

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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December 19, 2023

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

Dear Attorney General Garland:

The Committee on the Judiciary is conducting oversight of the Justice Department's use of its law-enforcement authority to obtain the private communications of Members of Congress and congressional staff members.¹ On October 31, 2023, we wrote to you to request information from the Justice Department regarding the Department's subpoenas to obtain private communications of Legislative Branch employees.² Due to the Department's inadequate response to date, the Committee must resort to compulsory process.

On November 8, the Department informed the Committee via e-mail of "a change to the Department of Justice's policies and procedures in criminal investigations involving Members of Congress and their staff" that "impose[s] new requirements to consult with, or receive approval from, the Public Integrity Section."³ This communication, however, provided no update on the status of the Department's response to our October 31 letter. After receiving no subsequent information from the Department, on November 28, 2023, the Committee wrote to you again reiterating our requests and requesting material relating to the Department's policy changes as announced on November 7.⁴

On December 4, 2023, the Department finally provided a response to our letter of October 31, offering a timeline and a brief description of the Department's recent policy changes

¹ See Margot Cleveland, *DOJ Subpoenaed Phone And Email Logs Of Hill Staffers Probing Crossfire Hurricane Malfeasance*, THE FEDERALIST (Oct. 25, 2023).

² Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Hon. Merrick B. Garland, Att'y Gen., U.S. Dep't of Justice (Oct. 31, 2023).

³ E-mail from Office of Leg. Affairs, U.S. Dep't of Justice, to H. Comm. on the Judiciary (Nov. 8, 2023), *see also* Ben Penn, *DOJ Tightens Rules for Prosecutors When Probing Congress*, BLOOMBERG LAW (Nov. 8, 2023).

⁴ Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Hon. Merrick B. Garland, Att'y Gen., U.S. Dep't of Justice (Nov. 28, 2023); *see also* Deputy Attorney General, *Policies and Procedures in Criminal Investigations Involving Members of Congress and Staff*, U.S. Dep't of Justice (Nov. 7, 2023).

for investigations involving Members of Congress and congressional staff.⁵ In response to the Committee’s request, the Department provided only two publicly available documents concerning the indictment and guilty plea of a Senate Select Intelligence Committee (SSCI) staff member.⁶ The Department produced no other documents responsive to the Committee’s requests.

In its letter to the Committee, the Department represented that the legal process used—which reportedly sought the private communications of both Republican and Democrat employees in both the House and the Senate⁷—were related to one investigation “into the unauthorized disclosure of classified information in a national media publication.”⁸ According to news reports, this investigation centered on FISA warrants obtained by the Justice Department on former Trump campaign associate Carter Page.⁹ At the time, the FISA warrant on Mr. Page was the subject of robust Congressional oversight and vigorous debate in Congress.¹⁰ The Justice Department Office of Inspector General later determined that the Department abused its FISA authority to surveil Mr. Page,¹¹ and the Department admitted there was “insufficient predication” for the warrant.¹²

If the Department’s representation is accurate, it indicates that the Executive Branch used its immense law-enforcement authority to gather and search the private communications of multiple Legislative Branch employees who were conducting Constitutional oversight of the Department’s investigative actions—actions that were later found to be unlawful. Because the Department has not complied in full with our requests, we cannot independently determine whether the Department sought to alleviate the heightened separation-of-powers sensitivities involved or whether the Department first sought the information through other means before resorting to legal process. The Committee also has concerns that aspects of the Department’s investigation may have been a pretext to justify piercing the Legislative Branch’s deliberative process and improperly access data from Members and staff involved in conducting oversight of the Department.

The Supreme Court has recognized that Congress has a “broad and indispensable” power to conduct oversight, which “encompasses inquiries into the administration of existing laws, studies of proposed laws, and surveys in our social, economic or political system for the purpose

⁵ Letter from Carlos Uriarte, Assistant Att’y Gen., U.S. Dep’t of Justice, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (Dec. 4, 2023); *see also* E-mail from H. Comm. on the Judiciary to Off. of Legis. Affairs, U.S. Dept’ of Justice (Nov. 15, 2023) (discussing the Department’s plan for responding to the Committee’s request after missing the deadline); E-mail from Off. of Legis. Affairs, U.S. Dept’ of Justice, to H. Comm. on the Judiciary (Nov. 17, 2023).

⁶ *Id.*

⁷ The Editorial Board, *When the Justice Department Spied on Congress*, WALL ST. J. (Oct. 26, 2023).

⁸ Letter from Carlos Uriarte, Assistant Att’y Gen., U.S. Dep’t of Justice, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (Dec. 4, 2023).

⁹ *See, e.g.*, Josh Gerstein, *Ex-Senate aide gets 2 months in prison for lying to FBI*, POLITICO (Dec. 20, 2018).

¹⁰ FOREIGN INTELLIGENCE SURVEILLANCE ACT ABUSES AT THE DEPARTMENT OF JUSTICE AND THE BUREAU OF INVESTIGATION, H. PERMANENT SELECT COMM. ON INTEL. (January 18, 2018); Del Quentin Wilber, *Carter Page Surveillance Documents Set Off New Skirmish*, WALL ST. J. (July 22, 2018).

¹¹ U.S. DEP’T. OF JUSTICE, OFFICE OF INSPECTOR GEN., REVIEW OF FOUR FISA APPLICATIONS AND OTHER ASPECTS OF THE FBI’S CROSSFIRE HURRICANE INVESTIGATION (2019).

¹² *In re Carter W. Page*, Nos. 16-1182, 17-52, 17-375, 17-679 (FISC Jan. 7, 2020).

The Honorable Merrick B. Garland

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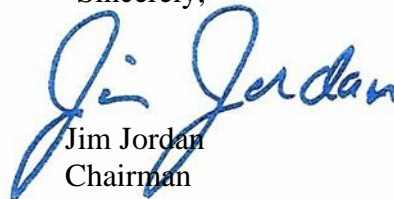
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of enabling Congress to remedy them.”¹³ Pursuant to the Rules of the House of Representatives, the Committee on the Judiciary has jurisdiction to conduct oversight of the Justice Department to inform potential legislative reforms that protect civil liberties and prevent the Department from misusing its law-enforcement authorities.¹⁴

Potential legislative reforms the Committee may consider include, among other proposals, establishing certain requirements for the Justice Department to provide appropriate notice when it seeks to access private information belonging to an employee of the Legislative Branch. The Committee may also consider legislative proposals to reform how often the Department may request an extension on a non-disclosure order without providing a compelling justification for the continued secrecy. The information we have requested regarding the Department’s use of legal process to obtain the private communications of Members of Congress and congressional staff members is necessary to inform such potential legislation.

Accordingly, please find attached a subpoena for the requested documents and information.

Sincerely,



Jim Jordan
Chairman

cc: The Honorable Jerrold L. Nadler, Ranking Member

Enclosure

¹³ See, e.g., *Trump v. Mazars LLP*, 140 S. Ct. 2019, 2031 (2020) (internal quotation marks and citations omitted).

¹⁴ Rules of the House of Representatives, R. X, 118th Cong. (2023).