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Obama Administration Removes Ban on Warrantless Surveillance of Americans

President Obama sought and obtained permission from a secret surveillance court to disregard previously enacted restrictions on the domestic, warrantless spying programs of the National Security Agency (NSA), the *Washington Post* reports.

According to sources cited in the story, in 2011, U.S. District Judge John D. Bates, former chief judge of the Foreign Intelligence Surveillance Court, issued an order "permitting the agency [NSA] to search deliberately for Americans' communications in its massive databases."

Also included in the order was an extension of the amount of time the NSA can store the electronic communication data it collects in the United States. Prior to the judge's decision, such files could be retained for only five years; the limit was pushed back to six years by the terms of the ruling.

The order, the story claims, reversed an "explicit ban" on such unconstitutional searches imposed by the same court in 2008. These restrictions reportedly were "not previously acknowledged."

A decision of this type would cause immediate and irreparable harm to the Constitution and the right of Americans — and all free people — to be free from unwarranted surveillance by agents of their own government.

What's more troubling and tyrannical is the fact that none of these changes to exceptions to the Fourth Amendment was ever debated or passed by the people's elected representatives in Congress. Rather, this fundamental civil liberty was repealed by a judicial appointee at the behest of the very department who sought the expanded authority.

When it comes to circumventing the Constitution in the name of "homeland security," the Obama administration seems to follow the popular philosophy that it is easier to ask forgiveness than permission. Unfortunately, the Constitution doesn't permit such departures from the road of republicanism.

In the spirit of "it depends on what the meaning of the word 'is' is," President Obama and his Stasi-like surveillance apparatus play fast and loose with the definition of "target."

As explained in the *Washington Post* piece:

> "The government says, 'We're not targeting U.S. persons,' " said Gregory T. Nojeim, senior counsel at the Center for Democracy and Technology. "But then they never say, 'We turn around and deliberately search for Americans' records in what we took from the wire.' That, to me, is not so different from targeting Americans at the outset."

Judge Bates didn't see it that way in his order. His decision purported to grant to the NSA power to search (that is "target") "the vast majority" of the electronic communications stored in its massive

databases. These phone records and e-mails may be "queried" using "the email addresses and phone numbers of Americans and legal residents" without first obtaining a qualifying search warrant as mandated by the Fourth Amendment.

The Fourth Amendment states:

> 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.

In light of the FISA court's 2011 ruling as reported in the *Washington Post,* the government needs neither probable cause nor a warrant before searching and seizing the records of private phone and electronic communications of millions of innocent Americans who are now "targets" without being "targeted."

What is more offensive than the fact that the NSA sought such obviously unconstitutional power is the fact that they don't deny it. As the *Post* reports:

> The court in 2008 imposed a wholesale ban on such searches at the government's request, said Alex Joel, civil liberties protection officer at the Office of the Director of National Intelligence (ODNI). The government included this restriction "to remain consistent with NSA policies and procedures that NSA applied to other authorized collection activities," he said.
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> But in 2011, to more rapidly and effectively identify relevant foreign intelligence communications, "we did ask the court" to lift the ban, ODNI general counsel Robert S. Litt said in an interview. "We wanted to be able to do it," he said, referring to the searching of Americans' communications without a warrant.

It would seem, then, in America 2013, what the government wants, the government gets — up to and including the secret subordination of the Constitution and the rights it protects to the will of an administration working to make every citizen a suspect and place their every move under the never-blinking eye of the federal government.

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