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NATIONAL

# Department Of Homeland Security Facing Lawsuit Over Use Of GPS Tracking Along Border

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Heard on All Things Considered



MARTIN KASTE

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The Supreme Court says police need a warrant before tracking people with GPS — but that rule isn't being followed at the border. Privacy activists are suing the government to find out the extent.

AILS CHANG, HOST:

The Electronic Frontier Foundation, which is a civil rights organization for the digital era, is suing the Department of Homeland Security. It wants to find out how DHS uses tracking devices on vehicles that come into the U.S. As NPR's Martin Kaste reports, it's part of a broader effort by privacy activists to shed more light on government searches at the border.

MARTIN KASTE, BYLINE: This lawsuit was inspired by a criminal case in 2017, when federal authorities say they caught two men driving a truck into the United States from Canada on a dry run for an alleged cocaine-smuggling operation. The Feds had already been watching for them, so they surreptitiously attached tracking devices to the truck at the border crossing in Michigan. Marilyn Bednarski represented one of the defendants.

MARILYN BEDNARSKI: They tracked the truck and the trailer throughout the United States, virtually the longest distance you could go - right? - all the way to Southern California. And the data is like 50 pages each. Yeah, I mean, minute by minute.

KASTE: But there was just one problem - the Feds never got a warrant for those trackers. Back in 2012, the Supreme Court had ruled that police need to get warrants to use these devices, which means showing probable cause. But in this case, investigators said they didn't think they needed a warrant because the trackers were attached to the truck at the border, where heightened security concerns mean Homeland Security feels less bound by warrant requirements.

BEDNARSKI: They tried to skirt around those Fourth Amendment protections by relying on this policy that Homeland Security had to not have to get a warrant, and I don't think the judge liked that.

KASTE: Because the truck had been tracked for thousands of miles into the United States, the judge called foul and threw out the GPS evidence. The case was dismissed. But for privacy activists, it left a lingering question. Just how common is it for the government to attach these GPS trackers to cars in the border zones?

SAIRA HUSSAIN: That definitely was the first time that we had heard of something like that happening, so we want to find out more information about how they do it.

KASTE: That's Saira Hussain, a staff attorney with the Electronic Frontier Foundation. The courts do give border agents more leeway for warrantless searches, but she says the EFF wants to know how far they're taking that. It's suing to find out what the actual practices are. For instance, how much suspicion do agents need before they attach a tracker to a vehicle? How far into the country do they usually follow a tracker when there's no warrant? And would they attach trackers to cars that belong to U.S. citizens?

HUSSAIN: What we would hope to uncover is exactly who this applies to. I think the major defining feature for them is that the car is entering the United States, and so they're allowed to do it - or at least that's what their policies were at the time of this criminal case last year.

**KASTE:** Customs and Border Protection told NPR that it doesn't comment on lawsuits such as this one. And this is just the latest round in an ongoing effort by privacy groups to suss out exactly what the search rules are at the border. EFF has another lawsuit, for instance, to find out what the guidelines are for searching phones and laptops when you come into the country. The CBP did put out a fact sheet about that last year, but it left a lot of gray area. And this vagueness shouldn't really be that surprising, says Berkeley law professor Orin Kerr.

**ORIN KERR:** There's a complicated dynamic where, if they make a policy and have to disclose it, they may not want to make the policy in the first place because it can tip off people who might want to circumvent the policy. So there's a little bit of a complicated dynamic in terms of whether you want the government to be disclosing everything that they're doing.

**KASTE:** But by refusing to disclose those internal guidelines, the government is making it harder in practice for the courts to test whether the searches and tracking that's happening at the border are, in fact, constitutional.

Martin Kaste, NPR News.

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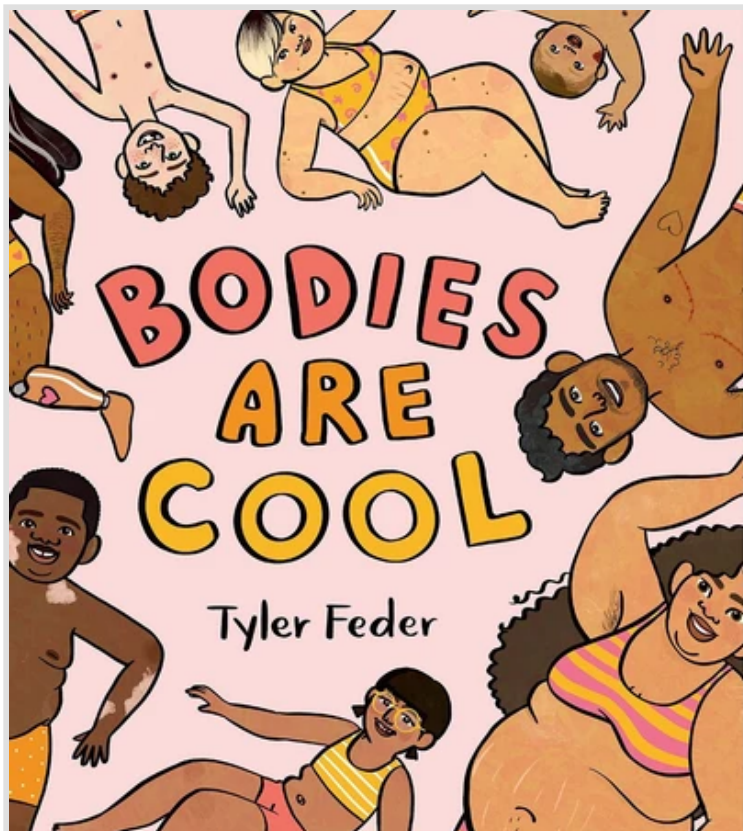
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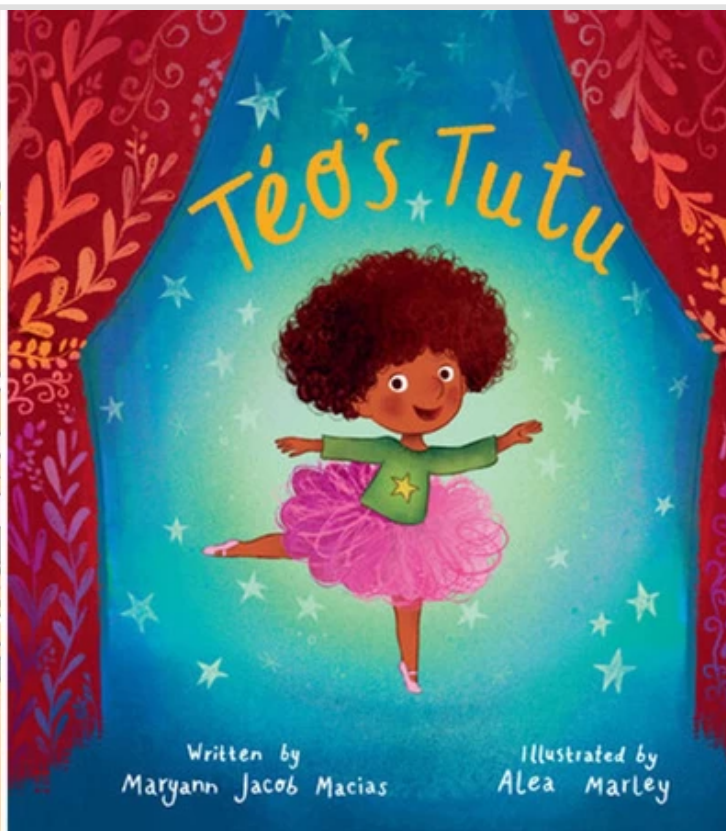


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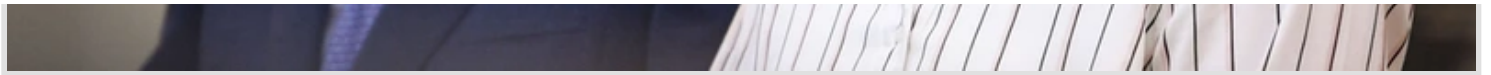
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