

ONE HUNDRED EIGHTEENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-6906  
judiciary.house.gov

June 22, 2023

The Honorable David C. Weiss  
United States Attorney  
United States Attorney's Office  
District of Delaware  
1313 North Market Street  
Wilmington, Delaware 19899

Dear Mr. Weiss:

On May 25, 2023, the Committee wrote to Attorney General Garland requesting documents and information related to the removal of an Internal Revenue Service (IRS) Criminal Supervisory Special Agent and whistleblower, as well as his entire investigative team, from a sensitive ongoing investigation in apparent retaliation for making protected disclosures to Congress.<sup>1</sup> The Committee received your reply letter on June 7, 2023, that responded on Attorney General Garland's behalf and declined to provide any substantive information.<sup>2</sup> Because your stated reason for refusing to cooperate with the Committee's requests is unpersuasive, we write to reiterate our request for material about the Department's retaliation against this whistleblower.

From your response, two critical points stand out. First, you did not dispute that the Department retaliated against the IRS whistleblower and his investigative team for making protected disclosures to Congress. Second, your stated reasons for refusing to comply with the Committee's requests have no relation to the subject of this oversight: whistleblower retaliation. Contrary to the central objections set forth in your letter, this matter does not involve the protection of "confidential law enforcement information from disclosures" or "deliberative communications regarding an ongoing criminal investigation."<sup>3</sup> Rather, it focuses solely on the Department's retaliation—which you seem to concede—against a whistleblower in violation of United States law, which you acknowledge "protects whistleblowers from retaliation."<sup>4</sup>

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<sup>1</sup> 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 (May 25, 2023) [hereinafter "Letter from Rep. Jordan"].

<sup>2</sup> Letter from Hon. David C. Weiss, U.S. Att'y, Dist. of Del. (June 7, 2023) [hereinafter "Letter from U.S. Att'y Weiss"].

<sup>3</sup> Letter from U.S. Att'y Weiss, *supra* note 2.

<sup>4</sup> Letter from U.S. Att'y Weiss, *supra* note 2.

The Committee has articulated its interest in obtaining material concerning a non-prosecutorial matter—namely, material referring or relating to the retaliation of an IRS Criminal Supervisor Special Agent and his investigative team for speaking to Congress.<sup>5</sup> The requests do not seek information that bears on the particulars or substance of an open criminal investigation. Instead, the Committee seeks information that bears on whistleblower retaliation to inform potential legislative reforms to protect Department whistleblowers—a matter that the Committee has also been examining with respect to the FBI.<sup>6</sup>

In fact, your letter acknowledged the Committee’s legislative purpose as “referenc[ing] recently-announced staffing determinations in the matter and the Committee’s concern that those decisions intersect with whistleblower protections.”<sup>7</sup> It is hard to understand how materials related to “staffing determinations” implicate “legally protected materials” or “information the disclosure of which might compromise open criminal investigations or prosecutions or constitute an unnecessary invasion of privacy.”<sup>8</sup> Similarly, providing responsive documents would not “compromise the independence and integrity of investigations . . . or create the appearance of political interference.”<sup>9</sup> Here, the Committee’s focus is not interested in “where, when, and whether”<sup>10</sup> the Department will prosecute or decline to prosecute a particular person, but rather in understanding whether the Department is faithfully adhering to whistleblower protection laws and, if not, whether Congress must consider legislative reforms.

The Department has no legitimate basis to refuse cooperation with the Committee’s oversight of this matter. The Committee is empowered by the House of Representatives to conduct oversight of the programs and operations of the Department of Justice,<sup>11</sup> and the Supreme Court has made clear 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 of enabling Congress to remedy them.”<sup>12</sup>

Finally, the Committee’s May 25 letter was addressed to Attorney General Garland because it sought documents in possession of the broader Department of Justice, not solely the U.S. Attorney’s Office for the District of Delaware. We reiterate those requests to the Department and expect to receive the responsive material promptly. In addition to the requests

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<sup>5</sup> Letter from Rep. Jordan, *supra* note 1.

<sup>6</sup> See generally *Hearing on the Weaponization of the Federal Government: Hearing Before the Select Subcomm. on the Weaponization of the Federal Gov’t*, 118 Cong. (2023) (testimony of three FBI whistleblowers regarding retaliation); H. COMM. ON THE JUDICIARY & SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FEDERAL GOV’T, FBI WHISTLEBLOWER TESTIMONY HIGHLIGHTS GOVERNMENT ABUSE, MISALLOCATION OF RESOURCES, AND RETALIATION (May 18, 2023).

<sup>7</sup> Letter from U.S. Att’y Weiss, *supra* note 2.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Rules of the U.S. House of Representatives, R. X, 118th Cong. (2023).

<sup>12</sup> See, e.g., *Trump v. Mazars LLP*, No. 19-715 at 11 (U.S. slip op. July 9, 2020) (internal quotation marks and citations omitted).

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made in the Committee's May 25 letter, and in light of the unusual nature of your response on behalf of Attorney General Garland, we ask that you provide the following information:

1. A list of individuals who drafted and assisted in drafting your June 7, 2023, response to the Committee's May 25 letter;
2. Who instructed you to sign and send your June 7 letter to the Committee;
3. When you first learned or were made aware of the Committee's May 25 letter to Attorney General Garland;
4. Who at the Department of Justice forwarded you the Committee's May 25 letter to Attorney General Garland; and
5. Whether you had any discussions with Attorney General Garland or any other individual at the Department about the Committee's May 25 letter. If so, please provide details of these conversations and/or documents or communications referring or relating to those conversations.

The Committee requests that you provide answers to these questions, as well as information and documents responsive to the requests outlined in our May 25 letter, as soon as possible but not later than 5:00 p.m., on July 6, 2023.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Jim Jordan". The signature is stylized with a large, looping "J" and "D".

Jim Jordan  
Chairman

cc: The Honorable Jerrold L. Nadler, Ranking Member  
The Honorable Merrick B. Garland, Attorney General