

HSGAC Statement

By Matt Taibbi

Last year, former Hawaii Congresswoman and Presidential Candidate Tulsi Gabbard was placed in a surveillance program called Quiet Skies by the Transportation and Security Administration. Across eight flights she was subject to intrusive searches, followed by bomb-sniffing dogs, and trailed by three Federal Air Marshals per flight, who if they were following procedure were attempting to listen to her conversations, recording how often and at what times she went to the bathroom, and following her to airport exits to see who if anyone met her.

In covering the story I contacted the TSA to ask for comment. They no-commented the main question – “TSA does not confirm or deny whether any individual has matched to a risk-based rule,” they said – but they added, as if in mitigation: “Simply matching to a risk-based rule does not constitute derogatory information about an individual.”

In other words: “We can’t say if Ms. Gabbard was in the program, but if she was, don’t draw conclusions, because we do this even to innocent people.”

Before Quiet Skies was discontinued by this administration, it was a symbol of the steep decline of federal enforcement since 9/11. This program wasted enormous sums following up to 50 people a day for a program that in its history never once led to an arrest, or thwarted a single criminal act. Despite its demonstrated inutility and grave civil liberties concerns it was re-funded year after year because this is what our government does now: it gathers information on its own citizens as an end in itself.

In a week in which the question of whether federal security officials always tell the truth to Congress is back in the news, it’s worth noting that it’s been 13 years since then-National Intelligence Director James Clapper answered, “No, sir,” and “Not wittingly” when Senator Ron Wyden of Oregon asked, “*Does the NSA collect any type of data at all on millions, or hundreds of millions of Americans?*”

Clapper later explained that he’d responded in the “least most untruthful manner.”

That episode solidified the principle that if you lie about mass surveillance programs in America, even under oath, you not only get to keep your job, you get to be a National Security Analyst for CNN. If you try to tell the truth about the same issues, your options are prison or leaving the country.

In those 13 years since, Americans became numb to surveillance. It was once a core principle that government shouldn’t spy on citizens without predication. Now much of the

country accepts as inevitable the idea that every move we make is being recorded and analyzed.

We know emails and phone conversations are being collected passively, via programs of dubious legality, and the data we leave behind as our lives move online– from geolocations of cell phones to GPS tracking to travel, banking, and medical records – are fodder for overt and covert acquisition by federal analysts. As [Google admitted last week](#), federal officials partnered with companies not just to monitor speech but to suppress it on a grand scale.

A lot of these changes have their roots in War on Terror programs that exchanged predication for a pre-crime theory out of *Minority Report*. Quiet Skies was the paradigmatic example of a program that could take endless liberties with the Constitution because it was secret. When you gather information with no intention of going to court, as the TSA did with Quiet Skies, you never have to justify yourself to a judge. This leads to a lot of what one court called “exploratory rummaging” in the lives of innocent people.

This is a betrayal not just of the public but of people we trained at taxpayer expense to do real and important work. Former Marshal Robert MacLean put it best when he said “[The air marshal’s job is to protect the cockpit and the pilots. Let somebody else do the intelligence.](#)” Similarly in the last decade current and former FBI agents – Tristan’s firm has represented a number of them – have talked about how since 9/11, federal agents build fewer cases but do more generalized spying, much of it political. One agent I interviewed said “The distinction between people who believe bad thoughts and people who do bad things” has been “completely lost” since 9/11.

This is not okay. Once you start down the road of collecting information on innocent people, it creates the intellectual justification for doing it again and again. From a contracting perspective, this is the proverbial self-licking ice cream cone, an upward spiral of endless expense. Morally, all this information-gathering reverses the natural political order, giving elected officials undeserved and unearned power over their bosses – the voters. These programs all need to be reevaluated. A lot of them have to go. People who lie about them need to be fired. Let’s hope the elimination of Quiet Skies is just the beginning.