

ONE HUNDRED SEVENTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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June 17, 2021

The Honorable Merrick B. Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Attorney General Garland:

As you know, recent reports suggest that the Trump Administration sought the phone and email records of journalists, Members of Congress, their families, and their staff.¹ As you no doubt agree, if the Department of Justice used criminal investigations as pretext to target President Trump's perceived political enemies, this conduct constitutes a gross abuse of power.

On May 7, 2021, the *Washington Post* reported that the Department had secretly obtained phone records and had sought access to email records belonging to some of its reporters.² Over the course of the next few weeks, additional reports showed that the Department had made similar attempts to access the communications records of a *CNN* reporter³ and multiple journalists at the *New York Times*.⁴ In multiple instances, a magistrate judge imposed a DOJ-requested gag order preventing news media organizations from disclosing any knowledge of the investigation.⁵

¹ Katie Benner, et al., *Hunting Leaks, Trump Officials Focused on Democrats in Congress*, N.Y. TIMES, June 10, 2021.

² Devlin Barrett, *Trump Justice Department secretly obtained Post reporters' phone records*, WASH. POST, May 7, 2021.

³ Adam Goldman, *Trump Justice Dept. Seized CNN Reporter's Email and Phone Records*, N. Y. TIMES, May 20, 2021.

⁴ Charlie Savage and Katie Benner, *Trump Administration Secretly Seized Phone Records of Times Reporters*, N. Y. TIMES, June 2, 2021.

⁵ Charlie Savage and Katie Benner, *U.S. Waged Secret Legal Battle to Obtain Emails of 4 Times Reporters*, N. Y. TIMES, June 4, 2021; Esha Sarai, *'Highly Offensive' Gag Orders in Media Subpoena Cases, Lawyer Says*, VOA, June 13, 2021.

On June 10, 2021, it was reported that the Trump administration had also subpoenaed the records of multiple Members of Congress, their family members, and congressional staff.⁶ A few days after that, it was reported that former White House Counsel Donald McGahn's records had been subject to a similar subpoena.⁷ Additionally, in conjunction with these subpoenas, the Department issued nondisclosure orders, which it renewed multiple times, and in one instance renewed over the course of three years.⁸ To date, the Committee is aware of no indictments resulting from these investigations, and prosecutors reportedly considered closing the investigations due to lack of evidence.⁹

The Committee understands the Justice Department's obligation to investigate the unauthorized disclosure of classified information, and, when an investigation is properly predicated, supports the Department's ability to do so.¹⁰

According to longstanding policy, however, Department personnel are prohibited from issuing subpoenas of this nature without authorization by the Attorney General.¹¹ There are limited exceptions to this policy, none of which appear to apply here.¹² In recent days, former Attorney General Jeff Sessions, former Attorney General William Barr, and former Deputy Attorney

⁶ Katie Benner, et al., *Hunting Leaks, Trump Officials Focused on Democrats in Congress*, N.Y. TIMES, June 10, 2021; Manu Raju, et al., *Trump Justice Department subpoenaed Apple for data from House Intelligence Committee Democrats, sources say*, CNN, June 10, 2021.

⁷ Michael S. Schmidt & Charlie Savage, *Apple Is Said to Have Turned Over Data on Trump's White House Counsel in 2018*, N. Y. TIMES, June 13, 2021.

⁸ The gag order imposed on Apple was renewed three times. Once freed from the gag order Apple notified affected customers of the subpoena. Microsoft also released a statement that it had received a similar subpoena and gag order. See Brian Fung and Evan Perez, *Justice Department requested data on 73 phone numbers and 36 email addresses from Apple*, CNN, June 11, 2021; Jack Nicas, et al., *In Leak Investigation, Tech Giants Are Caught Between Courts and Customers*, N. Y. TIMES, Jan. 11, 2021; Celine Castronuovo, *Trump DOJ demanded metadata on 73 phone numbers and 36 email addresses, Apple says*, THE HILL, June 11, 2021.

⁹ Katie Benner, et al., *Hunting Leaks, Trump Officials Focused on Democrats in Congress*, N.Y. TIMES, June 10, 2021 (“Ultimately, the data and other evidence did not tie the committee to the leaks, and investigators debated whether they had hit a dead end and some even discussed closing the inquiry.”).

¹⁰ There is a broad “patchwork of statutes [that] exists to protect information depending upon its nature, the identity of the discloser and of those to whom.” There are also clearly defined procedures in place when the Department is pursuing unauthorized disclosure investigations both through its own initiation or as referred to by elements of the executive branch, including the Intelligence Community and Department of Defense. See, e.g., STEPHEN P. MULLIGAN AND JENNIFER K. ELSEA, CRIMINAL PROHIBITIONS ON LEAKS AND OTHER DISCLOSURES OF CLASSIFIED DEFENSE INFORMATION, CONGRESSIONAL RESEARCH SERVICE, Mar. 7, 2017, available at <https://fas.org/sgp/crs/secret/R41404.pdf>; REPORTING UNAUTHORIZED MEDIA DISCLOSURES OF CLASSIFIED NSA/CSS INFORMATION, NATIONAL SECURITY AGENCY, Mar. 20, 2006, available at <https://fas.org/irp/nsa/unauthorized.html#annex>; UNAUTHORIZED DISCLOSURES OF CLASSIFIED NATIONAL SECURITY INFORMATION, OFFICE OF THE DIR. OF NATIONAL INTELLIGENCE, Dec. 22, 2017, available at https://www.dni.gov/files/documents/ICD/10-3-17_Atch1_ICD-701-Unauthorized-Disclosures_17-00047_U_SIGNED.pdf; MANAGEMENT OF SERIOUS SECURITY INCIDENTS INVOLVING CLASSIFIED INFORMATION, DEP'T OF DEFENSE, Oct. 27, 2014, available at https://fas.org/irp/doddir/dod/d5210_50.pdf.

¹¹ See e.g., 28 C.F.R. 50.10 (2015) and Justice Manual § 9-13.400.

¹² *Id.*

General Rod Rosenstein have all denied knowledge of subpoenas targeting Congress.¹³ If we are to believe these denials, even if the abuse of these authorities is limited to these three cases, we must determine if the Department deviated from its established procedures for conducting such investigations and if this was done without proper authorization from senior Department officials. We need to know the names of those Department officials involved in these decisions. And, of course, we need to understand the scope of the problem and whether it is limited to the cases that have been reported so far.

The Committee is now engaged in an investigation of the Trump Administration’s surveillance of Members of Congress, the news media, and others. We must determine if the Department sought these sensitive records for improper political purposes. We must ask why the Department repeatedly pursued gag orders—preventing companies from notifying their users of the sweeping information requests by federal law enforcement—despite realizing early in the effort that no criminal charges would result from these investigations. Finally, because the news media, the Members of Congress identified in recent reports, and the former White House Counsel were so frequently targets of President Trump’s public ire, we must identify the full set of individuals who may have also been the targets of politically-motivated investigations.

In keeping with your public commitment to transparency and the spirit of the statement you issued on Monday,¹⁴ we request an initial briefing from the Department on these topics no later than June 25, 2021 to be followed by additional briefings as needed. We also ask for the following information no later than July 1, 2021.

1. List of actions opened after January 2017 relating to the unauthorized disclosure of information about Russian interference in the 2016 presidential election; the Ukraine whistleblower matter; and the 2019-2020 and 2021 presidential impeachments.
 - a. This should include, but is not limited to, disclosures related to 28 C.F.R. 50.10(c)(3), 18 U.S.C. §§793-798, 18 U.S.C. §§952 & 1924¹⁵ investigations, or an investigation known as “Arctic Haze.”
2. Copies of documents and communications submitted to the Department from any originating Intelligence Community element used as a predicate for any of the actions identified under No. 1.
3. Copies of documents and communications relating to consultation and notice provided to the Criminal Division of the authorization of the issuance of any subpoena, 2703(d) order, or 3123 order filed in support of the actions identified under No 1.

¹³ Tom Porter, *Top Justice Department Officials Sessions, Barr and Rosenstein all deny knowledge of secret subpoenas targeting Democratic lawmakers*, BUS. INSIDER, June 13, 2021.

¹⁴ Statement from Attorney General Merrick B. Garland, Dep’t of Justice, June 14, 2021, available at <https://www.justice.gov/opa/pr/statement-attorney-general-merrick-b-garland>.

¹⁵ Stephen P. Mulligan and Jennifer K. Elsea, *Criminal Prohibitions on Leaks and Other Disclosures of Classified Defense Information*, Congressional Research Service, Mar. 7, 2017, available at <https://fas.org/sqp/crs/secretcy/R41404.pdf>.

- a. This should include, but is not limited to, notice provided to the Director of the Criminal Division's Office of Enforcement Operations pursuant to 28 C.F.R. 50.10 and Justice Manual §9-13.400.
4. Copies of documents and communications between the National Security Division, Criminal Division, Office of Deputy Attorney General, and/or the Office of Attorney General relating to any of the actions identified under No. 1.
 - a. This should include, but is not limited to, authorizations by the Attorney General for the issuance of any subpoena, 2703(d) order, or 3123 order filed in support of the actions identified under No. 1, and any associated consultation with the Policy and Statutory Enforcement Unit (PSEU).
5. Copies of documents and communications between the National Security Division, Criminal Division, Office of Legal Counsel (OLC), Office of Legal Policy (OLP), and/or Office of the Solicitor General (SG) relating to the scope, legal justification, or predicate of any subpoena, 2703(d) order, or 3123 order filed in support of the actions identified under No. 1.
 - a. This should include, but is not limited to, copies of any opinions or guidance provided by PSEU, OLC, OLP, or the SG.
6. Copies of documents and communications between DOJ and the President, Office of White House Counsel, or other White House officials relating to the initiation of an investigation or the issuance of any subpoena, 2703(d) order, or 3123 order filed in support of the actions identified under No 1.
7. List of personnel assigned to work on the actions identified under No. 1 in the Department's Counterintelligence and Export Division, the FBI's Counterintelligence Division, and the FBI's Investigative Division.
 - a. This should include, but is not limited to, personnel assigned to the office of U.S. Attorney Osmar Benvenuto after February 2020.
8. Copies of documents and communications between Julie Edelstein, Matt Blue, Mary McCord, Dana Boente, John C. Demers, Seth DuCharme, and/or Osmar Benvenuto relating to the actions identified under No 1.
 - a. This should include, but is not limited to, biweekly briefings on matters related to the actions identified under No. 1.
9. Copies of documents and communications relating to restricting access to confidential or classified information by targets of the actions identified under No 1.
 - a. This should include, but is not limited to, decisions to restrict access to information or downgrade/not renew security clearances of congressional targets.
10. Copies of documents and communications relating to the decision to renew gag orders in the actions identified under No. 1.
 - a. This should include, but is not limited to, the Department identifying the total number of actions identified under No. 1 currently subject to a gag order.

11. Copies of documents and communications relating to measures implemented by the Department and FBI to safeguard information obtained via subpoena, 2703(d) orders, or 3123 order filed in support of the actions identified under No. 1.
 - a. This should include, but is not limited to, encrypted content or the investigation of congressional targets and measures taken pursuant to Justice Manual § 9-13.400(h).

The Committee recognizes that the Inspector General (IG) of the Department for has initiated an investigation into these troubling allegations. However, in keeping with precedent and practice established in prior Congresses, we expect full cooperation from the Department as the IG investigation and the internal review proceeds concurrently.¹⁶ To the extent classified or sensitive information is involved, the Committee is amenable to receiving classified production to the extent necessary.

Thank you for your prompt response to this important matter.

Sincerely,



Jerrold Nadler
Chairman



Zoe Lofgren
Member of Congress

¹⁶ See e.g., House Committees on Judiciary and Oversight's joint investigations into the decision not to charge Hillary Clinton for her use of a private email server. These investigations overlapped with an IG review and occurred as the then-Attorney General requested U.S. Attorney John Huber to review these and other matters. Notwithstanding these ongoing investigations, DOJ made available more than 880,000 pages of documents, personnel lists, and internal communications. See also, House Judiciary, House Oversight, and Senate Judiciary Committees investigations into alleged bias in the origins of the investigation of Russian interference in the 2016 election. Despite ongoing criminal investigations, the committees were given access to materials related to ongoing matters, including FISA applications and renewals, electronic communications authorizing investigations into Russian election interference in 2016, more than 3,000 pages of unclassified and classified documents. See also, the House and Senate Judiciary Committee investigation into the resignations of nine U.S. Attorneys during President George W. Bush's Administration, which overlapped with investigations by the IG and Office of Professional Responsibility. DOJ produced more than 10,000 pages of documents and made available for testimony more than 20 current or former officials available to testify. Also, in keeping with past practices, confidential or deliberative materials shall be provided to the Committee without undue delay. See e.g., Department of Justice's document production in response to the Joint Judiciary Committee – Oversight & Government Reform Committee's Investigation into the FBI's Actions During the 2016 Election (115th Cong.). See also Reps. Bob Goodlatte – Trey Gowdy, Subpoena, Mar. 22, 2018. See also, Letter from White House Counsel Fielding to Chairman Conyers (Nov. 9, 2007).



Sheila Jackson Lee
Member of Congress



Steve Cohen
Member of Congress



Henry C. "Hank" Johnson
Member of Congress



Theodore E. Deutch
Member of Congress



Karen Bass
Member of Congress



Hakeem Jeffries
Member of Congress



David N. Cicilline
Member of Congress



Eric Swalwell
Member of Congress



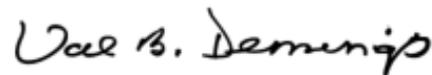
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J. Luis Correa
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Mary Gay Scanlon
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Sylvia R. Garcia
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Joe Neguse
Member of Congress



Lucy McBath
Member of Congress



Greg Stanton
Member of Congress



Madeleine Dean
Member of Congress



Veronica Escobar
Member of Congress



Mondaire Jones
Member of Congress



Deborah Ross
Member of Congress



Cori Bush
Member of Congress

cc: The Honorable Michael E. Horowitz, Inspector General, Department of Justice Office of the Inspector General

The Honorable Jim Jordan, Ranking Member, House Committee on the Judiciary