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Written by **Joe Wolverton, II, J.D.** on March 1, 2023

Supreme Court Considers Domestic Spying Too Secret to Be Challenged

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The Supreme Court of the United States has declined to review a lower court's dismissal of the Wikimedia Foundation's lawsuit against a National Security Agency (NSA) domestic surveillance program exposed in 2013 by Edward Snowden.

With the Court's citing of "state secrets privilege" as a prohibition against such litigation, debates in Congress on the question of whether to renew the statute authorizing the program might be the last hope of relief for Americans who cherish the U.S. Constitution and the freedoms protected by the Bill of Rights.

"The U.S. Supreme Court today denied the Wikimedia Foundation's petition for review of its legal challenge to the National Security Agency's (NSA) 'Upstream' surveillance program," Wikimedia announced February 21. "Under this program, the NSA systematically searches the contents of internet traffic entering and leaving the United States, including Americans' private emails, messages, and web communications. The Supreme Court's denial leaves in place a divided ruling from the U.S. Court of Appeals for the Fourth Circuit, which dismissed Wikimedia's case based on the government's assertion of the 'state secrets privilege.'"

The Supreme Court's refusal to even review this egregious denial of liberty is an affront to many of the chief foundation stones upon which the United States is built:

First, the separation of powers — the Supreme Court does not have the authority to make or redefine law.

Second — the sovereignty of the people over their government, which was created to protect the liberty of the people, not destroy it.

Third — the right of the people to be free from the type of searches and seizures being carried on by the NSA. This right is specifically protected by the Fourth Amendment to the U.S. Constitution.

The Fourth Amendment declares that:

> the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Based on the number of domestic phone calls being recorded by the National Security Agency, the federal government must have probable cause to suspect millions of Americans of threatening national security, for only thus would their actions be at all close to constitutional.

According to documents obtained by former NSA contractor-turned-whistleblower Edward Snowden, in a 30-day period in 2013, the NSA recorded data on 124.8 billion phone calls, about three billion of which originated within the United States.

The program, first reported by *The Guardian*, is appropriately code-named "Boundless Informant," and it involves the monitoring and recording of phone calls and internet communication. *The Guardian* reported that Boundless Informant "allows users to select a country on a map and view the meta data volume and select details about the collections against that country."

Some defenders of the NSA specifically — and the surveillance state in general — insist that the actual conversations themselves are not recorded. However, the fact that *any* information on a phone call was recorded without conforming to the Constitution should alarm and enrage Americans who value freedom. Regardless of the volume of recordings or the amount or type of data stored, a single act of warrantless surveillance violates the Constitution, and everyone who ordered or participated in the program should be held accountable.

I am reminded of a statement made by John Adams regarding how soon such tyranny should be opposed and squashed:

> The spirit of liberty, is and ought to be a jealous, a watchful spirit. *Obsta Principiis* is her motto and maxim; knowing that her enemies are secret and cunning, making the earliest advances slowly, silently and softly, and that according to her unerring oracle Tacitus, "the first advances of tyranny are steep and perilous, but when once you are entered, parties and instruments are ready to espouse you." It is one of these early advances, these first approaches of arbitrary power, which are the most dangerous of all, and if not prevented, but suffered to steal into precedents, will leave no hope of a remedy without recourse to nature, violence, and war.

There is no excuse for this type of unconstitutional, sanctioned surveillance. One unwarranted wiretap, one unwarranted seizure of a phone record, one search of records of an individual's digital communications is too many. If we are a country of laws, then the supreme constitutional law of the land must be adhered to.

The standard is not whether or not the spies or their bosses think the violations are keeping us safe, or whether the Supreme Court thinks there is value in the surveillance. The standard is the Constitution — for every issue, on every occasion, with no exceptions. Anything less than that is a step toward tyranny.

As it stands, it seems the establishment will likely continue construction of the surveillance state until the entire country is being watched around the clock and every monitored activity is recorded and made retrievable by agents who will have a dossier on every American.

And, despite the obvious constitutional breach made by the NSA and its domestic spying programs, the malady lingers and the U.S. Supreme Court has decided that "the approaches of arbitrary power" need not be prevented, or, in this case, even questioned.