

Supreme Court Holds Warrantless GPS Tracking Violated Constitutional Rights

The United States Supreme Court today released its decision in *United States v. Jones*, No. 10-1259, the most important Fourth Amendment case in a decade. In a unanimous ruling – albeit in three separate opinions – the Court held that the Government’s warrantless installation of a Global-Positioning-System (“GPS”) device on a suspect’s vehicle, and the use of that device to monitor the vehicle’s movements for a month, violated the Fourth Amendment. Separate majorities in the case affirmed that the Fourth Amendment continues to protect individuals’ property interests, independent of any expectations of privacy, and additionally protects citizens’ interests in a reasonable zone of privacy free from government surveillance.

The *Jones* dispute began in 2005, when federal law enforcement agents placed a GPS tracking device on the undercarriage of a car belonging to Antoine Jones and his wife. The officers did not have a valid warrant, and Jones neither consented to nor was aware of the placement of the GPS device. The government then used the GPS device to track the vehicle’s movements for twenty-eight days, yielding more than 2,000 pages of data. The government relied on the resulting information to secure an indictment and conviction of Jones on drug trafficking conspiracy charges. But the Court of Appeals for the District of Columbia reversed on Fourth Amendment grounds, holding that admission of the evidence obtained via warrantless GPS tracking invaded Jones’s reasonable expectation of privacy.

The Supreme Court granted certiorari, and added a question of its own. The issues before the Supreme Court were: (1) Whether the warrantless use of a GPS tracking device on a private citizen’s vehicle to monitor its movements on public streets violates the Fourth Amendment; and (2) Whether the government violated Jones’ Fourth Amendment rights when it attached the GPS tracking device to his vehicle without a valid warrant and without obtaining his consent.

Today, the Supreme Court affirmed the D.C. Circuit in an opinion that featured two competing Fourth Amendment rationales, each of which appeared to garner the support of at least five justices. The majority opinion, authored by Justice Scalia, and joined by Chief Justice Roberts and Justices Kennedy, Thomas, and Sotomayor, held that the government’s installation of a GPS device on Jones’ vehicle and use of the device to acquire information about Jones constituted a “search.” Adopting a view that Ropes & Gray had advanced in an amicus brief filed on behalf of the Constitution Project, the majority opinion stressed that the trespass against an individual’s property for the purpose of gaining information about him is a “search” within the historical meaning of the Fourth Amendment. The Court explained that recent decisions holding that the Fourth Amendment protects against unreasonable invasions of privacy had expanded, but not supplanted, this traditional Fourth Amendment concern for an individual’s property rights.

In a concurring opinion, Justice Alito, joined by Justices Ginsburg, Breyer, and Kagan, agreed that the month-long collection of detailed information using a GPS tracking device constitutes a search for Fourth Amendment purposes, but would have relied on the Supreme Court’s more recent privacy-oriented precedent. The concurring justices concluded that the lengthy monitoring that occurred in the case constituted a search because it involved a degree of privacy intrusion that a reasonable person would not have anticipated.

In a separate concurring opinion, Justice Sotomayor suggested a great deal of sympathy for Justice Alito’s privacy-based analysis, while finding it unnecessary to resolve those issues in this case because of the physical intrusion. In particular, citing the same factors that were highlighted in the Ropes & Gray amicus brief for

the Constitution Project, Justice Sotomayor stressed the all-encompassing nature of the data that a GPS can provide and the fact that this digital data can be aggregated and analyzed in a way that human observations cannot. She recognized that new technologies would require a new approach to the Fourth Amendment in order to preserve some area of individual freedom from government surveillance, and that it should not be dispositive that the government might conceivably obtain the information through conventional means. While Justice Sotomayor did not join Justice Alito's concurrence, her separate opinion provides a strong indication that a majority of the Court believes that the Fourth Amendment analysis must be adapted to the modern context to retain its essential purpose.

The Court's ruling has broad implications for law enforcement's use of modern technology, and the preservation of privacy and property rights in the United States. However, the differing rationales of Justice Scalia for the majority and Justice Alito for the concurrence leave open a number of significant questions concerning the constitutionality of the use of information acquired without a physical trespass on a vehicle. The opinion does not, for example, create a bright line rule for the use of information acquired from devices installed by a vehicle manufacturer or gathered from third-party smart phone carriers. Those questions will have to be resolved through further litigation in the lower courts.

For the full text of the Supreme Court's decision in *United States v. Jones*, please [click here](#).

If you have any questions or would like to learn more about the issues raised in the Court's decision, please contact [Douglas Hallward-Driemeier](#), [Michael Li-Ming Wong](#), or the Ropes & Gray attorney who normally represents you.