

GPS court ruling leaves US phone tracking unclear

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The top US court ruled 9-0 in January that police violated the rights of a suspected drug dealer when they placed a GPS, or [Global Positioning System](#), tracking device on his vehicle without a warrant and followed his movements.

But privacy activists and legal analysts are watching for guidance on the far more ubiquitous practice of law enforcement tracking using

cellphones.

This can be done using a phone's GPS or by "triangulation" using [cell towers](#), and can also be done with certain tablet or [laptop computers](#).

[Privacy advocates](#) say real-life police, like the ones on TV, often use this method to track suspects despite the murky legal situation. This could be limited if courts provide clearer rulings or if Congress passes legislation on "location privacy."

"Much government tracking does not involve use of a device planted on a car," said Christopher Slobogin of Vanderbilt Law School.

Slobogin said one study indicated that US police have made eight million requests to phone companies for help in carrying out cellphone tracking.

He said the Supreme [Court ruling](#) "leaves much up in the air," but that the justices gave a strong indication they did not like the practice of long-term surveillance without a warrant.

Slobogin said privacy activists should be heartened by the fact that judges across the political spectrum were united on the issue, and in particular by comments from Justice Samuel Alito, whom he called "a very well known conservative who is pro-law enforcement."

Alito held that the tracking using GPS was an "unreasonable search" barred by the constitution's fourth amendment.

Catherine Crump, an attorney with the American Civil Liberties Union's speech, privacy and technology project, said the January ruling was encouraging even though it did not specifically address mobile phone tracking.

"Five of the justices were extremely concerned about the long-term surveillance of Americans," Crump told AFP. "They felt it violates an individual's reasonable expectation of privacy and that rationale should apply to cellphone tracking."

Crump said authorities can obtain cellphone data in cases of emergencies like kidnappings or escaped criminals, with little controversy. But in investigations, they can often get a subpoena on thin legal grounds instead of what privacy advocates want -- a standard of "probable cause" of a crime.

Yet Crump said she expects no immediately [Supreme Court ruling](#) on cellphone tracking because the government, in her view, is pursuing a strategy to avoid an appellate court ruling that would limit its tracking ability.

"The pattern we've seen is that when the government loses, it rarely appeals... as long as a federal appeals court does not rule it needs warrant based on probable cause it can continue to track people based on a lower standard," she said.

Because of this, Crump said the ACLU and other activist groups believe "a legislative solution is necessary."

Several bills have been introduced in Congress, including one by Senator Patrick Leahy, which would call for search warrants to track people in most situations using phones, tablets or other electronic devices.

After the court ruling, Leahy said, "Congress must now do its part to enact this legislation, so that our federal privacy laws keep pace with technology and protect the interests of our nation's citizens."

Gregory Nojeim of the Center for Democracy and Technology, which is

part of a coalition supporting enhanced digital privacy, said he believes the top US court would support a high standard in a cellphone case but that Congress should act to clarify this.

"The court's decision in our view sets a constitutional floor for any such clarification" which would require a warrant "when the location monitoring is precise and persistent over time," he said.

But it is not just law enforcement that needs to be clarified, according to privacy advocates.

"Legislation is needed to ensure that companies get meaningful consent from consumers before disclosing information to advertisers and others and to set standards for government [tracking](#)," CDT said in a statement.

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