

Congress of the United States
Washington, DC 20515

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

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;¹
- the FBI may have flown Cessna 560 aircraft equipped with 'dirtboxes,' equipment that can collect cell phone location data, over Washington, D.C.;²

- 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, such as 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

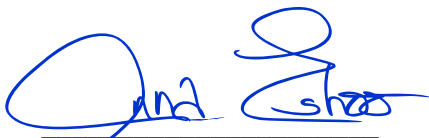
Americans have a healthy fear of government surveillance that started at the founding of our country and has continued to modern times. Polls show that seven in ten Americans believe the government surveils their phone calls and emails.⁸ In November 2019, nearly two-thirds of Americans said they were 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
- *Electronic Frontier Foundation*, “Surveillance Self-Defense: Attending Protests in the Age of COVID-19,”¹⁶
- *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.

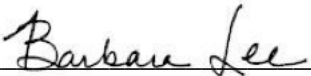
Most gratefully,



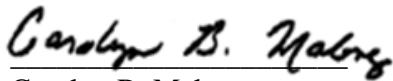
Anna G. Eshoo
Member of Congress




Bobby L. Rush
Member of Congress

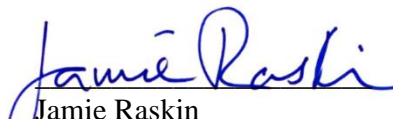

Barbara Lee
Member of Congress

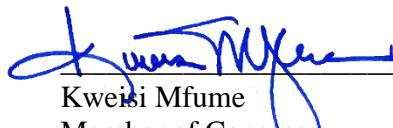

Zoe Lofgren
Member of Congress

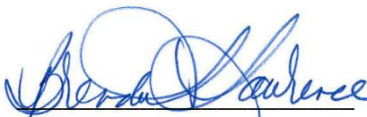

Carolyn B. Maloney
Member of Congress



Alexandria Ocasio-Cortez
Member of Congress

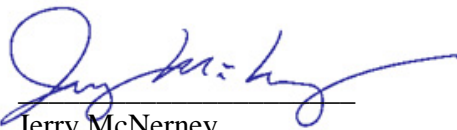

Eleanor Holmes Norton
Member of Congress

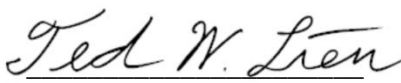

Jamie Raskin
Member of Congress

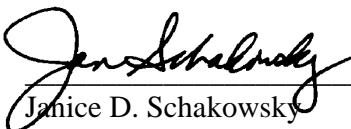

Kweisi Mfume
Member of Congress



Brenda L. Lawrence
Member of Congress


Ro Khanna
Member of Congress

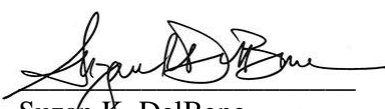

Jerry McNerney
Member of Congress


Ted W. Lieu
Member of Congress



Janice D. Schakowsky
Member of Congress



Deb Haaland
Member of Congress

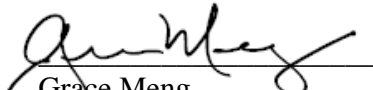

Peter Welch
Member of Congress



Suzan K. DelBene
Member of Congress

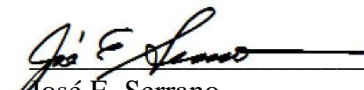

Denny Heck
Member of Congress



Stephen F. Lynch
Member of Congress



Mark Takano
Member of Congress


Grace Meng
Member of Congress



Raul M. Grijalva
Member of Congress



José E. Serrano
Member of Congress


Rashida Tlaib
Member of Congress

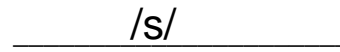

Salud O. Carbajal
Member of Congress



Peter A. DeFazio
Member of Congress



Darren Soto
Member of Congress


Michael F. Doyle
Member of Congress


Doris Matsui
Member of Congress

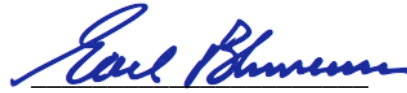

John Lewis
Member of Congress


Bill Foster
Member of Congress

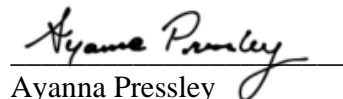

Wm. Lacy Clay
Member of Congress

/s/

Tim Ryan
Member of Congress



Earl Blumenauer
Member of Congress



Ayanna Pressley
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

¹ Joseph Cox, “The Military and FBI Are Flying Surveillance Planes Over Protests,” *Vice Motherboard*, June 3, 2020, https://www.vice.com/en_us/article/y3zvwj/military-fbi-flying-surveillance-planes-george-floyd-protesters.

² *Id.*

³ Jason Koebler, Joseph Cox, and Jordan Pearson, “Customs and Border Protection Is Flying a Predator Drone Over Minneapolis,” *Vice Motherboard*, May 29, 2020, https://www.vice.com/en_us/article/5dzbe3/customs-and-border-protection-predator-drone-minneapolis-george-floyd; Joseph Cox, “The Government Is Regularly Flying Predator Drones Over American Cities,” *Vice Motherboard*, June 3, 2020, https://www.vice.com/en_us/article/n7wnzm/government-flying-predator-drones-american-cities; Zolan Kanno-Youngs and Katie Benner, “Trump Deploys the Full Might of Federal Law Enforcement to Crush Protests,” *The New York Times*, June 2, 2020, sec. U.S., <https://www.nytimes.com/2020/06/02/us/politics/trump-law-enforcement-protests.html>.

⁴ Jason Leopold and Anthony Cormier, “The DEA Has Just Been Authorized to Conduct Surveillance on Protesters,” *BuzzFeed News*, June 2, 2020, <https://www.buzzfeednews.com/article/jasonleopold/george-floyd-police-brutality-protests-government>.

⁵ “Stingray Tracking Devices: Who’s Got Them?,” November 2018, <https://www.aclu.org/issues/privacy-technology/surveillance-technologies/stingray-tracking-devices-whos-got-them>.

⁶ Ryan Mac, Caroline Haskins, and Logan McDonald, “Clearview’s Facial Recognition App Has Been Used By The Justice Department, ICE, Macy’s, Walmart, And The NBA,” *BuzzFeed News*, February 27, 2020, <https://www.buzzfeednews.com/article/ryanmac/clearview-ai-fbi-ice-global-law-enforcement>.

⁷ “EPIC FOIA: Automated License Plate Readers (FBI)” (Electronic Privacy Information Center), accessed June 5, 2020, <https://epic.org/foia/fbi/lpr/>.

⁸ “Most in U.S. Say Government Could Be Monitoring Their Phone Calls, Emails” (Pew Research Center, September 27, 2017), <https://www.pewresearch.org/fact-tank/2017/09/27/most-americans-think-the-government-could-be-monitoring-their-phone-calls-and-emails/>.

⁹ Brooke Auxier et al., “Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over Their Personal Information” (Pew Research Center, November 15, 2019), <https://www.pewresearch.org/internet/2019/11/15/americans-and-privacy-concerned-confused-and-feeling-lack-of-control-over-their-personal-information/>.

¹⁰ Nicolas Rivero, “Signal App Downloads Spike as US Protesters Seek Message Encryption,” *Quartz*, June 4, 2020, <https://qz.com/1864846/signal-app-downloads-spike-as-us-protesters-seek-message-encryption/>.

¹¹ James Pace-Cornsilk and Jonathan Baran, *Your Protest Is Being Watched. Here’s How to Protect Your Privacy*. (Washington Post, 2020), https://www.washingtonpost.com/video/technology/your-protest-is-being-watched-heres-how-to-protect-your-privacy/2020/06/03/3badf963-ef49-47f9-8228-2d8bfb8c88b3_video.html.

¹² Joseph Cox and Lorenzo Franceschi-Bicchierai, “How to Protest Without Sacrificing Your Digital Privacy,” *Vice Motherboard*, June 1, 2020, https://www.vice.com/en_us/article/gv59jb/guide-protect-digital-privacy-during-protest.

¹³ Aliya Chaudhry, “How to Secure Your Phone before Attending a Protest,” *The Verge*, June 4, 2020, <https://www.theverge.com/21276979/phone-protest-demonstration-activism-digital-how-to-security-privacy>.

¹⁴ Andy Greenberg and Lily Hay Newman, “How to Protest Safely in the Age of Surveillance,” *Wired*, accessed June 5, 2020, <https://www.wired.com/story/how-to-protest-safely-surveillance-digital-privacy>.

¹⁵ Thomas Germain, “How to Protect Phone Privacy and Security During a Protest,” *Consumer Reports*, June 3, 2020, <https://www.consumerreports.org/privacy/protect-phone-privacy-security-during-a-protest/>.

¹⁶ Bill Budington, “Surveillance Self-Defense: Attending Protests in the Age of COVID-19,” *Electronic Frontier Foundation*, June 2, 2020, <https://www.eff.org/deeplinks/2020/06/surveillance-self-defense-attending-protests-age-covid-19>.

¹⁷ Jake Laperruque, “How to Respond to Risk of Surveillance While Protesting,” *Project On Government Oversight*, June 4, 2020, <https://www.pogo.org/analysis/2020/06/how-to-respond-to-risk-of-surveillance-while-protesting/>.