

FOR IMMEDIATE RELEASE:

Contact: James Hallinan

February 21, 2018

(505) 660-2216

AG Balderas & Bipartisan Coalition of Attorneys General Urge Congress to Pass the CLOUD Act

Balderas: "It's absurd and contrary to the rule of law that global corporations would seek to shield evidence of horrific crimes like child exploitation and murder committed in the United States on foreign servers"

Albuquerque, NM - In a bipartisan letter signed by Attorney General Hector Balderas and the attorneys general of 35 other states, the National Association of Attorneys General today urged Congress to pass the Clarify Lawful Overseas Use of Data ("CLOUD") Act. The CLOUD Act would update and amend several provisions of the Stored Communications Act ("SCA").

"It's absurd and contrary to the rule of law that global corporations would seek to shield evidence of horrific crimes like child exploitation and murder committed in the United States on foreign servers," said Attorney General Hector Balderas. "Our bipartisan coalition is calling on Congress to act so that we may pursue justice for countless innocent victims in New Mexico and across the United States."

Under the SCA, a law enforcement agency may obtain a warrant to search an individual's email or other online account if a reviewing court finds probable cause that the account contains evidence of a crime. Once issued, an SCA warrant is served on a service provider who must then collect the requested data and provide it to law enforcement. State and local law enforcement agencies routinely use SCA warrants to investigate all manner of local crime, from drug trafficking to murder to child sexual exploitation.

Recently, however, some service providers have argued that an SCA warrant cannot be enforced when the data being sought is stored on a foreign server, even if the provider and the customer who created the data are in the United States and that data can be accessed from the United States. The providers and others have argued that requiring compliance with an SCA warrant in this situation would be an extraterritorial application of a domestic law and would raise significant privacy and international comity concerns. This dispute has spawned litigation across the country, including the case of United States v. Microsoft, which is currently pending in the United States Supreme Court. Attorney General Balderas previously joined an amicus brief in that case on behalf of 35 states and the Commonwealth of Puerto Rico.

Today's letter urges Congress to pass the CLOUD Act as "an important step toward resolving this dispute." The CLOUD Act "both confirms law enforcement's ability to obtain probable-cause based warrants for electronic communications stored abroad and creates a clear avenue for service providers to challenge an SCA warrant that targets a foreign person and which would require a provider to violate foreign law. The Act also creates incentives for our foreign partners to enter into bilateral agreements that will facilitate cross-border criminal investigations, while ensuring that privacy and civil liberties are respected."

Today's letter was also joined by the attorneys general of Alabama, Alaska, Colorado, Delaware, Florida, Hawaii, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming.

Please see attached for a copy of today's letter.

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February 21, 2018

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Derek Schmidt
Kansas Attorney General

PRESIDENT-ELECT
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H-232, The Capitol
Washington, DC 20515

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317 Russel Bldg
Washington, DC 20510

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H-107, The Capitol
Washington, DC 20515

Hon. John Cornyn
Majority Whip
517 Hart Bldg.
Washington, DC 20510

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Committee
135 Hart Bldg.
Washington, D.C. 20510

Hon. Bob Goodlatte
Chairman, House Judiciary
Committee
2309 Rayburn Bldg.
Washington, DC 20515

Hon. Nancy Pelosi
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H-204, The Capitol
Washington, DC 20515

Hon. Charles Schumer
Minority Leader
322 Hart Bldg.
Washington, DC 20510

Hon. Steny Hoyer
Minority Whip
1705 Longworth Bldg.
Washington, DC 20515

Hon. Richard J. Durbin
Minority Whip
711 Hart Bldg.
Washington, DC 20510

Hon. Diane Feinsten
Ranking Member, Senate Judiciary
Committee
331 Hart Bldg.
Washington, DC 20510

Hon. Jerry Nadler
Ranking Member, House Judiciary
Committee
1209 Raburn Bldg.
Washington, DC 20515

Dear Congressional Leaders,

As state attorneys general, we write to express our support for the Clarifying Lawful Overseas Use of Data Act (“the CLOUD Act”), a bipartisan proposal to update and amend several provisions of the Stored Communications Act (“SCA”).

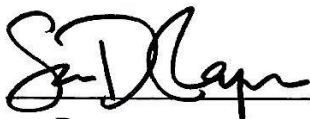
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1850 M Street, NW
Twelfth Floor
Washington, DC 20036
Phone: (202) 326-6000
<http://www.naag.org/>

agencies routinely use SCA warrants to investigate all manner of local crime, from drug trafficking to murder to child sexual exploitation. Recently, however, some service providers have argued that an SCA warrant cannot be enforced when the data being sought is stored on a foreign server, even if the provider and the customer who created the data are in the United States and that data can be accessed from the United States. The providers and others have argued that requiring compliance with an SCA warrant in this situation would be an extraterritorial application of a domestic law and would raise significant privacy and international comity concerns. This dispute has spawned litigation across the country and impeded numerous law enforcement investigations.

We believe the CLOUD Act—as introduced by Senators Hatch, Coons, Graham, and Whitehouse—is an important step toward resolving this dispute. The Act both confirms law enforcement’s ability to obtain probable-cause based warrants for electronic communications stored abroad and creates a clear avenue for service providers to challenge an SCA warrant that targets a foreign person and which would require a provider to violate foreign law. The Act also creates incentives for our foreign partners to enter into bilateral agreements that will facilitate cross-border criminal investigations, while ensuring that privacy and civil liberties are respected. We believe these specific amendments to the SCA are a reasonable solution to the acute problems that have arisen with respect to the collection of foreign-stored data. We understand that this Congress is also currently considering other changes to the Electronic Communications Privacy Act (“ECPA”) and other legislation concerning government access to third party communications. Those proposals raise significant issues and should be carefully considered on their own merits. We believe passage of the CLOUD Act should remain independent of other efforts to amend ECPA. We urge you to join us in supporting the CLOUD Act.

Sincerely,



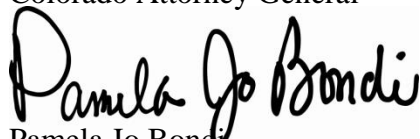
Sean Reyes
Utah Attorney General



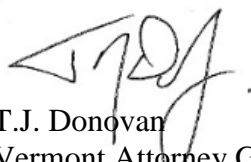
Steve Marshall
Alabama Attorney General



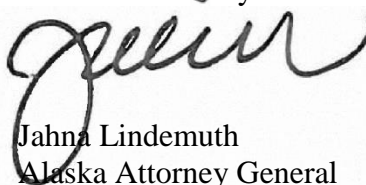
Cynthia H. Coffman
Colorado Attorney General



Pamela Jo Bondi
Florida Attorney General



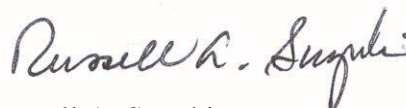
T.J. Donovan
Vermont Attorney General



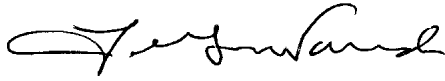
Jahna Lindemuth
Alaska Attorney General



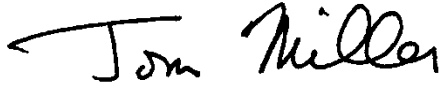
Matthew P. Denn
Delaware Attorney General



Russell A. Suzuki
Hawaii Acting Attorney General



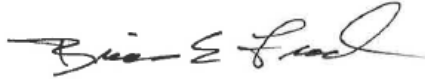
Lawrence Wasden
Idaho Attorney General



Tom Miller
Iowa Attorney General



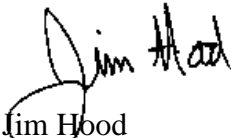
Jeff Landry
Louisiana Attorney General



Brian Frosh
Maryland Attorney General



Bill Schuette
Michigan Attorney General



Jim Hood
Mississippi Attorney General



Adam Paul Laxalt
Nevada Attorney General



Hector Balderas
New Mexico Attorney General



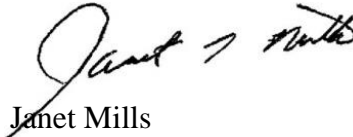
Josh Stein
North Carolina Attorney General



Curtis T. Hill Jr.
Indiana Attorney General



Andy Beshear
Kentucky Attorney General



Janet Mills
Maine Attorney General



Maura Healey
Massachusetts Attorney General



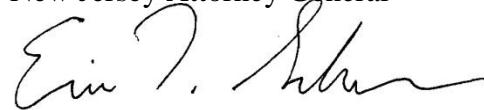
Lori Swanson
Minnesota Attorney General



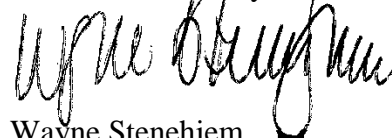
Douglas Peterson
Nebraska Attorney General



Gurbir S. Grewal
New Jersey Attorney General



Eric T. Schneiderman
New York Attorney General



Wayne Stenehjem
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Mike Hunter
Oklahoma Attorney General

Josh Shapiro
Pennsylvania Attorney General

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Brad Schimel
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Peter F. Kilmartin
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Marty J. Jackley
South Dakota Attorney General

Robert W. Ferguson
Washington Attorney General

Peter K. Michael
Wyoming Attorney General