United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510–6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
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October 8, 2015

Via Electronic Transmission

The Honorable Sally Q. Yates
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Dear Deputy Attorney General Yates:

On July 8, the Senate Judiciary Committee held a hearing entitled "Going Dark: Encryption, Technology, and the Balance between Public Safety and Privacy." At that hearing, you testified that widespread inviolable encryption was a "growing threat to public safety" and that "we must find a solution to this pressing problem, and we need to find it soon." Senators expressed similar concerns about the problem and pressed you about potential solutions. At several points, you stated that you intended to pursue a collaborative and cooperative approach with technology providers in the hopes of addressing the problem and avoiding a "one-size-fits-all legislative solution" that you would "essentially cram down the throats of the technology industry." Nevertheless, you repeatedly stated that you did not "rul[e] out a legislative solution if that's ultimately what's necessary" and that while you were "not suggesting a legislative solution today," such a solution "may ultimately be necessary."

Since the hearing, however, two articles have appeared in the *Washington Post* that question the Administration's commitment to a potential legislative solution – or to pursuing any solution at all. On September 16, the *Washington Post* reported that the Administration had "backed away from seeking a legislative fix to deal with the rise of encryption on communications, and they are even weighing whether to publicly reject a law requiring firms to be able to unlock their customer's smartphones or apps under court order."[1] And on September 24, the *Post* also reported that, shortly after the hearing, the Administration tasked a working group with analyzing possible technical approaches to address the problem.[2] That working group identified four "technically feasible" solutions that, according to its own assessment, might benefit from "substantial revision and refinement." Nevertheless, the *Post* reported that "senior officials do not intend to advance the solutions as 'administration proposals' – or even want them shared outside the government" because "they fear blowback" from technology providers. In fact, the spokesman for the National Security Council had expressly declared "these proposals are not being pursued."

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[1] Ellen Nakashima and Andrea Peterson, "Obama Faces Growing Momentum to Support Widespread Encryption," The Washington Post, Sept. 16, 2015.
[2] Ellen Nakashima and Andrea Peterson, "Obama Administration Quietly Explored Ways to Bypass Smartphone Encryption," The Washington Post, Sept. 24, 2015.

I believe that the Administration should use every lawful tool at its disposal and vigorously investigate each and every potential solution to this serious problem, as your testimony before the Committee implied it would. And as you will recall, members of the Committee offered their support and assistance in your ongoing efforts with technology providers, and asked to be advised of the status of those discussions. Moreover, countries like Great Britain and France are much further along in their national dialogues on how best to balance privacy and public safety with regard to encryption, and are currently contemplating specific legislative proposals to address the threat posed by widespread inviolable encryption.

I respectfully request that the Department provide my staff (1) a briefing on the status of your discussions with technology providers, (2) a briefing on the specific "investigation involving guns and drugs" that the *New York Times* reported was thwarted by encryption, as previously requested in my letter of September 10,[3] and (3) responses to my questions for the record that followed the hearing, which were due to the Committee on July 30.

Sincerely,

Chuck Grassley

Charles E. Grassley
Chairman
Senate Committee on the Judiciary

[3] Matt Apuzzo, David E. Sanger and Michael S. Schmidt, "Apple and Other Tech Companies Tangle With U.S. Over Data Access," The New York Times, Sept. 7, 2015.