



March 20, 2025

The Honorable Kashyap Patel
Director, Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Washington, D.C., 20535.

Dear Director Patel,

We, the 23 undersigned civil society organizations, write following your confirmation as FBI Director, to express our interest in engaging with you and your office on potential areas of common ground related to civil liberties and reforms of FBI, surveillance, assessments, and investigations. Many of the signatories below expressed concerns about previous administrations' approaches to civil liberties in the criminal justice and surveillance contexts, and have continued to do so in 2025. As civil society organizations, we share a belief that FBI investigative decisions should be completely separate from political concerns, and that the limited personnel and disciplinary changes included in the Reforming Intelligence and Securing America Act in April 2024 are insufficient to ensure that the FBI protects U.S. persons' Constitutional rights. We appreciate your pledge to "work with Congress moving forward to implement more reforms."¹ We request a meeting to discuss the following issues, all of which are directly addressable within your authority as Director, and all of which you have previously highlighted as abusive practices in your memoir or in testimony to Congress.

1. Improper FBI U.S. Person Queries of Intelligence Databases Under FISA Title VII.²

As Congress begins early discussions about the April 2026 FISA reauthorization, rules relating to FBI queries of U.S. persons under Section 702 will be a key issue. "Outside of the category of 'victim' or 'defensive' queries," noted the Chair of the Privacy and Civil Liberties Oversight Board in 2023, "[the] FBI has been unable to identify any cases in which a Section 702 U.S. person query provided unique value in advancing a criminal

¹ See "Kash Patel Confirmation Hearing" transcript, available at <https://www.rev.com/transcripts/kash-patel-confirmation-hearing>, at 03:28:15.

² *Ibid.*, at 01:43:13. Here, you note that there had been "255,000 illegal, improper queries of American citizens" under this authority, and that these were "255,000 reasons why the American people don't trust it, and that's what we must work together, Congress and me, if I'm confirmed as FBI Director, to restore that trust and protect the mission."

investigation.”³ We ask for you to support reforms that include a warrant by default for what you have said are "illegal, improper queries."

2. **"Domestic Violent Extremist" Labels.**⁴ We encourage the FBI, in its domestic terrorism assessments and investigations, to focus on criminal conduct that "poses physical harm ... to human life."⁵ By contrast, the FBI's current "domestic violent extremist" category and its subcategories are overly broad, lack specific legal parameters and reliable factual and evidentiary thresholds, and are all too often applied against Americans based on their beliefs and associations. As a result, the American public can have no confidence that FBI assessments and other investigations either comport with the Constitution, or avoid a basis in Constitutionally protected activities, including protests.
3. **Inaccurate FISA Title I Warrant Applications.**⁶ We applaud the uncovering of FBI agents' failure to follow the Woods Procedures in FISA Title I warrant applications. All such applications should be accurate and thoroughly supported by the facts. To this end, we request your support for the "Lee-Leahy reforms," which would strengthen FISC oversight, and which won the support of 77 Senators in a roll-call vote in 2020.⁷
4. **Insufficient Declassification and Oversight.** We support robust Congressional oversight of the FBI, and whistleblower access to Congressional committees without fear of workplace retaliation. We ask the FBI to cooperate fully with Congressional requests for documents, to begin a dialogue with civil society about declassifying key FBI documents and establishing protocols to improve FBI transparency and accountability for years to come.⁸

³ See Privacy and Civil Liberties Oversight Board, "Report On The Surveillance Program Operated Pursuant To Section 702 Of The Foreign Intelligence Surveillance Act, Annex A: Separate Statement of Chair Sharon Bradford Franklin", September 28, 2023, available at [https://documents.pclob.gov/prod/Documents/OversightReport/054417e4-9d20-427a-9850-862a6f29ac42/2023%20PCLOB%20702%20Report%20\(002\).pdf](https://documents.pclob.gov/prod/Documents/OversightReport/054417e4-9d20-427a-9850-862a6f29ac42/2023%20PCLOB%20702%20Report%20(002).pdf), accessed February 27, 2025.

⁴ For the most recent public list of categories, see FBI/DHS, "Federal Bureau of Investigation Department of Homeland Security Strategic Intelligence Assessment and Data on Domestic Terrorism", October 2022, available at https://www.dhs.gov/sites/default/files/2022-10/22_1025_strategic-intelligence-assessment-data-domestic-terrorism.pdf, accessed March 11, 2025; for your own comments on the issue, see Patel, K. P., "Government Gangsters: The Deep State, the Truth, and the Battle for Our Democracy", Post Hill Press, 2023 (referred to henceforth as "Government Gangsters"), ch. 3, p. 41, and "Kash Patel Confirmation Hearing" transcript, available at <https://www.rev.com/transcripts/kash-patel-confirmation-hearing>, at 01:54:31.

⁵ See "Audit of the Department of Justice's Strategy to Address the Domestic Violent Extremism Threat", June 2023, DOJ Audit Division, available at <https://oig.justice.gov/sites/default/files/reports/23-078.pdf>, accessed March 5, 2025.

⁶ See *Government Gangsters*, ch. 8, p. 117, where you propose several reforms for the FISA Court whose intent seems to be to make sure that a perspective other than the government's is heard before a Title I warrant is approved.

⁷ See https://www.senate.gov/legislative/LIS/roll_call_votes/vote1162/vote_116_2_00090.htm.

⁸ See *Government Gangsters*, ch. 13, p. 173, where you endorse robust Congressional oversight, writing that, "Defenders of transparency and of the people in the House and Senate should immediately form a

We urge you also to consider reforms to address four additional issues relating to those above:

5. The Hidden Scale of Intelligence Collection on Americans Under FISA Title VII.

Despite repeated bipartisan requests from Congress, intelligence officials, including FBI officials, have refused for years to provide basic transparency about the number of U.S. persons whose communications are subjected to FISA Section 702 surveillance. The public and lawmakers cannot meaningfully debate Section 702's renewal without knowing the true extent to which it sweeps up Americans' private communications. Princeton researchers have published a paper detailing a methodology that could reliably estimate the scale of "incidental" collection of Americans' communications.⁹ We ask you to work with ODNI to provide a good-faith estimate of this number during 2025.¹⁰

6. Misuse of FBI "Assessments" and Paid Confidential Informants. We urge you to begin a dialogue with civil society about reforms to the FBI Domestic Investigations and Operations Guide ("DIOG")—in particular, to the "assessment" authority and the FBI's use of informants. Under the DIOG, agents can open assessments of anyone under an extraordinarily low standard, which does not require evidence of wrongdoing or any particular factual predication. Once an assessment is opened, the DIOG allows agents to deploy an array of intrusive investigative tactics —ranging from trash covers to the use of confidential informants. The FBI should not use informants to infiltrate groups merely exercising their Constitutional rights, or allow informants to encourage or assist others to commit crimes. In recent years, the FBI has opened "assessments," with no criminal predicate, on a variety of nonprofits, including the conservative group Concerned Women of America. In many counter-terrorism investigations, involving Muslims and Christians, the use of paid confidential informants has undermined people's religious liberty.¹¹ The DIOG must be reformed.

committee to thoroughly investigate abuses within the intelligence community, modeled after the 1975 Church Committee."

⁹ See Kulshrestha, A, and Mayer, J.. "Estimating Incidental Collection in Foreign Intelligence Surveillance: Large-Scale Multiparty Private Set Intersection with Union and Sum," 31st USENIX Security Symposium (2022). *Collections* 2022 (2022): 08-10. Available at

<https://repository.library.georgetown.edu/handle/10822/1081870>, accessed February 27, 2025.

¹⁰ See Project for Privacy and Surveillance Accountability, "An Open Letter to Kash Patel – Clear the Record on Warrantless FBI Surveillance of Americans", February 20, 2025, available at <https://www.protectprivacynow.org/news/an-open-letter-to-kash-patel-clear-the-record-on-warrantless-fbi-surveillance-on-americans>, accessed February 27, 2025. We also echo PPSA's request in that letter to disclose the amount spent on acquiring data on Americans from data brokers, and their advice for limiting the damage caused by the passage of the ECSP provision in RISAA, which greatly expanded NSA's domestic surveillance powers.

¹¹ See, *inter alia*, Aaronson, T., *The Terror Factory: Inside the FBI's Manufactured War On Terrorism*, Brooklyn, New York, Ig Publishing, 2013.; Currier, C., "Hidden Loopholes Allow FBI Agents to Infiltrate Political and Religious Groups", in *The Intercept*, January 31, 2017, available at <https://theintercept.com/2017/01/31/hidden-loopholes-allow-fbi-agents-to-infiltrate-political-and-religious-groups/>, accessed February 27, 2025; Arnold, T., "FBI used undercover agent to investigate Catholics, says weaponization committee chairman", in *Catholic News Agency*, Apr 11, 2023, available at <https://www.catholicnewsagency.com/news/254072/fbi-used-undercover-agent-to-investigate-catholics-says-weaponization-committee-chairman>, accessed February 27, 2025; *Fazaga v. FBI*, No. 12-56867 (9th

7. Hiding Surveillance Techniques from Defendants Using "Parallel Construction".

The practice of "parallel construction" conceals the real means by which evidence against U.S. persons was obtained, and substitutes fake trails of evidence that prevent controversial surveillance methods from being challenged in court.¹² Director Wray claimed to Congress that he didn't even know what "parallel construction" meant.¹³ However, the FBI has failed for years to provide legally required notice to defendants that surveillance-derived evidence has been used against them.¹⁴

8. Use of Constitutionally Suspect Geofence and Keyword Warrants. The conservative Fifth Circuit has now held that "geofence warrants"¹⁵ are categorically unconstitutional, likening them to colonial-era general warrants. The government's warrantless access to location records, however narrowly limited by time or place, violates reasonable expectations of privacy under the Fourth Amendment.¹⁶ The FBI has also reportedly begun using "keyword warrants,"¹⁷ which suffer from an even greater lack of particularity.¹⁸ We ask you to confirm that, under your leadership, the FBI will not itself seek geofence or keyword warrants, acquire data obtained under such warrants from

Cir., December 20, 2024), available at

<https://cdn.ca9.uscourts.gov/datastore/opinions/2024/12/20/12-56867.pdf>, accessed February 27, 2025.

¹² See, for government reports highlighting this issue, "A Review of the Drug Enforcement Administration's Use of Administrative Subpoenas to Collect or Exploit Bulk Data", DOJ Office of the Inspector-General, March 2019, available at <https://oig.justice.gov/reports/2019/o1901.pdf>, accessed March 5, 2025; and "Report on the Surveillance Program Operated Pursuant To Section 702 of the Foreign Intelligence Surveillance Act", Privacy and Civil Liberties Oversight Board, September 28, 2023, available at <https://documents.pclob.gov/prod/Documents/OversightReport/d21d1c6b-6de3-4bc4-b018-6c9151a0497d/2023%20PCLOB%20702%20Report,%20508%20Completed,%20Dec%202024.pdf>, accessed March 5, 2025.

¹³ See Restore The Fourth, "Issue Brief: Parallel Construction", March 20, 2024, available at <https://restorethe4th.com/issues/parallel-construction/>, accessed February 27, 2025.

¹⁴ See Toomey, P. and Taitz, S., "Concealing Surveillance: The Government's Disappearing Section 702 Notices", Just Security, September 27, 2023, available at <https://www.justsecurity.org/88861/concealing-surveillance-the-governments-disappearing-section-702-notices/>, accessed February 27, 2025.

¹⁵ A geofence warrant is a warrant that "allows law enforcement to search digital records to identify people whose smartphones were inside a specified set of places and times[.]" See "Geofence Warrants", ACLU of Wisconsin, April 28, 2022, available at https://www.aclu-wi.org/sites/default/files/wysiwyg/geofencing_4-28-22_edit_1.pdf, accessed March 12, 2025.

¹⁶ See *U.S. v. Smith* (No. 23-60321, Aug 9, 2024). This ruling created a circuit split with the Fourth Circuit, which had held differently in *U.S. v. Chatrle* (No. 22-4489, Jul. 9, 2024).

¹⁷ "Keyword warrants pull data on everyone who searched a specific set of keywords and, using that date, work backwards to investigative leads or suspects. Like other reverse search warrants, these do not target someone suspected of being connected to a crime and many unrelated people's information is caught up in these searches." See "Reverse Search Warrants", National Association of Criminal Defense Lawyers, undated, available at <https://www.nacdl.org/Landing/Reverse-Search-Warrants>, accessed March 12, 2025.

¹⁸ See Schladebeck, J., "Feds Issue Secret 'Keyword Warrants' for Google Search History", in GovTech, available at <https://www.govtech.com/security/feds-issue-secret-keyword-warrants-for-google-search-history>, accessed February 28, 2025.

state or local law enforcement agencies, or purchase similar location or keyword data from private parties.

We look forward to working with you, and would welcome the opportunity to discuss these issues further at your earliest convenience. Please do not hesitate to reach out to us, via Alex Marthews, chair of Restore The Fourth, at rt4chair@protonmail.com, to arrange a meeting.

Sincerely,

Restore The Fourth
American Civil Liberties Union
American-Arab Anti-Discrimination Committee
Americans For Prosperity
Advocacy for Principled Action in Government
Brennan Center for Justice
Center for Democracy and Technology
Center for Security, Race and Rights
Demand Progress
Defending Rights & Dissent
Due Process Institute
Electronic Frontier Foundation (EFF)
Electronic Privacy Information Center (EPIC)
Eye on Surveillance
Government Information Watch
New America's Open Technology Institute
Organization for Identity & Cultural Development (OICD.net)
Project for Privacy and Surveillance Accountability
STOP - Surveillance Technology Oversight Project
TechFreedom
The National Association of Criminal Defense Lawyers (NACDL)
Whistleblower and Source Protection Program (WHISPeR) at ExposeFacts
X-Lab