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Unchecked AI in Government and War

Gavin Phelps, CIPP/US, YLS Chair

AI is becoming commonplace in personal and business use, and the government is also adopting AI tools. But what happens when those tools go unchecked, when AI replaces decision makers or gathers personal identifiable information without a warrant? This is not science fiction. It is happening today.

The Department of War overhauled its AI policy in January 2026. The former policy allowed commanders to exercise judgment over AI, included DEI protections, and emphasized "responsible AI." The new policy mandates "AI-first… across all components," removing all social ideology and "utopian idealism" and prohibiting defense contracts from restricting AI beyond "any lawful use." The new policy orders the Department to accelerate AI integration department-wide by the end of 2026, with special attention to enhancing the military's "warfighting," intelligence, and enterprise data. Lawyers and ethicists refer to this phenomenon, now central to every serious legal debate over AI warfare, as the erosion of meaningful human control.

The Department currently operates several AI platforms. Project Maven integrates AI and machine learning into military intelligence operations, analyzing imagery and sensor data to detect and track targets. Advana functions as a centralized hub for enterprise data and AI-driven decision-making across defense operations. GenAI delivers commercial generative AI tools for all military personnel, civilian employees, and contractors across the Department. Anthropic was the first AI company to partner with the Department for use in classified networks and to provide custom models for national security. But Anthropic's partnership with the Department ended over a disagreement on AI's use for, among other things, autonomous weapons and mass domestic surveillance.

The federal government currently uses AI for domestic surveillance. Companies such as Palantir contract with the Department of Homeland Security so that Immigration and Customs Enforcement agents can locate individuals using cellphone tower data, Medicaid records, social media use, and facial recognition. The government also uses an app called Mobile Fortify to process biometric data like facial recognition.

A warrant is not required for the government's use of this technology because the data is public, commercial, or aggregated. But does that make it right? If a government agent tried to gather the

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same information, they would need a warrant. An ICE agent speaking on the condition of anonymity recently cautioned, "It's very scary to me because it's through technology [that the DHS is] bypassing the Fourth Amendment."

At the same time, government misuse of data is also becoming easier. An executive order signed in March 2025 directed federal agencies to eliminate "information silos"—a directive that accelerated efforts to integrate disparate government datasets on American citizens. The colloquial term "information silo" commonly refers to data within one area of an organization that is inaccessible to other departments.

Congress has been slow to respond. Existing statutory frameworks were written before large-scale AI data aggregation existed as a practical capability. Bipartisan majorities in Congress have expressed concern, but attempts to pass meaningful legislation to bolster Fourth Amendment protections lack traction.

The concern is not whether the federal government has legitimate uses for AI, but rather whether any use that is technically lawful is therefore acceptable. AI should never be the final decision maker, especially in warfare. Democratically elected officials are meant to make those decisions, and AI does not absolve them of their responsibilities. Furthermore, Fourth Amendment protections should not diminish just because a machine does the searching. The government must use AI responsibly and be held accountable when it overreaches. ■

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