

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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July 28, 2023

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chair Khan:

We received your letter dated July 26, 2023.¹ We were surprised by the unusual tone and the baseless accusations made in your letter, and we are disappointed that you chose to leak it to the press before transmitting it to the Committee. The Committee is conducting constitutional oversight of the Federal Trade Commission (FTC), as we have repeatedly communicated to you and FTC staff.² Your recent letter, unfortunately, is not the first time that you and FTC staff have lodged frivolous ethics allegations against Committee staff in an apparent effort to chill the Committee's investigative work. The oversight you are blocking concerns your mistreatment and mismanagement of career FTC employees, and your unusual response to this oversight, forces us to examine whether you and your senior staff are attempting to obstruct the Committee's oversight to prevent potential embarrassment. This concerted effort to obstruct the Committee's oversight must stop.

There can be no serious dispute that the Committee has both the authority and the jurisdiction to conduct oversight of the FTC. The Supreme Court has made clear that Congress has a "broad and indispensable" power to conduct oversight, which "encompasses inquiries into the administration of existing laws, studies of proposed laws, and surveys in our social, economic or political system for the purpose of enabling Congress to remedy them."³ Rule X of

¹ Letter from Lina Khan, Chair, FTC to Jim Jordan, Chair, House Judiciary Committee (July 26, 2023).

² See, e.g., Letter to Lina Khan, Chair, FTC, from Rep. Moran, et al. (Mar. 9, 2023); Letter to Lina Khan, Chair, FTC, from Jim Jordan, Chair, House Judiciary Committee and Thomas Massie, Chair, Subcommittee on the Administrative State, Regulatory Reform, and Antitrust (Apr. 5, 2023); Letter to Lina Khan, Chair, FTC, from Jim Jordan, Chair, House Judiciary Committee and Cathy McMorris Rodgers, Chair, House Energy and Commerce Committee (July 12, 2023); Letter to Lina Khan, Chair, FTC, from Jim Jordan, Chair, House Judiciary Committee (June 28, 2023); Letter to Lina Khan, Chair, FTC, from Jim Jordan, Chair, House Judiciary Committee (July 17, 2023).

³ See, e.g., *Trump v. Mazars LLP*, No. 19-715 at 11 (U.S. slip op. July 9, 2020) (internal quotation marks and citations omitted).

the Rules of the House of Representatives authorizes the Committee to conduct oversight on matters relating to the “[p]rotection of trade and commerce against unlawful restraints and monopolies” to inform potential legislative reforms.⁴ The matters on which the Committee is conducting oversight are indisputably “subject[s] on which legislation could be had.”⁵

Federal courts have long recognized that Congress and its committees may obtain testimony, including from federal employees, to advance their duty of oversight and to inform legislative reforms.⁶ This authority extends to testimony in a deposition or transcribed interview setting. In fact, the House has promulgated specific regulations governing the compelled testimony of witnesses,⁷ and the Committee’s rules incorporate these regulations.⁸ The Committee has exercised this authority to obtain testimony from federal employees in the course of conducting oversight of several other agencies within its jurisdiction during the 118th Congress.

It is apparent from your letter that you disagree with the Committee’s decisions as to how to exercise its oversight authority. We appreciate your willingness to allow the Committee to interview senior FTC employees, and we will look forward to conducting those interviews at the appropriate time. However, it is up to the Committee—and not the FTC—to determine how and in what manner it conducts its oversight.⁹ The Committee has determined, as we have indicated by letter and in subsequent communication with FTC staff, that its oversight is best effectuated by obtaining testimony first from non-SES employees. Contrary to your assertion, there is ample precedent, both in the 118th Congress and in prior years, for the Committee to conduct interviews and depositions with line-level federal employees. There is simply no legitimate basis for you to continue to refuse to make these employees available to the Committee.

Your stated reason for refusing to cooperate in full with the Committee’s requests for transcribed interviews—that the Committee has not sufficiently identified the matters in which it is interested—is incorrect and unpersuasive. Public reporting and government-wide survey data suggest that career civil servants at the FTC believe you lack honesty and integrity, and that you have failed to motivate your employees.¹⁰ In addition, these career employees lack respect for your senior leadership team.¹¹ Further, possibly because of your mismanagement, merger enforcement numbers at the FTC have fallen compared to the end of the Trump

⁴ Rules of the U.S. House of Representatives, R. X (2023).

⁵ See, e.g., *Mazars*, No. 19-715 at 12 (internal quotation marks and citations omitted).

⁶ See, e.g., *Bragg v. Jordan*, 1:23-cv-3032 (S.D.N.Y. April 19, 2023) (opinion and order denying temporary restraining order) (citing *Watkins v. United States*, 354 U.S. 178, 187-88 (1957) and *Quinn v. United States*, 349 U.S. 155, 160-61 (1955)).

⁷ H. Res. 5, 118th Cong. (2023); see also Regulations for the Use of Deposition Authority, available at <https://rules.house.gov/press-releases/118th-congress-regulations>.

⁸ Rules of the H. Comm. on the Judiciary, R. XI.

⁹ See U.S. CONST. art. I, § 1.

¹⁰ Letter from Jim Jordan, Chair, House Judiciary Committee and Cathy McMorris Rodgers, Chair, House Energy and Commerce Committee to Lina Khan, Chair, FTC, at 2 (July 12, 2023).

¹¹ *Id.*

Administration.¹² These and related matters warrant the Committee's oversight, and form the basis for the interviews that the Committee has requested.

The Committee has been forthcoming and transparent that these serious issues at the FTC are matters of interest to the Committee's oversight. The Committee has sent you five letters requesting documents and information about these matters.¹³ The Committee has engaged with FTC staff about these matters. The Committee convened a hearing with you just weeks ago during which many of these topics arose.¹⁴ In addition, in response to your request and as an accommodation to the FTC, the Committee articulated the specific matters it sought to examine with each employee.¹⁵ Under these circumstances, it is unbelievable for the FTC to continue to claim, as you do, that it is unaware of the topics of the Committee's oversight.

We are deeply concerned about your repeated efforts to chill the Committee's oversight by lodging frivolous accusations of ethical violations against the Committee's professional staff and grossly mischaracterizing the Committee's actions. The accusations in your recent letter are baseless and legally deficient. Every federal employee has a right to speak freely with Congress without interference from his or her employer. To this end, Congress specifies in each annual appropriations bill that the salary of a federal employee may be withheld for:

[P]reventin[ing], or attempt[ing] or threaten[ing] to prohibit or prevent, any other officer or employee of the Federal Government from having any direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress in connection with any matter pertaining to the employment of such other officer or employee or pertaining to the department or agency of such other officer or employee in any way, irrespective of whether such communication or contact is at the initiative of such other officer or employee or in response to the request or inquiry of such Member, committee, or subcommittee[.]¹⁶

In fact, in 2016, the U.S. Government Accountability Office determined the Department of Housing and Urban Development (HUD) must partially withhold the salary of two HUD employees for delaying a line-level HUD employee from appearing before Congress in a transcribed interview setting.¹⁷ Contrary to your assertion, FTC employees are not parties "represented" by the FTC, because the FTC's lawyers represent the Commission as an entity and not the employees as individuals.¹⁸ This distinction is important because the interests of the FTC

¹² *Id* at 1.

¹³ *See supra* note 2.

¹⁴ *Oversight of the Federal Trade Commission Before the H. Comm. on the Judiciary*, 118th Cong. (July 13, 2023).

¹⁵ Letter from Jim Jordan, Chair, House Judiciary Committee to Lina Khan, Chair, FTC at 2 (July 17, 2023).

¹⁶ *See, e.g.*, H.R. 4664, § 713(1) (2023). *See also* Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, § 713(1) (2022).

¹⁷ Letter from Susan A. Poling, General Counsel, GAO to Charles E. Grassley, Chair, Senate Judiciary Committee et al. (Apr. 5, 2016).

¹⁸ *See* Regulations for the Use of Deposition Authority, *available at* <https://rules.house.gov/press-releases/118th-congress-regulations> ("Witnesses may be accompanied at a deposition by two designated personal, nongovernmental attorneys to advise them of their rights. Only members, committee staff designated by the chair or ranking minority

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as an entity and FTC employees as individuals potentially diverge in these matters. For that reason—and contrary to the misleading characterization in your letter—the Committee specifically advised FTC employees to contact the Committee through their counsel if they were represented.¹⁹

Your unusual response to the Committee’s oversight and your repeated frivolous allegations of ethics violations raise the serious concern that you and your senior staff are attempting to obstruct the Committee’s oversight into the FTC. As such, to allow the Committee to assess whether you are obstructing this oversight, please provide the following information:

1. All documents and communications referring or relating to the Committee’s requests for transcribed interviews with FTC employees; and
2. All documents and communication referring or relating to the FTC’s response to the Committee’s oversight of allegations of poor staff morale, mismanagement, and a toxic work environment within the FTC.

Please provide this information no later than 5:00 p.m. on August 11, 2023.

The Committee requires testimony from the FTC employees we have previously identified. Up to this point, you have baselessly refused to make these non-SES employees available, despite the Committee’s repeated efforts to accommodate the FTC’s interests. Your continued refusal to make these employees available will force the Committee to compel this testimony.

Thank you for your attention to this matter.

Sincerely,



Jim Jordan
Chairman

cc: The Honorable Jerrold Nadler, Ranking Member

member, an official reporter, the witness, and the witness’s two designated attorneys are permitted to attend. Other persons, including government agency personnel, may not attend.”).

¹⁹ The email to FTC employees from the Committee cannot seriously be considered inappropriate as you suggest. Your letter omitted language in the email in which the Committee specifically requested the employees to “please forward this communication to your attorney and ask that they engage with the Committee directly on your behalf.”