

United States Senate
WASHINGTON, DC 20510-3905

January 15, 2026

The Honorable Mike Johnson
Speaker of the House of Representatives
United States House of Representatives
Washington, D.C. 20515

Dear Speaker Johnson:

I write to clarify inaccuracies in a January 7, 2026, letter Senator Cruz sent you regarding impeachment of Chief Judge James Boasberg. The House deserves accurate information before proceeding to such a measure.¹

This letter, and a related subcommittee hearing, are part of a campaign of attacks on Chief Judge Boasberg. Why? Chief Judge Boasberg stopped DOJ's illegal deportations and has inquired into possible contempt for defying that order.² He sentenced January 6 rioters.³ He exposed FBI Director Patel's lies to the Senate Judiciary Committee.⁴ He presided over Jack Smith's grand jury investigation into President Trump's 2020 election crimes.⁵ And he is the likely target of then-Principal Associate Deputy Attorney General Emil Bove's threat to tell courts "fuck you."⁶

So President Trump has called Chief Judge Boasberg a "Radical Left Lunatic Judge";⁷ DOJ has submitted a seemingly meritless ethics complaint;⁸ Senate Republicans have called for his "suspension";⁹ House Republicans have tried to defund his chamber;¹⁰ and the Deputy Attorney General has called for "war."¹¹ The judge is consequently the subject of constant threats, and requires augmented security.

¹ In his letter, Senator Cruz has issued a similarly meritless call for the impeachment of Judge Deborah Boardman, citing a sentencing decision with which he disagrees. That demand contradicts basic law and history, as Chief Justice Roberts has made clear: "For more than two centuries, it has been established that impeachment is not an appropriate response to disagreement concerning a judicial decision. The normal appellate review process exists for that purpose." Amy Howe, *Chief justice rebukes Trump's call for judicial impeachment*, SCOTUSblog (Mar. 18, 2025). A notice of appeal has been filed regarding that sentencing, so it remains an active judicial proceeding, not a proper subject of partisan legislative pressure.

² Alan Feuer, *Stalled Contempt Inquiry Into Deportation Flights Springs Back to Life*, N.Y. Times (Nov. 19, 2025).

³ Ryan J. Reilly et al., *Federal judge targeted by Trump for impeachment is a bipartisan appointee with a three-decade career in Washington*, NBC News (Mar. 19, 2025).

⁴ *In re Politico LLC*, No. MC 25-7 (JEB), 2025 WL 2029757, at *2 (D.D.C. July 21, 2025).

⁵ Breanne Deppisch, *Boasberg's role in 'Arctic Frost' probe sparks fury from GOP senators, despite local rules*, Fox News (Nov. 1, 2025).

⁶ *Id.*

⁷ Piper Hudspeth Blackburn, *Trump administration files another misconduct complaint against a federal judge*, CNN (July 28, 2025).

⁸ *Id.*

⁹ Letter from Hon. Eric S. Schmitt et al. to Hon. Sri Srinivasan (Nov. 17, 2025).

¹⁰ Katherine Tully-McManus, *House passes 2 more funding bills – with 4 more to go*, Politico (Jan. 14, 2026).

¹¹ Jeff Overley, *'It's A War Man': Trump's Deputy AG Unloads on Judges, Bars*, Law360 (Nov. 7, 2025).

That brings us to Senator Cruz's calls for impeachment, as to which I offer the following clarifications.

First, the Cruz letter says Chief Judge Boasberg committed impeachable conduct by "secretly approving and sealing" grand jury subpoenas for senators' phone records in connection with Jack Smith's investigation into attempts to overturn the 2020 election.¹² As the Administrative Office of U.S. Courts (A.O.) reminded senators in a recent letter, federal prosecutors issue grand jury subpoenas "without approval or sign-off by any judge" and file them under seal as a matter of law.¹³ Smith confirmed as much under oath to the House Judiciary Committee.¹⁴

Chief Boasberg *did* approve applications to temporarily prohibit subpoena recipients from disclosing those subpoenas. In approving those "non-disclosure orders" (NDOs), Chief Judge Boasberg likely never saw the subpoenas. The recipients did not challenge the subpoenas before Chief Judge Boasberg, and, as the A.O. pointed out, NDO applications "typically do not attach the related subpoena," so he would have had no reason to see them.¹⁵

Second, the Cruz letter says Jack Smith's subpoenas sought senators' "text messages, voicemails, and geolocation data."¹⁶ As Senate Judiciary Chairman Grassley admitted: Smith's subpoenas were for telephone "toll records" showing "when and to whom a call is made, as well as the duration and general location of the call"—"not . . . the content of the call."¹⁷ No content of any kind was sought or collected. Jack Smith confirmed that too.¹⁸

Third, the Cruz letter accuses Chief Judge Boasberg of "targeting" Republican senators.¹⁹ Jack Smith—not Chief Judge Boasberg—issued those subpoenas because "President Trump and his associates tried to call Members of Congress in furtherance of their criminal scheme."²⁰ As Smith testified, "I didn't choose those Members; President Trump did."²¹

To the extent this claim relates to the approval of the NDOs, under the prevailing practice of the court and the Department at the time, the judge would not know to whom the subpoenaed phone numbers belonged. That was the same practice when President Trump's DOJ subpoenaed toll records of members of Congress in the first term.²²

¹² Letter from Hon. Ted Cruz to Hon. Mike Johnson at 2 (Jan. 7, 2026).

¹³ Letter from Robert J. Conrad, Jr., to Hon. Charles E. Grassley at 1 (Dec. 1, 2025); Fed. R. Crim. P. 6(e)(6). *See also* D.D.C. Crim. R. 6.1.

¹⁴ *Deposition of Jack Smith, Former Special Counsel, Before the H. Comm. On the Judiciary*, 119th Cong. at 38 (Dec. 17, 2025) (transcript).

¹⁵ Letter from Robert J. Conrad, Jr., *supra* note 13, at 1.

¹⁶ Letter from Hon. Ted Cruz, *supra* note 12, at 2.

¹⁷ U.S. S. Comm. on the Judiciary, Press Release, *Biden FBI Spied on Eight Republican Senators as Part of Arctic Frost Investigation, Grassley Oversight Reveals.* (Oct. 6, 2025).

¹⁸ *Deposition of Jack Smith*, *supra* note 14, at 37-38. *See also* Letter from Lanny A. Breuer & Peter Koski to Hon. Charles E. Grassley at 1 (Oct. 21, 2025).

¹⁹ *Impeachment: Holding Rogue Judges Accountable: Hearing Before the Subcomm. on Fed. Cts., Oversight, Agency Action & Fed. Rts. of the S. Comm. on the Judiciary*, 119th Cong. (2026) [hereinafter Hearing on Impeachment] (statement of Sen. Ted Cruz).

²⁰ *Deposition of Jack Smith*, *supra* note 14, at 18.

²¹ *Id.*

²² *See infra* notes 24-25.

Fourth, Senator Cruz says Chief Judge Boasberg “disregarded” federal law protecting senators’ phone records.²³ Chief Judge Boasberg likely did not know and had no reason to suspect that senators’ phone records were at issue. Judges usually do not know whose toll records are at issue in NDOs because DOJ historically has not included that information in NDO applications. These applications include only a “signifier — e.g., a phone number.”²⁴ That practice did not change until more than one year after the NDOs in question, when the Biden DOJ updated its policy to better protect Congress after the first Trump DOJ obtained similar toll records without notifying affected Members and their staffs.²⁵ This too Jack Smith confirmed.²⁶ The A.O. had clarified this point to Senator Cruz long before Senator Cruz’s letter.

Notably, that law never required judges to ask about every NDO application on the chance it might implicate senators’ official phone records.²⁷ Furthermore, it is not clear this law would apply to the toll records at issue, as personal devices were not covered by the law. That is, until Republican senators changed the law last year to retroactively make Chief Judge Boasberg’s orders illegal and provide for taxpayer-funded payouts of at least \$500,000 to Republican senators.²⁸

Fifth, Senator Cruz says the NDOs Chief Judge Boasberg issued “presume that sitting United States Senators would destroy evidence or intimidate witnesses.”²⁹ The NDOs do not say Chief Judge Boasberg thought *senators* would destroy evidence or intimidate witnesses, and there is no evidence that he had these senators in mind, since he had no reason to surmise senators’ phone numbers were the subject of the order.³⁰ The relevant law says NDOs are appropriate if disclosure might reasonably lead to interference like evidence destruction or witness intimidation. The law does not say the interference would have to be committed by the person whose phone records are the subject of the subpoena.³¹

Sixth, Senator Cruz says it “makes it worse” if Chief Judge Boasberg did not know senators’ records were at issue because that means he “did not know who the targets were” and thus the NDOs had “no basis in fact.”³² The likely basis in fact would be that President Trump and his co-conspirators had a pattern and practice of trying to tamper with evidence, intimidate witnesses, and jeopardize Jack Smith’s investigations.³³ The reason these subpoenas were issued in the first place was that the Trump conspirators had already tried to pressure these senators to overturn the 2020 election. That is how the telephones became relevant. There was every reason

²³ Letter from Hon. Ted Cruz, *supra* note 12, at 2.

²⁴ Letter from Robert J. Conrad, Jr., *supra* note 13, at 1.

²⁵ Ryan Tarinelli, *DOJ watchdog review sparks change to policy on lawmaker records*, Roll Call (Dec. 10, 2024).

²⁶ *Deposition of Jack Smith*, *supra* note 14, at 42.

²⁷ The operative provisions were passed not in 2004, as Senator Cruz asserts, but in 2020—in response to the Trump DOJ’s actions. *See Consolidated Appropriations Act, 2021*, Pub. L. No. 116-260, div. FF, tit. IV, 134 Stat. 1182.

²⁸ *See* 2 U.S.C. § 6628.

²⁹ Letter from Hon. Ted Cruz, *supra* note 12, at 2-3.

³⁰ *See In re Application of USA for 2705(b) Nondisclosure Order for Grand Jury Subpoena #GJ20230524-E0361, No. 23-sc-1256* (D.D.C. May 25, 2023); *In re Application of USA for 2705(b) Nondisclosure Order for Grand Jury Subpoena #GJ[REDACTED], No. 23-sc-1257* (D.D.C. May 25, 2023).

³¹ *See* 18 U.S.C. § 2705(b).

³² Hearing on Impeachment, *supra* note 19 (statement of Sen. Ted Cruz).

³³ *See Deposition of Jack Smith*, *supra* note 14, at 38-39.

to believe the conspirators would repeat their misconduct if they knew, a finding that would have amply supported the issuance of NDOs, and Jack Smith's testimony strongly implied this was the basis of his NDO applications.³⁴

These clarifications find support in letters from the A.O., letters from Jack Smith's attorneys, Jack Smith's own sworn testimony, and ordinary and customary legal practice at the time. The House of Representatives should deliberate carefully before it considers articles of impeachment against any public official, and I urge you to review the source material we cite.

* * *

The House should also carefully consider the context in which these calls for impeachment arise. Since President Trump took office, federal judges and their families have been subjected to a surge of threats, harassment, and intimidation.³⁵ The Marshals Service is responding to unprecedented risk levels, and security appropriations have had to be increased. The pattern is clear: judges rule against the Administration; the President or his allies attack and spread misinformation; judges and their families receive threats, "swatting" attempts, and threatening stunts like pizzas in the name of a federal judge's murdered son.³⁶ DOJ has repeatedly refused to assure us that they are investigating the pattern of threats for possible orchestration. Baseless calls for impeachment in this threat environment only add to the dangers facing these judges and their loved ones.

I hope these clarifications are helpful. I believe we all want a safe and independent federal judiciary.

Sincerely,



Senator Sheldon Whitehouse
Ranking Member
Subcommittee on Federal Courts,
Oversight, Agency Action, and
Federal Rights

cc: The Honorable Hakeem Jeffries, Democratic Leader, U.S. House of Representatives
The Honorable Jim Jordan, Chairman, House Judiciary Committee
The Honorable Jamie Raskin, Ranking Member, House Judiciary Committee

³⁴ *Id.*

³⁵ Lawrence Hurley, *Judges who ruled against Trump say harassment and threats have changed their lives*, NBC News (Dec. 23, 2025).

³⁶ Ned Parker et al., *These judges ruled against Trump. Then their families came under attack.*, Reuters (May 2, 2025).