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Via Electronic Mail

October 21, 2025

The Honorable Charles E. Grassley
Committee on Judiciary
United States Senate
Washington, D.C. 20510

Re: Investigation of Jack Smith

Dear Chairman Grassley:

We write on behalf of our client, former Special Counsel Jack Smith, in response to concerns raised by you and Members of the Senate Judiciary Committee regarding certain investigative steps taken by the Special Counsel's Office in its investigation of President Trump's alleged mishandling of classified documents and his role in attempting to overthrow the results of the 2020 election. Although you have not reached out to us to discuss this matter, we are compelled to correct inaccurate assertions made by you and others concerning the issuance of a grand jury subpoena for the toll records of eight Senators and one Member of the House of Representatives. Mr. Smith's actions as Special Counsel were consistent with the decisions of a prosecutor who has devoted his career to following the facts and the law, without fear or favor and without regard for the political consequences. His investigative decisions were similarly motivated, and the subpoena for toll records was entirely proper, lawful, and consistent with established Department of Justice policy. While Mr. Smith's prosecutions of President Trump have predictably been politicized by others, politics never influenced his decision making.

A number of people have falsely stated that Mr. Smith "tapped" Senators' phones, "spied" on their communications, or "surveilled" their conversations. As you know, toll records merely contain telephonic routing information—collected after the calls have taken place—identifying incoming and outgoing call numbers, the time of the calls, and their duration. Toll records are historical in nature, and do not include the content of calls. Wiretapping, by contrast, involves intercepting the telecommunications in real time, which the Special Counsel's Office did not do.

As described by various Senators, the toll data collection was narrowly tailored and limited to the four days from January 4, 2021 to January 7, 2021, with a focus on telephonic activity during the period immediately surrounding the January 6 riots at the U.S. Capitol. The subpoena's limited temporal range is consistent with a focused effort to confirm or refute reports by multiple news outlets that during and after the January 6 riots at the Capitol, President Trump and his surrogates attempted to call Senators to urge them to delay

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certification of the 2020 election results.¹ In fact, by the time Mr. Smith's team conducted the toll records analysis, it had been reported that President Trump and Rudy Giuliani tried calling Senators for such a purpose, with one Senator releasing a voicemail from Mr. Giuliani.²

It is well established that obtaining telephone toll records pursuant to a subpoena is a routine and lawful investigative step that does not violate an individual's expectation of privacy.³ Indeed, Special Counsel Robert Hur subpoenaed toll records in his investigation of President Biden.⁴ During the current Trump administration, the Department of Justice has routinely

¹ See, e.g., Sunlen Serfaty, Devan Cole & Alex Rogers, *As Riot Raged at Capitol, Trump Tried to Call Senators to Overturn Election*, CNN (Jan. 8, 2021), <https://www.cnn.com/2021/01/08/politics/mike-lee-tommy-tuberville-trump-misdialed-capitol-riot>; *Capitol Riots Timeline: What Happened on 6 January 2021*, BBC (Aug. 2, 2023), <https://www.bbc.com/news/world-us-canada-56004916>; Jacob Fischler, *Trump 'Chose Not to Act' As U.S. Capitol Underwent Attack, Jan. 6 Panel Says*, Mo. Indep. (July 22, 2022), <https://missouriindependent.com/2022/07/22/trump-chose-not-to-act-as-u-s-capitol-underwent-attack-jan-6-panel-says/> ("Former White House press secretary Kayleigh McEnany said in a taped deposition that she gave Trump a list of senators and that the president called them to urge them not to certify the election results.").

² See, e.g., Steve Hayes, *Giuliani to Senator: 'Try to Just Slow it Down,'* The Dispatch (Jan. 7, 2021), <https://thedispatch.com/article/giuliani-to-senator-try-to-just-slow/> (reporting on a voicemail that Rudy Giuliani intended to leave for Senator Tommy Tuberville on January 6, 2021, but instead "left . . . on the voicemail of another senator, who shared it with *The Dispatch*"); Riley Rogerson, *Alaska Sen. Sullivan Says Giuliani Tried to Call Him Twice Before Election Certification Vote, Left 'Incoherent' Messages He Says Were Intended for Another Senator*, Anchorage Daily News (Dec. 23, 2022), <https://www.adn.com/politics/2022/12/22/house-jan-6-panels-report-says-rudy-giuliani-called-alaska-sen-sullivan-twice-before-election-certification-vote/>; Julie Gerstein, *In the Midst of the Capitol Siege, Trump Tried Calling Tommy Tuberville but Got the Wrong Senator*, Business Insider (Jan. 8, 2021), <https://www.businessinsider.com/tommy-tuberville-wrong-number-trump-2021-1> (reporting that Senator Mike Lee told *Deseret News* about a call received by President Trump, intended for Senator Tommy Tuberville).

³ See 18 U.S.C. § 2703(c) (providing that a government entity may require an electronic communication service provider to disclose information, not including contents of communications, with a subpoena); *Smith v. Maryland*, 442 U.S. 735, 744 (1979) ("When he used his phone, petitioner voluntarily conveyed numerical information to the telephone company and 'exposed' that information to its equipment in the ordinary course of business. In so doing, petitioner assumed the risk that the company would reveal to police the numbers he dialed.").

⁴ See, e.g., SPECIAL COUNS. ROBERT K. HUR, U.S. DEP'T OF JUST., REPORT ON THE INVESTIGATION INTO UNAUTHORIZED REMOVAL, RETENTION, AND DISCLOSURE OF CLASSIFIED DOCUMENTS DISCOVERED AT LOCATIONS INCLUDING THE PENN BIDEN CENTER AND THE DELAWARE PRIVATE RESIDENCE OF PRESIDENT JOSEPH R. BIDEN, JR. 29 (2024) (stating that "the investigation collected over seven million documents, including e-mails, text messages, photographs, videos, toll records, and other materials from both classified and unclassified sources").

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relied upon subpoenaed toll records in numerous criminal prosecutions.⁵ During President Trump's first term, the Justice Department purportedly obtained communications records of two Democratic Members of Congress—Rep. Eric Swalwell and then-Rep. Adam Schiff—and forty-three congressional staffers in connection with an investigation into media leaks.⁶ More recently, the Department of Justice used toll records in the prosecution of Senator Menendez.⁷

The Justice Department—understanding that prosecutors may need to seek toll records and other documents for Members of Congress in their investigations—has procedures for investigative steps where a Member of Congress may be involved.⁸ Mr. Smith faithfully adhered to these procedures, including seeking and receiving authorization from the Public Integrity Section before taking this investigative step.

Mr. Smith's use of the toll records as Special Counsel was lawful and in accordance with normal investigative procedure. Against this backdrop, there is simply no support for FBI Director Patel's recent assertion that Mr. Smith hid the toll records information so that "no one would find it," or that Mr. Smith put the toll records in a "lockbox in a vault, and then put that vault in a cyber place where no one can see or search these files."⁹ It is not clear what cyber place in a vault in a lockbox Director Patel is describing, but Mr. Smith's use of these records is inconsistent with someone who was trying to conceal them. Paragraph 119 of the August 1, 2023 indictment describes some of the calls that were made to U.S. Senators on January 6, 2021, and

⁵ See, e.g., Criminal Complaint by Telephone or Other Reliable Electronic Means at 11, *United States v. Henley, Jr.*, No. 2:25-cr-00211 (C.D. Cal. Mar. 17, 2025), Dkt. No. 1 (indicating that agents gathered information from a variety of sources during the relevant investigation, including "toll records showing communications between conspirators, victims, and [criminal enterprise] members and associates"); Criminal Complaint by Telephone or Other Reliable Electronic Means at 36, *United States v. Mehrrafiee*, No. 2:25-cr-00126 (C.D. Cal. Feb. 9, 2025), Dkt. No. 1 (indicating that toll records were reviewed in connection with an investigation); Affidavit in Support of Application for Criminal Complaint at 2, *United States v. Rodriguez*, No. 1:25-mj-01178 (D. Mass. July 23, 2025), Dkt. No. 2-3 (highlighting that an FBI agent relied on "[t]elephone toll records, pen register and trap and trace information, and telephone subscriber information" in making the affidavit); Affidavit in Support of an Application for a Criminal Complaint at 3, *United States v. Mahoney*, No. 1:25-mj-08183 (D. Mass. Apr. 1, 2025), Dkt. No. 1-1 (indicating that "law enforcement officials . . . requested call detail records"); Affidavit in Support of Complaint and Arrest Warrant at 8 n.10, *United States v. Glauthier*, No. 1:25-mj-00007 (D.R.I. Feb. 27, 2025), Dkt. No. 3-1 (indicating that toll records were provided by T-Mobile).

⁶ See Ryan Lucas, *Trump-era Justice Department subpoenaed congressional staffers, watchdog finds*, NPR (Dec. 10, 2024), <https://www.npr.org/2024/12/10/g-s1-37644/justice-department-subpoenae-trump>.

⁷ See Transcript, *United States v. Menendez*, No. 1:23-cr-00490, at 141 (S.D.N.Y. June 6, 2024), Dkt. No. 540 ("[L]et's check the toll records. If there is no toll record between [senior congressional staffer] Rob Kelly and Senator Menendez, I don't think this comes in. We have all their toll records.").

⁸ See U.S. Dep't of Just., Just. Manual § 9-85.110 (2024) (Investigations Involving Members of Congress).

⁹ HANNITY: Patel: "We're Just Warming Up" in Investigation of Alleged Tracking of GOP Senators, Fox News (Oct. 7, 2025), <https://www.foxnews.com/video/6382234662112>.

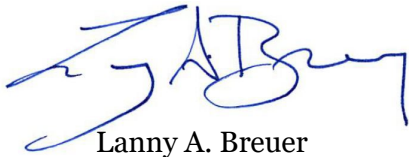
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footnote 132 of Volume 1 of the Special Counsel Report refers to the use of toll records in the investigation. Moreover, the precise records at issue were produced in discovery to President Trump's personal lawyers, some of whom now serve in senior positions within the Department of Justice.

We hope that this information is helpful, and we are confident that an objective assessment of the facts and the law will compel the inescapable conclusion that Mr. Smith's investigative efforts, including his Office's issuance of a grand jury subpoena for telephone toll records, were handled in an entirely lawful and appropriate manner.

Sincerely,



Lanny A. Breuer



Peter Koski

Cc: Honorable Richard Durbin, Ranking Member Senate Judiciary Committee