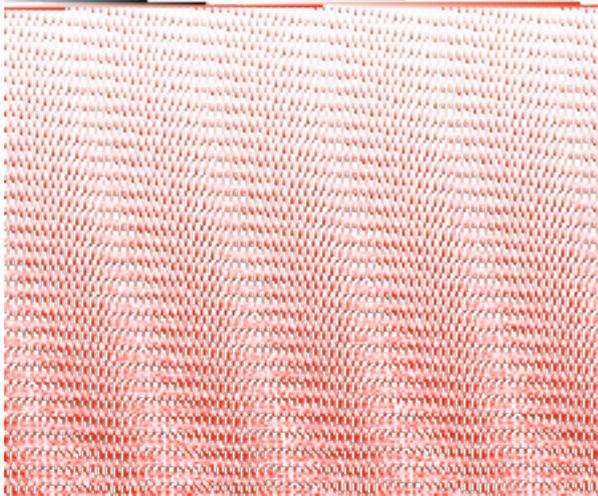


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The Supreme Court left too much unresolved with its GPS ruling

By Editorial Board,

THE [SUPREME COURT](#) this week rapped the knuckles of the Obama administration for arguing that law enforcement officers did not need a court order before slapping a Global Positioning System (GPS) device on a suspect's car and [then tracking him](#) around the clock for weeks on end. It was a welcome decision, as far as it went — which was not far enough.

All nine justices agreed that federal officials overstepped their bounds in 2005 when they surreptitiously — and without a valid court order — attached a tracking device to Antoine Jones's Jeep. Mr. Jones was a D.C. nightclub owner who was convicted for his alleged role in a cocaine distribution ring. The unanimous court threw out the conviction.

The justices split into two camps on why the law enforcement action was wrong. The five justices in the majority determined that the placement of the GPS device on the Jeep amounted to a trespass. "It is important to be clear about what occurred in this case: The Government physically occupied private property for the purpose of obtaining information," wrote Justice Antonin Scalia.

We agree that the government impermissibly trespassed on Mr. Jones's property, but by stopping its analysis there, the majority dodged the more important questions regarding what limits should exist when police organizations rely on this powerful and potentially intrusive technology. For example, would the tracking have been acceptable had police simply tapped into a GPS unit that was factory-installed in the vehicle?

Justice Samuel A. Alito Jr., who wrote for himself and three others, tackled the broader issues head-on. While police officers have never needed a search warrant to tail a suspect, extended use of GPS technology raises the capabilities sufficiently to provoke constitutional concerns.

“[S]ociety's expectation has been that law enforcement agents and others would not — and indeed, in the main, simply could not — secretly monitor and catalogue every single movement of an individual's car for a very long period,” Justice Alito wrote. “In this case, for four weeks, law enforcement agents tracked every movement that respondent made in the vehicle he was driving.” This breach of the “expectation of privacy,” Justice Alito suggested, exists whether the police attach a GPS device or use the car's own technology. In either case, police would be wise to obtain a court order before beginning extended use of GPS to track a suspect, he concluded.

Justice Alito's approach should be the law of the land, but the court will have to wait for another case before that becomes a possibility. In the meantime, Congress ought to draft legislation making clear that emergency use of GPS tracking is acceptable to avoid a suspect's escape — but that, in all other circumstances, law enforcement officers must get a court's approval before virtually and relentlessly shadowing a suspect.

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