Warrantless spying on US citizens sanctioned by Pentagon, training documents indicate

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Policy and training documents from US intelligence agencies obtained by Human Rights Watch earlier this year authorize warrantless spying on US citizens with no connections to terrorists.

The documents, obtained through a Freedom of Information Act request submitted by Human Rights Watch in January, outline policies and procedures concerning surveillance, retention of collected data and the sharing of information among intelligence agencies.

According to one training module, US citizens and legal residents, even when they have "no specific connection to foreign terrorist(s)," may be categorized as "homegrown violent extremists" (HVEs) and be subjected to targeted warrantless surveillance. Federal law generally prohibits deliberate surveillance of the communications of US persons without a warrant, obtainable only if authorities can show probable cause that the target has committed or is about to commit a crime, or that the target is an agent of a foreign power.

The documents cite persons who commit mass shootings, such as the Orlando nightclub shooting and the San Bernardino workplace shooting, as examples of HVEs, but do not specifically explain how a person is identified as an HVE. A senior Department of Defense (DoD) official who provided comments to Human Rights Watch on the condition of anonymity gave an example of an HVE as someone who was "self-radicalized via the Internet, social media, etc." and then executed—or only planned—"terrorist acts in furtherance of the ideology or goals of a foreign terrorist group." The official refused to disclose the government's criteria for designating a person as an HVE.

Such a provision allows the US government to spy on citizens based "on their beliefs, or what the government thinks they believe, [instead of] specific evidence that gives sufficient reason to think a criminal offense is occurring or that the person is an agent of a foreign power," pointed out Sarah St. Vincent, US surveillance and national security researcher at Human Rights Watch. "A secret determination that someone's rights should be curtailed based on undisclosed criteria is incompatible with the rule of law. The government should explain what it's doing as well as its legal basis for doing it."

That training module, created for the Air Force Office of Special Investigations, outlines other "key changes" regarding DoD procedures made in August 2016. These include the addition of "shared repositories," new retention timeframes and extensions for "incidentally" collected data, as well as provisions for "special circumstances collection." The latter, informally referred to as "bulk data" or "big data" collection in the training module and other documents, points to the routine and institutionalized use of mass surveillance since 2016, when the Obama administration added the category to DoD procedures.

The revised DoD procedures empower intelligence agencies to share "large amounts of unevaluated"—that is, raw and unredacted—data about US persons with other intelligence agencies, security contractors and law enforcement bodies, including local police departments as well as the federal Immigration and Customs Enforcement agency.

The documents primarily concern the DoD's interpretation of Executive Order 12333, signed into law by the Reagan administration and expanded officially via the enactment of other executive orders and unofficially via practice by subsequent presidencies. Executive Order 12333 authorizes US government intelligence agencies to collect any and all data from foreign sources they deem relevant to national security purposes, and includes provisions

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allowing the agencies to "incidentally" spy on US entities without a court order.

The National Security Agency (NSA) in particular has used the order to justify the trawling and storage of global communications and financial records from all over the world, including the American population, as revealed by the revelations of whistleblower Edward Snowden and investigative reports in the *Intercept* .

The training documents also authorize the warrantless surveillance of individuals, organizations and groups that are simply "in contact" with someone who US intelligence agencies "reasonably believe" is acting to support the goals of international terrorists to the detriment of national security. Another training module, in a broad interpretation of federal criminal law, defines "material support to terrorists" to include "humanitarian aid," "services in almost any form" and "political advocacy." (Federal criminal codes specifically exempt medicine and religious materials from constituting illicit material support.)

Another set of slides begins by explaining that procedure policies prohibit the satellite and aerial surveillance of specific US persons—and then sanctions said targeted surveillance so long as the collected data can be written off as falling into one of a dozen other categories of information, including foreign intelligence, counterintelligence, threats to safety, persons in contact with potential sources, and administrative purposes.

Physical stalking of non-US persons on US soil, such as undocumented immigrants and temporary visa holders, does not require a warrant if it occurs "under circumstances in which the person has no reasonable expectation of privacy"—circumstances the US government has not yet bothered to publicly define—and may be conducted so long as it is for "an authorized foreign intelligence or [counterintelligence] purpose." Members of the military and present and former employees of defense industry contractors may also be subjected to such warrantless stalking.

Another slide reveals the scope of data obtained by US intelligence agencies through the issuing of national security letters, which are used to obtain financial and travel records without need for a warrant. Bank account and credit card transaction histories, and documents held by a variety of establishments from pawnbrokers to US Post Offices, can be obtained by any US intelligence agency; telecommunications records from telephone companies and Internet service providers may be obtained only by the Federal Bureau of Investigation.

"These documents point to just how thoroughly the public has been kept in the dark about warrantless surveillance under Executive Order 12333," noted St. Vincent.

It has been well over one year since the US government revised the DoD's intelligence-gathering procedures, and the US government has provided no explanations, legal justifications and precedents, or explanations of the scale of its blatantly anti-democratic, warrantless mass spying operations, both within US territory and without. The reins to this apparatus of state spying, expanded by the Democratic and Republican parties alike, are now gripped tightly by the hands of the most right-wing administration in American history.

The author also recommends:

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