



Written by [Joe Wolverton, II, J.D.](#) on May 19, 2016

FAA OKs Drones on Loan to be Flown Nationwide

Do the police in your area wish they had a drone, but can't afford the Predator's price tag? The federal government can make that wish come true and money is no object.

An Associated Press (AP) story published on May 8 reported that the Federal Aviation Administration (FAA) has authorized the Northeast Region Unmanned Aircraft unit in Grand Forks, North Dakota, to fly their drones anywhere in the United States, even your hometown if need be.



The AP writes that the Grand Forks group is one of only "a handful of law enforcement groups with the capability of responding to incidents like natural disasters, crime scenes and search-and-rescue missions."

The relevant question, however, is: Are those the only purposes for which these loaner drones would be used? History doesn't look promising.

Daily flight logs from Customs and Border Protection (CBP) obtained by the Electronic Frontier Foundation in 2013 reveal that the federal department got a head start on loaning drones (Predators, in this case) to "state, local, and non-CBP federal agencies" and law enforcement didn't deploy the unmanned surveillance vehicles for only the reasons put forth by the AP.

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Beyond the law-enforcement purposes for the drone deployments, EFF reports that "CBP conducted extensive 'electro-optical, thermal infrared imagery and Synthetic Aperture Radar' surveillance of levees along the Mississippi River and river valleys across several states, along with surveillance of the massive Deep Water Horizon oil spill and other natural resources for the US Geological Survey, FEMA, the Bureau of Land Management, the US Forest Service, the Department of Natural Resources, and the National Oceanic and Atmospheric Administration."

While such activities seem, at first blush, legitimate and not subject to the same scrutiny as more overt surveillance missions, there are collateral aspects of these uses that deserve attention.

Perhaps most critical is the ultimate disposition of the images recorded by the drones deployed on these environmental missions. Photos of rivers, forests, and levees necessarily include pictures of the homes, cars, and other property of people who live in and near these areas. Such surveillance would seem to violate the Fourth Amendment, requiring that in order to remain constitutionally permissible, the local law-enforcement agency would have to have specific departmental procedures in place and in force designed to protect Americans from unwarranted searches, as set out in the Constitution.

North Dakota, home of the newly empowered no-limit unmanned aviation unit, is no stranger to the constitutionally charged controversy surrounding the domestic deployment of drones.

Constitutional conflicts rising in the wake of the domestic deployment of drones went to court in the case of North Dakota resident Rodney Brossart, who became one of the first American citizens (if not



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the first) arrested by local law enforcement with the use of a drone owned by a federal agency. Police launched this loaner after Brossart held the police at bay for over 16 hours in 2011.

Brossart's run-in with law enforcement began after six cows found their way onto his property (about 3,000 acres near Lakota, North Dakota), and he refused to turn them over to officers. In fact, according to several sources, Brossart and a few family members ran police off his farm at the point of a gun. Naturally, police weren't pleased with Brossart's brand of hospitality, so they returned with a warrant, a SWAT team, and a determination to apprehend Brossart and the cows.

A standoff ensued, and the Grand Forks police SWAT team made a call to Grand Forks Air Force Base, home to one of the Department of Homeland Security's squadron of Predator drones. No sooner did the call come in than the drone was airborne, and Brossart's precise location was pinpointed with laser-guided accuracy. The machine-gun toting SWAT officers rushed in, Tased, and then arrested Brossart on various charges, including terrorizing a sheriff.

In 2014, Brossart was sentenced to three years in prison (two and a half of which were suspended) for terrorizing police officers and resisting arrest.

Despite Brossart's conviction and sentencing, an important question remains: Is there a legal distinction to be made between the level of search conducted by the human eye (whether the searcher is on foot or in a helicopter) and that of a drone's powerful never-blinking optics?

Such an inarguable increase in police perception is not an insignificant decrease in the privacy expectation enjoyed by landowners and protected for centuries by timeless principles of Anglo-American law.

As this writer noted following the Brossart ordeal:

Given this encroachment into the formerly sacrosanct territory of individual liberty, Americans are right to resist the government's apparent plan to fill the skies of our Republic with remote-controlled agents of the president and police.

In point of fact, a warrant becomes unnecessary when the search is being conducted using a drone. The target of the hunt will likely be unaware that he is being tracked and thus government (at any level) can keep a close eye on those considered threats to national (or local) security without having to permit the eye of the court to look over their shoulder.

Not surprisingly, there are those who claim that a sheriff's use of a Predator is no different from his use of a helicopter, and that those who warn of an impending surveillance state are alarmists who should be paid no mind.

However, as discussed above, there are irrefutable differences in technology between the two vehicles, not to mention the devices used by each to perform their assigned tasks.

The standards presently used to judge the constitutionality of observation by helicopter or patrol car, for example, would be altered appropriately to fit the rapidly advancing drone technology. The improved legal framework would help law enforcement avoid legally suspect surveillance and would maintain the public's protection against unconstitutional searches and seizures.

It is revealing to read in the AP report on the Grand Forks group's newly minted nationwide drone deployment license that the training received by the pilots of these drones enables them to "operate in airspace that is restricted to non-rated pilots."



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Those aren't words that constitutionalists and civil liberty advocates like to read.

The North Dakota drone group's coast-to-coast clearance accelerates the necessity to ask a very important question: Will police be permitted to weaponize these drones for use in special deployments?

The answer to this question is urgent in light of the AP's report that "17 state law enforcement departments in Alabama, Arkansas, California, Florida, Georgia, Maryland, North Dakota, Ohio, Oregon, Texas and Washington" are already authorized to deploy their drones nationwide.

Of course, drones aren't bad per se. There are many lawful possible uses of drones, including wildfire control, tracking suspected criminals for whom a qualifying warrant has been issued, tracking of stolen vehicles, etc.

It is the unconstitutional use of drones that is objectionable and that Americans must be vigilant against, lest we legislatively repeal the Fourth Amendment and the protections it affords against tyranny.



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