



# Millions Turn Out to Protest and the Government Watches from Above

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An unmanned aircraft synonymous with the war on terror circled Minneapolis for nearly two hours on May 29, as masses of people below protested the police killing of George Floyd. The drone, operated by Customs and Border Protection (CBP), flew at exactly 20,000 feet in a rough hexagon shape, nearly invisible to those on the ground exercising their First Amendment rights.

The drone—whose presence over the city was **first reported** by the Project On Government Oversight (POGO)—is part of a program the Department of Homeland Security’s internal watchdog has repeatedly criticized for being wasteful and ineffective. The watchdog, which oversees Customs and Border Protection, has also found that the agency has failed to safeguard surveillance video and photographic data collected through its drone program, leaving the data exposed for potential abuse. The Constitution Project at POGO has also **examined** how law enforcement use of aerial surveillance can infringe on individuals’ rights to speak out, assemble, and protest. This technology can be used to track people’s movements, or identify them when used in combination with other surveillance technologies.

## **A MQ-9 Reaper circled Minneapolis for nearly two hours on May 29.**

POGO used open-source flight-tracking tools to spot the drone over Minneapolis. After POGO revealed the drone’s presence, a group of 35 members of Congress sent a **letter demanding** that Customs and Border Protection, the FBI, the National Guard, and the Drug Enforcement Administration “cease surveilling peaceful protests immediately and permanently.” The letter also refers to CBP drone surveillance over San Antonio and Detroit.

CBP began flying the aircraft in 2005, as part of an effort to “identify and intercept potential terrorists and illegal cross-border activity,” according to an agency **factsheet** on the program. The same sheet notes that the aircraft’s “video recorders document suspect activities for evidentiary use.”

Customs and Border Protection refers to this unmanned aircraft as “Predator B.” The drone is technically a General Atomics MQ-9 Reaper, and is one of the **same types** used by the CIA and the Air Force to surveil and kill abroad. While the aircraft flying over Minneapolis wasn’t armed with hellfire missiles or laser-guided bombs, it is typically equipped with sophisticated camera and radar technology, according to CBP’s factsheet on the program.

Customs and Border Protection’s Predator B drones are **equipped** with a **Raytheon electro-optical/infrared camera system**, operated through a “camera ball” that can stream live video. The Predator B is also equipped with **Lynx Synthetic Aperture Radar**, a high-resolution system that allows drone operators to compare scans for evidence of changes in the landscape, and a radio communication system for law enforcement purposes.

Beyond cameras and radar, there are plenty of off-the-shelf technologies that can be mounted on Predator drones, including devices that can geolocate cell phones. Several of these devices were revealed by *The Intercept* in its 2015 report “**The Secret Surveillance Catalogue.**” POGO did not find evidence of these devices on CBP’s drone fleet, and the agency did not respond to questions about location-tracking capabilities of the current fleet.

According to **documents** obtained by the Electronic Frontier Foundation, in 2010 Customs and Border Protection considered acquiring “non-lethal weapons designed to immobilize TOIs [targets of interest]” that would be mounted on drones like the one used over Minneapolis. It is unclear whether the agency pursued this technology further.

CBP did not respond to questions about what technology beyond video cameras can be attached to its fleet of Predator B drones.

Minneapolis is just outside of the **100-mile border zone** in which CBP is authorized to operate. Questions remain on the agency’s legal authority to operate the drone above the city. The Federal Aviation Administration (FAA) is responsible for regulating the airspace and granting CBP the authority to operate their aircraft. An FAA spokesperson referred POGO to CBP, whose spokesperson did not clarify what authority the drone was operating under.

## **Tracking Predator Drones**

### **Ongoing concerns that drones infringe on Americans’ civil liberties**

In 2015 the Department of Homeland Security **recommended against** the use of unmanned aerial vehicles to surveil protests. Titled “Protecting Privacy, Civil Rights & Civil Liberties In Unmanned Aircraft Systems Programs,” the report states that it may in some cases be necessary to deploy drones to protect public safety, but advises that data gathered by drones “should not be collected, disseminated or retained solely for the purpose of monitoring activities protected by the U.S. Constitution, such as the First Amendment’s

protections of religion, speech, press, assembly, and redress of grievances (e.g., protests, demonstrations).”

CBP **confirmed** to *The Intercept* that it used a predator drone to surveil the Dakota Access pipeline protests, which took place in 2016 and 2017.

The Homeland Security report warned that the department needed to “establish appropriate guidelines and administrative controls to anonymize, destroy, safeguard or prevent the misuse of such data.” CBP did not respond to POGO’s questions about data retention, although **current CBP policy** mandates deletion after five years.

But nearly three years after Homeland Security warned about the need for data-security measures, the department’s inspector general **found** that Customs and Border Protection “has not ensured effective safeguards for surveillance information, such as images and video, collected on and transmitted from its UAS [unmanned aerial systems].”

According to the report, CBP officials claimed they weren’t aware that department policy and federal regulations required a privacy assessment. The report also revealed numerous vulnerabilities in the computer systems used to store the potentially private information. The watchdog office additionally expressed concerns about whether drones achieved the stated border security goals.

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### **program’s costs.**

The inspector general had previously raised concerns about the drone program’s costs. In 2014, the watchdog **found** that Customs and Border Protection was **significantly underreporting** the real cost of the program, and couldn’t demonstrate that it led to any meaningful increases in border security as originally touted by the agency. According to the report, “CBP has invested significant funds in a program that has not achieved the expected results, and it cannot demonstrate how much the program has improved border security.”

The inspector general also recommended that the agency not pursue its planned \$443 million expansion of the program, which would have added 14 aircraft to the existing fleet of 10. The expansion did not take place, and the fleet currently consists of nine operational aircraft, according to a CBP public affairs officer.

## **“This is what happens when leaders sign blank check after blank check”**

After POGO’s discovery **started making headlines**, and after at least one congressional office started asking **questions**, Customs and Border Protection put out a **statement** on its website acknowledging the presence of its drone over Minneapolis.

The drone was “preparing to provide live video to aid in situational awareness at the request of our federal law enforcement partners in Minneapolis,” the agency said. “The unmanned aircraft system provides live video feed to ground law enforcement, giving them

situational awareness, maximizing public safety, while minimizing the threat to personnel and assets,” the statement continued. When reached for comment, the agency did not identify the federal partner who requested the drone.

Reactions among lawmakers and civil liberties groups to the use of drones over Minneapolis were swift. “This is what happens when leaders sign blank check after blank check to militarize police, CBP, etc while letting violence go unchecked,” Representative Alexandria Ocasio-Cortez (D-NY) said in a **tweet**. “We need answers. And we need to defund.” Democrats on the **House Committee on Homeland Security** and the **House Committee on Oversight and Reform** sent letters to Customs and Border Protection requesting more information about the decision to deploy the drone.

“CBP shouldn’t be flying drones over American cities, period, especially given the agency’s lack of existing privacy protections and the impact that the use of military technology will have on First Amendment rights,” said Andrea Flores, deputy director of immigration policy for the American Civil Liberties Union, in a **statement**.

“CBP has never seen its mission as limited to the border,” said David Bier, immigration policy analyst at the Cato Institute, who coauthored a **report** on CBP’s use of drones. “The agency is less focused on the border than ever before, and that is reflected in the deployment of CBP agents to the interior on numerous occasions as well as surveillance unrelated to border patrolling,” he told POGO.

“Even before Trump, nearly a fifth of CBP’s border drone flight hours were not in border or coastal areas,” Bier told POGO. “Only about half of its flight hours were to support Border Patrol. Unfortunately, there’s no expectation of privacy in public areas, so there’s nothing unconstitutional about it, and no law that I’m aware of limits CBP surveillance to the border.”

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ANDREA FLORES, DEPUTY DIRECTOR OF IMMIGRATION POLICY FOR THE AMERICAN CIVIL LIBERTIES UNION

CBP frequently loans its drones to other agencies. Flight logs obtained by the Electronic Frontier Foundation showed that between 2010 and 2012, the agency loaned its aircraft 700 times to local law enforcement, FBI, Immigration and Customs Enforcement, the U.S. Marshals, and **many others**. The lack of policy governing the practice of sharing drones was criticized in a 2012 Department of Homeland Security inspector general **report**. The inspector general recommended formalizing the practice, but it is unclear if the department implemented that recommendation.

**Other aircraft are surveilling protesters and may be collecting their cellphone information**

There have been **reports** of other aircraft that are likely conducting surveillance over the largely peaceful protests across the country and speculation about the technology that may be onboard, including some from lawmakers.

On June 2, *BuzzFeed News* **reported** that the Justice Department gave the Drug Enforcement Administration broad authority to surveil protesters. The U.S. Marshals Service and the FBI also operate aircraft with sophisticated technology onboard, such as IMSI catchers, devices that mimic cell phone towers and can reveal location and other information, according to *Wall Street Journal* **reporting**. Previous reporting by the Associated Press has shown the FBI and other federal law enforcement use **front companies** to obscure ownership when they operate spy planes over U.S. cities, making it more difficult for the public to identify when aircraft are operated by the federal government.

“Multiple federal agencies are flying surveillance planes over protests, and it's likely that some of these planes are outfitted with a Dirtbox or similar technology,” Martin Shelton, principal researcher at Freedom of the Press Foundation, told *Vice's Motherboard*. A “Dirtbox” is a more powerful type of IMSI catcher that can be mounted on aircraft. “What this means for protesters and journalists covering these events is that phone numbers, as well as voice calls and text messages, are likely being scooped up for analysis,” he added. In **POGO's guide** to responding to the risk of being surveilled while protesting, senior counsel for the Constitution Project Jake Laperruque breaks down the implications of aerial surveillance: “A serious risk for protesters is that the government might use surveillance technology to identify demonstrators who would otherwise be anonymous in a large crowd, and then retaliate against them in some way such as subjecting them to additional unfounded investigative activities, or singling them out in selective enforcement of unrelated matters.”