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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

March 28, 2022

The Honorable Christopher A. Wray
Director
Federal Bureau of Investigation
U.S. Department of Justice
935 Pennsylvania Avenue NW
Washington, D.C. 20535

Dear Director Wray:

We write to express our concern and seek additional information regarding recent reports that an internal audit conducted by the Federal Bureau of Investigation (FBI) in 2019 found widespread violations of internal policies designed to ensure proper handling of the FBI's most sensitive investigations.¹

Longstanding Department of Justice (DOJ) and FBI policies require the FBI to designate investigations and assessments involving public officials, political candidates, religious or political organizations or their leaders, the news media, and other similarly sensitive matters as "sensitive investigative matters" (SIMs).² Due to the nature of their subjects, these investigations present heightened constitutional and civil liberties concerns and therefore merit greater scrutiny and supervision. For this reason, the FBI's Domestic Investigations and Operations Guide (DIOG) has long imposed special approval and reporting requirements to ensure that SIMs are handled with the appropriate amount of coordination and supervision and opened only after the FBI considers the seriousness of the violation or threat, the probability that the investigation will be successful, and the adverse impact on civil liberties and public confidence.³ The DIOG also makes clear that when conducting a SIM, the FBI should take "particular care" when considering the intrusiveness of a planned course of action.⁴ The sensitive nature of these investigations demands strict adherence to these standards.

The newly publicized 2019 audit by the FBI's Inspection Division (INSD) details a litany of policy violations that the FBI committed between January 1, 2018 and June 30, 2019.⁵ The

¹ Ryan Lovelace, *Audit reveals FBI rule-breaking in probes involving politicians, religious groups, media*, Wash. Times, March 11, 2022, <https://www.washingtontimes.com/news/2022/mar/11/fbi-audit-reveals-agents-rule-breaking-investigati/>

² DIOG § 9.10.1.

³ DIOG § 10.1.3.

⁴ DIOG § 10.1.3.

⁵ Compliance and Mitigation Unit Report, 2019 Domestic Investigations and Operations Guide Audit, *available at* <https://media.washtimes.com/media/misc/2022/03/11/audit.pdf>.

FBI reviewed 353 SIMs—just under half of all such matters that were pending during this 18-month period—and identified 747 violations. Examples of DIOG requirement violations identified by the audit include the following:

- In 45 investigations, the FBI did not conduct or document a legal review prior to opening a SIM;
- In 40 investigations, the FBI officials who opened a SIM did not obtain approval from the relevant Special Agent in Charge or Assistant Special Agent in Charge;
- In 250 cases—70 percent of those audited—the relevant FBI field office did not notify the relevant U.S. Attorney’s Office within 30 days of opening a SIM, and in 46 cases the FBI field office did not notify FBI headquarters within 15 days of opening a SIM; and
- In dozens of instances, FBI headquarters and/or DOJ were not notified of intrusive investigative steps, such as search warrants and Title III wiretaps.

These widespread and apparently systemic violations of approval and notification requirements make clear that the FBI has failed to rigorously adhere to the DIOG. These failures also call into question whether the FBI is rigorously adhering to the DIOG’s substantive requirements for authorizing and conducting SIMs—including the requirements to consider whether a particular investigative action is the least intrusive method and to consider adverse impacts on civil liberties and public confidence before opening a SIM. The sheer number of FBI investigations that failed to comply with the DIOG’s rules suggests a pattern and practice of evading the rules, which consequently opens the door for political and other improper considerations to infect the investigative decision-making process.

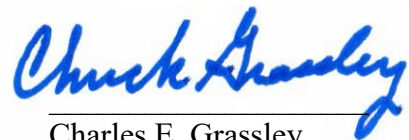
To help us better understand the scope of this problem, by April 11, 2022, please provide an unredacted copy of the 2019 INSD audit and explain in detail what remedial steps, if any, the FBI has taken in response to its findings.

Thank you for your attention to this important matter. We look forward to your prompt response.

Sincerely,



Richard J. Durbin
Chair



Charles E. Grassley
Ranking Member