

Congress of the United States
Washington, DC 20515

July 17, 2020

The Honorable Mark A. Morgan, Acting Commissioner
Customs and Border Protection
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20229

Dear Acting Commissioner Morgan,

Thank you for your response of July 2, 2020 to our letter of June 9, 2020, about the troubling government surveillance of protesters and the chilling effect it has on peaceful protests. While we appreciate your response, your letter raises several questions which are listed in this letter.

As we stated in our letter, the First and Fourth Amendments protect protesters from government surveillance. The reason our Constitution has such critical protections is that government surveillance has a chilling effect on peaceful protests, and Americans should not have to take proactive measures to protect themselves from government surveillance before engaging in peaceful demonstration.

In order to understand the scope of potential surveillance of protesters by CBP, we respectfully request that you respond to the below questions by July 31, 2020:

- (1) In your letter, you state a CBP unmanned aircraft system (UAS) flew over Minneapolis, Minnesota on May 29th at the request of federal law enforcement but “was unable to observe activities on the ground due to cloud cover.” Press reports based on public flight records indicate this UAS to be CBP-104.¹
 - (a) Which federal law enforcement agency requested this aerial support from CBP? What exactly did the federal agency request? Please share any documentation of such request(s).
 - (b) Which law enforcement agency or agencies (whether federal, state, local, tribal, or international) received information or intelligence derived in whole or in part by the UAS?

¹ Joseph Cox, “The Government Is Regularly Flying Predator Drones Over American Cities,” *Vice Motherboard*, June 3, 2020, https://www.vice.com/en_us/article/n7wnzm/government-flying-predator-drones-american-cities.

- (c) Altitude has a major impact on the capability of any onboard camera(s). Press reports indicate that CBP-104 flew at an altitude of 20,000 feet over Minneapolis.² Is this accurate? If not, at what altitude did CBP-104 fly?
- (d) What surveillance equipment did CBP-104 have on board while it flew over Minneapolis? Please identify whether or not CBP-104 has each of the following types of equipment and whether each was operating during the May 29th flight:
- (i) fixed or mobile video surveillance systems.
 - (ii) rangefinders.
 - (iii) thermal imaging devices.
 - (iv) radar.
 - (v) ground sensors.
 - (vi) dirtboxes, stingrays, other cell site mimicking equipment, other radio frequency sensors, or other telecommunications interception equipment.
 - (vii) wide-area surveillance system.
- (e) Did the UAS use any information collection technologies other than those identified in the Privacy Impact Assessment (PIA)?
- (f) What is the maximum resolution of the camera system(s) attached to CBP-104?
- (i) How many pixels does the imaging sensor possess?
 - (ii) Can any camera system discern specific vehicles or individuals, even if it is not able to identify them on its own?
- (g) Did any surveillance equipment on board CBP-104 have associated software for facial recognition, other biometric identification, or automated license plate reading? Was such software used during or after the flight?

² Jason Koebler, Joseph Cox, and Jordan Pearson, "Customs and Border Protection Is Flying a Predator Drone Over Minneapolis," *Vice Motherboard*, May 29, 2020, https://www.vice.com/en_us/article/5dzbe3/customs-and-border-protection-predator-drone-minneapolis-george-floyd.

- (h) What information was provided to the requesting agency or any other agencies that received footage or any other data from CBP-104?
- (i) If any video footage was provided, what was the duration of the footage and what was the file size of total video files transferred?
 - (ii) What other data or files were transferred to the requesting agency? What was the total file size of the transfer?
 - (iii) Did CBP edit or alter the video footage or other data in any way before transferring such footage or data to the requesting agency?
- (2) You state that CBP UAs were not flown over Detroit, Michigan or San Antonio, Texas during protests.
- (a) *The New York Times* reported on June 2nd that “At the request of the Justice Department...[AMO], which uses aircrafts and drones, was directed to provide surveillance of the protests, including demonstrations in Detroit.”³ Is this reporting inaccurate? If not, which part of the article is inaccurate?
 - (b) *Vice Motherboard* reported on June 3rd that “CPB-108 recently flew around half a dozen times above or near San Antonio, Texas”.⁴ Is this reporting inaccurate? If not, which part of the article is inaccurate?
- (3) Please provide a list of all requests for aerial support from federal, state, local, tribal, or international law enforcement agencies that involved any manned or unmanned aerial surveillance over, near, or of cities experiencing protests in the U.S. starting on May 25th.
- (a) Please provide the documentation related to these requests.
 - (b) Please include whether CBP complied with these requests.
 - (c) For requests that CBP fulfilled, please provide the amount of time CBP aircraft was flown, the amount of footage collected, agencies to which data collected by CBP aircraft was provided, and descriptions of any altering and processing of the data by CBP or about which CBP has knowledge.
- (4) Please provide a list of any CBP manned and unmanned aerial flights not included in the response to question (2) that CBP knows to have collected any video

³ Zolan Kanno-Youngs and Katie Benner, “Trump Deploys the Full Might of Federal Law Enforcement to Crush Protests,” *The New York Times*, June 2, 2020, sec. U.S., <https://www.nytimes.com/2020/06/02/us/politics/trump-law-enforcement-protests.html>.

⁴ Cox, “The Government Is Regularly Flying Predator Drones Over American Cities.”

footage or other data related to protests, whether or not requested by a federal, state, local, tribal, or international law enforcement.

(5) In your letter, you state that “the onboard camera cannot provide enough detail for an operator to identify a person.” Over seven years ago, the military developed cameras powerful enough to identify a six-inch target (i.e., a human face) from 20,000 feet away,⁵ which is the reported altitude of CBP-104’s flight over Minneapolis.⁶ Further, “CBP formed a partnership with the Department of Defense (DoD) to identify and reuse excess DoD technology,” according to CBP documents.⁷

- (a) Does the CBP currently own or operate cameras that can identify individuals from an altitude of 20,000 feet?
- (b) Has CBP developed, leased, purchased, procured, or otherwise used such cameras or is CBP currently developing, leasing, purchasing, procuring, or otherwise aiming to use such cameras?
- (c) Has CBP ever processed images or footage from aerial cameras using facial recognition, gait analysis, or other biometric identification technologies?
- (d) Is CBP aware of federal, state, local, tribal, or international law enforcement agencies that have used CBP footage to identify individuals from footage?

(6) You enclosed a PIA for Aircraft Systems of CBP, as required by federal law.⁸ The enclosed document is dated September 9, 2013. While CBP released a more recent PIA on April 6, 2018 (DHS/CBP/PIA-018(a)), it is largely limited to discussions of only small UAS (sUAS), and not other UAS.⁹

⁵ Sebastian Anthony, “DARPA Shows off 1.8-Gigapixel Surveillance Drone, Can Spot a Terrorist from 20,000 Feet,” *ExtremeTech*, January 28, 2013, https://www.extremetech.com/extreme/146909-darpa-shows-off-1-8-gigapixel-surveillance-drone-can-spot-a-terrorist-from-20000-feet?utm_source=rss&utm_medium=rss&utm_campaign=darpa-shows-off-1-8-gigapixel-surveillance-drone-can-spot-a-terrorist-from-20000-feet.

⁶ Jason Koebler, Joseph Cox, and Jordan Pearson, “Customs and Border Protection Is Flying a Predator Drone Over Minneapolis.”

⁷ “Privacy Impact Assessment Update for the Aircraft Systems DHS/CBP/PIA-018(a)” (Department of Homeland Security / Customs and Border Protection, April 6, 2018), n. 2, <https://www.dhs.gov/sites/default/files/publications/privacy-pia-cbp018a-aircraftsystems-april2018.pdf> (Internal quotation marks omitted).

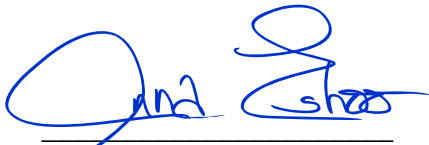
⁸ Section 208(b) of the E-Government Act of 2002 (44 U.S.C. §3501 note)

⁹ “Privacy Impact Assessment Update for the Aircraft Systems DHS/CBP/PIA-018(a).”

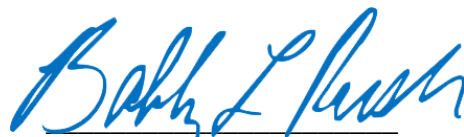
- (a) The 2013 PIA states that “As technology improves, operating environments change, and policies adapt, this PIA will be updated and amended to refresh the analysis of these changes...”¹⁰ Are surveillance technologies (equipment and software) on any CBP-operated UAS different from what was used on September 9, 2013?
- (i) If so, what are the new surveillance technologies, including but not limited to all of those discussed in this letter, that are not covered by the 2013 PIA?
 - (ii) If so, why has CBP not updated PIA documentation of these technologies?
 - (iii) If so, when will CBP update its PIA for these new technologies?
- (b) As mentioned in our questions, the 2018 PIA states that “CBP formed a partnership with the Department of Defense (DoD) to identify and reuse excess DoD technology.”¹¹ Does this partnership include any surveillance technologies (equipment and software) on any CBP-operated UAS (excluding sUAS)?
- (i) If so, what are these technologies?
 - (ii) If so, why has CBP not updated PIA documentation of these technologies?
 - (iii) If so, when will CBP update its PIA for these new technologies?

We would appreciate your prompt response to these highly important questions and requests, and we thank you in advance for your cooperation.

Most gratefully,



Anna G. Eshoo
Member of Congress



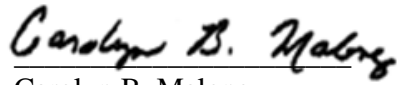
Bobby L. Rush
Member of Congress

¹⁰ “Privacy Impact Assessment for the Aircraft Systems DHS/CBP/PIA-018” (Department of Homeland Security / Customs and Border Protection, September 9, 2013), <https://www.dhs.gov/sites/default/files/publications/privacy-pia-cbp-aircraft-systems-20130926.pdf>.

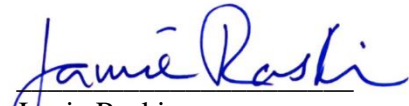
¹¹ “Privacy Impact Assessment Update for the Aircraft Systems DHS/CBP/PIA-018(a)” (Department of Homeland Security / Customs and Border Protection, April 6, 2018), n. 2, <https://www.dhs.gov/sites/default/files/publications/privacy-pia-cbp018a-aircraftsystems-april2018.pdf> (Internal quotation marks omitted).



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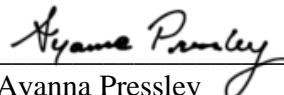
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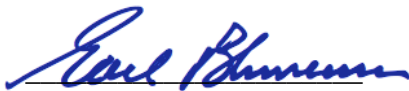
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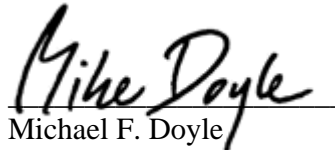
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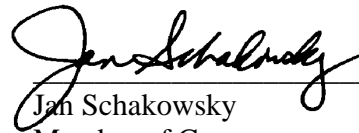
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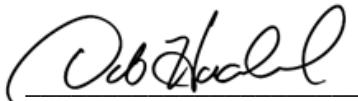
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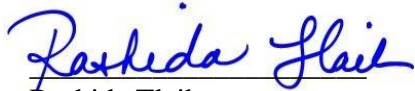
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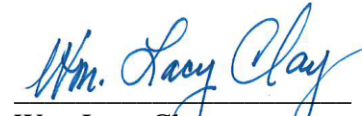


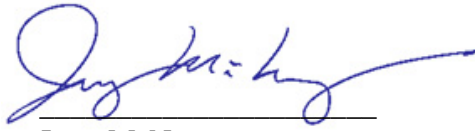
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