

Privacy and Civil Liberties Oversight Board

October 26, 2012

Agenda Items, Oral Statement Submission

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Dear Board Members,

We will attend your open meeting scheduled for October 30, 2012 and have provided, for your consideration, a brief outline of agenda items we'd like to see addressed by the agency. We are representing a group of citizens who have shared their concerns with us, both online and in person. The privacy of citizens must be respected, and the voices seeking to defend our historical right to privacy are not being heard. It is our hope that your agency will be able to provide meaningful oversight on behalf of citizens who are exposed to ill-conceived or poorly written legislation, while retaining the ability to effectively protect us from harm.

We support the American Civil Liberties Union position on Unmanned Aerial Vehicle (Drone) surveillance. The ACLU believes the widespread domestic use of drones will raise significant new privacy issues which cannot be adequately addressed by existing law and we agree.

([https://www.aclu.org/files/assets/poe\\_hearing\\_on\\_uas\\_-\\_oral\\_testimony\\_final\\_1.pdf](https://www.aclu.org/files/assets/poe_hearing_on_uas_-_oral_testimony_final_1.pdf))

We also endorse Senators Wyden, Senator Udall and the Federation of American Scientists statement (<https://www.fas.org/sgp/news/2012/10/pclob-let.pdf>) of concern about the effects on privacy and civil liberty of Section 215 of The Patriot Act, as interpreted by the Foreign Intelligence Surveillance Court. The ability to secretly interpret, and therefore create, law is one of the greatest risks to civil liberty that faces our nation today. In light of Sections

1021 and 1022 of the National Defense Authorization Act of 2012, which authorize the indefinite military detention of U.S. citizens without due process, our vigilance is needed now more than ever.

We endorse the FTC recommendations for privacy (<http://ftc.gov/os/2012/10/121022facialtechrpt.pdf>) as issued in the October, 2012 Staff Report titled "Facing Facts: Best Practices for Common Uses of Facial Recognition Technologies" (<http://ftc.gov/os/2012/10/121022facialtechrpt.pdf>), and would like to see these recommendations discussed further.

There are additional areas of concern that we would like to see addressed by your agency: The American people deserve an accounting of the transparency and security risks involved in the use of private business entities and contractors to access their personally identifying information for use by government agencies. These private entities are not required to conform to transparency regulations that may apply to government actors, presenting a grave risk to the privacy of average citizens. In addition, the storage of this data in order to resell it for data mining purposes creates a security risk for those whose information is collected.

We believe that Subtitle D--Counterterrorism, Section 1021, National Defense Authorization Act of 2012 needs clarification and strict definition. At minimum, we ask that these sections be more narrowly defined, using terms already codified by law, to limit their potential for misuse. Some commentary by an average citizen on this legislation is provided here for your consideration ( <http://pastebin.com/jR2sk5zx> ).

We would draw your attention to these 3 comments in particular:

1. "Section 1021 would not have been written had there been no need to add to or change existing law. The Senate received letters and recommendations from members of the FBI, 23 generals and admirals, and judges saying sections 1021 and 1022 should be stricken from the bill. The provision avoids judicial review while allowing this legal precedent to be entered into codified law. For the first time in history, a court decision can now be upheld that allows U.S. citizens to be imprisoned for terrorism - without any legal definition for acts considered terrorist in nature."
2. There is no legal definition on file for the term "directly supported." Therefore, there is no guideline one can use to determine what act(s) constitute a violation of this provision.
3. "This is a very definite expansion of the use of this act, which was previously constrained in application to persons who met both tests for "Enemy Combatant" status (see pgs. 30 & 31 - <http://www.fas.org/sgp/crs/natsec/RL33180.pdf> - for a simple definition)."

The Department of Homeland Security has far exceeded its original mandate. The lack of oversight and transparency about its actions and agenda are deeply troubling to many citizens. Taxpayers find themselves on the hook for billions of dollars every year on behalf of an agency that admits it does not know how many actors and agencies they fund, nor how the money it grants is spent. By failing to meet even basic standards of record-keeping, ordinary citizens have no way to hold this agency accountable for waste and mismanagement of their tax dollars. A complete and intensive audit and review of this agency must be undertaken immediately. This assessment needs to address the agency's conformance to its original mandate; its current requirements for transparency of those to whom they grant funds; the degree to which their technology and training practices infringe on civil liberties and privacy; and the effectiveness of their counterterrorism efforts.

One of the most troubling things about these new expansions in government surveillance is the near total lack of public conversation taking place before they become law. We believe that both small-government conservatives and civil rights liberals, as well as many others along the political spectrum, have not had their voices heard in these debates. So we appreciate you holding this public forum and hope that you will continue to listen to the voices of your constituents.

Thank you for this opportunity to address the Board. We hope you will be able to make full use of your charter and your authorized right of access to classified materials in order to produce a much-needed, fair and impartial accounting on behalf of the American people.

Sincerely,

Sam Jewler and Nathan Kopf