



**Permanent Select Committee  
on Intelligence  
U.S. House of Representatives**

September 18, 2020

Mr. Joseph B. Maher  
Principal Deputy General Counsel and Senior Official  
Performing the Duties of the Under Secretary for Intelligence and Analysis  
Office of Intelligence and Analysis  
U.S. Department of Homeland Security  
Washington, D.C. 20528

Dear Mr. Maher:

As the acting head of the Department of Homeland Security’s (“DHS” or “Department”) Office of Intelligence and Analysis (“I&A”)—like the heads of all other departments, agencies, and U.S. government entities involved in intelligence activities—you are required by statute to keep the congressional intelligence committees fully and currently informed of all intelligence activities. You are equally obligated to furnish to the committees, upon request, any information or material within your custody and control concerning such activities.<sup>1</sup> Consistent with these requirements, I appreciated the pledge you made during our September 9, 2020, meeting, which DHS personnel subsequently reaffirmed, that I&A would cooperate with the Committee’s broadened investigation.<sup>2</sup>

Subsequent actions by the Department, including its September 14 letter to the Committee, submitted on your behalf, contravene this legal obligation and renege on the commitment made during our meeting.<sup>3</sup> This sharp reversal is unacceptable, and raises troubling questions about why DHS and I&A are obstructing the Committee’s lawful oversight and duly authorized investigation and about what information is being concealed as a result. It is also

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<sup>1</sup> 50 U.S.C. § 3092 (“[T]he heads of all departments, agencies, and other entities of the United States Government involved in intelligence activities shall—(1) keep the congressional intelligence committees fully and currently informed of all intelligence activities, [...] and (2) furnish the congressional intelligence committees any information or material concerning intelligence activities (including the legal basis under which the intelligence activity is being or was conducted), [...] which is within their custody or control, and which is requested by either of the congressional intelligence committees in order to carry out its authorized responsibilities.”).

<sup>2</sup> Letter from Chairman Adam B. Schiff to Mr. Joseph B. Maher, Principal Deputy General Counsel and Senior Official Performing the Duties of the Under Secretary for Intelligence and Analysis, Office of Intelligence and Analysis, U.S. Department of Homeland Security, September 11, 2020, *available at* [https://intelligence.house.gov/uploadedfiles/hpsci\\_letter\\_to\\_dhs\\_ia\\_acting\\_maher\\_re\\_investigation\\_scope.pdf](https://intelligence.house.gov/uploadedfiles/hpsci_letter_to_dhs_ia_acting_maher_re_investigation_scope.pdf).

<sup>3</sup> Letter from Beth Spivey, Assistant Secretary for Legislative Affairs, U.S. Department of Homeland Security, to Chairman Adam B. Schiff, September 14, 2020.

deeply disappointing, as you had led me to believe you would not engage in the kind of obstructive behavior that has come to characterize so many during this administration.

As you know, the Committee was compelled to expand the scope of its investigation after learning of serious allegations of improper politicization of intelligence and political interference in I&A's mission and activities. A whistleblower reprisal complaint filed on behalf of your predecessor, former Acting Under Secretary for Intelligence and Analysis Brian Murphy, details a sustained and disturbing pattern of misconduct by senior Trump Administration officials within the White House and DHS. The complaint alleges repeated violations of both statutes and regulations, abuses of authority, attempted censorship of intelligence analysis, and improper administration of an intelligence program related to Russian efforts to influence the U.S. elections. Certain aspects of the complaint, moreover, appear consistent with public reports and information gathered by the Committee as part of its oversight work.

As noted in the Committee's September 9 letter requesting Mr. Murphy's deposition, such allegations—individually and as part of a broader pattern of improper political interference—fall squarely within the unique oversight and legislative jurisdiction of the Committee and, thus, are legitimate and necessary subjects of investigation.<sup>4</sup> The Committee, moreover, has the necessary jurisdiction to investigate matters raised in a whistleblower complaint filed by a member of the Intelligence Community.

The Committee, therefore, has a duty to independently scrutinize and substantiate allegations of such a serious nature by the former head of an Intelligence Community element. Just as the Committee cannot simply accept, without undertaking its own inquiry, representations by Mr. Murphy, it cannot accept at face value Mr. Chad Wolf's denials, including as represented in the Department's carefully worded assertion—phrased in the present tense—that the Department “stands by the Acting Secretary's statements from last week that any accusations that DHS *is* improperly holding or delaying intelligence for political considerations is false” (emphasis added).<sup>5</sup> Even if the Department were no longer engaging in the reported misconduct—something we can likewise not assume—it is vital that the Committee ascertain any wrongdoing, past or present, and act to prevent it from occurring again.

The Committee has the constitutional authority and institutional responsibility to exercise its oversight and investigative authority to determine the facts and, as necessary, develop legislative reforms to ensure abuses do not persist and are prevented in the future.<sup>6</sup> The

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<sup>4</sup> Letter from Chairman Adam B. Schiff to Mr. Brian Murphy, September 9, 2020, *available at* [https://intelligence.house.gov/uploadedfiles/20200909\\_-\\_dhs\\_interview\\_-\\_brian\\_murphy\\_letter.pdf](https://intelligence.house.gov/uploadedfiles/20200909_-_dhs_interview_-_brian_murphy_letter.pdf).

<sup>5</sup> Letter from Beth Spivey, Assistant Secretary for Legislative Affairs, U.S. Department of Homeland Security, to Chairman Adam B. Schiff, September 14, 2020.

<sup>6</sup> In its September 14, 2020, letter, the Department bizarrely charges that the Committee—which authorizes and oversees the activities of all elements of the Intelligence Community, including I&A—has yet to explain the “legislative purpose” of its investigation. *Id.* This assertion is false. In fact, the Committee repeatedly has described to the Department and I&A the oversight and legislative objectives of the investigation. For instance, the Committee's August 19 letter explained that, in connection with its investigation, the Committee “is exploring legislative options to clarify I&A's authorities and mission and institute necessary guardrails moving forward.”

Committee was established for this very purpose and would be derelict not to press forward with its investigation. Going forward, the Committee expects witnesses to answer all questions to the best of their knowledge, regardless of DHS' effort to artificially limit the Committee's scope of inquiry.<sup>7</sup>

In this respect, the Committee has received the Department's latest offer to make available three additional witnesses—of the dozen the Committee has requested—for “briefings.” As with the testimony of other I&A officials to date, the Committee has an obligation to ensure a clear investigative record and will transmit separately the dates for these witnesses' in-person transcribed interviews.

As part of the Committee's ongoing investigation and pursuant to 50 U.S.C. § 3092, the Committee also requests that DHS and I&A produce by **Wednesday, September 23, 2020, all** documents or communications within the possession, custody, or control of the Department or I&A— regardless of form, classification, and whether generated or obtained by the Department or I&A—that refer or relate to the factual allegations advanced in the complaint, including but not limited to (1) foreign interference in U.S. elections; (2) domestic threats related to white supremacy, antifa, and “anarchist groups”; and (3) migration and asylum.

The production shall include any materials the Department or I&A have produced or intend to produce to the Senate Select Committee on Intelligence (“SSCI”), in response to SSCI's September 10 letter.<sup>8</sup> The Department also shall produce all materials responsive to any and all future requests submitted to the executive branch by SSCI or by any other congressional committee, in connection with the complaint or otherwise related to the Committee's investigation into I&A's activities.

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Official Performing the Duties of the Under Secretary for Intelligence and Analysis, Office of Intelligence and Analysis, U.S. Department of Homeland Security, August 19, 2020, *available at* <https://intelligence.house.gov/uploadedfiles/20200819hpscichmfollowuplettertodhsia.pdf>. Moreover, the issue of legislative purpose is a “red herring” because as both the Department and I&A have statutorily-based legal obligations that are not dependent on any Committee investigation, including to furnish information to the Committee concerning intelligence activities upon request. Finally, you also agreed to cooperate with the Committee's expanded investigation, and raised no objection and sought no clarification, when I described the investigation's parameters and oversight and legislative goals during our meeting in the Committee's spaces on September 9.

<sup>7</sup> Mr. Ian Brekke, Deputy General Counsel at DHS who recently assumed supervisory responsibility for the Office of General Counsel's Intelligence Law division, initially refused to answer the Committee's questions regarding Mr. Murphy's whistleblower reprisal complaint during his September 15, 2020 voluntary transcribed interview. At the suggestion of a DHS attorney present at the interview, Mr. Brekke ultimately agreed, however, to answer questions about the underlying substantive allegations outlined in the complaint, even as he claimed ignorance or lack of knowledge. Similarly, the acting Mission Manager for I&A's Counterterrorism Mission Center answered questions related to the allegations in the complaint and beyond during his September 17, 2020, interview, notwithstanding a DHS attorney's continuing objection.

<sup>8</sup> Letter from Acting Chairman Marco Rubio and Vice Chairman Mark R. Warner to Joseph B. Maher, Principal Deputy General Counsel and Senior Official Performing the Duties of the Under Secretary for Intelligence and Analysis, Office of Intelligence and Analysis, U.S. Department of Homeland Security, September 10, 2020.

In addition, the Committee stresses that key documents and other information already requested from DHS and I&A—some requests submitted as early as July—remain unmet. Notwithstanding the selective and incomplete document production thus far, the Committee has reason to believe that DHS and I&A are withholding responsive records related to I&A’s activities in Portland and in support of DHS’ response to nationwide protests.

The Department and I&A have no legitimate basis for withholding such documents and information and must satisfy the Committee’s pending requests for production fully and without any further unwarranted delay. The Committee stands ready to consider compulsory process, as needed.

Finally, the Committee is aware that the Department informed Mr. Murphy’s attorneys yesterday—September 17, 2020—that it has denied Mr. Murphy’s request to access classified documents in preparation for his Committee deposition. Chad Mizelle, the Senior Official Performing the Duties of the General Counsel, falsely represented, despite clear and repeated prior communication to the contrary by the Committee and Mr. Murphy’s attorneys, that Mr. Murphy “wants access for the purpose of delivering documents to HPSCI.” This is an untrue and spurious claim. The Committee has made clear that it expects DHS and I&A—not Mr. Murphy—to produce responsive records, including classified documents, and any effort by DHS to prevent a witness from being able to prepare adequately for testimony before the Committee will be viewed as obstruction of this investigation. DHS should reverse its position immediately and grant Mr. Murphy access to these classified records prior to his deposition.

Should you have any questions, please contact the Committee’s Majority Staff at (202) 225-7690.

Sincerely,



Adam B. Schiff  
Chairman

CC The Honorable Devin Nunes, Ranking Member