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July 30, 2019

The Honorable Daniel Coats
Director
Office of the Director of National Intelligence
Washington DC, 20511

Dear Director Coats:

I write to ask that you clarify whether the intelligence community currently interprets Section 215 of the USA PATRIOT Act to permit the collection of location data about Americans' phones.

Ever since the revelation in 2013 that the government was abusing Section 215 to collect records of millions of Americans' phone calls, the public debate about this surveillance law has been almost entirely focused on phone metadata – that is, records about when and with whom Americans communicate. However, this is not the only use of Section 215. The government has also used Section 215 to collect location data from Americans' phones.

In 2014, then-Director Clapper and the Federal Bureau of Investigation each separately sent me the attached letters revealing that the government used Section 215 (also known as Title V of the Foreign Intelligence Surveillance Act) to obtain historical cell phone location data. In 2015, Congress passed the USA FREEDOM Act, which significantly constrained the use of Section 215. This law not only prohibited the government from conducting the type of bulk-surveillance that had been revealed to the public, but specifically prohibited the government from collecting location data when using Section 215 to obtain call detail records.

The Supreme Court has also sought to protect location data. In the case of *Carpenter v. United States* last year, the Court held 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. On March 21, 2019, a bipartisan group of four U.S. Senators, including myself, wrote Attorney General Barr asking how the *Carpenter* decision was being applied to the intelligence community. We have not received a response. However, following your appearance at the Senate Select Committee on Intelligence's public Worldwide Threat hearing, I sent you a similar question for the record. In your unclassified response, you revealed that, as of March of this year, you still have not provided guidance to the intelligence community.

If Congress is to reauthorize Section 215 before it expires in December, it needs to know how this law is being interpreted now, as well as how it could be interpreted in the future. While Congress and the Supreme Court have both sought to constrain the government's warrantless surveillance of location data, it remains unclear if the government believes it can still use Section

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215 to track the location of Americans' cell phones. I therefore request that you respond publicly to the following questions by September 6, 2019:

1. Does Section 215 (50 U.S.C. 1861) preclude the intelligence community's collection of cell site location information, not just with regard to the call detail program but with regard to the collection of any "tangible things" under the statute?
2. Does the Carpenter decision preclude the intelligence community's collection of cell site location information without a probable cause warrant?

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in blue ink that reads "Ron Wyden". The signature is written in a cursive, flowing style.

Ron Wyden
United States Senator