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February 28, 2019

The Honorable Kirstjen M. Nielsen  
Secretary  
U.S. Department of Homeland Security  
Washington, D.C. 20528

Dear Secretary Nielsen:

I write to seek information about the steps taken by the U.S. Government to assess whether our election infrastructure was hacked in 2018. If the Trump Administration has not forensically analyzed voting machines across the United States, to suggest there exists “no evidence” of foreign hacking would be the height of irresponsibility and duplicity.

First, I would like to remind you of our exchange last year. On November 6, 2018, I wrote to you urging the Department of Homeland Security (DHS) to “forensically examine paperless voting machines used in the November 6, 2018, general election for signs of tampering or other manipulation by foreign governments or other malicious actors.” On December 18, 2018, DHS responded, stating that “[u]nder our existing authorities, DHS cannot mandate that states submit to comprehensive forensic examinations of their voting machines.”

Regardless of what you feel you can or cannot “mandate,” your failure to direct federal cybersecurity experts to systematically examine voting machines raises serious questions about recent public statements and testimony by senior government officials. For example, the Director of National Intelligence’s January 29, 2019, Statement for the Record for the Senate Intelligence Committee’s Worldwide Threat hearing stated “we do not have any intelligence reporting to indicate any compromise of our nation’s election infrastructure that would have prevented voting, changed vote counts, or disrupted the ability to tally votes.” Likewise, on February 5, 2019, the Department of Justice (DOJ) and DHS issued a public statement concluding that there is “no evidence to date that any identified activities of a foreign government or foreign agent had a material impact on the integrity or security of election infrastructure or political/campaign infrastructure used in the 2018 midterm election.”

The strength of these statements is obviously dependent on the government’s ability to look for, collect, and examine evidence of hacking. As DHS, according to you, lacks the authority to examine voting machines, and you certainly lack the impetus to, carry out this important function, it would seem that there is a significant gap in the intelligence community, DOJ and DHS’ ability to evaluate the scope of foreign interference in U.S. elections. Put simply: on what basis can the Administration make its claims regarding lack of evidence of foreign interference if it has not looked for it?

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Public faith in our democratic system is important. That does not give the government license to sugarcoat the truth and deceptively avoid addressing key gaps and limitations. To that end, please provide me by March 21, 2019, unclassified answers to the following questions:

1. How did DHS and DOJ assess the likelihood that our election infrastructure was hacked without examining the voting machines for evidence of hacking?
2. How many voting machines used in the November 2018 election were running software with publicly known, exploitable security vulnerabilities?
3. What level of confidence does DHS have that no “foreign government or foreign agent had a material impact on the integrity or security of election infrastructure or political/campaign infrastructure used in the 2018 midterm election”? How does DHS define “material” in this context?
4. In response to my questions following the Intelligence Committee’s June 21, 2017 hearing, DHS acknowledged that it had high confidence that it would detect cyber manipulation “intended to change the outcome of a national election,” but that the Department had “not made an assessment of state-wide or local elections.” DOJ and DHS recently issued a joint statement concluding that there is “no evidence to date that any identified activities of a foreign government or foreign agent had a material impact on the integrity or security of election infrastructure or political/campaign infrastructure used in the 2018 midterm election.” Does this conclusion apply to statewide and local elections too? If yes, what changes have been made since 2016 to enable DHS to arrive at conclusions regarding state and local elections?

If you have any questions regarding this request, please contact Chris Soghoian in my office.

Sincerely,



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Ron Wyden  
United States Senator