Dear Director Wray, General Lengyel, Acting Administrator Shea, and Acting Commissioner Morgan,

We write to you to express our deep and profound concerns that the surveillance tactics of the Federal Bureau of Investigation (FBI), the National Guard Bureau, the Drug Enforcement Administration (DEA), and Customs and Border Protection (CBP) during the recent protests across the U.S. are significantly chilling the First Amendment rights of Americans. We demand that you cease any and all surveilling of Americans engaged in peaceful protests.

George Floyd and Breonna Taylor are only the most recent cases of Black Americans who’ve been murdered by law enforcement officials in our country. We stand with the millions of Americans in hundreds of communities who are peacefully calling for transformational changes to better our nation by addressing the systemic racism and injustice embedded in our society.

The First Amendment protects the right of Americans to assemble and protest government actions. Further, the Fourth Amendment protects “[t]he right of the people to be secure in their persons…against unreasonable searches and seizures,” a restriction that applies to the agencies you lead.

While the job of law enforcement is to protect Americans, limited actions may be necessary if a demonstration turns violent. However, this authority does not grant the agencies you lead to surveil American citizens or collect vast amounts of personal information. Recent press reports indicate that:

- the FBI and National Guard flew RC-26B aircraft equipped with infrared and electro-optical cameras over Washington, D.C. and Las Vegas;
- the FBI may have flown Cessna 560 aircraft equipped with ‘dirtboxes,’ equipment that can collect cell phone location data, over Washington, D.C.

June 9, 2020

The Honorable Christopher A. Wray,  
Director  
Federal Bureau of Investigation  
935 Pennsylvania Avenue, N.W.  
Washington, D.C. 20535

The Honorable Timothy Shea,  
Acting Administrator  
Drug Enforcement Administration  
600-700 Army-Navy Drive  
Arlington, Virginia 22202

General Joseph L. Lengyel,  
Chief  
National Guard Bureau  
111 South George Mason Drive  
Arlington, Virginia 22204

The Honorable Mark A. Morgan,  
Acting Commissioner  
Customs and Border Protection  
1300 Pennsylvania Avenue, N.W.  
Washington, D.C. 20229
• the CBP flew Predator drones that collected and disseminated live video feeds over Minneapolis, San Antonio, and Detroit;\(^3\) and

• the DEA was granted broad authority to “conduct covert surveillance” over protesters responding to the death of George Floyd.\(^4\)

Aside from these documented examples of vast overreach of federal government surveillance in just the last 10 days, we know that federal agencies, including the ones you lead, have used other technologies to surveil Americans, including Stingrays, which mimic cell towers to collect location, call, text, and browsing data of nearby cellular devices;\(^5\) facial recognition technology;\(^6\) and automated license plate readers.\(^7\)

Americans have a healthy fear of government surveillance that started at the founding of our country and has continued to modern times. Polls show that seven in ten Americans believe the government surveils their phone calls and emails.\(^8\) In November 2019, nearly two-thirds of Americans said they were concerned about how the government collects and uses data about citizens.\(^9\)

Government surveillance has a chilling effect. Downloads for encrypted messaging apps have spiked during recent demonstrations,\(^10\) showing a broad concern of surveillance among protesters. As further evidence of the concerns of protesters, the following headlines have appeared in popular publications or on the websites of civil society groups over the 10 days, aiming to help Americans considering protesting protect themselves:

- Washington Post, “Your protest is being watched. Here's how to protect your privacy”\(^11\)
- Vice, “How to Protest Without Sacrificing Your Digital Privacy”\(^12\)
- The Verge, “How to secure your phone before attending a protest”\(^13\)
- WIRED, “How to Protest Safely in the Age of Surveillance”\(^14\)
- Consumer Reports, “How to Protect Phone Privacy and Security During a Protest”\(^15\)
- Project on Government Oversight, “How to Respond to Risk of Surveillance While Protesting”\(^17\)

Americans should not have to take proactive measures to protect themselves from government surveillance before engaging in peaceful demonstration. The fact that the agencies you lead have created an environment in which such headlines are common is, in and of itself, an indication of the chilling effect of government surveillance on law-abiding Americans. For these reasons, we demand you cease surveilling peaceful protests immediately and permanently.

Most gratefully,

Anna G. Eshoo
Member of Congress

Bobby L. Rush
Member of Congress
cc: The Honorable William P. Barr, Attorney General
    The Honorable Mark T. Esper, Secretary of Defense
    The Honorable Chad F. Wolf, Acting Secretary of Homeland Security


2 Id.


