



# Curbs Needed on Police Drone Surveillance of Public Gatherings

*People’s right to assemble must not be chilled by aerial surveillance*

By Jay Stanley

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We’re on the cusp of a rapid expansion in the use of drones by law enforcement. Already drones are being operated by an [estimated](#) 1,400 law enforcement agencies (out of approximately 18,000 agencies in the U.S.). The Federal Aviation Administration (FAA) is moving toward issuing new rules that promise to greatly expand how drones can be used — in particular, allowing flights beyond the visual line of sight of the operator. This will open up the skies to new uses of drone technology that are not generally permitted yet.

One such use is “[drones as first responder programs](#),” in which police send a drone to the location of 911 calls ahead of officers. (We discussed this concept and its policy implications, as well as the broader implications of widespread law enforcement use of drones, in a 2023 [white paper](#).)

But there’s another use of drones by law enforcement that also raises serious issues: the monitoring of public gatherings. That can include events such as parades, concerts, and festivals, as well as political protest marches and rallies. Drones are a novel and powerful surveillance technology, and they are far cheaper to deploy than piloted aircraft. We shouldn’t allow drones to become omnipresent in American life — but signs suggest that police departments are gravitating toward their routine use over gatherings. Policymakers shouldn’t let this happen. Our country will do just fine without police drones over gatherings. To the extent that police drones are, nevertheless, used to monitor gatherings, communities will need to insist upon clear guardrails, encoded in law and policy, which we lay out below.

Police aerial surveillance of gatherings is not an entirely new phenomenon. In 2020, during nationwide protests sparked by the police killing of George Floyd, Department of

Homeland Security officials monitored marchers above [at least 15 cities](#) using [aerial surveillance](#) — mostly, small aircraft. State police in at least [some states also](#) monitored Black Lives Matter protests. The FBI piloted surveillance aircraft [above](#) protest marches such as those in [Ferguson](#), Missouri, and in [Baltimore following](#) the 2015 death of Freddie Gray in police custody.

But the aerial monitoring of gatherings seems to be growing rapidly, made easier by the relatively low cost of drones. We don't know how many police departments have used drones to monitor gatherings. But we're hearing more and more talk among police officials about "event monitoring" as a prime use of these aerial robots and, having looked at a selection of police department drone policies across the nation, we've noticed that references to such operations are common. And we are seeing more uses: in September, for example, the NYPD [announced](#) that it would be sending small drones to watch large Labor Day gatherings, and it has deployed drones over pro-Palestine [protests](#) in recent weeks.

### ***Is This Really Necessary?***

Police have been dealing with gatherings of all kinds for our entire history without the use of drones. How important is this tool now, and what would be the consequences of routine drone surveillance of gatherings?

Law enforcement's job is to worry about a gathering turning violent, but very few do. Even on the rare occasions when violence breaks out, it's not clear how the presence of a drone overhead would prove crucial to the police's ability to keep the peace. Most of the time, it's enough to rely upon ground observations or other techniques that have lower costs, fewer chilling effects, and less risk of lending themselves to abusive surveillance. One police department I talked to told me that they mainly use drones at large events to monitor traffic at the periphery — they don't use them to monitor the events directly because of the First Amendment sensitivities involved and because "we have people on the ground for that."

Indeed, there are many drone deployments where their importance is dubious at best. Did police in Elizabeth, New Jersey, really need drones to [monitor a protest](#) by local students demanding fewer police and more counselors in schools? A citizen of Asheville, North Carolina, [wrote](#) to a local newspaper to complain that the city's police department is deploying drones over "what seems to be any political gathering that happens in downtown Asheville, regardless of size." He continued:

*When I was at the Rally for Reproductive Justice and Bodily Autonomy, there was one of their large drones flying overhead. When I was at the May Day Rally, there was one of their large drones flying overhead. When I was at a gathering of about 20 people discussing the force and neck-pinning used against Devon Whitmire? Drone overhead. When the city and county teachers' associations gathered to demand higher pay? Drone overhead.*

Even supporters of police drone programs have told me they think those kinds of deployments are unnecessary.

### **Chilling effects**

Meanwhile, the chilling effects of aerial surveillance should not be underestimated. Many people fear the police and won't show up to express themselves if they expect to be recorded, with the unknown consequences that can bring. And it *can* bring consequences. There is a [long, unbroken record](#) of federal and local law enforcement surveilling and harassing political dissidents who are not suspected of engaging in wrongdoing. This record stretches from labor, anti-war, and civil rights protesters in the 20<sup>th</sup> century, to Arabs and Muslims after 9/11, to [environmental](#), [Occupy](#) and [Black Lives Matter protesters](#), to those [protesting](#) Atlanta's "Cop City" today.

Could there be a situation where having a drone over a seemingly peaceful protest march or other gathering helps the police deal with a genuine threat? Yes. But the chances of such a situation arising — a situation where a drone is necessary, rather than merely a convenience for law enforcement — must be balanced against the effects that routine drone surveillance will have on our political discourse. In this country, we rightly place a very high value on making sure people feel they can express themselves freely. Political protests and other public gatherings are vital to democratic accountability, and people shouldn't have to feel like they're living in a garrison state whenever they get together.

There is also, as we have [discussed](#), a long history of law enforcement [using cameras](#) to send a chilling message to protesters: Know that we are *watching you* and *recording* your presence at this event. Sometimes police attend protests not to keep the peace but to intimidate and surveil. These kinds of abuses are especially likely to happen at protests attended by historically marginalized communities, or where the police do not like the viewpoints expressed, such as protests against police violence or other misconduct. For example, police have notoriously [over monitored](#) Black Lives Matter protests.

In addition, drones are often [perceived as alien and hostile](#) and frequently [elicit](#) a [visceral response](#). We saw a [strong](#) bipartisan [backlash](#) in state legislatures when drones first became commonplace in the early 2010s. Unlike many threats to privacy, drones are far from abstract, silent, and invisible. They are very tangible. And by virtue of their position in the sky, they signify surveillance, dominance, and control. Human rights activists have pointed to the way drones have functioned as an intimidating and oppressive "technology of domination" in countries such as Afghanistan, [Pakistan](#), [China](#), and the Palestinian [occupied territories](#). We don't want to see drones assume that role in the United States. One activist I spoke to — a veteran of many U.S. protests — told me he has already seen police drones used aggressively to send an intimidating message to participants by flying low over a crowd.

Drones are also much cheaper and easier to acquire than helicopters, and so threaten to greatly expand police aerial surveillance of gatherings in the United States. We worry that this low cost may tempt some law enforcement agencies to create repositories of video of protesters, allowing those protesters to be systematically identified and cataloged. Such mass surveillance also lends itself to over-policing — for example, spotting and directing police resources toward minor and technical transgressions during an event.

For these reasons and others, many activists — including some ACLU affiliates, such as those in California — [support](#) outright prohibitions on the use of drones by police departments, and oppose a regulatory approach to their use. We agree that, given the issues that flights over gatherings raise and the doubts about their benefits, there should, at a minimum, be a steep presumption against the use of aerial surveillance — including by drones — to watch public protests or other gatherings.

## ***Guardrails***

However, law enforcement departments in many places are already using drones for such surveillance. In places where, despite the problems above, communities and policymakers nevertheless decide to permit law enforcement use of drones for monitoring events, or don't have the political power to roll such practices back, it's vital to put in place strict limits and guardrails to ameliorate the negative consequences of such monitoring. In particular, law enforcement should, at a minimum, adhere to five principles governing those deployments.

### **1. Limits on drone operations over gatherings**

Because drones are inexpensive, widely available, and [increasingly](#) free from regulatory constraints, there is a real danger that their deployment at protests will skyrocket. Communities that decide to allow drone deployments over gatherings should set strict limits.

Policymakers — ideally local or state lawmakers, but failing that, police chiefs — should enact policies limiting drone operations to gatherings that fit certain criteria.

Departments should be directed to exercise sensitivity and circumspection in deploying drones over events, and to document their rationale for the deployment of a drone according to factors such as:

- **The size of an event.** Even for those communities willing to accept some drone surveillance of gatherings, there's no reason the police need to fly a drone over a group of 20 people. Police shouldn't deploy a drone when they can't make a compelling argument for why that drone is necessary.
- **The likelihood of disorder.** Even for large events, do the police have reliable information in advance of the event that there is an imminent and non-speculative risk of violence or disorder? An estimated [1.2 million people](#) crowded onto the National Mall over a weekend in 1996 to view the AIDS Memorial Quilt,

but there was zero reason to expect disorder. Assessments of the likelihood of trouble should be based on solid, documented evidence, lest the personal views or biases of some in law enforcement guide them into over-monitoring protests they don't like.

- **The free speech sensitivity of an event.** Attendees of a march on a politically sensitive issue such as abortion, Israel-Palestine, or transgender rights are more likely to be chilled by surveillance than attendees of a pumpkin festival, and law enforcement should take that into account, even if, for example, they only plan to use a drone to monitor parking and traffic around a march.
- **The views of community members.** Do people assembling to express themselves on some local controversy mind the presence of a drone overhead? This is a new technology, and we're not sure how various diverse communities will respond the presence of drones over their gatherings. Some may fiercely hate it; others may not mind. As always with police technology, community views should be taken into account. (And as always, no drone deployments should take place at all unless approved by a jurisdiction's democratically elected representatives.)

In short, even communities that decide to allow aerial police drone monitoring should rule out such monitoring over events, unless they are significant in size, and there's some reason to believe trouble might be brewing, such as the presence of highly antagonistic counter-protesters. And even where the above calculus suggests that police should not deploy a drone, they could always put one up in short order should a justifiable need arise, such as unexpected crowd movements resulting from clashes with counter-protesters.

## **2. Limits on when recording may take place**

The Omaha Police Department recently [boasted](#) that, during protests, it used a drone "to document activities from a great vantage point." The police have no reason to be *documenting* people in their exercise of their right to peacefully assemble, even if they want to *monitor* such assemblies. Many people forget that just because a drone is flying and has a camera, it doesn't need to record. Speaking at a recent drone [conference](#) I attended, an officer with the San Antonio Police Department told the audience that the agency uses drones to record evidence when they are working a case, but won't record during crowd monitoring at large gatherings because of privacy concerns.

An officer with the Fort Wayne, Indiana, police department at the same event similarly said, "We don't record unless the person flying the drone believes it's of evidentiary value."

Communities should minimize surveillance by prohibiting the recording of video when monitoring events, except to gather evidence of a specific instance of violence, or other criminal behavior, including all occasions when the police themselves use force. The

District of Columbia — host of many protests and marches — has [a law](#) stating that DC police officers may use cameras to “record First Amendment assemblies for the purpose of documenting violations of law and police actions” and for other narrow purposes, such as training, but that “recording First Amendment assemblies shall not be conducted for the purpose of identifying and recording the presence of individual participants who are not engaged in unlawful conduct.”

### **3. Limits on the use of recordings**

Police departments should be subject to reasonable constraints not only on when they record video of events, but also in how they use any video they do capture. In addition to basic privacy protections such as restrictions on the sharing and retaining of video, departments should be banned from using video to identify the participants of gatherings. An exception should be where illegal behavior has taken place, prompting a department to begin recording, for the purpose of identifying those engaged in illegal activity. That should, ipso facto, include all uses of force by police officers.

Restrictions should also include a broader set of prohibitions against the use of analytics on video of peaceful participants recorded by drones, such as on their characteristics, movements, or location, which could be used to identify people indirectly. The technology for extracting various kinds of information from video is [expanding beyond](#) face recognition, and we don’t know what it might prove capable of doing in the future. In short, police departments should not do anything with video of peaceful protesters.

### **4. Public accessibility of recordings**

Where a drone does record a public gathering, those recordings should be available for the purpose of oversight. Like police body cameras, police drone cameras can record video evidence of criminal behavior — including criminal or other abusive behavior on the part of police officers. That can include the unnecessary use of force, tactics such as “[kettling](#)” and [mass arrests](#). As with body cameras, the public has a compelling interest in access to imagery of alleged police abuse. But we’ve seen a pattern of [arbitrary, inconsistent, and self-interested](#) releases of bodycam video of police shootings. That has greatly limited the utility of those devices in providing the accountability they promised.

Communities should ensure that drone video is fully available for oversight functions. No police department should be permitted to fly over events unless a policy is in place that removes police department discretion over when video is released and protects the public interest in access to video. In our [model police body camera policy](#), we recommend that bodycam video should be released to the public when — and only when — certain conditions are met, such as when the video captures a use of force or an encounter about which a complaint has been filed. Otherwise, it should be kept in a lockbox and destroyed after a set period of time. Because of the highly private and intrusive content of many body camera videos, the public does not have a strong interest in seeing most of them.



We think this is the right framework for drone video as well. Of course, if our recommendations are followed, then little or no aerial video of people peacefully exercising their rights should be recorded. But where such video is, for some reason, captured, that video should not be subject to public release, in order to protect the privacy of those assembling or protesting. As with body cameras, video that captures police uses of force or police behavior that is the subject of a complaint, however, should be released.

### **5. Police operations must not preclude other drone flights**

There is a very real danger that police drones could be used as a stratagem to prevent reporters, including citizens acting as reporters, from recording newsworthy public gatherings. In 2014, two men were arrested after a drone they were flying “nearly took out an NYPD chopper” patrolling over the Hudson River in New York City, according to law enforcement. The helicopter “had to swerve to avoid the small, unmanned aircraft,” as police sources [told](#) the New York Post.

Days later, however, air traffic control recordings [revealed](#) that, in fact, it was the police helicopter that chased and flew near the drone, rather than the other way around. “Clueless Cops Fly Helicopter At Drone, Arrest The Drone Pilots,” as one [report](#) headlined a story on the incident. The two drone pilots had been arrested on state charges of first-degree reckless endangerment, punishable by up to seven years in prison.

In 2016, Congress authorized the FAA to fine up to \$20,000 any drone operator who “deliberately or recklessly interferes” with law enforcement. As the journalist Faine Greenwood has [pointed out](#), “Police drones are a highly effective way for law enforcement to ‘mark’ the aerial territory over news-worthy events. While plenty of journalists and activists use drones to collect their own aerial information, they’re often reluctant to fly when there’s a chance they could be accused of interfering with a drone or a helicopter operated by police.”

Unfortunately, we know that police, too often, want to stifle First Amendment-protected drone photography by reporters and others. In Ferguson, Missouri, police asked the FAA to issue a no-fly zone over the 2014 protests there. Emails obtained by the Associated Press revealed police didn’t seek the no-fly zone for safety purposes, but to keep [media aircraft](#) from recording what the police were up to. Law enforcement also sought [illegitimate blackouts](#) of media aircraft around the protests of the Dakota Access Pipeline in 2016 and 2017. And innumerable people have been stopped, harassed, arrested, or worse, by police for engaging in street photography. The ACLU has taken many cases defending the rights of such people around the country.

Removing control over the public release of law enforcement video from police departments could help fix the problem of law enforcement blocking legitimate photography, because it decreases the incentive police might have to block independent aerial recordings of what officers are doing. Future FAA rules governing how drones

share airspace may solve or lessen this problem as well. But one way or another, policymakers need to ensure that law enforcement operations aren't permitted to become a rationale for blocking journalistic and other legal drone flights from the airspace over events.

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