University of Arkansas at Little Rock Law Review

Volume 41 | Issue 3 Article 4

2019

CRIMINAL PROCEDURE—Jurisdictional Limitations on Federal Judges' Ability to Authorize Electronic Surveillance: A Cry for Congressional Guidance

Meredith A. Powell

CRIMINAL PROCEDURE—JURISDICTIONAL LIMITATIONS ON FEDERAL JUDGES' ABILITY TO AUTHORIZE ELECTRONIC SURVEILLANCE: A CRY FOR CONGRESSIONAL GUIDANCE

I. INTRODUCTION

Imagine a drug distribution operation so vast that it takes more than forty people to run it.[1] This kind of operation is the type Los Dahda ("Mr. Dahda") found himself joining as an importer and a dealer.[2] Mr. Dahda had several roles in which he helped facilitate the transactions, including "driving money from Kansas to California for someone in the group to buy the marijuana, assisting with the purchase and packaging of marijuana in California, loading marijuana into crates for shipment to Kansas, and selling the marijuana in Kansas to individuals who redistributed the marijuana to others."[3] The network operated for nearly seven years and brought approximately $17 million worth of drugs to Kansas.[4] The government began investigating the drug network in 2011 and obtained wiretap authorization orders covering telephones used by the suspected members of the network.[5]

After years of surveillance, prosecutors indicted forty-three people, including Mr. Dahda, for trafficking in marijuana, cocaine, and methamphetamine.[6] Prosecutors obtained the majority of the evidence against Mr. Dahda through nine wiretap orders issued by the United States District Court for the District of Kansas.[7] Prior to trial, Mr. Dahda moved to suppress the intercepted communications, arguing that the wiretap orders exceeded the district court's territorial jurisdiction and thus, were facially insufficient.[8]

The question presented in *Dahda v. United States* is whether Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510–2520 ("Title III"), requires suppression of evidence obtained pursuant to a wiretap order that is facially insufficient because the order exceeds the

---

1. United States v. Dahda, 853 F.3d 1101, 1106 (10th Cir. 2017), *cert. granted*, 138 S. Ct. 356, 356 (U.S. Oct. 16, 2017) (No. 17-43).

2. *Id.*

3. *Id.* at 1105–06.

4. *Id.*; *Lawrence Twins convicted in $17 million drug conspiracy that ran through barbecue joint*, THE ASSOCIATED PRESS (July 24, 2014, 3:54 PM), http://www.kansascity.com/news/local/crime/article796203.html.

5. *Dahda*, 853 F.3d at 1106.

6. Ian Cummings & Shaun Hittle, *Day 1: From the Emerald Triangle to the Sunflower State*, LAWRENCE JOURNAL WORLD (May 26, 2013, 4:13 PM), http://www2.ljworld.com/news/2013/may/26/day-1-emerald-triangle-sunflower-state-inside-stor/.

7. *Dahda*, 853 F.3d at 1111.

8. *Id.*

judge's territorial jurisdiction.[9] This question has divided the circuit courts that have answered it.[10] In April 2017, Mr. Dahda and his brother, Roosevelt Rico Dahda, filed for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit.[11] The Supreme Court of the United States granted the petition on October 16, 2017.[12]

This note argues five points: (1) a cell phone is not a "mobile interception device" that falls within the court's ability to issue a wiretap order because "mobile interception device" means a mobile device used to intercept a telephone call—a cell phone is the thing being intercepted, not the thing used to do the intercepting[13]; (2) courts should not apply the "core concerns" reasoning because doing so renders provisions of Title III meaningless[14]; (3) Title III requires suppression of evidence obtained pursuant to a wiretap order that is facially insufficient because the order exceeds the judge's territorial jurisdiction[15]; (4) if the "core concerns" test is applied, courts should conclude that territorial jurisdiction limitations implicate a core concern of Title III[16]; and (5) congressional interpretation of Title III's ambiguous pro-

9. Petition for Writ of Certiorari at 3, Dahda v. United States, 138 S. Ct. 356, 356 (2017) (No. 17–43) (In the United States Court of Appeals for the Tenth Circuit, the *Dahda* Court had multiple questions before it. One of these questions involved the interpretation of the phrase "mobile interception device" as it is used in Title III. Although that particular question was not before the Supreme Court of the United States, it is still an important one on which the United States circuit courts are split. Further, whether a "mobile interception device" is used has a direct effect on whether a wiretap order is facially insufficient. Therefore, the interpretation of the phrase "mobile interception device" will be discussed in detail throughout this note).

10. *Compare Dahda*, 853 F.3d at 1113–14 (holding that the territorial jurisdiction limitation does not implicate a core concern of Title III and, thus, evidence obtained as a result of a facially insufficient wiretap order need not be suppressed), *with* United States v. Glover, 736 F.3d 509, 514–16 (D.C. Cir. 2013) (holding that the "core concerns" reasoning should not be applied to motions to suppress facially insufficient wiretap orders and even if it is applied, the territorial jurisdiction limitation implicates a core concern of Title III, and therefore, evidence obtained as a result of a facially insufficient wiretap order must be suppressed).

11. Petition for Writ of Certiorari, *supra* note 8, at 2.

12. Dahda v. United States, 138 S. Ct. 356, 356 (U.S. Oct. 16, 2017) (No. 17-43). On May 14, 2018, the Supreme Court, held (1) Title III's provision requiring suppression if a wiretap order is "insufficient on its face" does not contain a "core concerns" requirement, and (2) wiretap orders authorizing interception of communications outside the district court's territorial jurisdiction were not "insufficient on their face" within the meaning of the wiretap statute's suppression provision, abrogating *Glover*, 736 F.3d at 513. Dahda v. United States 138 S. Ct. 1491, 1492 (2018).

13. *See infra* Part III.A.

14. *See infra* Part III.B.

15. *See infra* Part III.C.

16. *See infra* Part III.C.

visions is long overdue, especially considering technological advances that have taken place since its enactment.[17]

Part II of this note discusses the purposes of Title III, as well as Congress's motives in enacting the statute, the "territorial jurisdiction" limitation, Title III's suppression remedy, the current circuit split on the interpretation of the phrase "mobile interception device," and the current circuit split on the application of Title III's suppression remedy when a wiretap authorization order is insufficient on its face.[18] Part III argues congressional action is long overdue to interpret Title III and settle the issues dividing the United States circuit courts.[19] Part IV concludes this note.[20]

II. BACKGROUND

A. The Purpose of Title III is to Regulate Electronic Eavesdropping by Government Officials, as Well as Private Actors.

In 1968, Congress enacted Title III to regulate electronic eavesdropping by government officials, as well as private actors.[21] Title III covers the intentional interception by any means of wire, oral, and electronic communications.[22] The statute codified *Berger v. New York*[23] and *Katz v. United States*.[24] In particular, Title III addresses the procedural requirements that the Supreme Court articulated in *Berger*.[25]

The law at issue in *Berger* authorized electronic eavesdropping without procedural safeguards.[26] The Court laid out the following procedural requirements that the New York statute failed to meet:

> (1) Particularity in describing the place to be searched and the person or thing to be seized; (2) Particularity in describing the crime that has been, is being, or is about to be committed; (3) Particularity in describing the type of conversation sought; (4) Limitations on the officer executing the

17. *See infra* Part III.D.
18. *See infra* Part II.
19. *See infra* Part III.
20. *See infra* Part IV.
21. S. REP. NO. 90-1097, at 66 (1968), *as reprinted in* 1968 U.S.C.C.A.N. 2112, 2153–54.
22. 18 U.S.C.A. § 2518 (Westlaw through Pub. L. No. 115-231).
23. S. REP. NO. 90-1097, at 2194 (citing Berger v. New York, 388 U.S. 41 (1967), in which the Supreme Court invalidated a New York law which authorized electronic eavesdropping without required procedural safeguards, holding that the "basic purpose of the Fourth Amendment is to safeguard privacy and security of individuals against arbitrary invasions by government officials").
24. *Id.* at 2185 (citing Katz v. United States, 389 U.S. 347 (1967)).
25. *Berger*, 388 U.S. at 58–59.
26. *Id.* at 43.

> eavesdrop that would (a) prevent his searching unauthorized areas, and (b) prevent further searching once the property sought is found; (5) Probable cause in seeking to renew the eavesdrop order; (6) Dispatch in executing the eavesdrop order; (7) Requiring the executing officer to make a return on the eavesdrop order showing what was seized; and (8) A showing of exigent circumstances in order to overcome the defect of not giving prior notice.[27]

In *Katz*, the Supreme Court reaffirmed the standards set out in *Berger*.[28] Congress used the Court's decisions in these two cases as a guide when drafting Title III.[29]

Legislative history indicates that Congress was concerned with "the tremendous scientific and technological developments that have taken place in the last century [that] have made possible today the widespread use and abuse of electronic surveillance techniques."[30] The Senate expressed fear that individual privacy was in jeopardy as a result of new and improved surveillance techniques.[31] It called for comprehensive, fair, and effective reform, emphasizing the need for uniform standards.[32]

Congress articulated two main concerns that animate Title III: "(1) protecting the privacy of wire and oral communications; and (2) delineating on a uniform basis the circumstances and conditions under which the interception of wire and oral communications may be authorized."[33] Title III protects privacy by limiting who is authorized to conduct wiretaps[34] and creating an evidentiary burden.[35]

B. Obtaining a Wiretap Authorization Order

To obtain a wiretap authorization order, a law enforcement officer must file an application with a judge of competent jurisdiction.[36] Section 2518(3)

---

27. S. REP. NO. 90-1097, at 2161–62 (citing *Berger*, 388 U.S. at 74).
28. *Id.* at 2162.
29. *Id.* at 2163.
30. *Id.* at 2154.
31. *Id.* ("No longer is it possible, in short, for each man to retreat into his home and be left alone. Every spoken word relating to each man's personal, marital, religious, political, or commercial concerns can be intercepted by an unseen auditor and turned against the speaker . . . .").
32. *Id.* at 2156.
33. S. REP. NO. 90-1097, at 2153.
34. United States v. Dahda, 853 F.3d 1101, 1115 (10th Cir. 2017), *cert. granted*, 138 S. Ct. 356, 356 (U.S. Oct. 16, 2017) (No. 17-43) (citing S. REP. NO. 90-1097, at 66) ("only duly authorized law enforcement officers engaged in the investigation or prevention of specified types of serious crimes").
35. *Id.* (explaining the evidentiary burden for obtaining a wiretap is probable cause).
36. 18 U.S.C.A. § 2510(9)(a) (Westlaw through Pub. L. No. 115-231) ("'judge of competent jurisdiction' means (a) a judge of a United States district court or a United States court

authorizes a judge to approve a wiretap within the territorial jurisdiction of the court in which the judge sits.[37] Title III permits courts to authorize law enforcement's interception of telephone communications.[38] The term "intercept"[39] is broadly defined in Title III and includes the use of a "device"[40] to acquire the "contents"[41] of any telephone call.[42] Moreover, interception occurs both where the tapped telephone is located and where law enforcement officers put their listening post.[43]

Title III comes with limits, however, one of which is the territorial jurisdiction limitation.[44] Generally, a judge's authority to authorize law enforcement's interception of telephone communications is limited to his or her territorial jurisdiction.[45] An exception exists, however, that allows interception outside the judge's territorial jurisdiction when a "mobile interception device" is used.[46] This phrase has been interpreted differently among federal courts.[47]

C. Title III's Suppression Remedy

Under Title III, a suppression remedy exists for communications that were intercepted (i) unlawfully; (ii) based on a facially insufficient wiretap

---

of appeals; and (b) a judge of any court of general criminal jurisdiction of a State who is authorized by a statute of that State to enter orders authorizing interceptions of wire, oral, or electronic communications").

37. § 2518(3).

38. §§ 2510–2520.

39. § 2510(4) ("'intercept' means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device").

40. § 2510(5) ("'electronic, mechanical, or other device' means any device or apparatus which can be used to intercept a wire, oral, or electronic communication . . . .").

41. § 2510(8) ("'contents' when used with respect to any wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication").

42. § 2510(4).

43. *See, e.g.*, United States v. Dahda, 853 F.3d 1101, 1111–12 (10th Cir. 2017), *cert. granted*, 138 S. Ct. 356, 356 (U.S. Oct. 16, 2017) (No. 17-43); United States v. Jackson, 849 F.3d 540, 551 (3d Cir. 2017); United States v. Luong, 471 F.3d 1107, 1109 (9th Cir. 2006); United States v. Ramirez, 112 F.3d 849, 852 (7th Cir. 1997); United States v. Denman, 100 F.3d 399, 403 (5th Cir. 1996); United States v. Tamarez, 40 F.3d 1136, 1138 (10th Cir. 1994); United States v. Rodriguez, 968 F.2d 130, 136 (2d Cir. 1992).

44. § 2518(3).

45. *Id.*

46. *Id.*

47. *Compare Dahda*, 853 F.3d at 1113 (holding that the phrase "mobile interception device" can only mean a listening device that is mobile, and thus, a stationary listening device does not qualify as a mobile interception device for purposes of the statute), *with Ramirez*, 112 F.3d at 853 (holding that a mobile interception device does include a stationary listening post used to intercept mobile communications).

authorization order; or (iii) not in conformity with the wiretap authorization order.[48] Section 2515 provides that evidence obtained as a result of a violation of Title III must be suppressed.[49]

It is essential to determine the validity of a wiretap order in order to assess whether evidence obtained as a result of a wiretap order should be suppressed.[50] Further complicating the matter, the fact that a wiretap order is facially insufficient does not mean suppression is required.[51] Instead, suppression is required only if a court determines that the jurisdiction requirement is one of "those statutory requirements that directly and substantially implement[s] the congressional intention to limit the use of intercept[ion] procedures to those situations clearly calling for the employment of this extraordinary investigative device."[52] This is the question on which the United States circuit courts are split, and the one that was addressed by the Supreme Court in *Dahda v. United States*.[53]

D. There is a Circuit Split on the Issue of Whether a Stationary Listening Post Located Outside a District Court's Jurisdiction and Used to Intercept Cell Phone Calls is a "Mobile Interception Device" for the Purposes of the Court's Ability to Issue a Wiretap Order.

1. The Tenth Circuit's interpretation of the phrase "mobile interception device" in United States v. Dahda

The *Dahda* Court suggested three possible interpretations of the phrase "mobile interception device" as provided by Title III: "(1) a listening device that is mobile; (2) a cell phone being intercepted; or (3) a device that intercepts mobile communications, such as cell phone calls."[54] The court found that only the first of these three possibilities is compatible with the text of the statute.[55]

---

48. § 2518(10)(a).

49. § 2515 ("[w]henever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any . . . proceeding . . . if the disclosure of that information would be in violation of this chapter").

50. § 2518(10)(a).

51. *Dahda*, 853 F.3d at 1114 (citing United States v. Foy, 641 F.3d 455, 463 (10th Cir. 2011) (holding "[n]ot all deficiencies in wiretap applications . . . warrant suppression.")).

52. *Id.* (citing United States v. Giordano, 416 U.S. 505, 527 (1974)); *see* United States v. Radcliff, 331 F.3d 1153, 1162 (10th Cir. 2003) (extending this rule to suppression for facial insufficiency under 18 U.S.C. § 2518(10)(a)(ii))).

53. Dahda v. United States, 138 S. Ct. 356, 356 (U.S. Oct. 16, 2017) (No. 17-43).

54. *Dahda*, 853 F.3d at 1113.

55. *Id.*

In *Dahda*, the wiretap ordered the authorized "interception of cell phones located outside the issuing court's territorial jurisdiction."[56] The listening posts used were also located outside of the court's territorial jurisdiction.[57] Therefore, the orders allowed interception outside the court's territorial jurisdiction because there was no geographic restriction on the locations of either the cell phones or the listening posts.[58] As a result, the orders "violated the general rule that the interception must occur within the issuing court's territorial jurisdiction."[59]

The court had to determine whether the stationary listening post used by law enforcement could be considered a "mobile interception device," as the phrase is used in Title III.[60] The court reasoned that a statute's plain language controls unless the plain language would "produce a result demonstrably at odds with the intention of its drafters."[61] The court analyzed what "mobile interception device" means by looking at the words' grammatical functions.[62] According to the court, the word "'mobile' modifies 'interception device,' and the phrase 'mobile interception device' on its face appears to refer to the mobility of the device used to intercept communications."[63] Therefore, the Tenth Circuit concluded that "mobile interception device" can mean only a listening device that is mobile; thus, a stationary listening device does not constitute a mobile interception device.[64]

2. The Seventh Circuit's interpretation of the phrase "mobile interception device" in United States v. Ramirez

In *United States v. Ramirez*, the United States Court of Appeals for the Seventh Circuit held that a stationary listening post used to intercept mobile communicates constitutes a "mobile interception device" for the purposes of Title III.[65] In *Ramirez*, the defendants were convicted of conspiring to distribute methamphetamine based on evidence obtained from a wiretap of their cell phones.[66] The government suspected that Paul Hotchkiss ("Hotchkiss"), who lived in Wisconsin but dealt drugs in St. Paul, Minnesota, was

56. *Id.* at 1112.
57. *Id.*
58. *Id.*
59. *Id.*
60. *Dahda*, 853 F.3d at 1112.
61. *Id.* at 1113 (citing Starzynski v. Sequoia Forest Indus., 72 F.3d 816, 820 (10th Cir. 1995)).
62. *Id.*
63. *Id.* (citing United States v. North, 735 F.3d 212, 218 (5th Cir. 2013) (DeMoss, J., concurring)).
64. *Id.* at 1113–14.
65. United States v. Ramirez, 112 F.3d 849, 853 (7th Cir. 1997).
66. *Id.* at 851.

using a cell phone owned by another defendant, Patrick Flynn ("Flynn"), to carry out the conspiracy.[67] The government believed that Hotchkiss carried the phone with him as he traveled between Minnesota and Wisconsin dealing drugs.[68]

Using this information, the government obtained an order authorizing the wiretapping of the cell phone line from the United States District Court for the Western District of Wisconsin.[69] The order was issued on April 13, 1995 and was valid for thirty days.[70] The government set up its listening post in Minnesota rather than in the Western District of Wisconsin where it obtained the authorization order.[71] It located the post in Minnesota out of fear that the agents handling the post were at risk for discovery "in the defendants' home stomping ground."[72] Several days later, agents discovered that Hotchkiss was not using the phone.[73] The unknown user was talking with Flynn about the drug conspiracy the government was investigating and did not appear to be traveling outside of Minnesota.[74] After the initial thirty days expired, the government obtained an extension from the same district judge in Wisconsin without disclosing that the cell phone and listening post were both located in Minnesota.[75]

The case was later reassigned to a different federal judge.[76] The defendants filed a motion to suppress based on the argument that the wiretap authorization orders were facially invalid because the order authorized wiretapping outside of the judge's territorial jurisdiction.[77] The judge denied the motion in regards to evidence obtained under the original wiretap, holding that the order had been approved based upon the government's reasonable and good faith belief that the phone line was being used in the Western District of Wisconsin.[78] The judge, however, granted the motion as to evidence obtained as a result of the wiretap extension, holding that Title III did not permit a judge in one district to authorize wiretapping in another district.[79]

The Seventh Circuit adopted the position of the Fifth and Second Circuits that "an interception takes place both where the phone is located and

67. *Id.*
68. *Id.*
69. *Id.*
70. *Id.*
71. *Ramirez*, 112 F.3d at 851.
72. *Id.*
73. *Id.*
74. *Id.*
75. *Id.*
76. *Id.*
77. *Ramirez*, 112 F.3d at 851.
78. *Id.*
79. *Id.*

where the scanner used to make the interception is located."[80] The court reasoned that a literal interpretation of the statute's language would make little sense and would prevent a judge from authorizing the interception of cell phone calls through a stationary listening post when both the cell phone and the listening post are located outside of the judge's district.[81] A literal reading of the statute,

> would mean that if as in this case the listening post is stationary and is for practical reasons located outside the district in which the crime is being investigated and the cellular phone is believed to be located, the government, to be sure of being able to tap the phone if it is carried outside the district (as is it is quite likely to be, given its mobility), must obtain the wiretap order from the district court in which the listening post is located, even though that location is entirely fortuitous from the standpoint of the criminal investigation.[82]

According to the Seventh Circuit, "the legislative history of Title III suggests that 'mobile interception device' was intended to carry a broader meaning."[83] The legislative history describes the phrase as applicable "to both a listening device installed in a vehicle and to a tap placed on a cellular or other telephone instrument installed in a vehicle."[84] The court viewed this language as "illustrative rather than definitional because there is no limitation to vehicles in the statute."[85]

The court explained that "a 'bug' planted in a car phone is not a 'mobile interception device' in an obvious sense; it is a stationary device affixed to a stationary object in a moving vehicle."[86] Similarly, a tap is not placed in the telephone handset itself but rather is attached to the telephone line at some distance from the handset.[87] According to the court, the emphasis on "mobile interception device" falls on the mobility of what is intercepted rather than on the mobility of the device doing the intercepting.[88] The court further reasoned that the literal interpretation of the statute would complicate law enforcement efforts, while serving no interest in protecting privacy, because the government can seek an order from the district court in which

---

80. *Id.* at 852 (citing United States v. Denman, 100 F.3d 399, 403 (5th Cir. 1996); United States v. Rodriguez, 968 F.2d 130, 136 (2d Cir. 1992)).

81. *Id.*

82. *Id.*

83. *Ramirez*, 112 F.3d at 852–53.

84. *Id.* (explaining that the Seventh Circuit "read this description to be illustrative rather than definitional because there is no limitation to vehicles in the statute.").

85. *Id.* at 852.

86. *Id.* at 852–53.

87. *Id.* at 853.

88. *Id.*

the listening post is located authorizing nationwide surveillance of cell phone calls.[89]

E. There is a Circuit Split on the Issue of Whether Title III Requires Suppression of Evidence Obtained Pursuant to a Wiretap Order That is Facially Insufficient Because the Order Exceeds the Judge's Territorial Jurisdiction.

In determining whether suppression is required, some courts have applied the "core concerns" test of *United States v. Chavez*.[90] This test looks at whether the statutory violation implicates a core concern of Title III.[91]

1. The Eleventh and Tenth Circuits have held that the territorial jurisdiction requirement does not implicate a core concern of Title III, and therefore, violations of the territorial jurisdiction requirement do not merit suppression.

a. The United States Court of Appeals for the Eleventh Circuit's decision in *Adams v. Lankford*

In *Adams v. Lankford*, the United States Court of Appeals for the Eleventh Circuit found that the core concerns behind the statute were "(1) protecting the privacy of wire and oral communications; and (2) delineating on a uniform basis the circumstances and conditions under which the interception of wire and oral communications may be authorized."[92] The court found that the legislative history was "silent with respect to the connection, if any, between the geographical limitations on state officials' capacity to authorize wiretaps on one hand and the statute's concern for individual privacy on the other."[93] As a result, the court held that a facially insufficient wiretap order does not implicate a "core concern" of Congress and therefore suppression is not required.[94]

89. *Ramirez*, 112 F.3d at 853.

90. *See, e.g.*, United States v. Dahda, 853 F.3d 1101, 1114 (10th Cir. 2017), *cert. granted*, 138 S. Ct. 356, 356 (U.S. Oct. 16, 2017) (No. 17-43); Adams v. Lankford, 788 F.2d 1493, 1499 (11th Cir. 1986).

91. United States v. Chavez, 416 U.S. 562, 575 (1974).

92. *Adams*, 788 F.2d at 1498.

93. *Id*.

94. *Id.* at 1500.

b. The United States Court of Appeals for the Tenth Circuit's application of the "core concerns" test in *United States v. Dahda*

Applying the "core concerns" reasoning of *Chavez,* the United States Court of Appeals for the Tenth Circuit found that suppression is not required for a district court's authorization of wiretaps beyond a court's territorial jurisdiction because such a statutory violation does not implicate a core concern of Title III.[95] The court analyzed the same two underlying concerns of Title III that the Eleventh Circuit did in *Adams.*[96] The court determined that neither the privacy nor the uniformity concern was implicated because Section 2518(3)'s territorial jurisdictional limitation was not mentioned in the legislative history of Title III.[97] The Tenth Circuit expressly opined that it thought suppression might actually undermine the goal of uniformity by requiring prosecutors in multiple jurisdictions to coordinate how they use electronic surveillance.[98] The court rejected Mr. Dahda's argument that the territorial limitation thwarts forum shopping by showing two ways in which the statute permits forum shopping.[99]

First, the court found that if the government wanted to seek a wiretap order from a particular court and neither the target phones nor a listening post was located in that court's territorial jurisdiction, the government could forum shop by using a mobile interception device.[100] Second, the court found that the government could forum shop by putting its listening post in its preferred judge's district.[101] Because the statute does not restrict where law enforcement can put its listening post, it can choose where it wants to put it.[102] As a result, the court concluded that suppression was not required for district court's authorization of wiretaps beyond the court's territorial jurisdiction.[103]

95. *Dahda*, 853 F.3d at 1115–16.
96. *Id.* at 1114–15.
97. *Id.* at 1115–16.
98. *Id.* at 1115 (citing *Adams*, 788 F.2d at 1499).
99. *Id.*
100. *Id.* (citing 18 U.S.C.A. § 2518(3) (Westlaw through Pub. L. No. 115-281)).
101. *Dahda*, 853 F.3d at 1115.
102. *Id.*
103. *Id.* at 1114.

2. The Fifth and District of Columbia Circuits have held that the territorial jurisdiction requirement does implicate a core concern of Title III, and therefore, evidence obtained in violation of the territorial jurisdiction requirement must be suppressed.

a. The United States Court of Appeals for the Fifth Circuit's decision and subsequent "non-decision" in *United States v. North*

In *United States v. North*, a judge in the United States District Court for the Southern District of Mississippi issued a wiretap order for a cell phone based in Texas.[104] The government believed the defendant was using the phone to conduct his business of delivering drugs to Mississippi.[105] While the phone was based in Texas, the government's listening post was located in Louisiana.[106] Initially, the Fifth Circuit held that the district court did not have territorial jurisdiction to issue the wiretap.[107] The court found that the territorial jurisdiction limitation was a "core concern" of Congress, and therefore, evidence from the wiretap must be suppressed.[108] Two months later, however, the court withdrew its initial decision and issued a second opinion that did not reach the territorial jurisdiction issue but, instead, suppressed the evidence based on minimization issues.[109]

In its first decision, the Fifth Circuit addressed the territorial jurisdiction question, holding that "except in the case of a mobile interception device, a district court cannot authorize interception of cell phone calls when neither the phone nor the listening post is present within the court's territorial jurisdiction."[110] The court held that the United States District Court for the Southern District of Mississippi lacked the authority to permit the interception of cell phone calls from Texas at a listening post located in Louisiana.[111]

The court addressed whether the lack of territorial jurisdiction requires suppression of evidence obtained from a wiretap issued without jurisdictional authority, holding that

---

104. United States v. North, 735 F.3d 212, 214 (5th Cir. 2013).

105. *Id.*

106. *Id.*

107. United States v. North *(North I)*, No. 11-60763, at *5 (5th Cir. Aug. 26, 2013), *superseded by North*, 735 F.3d 212.

108. *Id.*

109. *North*, 735 F.3d at 215–17 (The court suppressed the evidence based on minimization issues and therefore did not reach North's other arguments. Title III requires the government to take objectively reasonable measures in an effort to minimize the interception of non-pertinent conversations).

110. *North I*, No. 11-60763, at *5.

111. *Id.*

> Title III's territorial restrictions prevent forum manipulation by law enforcement, and prevent wiretap authorizations in cases where investigators would otherwise be able to obtain them. Limiting the number of district judges authorized to issue a wiretap warrant reduces the opportunity for the government to use forum manipulation to obtain a warrant that may not be approved elsewhere.[112]

The court opined that the territorial jurisdiction requirement implicates a core concern of Title III – privacy.[113] "Territorial limitations on a district court directly implicate Congress's intent to guard against the unwarranted use of wiretapping."[114]

Fewer than two months after its first decision in *North*, the Fifth Circuit, sua sponte, withdrew its first opinion and issued a new one.[115] The court did not decide the issue of territorial jurisdiction and ruled only on the issue of minimization.[116] These conflicting decisions by the Fifth Circuit have further complicated the debate of whether there are jurisdictional limitations on the authority of federal judges to issue wiretaps under Title III.

b. The United States Court of Appeals for the District of Columbia Circuit's decision regarding jurisdictional limitations in *United States v. Glover*

The Federal Bureau of Investigation (FBI) obtained a wiretap order from a district judge in the United States Court of Appeals for the District of Columbia Circuit.[117] The government wanted to place an audio recording device on the defendant's truck.[118] The truck was parked outside the district court's jurisdiction, and therefore, the government sought a wiretap order that would allow it to enter the truck regardless of its location.[119]

The court concluded that the order violated Title III on its face because it authorized placing an interception device on property that was not within the district court's jurisdiction at the time of the order.[120] In determining the proper remedy for the violation, the court held that the "core concerns" test does not apply to motions to suppress facially insufficient Title III wiretap orders, and even if the "core concerns" test did apply, the territorial jurisdic-

---

112. *Id.* at 9.
113. *Id.* at 20. "We fail to see how this is not a significant protection of privacy." *Id*. at 9.
114. *Id.* at 9.
115. United States v. North, 735 F.3d 212, 213 (5th Cir. 2013) (noting "Opinion, 728 F.3d 429, withdrawn and superseded").
116. *Id.* at 212–16.
117. United States v. Glover, 736 F.3d 509, 510 (D.C. Cir. 2013).
118. *Id.*
119. *Id.*
120. *Id.* at 514–15.

tion limitation implicates a core concern of Title III.[121] Thus, the court held that "suppression is the mandatory remedy when evidence is obtained pursuant to a facially insufficient warrant."[122]

The court further pointed out that to the extent that the statute is ambiguous, Rule 41 of the Federal Rules of Criminal Procedure governs, and it is unambiguous.[123] According to the court, Rule 41 partially implements the statute and states that "a magistrate judge with authority in the district has authority to issue a warrant for a person or property outside the district if the person or property is located within the district when the warrant is issued but might move or be moved outside the district before the warrant is executed."[124]

III. ARGUMENT

A. A Cell Phone is Not a "Mobile Interception Device" That Falls Within a Court's Ability to Issue a Wiretap Order.

A cell phone being intercepted cannot be a "mobile interception device," unless a cell phone can intercept itself. In other words, as the *Dahda* court pointed out, a cell phone "is the thing being intercepted, not the thing being used to intercept."[125] Therefore, a particular cell phone cannot be intercepted while also being the device used to carry out the interception.[126]

Moreover, the plain language of Title III indicates that a device is something used to intercept a call.[127] Therefore, a "mobile interception device" must be something other than a cell phone that is being intercepted.[128] A mobile interception device must be a mobile device that intercepts communications.[129] The Seventh Circuit's holding in *Ramirez*, that the phrase "mobile interception device" includes a cell phone being intercepted, is incompatible with the statute in that it ignores the statute's unambiguous language providing that a device is something that is used to intercept a call.[130] This interpretation simply does not make sense when one considers the definition of the word "device" under the statute.[131]

---

121. *Id.*
122. *Id.* at 514.
123. *Glover*, 736 F.3d at 515.
124. *Id.* (quoting FED. R. CRIM. P. 41(b)(2)).
125. United States v. Dahda, 853 F.3d 1101, 1113 (10th Cir. 2017), *cert. granted*, 138 S. Ct. 356, 356 (U.S. Oct. 16, 2017) (No. 17-43).
126. *Id.* at 1113.
127. *Id.*
128. *Id.* at 1114.
129. *Id.* at 1113–14.
130. United States v. Ramirez, 112 F.3d 549, 852 (7th Cir. 1997).
131. *Id.*

In addition, when Congress enacted Title III, cell phones did not exist.[132] Therefore, it is clear that Congress would not have interpreted the phrase "mobile interception device" to include a cell phone.[133] Given this fact and the statute's plain language, it seems likely that Congress intended "mobile interception device" to mean a listening device that is mobile and not a cell phone.

B. Courts Should Not Apply the "Core Concerns" Reasoning Because Doing So Renders Section 2518(10)(a)(i) Meaningless.

Title III's suppression remedy provides:

> [A]ny aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the contents of any wire or oral communication intercepted pursuant to this chapter, or evidence derived therefrom, on the grounds that
>
> (i) the communication was unlawfully intercepted;
>
> (ii) the order of authorization or approval under which it was intercepted is insufficient on its face; or
>
> (iii) the interception was not made in conformity with the order of authorization or approval.[134]

Thus, there are three situations in which a person has a right to move to suppress the contents of any wire or oral communication.[135] In *United States v. Chavez* and *United States v. Giordano*, the Supreme Court of the United States considered Title III's suppression remedy in the context of Section 2518(10)(a)(i), which provides for suppression as result of an "unlawful[] intercept[tion]."[136] The Court made clear that not every violation of Title III's requirements results in an "unlawful interception" under Section

---

132. *5 major moments in cellphone history*, CBC NEWS (Apr. 3, 2013, 5:33 AM), http://www.cbc.ca/news/technology/5-major-moments-in-cellphone-history-1.1407352 (stating that on April 3, 1973, Motorola engineer Martin Cooper made the world's first public call from a mobile phone).

133. Brief of Amici Curiae Electronic Frontier Foundation and Nat'l Assoc. of Criminal Def. Lawyers in Support of Petitioners at 11, Dahda v. United States, 138 S. Ct. 1491 (2018) (No. 17-43).

134. 18 U.S.C.A. § 2518(10)(a) (Westlaw through Pub. L. No. 115-231).

135. *Id.*

136. United States v. Chavez, 416 U.S. 562, 575 (1974); United States v. Giordano, 416 U.S. 505, 525–26 (1974); § 2518(10)(a)(i).

2518(10)(a)(i).[137] The Court held that suppression for an "unlawful[] intercept[tion]" is only required for a "failure to satisfy any of those statutory requirements that directly and substantially implement the congressional intention to limit the use of intercept procedures to those situations clearly calling for the employment of this extraordinary investigative device."[138]

In *United States v. Radcliff*, the Tenth Circuit extended the "core concerns" test of *Giordano* and *Chavez* to motions to suppress under Section 2518(10)(a)(ii).[139] Section 2518(10)(a)(ii) provides for suppression when a wiretap authorization order is insufficient on its face.[140] On the contrary, the District of Columbia Circuit noted in *Glover* that the "core concerns" test articulated in *Chavez* and *Giordano* should not be extended to facially insufficient wiretap orders under Section 2518(10)(a)(ii). [141]

Section 2518(10)(a)(i) applies to unlawful interceptions, while (ii) applies to a wiretap authorization order that is insufficient on its face.[142] As noted in *Glover*, however, these two appear to overlap because "if an authorization order is 'insufficient on its face,' the communication would necessarily be 'unlawfully intercepted.'"[143] Therefore, a broad reading of paragraph (i) would render the other two provisions of Section 2518(10)(a) superfluous.[144]

The "core concerns" test is a restriction on paragraph (i)'s unlawfully intercepted language and was developed by the Supreme Court in order to give meaning to the other paragraphs of Section 2518(10).[145] When a court applies the "core concerns" reasoning to Section 2518(10)(a)(ii), it essentially eliminates Title III's suppression remedy for facially insufficient wiretap orders because "anything that gives rise to suppression under paragraph (ii) necessarily also does so under paragraph (i)."[146] In other words, if you apply the "core concerns" test to both the unlawfully intercepted and facially insufficient provisions of Section 2518(10)(a), they become one in the same, and, therefore, Section 2518(10)(a)(ii) becomes "drained of meaning."[147] This is exactly what the Supreme Court was trying to avoid in *Chavez* and

137. *Chavez*, 416 U.S. at 575; *Giordano*, 416 U.S. at 526.

138. *Giordano*, 416 U.S. at 527.

139. Petition for Writ of Certiorari, *supra* note 8, at 8–9 (citing United States v. Radcliff, 331 F.3d 1153, 1162 (10th Cir. 2003)).

140. § 2518(10)(a)(ii).

141. Petition for Writ of Certiorari, *supra* note 8, at 13 (citing United States v. Glover, 736 F.3d 509, 513 (D.C. Cir. 2013)).

142. *Id.*

143. *Id.*

144. *Id.* (quoting United States v. Chavez, 416 U.S. 562, 575 (1974)) ("a broad reading of paragraph (i) would render (ii) and (iii) redundant and 'drained of meaning.'").

145. *Id.* at 19 (citing United States v. Giordano, 416 U.S. 505, 525–26 (1974)).

146. *Id.* at 20 (citing *Glover*, 736 F.3d at 513).

147. *Glover*, 736 F.3d at 513 (quoting *Chavez*, 416 U.S. at 575).

Giordano.[148] The Court intended for the "core concerns" test to apply only to paragraph (i), not (ii).[149]

Paragraph (i)'s provision that "an aggrieved person may move to suppress the contents . . . on the grounds that the communication was unlawfully intercepted" requires a general and broad analysis of the government's interception procedures to determine whether its actions infringed upon the "core concerns" of the statute.[150] Paragraph (ii) regarding suppression where a wiretap authorization order is facially insufficient, on the other hand, requires a mechanical test.[151] "The warrant is either facially sufficient or it is not."[152] Title III does not provide for judicial discretion on this point because the statute is clear.[153] Evidence obtained as a result of a facially insufficient wiretap authorization order must be suppressed.[154] There is simply no need for additional analysis when the statute is unambiguous.[155]

The wiretap authorizing law enforcement to conduct a wiretap of Mr. Dahda's phone line was facially insufficient because it authorized wiretapping outside the issuing court's territorial jurisdiction without regard to whether a "mobile interception device" would be used.[156] The facial insufficiency of the wiretap order does not require examination of Congress's "core concerns" in enacting Title III but rather requires the application of the mechanical test of Section 2518(10)(a)(ii).[157]

Applying the mechanical test of Section 2518(10)(a)(ii), the evidence used to convict Mr. Dahda should have been suppressed as a violation of Title III.[158] A court's failure to apply the mechanical test required by Section 2518(10)(a)(ii) results in the conviction of criminal defendants whose privacy rights were violated by the government's failure to abide by the clear requirements of Title III.[159]

148. Petition for Writ of Certiorari, *supra* note 8, at 20.
149. *Id.* at 13 (citing *Glover*, 736 F.3d at 515).
150. *Glover*, 736 F.3d at 513.
151. *Id.*
152. *Id.* (citing United States v. Giordano, 416 U.S. 505, 527 (1974)).
153. *Id.*
154. *Id.*
155. *Id.*
156. United States v. Dahda, 853 F.3d 1101, 1112 (10th Cir. 2017), *cert. granted*, 138 S. Ct. 356, 356 (U.S. Oct. 16, 2017) (No. 17-43).
157. *Giordano*, 416 U.S. at 528.
158. *Id.*
159. *Id.*; Petition for Writ of Certiorari, *supra* note 8, at 23.

C. Congress Enacted an Unambiguous and Mandatory Suppression Remedy to Minimize Unlawful Surveillance That Courts Should be Bound to Apply.

If the "core concerns test" is applied, courts must recognize that the territorial jurisdiction limitation implicates a core concern of Title III.[160] Congress's underlying reasons for enacting Title III—privacy and uniformity—were implicated by Mr. Dahda's argument that the wiretap order exceeded the Kansas district court's jurisdiction.

Title III contains a "statutorily *mandated* suppression remedy for violations of its requirements".[161] The statute provides, in relevant part, "[w]henever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial . . . if the disclosure of that information would be in violation of this chapter."[162]

The Senate noted that the provisions for suppression and exclusion in Title III are integral to the privacy regime established by the statute.[163] Title III's suppression requirement is unambiguous.[164] Nonetheless, courts have simply decreed that facially insufficient wiretap orders, like the one in Mr. Dahda's case, do not merit suppression, without providing support for their analyses.[165]

Congress enacted Title III to protect privacy and to advance the goal of uniformity.[166] It is not the judiciary's role to decide on a case-by-case basis whether it wants to implement the mandated suppression remedy provided by statute. When courts do so, they undermine one of Congress's main goals in enacting Title III, uniformity, by creating incongruous results among fed-

160. *Glover*, 736 F.3d at 514–15.

161. Petition for Writ of Certiorari, *supra* note 8, at 5.

162. 18 U.S.C.A. § 2515 (Westlaw through Pub. L. No. 115-231).

163. S. REP. NO. 90-1097, at 96 (1968), *as reprinted in* 1968 U.S.C.C.A.N. 2112, 2185.

164. § 2515 (stating "[w]henever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any . . . proceeding . . . if the disclosure of that information would be in violation of this chapter").

165. *See, e.g.* United States v. Dahda, 853 F.3d 1101, 1114 (10th Cir. 2017), *cert. granted*, 138 S. Ct. 356, 356 (U.S. Oct. 16, 2017) (No. 17-43); Adams v. Lankford, 788 F.3d 1493, 1499–1500 (11th Cir. 1986) (the territorial jurisdiction requirement does not implicate a core concern of Title III, and therefore, violations of the territorial jurisdiction requirement do not merit suppression).

166. S. REP. NO. 90-1097, at 2156.

eral courts.[167] These different interpretations result in unfair adjudication for criminal defendants.[168]

Furthermore, Title III's territorial jurisdiction limitation limits the government's opportunity to engage in forum shopping.[169] Without the territorial jurisdiction limitation, law enforcement would be able to get a warrant in a jurisdiction where it may not be approved elsewhere.[170] Although the legislative history may not specifically mention forum shopping, it does mention privacy.[171] Forum shopping would allow law enforcement to obtain a wiretap authorization order from the judge of its choosing, making these orders easier to obtain, and therefore, posing a threat to individual privacy.[172]

D. Congress Should Update the Privacy Protections Under Title III to Deal with the Increasing Threat to Privacy Posed by Advances in Wiretapping Technology

Congress and the federal judiciary have long recognized that wiretapping poses a serious threat to privacy, and today, that threat is even more alarming.[173] Wiretaps are arguably more intrusive than a physical search warrant because they allow law enforcement to obtain the subject's words, as well as any communication between the subject and third parties.[174]

When Congress enacted Title III, it intended to permit wiretaps, but only under the "narrowest of circumstances."[175] The privacy concerns that animate Title III have become more pervasive with the proliferation of technology since 1968.[176] Moreover, when Congress enacted Title III in the late

---

167. Petition for Writ of Certiorari, *supra* note 8, at 23.

168. *Id.* (noting that as matters currently stand, defendants are entitled to suppression of evidence obtained through a wiretap order that exceeds the issuing court's territorial jurisdiction in the D.C. Circuit, but not in the Tenth Circuit).

169. Brief of Electronic Frontier Found. and Nat'l Assoc. of Criminal Def. Lawyers in Support of Petitioners, *supra* note 133, at 20.

170. *Id.* (citing United States v. North, 735 F.3d 212, 219 (5th Cir. 2013) (DeMoss, J., concurring)).

171. S. REP. NO. 90-1097, at 66.

172. Brief of Electronic Frontier Found. and Nat'l Assoc. of Criminal Def. Lawyers in Support of Petitioners, *supra* note 133, at 20–21.

173. *Id.* at 1–2.

174. *Id.* at 4–5 ("Whenever a telephone line is tapped, the privacy of the persons at both ends of the line is invaded and all conversations between them upon any subject, and although proper, confidential, and privileged, may be overheard. Moreover, the tapping of one man's telephone line involves the tapping of the telephone of every other person whom he may call, or who may call him." Olmstead v. United States, 277 U.S. 438, 475–76 (1928) (Brandeis, J., dissenting)).

175. *Id.* at 1.

176. *Id.* at 11.

1960s, it had no idea that wiretapping technology would be where it is today.[177] Cell phones did not exist when Congress enacted Title III, and therefore, Congress never could have contemplated the ubiquitous nature of smart phone technology.[178]

As wiretapping technology has evolved, it has become easier for the government to obtain them.[179] A physical intrusion is no longer necessary to conduct a wiretap.[180] In 2018, government agents have the ability to listen to voice conversations, read texts, and view data communication, pictures, and emails sent from anywhere.[181] Cell phones contain a plethora of information regarding "nearly every aspect of our lives . . . from the mundane to the intimate."[182]

What is perhaps even more alarming is that an agent can do all of these things from the comfort of his or her office.[183] Since the enactment of Title III, the number of wiretaps has increased dramatically, with over forty-three million conversations intercepted last year.[184] Interestingly, on average, only about twenty percent of intercepted conversations are criminal in nature.[185] In 2016, the most interceptions occurred in the United States District Court for the Middle District of Pennsylvania.[186] The district authorized the wiretap of 3,292,385 cell phone conversations or messages over a period of sixty days.[187] More frightening than this is the fact that out of the over *three million* conversations intercepted in *one federal district* in just sixty days, none of the conversations were incriminating.[188]

Rapid advances in technology have resulted in nearly fifty years of ambiguity regarding the interpretation and application of Title III. Thus, if Congress was concerned about the privacy intrusion of wiretaps in the late 1960s, it should really be concerned about the privacy implications of wire-

177. *Id.*

178. Brief of Electronic Frontier Found. and Nat'l Assoc. of Criminal Def. Lawyers in Support of Petitioners, *supra* note 133, at 11.

179. *Id.* at 2.

180. *Id.*

181. *Id.*

182. Riley v. California, 134 S. Ct. 2473, 2490 (2014).

183. Brief of Electronic Frontier Found. and Nat'l Assoc. of Criminal Def. Lawyers in Support of Petitioners, *supra* note 133, at 2.

184. *Id.* (showing 93% of the over 43 million conversations intercepted last year were from "portable devices" or cell phones—only about 20% of these turn out to be incriminating, meaning 80% of conversations intercepted by the government have no criminal investigatory purpose).

185. *Id.* at 15.

186. *Id.* at 16.

187. *Id.*

188. *Id.*

taps in 2018.[189] After nearly half a century of ambiguity regarding phrases used in Title III, such as "interception" and "mobile interception device," congressional action is overdue. Moreover, Congress needs to clarify the correct application of Title III's suppression remedy in cases involving wiretap authorization orders that exceed the issuing judge's territorial jurisdiction. Title III is "in need of congressional attention" to address "[a]dvances in wiretapping technology."[190] Despite the widespread use of technology, American citizens must maintain the right to be free from unwarranted intrusions by the government.

Some of the terms and phrases of Title III are ambiguous and the suppression *requirement* provided for in Section 2518(10)(a)(ii) has not been followed by all courts.[191] This has resulted in incongruous results among the United States circuit courts.[192] This is unfair to criminal defendants, due to the fact that the application of Title III's suppression remedy often turns on which court is hearing the defendant's case.[193] The suppression of evidence based upon a facially insufficient wiretap order should not turn on which court hears the case.

IV. CONCLUSION

A cell phone is not a "mobile interception device" that falls within the court's ability to issue a wiretap order because a "mobile interception device" means a mobile device used to intercept a call—a cell phone is the thing being intercepted, not the thing used to do the intercepting.[194] Furthermore, Title III requires suppression of evidence obtained pursuant to a wiretap order that is facially insufficient because the order exceeds the judge's territorial jurisdiction.[195]

The "core concerns" test announced in *United States v. Chavez* should not be applied in situations like Mr. Dahda's, and if the "core concerns" test

189. Brief of Electronic Frontier Found. and Nat'l Assoc. of Criminal Def. Lawyers in Support of Petitioners, *supra* note 133, at 11.

190. United States v. Dahda, 853 F.3d 1101, 1118–19 (10th Cir. 2017), *cert. granted*, 138 S. Ct. 356, 356 (U.S. Oct. 16, 2017) (No. 17-43) (Lucero, J., concurring).

191. *Compare id.* at 1114, *and* Adams v. Lankford, 788 F.3d 1493, 1499 (11th Cir. 1986) (explaining the territorial jurisdiction requirement does not implicate a core concern of Title III, and therefore, violations of the territorial jurisdiction requirement do not merit suppression), *with* United States v. Glover, 736 F.3d 509, 514–15 (D.C. Cir. 2013) (explaining that the territorial jurisdiction requirement does implicate a core concern of Title III, and therefore, evidence obtained in violation of the territorial jurisdiction requirement must be suppressed).

192. Petition for Writ of Certiorari, *supra* note 8, at 23.

193. *Id.*

194. *Dahda*, 853 F.3d at 1113–14.

195. *Glover*, 736 F.3d at 514–15.

is applied, a facially insufficient wiretap order that exceeds the judge's territorial jurisdiction implicates one of Title III's core concerns.[196]

Regardless of the arguments that can be made by scholars, attorneys, and courts, after fifty years of ambiguity regarding the language in Title III and the intentions of Congress in enacting it, congressional action is long overdue. It is essential that Congress clarify Title III and clarify how courts should deal with facially insufficient wiretap orders. The widespread use of wiretapping technology merits Congress's time and efforts. Federal courts need unambiguous guidance regarding the suppression of evidence obtained on the basis of facially insufficient wiretap orders in order to implement the law in a uniform and fair manner.

*Meredith Powell**

196. *Id.*

* J.D. May 2019, *magna cum laude*, University of Arkansas at Little Rock William H. Bowen School of Law; B.S. Political Science, 2016, University of Central Arkansas. Thank you to Professor and mentor Terrence Cain for your feedback and assistance throughout the note writing process. Thank you to my husband and parents for all of the love and support you have given me during law school. I would also like to thank my friend and colleague Sarah Giammo for her feedback and encouragement.