

**United States Senate**  
WASHINGTON, DC 20510

September 1, 2022

**VIA ELECTRONIC TRANSMISSION**

The Honorable Merrick B. Garland  
Attorney General  
U.S. Department of Justice

Dear Attorney General Garland:

On August 30, 2022, you sent a memorandum to all Department of Justice (DOJ) employees instructing them that all direct communications with Congress are prohibited and that all employees must go through the DOJ Office of Legislative Affairs to communicate with Congress.<sup>1</sup> You rightfully caveated that this restriction does not apply to the rights of whistleblowers to speak with and provide information to Congress; however, you only did so after noting that the communication restrictions with respect to Congress “are designed to protect our criminal and civil law enforcement decisions, and our legal judgments, from partisan or other inappropriate influences, whether real or perceived, direct or indirect.”<sup>2</sup> I write this letter to make clear to you that whistleblowers are the most patriotic people I know and they play an integral part in ensuring that inappropriate influences, political influence, and improper conduct within the Department and its components, such as the FBI, are exposed. Under your leadership, the Department and FBI have failed to be responsive to congressional oversight requests. Accordingly, it is often only because of whistleblowers that Congress and the American people are apprised of the type of wrongdoing that your memo seeks to protect against. For example, it is only because of whistleblowers that I have been made aware of wrongdoing, including political bias infecting investigative matters, by ASAC Thibault and others during the course of the Trump and Hunter Biden investigations that I’ve recently written to you about.<sup>3</sup>

Notably, your memo arrived on the heels of those whistleblower disclosures to me from Department and FBI employees about the blatant politicization of the Trump and Hunter Biden

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<sup>1</sup> Bradford Betz, *AG Garland Issues Memo on DOJ Communications with Congress after Retirements, Whistleblower Reports*, FOX NEWS (Aug. 30, 2022), <https://www.foxnews.com/politics/ag-garland-issues-memo-doj-communications-congress-retirements-whistleblower-reports>; see also Memorandum from Att’y Gen. Garland to All Dep’t. Personnel (Aug. 30, 2022).

<sup>2</sup> Memorandum from Att’y Gen. Garland to All Dep’t. Personnel (Aug. 30, 2022); see also Memorandum from Att’y Gen. Garland to All Dep’t. Personnel (July 21, 2021), <https://www.justice.gov/ag/page/file/1413766/download>.

<sup>3</sup> Press Release, Sen. Charles E. Grassley, *Whistleblowers’ Reports Reveal Double Standard In Pursuit Of Politically Charged Investigations By Senior FBI, DOJ Officials* (July 25, 2022), <https://www.grassley.senate.gov/news/news-releases/whistleblowers-reports-reveal-double-standard-in-pursuit-of-politically-charged-investigations-by-senior-fbi-doj-officials>.

investigations.<sup>4</sup> Even with your whistleblower caveats, and due to the timing of your memo, I remain concerned about the chilling effect it may have on whistleblowers who wish to approach Congress with information relating to fraud, waste, abuse, and gross mismanagement. As you are aware, the Department and FBI have a reputation for retaliating against whistleblowers that provide information to Congress. Accordingly, I'd like to remind the Department that, as a basic matter of law, **all employees** of the U.S. Government have a right to petition Congress or furnish information to Congress:<sup>5</sup>

*The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied. 5 U.S.C. § 7211.*

Your memo failed to note that law.

Protections for DOJ employees to report wrongdoing directly to Congress don't end there. For example, 5 U.S.C. §2302-2303 also protects DOJ employees from reprisal for making disclosures directly to Congress.<sup>6</sup> DOJ's own policy manual regarding communications with Congress, which you cited to in your memo, also recognizes the unequivocal right of employees to petition Congress directly, stating, "nothing in this Policy is intended to conflict with or limit whistleblower protection such as those provided in 5 U.S.C. §§2302-2303 and applicable regulations."<sup>7</sup> Although your memo mentions this line, it provides no further context or guidance, leading many who read it to believe that whistleblower protections will not be available if they speak directly to Congress.<sup>8</sup>

Furthermore, any attempt by any official at DOJ to prevent an employee from petitioning Congress directly or furnishing information to Congress is a direct violation of the Consolidated Appropriations Act of 2022 which states:<sup>9</sup>

*Sec. 713. No part of any appropriation contained in this or any other Act shall be available for the payment of the salary of any officer or employee of the Federal Government, who –*

*(1) prohibits or prevents, or attempts or threatens to prohibit or prevent, any other officer or employee of the Federal Government from having any direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress in connection with any matter pertaining to the employment of such other officer or employee or pertaining to the department or agency of such other officer or*

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<sup>4</sup> *Id.*

<sup>5</sup> 5 U.S.C. § 7211.

<sup>6</sup> 5 U.S.C. §2302-2303.

<sup>7</sup> U.S. Dep't. of Justice, JM 1-8.800, Whistleblower Protections (2019).

<sup>8</sup> See Memorandum from Att'y Gen. Garland to All Dep't. Personnel (Aug. 30, 2022).

<sup>9</sup> Consolidated Appropriations Act of 2022, Pub. L. No. 117-103, 136 Stat. 295, Sec. 713.

*employee in any way, irrespective of whether such communication or contact is at the initiative of such other officer or employee or in response to the request or inquiry of such Member, committee, or subcommittee;*

Your memo failed to note that law.

Lastly, I will remind you that whistleblower protections are not a partisan issue. Just last month the Senate unanimously passed a resolution, backed by 21 Senate co-sponsors, including 11 Democrats, expressing its support for whistleblowers.<sup>10</sup> Both parties recognize the contributions made by whistleblowers who shine a light on waste, fraud, abuse, and gross mismanagement, often at great expense to their own career.

I will be making this letter public and I invite all willing employees of the Justice Department, FBI and other component agencies to contact my office to make protected disclosures with respect to fraud, waste, abuse, and gross mismanagement so that the government works better for the American people.

Sincerely,



Charles E. Grassley  
Ranking Member  
Committee on the Judiciary

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<sup>10</sup> S. Res. 723, 117<sup>th</sup> Cong. (2022) (enacted).