

Supreme Court of the United States

UNITED STATES, Petitioner

v.

Antoine **JONES**.

Decided Jan. 23, 2012.

Justice [SCALIA](#) delivered the opinion of the Court.

We decide whether the attachment of a Global–Positioning–System (GPS) tracking device to an individual's vehicle, and subsequent use of that device to monitor the vehicle's movements on public streets, constitutes a search or seizure within the meaning of the Fourth Amendment.

I

In 2004 respondent Antoine Jones, owner and operator of a nightclub in the District of Columbia, came under suspicion of trafficking in narcotics and was made the target of an investigation by a joint FBI and Metropolitan Police Department task force. Officers employed various investigative techniques, including visual surveillance of the nightclub, installation of a camera focused on the front door of the club, and a pen register and wiretap covering Jones's cellular phone.

Based in part on information gathered from these sources, in 2005 the Government applied to the United States District Court for the District of Columbia for a warrant authorizing the use of an electronic tracking device on the Jeep Grand Cherokee registered to Jones's wife. A warrant issued, authorizing installation of the device in the District of Columbia and within 10 days.

On the 11th day, and not in the District of Columbia but in Maryland, agents installed a GPS tracking device on the undercarriage of the Jeep while it was parked in a public parking lot. Over the next 28 days, the Government used the device to track the vehicle's movements, and once had to replace the device's battery when the vehicle was parked in a different public lot in Maryland. By means of signals from multiple satellites, the device established the vehicle's location within 50 to 100 feet, and communicated that location by cellular phone to a Government computer. It relayed more than 2,000 pages of data over the 4–week period.

The Government ultimately obtained a multiple-count indictment charging Jones and several alleged co-conspirators with, as relevant here, conspiracy to distribute and possess with intent to distribute five kilograms or more of cocaine and 50 grams or more of cocaine base, in violation of [21 U.S.C. §§ 841 and 846](#). Before trial, Jones filed a motion to suppress evidence obtained through the GPS device. The District Court granted the motion only in part, suppressing the data obtained while the vehicle was parked in the garage adjoining Jones's residence. The jury returned a guilty verdict, and the District Court sentenced Jones to life imprisonment.

The United States Court of Appeals for the District of Columbia Circuit reversed the conviction because of admission of the evidence obtained by warrantless use of the GPS device which, it said, violated the Fourth Amendment.

II

A

The Fourth Amendment provides in relevant part that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” It is beyond dispute that a vehicle is an “effect” as that term is used in the Amendment. [United States v. Chadwick](#), 433 U.S. 1, 12, 97 S.Ct. 2476, 53 L.Ed.2d 538 (1977). We hold that the Government's installa-

tion of a GPS device on a target's vehicle, and its use of that device to monitor the vehicle's movements, constitutes a "search."

It is important to be clear about what occurred in this case: The Government physically occupied private property for the purpose of obtaining information. We have no doubt that such a physical intrusion would have been considered a "search" within the meaning of the Fourth Amendment when it was adopted. *Entick v. Carrington*, 95 Eng. Rep. 807 (C.P. 1765), is a "case we have described as a 'monument of English freedom' 'undoubtedly familiar' to 'every American statesman' at the time the Constitution was adopted, and considered to be 'the true and ultimate expression of constitutional law' " with regard to search and seizure. [Brower v. County of Inyo](#), 489 U.S. 593, 596, 109 S.Ct. 1378, 103 L.Ed.2d 628 (1989) (quoting [Boyd v. United States](#), 116 U.S. 616, 626, 6 S.Ct. 524, 29 L.Ed. 746 (1886)). In that case, Lord Camden expressed in plain terms the significance of property rights in search-and-seizure analysis:

"[O]ur law holds the property of every man so sacred, that no man can set his foot upon his neighbour's close without his leave; if he does he is a trespasser, though he does no damage at all; if he will tread upon his neighbour's ground, he must justify it by law." *Entick, supra*, at 817.

The text of the Fourth Amendment reflects its close connection to property, since otherwise it would have referred simply to "the right of the people to be secure against unreasonable searches and seizures"; the phrase "in their persons, houses, papers, and effects" would have been superfluous.

Consistent with this understanding, our Fourth Amendment jurisprudence was tied to common-law trespass, at least until the latter half of the 20th century. [Kyllo v. United States](#), 533 U.S. 27, 31, 121 S.Ct. 2038, 150 L.Ed.2d 94 (2001); Kerr, [The Fourth Amendment and New Technologies: Constitutional Myths and the Case for Caution](#), 102 Mich. L.Rev. 801, 816 (2004). Thus, in [Olmstead v. United States](#), 277 U.S. 438, 48 S.Ct. 564, 72 L.Ed. 944 (1928), we held that wiretaps attached to telephone wires on the public streets did not constitute a Fourth Amendment search because "[t]here was no entry of the houses or offices of the defendants," [id.](#), at 464, 48 S.Ct. 564.

Our later cases, of course, have deviated from that exclusively property-based approach. In [Katz v. United States](#), 389 U.S. 347, 351, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967), we said that "the Fourth Amendment protects people, not places," and found a violation in attachment of an eavesdropping device to a public telephone booth. Our later cases have applied the analysis of Justice Harlan's concurrence in that case, which said that a violation occurs when government officers violate a person's "reasonable expectation of privacy," [id.](#), at 360, 88 S.Ct. 507. See, e.g., [Bond v. United States](#), 529 U.S. 334, 120 S.Ct. 1462, 146 L.Ed.2d 365 (2000); [California v. Ciraolo](#), 476 U.S. 207, 106 S.Ct. 1809, 90 L.Ed.2d 210 (1986); [Smith v. Maryland](#), 442 U.S. 735, 99 S.Ct. 2577, 61 L.Ed.2d 220 (1979).

The Government contends that the Harlan standard shows that no search occurred here, since Jones had no "reasonable expectation of privacy" in the area of the Jeep accessed by Government agents (its underbody) and in the locations of the Jeep on the public roads, which were visible to all. But we need not address the Government's contentions, because Jones's Fourth Amendment rights do not rise or fall with the [Katz](#) formulation. At bottom, we must "assur[e] preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted." [Kyllo, supra](#), at 34, 121 S.Ct. 2038. As explained, for most of our history the Fourth Amendment was understood to embody a particular concern for government trespass upon the areas ("persons, houses, papers, and effects") it enumerates.^{FN3} [Katz](#) did not repudiate that understanding. Less than two years later the Court upheld defendants' contention that the Government could not introduce against them conversations between *other* people obtained by warrantless placement of electronic surveillance devices in their homes. The opinion rejected the dissent's contention that there was no Fourth Amendment violation "unless the conversational privacy of the homeowner himself is invaded." [Alderman v. United States](#), 394 U.S. 165, 176, 89 S.Ct. 961, 22 L.Ed.2d 176 (1969). "[W]e [do not] believe that [Katz](#), by holding that the Fourth Amendment protects persons and their private conversations, was intended to withdraw any of the protection which the Amendment extends to the home...." [Id.](#), at 180, 89

[S.Ct. 961.](#)

[FN3.](#) Justice ALITO's concurrence (hereinafter concurrence) doubts the wisdom of our approach because “it is almost impossible to think of late–18th–century situations that are analogous to what took place in this case.” *Post*, at 958 (opinion concurring in judgment). But in fact it posits a situation that is not far afield—a constable's concealing himself in the target's coach in order to track its movements. *Ibid.* There is no doubt that the information gained by that trespassory activity would be the product of an unlawful search—whether that information consisted of the conversations occurring in the coach, or of the destinations to which the coach traveled.

In any case, it is quite irrelevant whether there was an 18th-century analog. Whatever new methods of investigation may be devised, our task, *at a minimum*, is to decide whether the action in question would have constituted a “search” within the original meaning of the Fourth Amendment. Where, as here, the Government obtains information by physically intruding on a constitutionally protected area, such a search has undoubtedly occurred.

More recently, in [Soldal v. Cook County](#), 506 U.S. 56, 113 S.Ct. 538, 121 L.Ed.2d 450 (1992), the Court unanimously rejected the argument that although a “seizure” had occurred “in a ‘technical’ sense” when a trailer home was forcibly removed, [id.](#), at 62, 113 S.Ct. 538, no Fourth Amendment violation occurred because law enforcement had not “invade[d] the [individuals'] privacy,” [id.](#), at 60, 113 S.Ct. 538. [Katz](#), the Court explained, established that “property rights are not the sole measure of Fourth Amendment violations,” but did not “snuff[f] out the previously recognized protection for property.” [506 U.S.](#), at 64, 113 S.Ct. 538. As Justice Brennan explained in his concurrence in [Knotts](#), [Katz](#) did not erode the principle “that, when the Government *does* engage in physical intrusion of a constitutionally protected area in order to obtain information, that intrusion may constitute a violation of the Fourth Amendment.” [460 U.S.](#), at 286, 103 S.Ct. 1081 (opinion concurring in judgment). We have embodied that preservation of past rights in our very definition of “reasonable expectation of privacy” which we have said to be an expectation “that has a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society.” [Minnesota v. Carter](#), 525 U.S. 83, 88, 119 S.Ct. 469, 142 L.Ed.2d 373 (1998) (internal quotation marks omitted). [Katz](#) did not narrow the Fourth Amendment's scope.

The Government contends that several of our post-[Katz](#) cases foreclose the conclusion that what occurred here constituted a search. It relies principally on two cases in which we rejected Fourth Amendment challenges to “beepers,” electronic tracking devices that represent another form of electronic monitoring. The first case, [Knotts](#), upheld against Fourth Amendment challenge the use of a “beeper” that had been placed in a container of chloroform, allowing law enforcement to monitor the location of the container. [460 U.S.](#), at 278, 103 S.Ct. 1081. We said that there had been no infringement of Knotts' reasonable expectation of privacy since the information obtained—the location of the automobile carrying the container on public roads, and the location of the off-loaded container in open fields near Knotts' cabin—had been voluntarily conveyed to the public.^{FN6} [Id.](#), at 281–282, 103 S.Ct. 1081. But as we have discussed, the [Katz](#) reasonable-expectation-of-privacy test has been *added to*, not *substituted for*, the common-law trespassory test. The holding in [Knotts](#) addressed only the former, since the latter was not at issue. The beeper had been placed in the container before it came into Knotts' possession, with the consent of the then-owner. [460 U.S.](#), at 278, 103 S.Ct. 1081. Knotts did not challenge that installation, and we specifically declined to consider its effect on the Fourth Amendment analysis. [Id.](#), at 279, n. **, 103 S.Ct. 1081. [Knotts](#) would be relevant, perhaps, if the Government were making the argument that what would otherwise be an unconstitutional search is not such where it produces only public information. The Government does not make that argument, and we know of no case that would support it.

[FN6. *Knotts*](#) noted the “limited use which the government made of the signals from this particular beeper,” [460 U.S., at 284, 103 S.Ct. 1081](#); and reserved the question whether “different constitutional principles may be applicable” to “dragnet-type law enforcement practices” of the type that GPS tracking made possible here, [ibid.](#)

The second “beeper” case, [United States v. Karo, 468 U.S. 705, 104 S.Ct. 3296, 82 L.Ed.2d 530 \(1984\)](#), does not suggest a different conclusion. There we addressed the question left open by [Knotts](#), whether the installation of a beeper in a container amounted to a search or seizure. [468 U.S., at 713, 104 S.Ct. 3296](#). As in [Knotts](#), at the time the beeper was installed the container belonged to a third party, and it did not come into possession of the defendant until later. [468 U.S., at 708, 104 S.Ct. 3296](#). Thus, the specific question we considered was whether the installation “with the consent of the original owner constitute[d] a search or seizure ... when the container is delivered to a buyer having no knowledge of the presence of the beeper.” [Id., at 707, 104 S.Ct. 3296](#) (emphasis added). We held not. The Government, we said, came into physical contact with the container only before it belonged to the defendant Karo; and the transfer of the container with the unmonitored beeper inside did not convey any information and thus did not invade Karo's privacy. See [id., at 712, 104 S.Ct. 3296](#). That conclusion is perfectly consistent with the one we reach here. Karo accepted the container as it came to him, beeper and all, and was therefore not entitled to object to the beeper's presence, even though it was used to monitor the container's location. Cf. [On Lee v. United States, 343 U.S. 747, 751–752, 72 S.Ct. 967, 96 L.Ed. 1270 \(1952\)](#) (no search or seizure where an informant, who was wearing a concealed microphone, was invited into the defendant's business). Jones, who possessed the Jeep at the time the Government trespassorily inserted the information-gathering device, is on much different footing.

B

The concurrence faults our approach for “present[ing] particularly vexing problems” in cases that do not involve physical contact, such as those that involve the transmission of electronic signals. In fact, it is the concurrence's insistence on the exclusivity of the [Katz](#) test that needlessly leads us into “particularly vexing problems” in the present case. This Court has to date not deviated from the understanding that mere visual observation does not constitute a search. See [Kyllo, 533 U.S., at 31–32, 121 S.Ct. 2038](#). We accordingly held in [Knotts](#) that “[a] person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another.” [460 U.S., at 281, 103 S.Ct. 1081](#). Thus, even assuming that the concurrence is correct to say that “[t]raditional surveillance” of Jones for a 4–week period “would have required a large team of agents, multiple vehicles, and perhaps aerial assistance,” *post*, at 963, our cases suggest that such visual observation is constitutionally permissible. It may be that achieving the same result through electronic means, without an accompanying trespass, is an unconstitutional invasion of privacy, but the present case does not require us to answer that question.

And answering it affirmatively leads us needlessly into additional thorny problems. The concurrence posits that “relatively short-term monitoring of a person's movements on public streets” is okay, but that “the use of longer term GPS monitoring in investigations of *most offenses*” is no good. *Post*, at 964 (emphasis added). That introduces yet another novelty into our jurisprudence. There is no precedent for the proposition that whether a search has occurred depends on the nature of the crime being investigated. And even accepting that novelty, it remains unexplained why a 4–week investigation is “surely” too long and why a drug-trafficking conspiracy involving substantial amounts of cash and narcotics is not an “extraordinary offens[e]” which may permit longer observation. See *post*, at 964. What of a 2–day monitoring of a suspected purveyor of stolen electronics? Or of a 6–month monitoring of a suspected terrorist? We may have to grapple with these “vexing problems” in some future case where a classic trespassory search is not involved and resort must be had to [Katz](#) analysis; but there is no reason for rushing forward to resolve them here.

III

The Government argues in the alternative that even if the attachment and use of the device was a search, it was reasonable—and thus lawful—under the Fourth Amendment because “officers had reasonable suspicion, and indeed probable cause, to believe that [Jones] was a leader in a large-scale cocaine distribution conspiracy.” Brief for United States 50–51. We have no occasion to consider this argument. The Government did not raise it below, and the D.C. Circuit therefore did not address it. We consider the argument forfeited.

* * *

The judgment of the Court of Appeals for the D.C. Circuit is affirmed.

It is so ordered.

Justice [SOTOMAYOR](#), concurring.

I join the Court's opinion because I agree that a search within the meaning of the Fourth Amendment occurs, at a minimum, “[w]here, as here, the Government obtains information by physically intruding on a constitutionally protected area.” *Ante*, at 950, n. 3. In this case, the Government installed a Global Positioning System (GPS) tracking device on respondent Antoine Jones' Jeep without a valid warrant and without Jones' consent, then used that device to monitor the Jeep's movements over the course of four weeks. The Government usurped Jones' property for the purpose of conducting surveillance on him, thereby invading privacy interests long afforded, and undoubtedly entitled to, Fourth Amendment protection. See, e.g., [Silverman v. United States](#), 365 U.S. 505, 511–512, 81 S.Ct. 679, 5 L.Ed.2d 734 (1961).

Of course, the Fourth Amendment is not concerned only with trespassory intrusions on property. See, e.g., [Kyllo v. United States](#), 533 U.S. 27, 31–33, 121 S.Ct. 2038, 150 L.Ed.2d 94 (2001). Rather, even in the absence of a trespass, “a Fourth Amendment search occurs when the government violates a subjective expectation of privacy that society recognizes*955 as reasonable.” *Id.*, at 33, 121 S.Ct. 2038; see also [Smith v. Maryland](#), 442 U.S. 735, 740–741, 99 S.Ct. 2577, 61 L.Ed.2d 220 (1979); [Katz v. United States](#), 389 U.S. 347, 361, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967) (Harlan, J., concurring). In [Katz](#), this Court enlarged its then-prevailing focus on property rights by announcing that the reach of the Fourth Amendment does not “turn upon the presence or absence of a physical intrusion.” *Id.*, at 353, 88 S.Ct. 507. As the majority's opinion makes clear, however, [Katz](#)'s reasonable-expectation-of-privacy test augmented, but did not displace or diminish, the common-law trespassory test that preceded it. *Ante*, at 951. Thus, “when the Government *does* engage in physical intrusion of a constitutionally protected area in order to obtain information, that intrusion may constitute a violation of the Fourth Amendment.” [United States v. Knotts](#), 460 U.S. 276, 286, 103 S.Ct. 1081, 75 L.Ed.2d 55 (1983) (Brennan, J., concurring in judgment); see also, e.g., [Rakas v. Illinois](#), 439 U.S. 128, 144, n. 12, 99 S.Ct. 421, 58 L.Ed.2d 387 (1978). Justice ALITO's approach, which discounts altogether the constitutional relevance of the Government's physical intrusion on Jones' Jeep, erodes that longstanding protection for privacy expectations inherent in items of property that people possess or control. See *post*, at 959 – 961 (opinion concurring in judgment). By contrast, the trespassory test applied in the majority's opinion reflects an irreducible constitutional minimum: When the Government physically invades personal property to gather information, a search occurs. The reaffirmation of that principle suffices to decide this case.

Nonetheless, as Justice ALITO notes, physical intrusion is now unnecessary to many forms of surveillance. *Post*, at 961 – 963. With increasing regularity, the Government will be capable of duplicating the monitoring undertaken in this case by enlisting factory- or owner-installed vehicle tracking devices or GPS-enabled smartphones. See [United States v. Pineda–Moreno](#), 617 F.3d 1120, 1125 (C.A.9 2010) (Kozinski, C.J., dissenting from denial of rehearing en banc). In cases of electronic or other novel modes of

surveillance that do not depend upon a physical invasion on property, the majority opinion's trespassory test may provide little guidance. But “[s]ituations involving merely the transmission of electronic signals without trespass would *remain* subject to *Katz* analysis.” *Ante*, at 953. As Justice ALITO incisively observes, the same technological advances that have made possible nontrespassory surveillance techniques will also affect the *Katz* test by shaping the evolution of societal privacy expectations. *Post*, at 962 – 963. Under that rubric, I agree with Justice ALITO that, at the very least, “longer term GPS monitoring in investigations of most offenses impinges on expectations of privacy.” *Post*, at 964.

In cases involving even short-term monitoring, some unique attributes of GPS surveillance relevant to the *Katz* analysis will require particular attention. GPS monitoring generates a precise, comprehensive record of a person's public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual associations. See, e.g., *People v. Weaver*, 12 N.Y.3d 433, 441–442, 882 N.Y.S.2d 357, 909 N.E.2d 1195, 1199 (2009) (“Disclosed in [GPS] data ... will be trips the indisputably private nature of which takes little imagination to conjure: trips to the psychiatrist, the plastic surgeon, the abortion clinic, the AIDS treatment center, the strip club, the criminal defense attorney, the by-the-hour motel, the union meeting, the mosque, synagogue or church, the gay bar and on and on”). The Government can store such records and efficiently mine them for information years into the future. *Pineda–Moreno*, 617 F.3d, at 1124 (opinion of Kozinski, C.J.). And because GPS monitoring is cheap in comparison to conventional surveillance techniques and, by design, proceeds surreptitiously, it evades the ordinary checks that constrain abusive law enforcement practices: “limited police resources and community hostility.” *Illinois v. Lidster*, 540 U.S. 419, 426, 124 S.Ct. 885, 157 L.Ed.2d 843 (2004).

Awareness that the Government may be watching chills associational and expressive freedoms. And the Government's unrestrained power to assemble data that reveal private aspects of identity is susceptible to abuse. The net result is that GPS monitoring—by making available at a relatively low cost such a substantial quantum of intimate information about any person whom the Government, in its unfettered discretion, chooses to track—may “alter the relationship between citizen and government in a way that is inimical to democratic society.” *United States v. Cuevas–Perez*, 640 F.3d 272, 285 (C.A.7 2011) (Flaum, J., concurring).

I would take these attributes of GPS monitoring into account when considering the existence of a reasonable societal expectation of privacy in the sum of one's public movements. I would ask whether people reasonably expect that their movements will be recorded and aggregated in a manner that enables the Government to ascertain, more or less at will, their political and religious beliefs, sexual habits, and so on. I do not regard as dispositive the fact that the Government might obtain the fruits of GPS monitoring through lawful conventional surveillance techniques. See *Kyllo*, 533 U.S., at 35, n. 2, 121 S.Ct. 2038; *ante*, at 954 (leaving open the possibility that duplicating traditional surveillance “through electronic means, without an accompanying trespass, is an unconstitutional invasion of privacy”). I would also consider the appropriateness of entrusting to the Executive, in the absence of any oversight from a coordinate branch, a tool so amenable to misuse, especially in light of the Fourth Amendment's goal to curb arbitrary exercises of police power to and prevent “a too permeating police surveillance,” *United States v. Di Re*, 332 U.S. 581, 595, 68 S.Ct. 222, 92 L.Ed. 210 (1948).

More fundamentally, it may be necessary to reconsider the premise that an individual has no reasonable expectation of privacy in information voluntarily disclosed to third parties. E.g., *Smith*, 442 U.S., at 742, 99 S.Ct. 2577; *United States v. Miller*, 425 U.S. 435, 443, 96 S.Ct. 1619, 48 L.Ed.2d 71 (1976). This approach is ill suited to the digital age, in which people reveal a great deal of information about themselves to third parties in the course of carrying out mundane tasks. People disclose the phone numbers that they dial or text to their cellular providers; the URLs that they visit and the e-mail addresses with which they correspond to their Internet service providers; and the books, groceries, and medications they purchase to online retailers. Perhaps, as Justice ALITO notes, some people may find the “tradeoff” of privacy for convenience “worthwhile,” or come to accept this “diminution of privacy” as “inevitable,” *post*, at 962, and perhaps not. I for one doubt that people would accept without complaint the warrantless disclosure to the Government of

a list of every Web site they had visited in the last week, or month, or year. But whatever the societal expectations, they can attain constitutionally protected status only if our Fourth Amendment jurisprudence ceases to treat secrecy as a prerequisite for privacy. I would not assume that all information voluntarily disclosed to some member of the public for a limited purpose is, for that reason alone, disintegrated to Fourth Amendment protection. See [Smith, 442 U.S., at 749, 99 S.Ct. 2577](#) (Marshall, J., dissenting) (“Privacy is not a discrete commodity, possessed absolutely or not at all. Those who disclose certain facts to a bank or phone company for a limited business purpose need not assume that this information will be released to other persons for other purposes”); see also [Katz, 389 U.S., at 351–352, 88 S.Ct. 507](#) (“[W]hat [a person] seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected”).

Resolution of these difficult questions in this case is unnecessary, however, because the Government's physical intrusion on Jones' Jeep supplies a narrower basis for decision. I therefore join the majority's opinion.

Justice [ALITO](#), with whom Justice [GINSBURG](#), Justice [BREYER](#), and Justice [KAGAN](#) join, concurring in the judgment.

This case requires us to apply the Fourth Amendment's prohibition of unreasonable searches and seizures to a 21st-century surveillance technique, the use of a Global Positioning System (GPS) device to monitor a vehicle's movements for an extended period of time. Ironically, the Court has chosen to decide this case based on 18th-century tort law. By attaching a small GPS device to the underside of the vehicle that respondent drove, the law enforcement officers in this case engaged in conduct that might have provided grounds in 1791 for a suit for trespass to chattels. And for this reason, the Court concludes, the installation and use of the GPS device constituted a search. *Ante*, at 948 – 949.

This holding, in my judgment, is unwise. It strains the language of the Fourth Amendment; it has little if any support in current Fourth Amendment case law; and it is highly artificial.

I would analyze the question presented in this case by asking whether respondent's reasonable expectations of privacy were violated by the long-term monitoring of the movements of the vehicle he drove.

I A

The Court argues—and I agree—that “we must ‘assur[e] preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted.’ ” *Ante*, at 950 (quoting [Kyllo v. United States, 533 U.S. 27, 34, 121 S.Ct. 2038, 150 L.Ed.2d 94 \(2001\)](#)). But it is almost impossible to think of late-18th-century situations that are analogous to what took place in this case. (Is it possible to imagine a case in which a constable secreted himself somewhere in a coach and remained there for a period of time in order to monitor the movements of the coach's owner? ^{FN3})

[FN3](#). The Court suggests that something like this might have occurred in 1791, but this would have required either a gigantic coach, a very tiny constable, or both—not to mention a constable with incredible fortitude and patience.

B

The Court's reasoning in this case is very similar to that in the Court's early decisions involving wire-tapping and electronic eavesdropping, namely, that a technical trespass followed by the gathering of evidence constitutes a search. In the early electronic surveillance cases, the Court concluded that a Fourth Amendment search occurred when private conversations were monitored as a result of an “unauthorized physical penetration into the premises occupied” by the defendant. [Silverman v. United States, 365 U.S. 505, 509, 81 S.Ct. 679, 5 L.Ed.2d 734 \(1961\)](#). In [Silverman](#), police officers listened to conversations in an attached home by inserting a “spike mike” through the wall that this house shared with the vacant house

next door. *Id.*, at 506, 81 S.Ct. 679. This procedure was held to be a search because the mike made contact with a heating duct on the other side of the wall and thus “usurp[ed] ... an integral part of the premises.” *Id.*, at 511, 81 S.Ct. 679.

By contrast, in cases in which there was no trespass, it was held that there was no search. Thus, in *Olmstead v. United States*, 277 U.S. 438, 48 S.Ct. 564, 72 L.Ed. 944 (1928), the Court found that the Fourth Amendment did not apply because “[t]he taps from house lines were made in the streets near the houses.” *Id.*, at 457, 48 S.Ct. 564. Similarly, the Court concluded that no search occurred in *Goldman v. United States*, 316 U.S. 129, 135, 62 S.Ct. 993, 86 L.Ed. 1322 (1942), where a “detectaphone” was placed on the outer wall of defendant's office for the purpose of overhearing conversations held within the room.

This trespass-based rule was repeatedly criticized. *Katz v. United States*, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967), finally did away with the old approach, holding that a trespass was not required for a Fourth Amendment violation. What mattered, the Court now held, was whether the conduct at issue “violated the privacy upon which [the defendant] justifiably relied while using the telephone booth.” *Katz*, *supra*, at 353, 88 S.Ct. 507.

III

Disharmony with a substantial body of existing case law is only one of the problems with the Court's approach in this case.

I will briefly note four others. First, the Court's reasoning largely disregards what is really important (the use of a GPS for the purpose of long-term tracking) and instead attaches great significance to something that most would view as relatively minor (attaching to the bottom of a car a small, light object that does not interfere in any way with the car's operation). Attaching such an object is generally regarded as so trivial that it does not provide a basis for recovery under modern tort law. See Prosser & Keeton § 14, at 87 (harmless or trivial contact with personal property not actionable); D. Dobbs, *Law of Torts* 124 (2000) (same). But under the Court's reasoning, this conduct may violate the Fourth Amendment. By contrast, if long-term monitoring can be accomplished without committing a technical trespass—suppose, for example, that the Federal Government required or persuaded auto manufacturers to include a GPS tracking device in every car—the Court's theory would provide no protection.

Second, the Court's approach leads to incongruous results. If the police attach a GPS device to a car and use the device to follow the car for even a brief time, under the Court's theory, the Fourth Amendment applies. But if the police follow the same car for a much longer period using unmarked cars and aerial assistance, this tracking is not subject to any Fourth Amendment constraints.

Fourth, the Court's reliance on the law of trespass will present particularly vexing problems in cases involving surveillance that is carried out by making electronic, as opposed to physical, contact with the item to be tracked. For example, suppose that the officers in the present case had followed respondent by surreptitiously activating a stolen vehicle detection system that came with the car when it was purchased. Would the sending of a radio signal to activate this system constitute a trespass to chattels? Trespass to chattels has traditionally required a physical touching of the property. See *Restatement (Second) of Torts* § 217 and Comment *e* (1963 and 1964); Dobbs, *supra*, at 123. In recent years, courts have wrestled with the application of this old tort in cases involving unwanted electronic contact with computer systems, and some have held that even the transmission of electrons that occurs when a communication is sent from one computer to another is enough. See, e.g., *CompuServe, Inc. v. Cyber Promotions, Inc.*, 962 F.Supp. 1015, 1021 (S.D. Ohio 1997); *Thrifty-Tel, Inc. v. Bezenek*, 46 Cal.App.4th 1559, 1566, n. 6, 54 Cal.Rptr.2d 468 (1996). But may such decisions be followed in applying the Court's trespass theory? Assuming that what matters under the Court's theory is the law of trespass as it existed at the time of the adoption of the Fourth Amendment, do these recent decisions represent a change in the law or simply the application of the old tort to new situations?

In the pre-computer age, the greatest protections of privacy were neither constitutional nor statutory, but practical. Traditional surveillance for any extended period of time was difficult and costly and therefore rarely undertaken. The surveillance at issue in this case—constant monitoring of the location of a vehicle for four weeks—would have required a large team of agents, multiple vehicles, and perhaps aerial assistance.^{FN10} Only an investigation of unusual importance could have justified such an expenditure of law enforcement resources. Devices like the one used in the present case, however, make long-term monitoring relatively easy and cheap. In circumstances involving dramatic technological change, the best solution to privacy concerns may be legislative. See, e.g., Kerr, [102 Mich. L.Rev., at 805–806](#). 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.

[FN10](#). Even with a radio transmitter like those used in [United States v. Knotts, 460 U.S. 276, 103 S.Ct. 1081, 75 L.Ed.2d 55 \(1983\)](#), or [United States v. Karo, 468 U.S. 705, 104 S.Ct. 3296, 82 L.Ed.2d 530 \(1984\)](#), such long-term surveillance would have been exceptionally demanding. The beepers used in those cases merely “emit[ted] periodic signals that [could] be picked up by a radio receiver.” [Knotts, 460 U.S., at 277, 103 S.Ct. 1081](#). The signal had a limited range and could be lost if the police did not stay close enough. Indeed, in [Knotts](#) itself, officers lost the signal from the beeper, and only “with the assistance of a monitoring device located in a helicopter [was] the approximate location of the signal ... picked up again about one hour later.” [Id., at 278, 103 S.Ct. 1081](#).

To date, however, Congress and most States have not enacted statutes regulating the use of GPS tracking technology for law enforcement purposes. The best that we can do in this case is to apply existing Fourth Amendment doctrine and to ask whether the use of GPS tracking in a particular case involved a degree of intrusion that a reasonable person would not have anticipated.

Under this approach, relatively short-term monitoring of a person's movements on public streets accords with expectations of privacy that our society has recognized as reasonable. See [Knotts, 460 U.S., at 281–282, 103 S.Ct. 1081](#). But the use of longer term GPS monitoring in investigations of most offenses impinges on expectations of privacy. For such offenses, society'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. In this case, for four weeks, law enforcement agents tracked every movement that respondent made in the vehicle he was driving. We need not identify with precision the point at which the tracking of this vehicle became a search, for the line was surely crossed before the 4-week mark. Other cases may present more difficult questions. But where uncertainty exists with respect to whether a certain period of GPS surveillance is long enough to constitute a Fourth Amendment search, the police may always seek a warrant. We also need not consider whether prolonged GPS monitoring in the context of investigations involving extraordinary offenses would similarly intrude on a constitutionally protected sphere of privacy. In such cases, long-term tracking might have been mounted using previously available techniques.

For these reasons, I conclude that the lengthy monitoring that occurred in this case constituted a search under the Fourth Amendment. I therefore agree with the majority that the decision of the Court of Appeals must be affirmed.