



Written Statement of the
American Civil Liberties Union

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that the government can obtain most cell phone loca

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The reason there is so little information available

From the limited published opinions available, it is apparent that courts do not always find in favor of the government position. In fact, the government frequently loses. The “strong majority” of district and magistrate judges have concluded in recently published opinions that the government lacks statutory authority to obtain prospective cell site location without a showing of probable cause.²⁶ In one of the few published decisions regarding government access to historical cell site location information, the Western District of Pennsylvania—with all magistrate judges signing the opinion—held that the government must obtain a warrant to access this information, in part because such applications raise constitutional concerns. That decision, which was affirmed by the district court, is now on appeal in the Third Circuit.

Until the action by the magistrate judges in Pennsylvania forced the government’s hand – by making it impossible to get an order under a relevance standard in that district – a location tracking case had never been appealed to the appellate court in any circuit. In what seems to be the formal policy of the Department of Justice, adverse decisions on whether to grant cell tracking orders are not appealed from the magistrate and district court level – in spite of express requests from some magistrate and district court judges – in order to avoid binding precedent which might tie the government’s hands in further cases.²⁹

This highlights the lengths the government will go to in order to obtain cell site location information. p9.06272(n)-0.956417(t)-2.53658orme,nt53

extension requests and then voluntarily dismissed i

In the most recent example, the ACLU and EFF filed an amicus brief on June 18, 2010 in the case of *United States v. Jones*.³⁶ In this case the FBI sought and received tracking information without a warrant, not just for the criminal defendant, but for “*anyone*”. Although the details remain unclear because the government’s surveillance application is apparently under seal, it appears that the government took the dragnet approach of getting location information for a large number of innocent people to try to figure out who was involved in the crime.

This is even more troubling in light of the FBI policy on record retention. In an oversight

