



Written by [Joe Wolverton, II, J.D.](#) on December 15, 2012

Counterterrorism Agency: Every Citizen a Suspect

Regulations recently signed into effect by Attorney General Eric Holder allow the [National Counterterrorism Center](#) (NCTC) to monitor records of citizens for any potential criminal activity, without a warrant and without suspicion.

According to [a report in the Wall Street Journal](#), the records that will be subject to seizure and examination by the NCTC include “flight records, casino-employee lists, the names of Americans hosting foreign exchange students and many others.”



Prior to the promulgation of these new regulations, such records were stored on only those citizens suspected of terror-related activity or as part of ongoing criminal investigations.

Furthermore, this information could only be stored for five years; that information will be stored indefinitely, so that the data can be analyzed by federal agents for signs of potential criminal behavior.

These sweeping new powers resulted from a debate among Obama administration intelligence officials, the story reports.

“The debate was a confrontation between some who viewed it as a matter of efficiency—how long to keep data, for instance, or where it should be stored—and others who saw it as granting authority for unprecedented government surveillance of U.S. citizens,” the *Wall Street Journal* reports, claiming that the newspaper received this insight into the process through Freedom of Information requests and interviews with representatives at several agencies familiar with the events.

In a historic and unconstitutional way, the new directives grant NCTC the power to place every American under the constant surveillance of the federal government, not because these people have ever merited the attention, but because someday they might.

Granting an agency of the federal government the power to place innocent citizens under surveillance is not only an unconscionable diminution of due process rights, but a wholesale regulatory nullification of the Bill of Rights.

Another equally intrusive aspect of the new regulations allows agents of the U.S. government to exchange the information gathered on citizens to be shared with their counterparts in other countries so that they can conduct their own analyses.

Should any agent — foreign or domestic — find any hint of potential threats in these files, the individual will be marked for future surveillance so as to prevent commission of future crimes.

Some within the counterterrorism coterie expressed similar concerns before Attorney General Holder signed off on the new guidelines.

“This is a sea change in the way that the government interacts with the general public,” declared Mary Ellen Callahan, chief privacy officer of the Department of Homeland Security, as quoted in the *Wall Street Journal* piece.



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Naturally, a spokesman for the NCTC assures Americans that the agency will provide “rigorous oversight” of the application of the new guidelines so that citizens’ civil liberties are never violated.

“The guidelines provide rigorous oversight to protect the information that we have, for authorized and narrow purposes,” said Alexander Joel, civil liberties protection officer for the Office of the Director of National Intelligence, as quoted in the *Wall Street Journal* story.

The constitutional threshold is much higher than that, however.

The [Fourth Amendment guarantees](#):

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Probable cause. That is what is required before the government can lawfully search or seize any of the information of the sort now being laid open for agents of the NCTC.

Remarkably, when Mary Ellen Callahan of the DHS expressed her doubts about the program, it wasn’t because she was troubled by the denial of due process and the violation of constitutional provisions specifically forbidding such surveillance. No, Callahan was more worried that the new NCTC directives were bad policy.

Any arguments that the regulations violated the law, the *Wall Street Journal* claims, were moot in light of the applicable provisions of the Federal Privacy Act of 1974. The article explains this position:

Congress specifically sought to prevent government agents from rifling through government files indiscriminately when it passed the Federal Privacy Act in 1974. The act prohibits government agencies from sharing data with each other for purposes that aren’t “compatible” with the reason the data were originally collected.

But the Federal Privacy Act allows agencies to exempt themselves from many requirements by placing notices in the *Federal Register*, the government’s daily publication of proposed rules. In practice, these privacy-act notices are rarely contested by government watchdogs or members of the public. “All you have to do is publish a notice in the *Federal Register* and you can do whatever you want,” says Robert Gellman, a privacy consultant who advises agencies on how to comply with the Privacy Act.

Loophole upon loophole. Each large enough to allow the tools of tyranny to be smuggled in through regulations and then used to build a massive surveillance state of historic and horrifying proportions.

As the constitutional chains that bind the government are loosened, so too are the strength of the links connecting targets of investigation to terrorism.

For example, the *Wall Street Journal* reports that NCTC manages a database called [Terrorist Identities Datamart Environment](#) (TIDE). This list includes the names of more than 500,000 people. “Some names are known or suspected terrorists; others are terrorists’ friends and families; still more are people with some loose affiliation to a terrorist.”

It is this sort of “loose affiliation” that is most worrisome. If a journalist, for example, were to interview a suspected militant to get his perspective on the drone war, would the identify of that journalist now be included in the TIDE database?



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Then, if that reporter's name is tagged for a having a "loose affiliation" to terrorists, is he liable to be apprehended by the U.S. military and indefinitely detained in a federal prison under the National Defense Authorization Act (NDAA)?

Do Americans have anything to worry about? Should they not be comforted by the NCTC spokesman who promised that great care would be taken to safeguard the civil liberties of all innocent Americans caught in the federal surveillance dragnet?

The story published by the *Wall Street Journal* suggests the agency might not be that circumspect:

Late last year, for instance, NCTC obtained an entire database from Homeland Security for analysis, according to a person familiar with the transaction. Homeland Security provided the disks on the condition that NCTC would remove all innocent U.S. person data after 30 days.

After 30 days, a Homeland Security team visited and found that the data hadn't yet been removed. In fact, NCTC hadn't even finished uploading the files to its own computers, that person said. It can take weeks simply to upload and organize the mammoth data sets.

Homeland Security granted a 30-day extension. That deadline was missed, too. So Homeland Security revoked NCTC's access to the data.

What was the NCTC's response to its failure to follow through on the requirement to ditch the data?

They said that such mistakes wouldn't occur if that had more power to peruse the files of their own accord and if the limits on how long they could store the data were eliminated.

During closed-door sessions at the White House, NCTC officials made that pitch. After some perfunctory wrangling about how the revised regulations would go over with the people, the White House gave the go ahead and the attorney general made it so.

Every day, it seems, the devolution from liberty to tyranny is codified by a government increasingly willing to disregard constitutional limits on its power.

The new guidelines may be downloaded and [read here](#).

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