

By Elliot Cohen

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According to a June 18 AP article, Homeland Security Chief Janet Napolitano has defended monitoring Internet communications as a "civil liberties trade-off the US must make to beef up national security." In addition, she said "it is wrong to believe that if security is embraced, liberty is sacrificed." Unfortunately, it is incomprehensible how "beefing up" national security can be both a civil liberties trade-off and not a sacrifice of liberty. This contradiction betrays the sad reality that the Obama administration has followed the lead of the Bush administration in escalating the abridgment of civil liberties in the US to protect "national security."

According to Napolitano, there have been an increasing number of homegrown terrorists who have used the Internet to "reached out" to Islamic extremists for training and inspiration; and the AP article points to the recent Times Square bomber, Faisal Shahzad, and accused Fort Hood Texas shooter Major Nadal Hasan as possible examples.

It is not clear, however, how a relatively few instances of homegrown terrorists who may have been influenced by their online activities to become radicalized can warrant government abridgment of the privacy of millions of Americans. However, it is not hard to see how easily such a principle could be expanded to include any private activities that may possibly be linked to radicalization. Thus, the communications that may occur inside a mosque may be deemed grist for the mill of government monitoring. And the same logic could well be applied to private communications in the homes of Americans because there may possibly be plans afoot by a few homegrown, would-be terrorists.

It should be emphasized that the Internet monitoring that Napolitano is defending is mass warrantless surveillance of millions of Americans. This is significantly different from the FBI's obtaining a warrant to spy on the conversations of specific individuals where probable cause exists to suggest that they are planning a terrorist attack.

During the Bush administration, the justification for such mass warrantless surveillance had

been to gather foreign intelligence. This meant that the government would not intentionally attempt to spy on American citizens. In fact, so-called minimization standards of the FISA Act, including the amendments to it passed in 2008 require the government to make all reasonable accommodations so as not to target American citizens. What Napolitano is saying is therefore illegal because it directly advocates mass surveillance sweeps for the specific purpose of targeting American citizens who may be involved or contemplating involvement in terrorist activities.

This is a chilling expansion of the Bush warrantless surveillance program that was exposed in 2005. It suggests that the Obama administration, far from being more interested than the Bush administration in preserving the civil liberties of Americans, is actually more vigilant in undermining these rights.

Napolitano has now boldly announced that the Obama administration will be engaging in mass warrantless spying targeting Americans, not just Al Qaeda or other organized groups of terrorists. Will it also soon announce that Americans may be labeled "unlawful enemy combatants" (the Obama administration now uses the label "unprivileged enemy belligerents")? Will such individuals be whisked off to an undisclosed location and be denied their constitutional rights to a fair trial?

The Obama administration has lost the faith of many of its liberals, democratic constituents and according to the AP article, Napolitano's comments were intended to reach out to this group to try to assuage their fears that the administration's concern for stopping terrorist attacks would erode civil liberties. Her remarks however should only increase these concerns. In fact, they should underscore the grave danger the Obama administration poses to the survival of Americans' civil liberties.