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Tuesday, November 1, 2011 6:16 AM EDT

## Supreme Court: Warrantless GPS Tracking Faces Review

By Dan Rivoli

As GPS technology becomes a ubiquitous feature in smartphones and automobiles, the U.S. Supreme Court will decide if law enforcement needs a warrant to use a device that tracks a person's public movement for a potentially unlimited amount of time.

Next week on Nov. 8, the justices will hear arguments in a case that could test the U.S. Constitution's Fourth Amendment protection from warrantless government searches and seizures in a digital age in which a person's public activities can be traced and compiled.

"[The case] is an opportunity for the court to consider a whole new range of technology available to the government that allows the government to compile a very detailed record of where a particular vehicle has gone over a long period of time," said Paul Smith, a partner at Jenner & Block.

Smith said that giving law enforcement the authority to compile such records using GPS technology without a warrant could be used to track the whereabouts of political figures, for instance.

"It's a troubling development if there's no check at all," Smith told the International Business Times. "If you can do it to one person, you could do it to a thousand."

The case involved the FBI installing a GPS device on a suspected drug trafficker's car without a warrant. The federal government defended its actions, arguing that agents had reason to track the vehicle's movement on public streets for a month.

"Law enforcement has not abused GPS technology," the U.S. said in its [brief](#) to the Supreme Court. GPS technology is "used to gather information that could be observed by any member of the public.... The use of a GPS tracking device to monitor the movements [of the suspect's] vehicle on public streets was not a search" under the Fourth Amendment, triggering the need for a warrant.

### FBI's Suspect

Antoine Jones operated and owned a night club in Washington, D.C., when the FBI and the capital's police department suspected him of trafficking drugs. During a 2004 investigation that involved a cell phone wiretap and visual surveillance, FBI agents obtained a 10-day warrant to put a GPS tracking device on Jones' Jeep Grand Cherokee in Washington, D.C., only. Agents, however, installed the device a day after the warrant expired while the car was parked in Maryland.

Nonetheless, the FBI tracked Jones' car for a month, leading investigators to a stash house in Fort Washington, Md. In late October 2005, on suspicion that Jones was going to receive a large drug shipment, agents commenced a bust and charged Jones with conspiring to sell five kilograms of cocaine.

Jones was sentenced to life in prison after a jury convicted him based on GPS data related to his car's movements on public roads (GPS data about his Jeep while parked in a garage was tossed out of court).

Jones' conviction was overturned on appeal because the GPS-tracking constituted an unlawful search under the Fourth Amendment.

A Supreme Court decision that guided the three-judge appellate panel's thinking is a 1983 case involving use of a beeper to track a suspect during a 100-mile trip from Minneapolis, Minn., to Wisconsin.

In that case, the Supreme Court held that tracking the suspect over a short trip was not a search under the Fourth Amendment because he was traveling on public streets where his movements could be observed.

Still, the [high court said](#) that the constitutionality of "twenty-four hour surveillance" and other "dragnet-type law enforcement practices" could be determined in later cases.

How is tracking a car during a short trip different from Jones' case? No one person could track Jones' every public movements for a month, according to the Washington, D.C.-based appellate panel that overturned his drug conspiracy conviction.

"A reasonable person does not expect anyone to monitor and retain a record of every time he drives his car, including his origin, route, destination, and each place he stops and how long he stays there," the court reasoned.

### **Civil Liberty Concerns**

The privacy implications of Jones' case have drawn interest from groups as diverse as the American Civil Liberties Union, Council on American-Islamic Relations, the libertarian Cato Institute and the Gun Owners of America--all of which have filed court briefs in support of Jones.

"You don't have to be a card-carrying member of the ACLU to see what's wrong with a world in which the police can track us easily and cheaply with zero supervision from a judge," said Catherine Crump, a staff attorney with the civil liberties group.

Such monitoring has even gotten easier since the 2004 investigation that produced Jones' case. As cell phones and cars increasingly feature GPS technology, police may no longer need to install a tracking device on a vehicle.

If warrantless use of GPS tracking information on public streets is not considered a search under the Fourth Amendment, "that will mean that law enforcement has unfettered discretion to track each and every one of us... without any court decision whatsoever," Crump told IBTimes. "A Supreme Court decision to adopt that kind of sweeping rule would basically ruin the privacy that Americans have traditionally enjoyed."

The Center for Democracy and Technology said in a brief supporting Jones that GPS--automated, precise, detailed and can operate around-the-clock--is "fundamentally different" than the beepers used in the 1983 Supreme Court case that serves as the basis for the government's arguments.

"GPS tracking can be used simultaneously on very large numbers of vehicles and individuals," the center wrote in its brief. "Large-scale monitoring using beeper-assisted surveillance is a practical impossibility."

### **Efficient or Creepy?**

Law enforcement's warrantless use of GPS tracking has [divided appellate courts](#) around the country.

In a similar case originating from Oregon, the Ninth Circuit Court of Appeals held that using mobile device tracking on a vehicle makes lawful police surveillance more efficient, not unconstitutional.

In dissent, the circuit's Chief Judge Alex Kozinski [said](#) that there is "something creepy and un-American about such clandestine and underhanded behavior."

In a case against an accused methamphetamine producer, Judge Richard Posner of the Seventh Circuit Court of Appeals held that warrantless use of a GPS device is the same as surveillance cameras, satellite imaging or tailing a vehicle.

Also, use of GPS in these cases has yet to rise to the 24-hour "dragnet-type" of surveillance that the Supreme Court mentioned in its 1983 case, which was a factor in Posner's decision.

"Should government someday decide to institute programs of mass surveillance of vehicular movements," Posner [wrote](#) in a decision on another GPS case, "it will be time enough to decide whether the Fourth Amendment should be interpreted to treat such surveillance as a search."