

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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March 7, 2022

The Honorable Gene L. Dodaro
Comptroller General
Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Comptroller General Dodaro:

We write to you to request that the Government Accountability Office (GAO) conduct a comprehensive review of the Federal Bureau of Investigation's (FBI) practice of surveilling subjects through activities it classifies as "assessments". We are concerned that FBI assessments operate as *de facto* investigations that can be launched without a factual predicate of criminal wrongdoing. We ask that GAO examine whether assessments result in the improper monitoring of protected First Amendment activity—including by political, racial, or religious organizations—and whether the FBI has sufficient controls in place to ensure that they do not run afoul of constitutional protections.¹

In 2008, the Department of Justice (DOJ) revised its Attorney General's Guidelines for Domestic FBI Operations (2008 Guidelines) to include a separate category of proto-investigatory "assessments." According to the 2008 Guidelines, assessments "require an authorized purpose but not any particular factual predication."²

The updated guidelines allowed the FBI to use "intrusive investigative techniques," including the use of informants and unlimited physical surveillance, on targets that were not linked to criminal wrongdoing or national security threats. The guidelines also eliminated many procedural checks that required supervisory approval, curtailed the use of intrusive investigative techniques early in an inquiry, and set durational limits on assessment activities.³ In addition,

¹ See *Standards for Opening an FBI Investigation So Low They Make the Statistic Meaningless*, Brennan Center (May 2, 2017) (online at www.brennancenter.org/our-work/analysis-opinion/standards-opening-fbi-investigation-so-low-they-make-statistic).

² Department of Justice, *Attorney General's Guidelines for Domestic FBI Operations* (Sept. 29, 2008) (online at www.justice.gov/archive/opa/docs/guidelines.pdf).

³ *FBI: Fact or Fiction?* Brennan Center (July 27, 2011) (online at www.brennancenter.org/our-work/research-reports/fbi-fact-or-fiction).

the guidelines allowed the FBI to use race, religion, or protected speech as factors in choosing targets for assessments.⁴

Between December 2008 and March 2009, the FBI opened 11,667 assessments of individuals and groups under the 2008 Guidelines. Of these, only 427 developed into full investigations based on information collected during the assessments.⁵ By 2011, the FBI had opened 82,235 similar assessments with fewer than 4,000 yielding any factual predicate to proceed with more intensive inquiries.⁶

The FBI has used the 2008 Guidelines to monitor groups engaged in protected First Amendment activity across the country. For example:

- In 2013, the Houston, Texas FBI Field Office carried out an assessment into a group opposed to the Keystone XL Pipeline. Although assessments are supposed to be for short periods of time, the investigation went on for nearly two years. Ultimately, the assessment was closed due to the FBI's inability to find any evidence of "extremist activity."⁷
- Documents obtained under the Oregon Public Records Act show that, in 2018, the FBI surveilled First Amendment protected public protests and educational activities, including a University of Oregon coordinated "kayak field trip," organized by groups opposing the Jordan Cove liquified natural gas terminal project in Coos Bay, Oregon.⁸
- Documents obtained by the America Civil Liberties Union under the Freedom of Information Act show that FBI offices in cities like Ferguson, Missouri repeatedly opened assessments on "black separatist extremists" and "black identity extremists" between 2015 and 2018, despite the lack of any known connection between the targets and violent activity.⁹
- The FBI has opened assessments to surveil domestic political and religious organizations serving Muslim communities, such as the Massachusetts-based

⁴ *Still Spying on Dissent: The Enduring Problem of FBI First Amendment Abuse*, Defending Rights and Dissent (2019) (online at https://drive.google.com/file/d/1z-i_XCoZub8ISKEe5DzjoMh0bPS5u1Xm/view).

⁵ *FBI Casts Wide Net Under Relaxed Rules for Terror Inquiries*, *Data Show*, New York Times (Mar. 26, 2011) (online at www.nytimes.com/2011/03/27/us/27fbi.html).

⁶ *FBI Focusing on Security Over Ordinary Crime*, New York Times (Aug. 23, 2011) (online at www.nytimes.com/2011/08/24/us/24fbi.html).

⁷ *Revealed: FBI Violated Its Own Rules While Spying on Keystone XL Opponents*, The Guardian (May 12, 2015) (online at www.theguardian.com/us-news/2015/may/12/revealed-fbi-spied-keystone-xl-opponents).

⁸ *Jordan Cove Pipeline Protests: Is the FBI Still Spying on Activists*, CATO Institute (Apr. 29, 2021) (online at www.cato.org/commentary/jordan-cove-pipeline-protests-fbi-still-spying-activists).

⁹ *The FBI Spends a Lot of Time Spying on Black Americans*, The Intercept (Oct. 29, 2019) (online at <https://theintercept.com/2019/10/29/fbi-surveillance-black-activists/>).

Muslim Justice League and the Denver, Colorado, chapter of the International Rescue Committee, allegedly to assist these groups in identifying potential terrorists in their communities.¹⁰

We are deeply concerned that the FBI's use of the 2008 Guidelines to open investigations without evidence of criminal wrongdoing may undermine First Amendment activities and chill protected speech.

Neither the Department of Justice Inspector General nor GAO have undertaken a comprehensive review of the FBI's use of assessments and the extent to which such investigations may have violated the constitutional rights of Americans or resulted in the inappropriate use of taxpayer funds.

To assist the Subcommittee in its review of this matter, we respectfully ask GAO to conduct a review of the FBI's use of assessments and to provide us with information on the following:

1. The total number of Type 1, Type 2, and Type 3 Assessments opened on domestic political organizations as defined in the FBI's Domestic Investigations and Operations Guide (DIOG), the number of domestic political organizations targeted, and the specific FBI classification and subclassification of each assessment opened;
2. The total number of Type 1, Type 2, and Type 3 Assessments opened on domestic political organizations as defined in the DIOG that represent a particular racial, ethnic, or religious group, the number of such domestic political organizations targeted, and the specific FBI classification and subclassification of each assessment opened;
3. The total number of Type 1, Type 2, and Type 3 Assessments on domestic political organizations as defined in the DIOG:
 - a. In which speech protected by the First Amendment was a factor in opening the assessment;
 - b. In which religion was a factor in opening the assessment;
 - c. In which ethnicity was a factor in opening the assessment;
 - d. That remain open;
 - e. That were converted to preliminary investigations;

¹⁰ *FBI "Assessments": Cato FOIA Lawsuit Edition*, Cato Institute (Apr. 16, 2021) (online at www.cato.org/blog/fbi-assessments-cato-foia-lawsuit-edition).


- f. That were converted to full investigations; and,
 - g. That were converted to full investigations that subsequently led to charges and the results of such cases;
4. The nature and effectiveness of FBI and DOJ internal oversight of the use of assessments, including the results of any internal FBI or DOJ audits or investigations into the use and effectiveness of assessments;
 5. A GAO evaluation of the adequacy of the current procedural safeguards in the assessments process to protect individuals' privacy and constitutional rights;
 6. Any evidence of trends or patterns of the use of racial, ethnic, religious or political bases in the opening of assessments;
 7. Any evidence that assessments have been opened solely on the basis of constitutionally protected speech or related activity;
 8. Any evidence of a pattern or practice of utilizing assessments as a substitute for seeking approval to open a preliminary or full investigation; and
 9. A GAO evaluation of the extent to which FBI has processes and procedures to ensure that the use of assessments is consistent with existing jurisprudence and law as it pertains to the exercise of Americans' First and Fourth Amendment rights.

We ask that this engagement cover the period from December 1, 2008, to the present. Upon completion of its investigation, we ask the GAO issue an unclassified report on its findings, and a separate classified version if necessary. As you proceed, we ask that GAO notify the Subcommittee of any issues that could potentially limit the scope of this study or delay its completion.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. If you have any questions regarding this request, please contact Subcommittee staff at (202) 225-5051.

We look forward to your prompt reply.

Sincerely,



Jamie Raskin
Chairman
Subcommittee on Civil Rights and
Civil Liberties



Nancy Mace
Ranking Member
Subcommittee on Civil Rights and
Civil Liberties