

# **Exhibit S**

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**The Department of Homeland Security's Response to  
Senator Al Franken's August 24, 2017 Letter**

1. **Policy Directive 047-02 “applies to the use of CSS technology inside the United States in furtherance of criminal investigations.” According to ICE, CSS devices are used “in support of criminal investigations requiring judicial process, and not for administrative violations under the Immigration and Nationality Act.” ICE has also stated that ICE Enforcement and Removal Operations (ERO) “does not use cell-site simulators for the purpose of civil immigration enforcement.”**
  - a. **In the Department's use of CSS technology for criminal investigations, does DHS distinguish between the seriousness of criminal offenses in determining whether to deploy CSS technology? If so, how?**

Neither the Department of Homeland Security (DHS) nor its Components have specifically prioritized criminal offenses for this purpose.

U.S. Immigration and Customs Enforcement's (ICE) Homeland Security Investigations (HSI) does not have a protocol designating a specific list of priority violations. In the event of limited resources, ICE HSI prioritizes cell-site simulator (CSS) deployments based on mission needs.

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- - b. **The Department's response to Senator Wyden's May 23, 2017 letter confirmed that ERO does not use CSS devices for administrative immigration enforcement. Does any other Component within the Department use CSS technology pursuant to non-criminal investigations within the United States.**

Within DHS, ICE HSI and USSS are the predominant users of CSS devices, and CBP has made limited use of this technology. No DHS Component uses CSS technology for the purpose of civil immigration enforcement or other “non-criminal” investigations.

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2. **Policy Directive 047-02 states that “[a]ffected DHS Components may issue additional specific guidance consistent with this policy.” Please provide copies of all such additional specific guidance, if any, issued by DHS’s immigration enforcement Components.**

ICE HSI has issued internal guidance that is consistent with the October 19, 2015 DHS Policy Directive 047-02, *Department Policy Regarding the Use of Cell-Site Simulator Technology*, as well as the Department of Justice’s *Guidance on the Use of Cell-Site Simulator Technology*. CBP is in the process of developing internal operational policy governing the use of CSS technology.

3. **Policy Directive 047-02 provides that DHS Components shall implement an auditing program to ensure that data collected by CSS technology is deleted following the completion of a mission, upon location of a target, and upon the identification of a target. Are such audits performed by Components that use CSS technology for immigration enforcement? If not, why?**
- a. **If so, how frequently are such audits performed?**
- b. **If so, what have such audits revealed about DHS Components’ data collection, retention, and disposal practices?**

DHS Components do not use CSS technology for administrative immigration violations.

4. **Policy Directive 047-02 provides that “DHS is committed to ensuring that law enforcement practices concerning the collection and retention of data are lawful and respect the important privacy interests of individuals.” Furthermore, in response to Senator Wyden’s letter, ICE stated that ICE Homeland Security Investigations operates CSS devices “in accordance with rules, policies, and laws that control the collection, retention, dissemination, and disposition of records that contain personally identifiable information.”**
- a. **Aside from Policy Directive 047-02, what “rules, policies, and laws” apply to information collected through the use of CSS technology? In particular, what “rules, policies, and laws” apply to information about noncitizens obtained through the use of CSS technology?**

DHS uses CSS devices in a manner consistent with the requirements and protections of the Constitution, including the Fourth Amendment and applicable statutory authorities, including the Pen Register Statute (18 U.S.C. §§ 3121 *et seq.*). DHS Components’ CSS use is also guided by DHS Policy Directive 047-02 and Component policy.

Pursuant to Department Policy, absent exigent circumstances under the Fourth Amendment or other exceptional circumstances where the law does not require a search warrant, operators are required to obtain a search warrant supported by probable cause

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and issued pursuant to Rule 41 of the Federal Rules of Criminal Procedure (or applicable state equivalent). Nationality and/or citizenship are not considered when deploying these devices; DHS Components deploy the devices only with probable cause supporting that an individual is suspected of committing a criminal violation.

Information that ICE HSI collects from CSS devices that is relevant to an investigation is recorded in Reports of Investigations, which are stored in the appropriate investigative file and retained in accordance with the applicable federal records schedule. Information that is not relevant to an investigation is not retained. Any information that ICE collects from CSS devices pertaining to U.S. citizens or Lawful Permanent Residents (LPRs) is used and disclosed in accordance with the DHS ICE – 009 External Investigations System of Records Notice.<sup>1</sup> Finally, any information ICE obtains from CSS devices pertaining to individuals who are neither U.S. citizens nor LPRs is handled in accordance with the Fair Information Practice Principles as outlined in DHS Privacy Policy Guidance Memorandum 2017-01, *DHS Privacy Policy Regarding Collection, Use, Retention, and Dissemination of Personally Identifiable Information*.<sup>2</sup> In addition to those protections, any information ICE obtains from these devices pertaining to individuals that may have applied or been granted U Nonimmigrant Status, T Nonimmigrant status, or protections under the *Violence Against Women Act* are handled in accordance with 8 U.S.C. Section 1367.

- b. Section 14 of President Trump’s Executive Order, entitled *Enhancing Public Safety in the Interior of the United States*, seeks to remove Privacy Act protections from immigrants who are not U.S. citizens or permanent residents. What effect does Section 14 of the President’s January 25, 2017 Executive Order have on the Department’s data collection and disposal policies, including but not limited to those laid out in Policy Directive 047-20?**

Section 14 of President Trump’s Executive Order, *Enhancing Public Safety in the Interior of the United States*, will not change how DHS and, specifically, ICE collects or disposes of data obtained through CSS devices.

- 5. Policy Directive 047-02 provides that an application or supporting affidavit should inform the court that the target cell phone and other cell phones in the area of the CSS device might experience a temporary disruption of service from the service provider. In response to Senator Wyden’s letter, ICE stated that “[d]uring use of cell-site simulators, interference with non-targeted mobile devices is virtually non-existent.” ICE also stated that “[i]n all circumstances, devices are always able to dial 911 without any disruption of service.” Please describe, in detail, how DHS knows this to be the case “in all circumstances.”**

<sup>1</sup> See DHS/ICE – External Investigations System of Records Notice, (75 FR 404, Jan. 5, 2010), available at: <https://www.gpo.gov/fdsys/pkg/FR-2010-01-05/html/E9-31269.htm>.

<sup>2</sup> [https://www.dhs.gov/sites/default/files/publications/PPGM%202017-01%20Signed\\_0.pdf](https://www.dhs.gov/sites/default/files/publications/PPGM%202017-01%20Signed_0.pdf).

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- a. **Have DHS employees (rather than manufacturers or third parties) tested the CSS technology the Department uses to measure the interference caused to nearby phones? If so, please provide a copy of all testing reports or other documentation related to device and network interference caused by CSS technology.**

Neither ICE nor USSS has funded independent interference testing. Components rely on manufacturer specifications and their extensive experience with the technology in the field.

With respect to your question about disruption of service, when CSS devices are in use,

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DHS is not aware of any complaints or reports of network interference or disruption from the CSS technology used by DHS.

- 6. **Does DHS maintain a record of which components possess CSS technology; how many CSS devices each component has; the makes and models of CSS devices used by each component; and when, where, and for how long the devices are used for immigration enforcement? If so, please provide a copy of such records.**

DHS does not maintain a centralized repository of this information. Currently, ICE HSI has

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CSSs are used in support of criminal investigations, requiring judicial process, and are not utilized for administrative violations under the Immigration and Nationality Act. The makes and models of CSS equipment utilized by DHS are considered law enforcement sensitive. DHS personnel may be made available to discuss equipment specifics should a briefing be deemed necessary.

- 7. **Does DHS maintain a record of how many individuals have been located, tracked, and/or monitored by federal immigration enforcement officers using CSS technology? If so, please provide a copy of such records and state how many of the individuals located, tracked, and/or monitored by federal immigration enforcement officers using CSS technology have been arrested for a crime, convicted of a crime, and convicted of a violent crime.**

DHS does not use CSS for administrative immigration violations.

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8. Does DHS deploy CSS technology for immigration enforcement purposes along the nation's borders? If so, please provide a list of the cities and states in which DHS has deployed CSS technology for immigration enforcement purposes.

No.

9. Does DHS deploy CSS technology during interior immigration enforcement? If so, please provide a list of the cities and states in which DHS has deployed CSS technology for immigration enforcement purposes.

No.

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