



December 12, 2013

The Honorable Eric Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Holder:

We write today to request the release of the two Department of Justice (DOJ) legal memoranda written in the wake of the 2012 Supreme Court case, *United States v. Jones*. These memoranda apparently describe when the Justice Department believes that GPS devices can be used in the course of investigations, as well as the application of the *Jones* case to other location-based technologies.

On February 24, 2012, FBI General Counsel Andrew Weissmann participated in a panel at the University of San Francisco Law Review Symposium. A few weeks earlier, the Supreme Court held in *Jones* that the government's trespassory placement of a GPS tracker on a suspect's vehicle qualifies as a search under the Fourth Amendment. In response to a question about the DOJ's reaction to *Jones*, Mr. Weissmann proceeded to list numerous location-tracking issues raised by the Court's decision. These issues included questions like: Does *Jones* apply to boats and airplanes? What does *Jones* mean for tracking when consent is given by an owner or possessor? Can *Jones* be applied at U.S. borders? The most significant question, in our view, is whether the Justice Department believes that *Jones* requires the government to get a warrant when obtaining an individual's location information from a cell-phone provider or other private company.

At the symposium, Weissmann discussed two internal memoranda that described both the DOJ position on the future of GPS tracking, and DOJ "guidance about what [*Jones*] means for other types of [location-tracking] techniques beyond GPS."¹ Both documents were authored by the Chief of the Criminal Division's Appellate Section and were directed to federal prosecutors and DOJ employees. In response to a request by the American Civil Liberties Union under the Freedom of Information Act, these memoranda were publicly released by DOJ on February 27,

¹ Mr. Weissmann's comments are available on YouTube (Part 1: <http://www.youtube.com/watch?v=3PCj3cqSxx8>, Part 2: <http://www.youtube.com/watch?v=pEBH11utdUo> and Part 3: <http://www.youtube.com/watch?v=C5f6VDUbgXs>). The comments quoted here begin around minute 27 of Part 2, and continue into Part 3.

2012 and July 5, 2012, respectively. The released documents were, however, heavily redacted and did not provide sufficient information regarding DOJ's position on tracking techniques.

Geolocation tracking and the use of GPS technology has been the subject of considerable Congressional scrutiny. Hearings in the 111th, 112th, and 113th Congressional sessions have explored the issue, and we have introduced bipartisan and bicameral legislation on the topic, known as the Geolocation and Privacy Surveillance (GPS) Act.

As Congress moves forward on geolocation legislation it is critical that members of Congress understand DOJ's precise views on the current state of the law and existing legal requirements and protections.

More broadly, it is also important that the Justice Department's understanding of these authorities be made available to the American public. In our view there is no room in American democracy for secret interpretation of public law.

Therefore, we request that you provide the February 27, 2012 and July 5, 2012 DOJ memos to our offices in their entirety by January 31, 2014.

Sincerely,

Ron Wyden
United States Senator

Jason Chaffetz
Member of Congress