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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

June 14, 2021

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

Dear Attorney General Garland:

On June 10, *The New York Times* reported that the Trump-era Department of Justice (DOJ) subpoenaed metadata of House Permanent Select Committee on Intelligence (HPSCI) Members, their staff, and family members, including a minor.<sup>1</sup> This grave assault on a co-equal branch of government threatens the very foundation of our constitutional order—the separation of powers.

DOJ reportedly targeted the Members as part of a leak investigation beginning in 2017, at the same time HPSCI was conducting a high-profile investigation into the 2016 Trump campaign's ties to Russia. Although prosecutors reportedly discussed ending the investigation after the metadata showed no proof of leaks, then-Attorney General William Barr apparently renewed it, including by assigning a handpicked prosecutor to oversee the investigation in February 2020.<sup>2</sup> This timing coincided with repeated statements by then-President Trump targeting HPSCI Chairman Adam Schiff, whom Trump baselessly accused in February 2020 of leaking information about Russian election interference—warning, “if they don’t stop it, I can’t imagine that people are not going to go after them and find out what’s happening.”<sup>3</sup>

Although compelling the production of metadata of Members, staff, and their families would raise grave separation of powers concerns in any leak case, these actions by former President Trump and Attorney General Barr raise additional concerns that DOJ’s investigative decisions in this case were motivated by improper political considerations. The Senate Judiciary Committee will vigorously investigate this apparent effort to weaponize DOJ against Trump’s perceived political enemies.

Several officials who reportedly oversaw these egregious overreaches remain at DOJ, including the handpicked prosecutor Attorney General Barr assigned to the case in February 2020. As a first step, we seek your immediate assurance that DOJ will preserve all relevant materials in

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<sup>1</sup> Katie Benner, Nicholas Fandos, Michael S. Schmidt, & Adam Goldman, *Hunting Leaks, Trump Officials Focused on Democrats in Congress*, N.Y. Times, Jun. 10, 2021.

<sup>2</sup> *Id.*

<sup>3</sup> Eileen Sullivan, *Trump Accuses Schiff of Leaking Intelligence on Russia’s 2020 Interference*, N.Y. Times, Feb. 25, 2020.

its possession, custody, or control, including the materials in direct possession, custody, or control of current DOJ employees who were involved in these matters. We also ask that you provide the Committee with an immediate briefing on the matter.

In addition, please respond to the following questions as soon as possible, and no later than June 28, 2021:

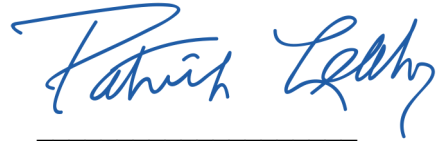
1. What was the factual and legal predicate for DOJ to include HPSCI Members, their staff, and family members in this investigation and in these subpoenas for metadata? Please provide separate explanations for each individual.
2. Please describe the process DOJ followed when obtaining grand jury subpoenas for the metadata of HPSCI Members, their staff, and family members, including which DOJ officials approved the decision to obtain such subpoenas.
3. Did DOJ include any Members of HPSCI other than Chairman Schiff and Congressman Eric Swalwell, or any other Members of Congress, their staff, or family members in this investigation? If so, please explain.
4. Did the Office of Legal Counsel provide advice on taking the extraordinary step of subpoenaing metadata from Members of Congress, their staff, and family members in a leak investigation? If so, please provide any such written advice and indicate when the advice was provided.
5. Please produce the following materials as soon as possible, but no later than June 28, 2021:
  - a. A copy of each subpoena;
  - b. All documents and communications, including emails, text messages, and calendar entries, referring or related to the Department's initial decision under Attorney General Sessions to include Members of Congress, their staff, and family members as a part of the investigation into alleged leaks;
  - c. All documents and communications, including emails, text messages, and calendar entries, referring or related to the Department's decision to obtain grand jury subpoenas for the metadata of Members of Congress, their staff, and family members in the leak investigation; and
  - d. All documents and communications, including emails, text messages, and calendar entries, referring or related to Attorney General Barr's appointment of Osmar Benvenuto to oversee the continuation of the investigation.

Thank you for your prompt attention to this request.

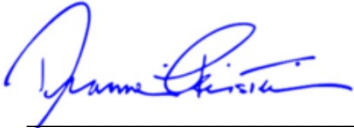
Sincerely,



RICHARD J. DURBIN  
Chair




PATRICK LEAHY  
United States Senator



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United States Senator



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United States Senator



CORY A. BOOKER  
United States Senator



ALEX PADILLA  
United States Senator



JON OSSOFF  
United States Senator

cc: The Honorable Charles E. Grassley  
Ranking Member