

July 3, 2013

Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, DC 20510

Dear Senators:

We write to urge you to fully explore the record of James Comey, current nominee to be the next Director of the Federal Bureau of Investigations (FBI), before voting on his nomination. Of particular importance are Mr. Comey's views on the detention and interrogation of terrorism suspects—issues that have been central to the operations of the FBI since the 9/11 attacks.

As former government officials and agents who have worked with the FBI, we are dedicated to ensuring that the Bureau remains an accountable and effective agency, acting within the boundaries of the law and in accordance with American ideals. The next Director of the FBI will lead the nation's premier federal law enforcement agency, which plays a primary role in debriefing, interrogating, and prosecuting terrorism suspects. Any candidate should have a record that reflects the capability and willingness to carry out these functions in a lawful and effective manner.

Mr. Comey has received the most public attention for refusing to reauthorize a controversial warrantless wiretapping program in the face of considerable pressure from the White House. E-mails written by Mr. Comey also show that he opposed some "enhanced interrogation techniques" on policy grounds, arguing that they were "simply awful," and that he refused to sign-off on an Office of Legal Counsel memorandum that justified the use of 13 "enhanced interrogation techniques" in combination. Mr. Comey deserves credit for these actions.

However, the public record also shows that Mr. Comey concurred with a May 10, 2005 Office of Legal Counsel opinion that justified those same enhanced interrogation techniques for use individually. These techniques include cramped confinement, wall-standing, water dousing, extended sleep deprivation, and waterboarding, all of which constitute torture or cruel, inhuman, or degrading treatment in contravention of domestic and international law. Further, Mr. Comey vigorously defended the Bush administration's decision to hold Jose Padilla, a United States citizen apprehended on U.S. soil, indefinitely without charge or trial for years in a military brig in Charleston, South Carolina.

The FBI, while not a perfect institution, has a proud history of dealing with terrorism suspects in accordance with the law. When other agencies and departments resorted to "enhanced interrogation" techniques, FBI Director Mueller directed FBI agents not to participate and in many cases FBI agents were pulled from the field where there were concerns about complicity with unlawful interrogation approaches. To date, the FBI has played a role in prosecuting within the civilian criminal justice system nearly 500

international terrorism cases—often leading to substantial periods of incarceration—without having to resort to indefinite detention. Even Jose Padilla was ultimately given a trial in a civilian court, despite claims by Mr. Comey that prosecuting Padilla or otherwise affording him traditional due process protections would compromise national security.

President Obama has banned torture—including waterboarding—and overturned the Office of Legal Counsel opinions authorizing it. The Obama administration has also stated that it is never appropriate to hold individuals picked up within the United States in indefinite detention without charge or trial. Senators should ask Mr. Comey to explain and clarify these aspects of his record, which appear to be contrary not only to established law, but also the policies put forth by the current administration.

Specifically, Mr. Comey should be asked to reject the May, 10, 2005 Office of Legal Counsel opinion with which he concurred, and all other Office of Legal Counsel opinions authorizing “enhanced interrogation techniques.” Mr. Comey should also support a process by which the Senate Intelligence Committee can make public its 6,000 plus page report on the post-9/11 CIA interrogation program, which was in substantial part authorized by the Office of Legal Counsel while Mr. Comey served as Deputy Attorney General. Finally, Mr. Comey should make clear that it is not lawful or appropriate to hold individuals picked up within the United States indefinitely without charge or trial.

Mr. Comey is a well-respected lawyer with an impressive background in government service that could serve as the foundation for a successful tenure as FBI Director. However, before the Senate votes on his nomination, it should fully explore his record on key aspects that pertain to the FBI’s mission in interrogating and prosecuting terrorism suspects.

Sincerely,

Luis Busquets  
Jim Clemente  
Jack Cloonan  
Mike Marks  
Joe Navarro

## Biographical Information:

### **Luis Busquets**

Luis Busquets is a former Air Force pilot, police officer, and FBI agent. As a pilot he flew both KC-135s and UH-1s. He then worked as a policeman for the Baltimore and Albuquerque police departments before becoming a special agent with the FBI where he specialized in violent crimes and counterintelligence.

### **James T. Clemente, FBI SSA (Retired)**

Retired FBI Supervisory Special Agent (for 22 years), Clemente was a member of the National Center for the Analysis of Violent Crime (NCAVC) Behavioral Analysis Unit (BAU), an integral part of the Critical Incident Response Group, which provides behavioral support during all FBI crisis incidents. Clemente has analyzed hundreds of cases for and has provided investigative, prosecutive, and sentencing guidance to FBI agents, federal, state, and local law enforcement agencies, prosecutors, psychologists, social workers, and other professional organizations across the United States and overseas in cases involving sexual exploitation of children, child pornography, child sex abuse, child prostitution, child abduction, serial rape, incest, sexual assault, sexual homicide, serial homicide, kidnapping, and equivocal death.

### **Jack Cloonan**

Jack Cloonan served as a special agent with the FBI from 1977 to 2002. He began investigating Al Qaeda in the early 1990's and served as a special agent for the Bureau's Osama bin Laden unit from 1996 to 2002.

### **Mike Marks**

Mike Marks is a retired NCIS agent with 23 years of experience. He has served in more than 20 countries, including Bahrain, Afghanistan, and Yemen. He assisted in the investigation of the USS Cole bombing, was assigned to the FBI's Joint Terrorism Task Force, and conducted numerous interrogations as part of the Criminal Investigations Task Force in Afghanistan.

### **Joe Navarro**

For 25 years, Joe Navarro worked as an FBI special agent in the area of counterintelligence and behavioral assessment. A founding member of the National Security Division's Behavioral Analysis Program, he is on the adjunct faculty at Saint Leo University and the University of Tampa and remains a consultant to the intelligence community. Mr. Navarro is the author of a number of books about interviewing techniques and practice including Advanced Interviewing which he co-wrote with Jack Schafer and Hunting Terrorists: A Look at the Psychopathology of Terror. He currently teaches the Advanced Terrorism Interview course at the FBI.