

November 26, 2008

The Honorable Robert S. Mueller, III
Director
Federal Bureau of Investigation
J. Edgar Hoover Building
935 Pennsylvania Avenue, NW
Washington, D.C. 20535-0001

Dear Director Mueller:

We write in the wake of two briefings recently hosted by Federal Bureau of Investigation (“FBI,” or the “Bureau”) officials¹ on the Bureau's Domestic Investigative Operational Guidelines (“DIOGs”) implementing the Attorney General’s Guidelines for Domestic FBI Operations, which are set to take effect on December 1, 2008.²

We welcome this opportunity for dialogue with the FBI in advance of the DIOGs’ scheduled implementation on December 1, 2008. While we appreciate the FBI’s effort to invite feedback from community groups and privacy & civil rights organizations, however, we respectfully request two adjustments in the process. First, please release copies of the DIOGs at your earliest opportunity in order to allow for meaningful review by the undersigned organizations and other key stakeholders, including Congress. Second, we request a delay in implementing the DIOGs — as well as the Attorney General’s Guidelines — in order to allow thoughtful input from those partners.

At a minimum, a meaningful review includes an opportunity to review the DIOGs prior to their finalization and release. However, no copies have been released to date, and participants in the briefings were not allowed to examine the 100-page document except during the live sessions, neither of which afforded sufficient time for a rigorous examination. In addition, the late stage at which we were briefed precludes any possibility of comments being meaningfully reflected in the final DIOGs. The two briefings took place only two and six business days, respectively, before the DIOGs’ implementation. Moreover, FBI officials confirmed during the November 19th briefing that very few of the DIOGs’ provisions remained open to revision and that most, by that point, had “come to rest.”³ Finally, we note that the FBI has previously claimed to Congress on related matters that it had consulted “interested individuals and groups” in a “dialogue...[that] has been...both unprecedented and very constructive,”⁴

¹ FBI General Counsel Valerie Caproni and Deputy General Counsel Dave Larson hosted the first briefing on November 19, 2008, and the second on November 25, 2008.

² See *The Attorney General's Guidelines for Domestic FBI Operations*, available at <http://www.justice.gov/ag/readingroom/guidelines.pdf>.

³ The substantial completion of the DIOGs prior to either briefing undermines official concerns about sharing pre-final documents: FBI officials rejected calls for disclosure because the DIOGs remained at a draft stage.

⁴ *New Attorney General Guidelines For Domestic Intelligence Collection*: Hearing Before the U.S. Senate Select Committee on Intelligence, 110th Cong. (September 23, 2008) (joint statement

notwithstanding the express concerns of many of our groups to the contrary.⁵ We reiterate our concerns that recent briefings were inadequate and did not, in fact, allow a meaningful exchange.

Furthermore, the DIOGs include significant new federal policies disclosed for the first time, including guidelines concerning “specific and relevant ethnic behavior” and a controversial “geo-mapping” project that was decisively rejected when first proposed at the local level.⁶ Policies with such broad-ranging effects, or such controversial histories, are especially unsuited for implementation prior to meaningful review by Congress and the American public.

Indeed, Congress has expressed a strong interest in the Attorney General’s Guidelines, reflected in recent Judiciary and Intelligence Committee hearings with Attorney General Mukasey, yourself, and other FBI officials about the Guidelines.⁷ Moreover, both Congress⁸ and the public⁹ have expressed serious concerns about unprecedented expansion of the FBI’s investigative authorities on several occasions. Congress, the undersigned organizations and other interested individuals and groups should have an

of Elisebeth Collins Cook, Assistant Attorney General, and Valerie Caproni, General Counsel, Federal Bureau of Investigation), 2.

⁵ See Letter to Attorney General Michael Mukasey from Arab-American Institute et al. (September 11, 2008) (joined by five civil liberties and community organizations serving the Arab, Muslim and Latino communities); see also Letter to Assistant Attorney General Grace Chung Becker from Muslim Advocates et al. (August 20, 2008) (joined by four organizations serving the Arab, Muslim and Sikh communities).

⁶ See, e.g., Teresa Watanabe & Richard Winton, *LAPD’s Muslim Mapping Plan Killed*, L.A. TIMES, November 15, 2007, at A1.

⁷ See *New Attorney General Guidelines For Domestic Intelligence Collection*: Hearing before the U.S. Senate Select Committee on Intelligence, 110th Cong. (September 23, 2008); *Oversight of the Federal Bureau of Investigation*: Hearing before the U.S. Senate Committee on the Judiciary, 110th Cong. (September 17, 2008); *The Federal Bureau of Investigation*: Hearing before U.S. House Committee on the Judiciary, 110th Cong. (September 16, 2008).

⁸ See Letter to Attorney General Michael Mukasey from Senators Leahy, Durbin, Feingold and Kennedy (November 25, 2008); Letter to Attorney General Mukasey from Senators Durbin, Feingold and Kennedy (September 23, 2008); Letter to Attorney General Mukasey from Senators Durbin, Feingold, Kennedy and Whitehouse (August 20, 2008); see also Letter to Attorney General Mukasey from Senators Leahy and Specter (August 18, 2008) (seeking “a meaningful dialog between Congress and [the Department of Justice].”).

⁹ See Statement by Kate Martin, Center for National Security Studies before U.S. Senate Select Committee on Intelligence (October 3, 2008); Letter to Inspector General Glenn Fine from Caroline Fredrickson, ACLU (September 22, 2008); Letter to Chairmen Conyers and Leahy, and Ranking Members Smith and Specter from ACLU et al. (September 12, 2008) (joined by 17 organizations representing the Arab, Sikh and civil libertarian communities); Letter to the Honorable John Conyers and the Honorable Patrick Leahy from Arab Community Center for Economic and Social Services (ACCESS) et al. (August 29, 2008) (joined by 28 interfaith, community and civil libertarian organizations); Letter to Attorney General Michael Mukasey from Muslim Advocates et al. (August 12, 2008) (joined by 36 organizations representing a diverse array of interfaith, community and civil libertarian interests).

opportunity to offer suggestions to the FBI before DIOGs implementing the controversial Attorney General's Guidelines take effect.

Accordingly, we urge you to provide copies of the DIOGs to these key stakeholders at your earliest opportunity. We further urge that implementation of the DIOGs, and the underlying Attorney General's guidelines, be delayed so that Congress and the American people can have a meaningful opportunity to examine them.

Thank you for your consideration. We look forward to hearing from you.

Sincerely,

Arab American Institute
American-Arab Anti-Discrimination Committee (ADC)
American Civil Liberties Union (ACLU)
Muslim Advocates
Muslim Public Affairs Council (MPAC)
Sikh American Legal Defense and Education Fund (SALDEF)

cc:

The Honorable Michael Mukasey, Attorney General
U.S. House Committee on the Judiciary
U.S. Senate Committee on the Judiciary