

United States Senate
WASHINGTON, DC 20510

February 6, 2025

The Honorable Charles E. Grassley
Chairman
Senate Committee on the Judiciary
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Grassley:

We write to object to Kash Patel's continued refusal to provide members of the Senate Judiciary Committee information essential to our consideration of his nomination to be Director of the Federal Bureau of Investigation. Mr. Patel has repeatedly refused to discuss the testimony he provided to a federal grand jury investigating Donald Trump's unlawful retention of classified documents, as well as his invocation of his Fifth Amendment privilege against self-incrimination. We regret that you have rejected our efforts to inquire into the first-ever invocation of Fifth Amendment protection by a nominee seeking to lead the FBI.

We believe Patel is at liberty to disclose his testimony. Federal law unambiguously permits grand jury witnesses to discuss their testimony,¹ but Mr. Patel has refused to do so—despite telling Senator Booker that he “would love for [his] grand jury testimony to be released.”² Subsequent to his confirmation testimony, he submitted responses in writing to questions, in which he stated, under oath, that he cannot discuss his testimony because it “is subject to a seal order.”³ We are unaware of any such order in this case that prohibits grand jury witnesses from discussing their testimony. We do not believe, nor has Mr. Patel provided any evidence, that such an order exists. This raises the grave prospect that the nominee is misleading members of the Committee by falsely hiding behind a nonexistent or inapplicable seal order.⁴

Mr. Patel's insistence on withholding this information is even more concerning because, when summoned before the grand jury, he initially invoked his Fifth Amendment privilege against self-incrimination.⁵ Under well-established Supreme Court precedent, to invoke this privilege, a

¹ *In re Grand Jury*, 490 F.3d 978, 989 (D.C. Cir. 2007) (“[G]rand jury witnesses are under no legal obligation of secrecy. A grand jury witness is legally free to tell, for example, his or her attorney, family, friends, associates, reporters, or bloggers what happened in the grand jury. For that matter, the witness can stand on the courthouse steps and tell the public everything the witness was asked and answered.”).

² *Nomination Hearing: S. Comm. on the Judiciary*, 119th Cong., at 03:32:03 (Jan. 30, 2025), <https://www.judiciary.senate.gov/committee-activity/hearings/01/30/2025/nominations> (statement of Kashyap Patel).

³ Questions for the Record to Kashyap Patel, from Sen. Sheldon Whitehouse, *Nomination of Kashyap Patel*, 119th Cong., (Jan 30, 2025).

⁴ In his response to questions for the record, Mr. Patel also suggested that he could not divulge the contents of his grand jury testimony because “litigation is ongoing over the release of Jack Smith's report regarding classified documents.” *Id.* The Department of Justice moved to drop the appeal in that case on January 29, thus ending the only remaining litigation. Daniel Barnes and Dareh Gregorian, *Justice Department drops classified documents case against Trump co-defendants*, NBC News (Jan. 29, 2025), <https://www.nbcnews.com/politics/donald-trump/justice-department-drops-classified-documents-case-trump-co-defendants-rcna189836>.

⁵ Paula Reid, *Trump adviser Kash Patel testified to grand jury investigating Mar-a-Lago documents*, CNN (Nov. 4, 2022), <https://www.cnn.com/2022/11/04/politics/kash-patel/index.html>.

witness must show that his or her testimony would put the witness at “substantial and ‘real’” risk of criminal prosecution.⁶ When an individual seeking to lead the FBI has declared himself to be at substantial and real risk of criminal prosecution, that merits further inquiry.

In a civil trial, jurors are instructed by judges that they can draw an “adverse inference” against a party who refuses to testify on Fifth Amendment grounds.⁷ Until Mr. Patel discloses the substance of his grand jury testimony, the Committee should similarly draw the adverse inference that he has something to hide; that he invoked the Fifth Amendment because his testimony would have shown that he committed a crime or was in other legal peril, which should be disqualifying for any candidate seeking to be confirmed as FBI Director.

As a nominee seeking Senate confirmation, Mr. Patel shoulders the burden to demonstrate that he is fit to hold the position to which he has been nominated. Any credible nominee to this position should leave us confident that he abides by our nation’s laws. Learning what Mr. Patel told the grand jury, and what crimes he believed he was at substantial and real risk of being prosecuted for, is crucial to that inquiry. In this instance, that means providing members with the information they need to provide informed advice and consent. We urge that you reconsider. This is an astonishing precedent.

Sincerely,



Sheldon Whitehouse
United States Senator



Cory A. Booker
United States Senator



Adam B. Schiff
United States Senator

cc: The Honorable Richard Durbin, Ranking Member, Senate Committee on the Judiciary

⁶ See *Marchetti v. United States*, 390 U.S. 39, 53 (1968).

⁷ *Mitchell v. United States*, 526 U.S. 314, 328 (1999).