

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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April 24, 2018

The Honorable Trey Gowdy
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Gowdy:

We are writing to request that you issue subpoenas to compel the Department of Justice and the Department of Homeland Security to produce documents they have been withholding from the Committee for more than a year as part of our bipartisan investigation into the Trump Administration's violations of the Whistleblower Protection Enhancement Act and our efforts to protect the right of whistleblowers to communicate with Congress about waste, fraud, and abuse at federal agencies.

If you decline to issue these subpoenas yourself, then we respectfully request that you include this issue on the agenda for our next business meeting so all Committee Members will have the opportunity to debate and vote on these subpoenas.

Early last year, on February 7, 2017, Chairman Mark Meadows and Ranking Member Gerry Connolly of the Subcommittee on Government Operations sent bipartisan requests to multiple agencies seeking documents relating to the Trump Administration's widespread use of nondisclosure agreements. This letter followed multiple news reports that these nondisclosure agreements "raised concerns regarding the implications for federal employees' personal communications including, in some instances, communications with Congress."¹

Specifically, these nondisclosure agreements reportedly violated federal law by failing to include mandatory language informing whistleblowers that—regardless of any other provisions

¹ Letter from Chairman Mark Meadows and Ranking Member Gerald E. Connolly, Subcommittee on Government Operations, House Committee on Oversight and Government Reform, to Acting Attorney General Boente, Department of Justice (Feb. 7, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/2017-02-07.Connolly%20Meadows%20to%20Boente-DoJ%20on%20NDAs.pdf>); Letter from Chairman Mark Meadows and Ranking Member Gerald E. Connolly, Subcommittee on Government Operations, House Committee on Oversight and Government Reform, to Secretary Kelly, Department of Homeland Security (Feb. 7, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/2017-02-07%20Connolly%20Meadows%20to%20Kelly-DHS%20on%20NDAs.pdf>).

in the nondisclosure agreements—all employees have a right under federal law to communicate freely with Congress.

These bipartisan letters were sent more than a year ago, but the Department of Justice and the Department of Homeland Security completely ignored them. They have not produced any documents or provided any responsive information.

After a year passed with no response, Democratic and Republican Committee staff contacted both Departments in February of this year, and both claimed that responses would be forthcoming. Yet, two more months have now passed with no information whatsoever from either agency.

Since that time, we have continued to receive more reports that the Trump Administration is acting to chill whistleblower disclosures and interfere with the right of employees to communicate with Congress. For example, on February 5, 2018, Chairman Charles Grassley of the Senate Judiciary Committee sent a letter to Attorney General Jeff Sessions indicating that he had obtained a memo from the Department of Justice from this year—dated January 29, 2018—that “does not appear to comply with existing law” and “attempts to prevent direct communications between federal employees and Congress.”²

In addition, just last week, Department of Justice Inspector General Michael Horowitz testified before our Committee that his office had conveyed their own concerns about the Department’s actions. When asked whether the Department has taken any action to remedy these violations, he responded, “I haven’t seen anything further.”³

The protection of whistleblowers and the right of federal employees to communicate with Congress have been longstanding bipartisan priorities of this Committee. Unfortunately, you have refused to issue even a single subpoena to any agency or official during your entire tenure as Chairman, and it appears that this abdication of oversight may be emboldening the Trump Administration to simply ignore our requests, knowing the Committee will do nothing to compel its compliance. Rather than protecting whistleblowers, the Committee appears to be more interested in protecting President Trump.

² Letter from Chairman Charles Grassley, Senate Committee on the Judiciary, to Attorney General Jeff Sessions, Department of Justice (Feb. 5, 2018) (online at [www.judiciary.senate.gov/imo/media/doc/2018-02-05%20CEG%20to%20DOJ%20\(Communications%20with%20Congress\).pdf](http://www.judiciary.senate.gov/imo/media/doc/2018-02-05%20CEG%20to%20DOJ%20(Communications%20with%20Congress).pdf)).

³ House Committee on Oversight and Government Reform, Testimony of Michael Horowitz, Inspector General, Department of Justice, *Hearing on Top Management and Performance Challenges Identified Government-wide by the Inspector General Community* (Apr. 18, 2018) (online at <https://oversight.house.gov/hearing/top-management-and-performance-challenges-identified-government-wide-by-the-inspector-general-community/>).

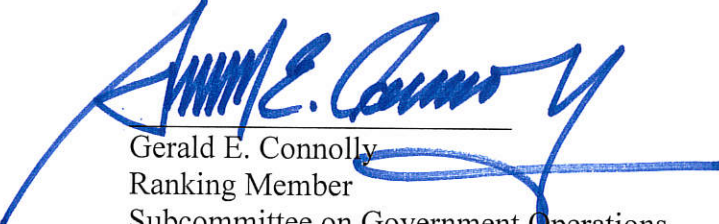
This is a very dangerous precedent. It undermines the integrity of our Committee and the respect that our requests are supposed to demand. It also creates the unfortunate perception that subpoenas will be issued only when the Committee is investigating the opposing political party. Worst of all, it deters whistleblowers from reporting abuses. We have now spoken with a number of whistleblowers who are hesitant to come forward to speak with you, a trend that is worsening due to the Trump Administration's record of overt retaliation.

In this case, we have heard no legitimate reason for the Trump Administration to withhold these documents from us, and we have received no credible rationale for its delay in producing them. For these reasons, we ask that you issue subpoenas to compel the Department of Justice and the Department of Homeland Security to produce all documents responsive to the request of February 7, 2017.

Thank you for your consideration of this request.

Sincerely,


Elijah E. Cummings
Ranking Member


Gerald E. Connolly
Ranking Member
Subcommittee on Government Operations

cc: The Honorable Mark Meadows
Chairman, Subcommittee on Government Operations