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## United States Senate

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August 18, 2008

The Honorable Michael B. Mukasey  
Attorney General  
United States Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Dear Attorney General Mukasey:

We write to request a brief delay in your approval of the proposed new guidelines for the investigative activities of the Federal Bureau of Investigation (FBI). We are grateful that you have contacted us personally to discuss your plans. We also appreciate that the Department of Justice (DOJ) has recently briefed congressional staff on the guidelines and allowed them to review the draft text, although we would have preferred to retain a copy of the documents. The revisions to the guidelines represent an important step towards our shared goal of improving the FBI's intelligence capabilities. The guidelines also reflect a laudatory effort to ensure that front-line agents are given clear rules to follow in pursuit of their investigations. Nevertheless, efforts to harmonize the rules governing criminal and national security matters also raise potential civil liberties concerns, given the broader latitude currently given to investigators to consider race and ethnicity in national security matters, as outlined in DOJ's June 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies.

The important aims of the guidelines, and their potential implications for civil liberties, require a meaningful dialogue between Congress and DOJ. Notwithstanding the work of our staff, Congressional consultation is difficult during the recess period. Moreover, these issues are sufficiently important to merit a public hearing. After all, although prior consultation on such guidelines is not mandatory, the level of public and Congressional confidence in the guidelines will inform later legislation and oversight activities.

The Senate Judiciary Committee has scheduled a hearing with FBI Director Mueller for September 17, 2008. This presents an opportunity to explore the potential impact of the new guidelines on both the FBI's intelligence collection efforts and Americans' civil liberties. Accordingly, we request that you wait until the guidelines have been subjected to such further review before finalizing them.

Sincerely,



PATRICK LEAHY  
Chairman



ARLEN SPECTER  
Ranking Member

cc: Honorable Robert S. Mueller, III