

**Department of Justice Use of Certain Law Enforcement Tools to Obtain Information from,
or Records of, Members of the News Media; and Questioning, Arresting, or Charging
Members of the News Media**

Annual Report: Calendar Year 2020

The Department of Justice (Department) is committed to making public, on an annual basis, data regarding its use of certain law enforcement tools to obtain information from, or records of, members of the news media; and regarding questioning, arresting, or charging members of the news media, pursuant to 28 C.F.R. § 50.10. See Justice Manual (JM) 9-13.400(L)(4). This public report, which encompasses authorizations during calendar year 2020, is derived from information provided by Department Divisions and United States Attorneys' Offices. In conjunction with issuing this report, the Department has also issued amendments to the public reports for calendar years 2017 and 2018 that include several matters not previously reported.

A. Subpoenas and applications for court orders or search warrants authorized by the Attorney General (28 C.F.R. §§ 50.10(c) and (d))

1. In connection with an investigation into several incidents of arson and destruction of government property that transpired when civil protests and demonstrations turned violent, the Attorney General authorized a U.S. Attorney's Office to issue a grand jury subpoena *duces tecum* for the production of videotape to a news media outlet. Investigators had pursued multiple avenues to identify the perpetrators of the crimes under investigation, without success, and had exhausted all investigative leads. With respect to video footage in the news media outlet's possession relating to these incidents, the news media outlet had provided the government with footage that had been broadcast, but had refused to supply any unaired footage. Other evidence gathered during the investigation suggested that the unedited videotape – in particular, the portions that were not aired – would be helpful in identifying the parties responsible for the crimes under investigation. The news media outlet complied with the subpoena.

2. In connection with an investigation into an attempted arson of a courthouse during a violent protest, the Attorney General authorized a U.S. Attorney's Office and the FBI to issue a subpoena to a newspaper for the original image and any immediately surrounding images of a photograph that the newspaper printed the day after the attempted arson, which depicted the subject attempting to commit the arson. While of high resolution, the published image was dark and showed only the subject's general features, insufficient to allow for the subject's identification. Cellphone footage from a citizen showed the newspaper's photojournalist pointing a high-resolution camera toward the subject for several seconds, indicating either the taking of video footage or of multiple still photographs. The U.S. Attorney's Office and the FBI sought the original photograph and any immediately surrounding images as a means of identifying the individual whom the investigation had not otherwise been able to identify. Because the newspaper declined to produce the images voluntarily or in response to a "friendly" subpoena, the Attorney General's authorization was

- required to issue the subpoena. Despite receiving authorization, the U.S. Attorney's Office ultimately did not issue the subpoena, instead deferring to the state's belated request to investigate and prosecute the matter.
3. In connection with an extortion investigation involving employees of a news media entity, the Attorney General authorized a U.S. Attorney's Office to subpoena the grand jury testimony of an individual employed by a media entity who had previously been the subject of a voluntary interview, also pursuant to the Attorney General's authorization. The employee at issue agreed to provide the requested testimony upon receipt of a subpoena. Ultimately, the media entity employee was not called to testify.
 4. In connection with an investigation into an unauthorized disclosure of classified information, the Attorney General authorized Department attorneys to obtain grand jury subpoenas seeking toll records from cellular service providers for four telephones used by a member of the news media (the Reporter). *See* 28 C.F.R. §50.10(c). The Attorney General also authorized the Department attorneys to apply for court orders, pursuant to 18 U.S.C. § 2703(d), directing internet service providers to produce non-content, email header, and related information for two email accounts used by the Reporter. The Reporter is not a target or subject of the investigation. The service providers complied with the subpoenas and orders. The classified information at issue had been disclosed in a news article authored by the Reporter and published on CNN.com. The investigative team sought these toll and email records to identify persons who may have shared the classified information with the Reporter. The time span for the information sought by the subpoenas and orders covered a period of several weeks before when the investigation revealed the Reporter first possessed the classified information to several weeks after the article containing the classified information was published. In 2021, notice of the Attorney General's authorization was given to the Reporter.
 5. In connection with an investigation into extortionate communications, identity theft, and computer fraud, the Attorney General authorized a U.S. Attorney's Office to obtain court orders, pursuant to 18 U.S.C. § 2703(d), for non-content information, including "communications records" as defined by the Department's News Media Policy. The investigation concerned harassment directed towards a member of the news media, and the U.S. Attorney's Office sought records associated with the member of the news media's internet accounts, thus requiring Attorney General authorization. *See* 28 C.F.R. § 50.10(c). The member of the news media was cooperating in the investigation, but as a matter of policy, the third-party service providers would not provide the requested information without court orders. The third-party service providers complied with the court orders.
 6. In connection with an investigation into an unauthorized disclosure of classified information, the Attorney General authorized Department attorneys to obtain grand jury subpoenas seeking toll records from cellular service providers for six phones used by three members of the news media (the Reporters). *See* 28 C.F.R.

§50.10(c). The Attorney General also authorized the Department attorneys to apply for court orders, pursuant to 18 U.S.C. § 2703(d), directing internet service providers to produce non-content, email header, and related information for three work email accounts used by the Reporters. The Reporters are not targets or subjects of the investigation. The classified information at issue had been disclosed in news articles authored by the Reporters and published in *The Washington Post*. The investigative team sought these toll and email records to identify persons who may have shared the classified information with the Reporters. The time span for the information sought by the subpoenas and orders covered the period from shortly before when the investigation revealed that the Reporters first possessed the classified information to shortly after the article containing the classified information was published. In 2021, notice of the Attorney General's authorization was given to the Reporters.

7. In connection with an investigation into an unauthorized disclosure of classified information, the Attorney General authorized Department attorneys to obtain grand jury subpoenas seeking toll records from cellular service providers for six telephones used by four members of the news media (the Reporters). *See* 28 C.F.R.

§50.10(c). The Attorney General also authorized the Department attorneys to apply for court orders, pursuant to 18 U.S.C. § 2703(d), directing internet service providers to produce non-content, email header, and related information for six work email accounts used by the Reporters. The Reporters are not targets or subjects of the investigation. The classified information at issue had been disclosed in news articles authored by the Reporters and published in *The New York Times*. The investigative team sought these toll and email records to identify persons who may have shared the classified information with the Reporters. The time span for the information sought by the subpoenas and orders covered the period from shortly before when the investigation revealed that the Reporters first possessed the classified information to shortly after the article containing the classified information was published. In 2021, notice of the Attorney General's authorization was given to the Reporters.

B. Questioning, arrests, or charges authorized by the Attorney General (28 C.F.R. § 50.10(f))

None.

C. Subpoenas, applications for court orders, search warrants, questioning, arrests, or charges authorized by a Deputy Assistant Attorney General for the Criminal Division (28 C.F.R. §§ 50.10(d)(4) and (g))

1. In an investigation concerning death threats that were made against a journalist, a Deputy Assistant Attorney General (DAAG) for the Criminal Division, under exigent circumstances, authorized a U.S. Attorney's Office to obtain a subpoena directing a telecommunications company to provide investigators toll records and subscriber information for the journalist's cell phone. *See* 28 C.F.R. § 50.10(g)(1). The DAAG's authorization was required under the Department's News Media Policy even though the journalist consented to the disclosure of the toll records by the telecommunications company. Investigators sought the toll records to determine the

identity of the individual/s who was/were threatening the life of the journalist. The USAO served the subpoena on the telecommunications company. The returns from the subpoena helped to reveal the identity of the individual who threatened the journalist. As a result, that individual was charged with stalking, in violation of 18 U.S.C. § 2261A(2).

D. Subpoenas and applications for court orders authorized by Assistant Attorneys General or United States Attorneys (28 C.F.R. §50.10(c)(3))

1. In the prosecution of an attempted child enticement offense, a United States Attorney authorized the issuance of a trial subpoena to the Editor in Chief of a news media entity, who had agreed to testify at the trial. Because the member of the news media expressly agreed to testify at the trial, Attorney General authorization was not required. *See* 28 C.F.R. § 50.10(c)(3)(i)(A). The member of the news media complied with the subpoena.
2. In a national security investigation, a United States Attorney authorized the issuance of a grand jury subpoena to a newspaper entity for business and financial records regarding classified advertisements seeking to purchase national security information. Because the information was not related to newsgathering activities, Attorney General authorization was not required. *See* 28 C.F.R. § 50.10(c)(3)(ii)(A). The newspaper complied with the subpoena.
3. In an investigation concerning the shooting of a court security officer outside of a federal courthouse, a United States Attorney authorized the issuance of a grand jury subpoena for surveillance video footage from a news media entity located near the courthouse, after the news media entity expressly agreed to provide the requested material in response to a subpoena. Because the news media entity expressly agreed to provide this information in response to a subpoena, Attorney General authorization was not required. *See* 28 C.F.R. § 50.10(c)(3)(i)(A). The newspaper complied with the subpoena.
4. In an investigation into arsons committed during civil unrest, a United States Attorney authorized the issuance of grand jury subpoenas to two local news networks for broadcast video footage, which the networks expressly agreed to provide in response to a subpoena. Because the networks expressly agreed to provide this information in response to a subpoena, Attorney General authorization was not required. *See* 28 C.F.R. § 50.10(c)(3)(i)(A). The news networks complied with the subpoenas.
5. In an investigation into the vandalism of U.S. Government property, a United States Attorney authorized the issuance of grand jury subpoenas to local news stations for video footage related to the vandalism, after the local news stations expressly agreed to provide the requested material in response to a subpoena. Because the news stations expressly agreed to provide the footage in response to a subpoena, Attorney

General authorization was not required. *See* 28 C.F.R. § 50.10(c)(3)(i)(A). The news stations complied with the subpoenas.

6. In a public corruption investigation, a United States Attorney authorized the issuance of a grand jury subpoena to the parent company of a local news station for video footage of a news broadcast, after the news station expressly agreed to produce the requested material in response to a subpoena. Because the news station expressly agreed to produce the footage in response to a subpoena, Attorney General authorization was not required. *See* 28 C.F.R. § 50.10(c)(3)(i)(A). The news station complied with the subpoena.
7. In an investigation into arsons committed during civil unrest, a United States Attorney authorized the issuance of a grand jury subpoena to a news radio station for video footage, after the station expressly agreed to provide the requested material pursuant to a subpoena. Because the radio station expressly agreed to provide the video footage in response to a subpoena, Attorney General authorization was not required. *See* 28 C.F.R. § 50.10(c)(3)(i)(A). The station complied with the subpoena.
8. In an investigation into vandalism of U.S. Government property during civil unrest, a United States Attorney authorized the issuance of a grand jury subpoena for video footage related to the vandalism, after the local news station expressly agreed to provide the requested material in response to a subpoena. Because the news station expressly agreed to provide the footage in response to a subpoena, Attorney General authorization was not required. *See* 28 C.F.R. § 50.10(c)(3)(i)(A). The news station complied with the subpoena.
9. In a fraud investigation, a United States Attorney authorized the issuance of a subpoena to a radio broadcast entity for records related to alleged false claims made by a radio personality regarding products being sold on the personality's website. Because the information was not related to newsgathering activities, Attorney General authorization was not required. *See* 28 C.F.R. § 50.10(c)(3)(ii)(A). The radio broadcast entity complied with the subpoena.
10. In a tax fraud investigation, a United States Attorney authorized the issuance of subpoenas to third parties for financial and administrative information of several news media entities. Because the information was not related to newsgathering activities, Attorney General authorization was not required. *See* 28 C.F.R. § 50.10(c)(3)(ii)(A). The third parties complied with the subpoena.
11. In an investigation into criminal conduct committed during civil unrest, a United States Attorney authorized the issuance of a grand jury subpoena to a local news station for video footage, after the station expressly agreed to provide the requested materials pursuant to a subpoena. Because the news station expressly agreed to provide the video footage in response to a subpoena, Attorney General authorization

- was not required. *See* 28 C.F.R. § 50.10(c)(3)(i)(A). The news station complied with the subpoena.
12. In an investigation into a wire fraud scheme involving, among other things, the failure to pay for advertisements, a United States Attorney authorized the issuance of grand jury subpoenas to several television networks and newspapers for records related to advertisements that the target of the investigation had ordered but for which the target did not pay. Because the information was not related to newsgathering activities, Attorney General authorization was not required. *See* 28 C.F.R. § 50.10(c)(3)(ii)(a). The television networks and all but one newspaper complied with the subpoenas.
 13. In an investigation concerning criminal conduct committed during civil unrest, a United States Attorney authorized the issuance of grand jury subpoenas to a newspaper and four television networks for content related to the unrest, after the news media entities agreed to provide the requested materials in response to a subpoena. Because the networks expressly agreed to provide the content in response to a subpoena, Attorney General authorization was not required. *See* 28 C.F.R. § 50.10(c)(3)(i)(A). The news media entities complied with the subpoenas.
 14. In a conspiracy against rights investigation in which the target was alleged to have circulated false information about the time, place, and manner of voting during an election, a United States Attorney authorized the issuance of a grand jury subpoena to a media platform for podcast content, after the media platform agreed to provide the requested materials in response to a subpoena. Because the media platform expressly agreed to provide the content in response to a subpoena, Attorney General authorization was not required. *See* 28 C.F.R. § 50.10(c)(3)(i)(A). The media platform complied with the subpoena.
 15. In a fraud investigation, a United States Attorney authorized the issuance of a grand jury subpoena to a local radio station for the production of commercial advertisements related to the fraud scheme, after the radio station expressly agreed to provide the requested materials in response to a subpoena. Because the radio station expressly agreed to provide the content in response to a subpoena and because the content was not related to newsgathering activities, Attorney General authorization was not required. *See* 28 C.F.R. § 50.10(c)(3)(i)(A) and 50.10(c)(3)(ii)(A). The radio station complied with the subpoena.
 16. In an investigation into an arson that occurred during civil unrest, a United States Attorney authorized the issuance of grand jury subpoenas to several local news stations for video footage from the night of the protests, after the local news stations expressly agreed to provide the requested materials pursuant to a subpoena. Because the news station expressly agreed to provide the video footage in response to a subpoena, Attorney General authorization was not required. *See* 28 C.F.R. § 50.10(c)(3)(i)(A). The news stations complied with the subpoenas.

17. In an investigation into criminal conduct committed during civil unrest, a United States Attorney authorized the issuance of grand jury subpoenas to several news stations for video footage, after the stations expressly agreed to provide the requested materials pursuant to a subpoena. Because the news stations expressly agreed to provide the video footage in response to a subpoena, Attorney General authorization was not required. *See* 28 C.F.R. § 50.10(c)(3)(i)(A). The news stations complied with the subpoenas.
18. In an insider trading investigation, a United States Attorney authorized the issuance of a grand jury subpoena to a news media entity for the login and account information of two individuals. Because the information was not related to newsgathering activities, Attorney General authorization was not required. *See* 28 C.F.R. § 50.10(c)(3)(ii)(A). The news media entity complied with the subpoena.
19. In an arson investigation, a United States Attorney authorized the issuance of a grand jury subpoena for video footage captured by a newspaper company, after the newspaper company expressly agreed to provide the footage in response to a subpoena. Because the newspaper company expressly agreed to provide the video footage in response to a subpoena, Attorney General authorization was not required. *See* 28 C.F.R. § 50.10(c)(3)(i)(A). The newspaper company complied with the subpoena.
20. In a racketeering investigation, a United States Attorney authorized the issuance of a grand jury subpoena to a media entity for video footage of a program with content related to the investigation, after the media entity expressly agreed to provide the footage in response to a subpoena. Because the media entity expressly agreed to provide the video footage in response to a subpoena, Attorney General authorization was not required. *See* 28 C.F.R. § 50.10(c)(3)(i)(A). The media entity complied with the subpoena.

E. News Media Consultations (28 C.F.R. § 50.10(c)(3)(iii) and JM 9-13.400(M))

Total Number of News Media Consultations conducted by the Office of Enforcement Operations in 2020: **223**