



May 20, 2008

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The Honorable John Boehner
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RICHARD ZACKS
TREASURER

**RE: Denying Funding for the Proposed National Applications Office
at the Department of Homeland Security**

Dear Madame Speaker and Representatives:

We write to urge that you not appropriate funds for the proposed National Applications Office (“NAO”) at the Department of Homeland Security (“DHS”). We strongly support the request from Chairman Thompson (D-MS) and Chairwoman Harman (D-CA) that Congress “abstain from authorizing or appropriating funding for the NAO.”¹ We further reiterate our recommendations provided in our testimony of September 6, 2007 before the House Committee on Homeland Security concerning “The Privacy and Civil Liberties Implications of Domestic Spy Satellites.” In that testimony, we stated:

1. Congress should demand, and DHS should impose, a moratorium on the enactment of this program. The moratorium should not be lifted unless Congress answers . . . key questions raised by the Chair and Congressman Markey.
2. The moratorium should not be lifted until Congress authorizes the program.
3. Congress should not authorize the enactment of this program before enacting statutory checks and balances to ensure the proper oversight of this potentially enormously powerful surveillance tool. Those measures should include clear rules for when domestic satellite use is permissible combined with judicial oversight of such use.²

According to DHS’ statements, DHS intends to divert U.S. military satellites for surveillance of American citizens while they are inside the U.S. for law enforcement and related purposes. The ACLU and the Committee both have serious concerns regarding the legality of the program under the Posse Comitatus Act, 18 U.S.C. §§ 1385, *et seq.*, and military regulations such as Department of Defense Directive 5525.5. Contrary to DHS’ statements to the House Committee on Homeland Security, Congress has provided clear legal parameters preventing such a diversion of a potent military assets since at least 1981. Congress has expressly allowed certain types of assistance, as exceptions to the flat prohibition erected by the Act, only in specific geographic areas or for specific types of crimes. Thus, currently, direct assistance by the military is permitted only for a limited number of crimes, and monitoring of individuals is largely limited to the

¹ Ltr. Thompson and Harman to Chairmen Reyes, Price and Holt, May 15, 2008 at 2.

² Test. of Barry Steinhardt, Dir. Technology and Liberty Project, American Civil Liberties Union, U.S. House of Rep. Comm. on Homeland Security, Hrg. Regarding The Privacy and Civil Liberties Implications of Domestic Spy Satellites, Sept. 6, 2007.

area outside the continental United States. DHS' persistent efforts to divert spy satellites ignore clear legal prohibitions. We have attached at a legal memo outlining these arguments in more detail.

Concerns about the misuse of spy satellites transcend partisan politics. Rep. Paul Broun (R-GA) stated at the September 6, 2007 hearing that:

I agree with Ms. Harman that I think you have a real Posse Comitatus problem here.

And I also know that technology is expanding tremendously, minute by minute, almost. And I have a tremendous distrust of government. And I'm not assured by you gentlemen that there are sufficient checks and balances put in place, because what I hear from you all is that the agency's going to police itself, and that there's no outside policing of the agency by some separate entity of government.

But I, for one, am not willing to give up my liberties and my constitutionally protected, God-given rights to your agency or any other. And I hope you see from all of us that there is a tremendous concern here.

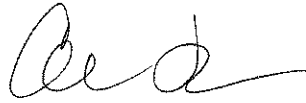
Because I don't see any outside review. I don't see any sort of effort on your part of looking beyond the agency itself.

As evidenced by the Harman and Thompson letter of May 15, 2008, DHS has, to date, failed to provide the legal review necessary to satisfy Rep. Broun's concerns.

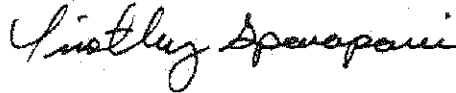
Quite apart from the legal prohibitions involved, such proposed diversion of military assets for domestic law enforcement fails a primary test: will the proposal actually prevent or deter crime. Despite repeated congressional demands, DHS has failed to identify what law enforcement benefit, if any, would flow from the use of these military assets. It has also failed to satisfy even the most rudimentary cost benefit analysis. Would not hiring hundreds or perhaps thousands more law enforcement officers or border patrol agents prove both more cost-effective and deter more crime?

We again commend Chairman Thompson and Chairwoman Harman for their continuing oversight concerning this unwise proposal and again urge a Congressional moratorium on authorizing or appropriating for the proposal.

Sincerely,



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Barry Steinhardt
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