

Supreme Court To Decide Whether GPS Tracking Requires Warrant

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1) Supreme Court to Decide Whether GPS Tracking Requires Warrant

On November 8, the U.S. Supreme Court is set to hear oral argument in the case of *United States v. Jones*, which raises the question of whether the government can, without a warrant, install a Global Positioning System (“GPS”) tracking device on a person’s motor vehicle to track the vehicle’s movements. If the Court decides that the installation or use of a GPS device to track a person is a “search” or “seizure” under the Constitution’s Fourth Amendment, then government agents would generally be required to obtain a warrant before using such a device. The Court’s decision could also shed some light on whether other forms of location tracking – such as monitoring the location of a mobile device such as a cellular telephone – trigger the warrant requirement of the Fourth Amendment.

The Court decided to hear the case after the D.C. Circuit Court ruled that prolonged surveillance with a GPS tracking device constitutes a search and requires a warrant. The police in *Jones* installed a GPS tracking device on the undercarriage of the suspect’s Jeep and tracked it on public streets 24 hours a day for four weeks. The government argues that no warrant was required for either placing the device on the vehicle or for monitoring the vehicle’s movements using the device, relying on *United States v. Knotts*, 460 U.S. 276 (1983). In *Knotts*, the Supreme Court upheld the warrantless use of a beeper that emits a low-powered signal that can be picked up by a receiver to aid the police tailing a suspect.

- [Appeals Court decision in the Jones case, *United States v. Maynard*, 615 F.3d 544 \(D.C. Cir. 2010\)](#) [1]
- [Wired, “GPS Inventor Urges Supreme Court to Reject Warrantless Tracking,” October 4, 2011](#) [2]

2) GPS Differs Fundamentally from “Bumper Beepers” of the Past

CDT joined with EFF and technology experts, including one of the inventors of GPS, in filing a “friend of the court” brief arguing that GPS surveillance should require a warrant. Our brief focused on the ways in which GPS technology is different from the beeper used without a warrant in *Knotts*.

The beeper at issue in *Knotts* was a low-powered radio that transmitted a beeping tone. Police officers typically planted these beeper devices on a suspect’s vehicle and then followed behind the vehicle and used the beeper to help relocate their target if they lost sight of it. Because of the beepers’ inherent limitations, these devices were used only to aid short-term, visual surveillance by police, and never as a substitute for it. It was this technology that the Supreme Court concluded in *Knotts* could be used without a warrant because “[a] person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another.”

Fast-forward to today, and tracking device technology has advanced considerably. Rather than being simple homing beacons, GPS devices use a fleet of satellites maintained by the U.S. military to pinpoint exact location. Unlike with beepers, police officers can monitor a GPS device attached to a car from a remote computer for a prolonged period without ever having to observe or follow the car themselves. This kind of precise and unblinking location information gathering would be logistically impossible and cost prohibitive to police officers employing beepers to aid visual tracking.

GPS tracking allows the government to engage in large scale monitoring and to compile volumes of data showing the precise coordinates of a target's location that can then be introduced in court. GPS trackers reveal patterns of movement, from which any number of other facts about a person can be deduced, from what church someone attends to whether they frequent an oncologist or go to a porn store.

The Supreme Court has said that a search under the Fourth Amendment is a government activity that intrudes on a reasonable expectation of privacy. CDT's brief concluded that GPS tracking intrudes on a reasonable expectation of privacy because the average person is reasonable in expecting that he will not be subject to precise, surreptitious and ongoing electronic tracking by a system of satellites maintained by the US military.

- [United States v. Knotts, 460 U.S. 276 \(1983\)](#) [3]
- [CDT Report: Digital Search and Seizure](#) [4]

3) Jones Decision Could Impact Cell Phone Tracking

The Jones case gives the Supreme Court an opportunity to preserve the Constitution's privacy protections in the face of rapidly evolving technology. CDT's brief focused narrowly on GPS trackers planted by the police, but the Court's decision may also shed light on whether government agents are required to get a warrant before accessing location information generated by use of a cellular telephone, laptop computer, tablet computer, or other mobile computing device. While the methodology of mobile phone tracking differs from GPS - and the courts may find that accessing information from a third party service provider is constitutionally different from accessing information from a device the government installs directly - the privacy interests at stake are quite similar.

Courts have split on whether a warrant is required for law enforcement to compel a cellular service provider to provide location information prospectively (in real time). A plurality have required a warrant supported by a finding of probable cause, but others have accepted the Department of Justice's argument that lesser proof—"specific and articulable facts" of relevance - is required. Courts are also split on whether a warrant is required for the government to compel a cellular provider to provide location information retrospectively from storage. Last year, the Third Circuit held that magistrate judges have discretion to require warrants for stored location information. This summer a federal district court in New York ruled that a warrant is constitutionally required to access stored location information from a provider; it relied, in part, on the lower court decision in the Jones case to hold that the accumulation of someone's location records "implicate sufficiently serious protected privacy concerns."

- [CDT post on New York court ruling that warrant is required for stored cell site location information, September 12, 2011](#) [5]
- [Third Circuit decision giving magistrate judges discretion to require warrants](#) [6]

4) A Legislative Solution?

The significance of location tracking in an era when most people carry tracking devices (their cell phones) in their pockets or handbags has prompted several lawmakers to draft legislation. Senators Wyden (D-OR) and Kirk (R-IL) and Representatives Chaffetz (R-UT) and Goodlatte (R-VA) have introduced the Geolocation, Privacy, and Surveillance Act (GPS Act), which would require government agents to get a warrant based on “probable cause” to track a person’s location using their mobile communications device. The bill would apply to both prospective (in real time) tracking and to tracking through the stored records of service providers. The bill includes sensible exceptions from the warrant requirement for emergencies, missing children and stolen cell phones. It would ban the surreptitious use of tracking devices by private parties and would prohibit businesses such as cell phone carriers from sharing customers’ geolocation data without their express consent.

Another bill, the Electronic Communications Privacy Act (ECPA) Reform Act introduced by Senate Judiciary Committee Chairman Patrick Leahy (D-VT), would require the government to obtain a warrant in order to access (i) prospective location information from a service provider and (ii) location information stored on a cell phone or other mobile device. The Leahy bill would permit the government to obtain retrospective location information from a service provider with a court order issued on a standard lower than probable cause. Like the GPS Act, the Leahy bill includes a number of common sense exceptions that permit government to access location information without a prior court order in emergencies and in other vital circumstances. It also includes other important amendments to ECPA, including a critically important amendment that would require government to obtain a warrant in order to gain access to communications content or to the content of documents stored in the Internet cloud. Senator Leahy recently announced that the Judiciary Committee will mark-up the ECPA Reform Act before the end of the year.

- [Senate GPS Act S. 1212, which is identical to House version H.R. 2168](#) [7]
- [Senator Wyden’s resource page on the GPS Act](#) [8]
- [CDT Blog Post on the GPS Act, June 28, 2011](#) [9]
- [Senator Leahy’s ECPA Reform bill, S. 1011](#) [10]

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- [fourth amendment](#)

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