Congress of the United States
Washington, DC 20515

September 1, 2026

The Honorable John G. Roberts, Jr
Chief Justice
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

Orice W. Brown
Acting Comptroller General
U.S. Government Accountability Office
441 G Street NW
Washington, D.C. 20548

Dear Chief Justice Roberts and Acting Comptroller General Brown:

We write to request that you address a pervasive, decades-long abuse of authority by federal law enforcement agencies: their attempts to coerce indefinite silence from private companies that receive subpoenas for customer information.

Under longstanding federal law, law enforcement agencies may compel companies to turn over customer records using subpoenas, including administrative, grand jury, and trial subpoenas. As you know, administrative subpoena authority is vested by Congress to federal agencies in over 300 different statutes to assist with the agencies' investigative and regulatory duties, while grand jury and trial subpoena authorities are granted to federal prosecutors to pursue criminal charges as governed by Rules 6 and 17 of the Federal Rules of Criminal Procedure. No matter the type, these subpoenas are all legal directives that, unlike a traditional warrant, do not require a court's prior approval. But crucially, the recipients of these subpoenas —often third-party companies and service providers— maintain a First Amendment right to notify their customers of the demand, allowing the actual targets of the subpoenas the opportunity to assert their own legal rights or challenge the demand in court.

When secrecy is necessary to protect an investigation or human life, federal law generally provides a clear mechanism: the government may apply to a court for a time-limited non-disclosure order in very limited circumstances, and even then, only under strict constitutional constraints. But rather than seek such court orders, federal agencies routinely utilize coercive tactics to circumvent that requirement: They embed deceptive boilerplate language into subpoenas that directs the recipient not to notify their customer and threatens vague legal consequences for non-compliance.

While these secrecy demands carry no force of law, their coercive effect is extremely successful.[1] This leaves customers entirely in the dark about government incursions into their personal data.

The institutionalization of this practice is well-documented across multiple agencies:

ICE. ICE frequently makes boilerplate requests for indefinite silence through its administrative subpoenas, including its customs summons and immigration subpoenas.

[1] Although large technology firms with sophisticated counsel sometimes ignore these extra-legal requests, many other businesses in heavily-regulated sectors—such as telecommunications, pharmaceuticals, automotive manufacturing, and banking—often comply out of fear of regulatory retaliation. Indeed, companies like AT&T and CVS have explicitly cited these extra-legal government demands to Congress to justify their failure to notify customers when their private records are turned over to the government.

When investigating violations of customs laws, ICE's Homeland Security Investigations (HSI) has a documented history of abusing its authority for other improper purposes, which makes its demands for secrecy even more troubling. Congress specifically limited the agency's customs summons authority to records related to cases involving illegal imports, unpaid customs duties and other trade-related offenses. Notwithstanding this statutory limitation, however, HSI has relied on this authority to surveil, intimidate, and suppress the free speech of ordinary citizens and even the free press. Specifically, it tried to unmask an anonymous Instagram account that was criticizing and publicizing ICE enforcement operations, force news organizations to reveal their sources on multiple occasions and demand records from entities that have little or nothing to do with customs enforcement, including a youth soccer league in Texas, a major abortion provider in Illinois, and an elementary school in Georgia.

ICE subpoenas also include boilerplate secrecy demands in the immigration context. These demands for secrecy appear on blank subpoena templates provided to government investigators, even when there is obviously no need for secrecy. For example, on July 8, 2025, Harvard University received three immigration subpoenas from ICE regarding international students with boilerplate requests for silence. The absurdity of this secrecy demand was demonstrated the very next day, when the Department of Homeland Security (DHS) issued a press release celebrating the very enforcement action it had just directed Harvard to keep secret.

DEA. For over a decade, the DEA has appended boilerplate language to subpoenas issued to pharmacies, physicians, and telecom providers that intentionally blurs the line between the lawful command to produce documents and the unlawful directive to remain silent:

> Please do not disclose the existence of this request or investigation for an indefinite time period. Any such disclosure could impede the criminal investigation being conducted and interfere with the enforcement of the Controlled Substances Act.
>
> [...]
>
> Failure to comply with this subpoena will render you liable to proceedings in the district court.

DOJ. For over forty years, DOJ has treated extra-legal gag requests as standard operating procedure, regularly instructing the recipients of grand jury subpoenas not to disclose the government's demands. Despite their name, grand jury subpoenas can be issued by federal prosecutors without prior knowledge or approval of a grand jury. In *In re Grand Jury Proceedings (Fernandez Diamante)*, a case involving a subpoena sent to a travel agent, the government openly admitted that sending pre-printed secrecy cover letters was a nationwide policy. 814 F.2d 61 (1st Cir. 1987). As the DOJ stated plainly at the time, "The government uses this letter all over the country. They're in our manuals and they're sent to banks and businesses." These standard cover letters explicitly directed recipients "not to disclose the existence of this subpoena or the fact of your compliance for a period of 90 days... Any such disclosure could seriously impede the investigation being conducted and, thereby, interfere with the enforcement of the federal criminal law."

In 2011, the Third Circuit admonished the government for this practice, noting that "the Government's practice of placing its non-disclosure request on all grand jury subpoenas is 'not a good policy'" and discouraging the practice moving forward. *United States v. Bryant*, 655 F.3d 232, 239 n.4 (3d Cir. 2011). In

2015, Judge Raymond Dearie of the Eastern District of New York caught prosecutors utilizing explicitly mandatory boilerplate language commanding non-disclosure in *United States v. Gigliotti*, No. 15-cr-204 (E.D.N.Y. Dec. 23, 2015). Rebuking the government's defense that the text was merely "inadvertent," Judge Dearie warned that "the government is unambiguously on notice of this problem and the need to correct it" and that "continued violations could well warrant severe remedies."

Recent litigation indicates that while judicial reprimands may have forced marginal adjustments to wording, the underlying problem remains live. A challenge to a grand jury subpoena in *United States v. Sun*, No. 24-cr-346 (E.D.N.Y. May 9, 2025) revealed that the U.S. Attorney's Office for the Eastern District of New York finally heeded the court's 2015 warning by softening its boilerplate language into a nominal "request" for secrecy rather than an outright demand.

While grammatically less demanding, it remains entirely unclear whether the DOJ has adopted this softened phrasing nationwide. More importantly, even if it has, these requests remain improper and continue to chill First Amendment rights. Given the severe, asymmetric power dynamics between federal law enforcement and civilian businesses—particularly when the subpoena recipient is a business operating within a highly regulated industry—many corporate legal departments will naturally read an official prosecutorial "request" for silence as an implied command, choosing compliance over risking scrutiny from federal regulators.

This coercive silence is particularly insidious because it targets corporate policies intended to protect consumers. For nearly every American industry, including telecommunications, technology, and healthcare, Congress has neither required nor prohibited notice of subpoenas. Absent a court order or statute saying otherwise, notice to customers is a protected exercise of free speech that furthers government transparency and customer privacy. Because gag orders constitute a prior restraint on speech, they are only valid if they withstand strict scrutiny. Prosecutorial demands for silence currently only require the right wording to avoid judicial scrutiny — even if the effect on subpoena recipients and targets is identical to that of a judicial gag order. The executive branch should not be permitted to achieve through administrative bullying what it cannot justify to a federal judge.

We therefore request that the Government Accountability Office initiate a comprehensive audit of DOJ, DHS, and their relevant component agencies—including DEA, ICE, and HSI—regarding the use of non-disclosure language in subpoenas. This review should evaluate internal agency operations and provide formal recommendations, as appropriate, on the following:

- Customs Summonses' Extralegal Scope: We request an audit of HSI's use of non-disclosure language in immigration subpoenas and customs summonses, as well as the circumstances under which HSI has used customs summonses unrelated to import violations or customs duties. This review should identify changes DHS implemented, if any, after a 2017 DHS Office of Inspector General management alert (OIG-18-18) regarding the use of customs summonses by U.S. Customs and Border Protection.

- Automated Proliferation: We request a review of the extent to which non-disclosure language is used as a default at DOJ, DHS, and their relevant components agencies by reviewing, as applicable, internal agency case management systems, subpoena templates, automated subpoena-generation software, and field office operations; and determining what criteria, reviews, or other controls are in place for the use of such language.

- Standardized Disclaimers: We request a review of the agencies' policies, whether formalized in writing or informally practiced, on the use of non-disclosure language on administrative forms and standard administrative templates, and the extent to which the agencies have ensured their policies address applicable legal requirements.

We further request that the Judicial Conference modify the standard templates for grand jury and trial subpoenas to include a conspicuous disclosure that the subpoena does not impose an obligation of secrecy on the recipient, unless a court issues a non-disclosure order or there is a statutory provision specifically imposing an obligation of secrecy (such as 18 U.S.C. 1510(b)(2) or 12 U.S.C. 3420(b)(1)). In the case of grand jury subpoenas, this notice should also inform recipients that, pursuant to Federal Rule of Criminal Procedure 6(e)(2), subpoena recipients and witnesses are not covered by grand jury secrecy requirements.

These steps will help ensure that agencies do not abuse their subpoena authorities at the expense of privacy and free speech rights. Thank you for your attention to this important request.

Sincerely,

Ron Wyden
United States Senator

Pramila Jayapal
Member of Congress