

Congress of the United States
Washington, DC 20515

March 23, 2016

Admiral Michael S. Rogers
Director, National Security Agency
Commander, U.S. Cyber Command
4409 Llewellyn Ave
Fort Meade, MD 20755

Dear Admiral Rogers:

Thank you for your service to our country as a career military officer. We are writing in our capacity as Members of the House Oversight & Government Reform Committee because we are alarmed by press reports that state National Security Agency (NSA) data may soon routinely be used for domestic policing.¹ If media accounts are true, this radical policy shift by the NSA would be unconstitutional, and dangerous.

We respectfully request you confirm whether the NSA intends to routinely provide intelligence information—collected without a warrant—to domestic law enforcement agencies. If the NSA intends to go down this uncharted path, we request that you stop. The proposed shift in the relationship between our intelligence agencies and the American people should not be done in secret. The American people deserve a public debate. The United States has a long standing principle of keeping our intelligence and military spy apparatus focused on foreign adversaries and not the American people.

Congress granted the NSA extraordinary authority to conduct warrantless collection of communications and other data.² Unlike domestic law enforcement's mission, NSA's mission is focused on foreign intelligence and counterintelligence. In a publicly released document, the NSA stated that "NSA is an element of the U.S. intelligence community charged with collecting and reporting intelligence for foreign intelligence and counterintelligence purposes."³ NSA's mission has never been, and should never be, domestic policing or domestic spying.

Congress, on the other hand, did not grant extraordinary warrantless surveillance and collection powers to domestic law enforcement agencies. The Executive Branch would be violating the Separation of Powers by unilaterally transferring warrantless data collected under the NSA's extraordinary authority to domestic agencies, which do not have such authority.

¹ See Radley Balko, "Surprise! NSA Data Will Soon Be Used For Domestic Policing That Has Nothing To Do With Terrorism," *Washington Post*, March 10, 2016; Joel Kurtinitis, "While You Were Watching Donald Trump, Obama Expanded Domestic Spying ... Again," *The Blaze*, March 10, 2016.

² See Foreign Intelligence Surveillance Act and the Patriot Act.

³ "The National Security Agency: Missions, Authority, Oversight and Partnerships," p. 2, *NSA*, August 9, 2013.

The apparent proposal to give vast information collected without warrants to domestic agencies would also violate the Fourth Amendment of the United States Constitution. According to the *New York Times*, the new system would permit analysts at other agencies “to obtain direct access to raw information from the NSA’s surveillance to evaluate for themselves.”⁴ We cannot let this happen.

The Fourth Amendment is clear: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” Some, or perhaps much, of the information the NSA collects would not have passed the probable cause test for a warrant. Domestic law enforcement agencies—which need a warrant supported by probable cause to search or seize—cannot do an end run around the Fourth Amendment by searching warrantless information collected by the NSA.

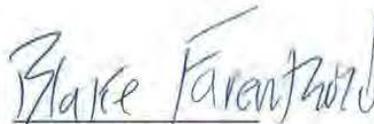
We believe allowing the NSA to be used as an arm of domestic law enforcement is unconstitutional. Our country has always drawn a line between our military and intelligence services, and domestic policing and spying. We do not—and should not—use U.S. Army Apache helicopters to quell domestic riots; Navy Seal Teams to take down counterfeiting rings; or the NSA to conduct surveillance on domestic street gangs.

Last year, Congress and the American people reigned in the NSA because of its overreach in spying on Americans. We respectfully request that you respect the will of the people and not repeat the same mistake.

Sincerely,



Ted W. Lieu
Member of Congress



Blake Farenthold
Member of Congress

cc:

The Honorable Jason Chaffetz, Chairman, House Oversight & Government Reform Committee

The Honorable Elijah Cummings, Ranking Member, House Oversight & Government Reform Committee

The Honorable Devin Nunes, Chairman, House Permanent Select Committee on Intelligence

The Honorable Adam Schiff, Ranking Member, House Permanent Select Committee on Intelligence

The Honorable Bob Goodlatte, Chairman, House Judiciary Committee

The Honorable John Conyers, Ranking Member, House Judiciary Committee

⁴ See Charlie Savage, “Obama Administration Set To Expand Sharing Of Data That N.S.A. Intercepts,” *New York Times*, February 25, 2016.