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United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 24, 2017

VIA ELECTRONIC TRANSMISSION

The Honorable Dana Boente
Acting Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

The Honorable James B. Comey, Jr.
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Washington, DC 20535

Dear Acting Deputy Attorney General Boente and Director Comey:

Over the weekend, the *New York Times* reported that during the investigation of Russian hacking against political organizations in the United States, the FBI saw batches of documents the Russians had taken.¹ In doing so, the FBI reportedly came across a document that had implications on the then-ongoing Clinton email investigation; namely, the FBI obtained an email memo written by a Democratic operative “who expressed confidence that Ms. Lynch would keep the Clinton investigation from going too far.”² According to anonymous government officials cited in the report, the discovery of the document “complicated” the procedures as to how FBI and the Justice Department would interact in the investigation, because “[i]f Ms. Lynch announced that the case was closed, and Russia leaked the document, Mr. Comey believed it would raise doubts about the independence of the investigation.”³ That’s an understatement.

Regardless of who announced that the Justice Department would not pursue charges against Secretary Clinton or her associates, the document raises questions about the independence of the investigation that cannot be ignored. I previously wrote to Director Comey during the investigation to express my concerns that the Justice Department appeared to be keeping the investigation improperly narrow and refused the FBI access to compulsory processes in such a way that several suspicious voluntary immunity arrangements had to be used with key suspects in order to obtain even the most

¹ Matt Apuzzo, Michael S. Schmidt, Adam Goldman, and Eric Lichtblau, *Comey Tried to Shield the F.B.I. From Politics. Then He Shaped an Election*, THE NEW YORK TIMES (Apr. 22, 2017).

² *Id.*, see also Nikita Vladimirov, *Mysterious Document Was at Center of FBI Clinton Decisions*, THE HILL (Apr. 22, 2017).

³ *Id.*

basic, limited information. Indeed, the investigation appears to have willfully refused to look at information from relevant times when evidence of Secretary Clinton's intent in deleting the emails under Congressional subpoena could have been examined. For example, the FBI specifically failed to review and analyze recovered emails and emails among her senior staff from the periods: (1) immediately after the press publicly reported her use of the private server for official business, (2) after Congress and the FBI instructed Secretary Clinton to preserve the emails, and (3) surrounding the deletion of the email backups and use of "BleachBit" to thwart their forensic recovery.

Director Comey has also failed to explain adequately why, in light of then-Attorney General Lynch's multiple appearances of a conflict of interest in the case, there is no public record of him suggesting that she should be recused. A clear explanation is needed even more in light of the reporting that Director Comey had misgivings about Attorney General Lynch's ability to appear impartial if the Russians released the email memo suggesting that she would ensure the FBI's inquiry would not go "too far." It is especially troubling that the FBI failed to disclose this email memo to the Committee despite the Committee's repeated expressions of concern about the independence of the investigation and multiple requests for relevant documents.

In order for the Committee to assess the situation, please provide a copy of the email memo by no later than May 1, 2017. By May 8, 2017, please also provide: 1) all FBI documents that reference the email memo, including records in which FBI personnel discussed how to interact with the Justice Department in light of discovering the memo, and 2) a description of what investigative actions, if any, the FBI took in response to the email memo to determine whether Attorney General Lynch was improperly limiting the investigation.

I anticipate that your responses to these questions will be unclassified. Please send all unclassified material directly to the Committee. In keeping with the requirements of Executive Order 13526, if any of the responsive documents do contain classified information, please segregate all unclassified material within the classified documents, provide all unclassified information directly to the Committee, and provide a classified addendum to the Office of Senate Security. Although the Committee complies with all laws and regulations governing the handling of classified information, it is not bound, absent its prior agreement, by any handling restrictions or instructions on unclassified information unilaterally asserted by the Executive Branch.

Thank you for your prompt attention to this important issue. If you have any questions, please contact Patrick Davis of my Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary

cc: The Honorable Dianne Feinstein
Ranking Member
Senate Committee on the Judiciary