

Congress of the United States

Washington, DC 20515

November 20, 2025

VIA ELECTRONIC TRANSMISSION

The Honorable James E. Boasberg
Chief Judge
U.S. District Court for the District of Columbia

Dear Chief Judge Boasberg:

We are investigating the government's conduct during Arctic Frost, the Biden-Department of Justice (DOJ) case that would become Special Counsel Jack Smith's election case against President Donald Trump. As part of Arctic Frost, Special Counsel Smith's office sought judicial nondisclosure orders (NDOs) for subpoenas, which you granted.¹ We write to you today to better understand your decision-making and to provide you an opportunity to explain yourself publicly.

Chairmen Grassley and Johnson revealed that Special Counsel Smith's office issued at least 43 subpoenas to Verizon and at least two to AT&T.² Of the 43 subpoenas sent to Verizon, three were issued for phone records associated with at least 11 senators, including two numbers issued by the Senate Sergeant at Arms (SAA).³ AT&T informed us that Special Counsel Smith's team sent one subpoena requesting the phone records of Senator Cruz and an unnamed Member of Congress and another for phone records associated with former Speaker of the House of Representatives Kevin McCarthy which AT&T said they did not know was McCarthy's number at that time.⁴ For the subpoena for Senator Cruz's phone records, AT&T challenged "Special Counsel Smith's office concerning the legal basis for seeking records of members of Congress" and Special Counsel Smith's team "did not pursue the subpoena further, and no records were produced."⁵ With respect to Speaker McCarthy, since AT&T claims it did not know the number was associated with a member, the company produced the requested information. All 45 subpoenas were accompanied by an NDO of which 19 of them, including the NDOs associated with Members of Congress, were signed by you.⁶

¹ See Press Release, *Grassley Opens Judiciary Committee Executive Business Meeting, Provides Arctic Frost Update*, (Nov. 6, 2025) <https://www.grassley.senate.gov/news/remarks/grassley-opens-judiciary-committee-executive-business-meeting-provides-arctic-frost-update>.

² Press Release, *Biden FBI Spied on Eight Republican Senators as Part of Arctic Frost Investigation, Grassley Oversight Reveals*, (Oct. 6, 2025) <https://www.judiciary.senate.gov/press/rep/releases/biden-fbi-spied-on-eight-republican-senators-as-part-of-arctic-frost-investigation-grassley-oversight-reveals>.

³ See Letter to Senator Charles E. Grassley, Chairman, Senate Committee on the Judiciary from Robert S. Fisher, Senior Vice President, Federal Government Relations & Public Affairs, Verizon, (Oct. 24, 2025) https://www.grassley.senate.gov/imo/media/doc/verizon_to_grassley_-_toll_records.pdf;

https://www.grassley.senate.gov/imo/media/doc/verizon_subpoena_and_ndo_provided_to_chairman_grassley.pdf.

⁴ Letter to Senator Charles E. Grassley, Chairman, Senate Committee on the Judiciary from AT&T, (Oct. 24, 2025) https://www.grassley.senate.gov/imo/media/doc/att_to_grassley_-_toll_records.pdf; Letter from AT&T to Senator Charles E. Grassley, Chairman, Senate Committee on the Judiciary and Senator Ron Johnson, Chairman, Permanent Subcommittee on Investigations (Nov. 14, 2025) (On file with Committee staff).

⁵ *Id.*

⁶ The exception is one NDO related to a subpoena for former Rep. Louie Gohmert and another related to former Speaker McCarthy's phone records that was signed by a Magistrate Judge whose signature is illegible.

2 U.S.C. § 6628 provides that no law, rule, or regulation may be used to prevent a service provider from notifying a Senate office that data or records have been sought through legal process.⁷ Specifically, this section states, “any provider for a Senate office...**shall not be barred, through operation of any court order or any statutory provision, from notifying the Senate office of any legal process seeking disclosure.**”⁸ It is unclear the extent to which the court considered the application of 2 U.S.C. § 6628 in granting Jack Smith’s NDO requests.

Special Counsel Smith’s request for records relating to sitting Members of Congress, including SAA-issued devices, raises serious constitutional and separation of powers concerns. Had the court considered the application of 2 U.S.C. § 6628, it would have seen that the clear prohibition on granting NDOs was designed, at least in part, to address such grave constitutional concerns. 2 U.S.C. § 6628(d) provides that the Senate office may seek a motion to “quash or modify any legal process directed at a Senate office if compliance with legal process would require disclosure.”⁹ However, Verizon informed our offices that they believed they were barred from notifying affected Members due to the NDOs you approved, thus preventing the Senate from intervening in the issuance of the subpoenas and addressing these concerns prior to any harm occurring.¹⁰ Further, it is absurd on its face to suggest that an NDO would be required for sitting Senators, who had been accused of no crime, out of fear they would destroy evidence, intimidate witnesses, and otherwise damage the investigation. Accordingly, we want to know whether you knew the government sought information relating to Members of Congress and, if not, why not.

The court’s apparent failure to consider a contrary legal requirement raises serious questions about either the sufficiency of the court’s assessment of the Special Counsel’s submissions seeking these subpoenas, or the Special Counsel’s candor before the court. Either way, these actions raise questions that Congress and the American people deserve answers to. Accordingly, so that Congress may conduct independent oversight, please answer the following questions no later than December 4, 2025:

1. Did the Special Counsel’s office inform you that it sought provider records for sitting Members of Congress? Please explain in detail.
2. Did the Special Counsel’s office brief the court on the applicability of 2 U.S.C. § 6628 when it applied to the court for an NDO pursuant to 18 U.S.C. § 2705 for the Members of Congress’s records? If yes, explain in detail how that affected your analysis. If not, should they have done so?
3. Prior to granting the NDO for SAA-issued devices, were you otherwise aware of 2 U.S.C. § 6628? Did you consider the applicability of 2 U.S.C. § 6628? If not, why not? If yes, explain in detail.

⁷ 2 U.S.C. § 6628.

⁸ 2 U.S.C. § 6628 (c) (emphasis added).

⁹ 2 U.S.C. § 6628 (d).

¹⁰ Letter from Mr. Robert S. Fisher, Senior Vice President for Government Relations & Public Affairs, Verizon, to Senator Charles E. Grassley, Chairman, Committee on the Judiciary (Oct. 24, 2025), https://www.grassley.senate.gov/imo/media/doc/verizon_to_grassley_-_toll_records.pdf. (According to Verizon’s letter, Verizon “did not notify the relevant congressional members about the subpoena.” Chairman Grassley and Johnson’s staff had additional follow up.)

4. In light of the volume of subpoenas issued by the Special Counsel's office, did you question the government about whether Members of Congress would be swept up into the collection of data and information? Did you consider constitutional and separation of powers implications? If not, why not?
5. Did the Special Counsel's office brief the court on Verizon's contractual requirement to notify the SAA about requests for records related to SAA-issued devices? If yes, explain in detail how that affected your analysis. If not, should they have done so?
6. Prior to granting the NDO for SAA-issued devices, were you otherwise aware of Verizon's contractual requirement to notify the SAA about requests for records related to SAA-issued devices? Did you consider the applicability of that contractual provision? If not, why not? If yes, explain in detail.
7. After granting the NDOs, did the Special Counsel's office ever present you with information concerning 2 U.S.C. § 6628 or Verizon's contractual requirement to notify the SAA about requests for records related to SAA-issued devices? What action did you take, if any, after learning this information?
8. Did you deny any DOJ requests for NDOs involving subpoenas related to Arctic Frost and Members of Congress before or after Special Counsel Smith was appointed? If yes, please list each subpoena and describe in detail why it was denied.

Thank you for your prompt review and responses. If you have any questions, please contact our Committee staff.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary



Ron Johnson
Chairman
Permanent Subcommittee on
Investigations



Jim Jordan
Chairman
House Committee on the Judiciary