

**Prepared Statement of Senator Chuck Grassley of Iowa
Chairman, Senate Judiciary Committee
Hearing on Oversight of the Federal Bureau of Investigation
Wednesday, December 9, 2015**

Director Comey, welcome and thank you for being here today. The FBI's mission is to protect us from the most dangerous threats facing our nation. The deadly attacks in Paris last month, and in California last week, confirmed that radical Islamic terrorism continues to be such a threat, regardless of whether that's politically correct or convenient for President Obama.

ISIS is a determined enemy executing a plan to gain and hold territory, enrich itself, inspire followers worldwide, and launch deadly attacks against the West. And the American people are worried. Not just about terrorism. But about the President's inability or unwillingness to rally the country, lead our international partners, develop a credible strategy to destroy ISIS, and execute it. We are now paying the price for that weakness.

At almost every turn, events have proven the President wrong about ISIS. In August 2012, he drew a "red line," warning the Assad's regime not to use chemical weapons in Syria. But the President backed down after Assad gassed his own people, and ISIS blossomed in the chaos that followed. In January 2014, the President referred to ISIS as the "j.v.," or junior varsity. It promptly spent the next six months conquering territory across Syria and Iraq. In August of that same year, the President conceded that he didn't have a strategy to defeat ISIS. A year and a half later, he remains without a coherent one. Even former Secretary Clinton admitted the other day that we're not winning this fight.

The President has been hoping that ISIS will go away, because its existence doesn't fit his preferred political narrative. But hope is not a strategy. Hope is not a plan. Hope is not action.

And all the while, the drumbeat of attacks in the United States continued. In May, there was the attack on a convention center in Garland, Texas. In June, police were forced to shoot a knife-wielding ISIS supporter on the streets of Boston. In July, we had the attack on military facilities in Chattanooga, Tennessee.

Director Comey, as of October you reported that the FBI was engaged in approximately 900 active domestic investigations against suspected ISIS-inspired operatives and other radicalized extremists. And you estimated that approximately 250 Americans have left the U.S. and traveled to Syria to fight with ISIS, or tried to do so.

Nonetheless, in November, the President assured us that ISIS was "contained." But the very next day, it inflicted the deadliest Islamic terrorist attacks in Europe in over a decade, a coordinated assault across Paris that killed 130 and injured over 350. A few weeks later, in San Bernardino, two of its apparent supporters executed the deadliest such attacks on the homeland since September 11, 2001.

Unfortunately, President Obama has responded to this crisis by trying to divide us, deride us, and distract us. He is doubling down on his failed strategy.

After reports suggested that one of the Paris terrorists possessed a Syrian passport and had entered Europe as a refugee, many expressed concern about the procedures used to screen refugees coming to the United States from Syria. Director Comey, you expressed similar concerns in October. You warned that there are “gaps” in the information we have to vet people coming out of a war zone. And you warned that letting anyone come to the United States carries some risk. We can point to the brothers who bombed the Boston Marathon as an example of terrorists who were granted asylum here.

The President responded to the concerns expressed by many Americans by mocking them for being afraid of “widows and orphans.”

But events continued to prove the President spectacularly wrong. As it turns out, women are radical Islamic terrorists, too, apparently to the President’s surprise. We now know that Ms. Malik, one of the San Bernardino attackers, arrived in the United States on a fiancée visa. This is yet another example of the failure of the screening process for those entering the United States. Our government apparently didn’t catch the false address in Pakistan she listed on her application or other possible signs that she was radicalized or an operative.

To top it all off, earlier this week we learned that the National Counterterrorism Center has identified individuals with ties to terrorists in Syria who are attempting to enter the United States through the refugee program. I guess that was one intelligence report the administration couldn’t shade to fit its preferred conclusions.

Now, it always bears repeating that *Islam is not our enemy*. Radical Islamic terrorists are. The vast majority of Muslims in this country and around the world are non-violent and law-abiding. We all should oppose, in no uncertain terms, any violence or intimidation against Muslims for their practicing their religion. But I fear that one of the reasons for the regrettable backlash against Muslims in this country is the public’s frustration with the President’s repeated public failure to acknowledge the actual nature of the threat that we face, his reluctance to utter the words radical Islamic terrorism.

President Obama has also continued to divide us, deride us, and distract us with the issue of gun control. To the President, radical Islamic terrorism is never to blame. But the constitutional right to own a gun always is.

But terrorists aren’t deterred by gun control. Strict European gun control laws did not stop the Paris attacks. California’s assault weapons ban didn’t stop the San Bernardino massacre.

Now, the Obama administration argues that allowing foreigners to buy guns who enter the United States through the visa waiver program is a problem. I agree. But at the same time, the administration’s apparently fine with allowing refugees, asylees, people on deferred action, and other non-citizens who are not legal permanent residents to buy guns. This makes no sense. With few exceptions, we need to prevent all of these people from buying guns.

The administration's current fixation with guns and the visa waiver program can be explained, though, because it's another area where the administration's actions have made Americans less safe. In fact, an opinion from the Obama Justice Department required the Bureau of Alcohol, Tobacco, Firearms and Explosives to change its policy to permit persons arriving from visa waiver countries to buy guns. And the administration removed the longstanding requirement that non-citizens at least establish residency for 90 days in the state where they want to purchase a gun. These 90 days could be crucial in a terrorism investigation.

So when we address the issue of foreigners in the United States buying guns, we need to be comprehensive about it, not just clean up the mess this administration created.

Finally, the Democrats have attempted to divide us, deride us, and distract us with proposals to deny the right to purchase firearms to those on various terrorist watch lists, including the No Fly List.

The San Bernardino terrorists were apparently not on any terrorist watch list, so such a proposal wouldn't have stopped that attack. In addition, the President's claim that "people we don't allow to fly could go into a store right now in the United States and buy a firearm and there's nothing we can do to stop them" just isn't true. The FBI is notified when someone on the No Fly List attempts to purchase a gun, and can take steps to ensure that a gun doesn't fall into the wrong hands. So the President and others have been misleading the American people on that matter.

But the more fundamental point is this: while these lists are useful in keeping us safe, they are the result of the executive branch's unilateral decisions to put people on them without any notice or opportunity to be heard. As a result, they can be unreliable. And it just isn't constitutional to condition the fundamental right to keep and bear arms on an administrative list that lacks that kind of due process.

We wouldn't consider conditioning any other constitutional right – such as the freedoms of speech or religion, or from unreasonable searches and seizures – on such a process. That is why it is so surprising that this President, a former constitutional law professor, and so many Democrats, would support such a scheme.

The fact is, law enforcement hasn't raised gun purchases by people on terrorist watch lists as a huge problem. And Director Comey, I know that you know how to tell us when you confront a serious obstacle to keeping us safe. At our hearing in July, we all heard you talk about the "Going Dark" problem and the increasing use of encrypted communications by terrorists. After these most recent attacks, I'll be interested in hearing how your discussions with technology companies on that issue are proceeding.

I also look forward to discussing a range of other issues with you today. One is the FBI's treatment of whistleblowers. You've expressed a strong commitment to whistleblowers. During your confirmation hearing, you said that whistleblowers were "a critical element of a functioning democracy."

Our hearing in March this year showed that many FBI whistleblowers still have no protection, and the ones who are protected wait many years for relief. I hope that I have your support in strengthening the FBI whistleblower law.

In addition, in March 2015, the American people learned that Secretary Clinton used a private email address and non-government server during her time at the Department of State. Secretary Clinton unilaterally deleted approximately 30,000 emails without any government oversight. Her email and server arrangement is an example of Freedom of Information Act interference, a statute that is within this committee's jurisdiction. Concerns about the email arrangement extend beyond FOIA and involve national security.

And a former Department of State employee, Bryan Pagliano, has refused to communicate with this committee citing his Fifth Amendment right against self-incrimination.

Both the Department of Justice and FBI have refused to confirm or deny any investigation relating to Secretary Clinton's email arrangement citing "long standing policy." Yet, on a number of occasions, the department has publicly announced that it launched an investigation. The American people ought to know what their government is doing. I will have questions for you on this matter.

On another matter, in April, the Wall Street Journal reported that in 2012 the FBI helped facilitate a \$250,000 ransom payment to al Qaeda from the family of kidnapped aid worker Warren Weinstein.

I wrote to the Department of Justice in May to ask if this was true. I also asked if the FBI had facilitated any other ransom payments to terrorist organizations. And I asked for more information about the FBI's policies and procedures relating to facilitating ransom payments to terrorist groups. I got a response letter five months later. That response did not really answer my questions.

Ransom payments are a significant source of terrorist financing. The FBI says its policy is quote "to deny hostage-takers the benefits of ransom" end quote. But the FBI also seems to say it may assist in private efforts to pay ransoms. So, it is not clear what is actually happening. It is not clear whether FBI has helped ransom payments get to terrorist groups.

In June, the Obama administration announced a new hostage recovery policy. It put the FBI in charge of an interagency Hostage Recovery Fusion Cell. Once again, it is unclear if the new hostage policy allows the FBI to facilitate ransom payments to terrorists. Some media outlets say that the new policy makes it easier to make these payments.

So, I'd like to get some specific answers about what the FBI does or does not do when it comes to ransom payments to terrorists. If it has helped with these payments, I'd like to know which terrorist groups received them and how much money they got.

Another issue I'll raise is the FBI's use of spyware. Six months ago, I wrote to the FBI to ask about its use of spyware. I still haven't received a response. According to press reports,

spyware is a type of software that can be remotely deployed to targeted computers and smart phones. Spyware can secretly activate the computer's camera and microphone; collect passwords; search the computer's memory; and intercept phone calls, text messages, and other communications. Spyware is a powerful surveillance tool. It has also been mentioned as a possible way to combat the "Going Dark" problem posed by encryption.

Tools like this need to be subject to oversight to make sure they are not abused. But the committee still does not know how the FBI is using these programs. We have asked. The FBI hasn't answered.

We don't know the types of spyware used or their capabilities. We don't know the FBI's policies and procedures for using spyware, or the legal processes used. And we don't know if there are any audit procedures in place to ensure spyware is used properly.

The Department of Justice is in the process of trying to change Rule 41 of the Rules of Criminal Procedure. The proposed change would make it easier for the FBI to get warrants to use spyware. Congress will eventually weigh in on the change. But we need to know more about spyware in order to make an informed decision.

So, I hope that I can get answers about the FBI's use of spyware. It is important for our oversight role, and it is important for the proposed change to Rule 41.

Finally, as you know, the FBI is conducting a review of federal and state criminal cases in which results of microscopic hair comparison analyses conducted in FBI Labs were used. The FBI has identified over 21,600 cases assigned to hair examiners prior to the year 2000. Cases since 2000 have had DNA analysis and so were not subject to the same potential problems that have led to the review.

Of those 21,600 cases, the FBI determined many of them did not have a microscopic hair analysis report sent to the requesting agency or there was not a conviction in the case. This left 3,118 cases where faulty lab work may have led to a criminal conviction.

The key step in evaluating those remaining 3,118 cases is getting and evaluating a trial transcript.

In a September 2015 letter, your staff said 689 of those cases have been closed because the FBI can't get an adequate response from case contributors or prosecutors. I will have a couple questions about those cases.

Again, thank you for being here, and I'll now recognize Ranking Member Leahy for his opening statement.