

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

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April 28, 2023

The Honorable Jen Easterly
Director
Cybersecurity and Infrastructure Security Agency
U.S. Department of Homeland Security
245 Murray Lane
Washington, DC 20528-0380

Dear Director Easterly:

The Committee on the Judiciary is conducting oversight of how and the extent to which the Executive Branch has coerced and colluded with companies and other intermediaries to censor speech.¹ To develop effective legislation, such as the possible enactment of new statutory limits on the Executive Branch's ability to work with social media platforms and other companies to restrict the circulation of content and deplatform users, the Committee on the Judiciary must first understand how and to what extent the Executive Branch coerced and colluded with companies and other intermediaries to censor speech. To this end, we have asked for communications between the Cybersecurity and Infrastructure Security Agency (CISA), private companies, and other third-party groups such as nonprofit organizations, in addition to other information. Your response without compulsory process has, to date, been inadequate.

The Twitter Files and other public reporting have exposed how the federal government has pressured and colluded with Big Tech and other intermediaries to censor certain viewpoints on social and other media in ways that undermine First Amendment principles. The First Amendment prohibits government officials from imposing viewpoint-based censorship restrictions. State action doctrine stands for the proposition that government officials may not circumvent constitutional strictures by using private actors—whether through coercion, encouragement, entwinement, or joint participation—to accomplish what the government cannot directly.

¹ See generally Ken Klippenstein & Lee Fang, *Truth Cops: Leaked Documents Outline DHS's Plans to Police Disinformation*, THE INTERCEPT (Oct. 31, 2022); Editorial Board, *The White House and Twitter Censorship*, WALL ST. J. (Aug. 12, 2022); Editorial Board, *How the Feds Coordinate With Facebook on Censorship*, WALL ST. J. (Sept. 9, 2022).

The Honorable Jen Easterly

April 28, 2023

Page 2

Numerous documents made publicly available reflect the weaponization of the federal government's power to censor speech online directly and by proxy. It is necessary for Congress to gauge the extent to which CISA coerced, pressured, worked with, or relied upon social media and other tech companies in order to censor speech. The scope of the Committee's investigation includes understanding the extent and nature of CISA's involvement in this censorship.

On March 22, 2023, the Committee wrote to CISA seeking voluntary cooperation with our oversight.² Among other things, we asked for communications between CISA and private companies, internal CISA communications, and communications between CISA and other third parties discussing content moderation. To date, CISA has failed to respond or to produce any documents responsive to the Committee's request.

Pursuant to the Rules of the House of Representatives, the Committee on the Judiciary has jurisdiction to conduct oversight of matters concerning "civil liberties" to inform potential legislative reforms.³ In addition, H. Res. 12 authorized the Committee's Select Subcommittee on the Weaponization of the Federal Government to investigate "issues related to the violation of the civil liberties of citizens of the United States."⁴

Accordingly, and due to CISA's inadequate voluntary compliance, please find attached a subpoena.

Sincerely,



Jim Jordan
Chairman

cc: The Honorable Jerrold L. Nadler, Ranking Member

Enclosure

² Letter from Hon. Jim Jordan, Chair, H. Comm. on the Judic., to Director Jen Easterly of CISA (Mar. 22, 2023).

³ Rules of the House of Representatives R. X (2023).

⁴ H. Res. 12 § 1(b)(1).