



U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

November 7, 2023

MEMORANDUM FOR ALL FEDERAL PROSECUTORS
FROM: THE DEPUTY ATTORNEY GENERAL *Cesar Munoz*
SUBJECT: POLICIES AND PROCEDURES IN CRIMINAL
INVESTIGATIONS INVOLVING MEMBERS OF
CONGRESS AND STAFF

The Department of Justice is guided by principles of federal prosecution to ensure that federal prosecutors are even-handed in the fair and faithful execution of the law, while scrupulously protective of the rights of individuals involved in criminal investigations. *See* Justice Manual § 9.27.001 (The principles of federal prosecution “ensur[e] the fair and effective exercise of prosecutorial discretion and responsibility by attorneys for the government, and promot[e] confidence on the part of the public and individual defendants that important prosecutorial decisions will be made rationally and objectively on the merits of each case”).

As the Justice Manual also recognizes, some matters present unique challenges requiring enhanced coordination and review in the Department. At times, Department of Justice employees are called upon to handle investigations or prosecutions that, in addition to presenting questions of substantive and procedural law that apply in all federal cases, also implicate significant privileges or constitutional considerations. These matters may include cases involving national security, domestic elections, members of the news media, attorneys, and religious or political organizations, among others. As a matter of Department policy, such sensitive matters are often subject to additional policies and procedures to ensure that the Department is appropriately and consistently taking into account all necessary interests, while adhering to the principles of federal prosecution.

Among such sensitive matters are those in which a Member of Congress is a target or subject of, or is otherwise involved in, a criminal investigation. The Department has a duty to ensure that federal laws are faithfully enforced against those vested with the public’s trust and that no one is above the law. At the same time, the Department has an obligation to respect the protections that apply to legislative materials under Article I of the Constitution, and to ensure that cases or matters involving Members of Congress are handled with uniformity and consistency across the Department’s offices and litigating divisions. Similar duties and obligations may apply in cases involving congressional staff members.

Accordingly, at the direction of the Attorney General, the Department has reviewed its policies and procedures concerning matters involving Members of Congress and has identified the necessary clarifications reflected below.¹

1. Consultation and Approval Requirements for Investigative Steps Where a Member of Congress is a Target, Subject, or Otherwise Involved in an Investigation

The Department has long relied upon the leaders of every prosecuting office to carefully and effectively supervise matters involving Members of Congress. Such matters are generally conducted, and handled capably, by U.S. Attorney's Offices across the country and the Public Integrity Section ("PIN"), often working in partnership with each other. Given the unique considerations involved in matters involving Members of Congress, PIN—under the leadership of the Criminal Division's Assistant Attorney General ("CRM AAG")—has long played an important role in overseeing and ensuring consistency in such investigations and prosecutions.

Indeed, in a section entitled "Protection of Government Integrity," the Justice Manual assigns PIN "supervisory jurisdiction" over all offenses that "affect government integrity, including bribery of public officials and accepting a gratuity, election crimes, and other related offenses."² Justice Manual § 9-85.100. In a section entitled, "Investigations involving Members of Congress," the Justice Manual instructs that "[c]onsultation with the Public Integrity Section is required" prior to taking certain investigative steps regarding a Member of Congress or congressional staffer, such as conducting an interview of, or sending a subpoena to, a Member or staffer, or applying for a search warrant for a location or device in which legislative materials are likely to be found. *Id.* § 9-85.110. In addition to protecting government integrity, these provisions serve to cultivate a corps of expertise and experience in the Department at PIN—staffed by senior career attorneys with deep experience in investigating and prosecuting public corruption—to ensure that the law is enforced in a uniform, broad, and balanced manner and that the Department is pursuing consistent approaches to investigative techniques and the application of statutes across the country.

After reviewing the Department's policies and procedures for matters and investigative steps involving Members of Congress and their staff, I have concluded that strengthening these policies and procedures will benefit the Department's mission. Additional supervision and coordination, both within U.S. Attorney's Offices and between those offices and PIN, will further promote the principles and obligations discussed above. Therefore, as set forth in the chart attached to this Memorandum and revised provisions of the Justice Manual, additional consultation and approval requirements shall henceforth apply when prosecutors intend to obtain records or information associated with Members of Congress or their congressional offices (including

¹ Aspects of this policy also apply to investigations and investigative steps related to conduct, while in office, of former Members of Congress.

² PIN's review function extends to all aspects of these cases, including *but not limited to* how to ensure that investigative steps do not run afoul of the Speech or Debate Clause of Article I of the Constitution.

electronic information held by third parties), or to take certain steps in advancing an investigation in which a Member of Congress or congressional staff member is a subject or target.

It is important that these requirements not unduly compromise the demands of ongoing investigations. Both U.S. Attorneys' Offices and the Criminal Division shall perform these requirements with dispatch and in a manner that permits appropriate consultation and review. Consistent with its supervisory role and the goals of consistency and uniform application of statutes and authorities, PIN may determine that additional consultation is appropriate or recommend partnership with the U.S. Attorney's Office or prosecuting component in response to an initial case consultation or as the case progresses.

These requirements operate in addition, and not as an alternative, to any other consultation or approval requirements of the Justice Manual. When any proposed investigative step governed by one of these requirements qualifies for inclusion in an Urgent Report, that report must still be submitted. *See* Justice Manual § 1-13.000 – *Urgent Reports* (“Submission of an Urgent Report is required even where a USAO has given . . . oral or written notice to other Department components or leadership.”). The Urgent Report should indicate whether PIN concurred with or approved the planned investigative step.

The Justice Manual will be updated to reflect the revised consultation and approval requirements set forth herein.

2. Investigations in Which Members of Congress, Their Offices, or Their Staff are Victims

In investigations in which Members of Congress or their offices or staff are crime victims—such as in a threats case, or when money or property is stolen from a Congressional office—prosecutors are encouraged but not required to consult with PIN, including to facilitate communications, where appropriate, with the House or Senate General Counsel's Office.³

Separately, the Justice Manual requires coordination, consultation, and approval by the Department's Office of Legislative Affairs (OLA) before communicating with Senators, Representatives, congressional committees, or congressional staff. *See* Justice Manual § 1-8.200 – *Communication with Congress*. However, advance consultation with OLA is not required when investigating an alleged threat against a Member of Congress or a staff member. In such a situation, the prosecutor should treat the Member or staff member as a victim and follow the office's regular practices and procedures pursuant to the [Attorney General Guidelines for Victim and Witness Assistance](#), accompanied by prompt notification to OLA for situational awareness.

³ If investigative or prosecutorial steps that are otherwise addressed in this memo become necessary in such a case, then the PIN consultation and approval requirements set forth in the attached chart would apply. For example, if the investigation into a crime committed against a Member of Congress were to require a subpoena for records belonging to a Congressional office, then PIN consultation would be required.

Absent victim status, or another investigative equity warranting delayed consultation, prosecutors shall notify OLA of communications with Members of Congress or their staffs. *Id.*

3. Effect and Implementation of Revised Policies and Procedures

These revised policies and procedures will ensure that the Department continues to do its important work in holding all persons, including public officials, accountable under federal law, while ensuring consistency of approach and appropriate respect for a co-equal branch of government. This memorandum is not intended to create or confer any rights, privileges, or benefits in any matter, case, or proceeding and does not have the force of law. *See United States v. Caceres*, 440 U.S. 741 (1979).

Within 180 days of the date of this Memorandum, the Assistant Attorney General for the Criminal Division and the Director of the Executive Office of United States Attorneys shall jointly assess and report to the Office of the Deputy Attorney General on the effect and implementation of these updated policies and procedures.

Consultation and Approval Requirements for Investigative Steps and Prosecutorial Decisions in Matters Involving Members of Congress

This chart sets forth the PIN consultation and approval requirements for investigative and prosecutorial steps in matters involving Members of Congress or congressional staffers.

U.S. Attorney’s Offices should also apply elevated internal review and approval requirements for all investigative steps identified below, with U.S. Attorney approval required where PIN approval is required.

Many of these steps will also warrant the filing of an Urgent Report.

Investigative Step/Prosecutorial Decision	Consultation or Approval Requirement⁴
Case Opening, Where Member of Congress Is a Subject or Target	Consultation with PIN
Issuance of Subpoena to a Congressional Office, Member of Congress, or Congressional Staffer	Consultation with PIN
Issuance of Subpoena to Third Party for Records Belonging to a Congressional Office, Member of Congress, or Congressional Staffer When Related to the Staffer’s Duties	Approval by PIN

⁴ PIN should notify the Criminal Division’s Assistant Attorney General of consultations and approvals undertaken.

Investigative Step/Prosecutorial Decision	Consultation or Approval Requirement⁴
Issuance of Subpoena to Third Party for Records Belonging to Congressional Staffer When Unrelated to the Staffer's Duties	Consultation with PIN
Applications, Pursuant to 18 U.S.C. §§ 2703(d) or 2705(b), for Records Belonging to a Congressional Office, Member of Congress, or Congressional Staffer When Related to the Staffer's Duties	Approval by PIN
Applications, Pursuant to 18 U.S.C. §§ 2703(d) or 2705(b), for Records Belonging to Congressional Staffer When Unrelated to the Staffer's Duties	Consultation with PIN
Application for Pen Register or Trap & Trace Surveillance of Devices or Accounts Belonging to a Congressional Office, Member of Congress, or Congressional Staffer When Related to the Staffer's Duties	Approval by PIN
Application for Pen Register or Trap & Trace Surveillance of Devices or Accounts Belonging to a Congressional Staffer When Unrelated to the Staffer's Duties	Consultation with PIN
Interview of Member of Congress or Congressional Staffer, Except When Member of Congress or Congressional Staffer Is a Victim	Consultation with PIN
Government-Directed Contact, by a Source or Government Cooperator, with Member of Congress or Congressional Staffer	Approval by PIN
Application for Warrant for Records, Information, or Property Belonging to a Congressional Office, Member of Congress, or Congressional Staffer, or for a Location or Device in Which Legislative Materials Are Likely To Be Found ⁵	Approval by PIN

⁵ This approval requirement also applies to warrants for GPS or other location data and tracking devices for vehicles or other property, devices, or accounts belonging to a Member of Congress, Congressional Staffer, Congressional Office, or in which legislative materials are likely to be found.

Investigative Step/Prosecutorial Decision	Consultation or Approval Requirement⁴
Application for Title III Electronic Surveillance if Member of Congress's or Congressional Staffer's Communications May Be Intercepted	Approval by PIN ⁶
Consensual Electronic Monitoring of Oral Communications of Member of Congress or Congressional Staffer	Approval by PIN
Charging (Whether by Criminal Complaint, Information, or Indictment) in Matter in Which a Member of Congress Is a Subject or Target for Conduct Related to Public Office or Campaign Activities	Approval by PIN
Charging (Whether by Criminal Complaint, Information, or Indictment) in Matter in Which a Member of Congress Is a Subject or Target for Conduct Unrelated to Public Office or Campaign Activities	Consultation with PIN
Resolution of Criminal Charges (Guilty Plea, DPA, NPA, or Declination) in Matter in Which a Member of Congress Is a Subject or Target	Approval by PIN
Resolution of Criminal Charges Against a Congressional Staffer (Guilty Plea, DPA, NPA, or Declination) in Matter in Which a Member of Congress Is Not a Subject or Target	Consultation with PIN

⁶ Additional approvals from the Office of Enforcement Operations, a Criminal Division Deputy Assistant Attorney General, and/or an Assistant Attorney General are required for TIIIs, as well as consensual monitoring in certain circumstances. See JM §§ 9-7.000 *et seq.*