87.823412; 42.584020, -87.823760

Also approximately depicted using the following image:




What happens if you are in a place covered by a geofence warrant?

- The criteria for a company sharing your identifying information with law enforcement often depends on the company's internal policies for how to respond to geofence warrants.
- You may not find out about your information being shared unless criminal charges are filed against you, or if it is revealed during someone else's criminal case.


What can you do about geofence warrants?

- Currently: Block location data from being collected in the first place.

Leave your phone at home (inconvenient, but provides complete protection from location tracking)



Take your phone with you but turn it off (more convenient, but trusts the phone on/off switch to operate as intended)



Take your phone with you in airplane mode and/or deactivate location services (most convenient, but relies exclusively on software to protect you)

- In the future: Public advocacy, litigation, and legislation are all potentially important tools for changing the rules on geofence warrants.

What can you do about geofence warrants?

Public advocacy

- Once you find out your information has been collected as part of a geofence warrant, you can go to the media, an important way of educating the public about the privacy harms of geofence warrants.
- You'll usually find out about the geofence warrant from being a defendant in a criminal case. Talk to your attorney about when it would be safe to go public. Make sure to tell your attorney in advance about any contacts with reporters.

What can you do about geofence warrants?

Litigation

- If you are facing criminal charges and a geofence warrant is involved, talk to your attorney about challenging the geofence warrant.
- In the *Chatrie* case in E.D. Virginia, a person filed who was arrested based on location data that law enforcement obtained through a geofence warrant.
- However, this issue that will take time to be addressed by the courts.

What can you do about geofence warrants?

Legislation

- Are you involved in state or local organizations that work on racial justice or privacy rights? Get the organization to push for legislation banning law enforcement from seeking geofence warrants or using information from geofence warrants obtained by other agencies.
- Call your state legislators to urge them to introduce legislation.

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