

Obama administration defends unlimited warrantless GPS surveillance before Supreme Court

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While most of the recent media attention on the US Supreme Court has focused on the Obama health care litigation, democratic rights remain under steady attack in a series of cases that will be decided in the coming months. Among the most important of these is *United States v. Jones*, in which the court is asked to decide whether the government may use Global Positioning System (GPS) technology to track any person's movements without a warrant.

GPS uses a network of satellites to precisely locate the position of a receiver anywhere on the earth's surface. Many cell phones and cars incorporate GPS devices, which record and transmit location information on a regular basis.

Without a warrant, the police used a GPS device surreptitiously installed in a car to track the movement of Antoine Jones, a suspected member of a drug trafficking ring, for 24 hours a day for nearly a month. His movements were used as evidence against him at his trial. Jones' lawyers argued that this warrantless surveillance violated his constitutional rights.

The Fourth Amendment to the US Constitution provides as follows: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . ." The Fourth Amendment contains the general requirement that the police must obtain a warrant from a judge before conducting a search or seizure.

The Supreme Court, during the Earl Warren period (1953-1969), consistently held that the Fourth Amendment protected automobiles and their contents from warrantless surveillance by the government. However, in 1983, as the period of rollbacks to democratic rights was getting underway, the court decided *Knotts v. United States*. In that case, the court opened up an exception, finding that the location information of a car on a public roadway, as indicated by a primitive GPS device installed in a vehicle's cargo, was not the subject of constitutional protection, since

anyone can observe a car on a public roadway and know its location.

Seizing on the *Knotts* case, as well as tremendous advances in GPS technology over the intervening decades, successive US administrations have expanded the use of warrantless GPS surveillance. The Obama administration has admitted that it already uses GPS—without a warrant or any judicial oversight—domestically to secretly monitor a number of people "in the low thousands annually." This figure, if it is to be believed, does not include surveillance by state governments, so the true number of people under secret GPS surveillance within the US is likely orders of magnitude higher.

In Jones' appeal from his conviction, the DC Circuit Court of Appeals, perhaps the most right-wing court in the US, held that the Obama administration had gone too far.

Distinguishing the prolonged surveillance of Jones from the *Knotts* case and the hypothetical case of an officer observing a car on a public roadway, the DC Circuit wrote, "Prolonged surveillance reveals types of information not revealed by short-term surveillance, such as what a person does repeatedly, what he does not do, and what he does ensemble. These types of information can each reveal more about a person than does any individual trip viewed in isolation."

The DC Circuit continued: "Repeated visits to a church, a gym, a bar, or a bookie tell a story not told by any single visit, as does one's not visiting any of these places over the course of a month. The sequence of a person's movements can reveal still more; a single trip to a gynecologist's office tells little about a woman, but that trip followed a few weeks later by a visit to a baby supply store tells a different story.

"A person who knows all of another's travels can deduce whether he is a weekly churchgoer, a heavy drinker, a regular at the gym, an unfaithful husband, an outpatient receiving medical treatment, an associate of particular individuals or political groups, and not just one such fact

about a person, but all such facts.”

“This kind of tracking is extremely invasive,” wrote ACLU attorney Catherine Crump in a CNN editorial, “because if the government knows where you are, it knows who you are.”

Michael R. Dreeben, deputy solicitor general in the Obama administration’s Department of Justice, relying on the *Knotts* case, took the position in oral argument before the Supreme Court on November 8 that there are no constitutional limits to the government’s power to use GPS to track the movements of each citizen in public without a warrant. Dreeben’s exchanges with the nine justices are often striking for the total absence of any trace of democratic consciousness, revealing the extent to which the constituency for dictatorship is growing in the ruling class.

CHIEF JUSTICE ROBERTS: ... Your argument is, it doesn’t depend how much suspicion you have, it doesn’t depend on how urgent it is. Your argument is you can do it, period. You don’t have to give any reason. It doesn’t have to be limited in any way, right?

MR. DREEBEN: That is correct, Mr. Chief Justice.

Justice Anthony Kennedy asked Dreeben, “[C]ould you put a beeper surreptitiously on the man’s overcoat or sport coat?” Dreeben provided an evasive affirmation: “In that event, Justice Kennedy, there is a serious question about whether the installation of such a device would implicate either a search or a seizure. But if it did not, the public movements of somebody do not implicate a seizure.”

Justice Stephen Breyer, responding to the Obama administration’s position, remarked incredulously, “So if you win, you suddenly produce what sounds like 1984 . . .” Repeated reference was made during oral argument to the Orwellian implications of such surveillance. “1984” was mentioned six times.

It is no coincidence that the Obama administration is emphatically asserting police-state powers in the midst of an aggressive crack-down on popular protests against the financial and corporate oligarchy. The position taken by the Obama administration should be taken as a warning that the ruling class will resort to dictatorial methods to prevent any challenge to the financial interests of the tiny layer at the pinnacle of society.

It remains unclear which way the Supreme Court will rule in *Jones*. During oral argument, even the conservative justices indicated concerns with the unlimited scope of the Obama administration’s asserted surveillance powers. At one point, arch-reactionary Chief Justice John Roberts pointed out to Dreeben that under the Obama administration’s doctrine, the government could secretly monitor the movements of the Supreme Court justices

themselves without a warrant: “you could tomorrow decide that you put a GPS device on every one of our cars, follow us for a month; no problem under the Constitution?”

Lurking beneath the surface in the *Jones* case, although never expressly stated, was the fact that the Obama administration carried out the extrajudicial assassination of US citizen Anwar Al-Awlaki at the end of September. (See “The legal implications of the al-Awlaki assassination”.) Washington’s preferred method of targeted assassination, and the one used to kill Al-Awlaki in Yemen, is to fire missiles from pilotless drones that use GPS-type tracking technology to locate the victim.

In another significant action, the Supreme Court on November 7 summarily overturned a ruling in the Sixth Circuit Court of Appeals that had reversed a criminal conviction on the grounds that the confession of the accused was improperly secured. Archie Dixon was convicted on the basis of a confession that he initially gave without being informed of his Miranda rights, and after police lied to him, telling him that his alleged accomplice had already confessed.

The police in Dixon’s case had deliberately evaded the Miranda protections. After they secured Dixon’s confession, they read him his rights and secured a second confession. The second confession was used against him at trial. The Supreme Court saw no reason to reverse the conviction.

On November 18, the court refused to intervene to stop the execution of Idaho death row inmate Paul Ezra Rhoades, who was executed that same day. With his last words, Rhoades forgave his executioners. His execution was the first in Idaho in 17 years.



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