

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

YASIR AFIFI

Plaintiff

v.

ERIC H. HOLDER, JR., in his official  
capacity as Attorney General of the  
United States;

ROBERT S. MUELLER, III, in his  
official capacity as Director of the  
Federal Bureau of Investigation; and

UNKNOWN AGENTS, in their  
individual capacities.

Defendants

CASE NO.: 1:11-cv-00460

HON.: Judge Howell

**MOTION TO STAY PROCEEDINGS PENDING SUPREME COURT'S REVIEW OF  
MATERIALLY IDENTICAL LEGAL ISSUE**

Plaintiff respectfully moves the Court to stay proceedings in this action until the Supreme Court issues its decision in *US v. Jones*. 2011 U.S. LEXIS 4956 (U.S. June 27, 2011). In *Jones*, the Supreme Court will determine whether government agents violated the Fourth Amendment “by installing the GPS tracking device on his vehicle without a valid warrant and without [] consent.”

*Id.* The resolution of this issue will have a dispositive effect on Plaintiff’s case.

1. On March 2, 2011, Plaintiff filed this action against Defendants for declaratory and injunctive relief and damages. The factual basis from which Plaintiff seeks relief is Defendants’ use of a

GPS tracking device against Plaintiff without a warrant and the Defendants' maintenance of records containing information derived from this unlawful search.

2. On April 5, 2011, counsel for Defendants Mueller and Holder entered their appearance but not on behalf of Defendants Unknown Agents. The pending Motion to Dismiss filed on June 16, 2011 does not pertain to all Defendants in this action. Plaintiff has not ascertained the identity of Defendants Unknown Agents—the persons Plaintiff sues in their individual capacities and who carried out the unlawful warrantless search via a GPS tracking device—and have thus not served them.

3. To determine the identity of Defendants Unknown Agents, Plaintiff would have to request leave from this Court to conduct limited discovery. This limited discovery may include interrogatories and depositions to establish the persons who carried out the unlawful warrantless search against Plaintiff and their respective roles in the operation.

4. On June 27, 2011, the Supreme Court granted the United States' petition for writ of certiorari in a case confronting the identical legal issue central to Plaintiff's claims. *United States v. Jones*, 2011 U.S. LEXIS 4956 (U.S. June 27, 2011). In *United States v. Jones*, FBI agents placed a GPS tracking device on the respondent's vehicle and tracked the vehicle's movement in both public places and private areas for several weeks. The appellate court determined that the respondent had a reasonable expectation in the public movements of his vehicle over the course of the tracking. *U.S. v. Maynard*, 615 F.3d 544, 565 (D.C. Cir. 2009). The government's use of a GPS device to monitor those movements, the court held, was therefore a search within the meaning of the Fourth Amendment. *Id.* see *Katz v. U.S.*, 389 U.S. 347, 351 (1967). The United States filed a petition for writ of certiorari to determine whether prolonged GPS monitoring of a

vehicle's movements on public roads is not a “search” within the meaning of the Fourth Amendment. The Supreme Court granted that petition, indicating that it will determine whether government agents violate the Fourth Amendment “by installing the GPS tracking device on [a] vehicle without a valid warrant and without [ ] consent.” *Id*

4. A stay will prevent the waste of judicial resources in litigating an issue that the Supreme Court will soon ultimately settle. “The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket.” *Clinton v. Jones*, 520 U.S. 680, 706 (1997). In particular, district courts have authority under Federal Rule of Civil Procedure 16(a)(3) to schedule proceedings in a case to “discourag[e] wasteful pretrial activities.” Indeed, a “trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case.” *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1111 (9 Cir. 2005). *See also Michael v. Ghee*, 325 F.Supp.2d 829, 831 (N.D. Ohio, 2004) (explaining that a case pending “on appeal to the Supreme Court [that] may have a dispositive effect on the instant case . . . weighs heavily in favor of granting the stay”); *Bechtel Corp. v. Local 215, Laborers Intern. Union of North America, AFL-CIO*, 544 F.2d 1207, 1215 (3rd Cir. 1976) (holding that “[i]n the exercise of its sound discretion, a court may hold one lawsuit in abeyance to abide the outcome of another which may substantially affect it or be dispositive of the issues.”); *Hicks v. Bush*, 397 F. Supp. 2d 36, 39 (D.D.C. 2005) (granting a stay where “the Supreme Court’s review” of a case will “leav[e] no doubts” as to the dispositive legal issues in the trial court).

5. Defendants will not be harmed by a stay in the proceedings. The public interest is best served by awaiting a definitive resolution of the constitutionality of the warrantless use of GPS tracking devices.

Respectfully submitted,

By: \_\_\_\_\_/s/\_\_\_\_\_

**Nadhira F. Al-Khalili (DSB #997827)**  
**THE COUNCIL ON AMERICAN-**  
**ISLAMIC RELATIONS**  
**453 New Jersey Avenue, South East**  
**Washington, D.C. 20003**  
**Telephone: (202) 646-6034**  
**Facsimile: (202) 488-3305**  
**Email: nalkhalili@cair.com**  
*Attorney for Plaintiff Yasir Afifi*

**CERTIFICATE OF SERVICE**

I hereby certify that on July 18, 2011, a true and correct copy of the foregoing was served electronically by the U.S. District Court for the District of Columbia Electronic Case Filing System (ECF) and that the documents are available on the ECF system.

By:   /s/  Nadhira Al-Khalili\_\_\_\_\_

**Nadhira F. Al-Khalili (DSB #997827)  
THE COUNCIL ON AMERICAN-  
ISLAMIC RELATIONS  
453 New Jersey Avenue, South East  
Washington, D.C. 20003  
Telephone: (202) 646-6034  
Facsimile: (202) 488-3305  
Email: nalkhalili@cair.com**