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February 20, 2017

The Honorable John F. Kelly
Secretary of Homeland Security
Washington, D.C. 20528

Dear Secretary Kelly,

I am alarmed by recent media reports of Americans being detained by U.S. Customs and Border Protection (CBP) and pressured to give CBP agents access to their smartphone PIN numbers or otherwise provide access to locked mobile devices. These reports are deeply troubling, particularly in light of your recent comments suggesting that CBP might begin demanding social media passwords from visitors to the United States. With those passwords, CBP may then be able to login to accounts and access data that they would otherwise only be able to get from Internet companies with a warrant. Circumventing the normal protections for such private information is simply unacceptable.

There are well-established legal rules governing how law enforcement agencies may obtain data from social media companies and email providers. The process typically requires that the government obtain a search warrant or other court order, and then ask the service provider to turn over the user's data. If the request is overbroad, the company may seek to have the order narrowed. By requesting a traveler's credentials and then directly accessing their data, CBP would be short-circuiting the vital checks and balances that exist in our current system.

In addition to violating the privacy and civil liberties of travelers, these digital dragnet border search practices weaken our national and economic security. Indiscriminate digital searches distract CBP from its core mission and needlessly divert agency resources away from those who truly threaten our nation. Likewise, if businesses fear that their data can be seized when employees cross the border, they may reduce non-essential employee international travel, or deploy technical countermeasures, like "burner" laptops and mobile devices, which some firms already use when employees visit nations like China.

I intend to introduce legislation shortly that will guarantee that the Fourth Amendment is respected at the border by requiring law enforcement agencies to obtain a warrant before searching devices, and prohibiting the practice of forcing travelers to reveal their online account passwords.

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Please respond to the following questions by March 20, 2017.

1. What legal authority permits CBP to ask for or demand, as a condition of entry, that a U.S. person disclose their social media or email account password?
2. How is CBP use of a traveler's password to gain access to data stored in the cloud consistent with the Computer Fraud and Abuse Act?
3. What legal authority permits CBP to ask for or demand, as a condition of entry, that a U.S. person turn over their device PIN or password to gain access to encrypted data? How are such demands consistent with the Fifth Amendment?
4. How many times in each calendar year 2012-2016 did CBP personnel ask for or demand, as a condition of entry, that a U.S. person disclose a smartphone or computer password, or otherwise provide access to a locked smartphone or computer? How many times has this occurred since January 20, 2017?
5. How many times in each calendar year 2012, 2013, 2014, 2015, and 2016 did CBP personnel ask for or demand, as a condition of entry, that a U.S. person disclose a social media or email account password, or otherwise provide CBP personnel access to data stored in an online account? How many times has this occurred since January 20, 2017?

If you have any questions about this request, please contact Anderson Heiman with the Finance Committee Staff at (202) 224 4515.

Sincerely,



Ron Wyden
Ron Wyden
United States Senator