



Written by [C. Mitchell Shaw](#) on October 28, 2020

## Senators Call for Investigation of CBP for Illegally Tracking Americans

In an incestuous relationship between Big Data and Big Brother, Customs and Border Protection (CBP) agents conduct warrantless tracking of people inside the U.S. by using commercially available location data from cell phones from subscriptions with data broker Venntel, a government contractor based in Virginia. And according to five senators, CBP has refused to answer congressional requests for the legal justifications for its actions.



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In a [letter](#) sent to Homeland Security Department Inspector General Joseph Cuffari, five senators demanded answers, writing, “CBP outrageously asserted that its legal analysis is privileged and therefore does not have to be shared with Congress.” The letter goes on to say, “We disagree.”

Surveillance Hawks are consistent in two regards: Too much data is never enough, and laws are for other people. This writer has long agreed with privacy advocates and experts that the type of data-mining and data-analysis used by both private corporations and three-letter agencies is a threat to liberty. [Big Data knows you better than you know yourself](#) and the Surveillance State circumvents laws about spying on U.S. citizens by purchasing the data from data-brokers. The end result is a loss of privacy, a growing Surveillance State (without which a Police State is impossible), and eventually, a loss of liberty.

In the digital age, there is no line of demarcation between digital privacy and any other privacy, between digital liberty and any other liberty. After all, if you have no choice about the data that is collected on you and who has access to it — including your phone calls, texts, e-mails, browsing history, calendar, and more — can you really be said to be free?

Many Americans feel that as long as they have nothing to hide, they have nothing to fear from the Surveillance State. But that misses the point. [Privacy is not about what you have to hide, it is about what you have that is worth protecting.](#) One thing that is certainly worth protecting is the rule of law under the Constitution.

The lengths to which CBP has gone — and the depths to which it has stooped to do so — to spy on American citizens illustrate this point. The letter sent to Inspector General Joseph Cuffari and signed by senators Elizabeth Warren (D-Mass.), Ron Wyden (D-Ore.), Sherrod Brown (D-Ohio), and Brian Schatz (D-Hawaii), begins, “We write to ask you to investigate warrantless domestic surveillance of phones by



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Customs and Border Protection (CBP).” It goes on to cite *Carpenter v. United States*, a Supreme Court case in which the court ruled that “the collection of significant quantities of historical location data from Americans’ cell phones is a search under the Fourth Amendment and therefore requires a warrant.”

The letter goes on to say that “CBP officials have confirmed to Senate staff that the agency is using Venntel’s location database to search for information collected from phones in the United States without any kind of court order.” Furthermore, “The agency refused a follow-up request for information about the legal analysis it conducted, and refused to reveal whether or not it has taken the position that the Supreme Court’s *Carpenter* decision does not apply to location data purchased by the government.” The letter also makes the valid and salient point that “CBP is not above the law and it should not be able to buy its way around the Fourth Amendment.”

Nextgov [reported](#):

Mana Azarmi, policy counsel at the Center for Democracy and Technology, told *Nextgov* the Supreme Court case referenced in the letter, *Carpenter v. United States*, upheld in clear terms the sensitivity of this kind of data and why it demands strong protection before the government can access it.

“If government agencies like CBP can evade the warrant requirements imposed by *Carpenter* simply by purchasing the data, we render that ruling a nullity, and then we lack sufficient checks to protect our privacy,” Azarmi said.

Azarmi suggested CBP’s use of the Venntel database may also be an example of mission creep, where CBP deploys surveillance technology for use along the border but then applies the technology to a broader range of cases. This latest instance of CBP admitting it uses location data to track people within the U.S. is similar to the agency’s [use of drones to surveil protests this summer](#), she added.

Nextgov also reported, “In a statement shared with *Nextgov*, CBP repeated the assertion it may obtain access to commercially available information, adding this data is anonymized.” However, “[Even when anonymized, geographic data can contain enough](#) detail to re-identify individual users.”

Perhaps the saddest part of all of this — even sadder than the illegal surveillance by the recalcitrant CBP — is that the letter calling CBP to task and requesting an investigation was signed by five Democrat senators and zero Republicans. Surveillance is not — *should not be* — a partisan issue. It is not a matter of Left vs. Right; it is a matter of Liberty vs. Tyranny. Concerned Americans should stand for privacy as an indispensable part of liberty. And Democrats should not be leading the charge while Republicans sit idly by.



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