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One Hundred Tenth Congress
U.S. House of Representatives
Committee on Homeland Security
Washington, DC 20515

April 7, 2008

The Honorable Michael Chertoff
Secretary
Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Chertoff:

For the past eight months, this Committee has been closely following the Department's developing plans for the National Applications Office (NAO). As the executive agent for the NAO, the Department will serve as the gatekeeper for all requests to access spy satellite imagery for domestic purposes. Beyond the traditional uses of such imagery – to track hurricane damage, monitor climate change, and create topographical maps – the NAO will field requests for new and expanded applications addressing the information needs of emergency response, border control, and State, local, and tribal law enforcement agencies across the United States. We recently learned that the Department has begun to advertise for positions at the NAO. While we applaud the Department's efforts to prepare for the future, we are disappointed by its continuing pattern of putting the cart before the horse. We accordingly are writing to reiterate our position on the future of the NAO and the privacy and civil liberties challenges it poses and to request an update on your progress.

On February 13, 2008, you briefed Members of the Committee on the current status of the NAO. At that time, you provided assurances that a NAO Charter would be forthcoming within a week. You advised, however, that the legal framework and the standard operating procedures (SOPs) for the NAO – which we had requested last September – were not complete, and that the specific guidance applicable to its State, local, and tribal law enforcement customers would not be ready before this summer. When we finally received the NAO Charter late last month, it did not include any legal framework or SOPs. Moreover, it had been finalized without any input from this Committee, or – to our knowledge – the Government Accountability Office or the privacy and civil liberties community. Instead of crafting a privacy and civil liberties solution for the Department's NAO law enforcement customers or updating us about a summer date for its completion, the NAO Charter now makes clear that this critical undertaking will be postponed until an unspecified time in the future. This is unacceptable. Inspector General Richard L. Skinner's admonition to Under Secretary Charles Allen on April 2, 2008, that additional privacy and civil liberties reviews are necessary before the NAO becomes operational only underscores our concern.

Turning America's spy satellites on the homeland for domestic law enforcement purposes is no trivial matter. Although we support any Department effort to engage in more effective and responsive information sharing with our nation's first preventers, the serious privacy and civil liberties issues that the NAO raises are manifold and multifaceted. Doing business with the NAO's law enforcement and other customers therefore requires a robust and detailed legal framework and SOPs that provide clearly defined privacy and civil liberties safeguards. Merely mentioning *Posse Comitatus* and other laws in the NAO Charter does not provide needed assurances that the Department will not transform NAO into a domestic spying platform. Furthermore, delaying the hard work of addressing the privacy and civil liberties issues specific to law enforcement customers further erodes our confidence that you are serious about serving their needs. It's frankly time for the Department to lead on privacy and civil liberties in this area – not shirk a difficult duty.

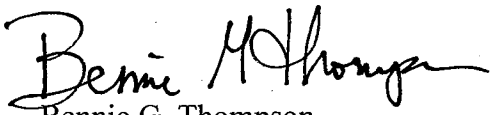
Our letter dated September 6, 2007, moreover, was clear: until the Committee receives a detailed legal framework and SOPs "and has had a full opportunity to review them, offer comments, and help shape appropriate procedures and protocols, we cannot and will not support the expanded use of satellite imagery by the NAO." We are not alone. In Section 525 of H.R. 2764, the Appropriations Committee made clear that, "none of the funds provided in this Act shall be available to commence operations of the National Applications Office . . . until the Secretary certifies that these programs comply with all existing laws, including all applicable privacy and civil liberties standards, and that certification is reviewed by the Government Accountability Office."

Bifurcating the NAO into "easy to do" domains and a "hard to do" law enforcement domain is not an option. The legal framework and SOPs should be completed as a seamless package so privacy and civil liberties are approached holistically and not haphazardly. Under Secretary Allen promised such an approach in his September 28, 2007 letter to the Committee, stating "that DHS has no intention to begin [NAO] operations until we address your questions." Key questions have not yet been answered.

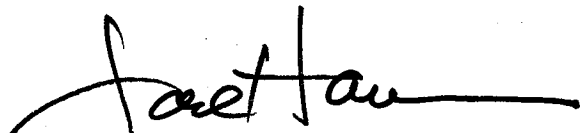
Instead of bringing on staff and touting the NAO's promise to potential customers, job number one needs to be the completion of a detailed legal framework and SOPs applicable to all NAO domains – including the law enforcement domain – without delay. Only after we have had an opportunity to review these documents and to bring the privacy and civil liberties community into the process should NAO commence hiring and other development efforts.

Please provide this Committee with a timetable describing how soon you can provide the detailed legal framework and the SOPs that we requested. Please also advise, in writing, about the current development status of the NAO; the hiring that has occurred to date; and the funding that you are using for these purposes. Please also provide assurances that you have discontinued the NAO startup until the outstanding privacy and civil liberties issues have been resolved, which we hope could occur once we have reviewed the detailed legal framework and the SOPs. Should you proceed with the NAO without addressing our concerns, we will take appropriate steps to discontinue it.

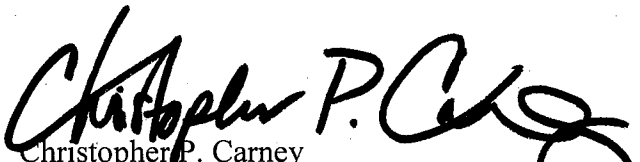
Sincerely,



Bennie G. Thompson
Chairman



Jane Harman
Chair
Subcommittee on Intelligence,
Information Sharing, and Terrorism
Risk Assessment



Christopher P. Carney
Chairman
Subcommittee on Management, Investigations,
and Oversight

cc: Charles Allen
Under Secretary
Office of Intelligence and Analysis

Peter King
Ranking Member
Committee on Homeland Security

Dave Reichert
Ranking Member
Subcommittee on Intelligence, Information
Sharing & Terrorism Risk Assessment

David E. Price
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Harold Rogers
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