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Declassified Secret Rulings Found NSA Spying Program Unconstitutional

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Three secret US court opinions declassified Wednesday show that the NSA collected at least 58,000 emails and other US communications per year that were "wholly domestic" and completely unrelated to terrorism. According to a senior US official quoted in *USA Today*, the court opinions were declassified by Director of National Intelligence James Clapper because Clapper believed they show "effective self-policing" by the NSA.

In one of the documents, a heavily blacked-out 86-page 2011 secret court opinion released Wednesday that declared NSA activities to be unconstitutional, US District Judge John Bates wrote that on three occasions within a three-year period, the state "disclosed a substantial misrepresentation regarding the scope of a major collection program."

The declassified opinion further stated that "the volume and nature of the information [the government] has been collecting is fundamentally different than what the court had been led to believe."

The declassified documents were posted at icontherecord.tumblr.com, a web page that was created on Wednesday "at the direction of the President of the United States," and which claimed to provide "immediate, ongoing and direct access to factual information related to the lawful foreign surveillance activities carried out by the US Intelligence Community."

While the opinions were released as part of damage control efforts aimed at demonstrating the supposed effectiveness of judicial oversight of surveillance, they show a pattern of regular and massive violations by the government of its own regulations.

The lack of any genuine control over the massive domestic spying operation was underscored by an August 20 *Wall Street Journal* article titled "New Details Show Broader NSA Surveillance Reach." The newspaper reported that the National Security Agency's surveillance system touches "roughly 75% of all US Internet traffic." According to the *Journal's* report, the NSA "retains the written content of emails sent between citizens within the US" and sucks up "domestic phone calls made with Internet technology" as it operates a surveillance machinery that "covers more Americans' internet communications than officials have publicly disclosed."

The *Journal* cited a range of programs code-named Blarney, Fairview, Oakstar, Lithium and Stormbrew, "among others," which "filter and gather information at major telecommunications companies." This "filtering" occurs at "major Internet junctions" across the US.

The surveillance programs use algorithms to filter out desired data from extraneous data. After 9/11, the NSA modified its algorithms to collect a greater volume of data. A US official said the NSA is "not wallowing willy-nilly" through "idle online chatter" but rather, "We want high-grade ore."

"We don't keep track of numbers of U.S. persons [incidentally spied on in NSA dragnets]," an anonymous U.S. official told the *Wall Street Journal*.

The *Journal* stated that the NSA must destroy US data that is not covered by several exceptions, such as data that is "relevant to foreign intelligence," or data that is encrypted. Yet a US official told the newspaper that "in practice" the "foreign intelligence interest" criterion for data snooping gives the NSA latitude to carry out warrantless surveillance of US communications.

The *Journal* also noted that the NSA began intercepting Internet communications long before 9/11, deploying the Special Services Office to set up "arrangements with foreign Internet providers," many of which continue to the present. This policy was extended to the US when in the months leading up to the 2002 Winter Olympics, the NSA monitored the content of all emails and text messages sent in the Salt Lake City area, as part of an arrangement with Qwest Communications.

In a further indication of the lengths to which Washington and its allies are prepared to go in trying to suppress further exposures of the NSA's illegal and unconstitutional spying operations, UK deputy prime minister Nick Clegg issued a statement Wednesday confirming that the British government threatened the *Guardian* with legal action should it disobey police orders to destroy or forfeit files containing material on government surveillance.

Last month, under direct supervision from UK intelligence agents, *Guardian*employees smashed two hard drives which contained data provided by NSA whistleblower Edward Snowden. The *Guardian* faced the possibility of having its reporting on the surveillance muzzled under an act of "prior restraint," should it fail to comply with the government's demands.

Top UK officials have vehemently defended the decision to destroy the data, which a spokesman for Clegg said "would represent a serious threat to national security if it was to fall into the wrong hands." He described the police-state tactic employed against the newspaper as "a precautionary measure to protect lives and security."

In light of the fact that additional copies of the destroyed files remain in the possession of *Guardian* journalists, a fact well understood by the British government, the destruction of the hard drives at the newspaper's London office was meant to intimidate those investigating the surveillance programs.

The detention of David Miranda, partner of Glenn Greenwald, further indicated the willingness of the ruling elite to use antiterrorism laws to punish journalists who challenge the police-state policies of the government. According to a US security official who spoke to Reuters, the detention of Miranda at Heathrow airport this week was intended "to send a message to recipients of Snowden's materials, including the *Guardian*, that the British government was serious about trying to shut down the leaks."

In his Wednesday column, "Sending a message: what the US and UK are attempting to do,"

Greenwald wrote that “conveying a thuggish message of intimidation is exactly what the UK and their superiors in the US national security state are attempting to accomplish with virtually everything they are now doing in this matter.”

“The US and the UK governments go around the world threatening people all the time. It’s their modus operandi. They imprison whistleblowers. They try to criminalize journalism… And that’s just their recent behavior with regard to press freedoms: it’s to say nothing of all the invasions, bombings, renderings, torture and secrecy abuses for which that bullying, vengeful duo is responsible over the last decade.”

Miranda’s detention will be the subject of hearings in Britain’s high court on Thursday. He and his lawyers have already demanded a court order blocking the government from accessing or transferring the data taken during the interrogation at Heathrow.

While Miranda was detained under a counterterrorism law, the UK has not even pretended to investigate him for terrorist connections. Instead, it has focused relentlessly on Miranda’s connections to individuals involved in legally protected journalism relating to NSA surveillance. As Miranda’s lawyers observe in their filing to request this injunction, Miranda was “subjected to intensive, wide-ranging and intrusive questioning…but he was not asked, nor was it suggested – that he was involved with terrorist groups, organisations or terrorist activity.”

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