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Obama's white paper on NSA spying

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The Obama administration released a “white paper” on Friday that purports to provide a legal justification for one of its telephone surveillance programs. Under conditions of growing public concern over revelations by National Security Agency (NSA) whistleblower Edward Snowden, the document was clearly prepared for public relations purposes. Its release was timed to coincide with Friday’s press conference, at which Obama attempted to put a friendly face on police state spying.

As with all of the arguments marshaled by the government to justify its unconstitutional actions, the white paper begins with the desired conclusion—that mass surveillance of the American people is legal—and works backwards, stringing together whatever rationalizations its authors can come up with. In this it recalls White House lawyers’ previous handiwork on the subjects of drone assassinations, torture and indefinite detention.

In this case, the program in question, based on the Patriot Act, involves the collection of “telephony metadata”—including the originator of the call, the number dialed, and the date and time—on nearly every individual in the United States. With this information, the government can determine in great detail the social and political affiliations of individuals. Such a mass seizure of personal records, without specific warrants, is in flagrant violation of the Fourth Amendment to

the Constitution, part of the Bill of Rights, which protects “against unreasonable searches and seizures” and prohibits searches without narrowly defined warrants based on probable cause.

The arguments advanced by the white paper are in conflict not only with the letter of the Constitution, but its entire spirit. The revolutionary framers of the document started with the premise that the state represented a permanent danger to the liberties of the people, requiring “eternal vigilance” and a spirit of collective distrust. Accordingly, they established numerous mechanisms for protecting the people from the government, including by limiting and enumerating government powers, establishing a system of checks and balances, and passing a Bill of Rights.

The basic conceptions advanced by the Obama administration start from diametrically opposed premises. The state is elevated above the people and their—in the words of the Declaration of Independence—“unalienable rights.” Its interests, generally summed up with the phrase “national security,” trump the individual liberties of the people.

The sophistic arguments advanced in the white paper largely boil down to the injunction: “Trust us.” Trust the NSA, trust the FBI, trust the secret Foreign Intelligence Surveillance (FISA) court, trust the White House. The American people, the document advises, should rest assured that the executive branch and the star chamber FISA court ensure “strict oversight standards to guard against any potential for misuse of the data” the NSA collects.

This “oversight” is carried out by the very institutions that approve or operate the mass spying programs to begin with! It is as if a thief were to counsel his victim to rest assured that his stolen goods will be well looked after.

The white paper repeatedly cites laws, rules and “checks and balances” supposedly carried out by Congress and the FISA court, as though such things guarantee the civil liberties and privacy rights of the people. But, of course, the people are barred from checking any of this for themselves, since all of these operations are classified.

We are all to assume that those who preside over these mass spying programs are beyond reproach and of unimpeachable honesty and integrity. This entire argument violates the basic democratic conception of a “government of laws, not of men.”

Meanwhile, the highest-ranking intelligence official in the United States, Director of National Intelligence James Clapper, was caught outright lying in testimony before Congress last March when asked about the extent of the administration’s spying on ordinary Americans. And not a single administration official or lawmaker has proposed that he face any sanctions, let alone impeachment and prosecution, for perjuring himself and lying to the American people.

The language in the white paper is carefully chosen. “Importantly,” it declares, the information gathered about telephone calls “does *not* include any information about the content of those calls—the Government cannot, through this program, listen to or record any telephone conversations.”

But while “this program” may not authorize the monitoring of the content of calls and Internet communications, Snowden has revealed that other NSA programs do. In fact, there is not a single digital communication that is not being captured and kept for analysis by US intelligence agencies.

One blatant lie follows the next. “The program is carefully limited,” and is not used for “any purpose other than counterterrorism,” the white paper states. Yet just last week it was reported that the NSA has been passing on information to the Drug Enforcement Agency, the Internal Revenue Service and likely other agencies. The agencies have been using this secret data to carry out arrests and prosecutions, while covering up this fact in court—a blatant violation of due process.

The white paper repeatedly reminds the reader that the telephone spying program in question has been “authorized” and “renewed thirty-four times” by the FISA court. This only underscores the anti-democratic and unconstitutional character of the FISA court and its central role in the emerging police state framework.

A “court” in name only, this institution has been developed as a mechanism for subverting the Constitution, issuing secret interpretations of laws in secret rulings based on secret records and secret evidence, in which only one side—the government side—is represented. For a targeted individual or group, there is no right to appeal or even to know about its decisions.

At every turn, Obama’s lawyers argue that basic democratic rights must be “balanced” against the interests of national security. For example, the white paper contends that “any arguable privacy intrusion” is “outweighed by the need to “thwart terrorist plots.” This approach treats the Constitution as a list of suggestions or guidelines, to be followed when convenient but violated whenever necessary to wage the “war on terror.” Similar arguments have been advanced by every dictatorship.

In the end, the programs defended by the Obama administration are directed not at terrorists, but at the American people. The drive by the ruling class to monitor every communication betrays a deep fear arising from an understanding that its policies of endless war and austerity are creating the conditions for massive class struggles. It is precisely these struggles, guided by an independent socialist program, that must form the basis for the defense of democratic rights.