

U.S. v. Jones

Brief of Amicus Curiae The CATO Institute In Support Of Respondent

As technology advances — and law enforcement adapts these advancements to police work — courts will be asked to apply the Fourth Amendment's protections against unreasonable searches and seizures in new and varied situations. In 2004, the FBI, as part of a joint task force, suspected Antoine Jones of dealing drugs. To verify their suspicions, agents secured a warrant allowing them to attach a GPS tracking device to Jones's car (but then attached it after the warrant had expired, and in Maryland rather than the warrant's operative jurisdiction of D.C.). The FBI used this device to monitor and record the car's every movement for nearly a month before finally arresting Jones. The U.S. Court of Appeals for the D.C. Circuit found that the FBI's action was unconstitutional because it violated Jones's "reasonable expectation of privacy" — the two-part Fourth Amendment standard developed in the landmark case of *Katz v. United States*. The "reasonable expectation of privacy" doctrine holds that if a person has an actual (subjective) expectation of privacy and that expectation is one society is prepared to accept, then the Fourth Amendment protects the object of that expectation. The court found that the long-term round-the-clock GPS surveillance, even of a vehicle always on public roads and in locations readily observable by a cop on the street, was qualitatively different than a temporary stakeout or other conventional surveillance. The government successfully petitioned the Supreme Court to review the case, and the Court added the issue of whether installing the GPS device was itself a Fourth Amendment violation, quite apart from the monitoring. Cato filed a brief supporting Jones and arguing that the Court should take this opportunity to strengthen Fourth Amendment protections by finding unconstitutional the government's continuous and long-term tracking of someone's vehicle without a valid warrant. This case affords the Court an opportunity to revisit the "reasonable expectation of privacy" standard — which has dominated this area of law for over 40 years but is a misinterpretation of *Katz* that has proven unworkable. Standing alone, the "reasonable expectation" test reverses the original meaning of the Fourth Amendment by putting the onus on citizens to prove the reasonableness of their expectations instead of examining the reasonableness of government action. By measuring the actions an individual takes to shield his information against the reasonableness of the government's actions in piercing that shield, the Court can simplify this area of law from one measuring esoteric "expectations" to one examining a straightforward factual question. Moreover, the government's conversion of Jones's property — his car — into a surveillance device acted as an unreasonable seizure for Fourth Amendment purposes because it deprived Jones of a valuable property right, the

right to exclude others from his property. Similarly, using his car then to collect information and track Jones then became an unreasonable search. Thus, even if the Court continues to adhere to the "reasonable expectations of privacy" test, it should recognize the sanctity of Jones's property and find the warrantless GPS-attachment and-surveillance unconstitutional.

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