

# United States Senate

WASHINGTON, DC 20510

August 22 , 2013

The Honorable Eric Holder  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Mr. Attorney General:

We are writing to express our concern over recent reports regarding the use of investigative information provided by the National Security Agency to domestic federal agencies to investigate Americans within the United States for non-terror related crimes. Last week, *Reuters* reported that the NSA is providing information from intelligence investigations, “to help [the Drug Enforcement Administration (DEA)] launch criminal investigations of Americans.” The media has reported that certain agencies have fabricated evidence trails in order to conceal the NSA as the source of their information. These allegations raise serious concerns that gaps in the policy and law are allowing overreach by the federal government’s intelligence gathering apparatus. Such overreach could threaten the privacy and constitutional rights of Americans while jeopardizing both law enforcement’s ability to prosecute criminals and Americans’ right to a fair trial. Accordingly, we respectfully request that you respond to questions included in this letter, to address the issues raised by these recent media reports.

*Reuters* has reported that it has documents showing “that federal agents are trained to ‘recreate’ the investigative trail to effectively cover up where the information originated.” Additionally, *The Houston Chronicle* has reported that “The National Security Agency is handing the Justice Department information, derived from its secret electronic eavesdropping programs, about suspected criminal activity unrelated to terrorism.”

The 9/11 Commission showed that communications between intelligence agencies and domestic law enforcement can be essential to American national security. However, recently reported actions appear to go far beyond what is necessary to protect national security. The FISA Amendments Act and PATRIOT Act authorize programs “to protect against international terrorism or clandestine intelligence activities” being executed by “a foreign power or an agent of a foreign power”. Moreover, there are existing rules that govern how and when the NSA can legitimately share information with law enforcement. News media reporting suggests that these rules are being violated or circumvented. These reports suggest that these programs are improperly being used in domestic law enforcement investigations, unrelated to terrorism or national security. If domestic law enforcement officials were to collaborate with intelligence agencies and use authorities intended for the surveillance of foreigners to improperly gather information about Americans, this would raise concerns about these domestic law enforcement agencies using intelligence agency authorities to circumvent the Constitution. This would be an infringement on Americans’ most basic rights of due process and privacy, and the right to be free from unwarranted search and seizure.

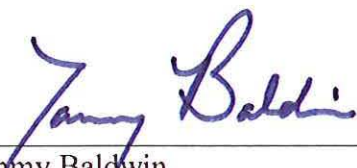
We are further troubled by reports of calculated efforts to conceal these activities by using a process called “parallel construction”. These reports indicate that potentially dozens of federal law enforcement agencies are fabricating trails of evidence used in federal courts. Evidence is critical to the legal process and fabricating its source could deny citizens the ability to properly defend themselves and jeopardize domestic law enforcement’s ability to prosecute criminals.

To ensure the protection of Americans' personal privacy and freedoms from potential violations, we respectfully ask that you—in collaboration with the Director of National Intelligence—respond with unclassified answers to the following questions by no later than September 16, 2013:

- How are Americans' constitutional rights and due process protections safeguarded in the intelligence gathering and sharing procedures reported by *Reuters* and other media outlets?
- Recognizing there are some circumstances where such collaboration is permitted, what decision-making parameters (“minimization procedures”), and what specific statutory authorities, does the Intelligence Community use to determine if it will share information with domestic law enforcement agencies?
- How does the Intelligence Community manage requests for information from domestic law enforcement, and how does it determine if these requests conflict with the Constitution or law?
- If a domestic law enforcement agency utilized “parallel construction” to introduce information gathered by intelligence agencies at a trial and did not reveal the origin of its source, would this violate Americans' rights to a fair trial and jeopardize law enforcement's ability to prosecute criminals? Has law enforcement deemed the Classified Information Procedures Act (CIPA) inadequate for use in these reported non-terrorism cases?
- How many times has the Intelligence Community shared information with domestic law enforcement? How often does such sharing result in use of “parallel construction”?

Thank you for your attention to this important matter. We look forward to further discussion in the weeks ahead.

Sincerely,



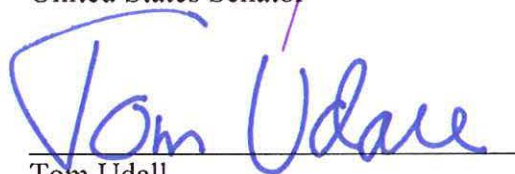
Tammy Baldwin  
United States Senator




Ron Wyden  
United States Senator



Sherrod Brown  
United States Senator



Tom Udall  
United States Senator



Richard Blumenthal  
United States Senator

Cc: The Honorable James R. Clapper, Jr.  
Director of National Intelligence

The Honorable Michele M. Leonhart  
Administrator, Drug Enforcement Administration