

July 12, 2011

U.S. Senate
Washington, DC 20510

U.S. House of Representatives
Washington, DC 20515

Dear Members of Congress:

We write to request that you vote against the White House proposal to extend the term of FBI Director Robert S. Mueller, III. The Senate Judiciary Committee has approved legislation to implement the proposal, but did so without adequate process and without meaningfully addressing any of the numerous outstanding oversight issues and constitutional abuses for which the Bureau continues to evade accountability.¹

Under Director Mueller's leadership, the FBI has frequently violated the rights of diverse law-abiding Americans,² abused its investigative powers,³ failed to abide by its own guidelines,⁴ arbitrarily revised

¹ George Zornick, [Robert Mueller's Questionable Extension as FBI Director](#), *The Nation* (June 14, 2011) ("Mueller—who had received largely softball questions and lengthy praise to that point [in a June 2011 Senate Judiciary Committee hearing]—became visibly uncomfortable when [Senator Al] Franken...[said] that 'your department has been heavily criticized over the last ten years for significant misuse of the department's surveillance powers and for other major civil liberties violations.'...These serious abuses—and Mueller's resistance to admitting they even occurred—apparently only bothered Franken....").

² See, e.g., Peter Wallsten, *Activists Cry Foul over FBI Probe*, *Washington Post* (June 13, 2011) (describing "a mysterious, ongoing nationwide terrorism investigation with an unusual target: prominent peace activists and politically active labor organizers....involving subpoenas to 23 people and raids of seven homes...."); Dep't of Justice, *A Review of the FBI's Investigations of Investigations of Certain Domestic Advocacy Groups* (Sep. 2010) available at <http://www.justice.gov/oig/special/s1009r.pdf>; Jeff Stein, *FBI misled Justice about spying on peace group*, *Washington Post* (Sep. 20, 2010) (documenting illegal FBI surveillance of targets including "an antiwar rally in Pittsburgh; a Catholic peace magazine; a Quaker activist; and members of the environmental group Greenpeace as well as of People for the Ethical Treatment of Animals"); *Humanitarian Law Project v. Holder*, 561 U.S. ____ (2010) (upholding prosecution for material support for terrorism on the basis of mere association); Thomas R. Cincotta, *Platform for Prejudice* (March 2010), available at http://www.publiceye.org/liberty/matrix/reports/sar_initiative/sar-full-report.pdf at 22 (recommending that Congress and the courts "Restore Constitutional Checks and Balances" to domestic intelligence activities); Paul Vitello & Kirk Semple, *Muslims Say F.B.I. Tactics Sow Anger and Fear*, *N.Y. Times* (Dec. 17, 2009); Salvador Hernandez, *FBI denies claim by alleged informant*, *Orange County Register* (Dec. 8, 2009); Max Solie, *The Return of COINTELPRO: Government Infiltration of Activist Groups* (Aug. 12, 2009), available at <http://www.constitutioncampaign.org/blog/?p=99>; Elliott McLaughlin, *FBI planting spies in U.S. mosques*, *CNN* (March 20, 2009); OMB Watch, *FBI Documents Reveal Further Spying on Peace, Civil Rights Groups* (Sep. 6, 2005), available at <http://www.ombwatch.org/node/2654>; Democracy Now!, *The Return of COINTELPRO: FBI Launches Nationwide Surveillance Of Activists Ahead of GOP Convention* (Aug. 19, 2004), available at http://www.democracynow.org/2004/8/19/the_return_of_cointelpro_fbi_launches; ACLU of Colorado, *Spy Files Documents Reveal Political Spying by FBI's Joint Terrorism Task Force* (March 11, 2002), available at <http://www.aclu-co.org/spyfiles/fbifiles.htm>.

³ U.S. Dep't of Justice, Office of the Inspector General, *A Review of the Federal Bureau of Investigation's Use of National Security Letters* (March 2007), available at <http://www.justice.gov/oig/special/s0703b/final.pdf>; *A Review of the FBI's Use of National Security Letters* (March 2008), available at <http://www.justice.gov/oig/special/s0803b/final.pdf>; *A Review of the Federal Bureau of Investigation's Use of*

those guidelines to permit longstanding abuses even in the face of congressional concerns,⁵ and avoided public accountability by cloaking its actions in secrecy—all while actively (and demonstrably) misleading federal courts,⁶ Congress⁷ and the American people.⁸

These abuses are gravely serious, have impacted millions of law-abiding Americans, and should not be ratified by congressional acquiescence. Because further abuses have been committed not just by the FBI, but also other intelligence agencies, a “race to the bottom dynamic” has emerged among them: the FBI has abused the First Amendment by investigating the political activities and associations of peace, labor and immigrant rights activists around the country, the Fourth Amendment by collecting reams of information about untold numbers of law-abiding Americans without any individualized suspicion of crime, and both the First and Fourth Amendment through unchecked secret undercover infiltration and surveillance of faith institutions⁹; the NSA has discarded any pretense of Fourth Amendment compliance by wiretapping Americans en masse, without even acknowledging the importance for individualized

Exigent Letters and Other Informal Requests for Telephone Records (Jan. 2010), available at <http://www.justice.gov/oig/special/s1001r.pdf> (documenting expanding abuses under the Holder Justice Department of novel powers even beyond those authorized by the USA PATRIOT Act).

⁴ See Richard A. Serrano, *FBI agents cheated on surveillance tests, director says*, L.A. Times (July 28, 2010), available at <http://articles.latimes.com/2010/jul/28/nation/la-na-fbi-cheating-20100729>; U.S. Dep't of Justice, Office of the Inspector General, *The Federal Bureau of Investigation's Compliance with the Attorney General's Investigative Guidelines* (Sep. 2005), available at <http://www.justice.gov/oig/special/0509/final.pdf> (documenting violations of the 2003 Attorney General's Guidelines, which were further relaxed in 2008 to allow previously prohibited FBI powers); see also Charlie Savage, *F.B.I. Casts Wide Net Under Relaxed Rules for Terror Inquiries*, *Data Show*, N.Y. Times (March 26, 2011).

⁵ U.S. Senator Richard Durbin, *Statement on Announcement of New FBI Guidelines* (Oct. 3, 2008) (“The Justice Department claims that they consulted with Congress, but they made only cosmetic and superficial changes and ignored all of the significant changes we suggested, including prohibiting racial profiling and requiring some factual basis for FBI surveillance.”), available at <http://durbin.senate.gov/public/index.cfm/pressreleases?ID=fe77d3f4-09ac-4aa2-8980-0729c1215027>; Pete Yost, *FBI Manual Changes Spur Concerns Over Privacy*, Associated Press (June 13, 2011) available at http://news.yahoo.com/s/ap/20110613/ap_on_go_ca_st_pe/us_fbi_guidelines_2.

⁶ See *Islamic Shura Council of Southern Cal v. FBI*, Civil Action No. SACV07-1088-CJC(ANx) at 2-3 (C.D.C.A. 2011) (“The Government represented to the Court...that it had searched its databases and found only a limited number of documents responsive to Plaintiff’s FOIA request....The Government’s representations were then, and remain today, blatantly false....The Government cannot, under any circumstance, affirmatively mislead the court.”).

⁷ See Letter from Stephen Kelly to Senator Richard J. Durbin (July 28, 2010), available at <http://www.bordc.org/press/fbidurbinletter.pdf> (acknowledging surveillance under the 2008 DIOG of individuals and locations unbounded by suspicion of criminal activity); Rep. John Conyers, Jr., *FBI Broke the Law and General Counsel's Office...Must Face Consequences* (April 14, 2010), available at <http://judiciary.house.gov/news/100414.html>.

⁸ See Center for Constitutional Rights et al., *New Documents Reveal Behind-the-Scenes FBI Role in Controversial Secure Communities Deportation Program*, (July 6, 2011) available at <http://uncoverthetruth.org/featured/new-documents-reveal-behind-the-scenes-fbi-role-in-controversial-secure-communities-deportation-program-pr/> (“Documents ...show that the controversial Secure Communities deportation program...is also a key component of a little-known FBI project to accumulate a massive store of personal biometric information on citizens and non-citizens alike.”); Simone Wilson, *FBI Documents Reveal ICE's 'Secure Communities' Program Was Mandated to Further FBI's Own Creepy Biometric Database*, *LA Weekly* (July 6, 2011) available at http://blogs.laweekly.com/informer/2011/07/fbi_documents_ice_secure_communities_program_mandated_biometric_database.php.

⁹ See supra notes 2-3 and accompanying text.

suspicion;¹⁰ and the CIA was recently revealed to have conducted political surveillance and intimidation of a respected dissident and journalist¹¹—recalling the COINTELPRO era abuses for which Congress limited the FBI director’s term in the first place.¹² Put simply, the Bureau’s many violations have occurred in a broader context, and the whole is unfortunately even worse than the sum of its parts.¹³

Moreover, the director’s post—and the future ability of Congress to restore checks and balances undermined by executive aggrandizement and secrecy—are concerns too important to be sacrificed for political considerations. Constitutional rights are not partisan issues. Indeed, administrations from both major parties, and congressional leaders from both sides of the partisan aisle, have repeatedly entrenched executive power despite a rising tide of violations by our nation’s intelligence agencies. Even FBI veterans have called for long overdue oversight and opposed the extension of the director’s term.¹⁴

Accordingly, we urge you to defend Congress’ institutional authority and check and balance the executive branch,¹⁵ by voting against the White House proposal to extend the FBI director’s term. Should you ultimately choose to allow the extension even in the face of unanswered concerns about mounting civil liberties violations, we implore you to insist that the administration immediately nominate an Inspector General to monitor the Department of Justice. The IG’s office has remained empty for five months, despite its crucial role—which has grown even more critical given Congress’ repeated failures to conduct effective oversight or impose accountability for repeated violations.

¹⁰ See Eric Lichtblau & James Risen, [Officials Say U.S. Wiretaps Exceeded Law](#), N.Y. Times (April 15, 2009) (“The National Security Agency intercepted private e-mail messages and phone calls of Americans in recent months on a scale that went beyond the broad legal limits established by Congress last year, government officials said in recent interviews); Glenn Greenwald, [New FISA Law Enabled Massive Abuses](#) (April 16, 2009) (“spying abuses are ‘significant and systemic’; involve improper interception of ‘significant amounts’ of the emails and telephone calls of Americans, including purely domestic communications; and...the NSA tried to eavesdrop with no warrants on a member of Congress....”) available at http://www.salon.com/news/opinion/glenn_greenwald/2009/04/16/nsa.

¹¹ See Thomas Ricks, [The CIA vs. Professor Juan Cole](#) (June 21, 2011), available at http://ricks.foreignpolicy.com/posts/2011/06/21/the_cia_vs_professor_juan_cole.

¹² See U.S. Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, [Intelligence Activities and the Rights of Americans](#) (April 26, 1976) (exhaustively documenting a series of programs involving the FBI and other agencies that amounted to “a sophisticated vigilante operation aimed squarely at preventing the exercise of First Amendment rights of speech and association”).

¹³ See Dana Priest & William Arkin, [Monitoring America](#), Washington Post (Dec. 20, 2010); Priest & Arkin, [National Security Inc.](#), Washington Post (July 20, 2010); Priest & Arkin, [The Secrets Next Door](#), Washington Post (July 21, 2010) (documenting the entrenchment of executive secrecy pervading national security and intelligence agencies including the FBI, and “a new level of government scrutiny” of even lawful activities driven by “[t]he government’s goal...to have every state and local law enforcement agency in the country feed information to Washington to buttress...the FBI....”); see also supra footnotes 4-8.

¹⁴ See Coleen Rowley and Philip Leggiere, [Let the Patriot Act die](#), Washington Times (April 25, 2011) (quoting a 24-year veteran FBI Special Agent and division legal counsel: “A wide-ranging congressional investigation of the sort conducted by the Church Committee is long overdue.”); Jerry Markon, [Some FBI agents are angered by plan to extend tenure of Director Robert Mueller](#), Washington Post (May 19, 2011) (reporting on “accusations of hypocrisy” by “some agents, who say [Director] Mueller imposed term limits on hundreds of supervisors in the agency but is failing to abide by legal limits set on his own tenure.”).

¹⁵ See, e.g., Charlie Savage & Mark Landler, [White House Defends Continuing U.S. Role in Libya Operation](#), N.Y. Times (June 15, 2011) (“The escalating confrontation with Congress reflects the radically altered political landscape in Washington: a Democratic president asserting sweeping executive powers...while Republicans call for stricter oversight and voice fears about executive-branch power....”); see also Zornick, supra note 1 (“If the Senate is serious about providing a check on executive power, this would be a nomination to question.”).

For more information about the concerns raised in this letter, please contact Shahid Buttar from the Bill of Rights Defense Committee at shahid@bordc.org or 413-582-0110.

Respectfully submitted,

Bill of Rights Defense Committee (BORDC)
A Better Way Foundation
American Muslim Voice Foundation
Arab-American Action Network
Asian Law Caucus
Center for Constitutional Rights (CCR)
Center for Financial Privacy and Human Rights
Center for Media and Democracy
Center for Torture Accountability
Civic Trust Public Lobbying Company
Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA)
Committee to Stop FBI Repression
Constitutional Alliance
Council on American-Islamic Relations (CAIR)
Creating Law Enforcement Accountability & Responsibility (CLEAR)
Culture Project
Defending Dissent Foundation
Demand Progress
Desis Rising Up and Moving (DRUM)
Equal Justice Alliance
Friends of Human Rights
Global Network Against Weapons & Nuclear Power in Space
Government Accountability Project (GAP)
Islamic Shura Council of Southern California
Liberty Coalition
Muslim Legal Fund of America (MLFA)
National Coalition to Protect Civil Freedoms (NCPFCF)
National Lawyers Guild—National Office
National Whistleblower Center
Pain Relief Network
Political Research Associates (PRA)
Progressive Democrats of America
Project Salam
Rutherford Institute
South Asian Americans Leading Together (SAALT)
South Asian Network
Southern California Immigration Coalition
Strength Through Peace
The Multiracial Activist
United Sikhs
WarIsACrime.org