Executive order 12333 authorizes NSA to collect vast quantities of US data

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Media attention has focused in recent weeks on the actions of new surveillance whistleblower John Napier Tye, a former US State Department employee who has spoken out against National Security Agency (NSA) surveillance operations conducted under Executive Order 12333.

EO 12333, issued by President Ronald Reagan in 1981 and updated by two subsequent EOs (EO 13355 and EO 13470) issued by the George W. Bush administration, authorizes the NSA to conduct virtually limitless surveillance and information capture operations against servers located in foreign countries.

"Mirror" servers used by Google, Yahoo and other firms hold large quantities of US data on overseas computer systems, where they are subject to direct, unwarranted surveillance by the NSA, which taps into the communications satellites and fiber optic hubs used to route data around the world.

Documents stemming from whistleblower Edward Snowden show that NSA and GCHQ [British intelligence] penetration of these linkages between overseas data centers resulted in acquisition by the surveillance agencies of some 181.3 million records in a single 30-day period. As Tye noted in a July 18 Op-Ed for the *Washington Post*, a whole power plant could easily be dedicated to storing the vast quantities of US communications data being captured and stored by the NSA under EO 12333.

The surveillance "reforms" contained in the USA Freedom Act, recently passed by the US Senate, do not even address the EO 12333-based operations, but instead are limited to powers granted to the NSA by Section 215 of the USA Patriot Act. In light of the surveillance conducted under EO 12333, it becomes clear that Section 215 is only a backup component of the legal architecture for the mass spying.

As Tye put it, Section 215 is effectively "a mechanism to backfill that portion of US person data that cannot be collected overseas under 12333."

In other words, most of the surveillance, including mass spying on communications of US persons, is conducted on the basis of executive fiat, and the supposed reforms passed by Congress and lauded by civil liberties groups, including the American Civil Liberties Union and the Electronic Frontier Foundation, do not even touch the virtually limitless surveillance powers that the executive branch has granted itself.

The surveillance of US citizens conducted under EO 12333 is in flagrant violation of the US Bill of Rights, as Tye correctly pointed out when he came forward last month.

"I don't believe that there is any valid interpretation of the Fourth Amendment that could permit the government to collect and store a large portion of US citizens' online communications, without any court or congressional oversight, and without any suspicion of wrongdoing," Tye wrote.

"Executive Order 12333 contains nothing to prevent the NSA from collecting and storing all such communications--content as well as metadata … No warrant or court approval is required, and such collection never need be reported to Congress. … The executive order does not require the NSA to notify or obtain consent of a company before collecting its users' data," Tye wrote.

US officials told the *New York Times* this week that communications intercepted under EO 12333 can be used to build a criminal case against a target, without the target ever being informed 12333-based surveillance was involved, even when it was used to secure evidence used in court. Snowden's documents have already revealed that in 2010 the Obama

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administration covertly authorized the NSA to analyze US metadata acquired under 12333.

American officials also told the *Times* that Obama administration is preparing new guidelines to allow NSA to share 12333 intercepts with the FBI, CIA and other agencies.

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