

United States Senate

WASHINGTON, DC 20510

October 23, 2020

The Honorable Joseph V. Cuffari
Inspector General
Department of Homeland Security
245 Murray Lane SW
Washington, DC 20528-0305

Dear Mr. Cuffari:

We write to ask you to investigate warrantless domestic surveillance of phones by Customs and Border Protection (CBP).

According to public government contracts, CBP has spent nearly half a million dollars for subscriptions to a commercial database provided by a government contractor named Venntel, containing location data collected from millions of Americans' mobile phones. In an oversight call with Senate staff on September 16, 2020, CBP officials confirmed the agency's use of this surveillance product, without a court order, in order to track and identify people in the United States.


In 2018, the Supreme Court held in *Carpenter v. United States* that the collection of significant quantities of historical location data from Americans' cell phones is a search under the Fourth Amendment and therefore requires a warrant. In the decade prior to the *Carpenter* decision, lower courts had been divided on the question of the type of court order necessary for the government to obtain location data from Americans' phones. The Department of Justice (DOJ) argued that a lesser court order, based upon a reasonable suspicion standard, was sufficient, while privacy advocates argued, and some courts held, that surveillance of historical location data required a probable cause warrant. However, even DOJ did not attempt to argue that government officials could have unfettered access to location data without any kind of court order.


In contrast, CBP officials confirmed to Senate staff that the agency is using Venntel's location database to search for information collected from phones in the United States without any kind of court order. The agency refused a follow-up request for information about the legal analysis it conducted, and refused to reveal whether or not it has taken the position that the Supreme Court's *Carpenter* decision does not apply to location data purchased by the government. CBP outrageously asserted that its legal analysis is privileged and therefore does not have to be shared with Congress. We disagree.


CBP is not above the law and it should not be able to buy its way around the Fourth Amendment. Accordingly, we urge you to investigate CBP's warrantless use of commercial databases containing Americans' information, including but not limited to Venntel's location database. We urge you to examine what legal analysis, if any, CBP's lawyers performed before the agency started to use this surveillance tool. We also request that you determine how CBP was able to begin operational use of Venntel's location database without the Department of Homeland Security Privacy Office first publishing a Privacy Impact Assessment.


Thank you for your attention to this important matter


Sincerely,


Ron Wyden
United States Senator


Elizabeth Warren
United States Senator


Sherrod Brown
United States Senator


Edward J. Markey
United States Senator


Brian Schatz
United States Senator