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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

March 28, 2022

The Honorable Michael E. Horowitz
Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

Dear Inspector General Horowitz:

We write to express our concern about 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, and to request that you conduct an additional audit of the FBI's compliance with these policies.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 2018 and June 2019.⁵ The FBI reviewed 353 SIMs—just under half of all such matters that were pending during this 18-month

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 Inspection Division 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>.

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.

We believe that these serious violations warrant further attention. Accordingly, we ask that the Office of the Inspector General (OIG) perform an additional audit of the FBI’s compliance with the DIOG’s requirements for conducting SIMs. Among other things, the audit should address the FBI’s compliance with relevant requirements during SIMs pending from July 2019 to the present day, including additional SIM-related guidance and requirements imposed by the FBI in response to OIG’s December 2019 report regarding Crossfire Hurricane. The audit should also address any additional aspects of the FBI’s adherence to SIM-related requirements during the period of time covered by INSD’s review that are needed to provide a complete evaluation of the FBI’s record, including assessing the prevalence of DIOG violations across different categories of SIMs.

Thank you in advance for your attention to this important matter.

Sincerely,



Richard J. Durbin
Chair



Charles E. Grassley
Ranking Member