



ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

HONORABLE ROBERT J. CONRAD, JR.
Director

WASHINGTON, D.C. 20544

December 1, 2025

Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Your letter of November 20, 2025, inquires about Chief Judge James E. Boasberg's decision-making regarding the issuance of non-disclosure orders ("NDOs") in particular matters, and has been referred to me. As set forth in my previous letter of November 12, 2025, it would encroach upon the separation of powers and the independence of the Judiciary for judges to be required to explain their deliberative processes in reaching judicial decisions. Moreover, the matters about which your letter inquires remain under seal. While honoring these principles, I write to provide some information to help the Committees better understand relevant practices regarding NDOs at the time in question.

In the United States District Court for the District of Columbia, the Department of Justice (DOJ) has been authorized to file certain categories of sealed investigative applications, proposed orders, and related documents electronically. An application for an NDO under 18 U.S.C. § 2705(b), which would prohibit a service provider from disclosing information about a grand jury subpoena, generally is filed electronically. The DOJ typically requests that such applications and all related filings be docketed under seal, and these requests are normally granted. The District Court docket NDO applications and related orders using its "SC" (stored communications) case type. NDO applications and orders remain under seal unless and until a request for unsealing is made and granted.

Applications for NDOs typically do not attach the related subpoena; rather they identify the subject accounts only by a signifier — e.g., a phone number. As a result, NDO applications would not reveal whether a particular phone number belonged to a member of Congress. In addition, subpoenas, as you know, are issued by the United States without approval or sign-off by any judge.

Without disclosing what is contained in the sealed NDO matters you inquire about, there are public documents outlining NDO practices in place at the time of the relevant applications, including a 2024 DOJ Office of Inspector General (“OIG”) Report and a 2023 House Judiciary Committee Report.

The OIG Report documented the process by which the DOJ sought NDOs in prior matters involving compulsory process for records of Members of Congress and their staff. See U.S. DOJ, Office of the Inspector General, *A Review of the Department of Justice’s Issuance of Compulsory Process to Obtain Records of Members of Congress, Congressional Staffers, and Members of the News Media* (Dec. 2024), available at <https://oig.justice.gov/sites/default/files/reports/25-010.pdf>.

The Report determined that “Department policy at the time did not require including information in [NDO] applications about whose records are at issue.” *Id.* at 44. More particularly, “DOJ policy in effect at the time did not require the NDOs filed with the courts to reference . . . the fact that they related to requests for records of Members of Congress or congressional staffers.” *Id.* at 4. As a result, “[t]he NDO applications filed with the courts—both in original and renewal applications—did not reference the fact that the compulsory process sought records of Members of Congress or congressional staffers . . .” *Id.* at 44. After reviewing a draft of the OIG Report, “the Department revised JM 9-13.700 in September 2024 to require that, in cases where an NDO would delay notice to a Member of Congress, congressional office, or a congressional staffer, the prosecutor must disclose this fact in the application filed with the court.” *Id.* at 25. This revision post-dates the applications discussed in your inquiry.

The OIG Report further determined that “Department policy permits prosecutors to make boilerplate statements in applications” for NDOs. *Id.* at 4. The applications for the 40 NDOs the OIG reviewed “relied on general assertions about the need for non-disclosure rather than on case-specific justifications.” *Id.* at 4.

In the Committee Report on the *NDO Fairness Act*, H.R. Rep. No. 118-54 (2023), the House Judiciary Committee similarly considered the use of NDOs in connection with compulsory process for records of Members of Congress. See *id.* at 4, 5. The proposed *NDO Fairness Act* (H.R. 3089) would have amended 18 U.S.C. § 2705(b) to require “meaningful judicial review of the need for secrecy,” House Report at 8, and to ensure that the DOJ provided the underlying compulsory process to the reviewing court, *id.* at 10. H.R. 3089 passed in the House by a vote of 412-0 but was not enacted into law.

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I hope that the information provided is useful. If I may be of further assistance to you in this or any other matter, please contact me through our Office of Legislative Affairs at 202-502-1700.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Conrad, Jr.", written in a cursive style.

Robert J. Conrad, Jr.
Director

cc: Honorable Richard J. Durbin

Identical letter sent to: Honorable Jim Jordan
Honorable Ron Johnson