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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

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January 8, 2020

The Honorable William P. Barr
Attorney General
Department of Justice

The Honorable Christopher A. Wray
Director
Federal Bureau of Investigation

Dear Attorney General Barr and Director Wray:

In February 2011, CBS News investigative journalist Sharyl Attkisson began reporting on “Operation Fast and Furious,” an operation by the Department of Justice’s (DOJ) Bureau of Alcohol, Tobacco, and Firearms (ATF) that allowed Mexican cartel members and gun traffickers to illegally purchase firearms with the hope of tracking and later recapturing them.¹ Instead, ATF lost track of “a larger number” of those weapons.² In October 2012, Ms. Attkisson began reporting on the attacks in Benghazi that resulted in the death of U.S. Ambassador Christopher Stevens and three other Americans.³

In mid- to late-2011, Ms. Attkisson noticed “anomalies” with several of her work and personal electronic devices.⁴ These anomalies persisted through 2012.⁵ “In mid-2013, [Ms.] Attkisson and CBS announced publicly that her personal devices had been accessed and compromised.”⁶ The compromise of Ms. Attkisson’s electronic devices is troubling and occurred around the same time as the targeting of investigative journalists that occurred under the Obama administration.⁷ For example, the DOJ under President Obama “secretly seized phone records from The Associated Press, labeled one Fox News reporter [James Rosen] a criminal co-conspirator[,] [sought grand jury testimony from another reporter][,]”⁸ and obtained a search warrant for Mr. Rosen’s personal emails.⁹

¹ *Attkisson v. Holder*, 925 F.3d 606, 610 (4th Cir. 2019).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 611.

⁷ See, e.g., Sari Horwitz, *Under Sweeping subpoenas, Justice Department obtained AP phone records in leak investigation*, Wash. Post., May 13, 2013, https://www.washingtonpost.com/world/national-security/under-sweeping-subpoenas-%20justice-department-obtained-ap-phone-records-in-leak-%20investigation/2013/05/13/11d1bb82-bc11-11e2-89c9-3be8095fe767_story.html.

⁸ Matt Apuzzo, *Times Reporter Will Not Be Called to Testify in Leak Case*, N.Y. Times, Jan. 12, 2015, <https://www.nytimes.com/2015/01/13/us/times-reporter-james-risen-will-not-be-called-to-testify-in-leak-case-lawyers-say.html>.

⁹ Margaret Sullivan, *Shocked by Trump aggression against reporters and sources? The blueprint was drawn by Obama*, Wash. Post, Jun. 8, 2018, https://www.washingtonpost.com/lifestyle/style/shocked-by-the-trump-aggression-against-reporters-and-sources-the-blueprint-was-made-by-obama/2018/06/08/c0b84d88-6b06-11e8-9e38-24e693b38637_story.html.

On February 18, 2015, Ms. Attkisson filed a lawsuit claiming violations of her 4th Amendment rights.¹⁰ She sued not only named individuals, including then-Attorney General Eric Holder, but also unnamed federal agents who allegedly perpetrated the compromise of her electronic devices. However, by May 15, 2018, a federal district court had dismissed all of her claims.¹¹ On May 17, 2019, a divided three-judge panel of the 4th Circuit Court of Appeals turned down Ms. Attkisson's attempt to revive her lawsuit against the government for allegedly unauthorized surveillance of her work and personal computers.¹²

But in a dissenting opinion, Judge James Wynn, Jr. wrote that "Attkisson never got a meaningful opportunity to pursue her claims because the government did everything in its power to run out the clock on [her lawsuit]." In fact, "the district court dismissed her case with prejudice against [the unnamed federal agents]" who allegedly compromised her electronic devices because she was not able to identify them "even though the government's delaying tactics deprived [her] of any meaningful opportunity to engage in the discovery necessary to identify the[m]."¹³ Judge Wynn described the government's position as "Kafkaesque"¹⁴ and "tantamount to asserting that early discovery should never be available in a [] case against unnamed defendants."¹⁵

In 2013, as Ranking Member of this committee, Senator Tom Coburn sought answers from then-Attorney General Eric Holder regarding the government's actions in the hacking and surveillance of Ms. Attkisson's computers. In 2014, Senator Coburn sent a second letter noting that DOJ's response answered none of his questions.¹⁶ In 2015, as Chairman of the Senate Judiciary Committee, Senator Charles Grassley also sought answers. In March 2018, I wrote to DOJ's Office of the Inspector General (DOJ OIG) and received a copy of its Abbreviated Report of Investigation regarding its analysis of Ms. Attkisson's personal laptop.¹⁷ To this day, however, other than DOJ OIG's response, the government has successfully resisted providing any meaningful answers or insights into the matter.

In light of the recently documented abuse of Foreign Intelligence Surveillance Act applications by the Federal Bureau of Investigation (FBI),¹⁸ I am especially concerned about these unresolved questions regarding the alleged surveillance of Ms. Attkisson. It is well past time that Ms. Attkisson, Congress, and the American public receive answers to questions that have remained outstanding for over 6 years. These questions include:

- 1) Was Ms. Attkisson ever a witness, subject, or target in an investigation by the DOJ, to include the FBI and ATF?

¹⁰ See *Attkisson v. Holder*, No. 1:17-cv-364, 2017 WL 5103230, at *4, (E.D.V.A. Nov. 1, 2017).

¹¹ *Id.*

¹² *Attkisson v. Holder*, 925 F.3d 606 (4th Cir. 2019).

¹³ *Id.* at 629.

¹⁴ *Id.* at 638.

¹⁵ *Id.* at 632.

¹⁶ See Sharyl Attkisson, *Justice Dept. on the Hotseat*, <https://sharylattkisson.com/2019/01/justice-dept-on-the-hotseat/>.

¹⁷ Letter from Ron Johnson, Homeland Security & Gov't Affairs Comm. Chairman, to Michael Horowitz, U.S. Dep't of Justice Inspector Gen., Mar. 7, 2018 (on file with Comm.).

¹⁸ U.S. Dep't of Justice, Office of the Inspector General, *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation* (Dec. 2019).

- 2) Has any employee, contractor or other representative of the DOJ, to include the FBI and ATF, ever obtained or sought to obtain records concerning Ms. Attkisson? If yes, please describe those efforts, their legal basis, and identify the individuals involved.
- 3) Has any employee, contractor or other representative of the DOJ, to include the FBI and ATF, ever attempted to remove, exfiltrate or otherwise transfer data to or from any electronic device used by Ms. Attkisson without her consent? If yes, please describe those efforts, their legal basis, and identify the individuals involved.
- 4) Has any employee, contractor or other representative of the DOJ, to include the FBI and ATF, ever obtained access to any electronic device used by Ms. Attkisson without her consent? If yes, please describe those efforts, their legal basis, and identify the individuals involved.
- 5) Other than the DOJ OIG's review of her personal computer, has the DOJ, to include FBI and ATF, investigated the compromise by Ms. Attkisson's electronic devices? If so, please describe the results of the investigation(s) or review(s). If not, why not?

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate "the efficiency, economy, and effectiveness of all agencies and departments of the Government."¹⁹ Additionally, Senate Resolution 70 (116th Congress) authorizes the Committee to examine "the efficiency and economy of operations of all branches of the Government[.]"²⁰

Please respond no later than January 22, 2020 by contacting Brian Downey or Scott Wittmann with my committee staff at (202) 224-4751 to discuss a plan for producing documents and answers responding to these questions.

Sincerely,



Ron Johnson
Chairman

cc: The Honorable Gary Peters
Ranking Member

¹⁹ S. Rule XXV; *see also* S. Res. 445, 108th Cong. (2004).

²⁰ S. Res. 70, 116th Cong. § 12(e)(1)(A) (2019).