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United States Senate

WASHINGTON, DC 20510

December 9, 2014

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

The Honorable Jeh Johnson
Secretary of Homeland Security
Department of Homeland Security
Washington, D.C. 20528

Dear Attorney General Holder and Secretary Johnson,

We are writing to express our concern about recent news reports revealing that the U.S. Marshals Service is flying airplanes over the United States equipped with surveillance devices that transmit electronic signals into the homes of thousands of Americans in order to locate individuals via their mobile phones. These International Mobile Subscriber Identity Catcher surveillance devices (IMSI-catcher), commonly known as “DRTBoxes,” “dirtboxes” or “Stingrays,” simulate legitimate cell phone towers, thus compelling all nearby phones to identify themselves. As a result, agencies that use these devices collect the information of thousands of Americans, potentially infringing on the Fourth Amendment and disrupting normal cell phone usage.

The U.S. Marshals Service is apparently not the only agency using these devices from the air—it has come to our attention that other agencies with the Department of Justice (DOJ), including the Drug Enforcement Administration (DEA), as well as the Department of Homeland Security (DHS), more specifically Immigration and Customs Enforcement (ICE), are also using airborne IMSI-catchers.

Whether used on an automobile or plane, these devices potentially violate the Fourth Amendment and represent a significant intrusion into the private lives of thousands of Americans. While we all want law enforcement agencies to use cutting-edge tools to catch criminals and protect our borders, Americans should not have to sacrifice their privacy rights in the process. Furthermore, given the extreme lengths to which federal agencies have gone to keep surveillance technologies like this a secret,¹ it is vital that their use be subject to strict oversight by the courts and Congress.

¹ See Martin Kaste, *Should Police Be Able To Keep Their Devices Secret?*, NPR, October 22, 2014, available at <http://www.npr.org/2014/10/22/358120429/should-police-be-able-to-keep-their-devices-secret>. See also Kim Zetter, *Florida Cops' Secret Weapon: Warrantless Cellphone Tracking*, Wired, March 3, 2014, available at <http://www.wired.com/2014/03/stingray/>.

We would like to know if your departments, or its components, utilize these devices along the borders and in our states. Accordingly, we request the following information:

1. To what extent does your department use IMSI-catchers (Stingrays, DRTboxes, etc.) or other similar technology? Specifically:
 - a. Which components within your department use such devices? If multiple components use such devices, is there department-wide guidance governing their use?
 - b. Since FY 2010, how many times has such technology been deployed, and how many phones were identified or tracked by this technology, including devices used by the targets of the operation as well as non-targets whose information was incidentally swept up?
 - c. In what types of operations are these devices deployed?
 - d. What statutory authority permits the use of this surveillance technology?
 - e. Do DHS and/or DOJ obtain a court order prior to using such devices? If so, do DHS and/or DOJ inform the courts of the number of individuals likely to be impacted; the scope of acquisition; or the specific technology being deployed?
2. Did the DOJ Office of Privacy and Civil Liberties, the DHS Privacy Office, and the DHS Office for Civil Rights and Civil Liberties review and/or conduct a privacy impact assessment or other review regarding the use of these technologies prior to deployment? If so, please provide copies of such reviews or assessments.
3. To what extent is your department coordinating or providing assistance to other federal agencies in order to help them purchase or otherwise obtain this type of technology?
4. The Federal Communication Commission requires that "state and local law enforcement agencies must coordinate with the Federal Bureau of Investigation (FBI) ... prior to the acquisition and use of the [IMSI-catchers or other similar] equipment/technology."² What does the FBI require of departments and agencies as part of this coordination process?
5. To what extent does your department provide assistance to state and local agencies in order to help them purchase or otherwise obtain this type of technology?
 - a. To the extent that these devices have been purchased through DHS and DOJ grant programs, how much federal money has been used to purchase them? What, if any, limitations or requirements are imposed on agencies that receive and use federal grant money to acquire this type of surveillance technology?


² Muckrock, FCC and FBI disagree over NDA requirement for police StingRays, October 8, 2014, <https://www.beaconreader.com/muckrock/fcc-claims-nondisclosure-agreement-not-required-for-police-to-use-stingrays>.

- b. What training and conditions are given to state and local agencies who receive this technology, as it relates to protecting innocent Americans' privacy?
 - c. How many times have DHS and/or DOJ loaned or otherwise permitted the use of such devices by state or local agencies?
6. Public documents reveal that the DEA has acquired airborne IMSI-catchers for use along the southwestern border.³ Is this technology also being utilized by the DEA or other DOJ office along the Northern Border? How many miles inland from both borders is this technology being deployed?
7. Does DHS also deploy this or similar technology along northern and/or southern borders? If so, in what areas? What legal authority is your agency using to conduct flights whilst using such devices?
8. Are operations conducted within existing high-crime designated areas (i.e. High Intensity Drug Trafficking Area)?
9. What policies and guidance govern the use, retention, and dissemination of information collected by these devices? Specifically:
 - a. What information is collected using these devices? How is the acquired information stored?
 - b. When are department personnel permitted to search through information acquired by these devices?
 - c. How long is the collected information retained? How is this information disposed of, and what timeframe is your agency using to dispose of information collected by such devices?
 - d. When is this information shared with other federal, state, or local agencies, or international partners? How much is information shared with other federal agencies, how often is information shared, and to which agencies?
 - e. Is information collected used in criminal prosecutions or immigration proceedings? If so, does DHS or DOJ have a policy in place requiring that defendants be notified of how such information was collected so they may raise relevant legal challenges?
10. Do DHS and/or DOJ have policies in place requiring that individuals who are not targets be informed when their information is inadvertently collected, reviewed, or retained?
11. What efforts are made to ascertain and minimize civilian interference?

³ See "Prime Award Spending Data," available at http://www.usaspending.gov/explore?fiscal_year=all&comingfrom=searchresults&piid=DJD14HQP0798&typeofview=complete

Thank you for your attention to this important matter. We look forward to your response.

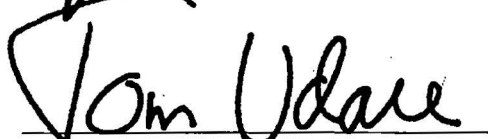
Sincerely,



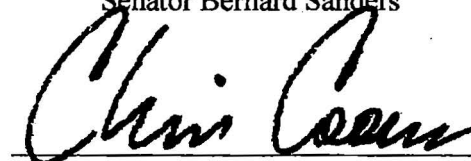
Senator Jon Tester




Senator Bernard Sanders



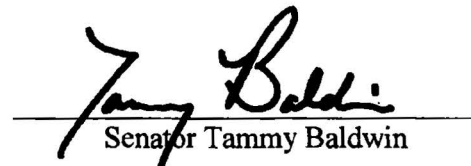
Senator Tom Udall



Senator Christopher Coons



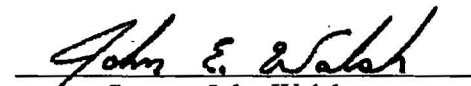
Senator Mark Begich



Senator Tammy Baldwin



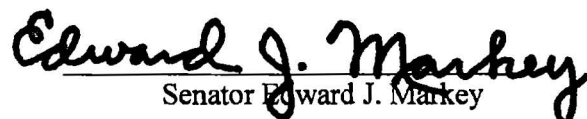
Senator Al Franken




Senator John Walsh



Senator Jeff Merkley



Senator Edward J. Markey



Senator Martin Heinrich