



Written by [Joe Wolverton, II, J.D.](#) on July 12, 2013

Nominee to Head FBI Explains Case for Domestic Drone Strike

President Obama's nominee to head the FBI told senators that he opposed the use of drones to kill Americans inside the United States unless they qualified as "imminent threats" to the security of the homeland.

At a hearing before the Senate Judiciary Committee on July 9, prospective FBI director James Comey (shown in inset) testified that targeting U.S. citizens for drone assassination should be an option only when they are "imminent threats," although he failed to define that crucial term.



Comey's comment came in response to a question by freshman Senator Ted Cruz (R-Texas). Cruz, a consistent defender of individual rights, asked Comey if he believed "that the Constitution allows the United States government to use a drone to target with lethal force a U.S. citizen on U.S. soil, if that individual does not pose an imminent threat." Comey responded that he did not believe it did.

There are a couple of problems with that exchange. First, Senator Cruz should have tailored that question much more narrowly, preventing Comey from theorizing a scenario where an American could be killed by a drone piloted by an agent of the federal government.

Second, Comey's terse response (he answered a simple "no" to the question Cruz put to him) presaged the possibility not only that an American could be targeted for a drone strike, but also that the justification for a death resulting from such a strike could be hidden behind a haze of vague language and slippery standards.

Comey comes by his imprecision honestly. At a hearing of the Senate Judiciary Committee in June, outgoing FBI Director Robert Mueller testified that his agency has used drones to monitor American citizens within the United States. Using typically ill-defined language, Mueller qualified the admission by saying the unmanned aerial vehicles have been used in only a "very, very minimal way."

During his testimony it seemed Mueller was almost coining words in order to dramatically downplay the use of drones in the FBI's domestic surveillance. "And I will tell you that our footprint is very small. We have very few and of limited use and we're exploring not only the use but also the necessary guidelines for that use," he testified.

Mueller's testimony was the first time that the FBI admitted deploying drones to monitor citizens. The key word in that last sentence being "admitted."

"It's very seldom used and generally used in a particular incident when you need the capability," Mueller said. "It is very narrowly focused on particularized cases and particularized needs."

Some of those "particularized needs" were described in further detail by FBI spokesman Paul Bresson. In his testimony, Bresson said that the bureau used a drone to support local law enforcement during the standoff and hostage situation in Alabama in January of this year.



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As Bresson described the deployment, the drone was used then in a way typical of the “very limited circumstances” when the FBI can use them to support a “specific operational need.” The drones, he added, “allow us to learn critical information that otherwise would be difficult to obtain without introducing serious risk to law enforcement personnel.”

Neither Mueller nor Comey (nor Bresson, for that matter) was pressed at their respective hearings to commit to a specific standard for the use of drones by domestic federal law enforcement. Constitutionalists know, however, that the standard has already been set. That standard is the Fourth Amendment.

On July 9, however, Senator Rand Paul (R-Ky.) sent a letter to Director Mueller asking him to clarify his remarks regarding the FBI’s use of drones in domestic surveillance. In the letter (the second sent by Paul to Mueller), the senator wrote:

Given that drone surveillance over American skies represents a potentially vast expansion of government surveillance powers without the constitutionally-guaranteed protection of a warrant, it is vital that the use of these drones by the FBI be fully examined in an open and transparent manner. The American people have a right to know the limits that the federal government operates under when using these drones, and whether further action by Congress is needed to protect the rights of innocent Americans.

Paul warned Mueller that should his inquiry go unanswered, he “will object to the consideration of that nomination and ask [his] colleagues to do the same.”

As Senator Paul indicated, the [Fourth Amendment protects](#) the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”

Furthermore, the Fourth Amendment also protects fundamental principles of justice by requiring that the government may rely only on warrants that are based “upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

While it is new, the FBI’s admission of its use of drones to conduct unwarranted surveillance, the act of ignoring liberty and the Constitution that protects it is not novel.

As the [documents released by Edward Snowden](#) reveal, the NSA has just as little concern for constitutional limits on its power or the inalienability of certain fundamental rights.

President Obama, for his part, has embraced yet another standard for greenlighting a domestic death by drone. The White House claims that killing Americans without due process is “legal,” “necessary,” “ethical,” and “wise.”

In commenting on [a white paper released by the Justice Department](#) and obtained by NBC News, White House Press Secretary Jay Carney used these words to describe the targeted assassination of American citizens overseas. Those marked for death by drone are those believed by the president to be collaborating (in a notably undefined manner) with “al-Qaeda and its associated forces.”

In a footnote, the Justice Department explains that the “laws of war” will be used to determine whether a group is a “co-belligerent” with al-Qaeda. That is the sum of the guidance and notice given to those Americans residing overseas who might unknowingly be targets for the next Hellfire missile.

In the newly released memo, the Justice Department insists that such life or death decisions will be handled by “an informed, high-level official of the U.S. government.” That is hardly sufficient protection



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of the due process rights of Americans. Due process requires that the suspected terrorist “co-belligerent” be charged with a crime, allowed to answer those charges, and defend himself against those charges before an unbiased judge in court.

In the spirit of the testimonies of Comey and Mueller, the Justice Department white paper argues that such constitutional procedures must be by-passed in the name of national security, arguing that the safety of America is more important than the constitutionally protected rights of one individual. The document propounds the “imminent threat” standard, as well, claiming that only those who pose an “imminent threat of violent attack against the United States” will be targeted.

When asked later in the hearing about whether he thought that civilian-piloted drones posed “security concerns,” Comey replied, “I do, even as a private citizen reading about the increasing availability of drones. I watched what to me was a sobering video of someone who had put a firearm on a drone and fired it remotely while flying one of these cheaply acquired drones, a hundred-dollar drone. It’s certainly something that lies in our future if not in our present.”

Again, Comey demonstrates a lack of understanding of basic principles of constitutional law.

The Constitution is a compact between sovereign states wherein the parties created an agent — the federal government — and granted it a small slate of enumerated powers. The articles and amendments of that document are meant to establish the scope of the agent’s powers, not to control or criminalize civilian behavior. State laws ably serve that purpose.

Furthermore, while it may be within the FBI’s purview to investigate accusations of illegal use of drones by private citizens, it is unqualifiedly not within that organization’s authority to violate the restrictions of the Fourth Amendment. The Fourth Amendment, moreover, was included in the Bill of Rights in order to protect “the people” from attempts by the federal government to deprive them of their God-given right to be free from unwarranted watching.

At the conclusion of the hearing, lawmakers were reminded that they have one week in which to submit written questions to Comey.

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