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January 22, 2015

VIA ELECTRONIC TRANSMISSION

The Honorable Eric Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Holder:

According to a recent USA Today article, the Federal Bureau of Investigation, the U.S. Marshals Service, and dozens of other law enforcement agencies have access to radar technology that can precisely detect movement inside buildings.¹ We appreciate the potential law enforcement value of these devices. However, technology that can essentially look inside peoples' homes presents privacy concerns of the highest order. There has been little to no public discussion of this technology and it is unclear whether agencies are obtaining any legal process – let alone a warrant – prior to deploying it.

Privacy of the home is at the core of the Fourth Amendment. More than a decade ago, the U.S. Supreme Court decided that the use without a warrant of thermal imaging equipment that could detect activity inside a home violated the Fourth Amendment.² Similarly, in 2013, the Court found a Fourth Amendment violation when police brought a drug-sniffing dog onto an individual's front porch without a warrant.³ Unsurprisingly, the U.S. Court of Appeals for the Tenth Circuit recently noted the "obvious" and "grave" Fourth Amendment concerns associated with the use of the radar technology that is the subject of this letter.⁴

On December 23, 2014, we raised similar concerns in a letter to you about the use of cell-site simulators (sometimes referred to as "Stingrays" or "dirtboxes"), which can collect data from large numbers of cell phones in their vicinity — including phones in private homes. This pattern of revelations raises questions about whether the Justice Department is doing enough to ensure that — prior to these technologies' first use — law enforcement officials address their privacy implications, seek appropriate legal process, and fully inform the courts and Congress

¹ Brad Heath, "New police radars can 'see' inside homes," *USA Today*, January 20, 2015, <http://www.usatoday.com/story/news/2015/01/19/police-radar-see-through-walls/22007615/>.

² *Kyllo v. United States*, 533 U.S. 27 (2001).

³ *Florida v. Jardines*, 133 S.Ct. 1409 (2013).

⁴ *United States v. Denson*, 2014 WL 7380656 (10th Cir. 2014).

about how they work. There is also a question as to how many other new technologies are being used by law enforcement agencies that raise similar privacy concerns.

Accordingly, please arrange for knowledgeable officials to provide a briefing to Judiciary Committee staff no later than February 13, 2015. Should you have any questions, please contact Jay Lim at (202) 224-5225 or Lara Flint at (202) 224-7703. Thank you.

Sincerely,


Charles E. Grassley
Chairman


Patrick Leahy
Ranking Member