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**Statement of Michael German, Fellow,
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**To the Public Safety Committee
Oakland City Council**

October 13, 2020

To the Honorable Members of the Public Safety Committee of the Oakland City Council,

I am submitting this statement to urge you to vote to end the Oakland Police Department's participation in the FBI Joint Terrorism Task Force (JTTF). The security of Oakland residents can best be assured when law enforcement policies and practices respect constitutional limits; employ reasonable evidentiary standards for initiating investigations and collecting intelligence; prohibit racial profiling and immigration enforcement; and are subjected to independent oversight and public accountability. Federal laws and guidelines governing FBI investigations do not meet these reasonable requirements, and the FBI fails to allow the transparency necessary to assure Oakland police officers assigned to the JTTF comply with state and local laws, ordinances, and policies.

Reasonable Standards Protect the Public

My 16 years as an FBI special agent taught me that reasonable standards work. I served as an undercover agent on domestic terrorism investigations overseen by Joint Terrorism Task Forces (JTTF) in Los Angeles and Seattle in the 1990s. In those cases, I operated under Attorney General's Guidelines that required me to have a reasonable indication that each person I investigated was engaging in, or likely to engage in a violation of federal law. This reasonable suspicion requirement is one police officers are trained in and use in multiple contexts, including Terry stops and criminal intelligence sharing under federal regulations.¹ These standards were adopted to protect the privacy and civil liberties of innocent persons and ensure law enforcement activities are based on evidence of wrongdoing rather than bias. As a working agent, I also found this reasonable standard made my investigations more effective, by focusing my efforts and resources where the evidence directed.

Unfortunately, after the 9/11 attacks, the Justice Department and Congress altered the FBI's authorities significantly, giving it the power to conduct electronic surveillance, gather intelligence, and investigate people and organizations it does not suspect of engaging in criminal activity. The FBI exercises these expanded powers in nearly complete secrecy, giving overseers, the public, and victims of abuse few opportunities to challenge the legality or effectiveness of its methods.

As a result, Oakland police officers assigned to the JTTF would find it extremely difficult, if not impossible to comply with state law and local ordinances while conducting routine operations under the FBI's current counterterrorism authorities and practices. These Oakland officers would have routine access to massive databases of information gathered about Americans without any suspicion of wrongdoing. And information these officers collect during JTTF operations could be used by federal agencies engaged in immigration enforcement.

The USA PATRIOT Act, passed just weeks after the 9/11 attacks, expanded the federal government's secret foreign intelligence powers, allowing it to amass enormous databases containing information about persons two and three degrees separated from individuals who are merely "relevant" to an authorized inquiry.² Congress continued reauthorizing its most problematic provisions even after Justice Department Inspector General audits began revealing widespread abuse in 2007, including the use of illegal "exigent letters" to gather telephone toll records of journalists based on faked emergencies.³ It wasn't until National Security Agency (NSA) whistleblower Edward Snowden provided journalists with documents revealing the government's secret interpretation of the PATRIOT Act that allowed the FBI to gather the phone records of virtually all Americans that even members of Congress realized how expansively the bureau was using these authorities.⁴ The FBI also claimed the authority to sift through the NSA's vast trove of intercepted international communications without warrants to seek evidence for use in routine criminal investigations against Americans, though it won't say how often it conducts these backdoor searches.⁵ Oakland police officers assigned to the JTTF would have routine access to many of these data bases when conducting counterterrorism investigations or engaging in intelligence gathering activities.

The Justice Department also amended the Attorney General's Guidelines that govern the FBI's investigative authorities several times after 9/11, lastly and most significantly by Attorney General Michael Mukasey in December 2008.⁶ The Mukasey guidelines created a new type of investigation called an "assessment," and expanded the scope of preliminary investigations, neither of which require reasonable suspicion in order to initiate. Assessments permit physical surveillance, commercial and government database searches, overt and covert interviews, racial and ethnic mapping, and the recruitment and tasking of informants without any factual predicate, that is, without any objective basis to suspect the target of the investigation has violated any law or is likely to in the future.⁷

Agents can open renewable 30-day assessments by claiming they have an "authorized purpose," such as preventing crime or terrorism. This subjective criteria allows agents immense discretion to target anyone with intrusive tactics, such as tasking informants, conducting physical surveillance, and engaging in overt and covert interviews. Assessments can also be opened for the purpose of finding information to coerce a person to become an FBI informant. Again, no

factual predicate suggesting criminal wrongdoing is required. FBI agents opened over 82,325 assessments of individuals and organizations from 2009 to 2011, the first two years they had this authority. But only 3,315 of these assessments found information that warranted opening preliminary or full investigations, according to data the FBI released to *The New York Times*.⁸ An FBI white paper discussing the San Francisco Police Department's participation in the JTTF made clear that local law enforcement officers assigned to the JTTF primarily conduct assessments, in clear violation of the San Francisco ordinance that the Oakland ordinance mirrored.⁹

This low conversion rate documented by *The New York Times* is strong evidence that the vast majority of assessments target innocent persons, particularly because the guidelines require only that agents have "information or an allegation" to open Preliminary Investigations. A 2010 Inspector General inquiry regarding FBI investigations of domestic advocacy groups like the Thomas Merton Center for Peace and Justice, Greenpeace, Catholic Worker, and People for the Ethical Treatment of Animals found that FBI agents often made the allegations necessary to open these abusive investigations themselves, based on the mere speculation that the subjects might commit a crime in the future.¹⁰ Being secretly subjected to a Preliminary Investigation carries consequences. JTTF agents place subjects of Preliminary Investigations on terrorist watchlists as a matter of policy, without ever revealing this fact to the impacted victims. Only full investigations, which allow electronic wiretaps and search warrants, require the reasonable suspicion of criminal activity that Oakland Police Departmental orders require.¹¹

The abuse that results from these low standards is not hypothetical. Despite the excessive secrecy shrouding most JTTF activities, substantial public evidence shows the FBI has repeatedly used its post-9/11 powers to harass political dissidents, immigrants, and minority communities. The Portland Police can be proud of the fact they led resistance to this federal overreach when Attorney General Ashcroft ordered FBI agents to conduct "voluntary" interviews of thousands of Middle Eastern immigrants based on nothing but their national origin. This broad racial and ethnic profiling has not stopped. In 2009 the FBI initiated a nationwide program of mapping American communities by race and ethnicity, and tracking so-called "ethnic behaviors," which the Justice Department specifically authorized in 2014.¹² FBI documents obtained by the *Intercept* reveal agents regularly exploit immigration records, scour social media, and infiltrate Muslim Students Associations or local mosques to recruit informants.¹³ On the eve of the 2016 presidential elections FBI agents conducted at least 109 interviews of American Muslims across the nation, asking generalized questions about potential threats to polling places, and potentially suppressing voter turnout from these communities.¹⁴

In August 2017, the FBI circulated an intelligence assessment to its local networks, including thousands of local police officers assigned to the JTTF. The document warned of the threat posed to law enforcement by so-called "Black Identity Extremists," a movement it describes as responding to "*perceptions* of police brutality against African Americans."¹⁵ Local law enforcement has adopted this thinly veiled allusion to the Black Lives Matter movement as a threat to be prioritized in investigations.¹⁶ The FBI has targeted Black Lives Matter activists with intimidating visits to their homes and workplaces, as they have done with environmental activists across the country.¹⁷ In 2016, the Bay Area JTTF opened an investigation targeting anti-racist

activists who had been stabbed by neo-Nazi skinheads at a Sacramento protest. JTTF harassment of political activists does not make us safer.

JTTF Participation Does Not Make Oakland Safer

Participation in JTTFs does not guarantee that terrorism threat information will be handled properly to prevent attacks. The Boston Police Department was a JTTF member when the FBI received warnings from Russian intelligence officials that Tamerlan Tsarnaev posed a terrorist threat, but information in that case was not effectively pursued or shared among JTTF members before the Boston Marathon bombing. The Orlando Police Department was a JTTF member while it investigated Omar Mateen, but he was able to commit mass murder in a local nightclub nonetheless. Department of Defense investigators were JTTF members when the FBI investigated Maj. Nadal Hasan, but the Webster Commission investigating the 2009 Ft. Hood shooting determined the “data explosion” within the FBI hindered the proper identification and sharing of pertinent information among JTTF agents. There is simply no evidence to suggest that participation in JTTFs helps avoid these tragedies. Oakland residents are safer when law enforcement resources are focused on threats based on evidence, not bias. The greatest threat to public safety is the unchecked exercise of police power. Certainly innocent victims of abusive JTTF operations would not be made safer if Oakland police officers assisted the FBI in unreasonable investigations and intelligence collection.

Ensuring public safety includes protecting Oakland residents against unwarranted government interference with the free exercise of our civil rights and liberties.

¹ See *Terry v. Ohio*, 392 U.S. 1 (1968); 28 Code of Federal Regulations, Part 23.

² Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, 107 P.L. 56, 115 Stat. 272.

³ OFFICE OF INSPECTOR GEN., DEP’T OF JUSTICE, A REVIEW OF THE FEDERAL BUREAU OF INVESTIGATION’S USE OF EXIGENT LETTERS AND OTHER INFORMAL REQUESTS FOR TELEPHONE RECORDS (2010), available at <http://www.justice.gov/oig/special/s1001r.pdf>

⁴ Glenn Greenwald, “NSA collecting phone records of millions of Verizon customers daily,” *The Guardian*, June 5, 2013, <http://www.guardian.co.uk/world/2013/jun/06/nsa-phone-records-verizon-court-order>.

⁵ Louise Matsakis, “Congress Renews Warrantless Surveillance – And Makes It Even Worse,” *Wired Magazine*, Jan. 11, 2018, at: <https://www.wired.com/story/fisa-section-702-renewal-congress/>.

⁶ See Emily Berman, “Domestic Intelligence: New Powers, New Risks,” *Brennan Center for Justice at New York University Law School*, January 18, 2011, <https://www.brennancenter.org/publication/domestic-intelligence-new-powers-new-risks>.

⁷ U.S. Department of Justice, Office of the Attorney General, *The Attorney General’s Guidelines for Domestic FBI Operations* (2008), <https://www.justice.gov/archive/opa/docs/guidelines.pdf>.

⁸ Charlie Savage, “F.B.I. Focusing on Security Over Ordinary Crime,” *The New York Times*, August 23, 2011, sec. U.S., <https://www.nytimes.com/2011/08/24/us/24fbi.html>.

⁹ Ryan Devereaux, “The FBI and San Francisco Police Have Been Lying About Scope of Joint Counterterrorism Investigations, Documents Suggest,” *The Intercept*, November 1, 2019, <https://theintercept.com/2019/11/01/fbi-joint-terrorism-san-francisco-civil-rights/>.

¹⁰ OFFICE OF THE INSPECTOR GEN., DEP’T OF JUSTICE, A REVIEW OF THE FBI’S INVESTIGATIONS OF CERTAIN DOMESTIC ADVOCACY GROUPS (2010), <http://www.justice.gov/oig/special/s1009r.pdf>

¹¹Oakland Police Departmental General Order M-17 (Criminal Intelligence), June 28, 1999, <https://powerdms.com/public/OAKLAND/tree/documents/460>; Oakland Police Departmental General Order M-19 (Bias-Based Policing, Prohibitions Against Racial Profiling and Other Bias-Based Policing), Nov. 15, 2004, <https://powerdms.com/public/OAKLAND/tree/documents/462>.

¹²The Department of Justice, *Guidance for Federal Law Enforcement Regarding Their Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation*, December 2014, <https://www.justice.gov/sites/default/files/ag/pages/attachments/2014/12/08/use-of-race-policy.pdf>. See also, Federal Bureau of Investigation, *Domestic Investigations and Operations Guide (DIOG)*, December 16, 2008.

¹³Cora Currier, “The FBI Wanted to Target Yemenis Through Student Groups and Mosques,” *The Intercept*, September 29, 2016, <https://theintercept.com/2016/09/29/the-fbi-wanted-to-target-yemenis-through-student-groups-and-mosques/>; and Cora Currier, “Revealed: The FBI’s Secret Methods for Recruiting Informants at the Border,” *The Intercept*, Oct. 5, 2016, <https://theintercept.com/2016/10/05/fbi-secret-methods-for-recruiting-informants-at-the-border/>.

¹⁴Mazin Sidahmed, “FBI Pre-election Sweep of Muslim Americans Raises Surveillance Fears,” *The Guardian*, Jan. 16, 2017, <https://www.theguardian.com/us-news/2017/jan/16/fbi-muslim-americans-visits-surveillance-cair>.

¹⁵Jana Winter and Sharon Weinberger, “The FBI’s New U.S. Terrorist Threat: ‘Black Identity Extremists,’” *Foreign Policy*, October 6, 2017, <https://foreignpolicy.com/2017/10/06/the-fbi-has-identified-a-new-domestic-terrorist-threat-and-its-black-identity-extremists/>.

¹⁶Martin De Bourmont, “Is a Court Case in Texas the First Prosecution of a ‘Black Identity Extremist’?,” *Foreign Policy*, January 30, 2018, <https://foreignpolicy.com/2018/01/30/is-a-court-case-in-texas-the-first-prosecution-of-a-black-identity-extremist/>; Will Parrish, “Documents: Police Targeted Leftists Before ‘Unite The Right’ Rally,” *Shadowproof*, March 7, 2018, <https://shadowproof.com/2018/03/07/documents-reveal-police-targeting-anti-racists-charlottesville/>.

¹⁷Adam Federman, “Lawyer for Environmental Group ‘interrogated Repeatedly’ at US Border,” *the Guardian*, July 6, 2015, <http://www.theguardian.com/us-news/2015/jul/06/environmental-group-lawyer-interrogated>.