

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

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August 10, 2023

The Honorable Merrick B. Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Attorney General Garland:

The Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government are conducting oversight of how federal law enforcement uses geofence warrants. In particular, the Committee is examining the Federal Bureau of Investigation's purported decision to use geofence warrants as part of its investigation into the events that occurred at the U.S. Capitol on January 6, 2021, while failing to similarly use geofence warrants to investigate the violence that erupted across the country, including at federal facilities, throughout the spring and summer of 2020. We appreciate your cooperation with our oversight.

Geofence warrants—a largely new investigative tool—enable law enforcement to require a third-party provider, like Google, to turnover the location history data of any connected device(s) inside of or near the site of alleged criminal activity.¹ In other words, this tactic allows law enforcement to cast a wide net and then, after receiving the unique identifiers and location history data of the device(s) from the third-party provider, reverse engineer the information to narrow the universe of persons of interest.² According to reports, requests from law enforcement for geofenced location history data have steadily increased year over year.³

The use of geofence warrants raises serious Constitutional concerns. First, location history data is not an exact science as the geo-location data represents only a probable estimation of a device's location within a given radius and margin of error.⁴ Second, a geofence warrant is

¹ See Saraphin Dhanani, *The D.C. District Court Upholds the Government's Geofence Warrant Used to Identify Jan. 6 Rioters*, LAWFARE BLOG (Mar. 10, 2023).

² See *id.*

³ E.g. Bonnie Kristian, *Geofencing Warrants Are a Threat to Privacy*, REASON (Dec. 5, 2022).

⁴ Mot. To Suppress Evid. Flowing From The Geofence Warrant at 4. *United States v. Rhine*, No. 21-CR-687, 2023 U.S. Dist. LEXIS 12308 (D.D.C. Oct. 17, 2022) (No. 21-CR-687).

inherently tied to a specific location—not a known suspect, user, account, or crime.⁵ For that reason, among others, courts have wavered on whether searches pursuant to geofence warrants comply with the Fourth Amendment’s requirements of probable cause and particularity.⁶

In addition to the constitutional concerns associated with geofence warrants, federal law enforcement’s interest in geofenced data appears selective. For example, in 2020, Minnesota police sought a geofence warrant to investigate violent rioting in Minneapolis and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) used geofence warrants to investigate arson throughout Kenosha, Wisconsin.⁷ However, it seems that the FBI did not pursue geofenced data to investigate the violent crime occurring at federal facilities during a similar time frame. In contrast, the FBI readily used geofencing at an unprecedented scope and scale as a part of its investigation and prosecution of the events of January 6, 2021.⁸ With Google’s assistance, the government initially received responsive location history data of as many as 5,723 unique devices from the geofence warrant, meaning those devices that “were or could have been . . . within the target location . . . including the Capitol Building and the area immediately surrounding it, which covers approximately 4 acres of land.”⁹

Congress has an important interest in ensuring powerful investigative tools like geofence warrants are not weaponized for political ends or used in violation of the Constitution. The Committee and Select Subcommittee must understand the Department’s policy for pursuing geofence warrants and the extent of geofencing techniques used to investigate federal crimes. Accordingly, we ask that you please provide the following documents and information:

1. All documents and communications referring or relating to the policies or processes of the Department or its component entities regarding the use of geofencing;
2. All documents and communications referring or relating to the Department’s policies or processes regarding the submission of warrant applications that request location history data held by a third party, within a geographical region bounded by latitudinal and longitudinal coordinates, dates, and times;
3. All search warrant applications, including the accompanying affidavit, requested and created by the Department or the Federal Bureau of Investigation from January 2020 to November 2020 requesting location history data held by a third party, within a geographical region bounded by latitudinal and longitudinal coordinates, dates, and times; and

⁵ See generally Mark Harris, *A Peek Inside the FBI’s Unprecedented January 6 Geofence Dragnet*, WIRED (Nov. 28, 2022).

⁶ Compare *United States v. Chatrue*, 590 F. Supp. 3d 901 (E.D. Va. 2022) with *United States v. Rhine*, No. 21-CR-687, 2023 U.S. Dist. LEXIS 12308 (D.D.C. 2023).

⁷ Zach Whittaker, *Minneapolis police tapped Google to identify George Floyd protestors*, TECHCRUNCH (Feb. 6, 2021); Matthew Guariglia, et al., *Geofence Warrants Threaten Civil Liberties and Free Speech Rights in Kenosha and Nationwide*, ELECTRONIC FRONTIER FOUNDATION (Sep. 10, 2021).

⁸ See Harris *supra*, note 4.

⁹ Mot. To Suppress Evid. Flowing From The Geofence Warrant, *supra* note 4 at 6.

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4. All search warrant applications, including the accompanying affidavit, requested and created by the Department or the Federal Bureau of Investigation relating to the investigation of the events of January 6, 2021, that request location history data held by a third party, within a geographical region bounded by latitudinal and longitudinal coordinates, dates, and times.

Please produce all documents and information as soon as possible but no later than 5:00 p.m. on August 24, 2023.

Pursuant to the Rules of the House of Representatives, the Committee on the Judiciary has jurisdiction to conduct oversight of matters concerning “civil liberties” and “criminal law enforcement” to inform potential legislative reforms.¹⁰ In addition, H. Res. 12 authorizes the Committee’s Select Subcommittee on the Weaponization of the Federal Government to investigate “issues related to the violation of the civil liberties of citizens of the United States.”¹¹ H. Res. 12 also authorizes the Select Subcommittee to investigate “how executive branch agencies work with, obtain information from, and provide information to the private sector, non-profit entities, or other government agencies to facilitate action against American citizens.”¹²

If you have any questions about this matter, please contact Committee staff at (202) 225-6906. Thank you for your prompt attention to this matter.

Sincerely,



Jim Jordan
Chairman

cc: The Honorable Jerrold L. Nadler, Ranking Member

¹⁰ Rules of the House of Representatives R. X (2023).

¹¹ H. Res. 12 § 1(b)(1).

¹² *Id.*