

Congress of the United States
Washington, DC 20515

May 11, 2021

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Garland:

We write respectfully to bring to your attention the decision by the Department of Justice, under the previous Administration, to assert the so-called “state secrets privilege” in litigation brought by victims of the terrorist attacks of September 11, 2001. The 9/11 families—many of whom we have the honor of representing in Congress—have fought relentlessly for nearly twenty years to bring to justice all those associated with the worst terrorist attack on American soil.

Your predecessor, on more than one occasion, asserted the “state secrets privilege” in litigation brought by the victims of the 9/11 attacks and their families against the Kingdom of Saudi Arabia. We understand that the families in this litigation seek documents that they believe would show Saudi Arabia’s complicity in the attacks, as well as information related to Operation Encore, an investigation conducted by the FBI between 2007 and 2016. Like other victims, these families deserve to go to court with all the evidence available to them under a fair application of the law.

As you know, one of our principal concerns with the “state secrets” doctrine is that it has no basis in statute; it is entirely judge-made, and it has frequently been asserted to cover up government misconduct. In many instances, courts have given the executive branch the unilateral power to dismiss a case or withhold information from litigants without needing to show any legitimate concern about the national security sensitivity of the information in question. As such, we appreciate you exercising extreme care with regard to any assertion or maintenance of this privilege.

We respectfully request you review past decisions to invoke the state secrets privilege in this case, in light of all the relevant facts and equities of the matter. Thank you for your prompt consideration of this important matter.

Sincerely,

/s/
Jerrold Nadler
Member of Congress

/s/
Richard Blumenthal
United States Senate

/s/
Robert Menendez
United States Senate

/s/
Kirsten Gillibrand
United States Senate

/s/
Charles E. Schumer
United States Senate

/s/
Cory A. Booker
United States Senate

/s/
Christopher S. Murphy
United States Senate

/s/
Ritchie Torres
Member of Congress

/s/
Adriano Espaillat
Member of Congress

/s/
Tom Malinowski
Member of Congress

/s/
Nicole Malliotakis
Member of Congress

/s/
Grace Meng
Member of Congress

/s/
Jim Himes
Member of Congress

/s/
Nydia M. Velázquez
Member of Congress

/s/
Kathleen M. Rice
Member of Congress

/s/
Carolyn B. Maloney
Member of Congress

/s/
Bonnie Watson Coleman
Member of Congress

/s/
Jahana Hayes
Member of Congress

/s/
John B. Larson
Member of Congress

/s/
Mikie Sherrill
Member of Congress

/s/
Rosa L. DeLauro
Member of Congress

/s/
Josh Gottheimer
Member of Congress