

United States Senate

WASHINGTON, DC 20510

May 17, 2023

Gary R. Barksdale
Chief Postal Inspector
United States Postal Inspection Service
433 W. Harrison Street, Room 3255
Chicago, IL 60699-3255

Dear Chief Postal Inspector Barksdale:

We write to urge the United States Postal Inspection Service (USPIS) to reform its policies to require a federal judge to approve any surveillance of Americans' mail, in order to protect Americans from unchecked government monitoring that threatens both our privacy and First Amendment rights.

Each year, the United States Postal Service (USPS) surveils tens of thousands of Americans' postal communications. While most of this surveillance is conducted by USPS in support of USPIS investigations, federal, state, and local agencies also request the mail records of thousands of Americans each year. Under one type of mail surveillance, known as "mail covers," requesting agencies are provided with sender and recipient information for letters and parcels sent to or from a particular target that are delivered by USPS. USPIS coordinates these requests from law enforcement and intelligence agencies, and delivers the list of targets to USPS, which then conducts the surveillance.

USPIS' mail covers regulations only require that the agency or postal inspector requesting a mail cover submit the request in writing. No court order is required. In contrast, government agencies may only monitor Americans' metadata associated with electronic communications, such as email or instant messaging, with a court order. The reason for this significant difference in privacy protections is that surveillance of electronic communications is strictly regulated by federal privacy laws enacted by Congress, while postal surveillance operates according to USPIS' own rules with no supervision by the courts. However, USPIS is neither required by law to conduct mail cover monitoring for other agencies, nor to keep it secret from the targets. USPIS is choosing to provide this surveillance service and to keep postal customers in the dark about the fact they have been subjected to monitoring.

While mail covers do not reveal the contents of correspondence, they can reveal deeply personal information about Americans' political leanings, religious beliefs, or causes they support. Consequently, surveillance of this information does not just threaten Americans' privacy, but their First Amendment rights to freely associate with political or religious organizations or peacefully assemble without the government watching.

The risk of abuse of mail covers is not theoretical. There is a long history of documented abuses of postal surveillance. The Senate Select Committee to Study Governmental Operations with

Respect to Intelligence Activities, chaired by Senator Frank Church, revealed in 1976, that the Central Intelligence Agency (CIA) had photographed the exteriors of over two million pieces of mail and opened hundreds of thousands of letters from prominent activists and authors. This program was one of several mail cover abuses exposed by the Church Committee, and that the Federal Bureau of Investigation and CIA began conducting illegal surveillance of the mail in the 1940s. The Church Committee ultimately recommended that the mail covers program be reformed so that only the Attorney General be able to authorize requests for mail covers, but this reform was never implemented.

While the Church Committee's report was the first time such widespread postal surveillance had been revealed, concerns about postal surveillance date back to the very beginning of our nation. The Founding Fathers were worried about surveillance of their communication, with Thomas Jefferson fearing the "infidelities of the post office" precluded him from writing freely. Jefferson and James Madison went to extreme lengths, using encryption technology that Jefferson himself designed, to protect their letters, which included an early proposal for the Bill of Rights. While encryption technology has come a long way since then, and is now built into widely used mobile messaging apps, postal communications remain just as vulnerable to warrantless surveillance as they were in the 1700s.

Fifty years after the Church Committee's discovery of widespread abuses, USPS continues to conduct warrantless surveillance of tens of thousands of Americans each year with little oversight. A 2014 audit of the mail covers program by the USPS Office of Inspector General (OIG) revealed postal inspectors requested more than 100,000 mail covers, and external law enforcement agencies requested more than 35,000 mail covers between 2010-2014. According to the OIG report, the top agencies requesting mail covers were the Internal Revenue Service, the Federal Bureau of Investigation, the Drug Enforcement Administration and the Department of Homeland Security. The government has not published statistical data on mail covers since that 2014 OIG report, and no data has been published revealing how often the government opens and inspects mail, a practice the Supreme Court held in 1877 requires a warrant unless USPS is searching for contraband.

USPIS must reform its regulations for mail covers to protect Americans' privacy. USPS and USPIS should, except in emergencies, only conduct mail covers when a federal judge has approved this surveillance—a policy that USPIS already has in place for searches of the contents of mail — and it should also notify the targets of surveillance after the fact, unless a judge requires that such notice be delayed. Finally, to enable transparency and oversight, USPIS should begin publishing annual statistics on the mail covers program. To that end, we request that you provide us with a plan of action, no later than June 16, 2023, detailing the steps you will take to reform the regulations for mail covers to protect Americans' privacy and liberty. We also request that you provide us with answers to the following questions:

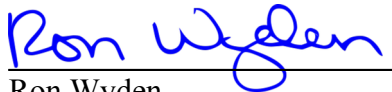
1. In its May 28, 2014 and September 15, 2015 audits of the mail covers program, the OIG recommended that USPIS implement new policies, procedures and a system of controls to ensure responsible personnel process mail covers in a timely manner and to ensure data

integrity in the mail covers application. Please provide us with a copy of all documentation that USPIS submitted to the OIG, outlining how it implemented the recommendations.

2. In its formal response to the September 15, 2015 follow-up OIG audit of the mail covers program, USPIS indicated that if Congress requested statistics on the mail covers program, it would provide them. Please provide us with statistics for mail covers of mail requested by postal inspectors and by other government agencies, as well as statistics of mail covers approved, broken out by the requesting agency, for each of the years between 2014 and 2021.
3. Please also provide us with annual statistics relating to the amount of mail opening, or opening or inspecting the contents of sealed mail, that is conducted by USPIS and USPS. Specifically, please provide us with the number of mail openings requested by postal inspectors and by other government agencies, broken out by the requesting agency, for each of the years between 2014 and 2021.
4. In the wake of the Supreme Court's decision in *Carpenter v. United States*, holding that Americans can have a reasonable expectation of privacy in some information that is revealed to third parties, the mail covers program raises serious constitutional questions. Has USPIS evaluated its mail cover regulations, and its surveillance practices generally, after the *Carpenter* decision?

Thank you for your attention to this important matter.

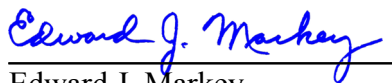
Sincerely,



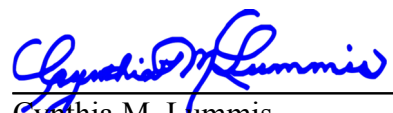
Ron Wyden
United States Senator



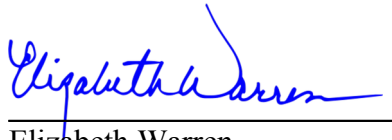
Rand Paul
United States Senator



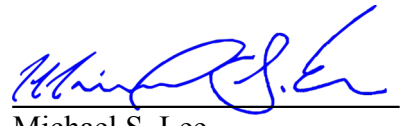
Edward J. Markey
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Cynthia M. Lummis
United States Senator



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Steve Daines
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