



United States v. Juan Pineda-Moreno
USE OF GPS TRACKING DEVICE UPHELD
BY NINTH CIRCUIT



February 2010

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Article Source: http://www.llrmi.com/articles/legal_update/9th_gps_tracking.shtml

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*United States v. Juan Pineda-Moreno, 2010 U.S. App. LEXIS 625
(9th Cir. Decided January 11, 2010)*

On January 11, 2010, in the *United States v. Pineda-Moreno*¹, the Ninth Circuit Court of Appeals upheld the warrantless use of a GPS tracking device that was affixed to a suspect's vehicle while the vehicle was parked in the suspect's driveway. The facts of *Pineda-Moreno*, taken directly from the case, are as follows:

On May 28, 2007, a Drug Enforcement Administration ("DEA") special agent noticed a group of men purchasing a large quantity of fertilizer from a Home Depot. Recognizing the fertilizer as a type frequently used to grow marijuana, he followed the men as they left the store and saw them drive away in a silver 1997 Jeep Grand Cherokee. Law enforcement later identified one of the men as Juan Pineda-Moreno, the owner of the Jeep.

In June, DEA agents obtained information that Pineda-Moreno and his associates had purchased large quantities of groceries, irrigation equipment, and deer repellent at several stores. On several of these occasions, the group traveled in Pineda-Moreno's Jeep. Agents eventually followed these individuals to a trailer home Pineda-Moreno was renting at the time.

After learning where Pineda-Moreno lived, agents escalated their investigation. Over a four-month period, agents repeatedly monitored Pineda-Moreno's Jeep using various types of mobile tracking devices. Each device was about the size of a bar of soap and had a magnet affixed to its side, allowing it to be attached to the underside of a car.

Agents installed these devices on the underside of Pineda-Moreno's Jeep on seven different

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occasions. On four of these occasions, the vehicle was parked on a public street in front of Pineda-Moreno's home. On one occasion, it was located in a public parking lot. On the other two occasions, the Jeep was parked in Pineda-Moreno's driveway, a few feet from the side of his trailer. The driveway leading up to the trailer was open; agents did not observe any fence, gate, or "No Trespassing" signs indicating that they were not to enter the property. The agents entered Pineda-Moreno's driveway between 4:00 and 5:00 a.m and attached the tracking devices to the Jeep. Once in place, the tracking devices recorded and logged the precise movements of the vehicle. Some of these devices permitted agents to access the information remotely, while others required them to remove the device from the vehicle and download the information directly.

On September 12, 2007, information from a mobile tracking device alerted agents that Pineda-Moreno's vehicle was leaving a suspected marijuana grow site. Agents followed the Jeep, pulled it over, and smelled the odor of marijuana emanating from a passenger in the backseat of the vehicle. The agents contacted immigration authorities, who arrested all three individuals in the vehicle for violations of immigration laws. Pineda-Moreno subsequently [*4] consented to a search of his vehicle and home. In Pineda-Moreno's trailer, agents found two large garbage bags full of marijuana.ⁱⁱ

Pineda-Moreno was indicted for federal narcotics violations. He filed a motion to suppress the evidence obtained from the GPS devices on the grounds that the agents violated his Fourth Amendment rights by attaching the devices to his Jeep. Specifically, he argued that the agents violated his Fourth Amendment rights when they attached the device to the undercarriage of his vehicle while it was parked in the street and other public areas because he possessed a reasonable expectation of privacy in that area. The district court denied his motion and he later appealed. Further, he argued that agents violated his Fourth Amendment rights when they entered his driveway, which he states is constitutionally protected "curtilage," and attached the devices to his Jeep.

Attaching a GPS Tracking Device to a Vehicle Parked in a Public Area

As to the issue of whether attaching a GPS tracking device to Pineda-Moreno's vehicle as it was parked in an area not within his curtilage, the court looked to a prior Ninth Circuit case, the *United States v. McIver*.ⁱⁱⁱ In *McIver*, the Ninth Circuit previously held that agents do not violate the Fourth Amendment when they attach a GPS tracking device to the undercarriage of a vehicle located in the suspect's driveway, *but outside of the curtilage*.^{iv} The court also held that the undercarriage of vehicle, as part of the exterior is not considered within a person's "reasonable expectation of privacy," and, as such, does not gain the protection of the Fourth Amendment.^v Thus, the court found that in Pineda-Moreno's case, the agents did not violate the Fourth Amendment when they attached the GPS device to his vehicle while it was parked in an area that was *not* within his curtilage.

Attaching a GPS Tracking Device to a Vehicle Parked within the Suspect's Driveway

As to the issue of whether attaching a GPS tracking device to Pineda-Moreno's vehicle as it was parked in his driveway, the prosecution conceded that the vehicle was located within the suspect's curtilage. However, the Ninth Circuit Court of Appeals noted that they have previously held that a driveway is only considered a "semi-private" area.^{vi} The court then stated that, in order to determine if a person has a reasonable expectation of privacy in a driveway, one must look at the specific

features of the driveway such as enclosures, barriers, lack of visibility from the street, “no trespassing” signs or the nature of activities performed upon it.^{vi} In this case, Pineda-Moreno articulated no such features of his driveway. In fact, it was noted that any visitor to the house would likely walk up the driveway. Thus, the court held “because Pineda-Moreno did not take steps to exclude passersby from his driveway, he cannot claim a reasonable expectation of privacy in it, regardless of whether a portion of it was located within the curtilage of his home.” Therefore, the court held that the agents did not violate Pineda-Moreno’s Fourth Amendment rights when they attached the GPS tracking device to his vehicle as it was parked in his driveway. Further, the court held that it did not matter that the agents attached the device to his car at an unusual time of day, particularly 4:00a.m. to 5:00a.m.

On a final note, the court found that the use of a GPS tracking device to record the travels of a vehicle on public roadways and areas was akin to the use of the “beeper” tracking device that was held to be constitutionally reasonable in the *United States v. Knotts*.^{viii}

Therefore, the Ninth Circuit Court of Appeals affirmed the district court’s denial of the motion to suppress.

Key Points

1. Tracking a vehicle and recording its location on public roads and public areas by use of a GPS tracking device does not violate the Fourth Amendment.
2. Affixing a GPS tracking device to the undercarriage of a vehicle that is located in a public area does not violate the Fourth Amendment.
3. A driveway may or may not be considered an area where a person possesses a reasonable expectation of privacy under the Fourth Amendment. Factors to consider are whether the driveway is visible from the road, barriers erected by the residents (i.e. gates), enclosures around the driveway (i.e. fences), the presence of “no trespassing” signs, and the nature of the use of the driveway.
4. If none of the factors from point three above are present, the driveway is likely considered a “semi-private” area and it would not violate the Fourth Amendment to attach a GPS tracking device to a vehicle in that area.

Note: Case law can vary among federal circuits and states. Questions can be directed to your local prosecutor or www.llrmi.com.

ⁱ *United States v. Juan Pineda-Moreno*, 2010 U.S. App. LEXIS 625 (9th Cir. Decided January 11, 2010)

ⁱⁱ *Id.*

ⁱⁱⁱ 186 F.3d 1119 (9th Cir. 1999)

^{iv} *Id.* at 1126

^v *Id.* at 1127

^{vi} *United States v. Magana*, 512 F.2d 1169, 1171 (9th Cir. 1975).

^{vii} *Maisano v. Welcher*, 940 F.2d 499, 503 (9th Cir. 1991).

^{viii} 460 U.S. 276, 281-82, 103 S. Ct. 1081, 75 L. Ed. 2d 55 (1982).