

June 18, 2021

Dear Attorney General Garland, Chairman Nadler, Chairman Durbin, Ranking Member Jordan, and Ranking Member Grassley,

The undersigned civil society organizations write to condemn the Department of Justice's surveillance of Members of Congress, their staff, and their families, and urge the Congress to investigate this matter immediately as well as enact substantive reforms to prevent such abuse in the future. This conduct—as well as recent revelations regarding surveillance of journalists—represents a significant threat to democratic society.

On June 10, the *New York Times* reported that in 2017 and 2018 the Justice Department seized communications records of Representatives Adam Schiff and Eric Swalwell, congressional staff, and family members—including a child—as part of leak investigations.¹ These records were collected using a grand jury subpoena, which does not require evidence of wrongdoing, despite the fact that they would surely reveal information about members of Congress. Using broad and intrusive surveillance to collect private information about a president's political rivals could easily lead to abuse, including fishing expeditions, and undermines the separation of powers that is so vital to a functional democracy.

Also disturbing are recent revelations that the Justice Department collected private communications records from journalists at the *New York Times*, the *Washington Post*, and CNN. This similarly misuses executive power to chill and undermine an institution we depend on to hold the government accountable. And in both cases, gag orders were deployed to keep improper surveillance activities hidden.

We are pleased the Department supported an inspector general investigation into this matter. However, while such an investigation is vital, it is not sufficient to remedy this abuse. According to Representative Schiff and congressional staff, the Justice Department has not been sufficiently forthcoming or provided important details about this matter.² This lack of transparency undermines public accountability. We call on the Justice Department to immediately release all relevant court filings, requests, and other records regarding surveillance that targeted members of Congress, their staff, and the media.

Congressional inquiry is also required. We commend the House Judiciary Committee for announcing that it will investigate the subpoenas. We call on both the House and Senate Judiciary Committees to hold public hearings to investigate the matter, including testimony from former Attorneys General Jeff Sessions and Bill Barr, and former Deputy Attorney General Rod Rosenstein. We call on the Justice Department to fully cooperate with any congressional subpoenas for documents and testimony.

Internal reforms and changes to Justice Department policy are insufficient to address this misconduct. Congress must also enact strong safeguards to restrict collection of private records containing sensitive information—such as communications records—as well as reform the overly permissive laws regarding gag orders, which serve to shield improper surveillance and hinder accountability.

While surveillance targeting political rivals and the press is shocking, it is sadly far from unprecedented. It is far past time to prohibit this type of unfettered surveillance that has repeatedly been abused. We hope the Justice Department will show a genuine commitment to preventing future misconduct by working

¹ Katie Benner, Nicholas Fandos, Michael S. Schmidt, and Adam Goldman, “Hunting Leaks, Trump Officials Focused on Democrats in Congress,” *New York Times*, June 10, 2021. <https://www.nytimes.com/2021/06/10/us/politics/justice-department-leaks-trump-administration.html>

² Manu Raju, Evan Perez, Katie Bo Williams, and Paul LeBlanc, “Trump Justice Department subpoenaed Apple for data from House Intelligence Committee Democrats, sources say,” CNN, June 10, 2021. <https://www.cnn.com/2021/06/10/politics/house-intelligence-committee-apple-data-trump-justice-department-doj/index.html>

with Congress, as well as civil rights and civil liberties advocates, in support of new statutory reforms to surveillance and gag orders.

We look forward to working with you on these important issues. If you have any questions please contact Jake Laperruque, senior counsel at the Project On Government Oversight's Constitution Project, at jlaperruque@pogo.org.

Sincerely,

Advocacy for Principled Action in Government
American Civil Liberties Union
Brennan Center for Justice at NYU School of Law
Center for Constitutional Rights
Citizens for Responsibility and Ethics in Washington (CREW)
Defending Rights & Dissent
Demand Progress
The Digital Democracy Project
Due Process Institute
Electronic Privacy Information Center
Government Accountability Project
Government Information Watch
Fight for the Future
National Coalition Against Censorship
New America's Open Technology Institute
Open The Government
PEN America
Project for Privacy and Surveillance Accountability
Project On Government Oversight
Protect The 1st
Restore The Fourth
The Surveillance Technology Oversight Project
X-Lab