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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
KRISTINE J. LUCIUS, *Democratic Chief Counsel and Staff Director*

June 3, 2015

The Honorable Loretta E. Lynch
Attorney General
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

The Honorable James B. Comey
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Washington, DC 20535

Dear Attorney General Lynch and Director Comey:

In light of recent reports of the Federal Bureau of Investigation conducting aerial surveillance above American cities, I write to you to request additional information about these programs. Many Americans have been troubled by these reports, and as ranking member of the Senate Judiciary Subcommittee on Privacy, Technology and the Law, I believe it is important to ensure that these programs adequately protect Americans' privacy while furthering public safety and national security.

Yesterday, a report by the Associated Press ("FBI behind mysterious surveillance aircraft over US cities") revealed that the FBI is flying aircraft equipped with surveillance or monitoring equipment over the United States. The AP described the Bureau's practice of using low-flying planes carrying video and cell phone surveillance technology to assist in ongoing investigations. According to the report, over a 30-day period, the FBI deployed aircraft above more than 30 cities in 11 states. This revelation follows reports of small, fixed-wing aircraft circling highly populated areas of the Twin Cities in my state of Minnesota, including downtown Minneapolis, the Mall of America, and Southdale Center.

I wrote to former Attorney General Holder in November 2014 to express concern about the Department of Justice's collection of Americans' cell phone data from aircraft. Other senators wrote similar letters requesting additional information. At the time, reports described the Department's use of wireless surveillance systems, known as International Mobile Subscriber Identity Catcher devices (IMSI-catchers), "DRTBoxes," "dirtboxes," or "Stingrays," which have the ability to impersonate cellular phone towers and compel affected mobile phones to reveal their location and users' registration information. I cautioned that the need for law enforcement to monitor and apprehend criminal suspects should not come at the expense of innocent Americans' privacy.

Since my initial letter requesting additional information on the topic, the FBI has provided lawmakers with some clarity regarding the legal process the Bureau requires before deploying wireless surveillance, and explained that Bureau policy requires that the FBI obtain a warrant prior to using technology capable of impersonating a cell phone tower. However, the extent to which those same processes extend to aerial surveillance more broadly remains unclear.

In light of the Bureau's apparent increase in its use of aerial surveillance, I request that you provide greater detail about the FBI's policies regarding its use. I also request that you provide detailed written answers to the following questions:

1. What technologies are used by the FBI during the course of aerial surveillance? To what extent does the FBI use IMSI-catchers, "DRTBoxes," "dirtboxes," or "Stingrays"? To what extent does the FBI use infrared cameras? To what extent does the FBI use video cameras?
2. How frequently does the FBI engage in aerial surveillance that utilizes IMSI-catchers, infrared cameras, or video technology? In what types of operations does the FBI deploy aerial surveillance utilizing these technologies? More generally, under what circumstances is aerial surveillance using these technologies deployed?
3. Under what legal authority is the FBI acting when conducting aerial surveillance, including aerial surveillance that utilizes IMSI-catchers, infrared cameras, or video technology? To the extent that the Department of Justice is seeking court approval before deploying any of these technologies during aerial surveillance, is this done on a case-by-case basis or does the Department seek broader authorization? What are judges told about how the technologies deployed work, and the potential impact on innocent Americans? Please provide a representative sample of the applications for these court orders.
4. To the extent that the Department of Justice has developed policies governing the use of IMSI-catchers, infrared cameras, or video technology during aerial surveillance, please identify the policies and legal processes used. Are different technologies subject to different policies or forms of legal process? If so, please describe the application of these policies.
5. Has the Department of Justice developed policies on the retention of data collected in the course of aerial surveillance that utilizes IMSI-catchers, infrared cameras, or video technology? Has the Department developed policies on the destruction of that data? If so, please describe these policies.
6. How many individuals can be detected, tracked, and/or monitored during each surveillance flight? If IMSI-catchers are being used, how many phones can be detected, tracked, and/or monitored during each flight?
7. Reports indicate that some of the surveillance systems have the capability of blocking phone calls, including 911 and other emergency calls. What steps have been taken to ensure that phone calls of non-targeted civilians are not interrupted by the FBI's aerial surveillance?
8. To the extent that aerial surveillance has been deployed above large public gatherings, what steps is the government taking to ensure that such surveillance does not chill constitutionally protected conduct, such as political and religious activity?

9. Has the Department of Justice's Office of Privacy and Civil Liberties conducted a privacy impact assessment or otherwise reviewed the use of technologies utilized during aerial surveillance? Has a review or privacy impact assessment been conducted on the FBI's use of aerial surveillance more broadly? If so, please provide copies of such assessments or reviews.

10. What safeguards are in place to ensure that innocent American's privacy is protected during aerial surveillance utilizing technology that collects data and personal information?

Thank you for your prompt attention to this important matter. If you have any questions, you may contact Nick Wunder on my staff at 202-224-5641.

Sincerely,



Senator Al Franken
Ranking Member, Subcommittee on
Privacy, Technology and the Law