

Questions for the Record from Rep. Ted Lieu for FBI Director Christopher Wray
Hearing on Oversight of the Federal Bureau of Investigation
July 12, 2023

1. In your letter to Acting Pardon Attorney Rosalind Sargent-Burns dated March 25, 2022, you cite the 2004 testimony of Darlene Nichols. At the time, Ms. Nichols claimed that Peltier had admitted to her that he murdered Special Agents Jack R. Coler and Ronald A. Williams.

As you likely know, activists in support of Mr. Peltier's petition for commutation have contended that Ms. Nichols was an FBI informant and highlight her marriage to Robert Ecoffey, a Bureau of Indian Affairs investigator. **How do you respond to claims that Ms. Nichols' testimony cannot be trusted due to a potential for bias?**

Ms. Nichols provided her testimony in a separate, unrelated case centered on the murder of Anna Mae Aquash. **How do you respond to concerns that Mr. Peltier's counsel has never had the opportunity to cross-examine Ms. Nichols?**

2. During Mr. Peltier's 1977 trial, the prosecution noted that a .223 casing was "the most important piece of evidence in the case". In 1980, a Freedom of Information Act (FOIA) request surfaced claims among advocates that the FBI may have intentionally withheld evidence. More specifically, a firearms examiner concluded that the .223 caliber cartridge contained a different firing pin from the AR-15 that the FBI has claimed was in Mr. Peltier's possession during the shootout.

How do you respond to concerns that this ballistics evidence was not presented at trial?

3. Supporters of Mr. Peltier's petition of commutation have also argued that the FBI deployed coercive methods to extract false testimony from witnesses.

After Mr. Peltier's arrest in 1976, the FBI submitted to the Canadian court an affidavit signed by Myrtle Poor Bear to secure Mr. Peltier's extradition. In the affidavit, Myrtle Poor Bear claims that "I was [Mr. Peltier's] girl friend at the time" and that "I saw Leonard Peltier shoot the FBI agents." However, years later, Myrtle Poor Bear recanted her statement and claimed that FBI agents had coerced her into signing the affidavit. She claimed that she never knew Mr. Peltier.

How do you respond to allegations that the FBI coerced Myrtle Poor Bear into claiming that was associated with Mr. Peltier and that she witnessed the deaths of Special Agents Coler and Williams?

Questions for the Record from Rep. Cori Bush for FBI Director Christopher Wray
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1. As I highlighted in my remarks, the Foreign Intelligence Surveillance Court recently disclosed the FBI improperly queried FISA Section 702 data about 133 individuals arrested during the George Floyd protests. 702 is a foreign counterintelligence tool.
 - a. Were any of these individuals prior to this query the subject of an FBI foreign counterintelligence or other national security investigation not involving domestic terrorism or violations of federal anti-riot laws?
 - b. If any of the 133 individuals were being investigated for domestic terrorism, what investigative classifications were they being investigated under?

2. Please clarify your remarks in response to my question about the FBI's relationship to ZeroFox.
 - a. Does the Bureau have an existing contract with ZeroFox?
 - b. What are the terms of the Bureau's engagement, contractual or otherwise, with ZeroFox?
 - c. What are the total dollar values of any current or former contractual or other engagements between the Bureau and ZeroFox?
 - d. How does the Bureau use ZeroFox tools?
 - e. What steps is the Bureau taking to ensure that its usage of ZeroFox social media monitoring tools does not disproportionately target Black people, protesters and activists?

3. In response to my question, you acknowledged that the FBI's Atlanta Division has been involved in the law enforcement response to people protesting the Atlantic Public Safety Training Center. What is the FBI doing to ensure that it does not misuse the term "violent extremist," and that the term "domestic terrorist" is not misused by state and local law enforcement, to infringe on protesters' and activists' constitutional rights?

4. You previously informed Congress that the FBI has ceased using the Black Identity Extremist investigative classification.
 - a. Does the FBI's current investigative classification system still include sub-categories for "Black Separatist Extremist," or any variation thereof (such as Terrorism Enterprise Investigation-Domestic Terrorism-Black Separatist Extremist or Act of Terrorism-Domestic Terrorism-Black Separatist Extremist)?
 - b. Has the FBI opened any predicated investigations or assessment under any variation of the "Black Separatist Extremist" investigative classifications in the

last year? If so, how many? If not, when did the FBI last open an assessment or predicated investigation under these investigative classifications?

- c. Did the FBI use any variation of “Black Separatist Extremist” investigative classifications when investigating Black Identity Extremists?
 - d. What investigative classifications are used when investigating so-called Racially Motivated Violent Extremists?
 - e. How many domestic terrorism investigations have been opened with a nexus to the George Floyd protests?
 - i. How many were predicated investigations and how many were assessments?
 - ii. How many investigations were classified as investigations into Black Separatist Extremists?
 - iii. How many investigations were classified as investigations into Anarchist Extremists?
 - iv. How many investigations were classified as investigations into civil unrest or violations of federal anti-riot laws?
5. On September 7, 2022, the Anti-Defamation League released its analysis of a leaked Oath Keepers membership list. It identified 373 individuals it believes are currently serving in law enforcement agencies and 117 individuals it believes are currently serving in the U.S. military.
- a. Has the FBI identified whether any of the listed individuals are involved in federal task forces? If so, how many and which task forces?
 - b. Has the FBI reviewed whether any of the agencies employing listed officers are recipients of federal funds, and whether they are properly investigating officers listed?
 - c. Will the FBI commit to sharing information about how it is ensuring that law enforcement agencies and officers it partners with meet minimal standards that include being free of conduct that exhibits racial or other bias?
6. The FBI has released a limited amount of use of force data to the public; according to the National Use-of-Force Data Collection website, more can be released when 80% of law enforcement agencies report data. I understand that 60% of agencies are currently reporting, and that this data does not reflect demographic information on the subjects of the use of force as is indicated to be included.
- a. What is the FBI doing to encourage additional state and local law enforcement agencies to report?
 - b. When can we expect to see the demographic information on the subjects of the use of force included in reporting?

Questions for the Record from Rep. Matt Gaetz for FBI Director Christopher Wray
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1. On June 24th, 2022, Christian Beamon, the teenage brother of Fox News Analyst Gianni Caldwell, was shot and killed on the southside of Chicago. I have been informed that the FBI made an arrest in an unrelated case almost two months after Christian's murder. Gianni Caldwell has said that he has reached out to the FBI on multiple occasions via the FBI's 800 number, and no one has been in touch with him even to this day.

Therefore, I write seeking answers to the following:

- (1) Why hasn't the FBI responded to a victim of a violent crime, especially if there's been an arrest made by the FBI?
- (2) Will you commit to having the FBI follow up with Gianni Caldwell on the murder investigation of his brother?

2. The behavior and practices of the FBI when conducting investigations both traditionally and under cover has drawn much deserved attention as a result of investigations into your bureau. Both the Durham Report and the Judiciary Committee's whistleblower depositions have uncovered serious malpractice by the FBI – including FBI involvement in spying on presidential candidates and potential wrongdoing during the events of January 6, 2021.

It has been over six years since Operation Crossfire Hurricane and over two years since the event of January 6th, 2021, and many questions remain unanswered.

Therefore, I write seeking answers to the following:

- (1) How many FBI agents and/or assets spied on the Trump campaign and/or Trump administration between 2015 and 2020?
- (2) How many FBI agents were present in or near the Capitol on January 6, 2021?
- (3) How many FBI assets, informants, or undercover agents were present in or near the Capitol on January 6, 2021?

Questions for the Record from Rep. Andy Biggs for FBI Director Christopher Wray
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1. After having the opportunity to review the context Capitol Police Chief Steven Sund's statement regarding federal agents in the United States Capitol or in the vicinity on January 6, 2021, please provide an updated answer to this question: Would you agree with Chief Sund that it was filled with federal agents on January 6, 2021?
2. How many confidential human sources were present in the United States Capitol and in the vicinity on January 6, 2021?
3. How many individuals, who were at the time in communication with the FBI in an informant or asset capacity, were present in the United States Capitol and in the vicinity on January 6, 2021?
4. How many FBI agents were present in the crowd at the United States Capitol and in the vicinity on January 6, 2021?
5. How many federal agents were present in the crowd at the United States Capitol and in the vicinity on January 6, 2021?
6. How many of each of the above categories of agents, sources, informants, and assets were present in an undercover capacity in the United States Capitol and in the vicinity on January 6, 2021?
7. You mentioned that you would provide my office with the numbers of these federal agents along with the court filings that indicate these statistics. Please provide those materials and numbers.
8. How many queries of data and communications possessed by the FBI were conducted targeting individuals in or around, or believed to be in the United States Capitol and in the vicinity, on January 6, 2021?
9. What is the FBI's estimate of the cost of the process to complete a FISA application for a single application?
10. What is the FBI's estimate of the cost of a running a backdoor query, including compliance with all relevant regulations and query limitations, for a single query term?
11. What is the process for reviewing whether a completed query was legally justified after it has been run?
12. How can a subject of a query be notified of FBI's failure to comply with relevant regulations and query limitations?
13. How can a subject of a query receive justice for the FBI's failure to comply with relevant regulations and query limitations?
14. You have denied that the FBI requested financial records for broad segments of law-abiding Americans, instead describing such interactions as "engagements" that the FBI commonly undertakes. Please describe why you characterize such requests as "engagements?"
 - a. Under what constitutional or statutory provisions do you aver such "engagements" are lawful?

- b. With which companies, including banks, credit card companies, and data companies, has the FBI “engaged” to warrantlessly collect information on Americans?
 - c. Are these “engagements” supported by Fourth Amendment standards of probable cause?
 - d. For what purposes is the FBI using a likely constitutionally prohibited “engagement” program to demand and to track firearms and ammunition purchases of vast swaths of the American population?
15. Through what other processes, in addition to “engagements,” FISA, and purchases from data brokers, is the FBI acquiring Americans’ personal information (e.g. financial transaction history, location data, etc.)?
 16. Does the FBI have in place procedural protections to protect citizens’ civil rights regarding these “engagements,” considering that FBI policies have repeatedly been violated, resulting in untruthful affidavits to the FISC and queries lacking probable cause?
 17. Does the FBI recognize any privacy rights held by American customers relating to their activity with their financial institutions?
 18. Is there a penalty by law if a company refuses to disclose to the FBI information demanded by these “engagements?”
 19. Has any entity refused to disclose to the FBI information demanded by these “engagements?” How has the FBI responded in such cases?
 20. Please list the names and titles of FBI personnel who have requested these kinds of email “engagements” (e.g. financial transaction history, location data, etc.) and additionally the names and titles of those who are authorized to send these requests.
 21. Has the FBI ever attempted to or considered it necessary to obtain a warrant for Americans’ financial information or for other information requested or shared through these “engagements?”
 22. Do you believe these “engagements” constitute National Security Letters (NSLs), which are described as being “relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities?”
 23. Has the FBI ever sought judicial clarification or oversight regarding this “engagement” process?
 24. You testified that the FBI did not use leads collected from the “engagement” process. What is a “lead?”
 - a. Is every reported transaction considered a “lead?”
 - b. Does the FBI compare those purchases against other sources (e.g. location data, social media posts, internet search history) before considering it a “lead?”
 25. Has the FBI shared the information collected through “engagements” with other agencies such as DOJ, IRS, ATF and/or others?
 - a. Has this information been shared for the purpose of opening investigations, or for exclusively to supplement existing investigations?
 26. Have other agencies shared similar forms of information collected from random surveillance efforts with the FBI? For example, armed agents of the IRS and ATF in June

raided a licensed gun store in Great Falls, Montana and seized all Firearms Transaction Records (ATF Forms 4473).

- a. Did FBI personnel participate in that Great Falls raid?
 - b. If not, did IRS/ATF share information with the FBI about that raid or any data retrieved from ATF Forms 4473?
 - c. If so, was any data retrieved from the confiscated ATF Forms 4473 compared to firearms financial records obtained through FBI “engagement” demands in this particular, or any other similar, investigation, raid or operation?
27. Please clarify your statement to Chairman Jordan that the FBI did not use “leads” attained from “engagements?”
- a. Is that statement interpreted or limited to mean not “used” as evidence in a criminal trial obtained by probable cause warrant; or does it mean the “leads” were not used for any purposes whatsoever?
 - b. If the “leads” were, or have not been, used have the records thus obtained been expunged from FBI databases and all other databases in other government repositories?
 - i. If not, why not?
 - ii. Does the FBI envision a possible use of this information in the future?
 - iii. If so, for what purpose(s)?
28. Has the FBI continued to use, and does the FBI currently use, this “engagement” process to demand private financial data to scour the lawful purchases of lawful goods by law-abiding customers from lawful businesses?
29. Is the FBI, in coordination with other instrumentalities of federal, state or local government to collect, compile and to maintain a confidential database of firearms owners in contravention of federal law?
30. Has the FBI considered whether its presumed authority to compel the production of customer records through an email “engagement” program violates the First Amendment because it permits the FBI to obtain, without prior judicial review, information potentially protected by the First Amendment?
31. Has the FBI considered whether its “engagement” violates the First Amendment by requesting companies engage in compelled disclosures under fear of federal retaliation?
32. Has the FBI considered that the collection, compilation, retention and maintenance of a secret gun owner database infringes on Americans’ privacy and association rights? This may include identity information where individuals are lawfully seeking to communicate or associate anonymously.
33. Has the FBI considered whether its “engagement” demands violate “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”?
34. On June 24th, 2022 Christian Beamon, the teenage brother of Fox News Analyst Gianni Caldwell was shot and killed on the southside of Chicago. I have been informed that the FBI made an arrest in an unrelated case almost two months after Christian’s murder. Gianni Caldwell has said that he has reached out to the FBI on multiple occasions via the FBI’s 800 number and no one has been in touch with him even to this day.

- a. Why is the FBI not responding to a victim of a violent crime, especially if there has been an arrest made by the FBI?
- b. Will you commit to having the FBI follow up with Gianni Caldwell on the murder investigation of his brother?