

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
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February 26, 2016

Memorandum

TO: Members of Committee on Oversight and Government Reform
FROM: Majority Staff, Committee on Oversight and Government Reform
SUBJECT: Hearing titled “Geolocation Technology and Privacy”

On **Wednesday, March 2, 2016 at 10:00 a.m. in room 2154 Rayburn House Office Building**, the committee will hold a hearing titled, “Geolocation Technology and Privacy.” The hearing will examine law enforcement’s use of devices, data, and technology that obtain geolocation information of individuals. The hearing will examine the Department of Justice’s (DOJ) policies and procedures governing the use of geolocation data, as well the policies and procedures governing the use of geolocation data at the state and local level.

Background:

Technological advances such as Smartphone’s have made tracking people’s movements over long periods of time easier and less expensive for law enforcement. Everyday wireless devices that communicate with cell towers, wireless routers, or GPS satellites generate a near constant stream of geolocation data. This geolocation data can be used to mount prolonged, indefinite surveillance of an individual’s location in a way previously unachievable by traditional surveillance techniques. This prolonged surveillance can reveal intimate details about a person’s life:

A person who knows all of another’s travels can deduce whether he is a weekly church goer, 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.¹

¹ *United States v. Maynard*, 615 F.3d 544 at 562 (D.C. Cir. 2010)

The Supreme Court has provided limited clarification in recent years about whether a warrant is required for law enforcement to obtain geolocation information. In *United States v. Jones*, the Court unanimously held that physically attaching a GPS tracking device to a vehicle constituted a search under the Fourth Amendment. In *Riley v. California*, the Court held, again unanimously, that a warrant was required for the search of the digital contents of a cell phone obtained during an arrest of a suspect.

While the Court has now required a warrant for placing a GPS tracker on a private vehicle, and required a warrant before searching the contents of a cell phone, the Court has not yet weighed in on whether a warrant requirement exists for all geolocation information, such as OnStar or other wireless device transmissions that reveal geolocation over time. Geolocation technology is outpacing the Court's ability to analyze and rule on each technological device or method of obtaining geolocation in a method by method fashion. Justice Alito's concurrence in *U.S. v. Jones* suggests this entire topic is better dealt with through legislation rather than Fourth Amendment litigation:

In circumstances involving dramatic technological change, the best solution to privacy concerns may be legislative. A legislative body is well situated to gauge changing public attitudes, to draw detailed lines, and to balance privacy and public safety in a comprehensive way.²

Hearing Purpose:

The hearing builds on the bipartisan geolocation related investigations and oversight the Committee has conducted, including an October 21, 2015 Subcommittee on Information Technology hearing on Stingray surveillance technology.

The hearing will provide Members an opportunity to hear from a variety of law enforcement and privacy experts with different perspectives on what the Fourth Amendment means in the digital age

The hearing will also examine what level of protection people should have over their geolocation data, and what rules and processes should govern law enforcement's access to that data.

² *United States v. Jones* 132 S. Ct. 945, at 964 (2012) (Alito concurring opinion).

Invited Witnesses:

Mr. Richard Downing

Deputy Chief
Computer Crime and Intellectual Property Section
U.S. Department of Justice

Mr. Michael R. Doucette

Commonwealth's Attorney
City of Lynchburg, Virginia

Mr. Paul J. Larkin Jr.

Senior Legal Research Fellow
Edwin Meese III Center for Legal and Judicial Studies
The Heritage Foundation

Ms. Neema Singh Guliani

Legislative Counsel
American Civil Liberties Union

Staff Contact:

Please contact Troy Stock with the Majority staff at (202) 225-5074 with any questions.