

alert-doj

From: alert-doj
Sent: Tuesday, May 18, 2021 7:01 AM
To: Raimondi, Marc (PAO)
Subject: CNN: "Justice Department sought to unmask Devin Nunes parody Twitter account this year, court records show"

CNN: "Justice Department sought to unmask Devin Nunes parody Twitter account this year, court records show," Katelyn Polantz, May 18, 2021

<https://www.cnn.com/2021/05/17/politics/nunes-parody-twitter-justice-department/index.html>

The Justice Department was investigating threatening messages related to a parody Twitter account -- @NunesAlt -- that criticized Rep. Devin Nunes, in a previously unknown criminal investigation, according to federal court records made public on Monday.

Twitter, in its fight to keep the user's information secret, suggested the subpoena may be part of a government attempt -- from either Nunes, a California Republican, or the Justice Department -- to unmask Nunes' critics and chill their speech.

But the details of what and who were being investigated are scant and the court records don't show whether the investigation is over.

"In light of Congressman Nunes's repeated efforts to silence criticism against him, any complaint that gave rise to the Subpoena may be aimed at doing the same," lawyers for the social media company wrote to the federal judge overseeing a grand jury in March.

Neither the Justice Department nor Nunes' office responded to CNN's requests for comment Monday.

The Justice Department had subpoenaed Twitter in late November 2020 to try to learn the identity of the user behind the fake account @NunesAlt, according to newly unsealed court filings about the subpoena.

The subpoena landed after Nunes had sued Twitter and parody accounts posing as his cow and his mother, and as he tried to unmask fake accounts using his name. A judge dismissed the suit against Twitter last summer.

A national security prosecutor in the DC US Attorney's Office had sought the Twitter records dating back to October 1, 2020.

Twitter took on fighting the subpoena, arguing that Justice Department couldn't force the disclosures because of free speech guarantees in the Constitution.

The person behind the account "appears to be engaged in clear First Amendment activity," Twitter wrote.

A lawyer for Twitter also revealed in the court filings that in late January -- even after Democrats had taken control of the White House and Congress -- the company thought Nunes, a Republican and Trump ally, somehow could be behind the subpoena. The next day, prosecutor Michael Friedman told Twitter's law firm that the grand jury subpoena was part of a criminal investigation into threats, the court records show.

But Friedman wouldn't provide any additional details, including what the threat allegedly was, or if it was directed at Nunes, according to the court documents.

The criminal investigation persisted for months past the Trump administration. A grand jury in Washington, DC, still was seeking the Twitter records as late as this March, according to the court record.

"We have a strong track record and take seriously the trust placed in us to work to protect the private information of the people on Twitter," a spokesperson for Twitter said in a statement Monday.

According to Twitter, an account holder would typically be notified if there were a legal request -- such as subpoenas, court orders or other legal documents -- regarding their account. But in this case, prosecutors got a court order in November to keep the subpoena secret, citing a fear that its disclosure could harm the investigation.

The @NunesAlt Twitter account, which holds itself out as a parody of the "not-so-proud" mother of Nunes responded to the court records' disclosure on Monday with a tweet:

"This is the closest thing I'm gonna get to a Mother's Day card."

END

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From: alert-doj
Sent: Tuesday, May 18, 2021 6:58 AM
To: Raimondi, Marc (PAO)
Subject: LAT: "Twitter fights Justice Department subpoena over Rep. Nunes parody account"

LAT: "Twitter fights Justice Department subpoena over Rep. Nunes parody account," Del Quentin Wilber and Sarah D. Wire, May 18, 2021

<https://www.latimes.com/politics/story/2021-05-17/twitter-fights-justice-department-subpoena-over-rep-nunes-parody-account>

Twitter is fighting a Justice Department subpoena seeking information about the user of an account that routinely parodies Rep. Devin Nunes, a California Republican who has spent recent years unsuccessfully seeking to unmask such users so he can sue them for defamation.

In urging a federal judge in Washington, to quash a subpoena, the social media platform argued in court papers filed that it believed the Justice Department might be aiding Nunes' numerous efforts to expose such anonymous critics. The Justice Department subpoenaed Twitter in November seeking information on the user behind the parody account @NunesAlt.

"Twitter is concerned that this subpoena is but another mechanism to attack its users' First Amendment rights," the company's attorneys wrote in a March court filing made public Monday at the company's request. "It appears to Twitter that the subpoena may be related to Congressman Devin Nunes's repeated efforts to unmask individuals behind parody accounts critical of him.

Chief U.S. District Judge Beryl Howell gave the Justice Department until Wednesday to redact and make public its response to Twitter's motion. A spokeswoman for the U.S. Attorney's Office in Washington did not immediately reply to an email seeking comment. A spokesman for Nunes (R-Tulare) did not respond to a request for comment.

Twitter issued a statement Monday saying it "is committed to protecting the freedom of expression for those who use our service. We have a strong track record and take seriously the trust placed in us to work to protect the private information of the people on Twitter."

The company had also asked Howell in its court filings to lift a court order obtained by the Justice Department that prevented Twitter from disclosing the existence of the subpoena to anyone other than its attorneys. That 90-day gag order appears to have expired.

It is not clear why the Trump-era Justice Department was seeking information about @NunesAlt, which describes itself in its profile as the "no-so-proud alt-mom of prolific Libel Tourist, and part-time Congressman, Devin Nunes. (Yes, it's parody) Probably hammered." The Justice Department, at the time the subpoena was issued, was overseen by then-Atty. Gen. William Barr. Nunes is a Trump political ally.

Hayden M. Schottlaender, an attorney representing Twitter, wrote in a declaration made public Monday that an assistant U.S. attorney in Washington told him in January the subpoena was issued as part of a criminal investigation into "threatening communications in interstate commerce." The Justice Department, Schottlaender said, declined to provide further information.

Prosecutors must generally suspect a crime has been committed before issuing a subpoena. Subpoenaed information in criminal investigations is confidential and protected by strict secrecy rules until a grand jury issues an indictment

and often is not disclosed unless it is presented as evidence at a trial. Otherwise, such information is rarely made public.

In its filing, Twitter sought to link the subpoena to Nunes' legal efforts to unmask users and to sue them for defamation. It tallied at least nine lawsuits brought by Nunes in the last two years "against individuals, the media and one research and intelligence firm."

The user whose information was being sought by the Justice Department, @NunesAlt, responded to Twitter's motion by tweeting: "This is the closest thing I'm gonna get to a Mother's Day card." The user declined to comment further after being contacted by The Times.

The account originated as a parody of Nunes' mother, under the account name @DevinNunesMom, which was suspended by Twitter in 2019, the company wrote in court filings. It is unclear why that account was suspended, but the @NunesAlt user has confirmed it had previously operated it.

Nunes in 2019 sued @DevinNunesMom and another parody account, @DevinCow, which called Nunes "a treasonous cowpoke." The lawmaker alleged the accounts had defamed him, ruined his reputation and caused him to win his 2018 election by a narrower margin than expected.

Most of the suits were withdrawn by Nunes or tossed out of court.

Anonymous Twitter critics began dogging Nunes as he rose to prominence in 2017 as chairman of the House Intelligence Committee. From that post, he was tasked with investigating accusations of Russian interference in the previous year's presidential election.

Nunes quickly found himself at the center of a political firestorm in Washington over his quick release of a controversial memo dismissing the allegations and clearing the president's campaign of any wrongdoing. Those conclusions were disputed in a similar memo released once Democrats took control of the committee, as well as by the special counsel's Russia investigation.

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From: alert-doj
Sent: Tuesday, May 18, 2021 6:57 AM
To: Raimondi, Marc (PAO)
Subject: NYT: "Trump Justice Dept. Tried to Use Grand Jury to Identify Nunes Critic on Twitter"

NYT: "Trump Justice Dept. Tried to Use Grand Jury to Identify Nunes Critic on Twitter," Charlie Savage, May 18, 2021
<https://www.nytimes.com/2021/05/17/us/politics/devin-nunes-twitter-justice-department.html>

The Justice Department under President Trump secretly obtained a grand-jury subpoena last year in an attempt to identify the person behind a Twitter account dedicated to mocking Representative Devin Nunes of California, according to a newly unsealed court document.

But Twitter fought the subpoena, as well as an associated gag order barring the company from talking about it publicly. Twitter executives raised skepticism about whether the Justice Department might be abusing federal criminal law-enforcement power to retaliate against a critic of Mr. Nunes, a Republican who is a close ally of Mr. Trump, in violation of the First Amendment.

Ultimately, according to a person familiar with the matter, the Justice Department withdrew the subpoena this spring, after President Biden took office.

What was going on behind the subpoena remains murky. The filing a motion to suppress the subpoena and lift the gag order that Twitter filed in March shows that the Justice Department sent the company a demand on Nov. 24 to provide identifying information about the user @NunesAlt.

Twitter appears to have immediately been suspicious about the legitimacy of the request. The user of that account, the filing said, "appears to be engaged in clear First Amendment activity, discussing stances on current events, government policies and one elected official in particular Congressman Nunes."

The filing provided examples of some of the account's tweets, such as a photograph of Mr. Nunes with text superimposed over his face: "Believe in conspiracy theories. Even if there is no evidence."

As the chairman of the House Intelligence Committee until Democrats took control of the chamber after the 2018 midterm elections, Mr. Nunes used his position to put forward claims that supported Mr. Trump's contention that the Russia investigation was a "deep state" conspiracy against him.

Twitter's filing also noted that Mr. Nunes and his lawyer had separately filed a series of lawsuits in efforts to unmask pseudonymous social media users who criticized him, including an account that purported to be the congressman's cow and the @NunesAlt account.

When Twitter pressed the Justice Department for an explanation, the filing said, the government said the subpoena was part of a criminal investigation into a possible violation of a federal statute that makes it a felony to use interstate communications to threaten to injure someone. But the government refused to point to any particular tweet that made a threat.

The company's filing asked the judge overseeing the matter to take a searching look at the basis for the Justice Department's motivations in going after the user.

"As the custodian entrusted with the private identifying information that the government seeks, Twitter is concerned

the subpoena may not be supported by a legitimate law enforcement purpose, and that therefore, there cannot be any need — let alone a compelling need — for the government to unmask the user,” a lawyer for Twitter wrote in the court motion.

It continued: “As such, Twitter asks that the court engage in a searching analysis of the government’s bases for issuing the subpoena in order to determine whether the subpoena violates the First Amendment and should be quashed.”

The grand-jury subpoena had been obtained by the office of the United States attorney for the District of Columbia. At the time, the office was run on an acting basis by Michael R. Sherwin, who had been installed by Attorney General William P. Barr.

A spokeswoman for that office did not respond to a request for comment or explanation, including whether the underlying investigation remained open. The text of the subpoena, which was attached to Twitter’s court filing, suggested that the inquiry was being run by the Capitol Police, which protect members of Congress.

A spokesman for Mr. Nunes did not respond to a request for comment.

The person who operates the @NunesAlt account appeared to be surprised by the filing, writing in a post on Monday afternoon that there was “nothing remarkable about me” and adding, “So then why am I being sued by a US congressman? Why would the DOJ ever target me? Is it the mean tweets and bad memes?”

Twitter said in a statement that it was “committed to protecting the freedom of expression for those who use our service. We have a strong track record and take seriously the trust placed in us to work to protect the private information of the people on Twitter.”

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U.S. Department of Justice
Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530
October 19, 2017

MEMORANDUM FOR HEADS OF DEPARTMENT LAW ENFORCEMENT COMPONENTS
DEPARTMENT LITIGATING COMPONENTS
THE DIRECTOR, EXECUTIVE OFFICE FOR U.S. ATTORNEYS
ALL UNITED STATES ATTORNEYS

FROM:

Rod J. Rosenstein 
Deputy Attorney General

SUBJECT:

Policy Regarding Applications for Protective Orders
Pursuant to 18 U.S.C. § 2705(b)

This memorandum provides guidance and direction for Department of Justice attorneys and agents seeking protective orders pursuant to 18 U.S.C. § 2705(b) of the Stored Communications Act (SCA).¹ This guidance applies prospectively to all applications seeking protective orders, including both new orders and renewals, filed on or after 30 days of the date this memorandum is issued.

The SCA permits the government to obtain certain records and information from providers of electronic communications services or remote computing services relating to their customers or subscribers. Under the SCA, the government may compel the disclosure of different categories of information via subpoena, a court order under 18 U.S.C. § 2703(d), or a search warrant. The SCA does not by default forbid a provider from notifying anyone. Providers will be prohibited from voluntarily notifying their users of the receipt of legal process under the SCA only if the government obtains a protective order under 18 U.S.C. § 2705(b), based on a need for protection from disclosure.

Each § 2705(b) order should have an appropriate factual basis and each order should extend only as long as necessary to satisfy the government's interest. Prosecutors who are applying for § 2705(b) orders must follow the steps outlined below:

¹ This guidance is intended only to improve the internal management of the Department of Justice. It is not intended to and does not create any right, benefit, trust, or responsibility, whether substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities, entities, officers, employees, or any person, nor does it create any right of review in an administrative, judicial, or any other proceeding. This memorandum does not impact or alter existing procedures governing protective orders pursuant to any other authority, including 18 U.S.C. § 2709(c) or the Termination Procedures for National Security Letter Nondisclosure Requirement, Federal Bureau of Investigation (Nov. 24, 2015).

1. Prosecutors must conduct an individualized and meaningful assessment regarding the need for protection from disclosure prior to seeking a § 2705(b) order and only seek an order when circumstances require.
2. In applying for a § 2705(b) order, prosecutors should tailor the application to include the available facts of the specific case and/or concerns attendant to the particular type of investigation. The prosecutor should identify which of the factors set forth in § 2705(b)(1)–(5) apply and explain why. For example, prosecutors might choose to include information about the relationship of the data sought to the subject(s) of the investigation or describe the potential for related accounts or data to be destroyed or otherwise made inaccessible to investigators. Similarly, prosecutors may identify concerns attendant to the risk of flight or harm to public safety in that particular investigation, including those concerns based on experience with similar types of investigations. The factors justifying protection from disclosure may be similar in many cases, particularly at the outset of an investigation. As appropriate, prosecutors may state the extent to which the stage of the investigation limits the availability of specific facts justifying the § 2705(b) order.²
3. Prosecutors may seek a single protective order that covers multiple grand jury subpoenas issued as part of the same investigation, or a single protective order that covers other sets of nearly-identical legal process in a discrete investigation. A single protective order for multiple items of process should be sought only if the facts justifying protection from disclosure are the same for all items of process covered by the order. Prosecutors should ensure that a copy of the protective order is served with each item of process covered by the order.
4. Barring exceptional circumstances, prosecutors filing § 2705(b) applications may only seek to delay notice for one year or less.³

² When applying for a § 2705(b) order to accompany a subpoena seeking basic subscriber information in an ongoing investigation that is not public or known to the subject(s) of the investigation, stating the reasons for protection from disclosure under § 2705(b)—such as the risk that subject(s) will flee, destroy or tamper with evidence, change patterns of behavior, or notify confederates—usually will suffice. At a later stage of the investigation, for example, when a search warrant is being sought, the prosecutor should include more specific facts, as available, in support of the protective order.

³ There may be exceptional circumstances in which orders of longer duration are necessary, such as in certain national security investigations that materially differ from routine criminal investigations. Orders seeking to delay notice beyond the time limit listed above shall be sought only with the written concurrence of a supervisor designated by the United States Attorney or the appropriate Assistant Attorney General, based upon facts and concerns that support a longer delay (*e.g.*, the suspect is an overseas fugitive who may travel internationally at some future time, if not alerted to the investigation).

5. The Department recognizes that judges may direct shorter or longer periods for orders, consistent with the language of § 2705(b).
6. If factors justifying protection from disclosure continue to exist at the expiration of the original order, subsequent extensions of equal or less duration may be sought. Requests should be supported with such additional, specific facts as may have been developed through the investigation.

The guidance was developed with input from many Department components and will be added to the U.S. Attorney's Manual. Nothing in this guidance is intended to indicate or imply that any existing protective order(s) issued by any court may be improper. If you have questions relating to the interpretation or recommended implementation of this guidance, please contact the Computer Crime and Intellectual Property Section of the Criminal Division at 202-514-1026.