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Obama administration pledges to continue illegal spying programs

By Joseph Kishore

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The Obama administration is responding to the latest series of exposures of the massive National Security Agency spying operations by insisting that all the programs will continue, while intensifying its campaign against NSA whistleblower Edward Snowden.

Leaks from Snowden over the past two weeks include the exposure of an intelligence apparatus aimed at collecting all significant electronic communications worldwide, the monitoring of dozens of heads of state using US embassies as NSA outposts and the secret theft of communications from Internet giants Yahoo and Google. These actions, which are illegal and unconstitutional, have provoked growing outrage internationally and a diplomatic crisis for the United States.

Referring to one program, which collects phone records, the *New York Times* wrote on Tuesday: “But for now, President Obama and his top advisers have concluded that there is no workable alternative to the bulk collection of huge quantities of ‘metadata,’ including records of all telephone calls made inside the United States.”

The *Times* cites NSA Deputy Director John Inglis as insisting, in testimony before Congress last week, that “it needs to be the whole haystack”—i.e., the NSA must have access to all telephone records. “It needs to be such that when you make a query you come away confident you have the whole answer.”

The telephone records program is only a small component of an all-consuming intelligence apparatus. A *New York Times* article over the weekend (“No Morsel Too Minuscule for All-Consuming NSA”), based on thousands of documents provided by Snowden to the *Times* and the *Guardian*, documents “an electronic omnivore of staggering capabilities, eavesdropping and hacking its way around the world to strip governments and other targets of their secrets, all the while enforcing the utmost secrecy about its own operations.”

“The NSA seems to be listening everywhere in the world,” the *Times* writes, “gathering every stray electron that might add, however minutely, to the United States government’s knowledge of the world... It sucks the contents from fiber-optics cables, sits on telephone switches and Internet hubs, digitally burglarizes laptops and plants bugs on smartphones around the globe...”

Among the activities documented by the newspaper are the collection of text messages from all over the world, the daily monitoring of the movements and communications of Iranian leader Ayatollah Khamenei and Venezuela government officials, and many other operations.

“The agency, using a combination of jawboning, stealth and legal force,” the *Times* writes, “has turned the nation’s Internet and telecommunications companies into collection partners, installing filters in their faculties, serving them with court orders, building back doors into their software and acquiring keys to break their encryption.”

In the media and political establishment, the fact that these programs are being operated in flagrant violation of international law and the Fourth Amendment prohibition of unreasonable searches and seizures is treated as a non-issue. So is the fact that the latest revelations directly contradict previous statements from Obama and other administration officials that the NSA does not monitor the phone conversations and emails of US citizens.

In an attempt to diffuse the crisis, the administration is proposing the most minor modifications to some programs, which barely rise to the level of a fig-leaf. One modification would limit the amount of time that the NSA keeps all telephone records in its own storage facilities to three, down from five years. Another would develop methods for the NSA to access the data on the servers of telephone companies directly, so that it would not have to store the information itself.

These proposals are being advanced as alternatives to a bill sponsored by Republican Congressman Jim Sensenbrenner, which would end the bulk phone records program. According to the *Guardian*, “The NSA has been lobbying hard to maintain the program, and appears to have

secured the support of the White House and the majority of members of the House and Senate intelligence committees.”

With regard to overseas spying, including on heads of state, the US is seeking to reach some accommodation with the major European powers to ensure that the bulk of these operations continue, while heading off a major diplomatic crisis.

Sections of the German political establishment have raised the possibility of granting Snowden asylum, which would signify an unprecedented political schism between the US and post-war Germany. Top officials from both the Democratic and Republican parties, as well as a White House spokesman, have rejected out of hand proposals for granting Snowden clemency.

In Poland on Tuesday, ahead of meetings on a proposed Transatlantic Trade and Investment Partnership, US Secretary of State John Kerry said that it was necessary to strike “the right balance” on global spying. German officials are currently in Washington discussing proposals that would nominally limit spying on certain leaders, such as German Chancellor Angela Merkel, while the bulk data collection on the population as a whole—much of it carried out with the collaboration of European spy agencies—would continue.

On Monday, administration lawyers defended the spying programs in a public hearing of the so-called Privacy and Civil Liberties Oversight Board, an executive agency appointed by the president.

The acting general counsel at the Federal Bureau of Investigation, Patrick Kelley, told the board that the bulk telephone record program was necessary, and that without it “we’d be less agile, we’d be less informed, we’d be less focused...we’d be a lot less effective at preventing the attacks that the American people would want us to prevent.”

Claims that the collection of communications records on every individual is necessary to prevent terrorist attacks are made routinely without any evidence—and in the face of the fact that the most significant attack since September 11, the Boston Marathon bombings, was allegedly carried out by an individual who had been closely monitored by US intelligence agencies.

One official at the hearings called the idea of requiring warrants to access databases of phone records—a basic requirement of the US Constitution—a “novel approach.” Another compared the bulk collection of data to the “stop and frisk” policy of the New York City police, which has subjected hundreds of thousands of working class youth to arbitrary police searches, and was declared unconstitutional by a US district court judge earlier this year.

“It’s effectively the same standard as stop-and-frisk,” said NSA General Counsel Rajesh De, referring to the requirement that agency officials have a “reasonable and articulable suspicion” in order to justify searching the phone record database.

Regarding Snowden's revelation that the NSA has obtained backdoor access to all communications data from Google and Yahoo—which would include the emails, chats and internet calls of millions of Americans—De did not deny the existence of these programs but said that they were not aimed at bypassing legal restrictions on the collection of data within the United States.

Summing up the position of the administration, Director of National Intelligence General Counsel Robert Litt said, “We are open to consideration of a variety of possible reforms to the program so long as they don't eliminate its utility”—that is to say, so long as they have no impact on the powers of the intelligence agencies.