

# WAR ON DRUGS: SURVEILLANCE

**IMPACT:** The US War on Drugs has used surveillance to aid in policing, curb the international drug trade, and enforce drug prohibition since 1971. Technologies and techniques used as part of the “war” include wiretapping, aerial surveillance drones, thermal imaging, GPS tracking, entrapment, the use of informants, and parallel construction. The use of surveillance has raised Fourth Amendment concerns about protection from unreasonable searches and seizures, and further human rights concerns about privacy. The US Drug Enforcement Administration (DEA) has been at the forefront of the War on Drugs’ surveillance efforts, and has often collaborated with the National Security Agency (NSA). These surveillance efforts laid the groundwork for the US War on Terror, particularly the 2001 PATRIOT Act.

- The **US War on Drugs has utilized surveillance, policing, and militarization in an effort to curb the international drug trade and enforce drug prohibition.** Since its inception in June 1971, it has not only increasingly criminalized drug use, but has also furthered privacy infringements and provided the basis for surveillance practices used in other endless wars, specifically the War on Terror. Common methods of surveillance have included “wiretapping... peering through private windows, flying over houses [aerial drones], undercover operations, bribery of informants, entrapment by offering to buy or sell drugs” and numerous other tactics. **Surveillance techniques and technologies have been utilized by US law enforcement agencies, the US military, and government agencies such as the Drug Enforcement Administration (DEA) and the National Security Agency (NSA).**
- The Drug Enforcement Administration (DEA)—which is housed under the Department of Justice—was founded in July 1973 by President Richard Nixon, who had “declared ‘an all-out global war on the drug menace.’” The agency has a stated mission of “enforc[ing] the United States’ controlled substance laws and regulations and...reduc[ing] the supply of and demand for such substances.” According to the Drug Policy Alliance, the DEA has “repeatedly engaged in unlawful operations, spent lavishly, ignored civil rights, packed federal prisons,...failed to make a significant impact on drug supply” and “facilitated the growth of paramilitary forces on U.S. soil, expanded surveillance, and embedded itself in communities throughout the U.S. and abroad.”
- In **April 2015, USA Today revealed that the DEA’s intelligence arm conducted a mass surveillance operation, beginning in 1992, that “amassed logs of virtually all telephone calls from the USA to as many as 116 countries linked to drug trafficking.”** The program was the government’s “first known effort to gather data on Americans in bulk” and their calls were logged “regardless of whether they were suspected of a crime.” The content of calls were not intercepted, however, information such as which numbers were called and when “allowed agents to map suspects’ communications and link them to troves of other police and intelligence data.” The **program officially ended in 2013, and according to USA Today, it “provided a blueprint for the far broader National Security Agency surveillance that followed.”**
- The NSA, established in 1952, has often aided the DEA’s surveillance efforts. According to reporting in the Intercept in August 2014, the NSA contributed to a surveillance initiative called Project Crisscross started by the DEA and the CIA in the early 1990s. As part of the project, both agencies “built a database system to analyze phone billing records and phone directories, in order to identify links between intelligence targets and other persons of interest...[and] By 1999, the NSA, the Defense Intelligence Agency, and the FBI had gained access to CRISSCROSS and were contributing information to it.” **Project Crisscross laid the groundwork for the NSA’s ICREACH, “a ‘Google-like’ search engine built to share more than 850 billion records about phone calls, emails, cellphone locations, and internet chats.”** The system,

along with Project Crisscross, allowed the DEA to “sift through billions of metadata records collected by other agencies about emails, phone calls, faxes, Internet chats and text messages.”

- The existence of interagency database systems has made it possible to use parallel construction—the process of “concealing methods used by intelligence or law enforcement agencies to identify or investigate suspects.” In August 2013, Reuters reported that the DEA Special Operations Division (SOD) funneled “information from intelligence intercepts, wiretaps, informants and a massive database of telephone records to authorities across the nation” to aid in the process of parallel construction. A January 2018 Human Rights Watch (HRW) report titled Dark Side: Secret Origins of Evidence in US Criminal Cases concluded that parallel construction “violates the right to fair trial proceedings” and facilitates other potential rights violations including “infringements on privacy rights (as in the case of any unlawful surveillance), defendants’ right of access to any evidence the government holds that is favorable to them, and the entitlement to a remedy for government abuses.”
- In addition to the data systems utilized by the DEA and NSA, a variety of surveillance technologies and techniques have been used in the War on Drugs. **One of the leading practices has been wiretapping, or intercepting phone calls.** Since 1988, wiretaps carried out for narcotics offenses have represented the highest number of wiretaps authorized by federal and state courts. In 2019, nearly 40 percent of wiretap interceptions authorized were authorized for narcotics offenses.
- **Remote warfare—particularly the use of aerial surveillance drones—has been increasingly implemented in the War on Drugs.** According to a March 2016 Open Democracy report titled Drones, Drugs and Death, drones and other forms of remote warfare appeal to government agencies because of their “perception as a cost-free form of warfare” and because they cater to a “war-weary general public hostile to ‘boots on the ground.’”
- Along with the ability to carry copious amounts of data, drones can “carry various types of equipment including live-feed video cameras, infrared cameras, heat sensors, and radar. Some newer drones carry super high resolution “gigapixel” cameras.” According to reporting in Vox from February 2020, Customs and Border Control has increased its use of drones known as sUAS, small unmanned aerial systems. The lightweight drones—initially created for use by the military in Afghanistan and Iraq—have the ability to collect images and video, as well as use AI in some cases to “automatically sense if there is a suspected person where there shouldn’t be.” **The sUAS are specifically used for surveillance, unlike Predator drones—also used by CBP and originally developed for military use—which have the ability to deploy weapons.**
- **An additional form of surveillance used in the War on Drugs includes GPS tracking.** In US vs. Jones (2012), the Supreme Court “unanimously confirmed that Americans have constitutional protections against GPS surveillance by law enforcement, holding that GPS tracking is a ‘search’ under the Fourth Amendment.” However, gray areas in GPS tracking have since expanded. In February 2020, the Indiana Supreme Court ruled that a suspected drug dealer who had removed a police tracking device from his SUV did not steal the device, and that a search warrant issued based on the “stolen” device was invalid.
- **Entrapment has also been used as a surveillance technique in the War on Drugs.** This method **involves the use of sting operations, in which “a police officer may pose as a drug dealer to catch [entrap] someone trying to buy drugs.”** In December 2015, 60 Minutes conducted a special on young confidential informants, some of whom included college students charged for selling marijuana and recruited by law enforcement to “make undercover drug buys in exchange for having their charges reduced

or dropped altogether.” According to the report, there were “no age limits on who [could] become a [confidential informant], no rules about how, or even whether, informants must be trained, [and] no guidelines on their protection.”

- **A series of Supreme Court decisions in the 1960s—Hoffa v. United States, Lewis v. United States, and Osborn v. United States—opened the use of police informants.** As a result, according to the American Civil Liberties Union (ACLU), informant testimony could be exploited and informants could be incentivized “via a promise of a plea deal or no arrest for their own accused offenses” to provide useful information, regardless of truth. Furthermore, “if law enforcement provides these rewards without requiring corroboration from a noninformant source, then the [confidential informant] has much to gain and little to lose from choosing to lie to satisfy the officer.”
- **Surveillance technologies have landed in the hands of local law enforcement agencies largely due in part to the 1033 program.** In 1989, Congress passed Section 1208 of the National Defense Authorization Act, which “allowed for the transfer of military items to local and state police departments specifically for counterdrug activities.” The program was made permanent in 1996, and an expansion of the National Defense Authorization Act of 1997 led to the 1033 program, which “allowed for the transfer of excess personal property to support law enforcement activities, ‘in counternarcotics and counter-terrorism operations, and to enhance officer safety.’”
- **Equipment typically confined to the military, such as “facial recognition technology, satellite monitoring, and thermal imaging,” could be transferred to local law enforcement for counternarcotics operations.** According to reporting in Wired, “over \$7.4 billion of property has been transferred since the program’s inception; [and] more than 8,000 law enforcement agencies have enrolled.”
- The **surveillance infrastructure constructed during the War on Drugs, and its subsequent militarization of law enforcement, has played a substantial role in laying the groundwork for the War on Terror.** In April 2015, ACLU attorney Patrick Toomey described the surveillance to the Atlantic: “The government has repeatedly tried to justify its spying activities on national security grounds, but it turns out it was doing much the same thing for years in aid of ordinary criminal investigations ... These new revelations are a reminder of how little we still know about the government’s surveillance activities—including dragnet programs that operated for decades in secret.” Furthermore, the **war on drugs led “to the creation of a sophisticated government surveillance system for the monitoring of financial activities — which was later expanded dramatically on the rationale of detecting terrorist financing.”**
- **Both wars are similar in that they are endless wars—wars with no specific location, parameters, or end in sight. Oswaldo Zavala, professor of Latin American literature and culture at the City University of New York, commented on the shared origins of the War on Drugs and War on Terror:** “The War on Terror and the War on Drugs are certainly two sides, not of a coin, but of a polyhedron—since the national security agenda continues to fabricate new objects, recycle old ones and conflates two or three at a time. While there are clearly important social, cultural and economic differences, both wars are structured by a shared narrative: a racialized enemy emerging from the margins of a dominated foreign nation, supposedly building a transnational organization capable of subduing official institutions in that country, and penetrating the porous US borders, which in turn justifies the simultaneous militarization of the US borders and the target country alike.”

- The **continuum between the War on Drugs and the War on Terror is most visible in the 2001 Patriot Act**. Officially titled the “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism” Act, the PATRIOT Act was passed to help US law enforcement “detect and deter terrorism.” **According to the Department of Justice (DOJ), “many of the tools the Act provides to law enforcement have been used for decades to fight organized crime and drug dealers,** and have been reviewed and approved by the courts.” The act also expanded the crimes law enforcement could “conduct electronic surveillance to investigate.”
- In June 2020, BuzzFeed reported that the DOJ had given the DEA permission to surveill individuals protesting the death of George Floyd. Prior to this decision, then-US Attorney General William Barr affirmed that “the Department of Justice (including the FBI, Marshals, ATF, and DEA)” would aid in local law enforcement efforts related to the protests.

Bridge Initiative Factsheet