Congress of the United States
Washington, DC 20515

October 5, 2016

The Honorable Loretta E. Lynch
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue N.W.
Washington, D.C. 20530

Dear Madam Attorney General:

Last week your staff made available, for an *in camera* review by our committees, two letters to the Department of Justice (DOJ) from attorney Beth Wilkinson, on behalf of her clients Cheryl Mills and Heather Samuelson (the Wilkinson letters). The Wilkinson letters—both dated June 10, 2016—were incorporated by reference into the immunity agreements for Ms. Mills and Ms. Samuelson related to the Federal Bureau of Investigation's (FBI) criminal investigation into former Secretary Hillary Clinton's email server. The letters set out the precise manner in which the Department and the FBI would access and use federal records and other information stored on .PST and .OST email archives from Ms. Mills' and Ms. Samuelson's laptops. We understand Ms. Wilkinson and lawyers from the Justice Department drafted the Wilkinson letters jointly before Ms. Wilkinson sent them to DOJ.[1]

We write to express our concerns about the process by which Congress was allowed to view the Wilkinson letters, that the letters inappropriately restrict the scope of the FBI's investigation, and that the FBI inexplicably agreed to destroy the laptops knowing that the contents were the subject of Congressional subpoenas and preservation letters.[2]

With respect to the viewing restrictions imposed on the Committees, as a condition of cooperating voluntarily, the Department limited access to the letters to only Members of certain committees and one or two staff, prohibited Members and staff from "tak[ing] notes or photos, or otherwise seek[ing] to record the information contained in the memos," and redacted the names of all DOJ and FBI personnel on the documents.[3] These onerous restrictions are not consistent with the high degree of transparency you and Director Comey promised to Congress.[4] Further, in previous *in camera* reviews these restrictions were not imposed, which calls into question why the Wilkinson letters were given special treatment. These extraordinary restrictions interfere with our constitutional obligation to conduct oversight of this matter. Thus far, the Department has not explained its rationale for imposing these restrictions.

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[1] Briefing by Dep't of Justice staff to Committee staff (Sept. 29, 2016).
[2] *E.g.*, *Oversight of the Federal Bureau of Investigation: Hearing before the H. Comm. on the Judiciary*, 114th Cong. (2016); *Fifteen Years after 9/11: Hearing before the S. Comm. on Homeland Sec. & Gov't Affairs*, 114th Cong. (2016).
[3] Email from Dep't of Justice staff to Committee staff (Sept. 29, 2016).
[4] *E.g.*, *Oversight of the State Department: Hearing before the H. Comm. on Oversight and Government Reform*, 114th Cong. (2016).

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In his statements before Congress, Director Comey repeatedly assured us that the FBI investigated whether charges of obstruction of justice and intentional destruction of records were merited. The facts of this investigation call those assertions into question. For example, the Wilkinson letters only permitted the FBI to review email archives from Platte River Networks created after June 1, 2014, and before February 1, 2015, that included emails sent or received from Secretary Clinton's four email addresses during her tenure as Secretary of State. These limitations would necessarily have excluded, for example, any emails from Cheryl Mills to Paul Combetta in late 2014 or early 2015 directing the destruction or concealment of federal records. Similarly, these limitations would have excluded any email sent or received by Secretary Clinton if it was not sent or received by one of the four email addresses listed, or the email address was altered. Notably, in December 2014, Mr. Combetta deleted all Clinton emails older than 60 days, which was in effect all of Secretary Clinton's emails from January 2009 to October 2014. He admitted this "change in retention policy" during his second FBI interview in February 2016.

In addition, in March 2015, Mr. Combetta had two conference calls with David Kendall, attorney for Secretary Clinton, and Ms. Mills. Mr. Combetta admitted to the FBI in his third interview in May 2016 that after the second conference call on March 31, 2015, he used BleachBit to destroy any remaining copies of Clinton's emails and .PST files that he was able to locate. Per the agreement with Ms. Wilkinson, emails from around the time of the conference calls (and subsequent deletion of records) would not have been covered by the FBI's review of Ms. Mills' and Ms. Samuelson's laptops. Importantly, before the FBI agreed to the Wilkinson letters in June 2016, it already knew of the conference calls between Secretary Clinton's attorneys and Mr. Combetta, his use of BleachBit, and the resulting deletions, further casting doubt on why the FBI would enter into such a limited evidentiary scope of review with respect to the laptops.

The Wilkinson letters went on to provide that *the FBI would destroy* any records which it retrieved that were not turned over to the investigatory team, meaning the FBI might proceed to delete such an email, after determining it should not be sent to the investigatory team. Further, the Wilkinson letters memorialized the *FBI's agreement to destroy the laptops*. This is simply astonishing given the likelihood that evidence on the laptops would be of interest to congressional investigators.

The Wilkinson letters raise serious questions about why DOJ would consent to such substantial limitations on the scope of its investigation, and how Director Comey's statements on the scope of the investigation comport with the reality of what the FBI was permitted to investigate. So we can better understand the Department's basis for agreeing to these restrictions, please respond to the following questions as soon as possible, but no later than October 19, 2016:

1. What is the basis for the FBI's legal authority—in any circumstance—to destroy records which are subject to a congressional investigation or subpoena?

2. Why did the FBI agree to terms that allowed it to destroy both laptops?

3. Has the FBI, in fact, destroyed any evidence acquired from the laptops or the laptops themselves?

4. Is there any circumstance in which an email from Ms. Mills to Mr. Combetta (and only Mr. Combetta) in December of 2014 or March of 2015 discovered on Ms. Mills' laptop or Ms. Samuelson's laptop would have been turned over to the investigative team under the terms of the Wilkinson letters? If so, please explain.

5. Given that the range of emails the FBI could view under the terms of the Wilkinson letters were only those sent or received while Secretary Clinton was Secretary of State, how did the FBI intend to investigate the laptop files for evidence of possible intentional destruction of records or obstruction of evidence given the fact many of those emails were out of the allowed date range?

6. Did the filter team identify any emails that were otherwise responsive but were not turned over to the investigative team because they were privileged? Did anyone create a privilege log for such emails?

7. How many total documents were reviewed by the filter team from both laptops? Of those, how many were deemed privileged? Of the total, how many were sent to the investigative team?

8. How many total documents were withheld from the investigative team because they fell out of the date range imposed by the June 10, 2016 agreements?

9. How many of the documents acquired by the FBI from both laptops were classified? Please list each document, the classification level, and the classifying agency.

10. The Wilkinson letters apparently provided for different treatment of email fragments from Secretary Clinton's email addresses on the "clintonemail.com" domain versus her email addresses on the "blackberry.net" domain. Specifically, email fragments without a date sent to or received by either of the clintonemail.com addresses were included, while email fragments without a date that were sent to or received by either of the blackberry.net addresses were excluded. Please explain the difference in treatment of these email addresses.

11. The Wilkinson letters included a caveat that the FBI was not assuming custody, control, or ownership of the laptops for the purpose of any request under the Freedom of Information Act (FOIA).

    a. How does that statement square with the reality that the FBI had both laptops in its possession?

    b. Has DOJ ever used that statement or a similar statement to avoid compliance with FOIA?

Please provide the Committees with unredacted copies of: the Wilkinson letters; the two immunity agreements for Mr. Bryan Pagliano; the immunity agreement for Mr. Paul Combetta;

the immunity agreement for Mr. John Bentel; the immunity agreement for Ms. Cheryl Mills; and the immunity agreement for Ms. Heather Samuelson.

We understand from your staff that neither the DOJ nor the FBI plans to destroy any information obtained in the course of this investigation.[5] To ensure the integrity of the Committees' investigations, we request that you continue to preserve all documents that can reasonably be anticipated to be subject to a request for production from the Committee(s) related to their investigations. For the purposes of this request, "preserve" means taking reasonable steps to prevent the partial or full destruction, alteration, testing, deletion, shredding, incineration, wiping, relocation, migration, theft, or mutation of electronic records, as well as negligent or intentional handling that would make such records incomplete or inaccessible.

Thank you for your attention to this important matter. Please contact our staff with any questions about this request.

Sincerely,

Jason Chaffetz
Chairman
House Committee on Oversight and Government Reform

Bob Goodlatte
Chairman
House Committee on the Judiciary

Charles E. Grassley
Chairman
Senate Committee on the Judiciary

Devin Nunes
Chairman
House Permanent Select Committee on Intelligence

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
House Committee on Oversight and Government Reform

The Honorable John Conyers, Jr., Ranking Minority Member
House Committee on the Judiciary

The Honorable Patrick J. Leahy, Ranking Minority Member
Senate Committee on the Judiciary

The Honorable Adam Schiff, Ranking Minority Member
House Permanent Select Committee on Intelligence

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[5] Briefing by Dep't of Justice staff to Committee staff (Sept. 29, 2016).