



COMMONWEALTH of VIRGINIA
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February 10, 2023

The Honorable Merrick B. Garland
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

The Honorable Christopher Wray
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Washington, D.C. 20535

Via Email and U.S. Mail

Re: Federal Bureau of Investigation Infiltrating Catholic Congregations

Dear Attorney General Garland and Director Wray:

We are the chief legal officers of our respective States charged not only with enforcing the law, but also with securing the civil rights of our citizens. We write with outrage and alarm to address the anti-Catholic internal memorandum produced by the FBI's Richmond Field Office on January 23, 2023, which was released to the public this week.¹ The FBI must immediately and unequivocally order agency personnel not to target Americans based on their religious beliefs and practices. We also demand that the FBI produce publicly all materials relating to the memorandum and its production.

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in . . . religion."² This country was founded on the right of all people to worship in the church, mosque, or synagogue of their choice, free from government

¹ FBI, *Interest of Racially or Ethnically Motivated Violent Extremists in Radical-Traditionalist Catholic Ideology Almost Certainly Presents New Mitigation Opportunities*, reprinted in Kyle Seraphin, *The FBI Doubles Down on Christians and White Supremacy in 2023*, UncoverDC (Feb. 8, 2023), <https://tinyurl.com/3fdb69ha>.

² *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

interference. Countless millions were drawn to our country because of that very right. Indeed, some of our first States were founded as safe havens for religious dissenters. There is no right more sacred to American democracy than the right to worship freely.

We are horrified to learn that at least one field office of the FBI apparently does not agree with this proposition. Anti-Catholic bigotry appears to be festering in the FBI, and the Bureau is treating Catholics as potential terrorists because of their beliefs.

On Wednesday, the public learned of an internal memorandum produced by the FBI's Richmond Field Office.³ The memorandum identifies "radical-traditionalist Catholic[s]" as potential "racially or ethnically motivated violent extremists."⁴ The memorandum deploys alarmingly detailed theological distinctions to distinguish between the Catholics whom the FBI deems acceptable, and those it does not. Among those beliefs which distinguish the bad Catholics from the good ones are a preference for "the Traditional Latin Mass and pre-Vatican II teachings," and adherence to traditional Catholic teachings on sex and marriage (which the memorandum glibly describes as "anti-LGBTQ").⁵ The memorandum even appears to accuse the Supreme Court and the Governor of Virginia of "[c]atalyzing" the bad Catholics through "legislation or judicial decisions in areas such as abortion rights, immigration, affirmative action, and LGBTQ protections," singling out the Supreme Court's recent decision in *Dobbs v. Jackson Women's Health Organization*⁶ and Governor Youngkin's support for sensible abortion regulations as examples.⁷

After defining which Catholics are the dangerous ones, the memorandum proposes dealing with those Catholics through "the development of sources with access," including in "places of worship."⁸ In other words, the memorandum proposes recruiting Catholics to enter a sacred house of worship, talk to their fellow Catholics, and report those conversations back to the FBI so that the federal government can keep tabs on the bad Catholics. To allocate these "sources," the document includes an appendix with a list of Catholic "hate groups" that was assembled by the Southern Poverty Law Center (SPLC),⁹ apparently without any independent vetting from the FBI.¹⁰

³ *Interest of Racially or Ethnically Motivated Violent Extremists*, *supra* note 1.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ 142 S. Ct. 2228 (2022).

⁷ See, e.g., Myah Ward, *Youngkin will pursue 15-week abortion ban in Virginia*, Politico (June 24, 2022), [tinyurl.com/yckykeus](https://www.tinyurl.com/yckykeus).

⁸ *Interest of Racially or Ethnically Motivated Violent Extremists*, *supra* note 1.

⁹ The memorandum's reliance on the SPLC is particularly disappointing, given that the SPLC has been utterly discredited as a reliable source. Its founder is said to have "viewed civil-rights work mainly as a marketing tool for bilking gullible Northern liberals," and former staffers have confessed that the SPLC has been "ripping off its donors" by failing to "live[] up to the values it espoused." Bob Moser, *The Reckoning of Morris Dees and the Southern Poverty Law Center*, New Yorker (Mar. 21, 2019), <https://www.tinyurl.com/ht6nkfn2>. It should come as no surprise, then, that even the mainstream media has begun to call into question the SPLC's mission and methods. See, e.g., David Montgomery, *Is the Southern Poverty Law Center Judging Hate Fairly?*, The Washington Post (Nov. 8, 2018), <https://www.tinyurl.com/mwcj6vuz>; Ben Schreckinger, *Has a Civil Rights Stalwart Lost Its Way?*, Politico (June 28, 2017), <https://www.tinyurl.com/y7zfmxsu>. Indeed, the FBI at one time recognized this reality, having reportedly dropped the SPLC as a hate-crimes resource in 2014. Valerie Richardson, *FBI, Southern Poverty Law Center partnership alarms conservatives*, AP News (July 30, 2018), <https://www.tinyurl.com/yckkpt77>.

¹⁰ *Interest of Racially or Ethnically Motivated Violent Extremists*, *supra* note 1.

After the American public learned of the memorandum, the Bureau apparently emailed a smattering of reporters to inform them that “FBI Headquarters quickly began taking action to remove the document from FBI systems and conduct a review of the basis for the document.”¹¹ The Bureau’s “action” occurred only in response to public outrage over the memorandum, which the FBI never intended the public to see at all. Had the memorandum not been revealed to the public, it might well still be an intelligence product available to the Bureau.

Suffice to say we are not persuaded by the FBI’s damage-control efforts. The FBI’s scrubbing of the document from its systems and the purported “review” of the process that created it in no way reassures us that this memorandum does not reflect a broader program of secretive surveillance of American Catholics or other religious adherents, and infiltration of their houses of worship. It assures us only that the FBI is embarrassed at the public revelation of the memorandum’s contents.

The memorandum’s targeting of Catholics because they prefer to pray in the ancient liturgical language of the Church, and the tactics it proposes for dealing with those Catholics, harkens back to some of the worst chapters of our past. This country has a sordid history of discrimination against Catholics. An entire political party, the Know Nothings, “formed in the 1850s to decrease the political influence of immigrants and Catholics”—groups that were often interchangeable given the rise of German and Irish immigration in the mid-19th century—and gained “hundreds of seats in Federal and State Government.”¹² A few decades later, in the 1870s, our Constitution was nearly amended to prohibit States from aiding “sectarian” schools.¹³ It was an “open secret” that “‘sectarian’ was code for ‘Catholic.’”¹⁴ This amendment was “born of bigotry” and “arose at a time of pervasive hostility to the Catholic Church and to Catholics in general.”¹⁵ When the federal amendment failed, dozens of States adopted these amendments in their own constitutions.¹⁶ And this discrimination did not end in the nineteenth century. Just a few decades ago the Ku Klux Klan—more infamous for its vicious campaign of wanton violence against Black Americans in the South—also targeted religious minorities such as Jews and Catholics.¹⁷

The targeting of Catholics for treatment as “violent extremists” because of the language in which they pray or because of the beliefs to which they subscribe is unacceptable, unconstitutional, and deeply un-American. It is particularly concerning that this memorandum originated in Virginia. Virginia is the birthplace of religious freedom in America and has a proud history of protecting the right to worship free from government interference or intimidation. Shortly after Independence, Virginia enacted Thomas Jefferson’s “Bill for establishing religious freedom” which decreed that “no man shall be . . . restrained, molested or burdened . . . or shall otherwise

¹¹ Brittany Bernstein, *FBI Retracts Memo on “Radical Traditionalist Catholic Ideology,” Says It Failed to Meet Bureau Standards*, National Review (Feb. 9, 2023), [tinyurl.com/2kz3jxkd](https://www.tinyurl.com/2kz3jxkd).

¹² *Espinoza v. Montana Dep’t of Rev.*, 140 S. Ct. 2246, 2269 (2020) (Alito, J., concurring).

¹³ See *Espinoza*, 140 S. Ct. at 2259.

¹⁴ *Ibid.* (cleaned up).

¹⁵ *Ibid.* (cleaned up).

¹⁶ *Id.* at 2268–69 (Alito, J., concurring).

¹⁷ Josh Zeitz, *When America Hated Catholics*, Politico (Sept. 23, 2015), <https://www.tinyurl.com/7xuuwpwy>.

suffer, on account of his religious opinions or belief.”¹⁸ When the former colonies came together to draft the Bill of Rights, they included first and foremost that the new federal government could “make no law” which “prohibit[ed] [the] free exercise” of religion.¹⁹ That foundational protection of those beliefs nearest and dearest to persons of faith extends to all sincere beliefs, whether or not those beliefs may be considered “acceptable.”²⁰

The un-American and unconstitutional memorandum alarms us for three additional reasons. First, it is part of a dangerous tendency in the FBI and DOJ to label those who hold views contrary to the Administration as violent extremists or terrorists. In October 2021, Attorney General Garland directed the FBI to “address[] threats” to school boards and administrators posed by parents and guardians protesting school board meetings, labeling those protests as “run[ning] counter to our nation’s core values.”²¹ The weaponization of the DOJ and FBI to suppress political and religious views inconsistent with the Administration’s orthodoxy is an alarming trend that must be immediately curtailed.

Second, spying on Catholics in their churches and cathedrals is an absurd use of federal law-enforcement and counterintelligence resources. Every day, lethal amounts of fentanyl cross the southwestern land border unimpeded.²² The Russian government successfully hacked software used by federal agencies and conducted an unprecedented espionage operation against the United States.²³ And a Chinese spy balloon recently crossed the entire continental expanse of the United States unmolested.²⁴ The Administration should focus its resources on addressing these real and ongoing threats to Americans, rather than labeling traditional Catholics as violent extremists and recruiting “sources” to spy on them.

Finally, we are particularly alarmed by the memorandum’s suggestion that FBI operatives should be developing “sources with access,” including in “places of worship,” to identify the bad Catholics. The FBI has been down this road before, having infiltrated countless mosques throughout the country in the wake of the September 11, 2001 terrorist attacks.²⁵ The FBI

¹⁸ *Report of the Committee of Revisors Appointed by the General Assembly of Virginia in 1777* 58 (1784).

¹⁹ U.S. Const. amend. 1.

²⁰ *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993).

²¹ Letter from the Attorney General to the Director of the FBI, *et al.* (Oct. 4, 2021), available at tinyurl.com/57y267kh; Ariana Figueroa, *U.S. Attorney General Defends FBI Probe of Threats Against School Board Members*, *Virginia Mercury* (Oct. 28, 2021), <https://tinyurl.com/bdzf5wjw>.

²² U.S. Attorney’s Office for the S.D. Cal., *Fentanyl Seizures at Border Continue to Spike, Making San Diego a National Epicenter for Fentanyl Trafficking; U.S. Attorney’s Office Prioritizes Prosecutions and Prevention Programs* (Aug. 11, 2022), <https://tinyurl.com/2p9x3p63>.

²³ Government Accountability Office, *SolarWinds Cyberattack Demands Significant Federal and Private-Sector Response* (Apr. 22, 2021), <https://tinyurl.com/2s4xec8c>; Cybersecurity & Infrastructure Security Agency, *Emergency Directive 21-01 – Mitigate Solarwinds Orion Code Compromise* (Dec. 13, 2020), <https://tinyurl.com/27vfnpjd>.

²⁴ Katie Bo Lillis, *et al.*, *Initial Classified Balloon Report Wasn’t Flagged as Urgent, Drawing Criticism*, *CNN* (Feb. 8, 2023), <https://tinyurl.com/dnsme2rm>.

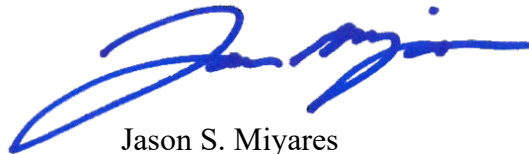
²⁵ See, e.g., Sabrina Alimahomed-Wilson, *When the FBI Knocks: Racialized State Surveillance of Muslims*, 45 *Critical Sociology* 871 (2019), available at <https://tinyurl.com/2p84jvkc>.

disavowed this ignominious practice in 2008,²⁶ and revised its internal guidelines in 2010²⁷ and 2013²⁸ to prevent its operatives from callously disregarding the religious liberty of American citizens. It would be very concerning indeed if the FBI had revived this practice against American Catholics or, worse, if it had never shut down the program in the first place.

DOJ and the FBI must desist from investigating and surveilling Americans who have done nothing more than exercise their natural and constitutional right to practice their religion in a manner of their choosing. And they should reveal to the American public the extent to which they have engaged in such activities. We will take all lawful and appropriate means to protect the rights of our constituents as guaranteed by our Constitution.

To that end, we request that you respond to this letter by: (1) producing the full, unredacted January 23, 2023 FBI report to the undersigned Attorneys General; (2) producing any and all documentation used in drafting the report; (3) producing any and all documents implementing the report's recommendations or interpreting the report's conclusions; (4) providing a representative to present to the undersigned Attorneys General or their delegates a full and complete briefing of the process by which the report was drafted, an explanation of its conclusions, and the effect that is likely to be experienced by the Catholic populations of the undersigned's States, and what efforts, if any, have been taken to ensure that the memorandum's recommendations have not been, and will not be, implemented; and (5) providing information on whether the FBI has been adhering to its guidelines restricting the use of operatives to infiltrate houses of worship and if not, providing an explanation as to the extent of those activities and their constitutionality.

Sincerely,



Jason S. Miyares
Attorney General of Virginia

²⁶ FBI Response to Allegations of Mosque Surveillance and Monitoring of the Muslim Community (May 30, 2008), <https://tinyurl.com/4pcftj6b> (“The FBI does not monitor the lawful activities of individuals in the United States, nor does the FBI have a surveillance program to monitor the constitutionally protected activities of houses of worship. We do not target or monitor legal activity of Muslim groups anywhere in the nation.”).

²⁷ FBI, Corporate Policy Directive (Dec. 23, 2010), *available at* <https://tinyurl.com/33p5mvh6> (outreach personnel “must operate with honesty and transparency” for the sake of “developing trust and confidence”).

²⁸ FBI, Community Outreach in Field Offices Corporate Policy Directive and Policy Implementation Guide (Mar. 4, 2013), *available at* <https://tinyurl.com/4b82en48> (requiring officers to maintain “appropriate separation of operational and outreach efforts”).



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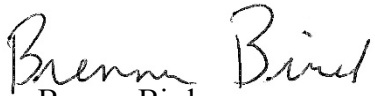
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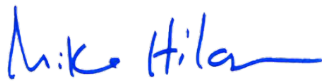
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