

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

January 29, 2025

James R. McHenry III
Acting Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Acting Attorney General McHenry:

As the Senate Judiciary Committee exercises its constitutional responsibility to provide advice and consent on the nomination by President Trump of Kashyap “Kash” Patel to serve as Director of the Federal Bureau of Investigation (FBI), it is necessary for the Committee to evaluate Mr. Patel’s full record, including the veracity of his public and private statements and activities that pertain to the handling and protection of classified information. In this respect, the Committee requests urgent access to materials that have not yet been shared with the Committee and bear directly on Mr. Patel’s suitability to lead the nation’s premier law enforcement agency. Specifically, the Committee requests any and all sections of Volume Two of the “Final Report of the Special Counsel’s Investigations and Prosecutions,” submitted on January 7, 2025, by Special Counsel Jack Smith to the Attorney General, that refer or pertain to Mr. Patel’s testimony or actions.

According to public reports, federal prosecutors subpoenaed Mr. Patel to testify before a grand jury investigating President Trump’s retention of classified materials after leaving office and granted Mr. Patel immunity to facilitate his testimony in November 2022 after Mr. Patel invoked his Fifth Amendment right against self-incrimination and refused to answer questions. The Department reportedly sought Mr. Patel’s testimony in response to, among potentially other matters, Mr. Patel’s unsubstantiated public assertion that President Trump declassified documents prior to departing office at the end of his first term.¹ The Special Counsel’s findings with regard to Mr. Patel’s related activities and statements remain unknown to the Committee and the public.

The Committee cannot adequately fulfill its constitutional duty without reviewing details in the report of Mr. Patel’s testimony under oath, which is necessary to evaluate Mr. Patel’s truthfulness, trustworthiness, and regard for the protection of classified information. This is of utmost importance, as Mr. Patel has been nominated to hold one of the nation’s most important law enforcement positions, in which his core responsibilities, if confirmed, include seeking and

¹ Carol D. Leonnig, Devlin Barrett, and Josh Dawsey, *Trump loyalist Kash Patel questioned before Mar-a-Lago grand jury*, THE WASHINGTON POST, (Nov. 4, 2022), <https://www.washingtonpost.com/national-security/2022/11/03/kash-patel-grand-jury-trump/>.

telling the truth, maintaining the trust of Congress and the American people, and protecting our nation's most sensitive information.

The Committee is engaged in pertinent and urgent constitutionally mandated legislative activity that removes prior barriers to access to these materials. On January 23, 2025, the Committee issued a "Notice of Committee Nomination Hearing" for Mr. Patel, which is now scheduled for January 30, 2025. The Ranking Member of the Committee submitted on January 16, 2025, Questions for the Record (QFR) to Attorney General nominee Pamela Jo Bondi following her confirmation hearing, requesting that she commit to making Volume Two of the Special Counsel's report available immediately for review to the Senate Judiciary Committee Chair, Ranking Member, or their designees.²

This formal request preceded an order issued several days later by a judge in the United States District Court for the Southern District of Florida that enjoined the Department from releasing or otherwise making available a redacted version of Volume Two of the Special Counsel's report to the House and Senate Judiciary Committees. In the order, the judge erroneously stated that "[t]here is no record of an official request by members of Congress for *in camera* review of Volume II as proposed by the Department in this case," despite the prior request which her order omits. The judge also concludes wrongly that the Department "identified no pending legislation on the subject or any legislative activity that could be aided, even indirectly, by dissemination of Volume II to the four specified members whom the Department believes should review Volume II now," notwithstanding the Committee's ongoing consideration of Mr. Patel and others' nominations.³

The Committee is presently charged with undertaking one of its core constitutional and legislative functions: providing advice and consent on nominations by the President to positions of great responsibility in the U.S. federal government. The position of FBI Director bestows on its officeholder a solemn duty to be impartial, truthful, and trustworthy. In order to discharge their constitutional duty, the Members of the Senate Judiciary Committee must therefore be fully and accurately informed about Mr. Patel's record.

We request that you comply promptly with these requests by **February 10, 2025**, in order for the Senate Judiciary Committee to review any relevant information prior to Mr. Patel's confirmation vote. The Committee is prepared, as an accommodation, to accept *in camera* review of the materials and urges the Department to seek immediately a court order, if the Department deems necessary, to comply with this request.

² Senate Judiciary Committee, *Questions for the Record the Honorable Pamela Jo Bondi Nominee to be Attorney General of the United States*, (Jan. 16, 2025), https://www.judiciary.senate.gov/imo/media/doc/2025-01-15_-_qfr_responses_-_bondi.pdf

³ *United States v. Trump*, No. 9:23-cr-80101, (S.D. Fla. Jan. 21, 2025) ECF No. 714 at 7; In addition, on January 13, 2025, Senator Dick Durbin, Ranking Member of the Senate Judiciary Committee and the other Democratic members of the Committee submitted a letter to then-Attorney General Merrick Garland "recogniz[ing] the current injunction against the release of Special Counsel Smith's report and related materials and reserv[ing] its right to request production of the report and relevant records at an appropriate future date." Senate Judiciary Committee Letter Requesting Preservation of DOJ documents (Jan. 13, 2025), <https://www.judiciary.senate.gov/imo/media/doc/Letter%20to%20DOJ%20on%20Records%20Preservation.pdf>

We look forward to your full and immediate compliance with these requests. Thank you for your prompt attention to this important matter.


Sincerely,



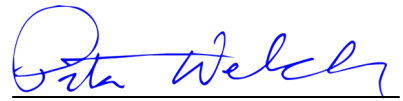
Richard J. Durbin
United States Senator



Adam B. Schiff
United States Senator



Alex Padilla
United States Senator



Peter Welch
United States Senator



Sheldon Whitehouse
United States Senator



Christopher A. Coons
United States Senator



Cory A. Booker
United States Senator



Amy Klobuchar
United States Senator



Mazie K. Hirono
United States Senator



Richard Blumenthal
United States Senator

cc: The Honorable Charles E. Grassley
Chairman, Senate Committee on the Judiciary