

# United States Senate

WASHINGTON, DC 20510-6200

March 14, 2024

The Honorable Merrick Garland  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Attorney General Garland:

We write seeking information related to the Department of Justice's ("DOJ") handling of a major criminal investigation into corporate giant Caterpillar, Inc. ("CAT"). As you are aware, there has been significant Congressional interest in this matter, and new information indicates that the investigation, which resulted in no criminal charges, was handled in a highly irregular manner.

Recent reporting revealed disturbing new details of political interference by the Trump administration in a major criminal investigation into CAT.<sup>1</sup> Public reports indicate that Richard Zuckerman, the Trump-appointed head of the DOJ tax division, made unusual interventions in the investigation and prevented prosecutors from following through with critical investigative steps. Specifically, reporting indicates that Zuckerman personally blocked federal agents from taking planned investigative actions, such as interviewing a key witness in the case and reviewing evidence obtained through a court-authorized search warrant. Our offices have also obtained evidence and spoken to whistleblowers corroborating many of these claims. These interventions by the leadership of the DOJ tax division appear to have undermined prosecutors and derailed the criminal investigation into CAT.

It is our understanding that Zuckerman blindsided prosecutors by ordering them to stop investigating CAT weeks after meeting with CAT's attorneys. It appears that CAT's lawyers, including former DOJ officials, enjoyed frequent access to the highest levels of DOJ leadership as they successfully lobbied the Department to shut down a criminal investigation. These revelations raise fresh concern that the Trump DOJ gave a sweetheart deal to one of the largest corporations in the world on high-profile criminal matters, potentially including a tax controversy involving billions of dollars.

The timing of these actions is what appears to show egregious political interference at the highest level of the Trump DOJ. Bill Barr, then in private practice, represented CAT in this

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<sup>1</sup> *How Trump's Justice Dept. Derailed an Investigation of a Major Company*, The New York Times, Mar. 9, 2024 available online at <https://www.nytimes.com/2024/03/09/business/caterpillar-tax-trump-barr.html>

matter and was directly involved in the company's correspondence with the DOJ. Based on newly available information, it appears DOJ leadership sprang into action in the days immediately before and after Barr was nominated by President Trump to serve as U.S. Attorney General, squashing the investigation into Barr's client. This sequence of events and further evidence obtained by our offices leads us to demand to understand why the highest levels of the department intervened to prevent federal investigators from following up on several lines of inquiry.

### **Background**

In 2015, CAT disclosed that a federal grand jury in Illinois had begun investigating matters relating to a tax planning scheme involving the company's offshore subsidiaries.<sup>2</sup> The investigation began in the aftermath of a damning report and hearing by the Senate Permanent Subcommittee on Investigations (PSI) that found that CAT worked with accounting firm PwC to use a set of dubious transactions to transfer over \$8 billion in profits to a Swiss subsidiary.<sup>3</sup> PSI concluded that these maneuvers resulted in Caterpillar avoiding or evading billions of dollars in federal taxes over the course of a decade.

As part of the DOJ's subsequent investigation, CAT disclosed in 2015 that it had received grand jury subpoenas requesting "documents and information from the company relating to, among other things, financial information concerning U.S. and non-U.S. CAT subsidiaries (including undistributed profits of non-U.S. subsidiaries and the movement of cash among U.S. and non-U.S. subsidiaries)."<sup>4</sup> Additional grand jury subpoenas also covered CAT's replacement parts business and additional information on foreign subsidiaries and related structures.<sup>5</sup>

On March 2 and 3, 2017, federal agents executed search and seizure warrants, which concerned both Title 13 (failure to file or submitting false electronic export information) and Title 15 (false and misleading financial reports and statements) activities, at three CAT facilities in the Peoria, Illinois area, including CAT's former corporate headquarters.<sup>6</sup> Corporate filings by CAT also made clear that the materials obtained through the execution of the search warrant included documents related to tax issues.<sup>7</sup> This raid was authorized by a federal court and involved more than 60 federal law enforcement personnel, including agents from Internal

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<sup>2</sup> Caterpillar Inc.; *2015 Annual Report* (Form 10-K), at 22, (Feb. 15, 2016), ("On January 8, 2015, the Company received a grand jury subpoena from the U.S. District Court for the Central District of Illinois. The subpoena requests documents and information from the Company relating to, among other things, financial information concerning U.S. and non-U.S. subsidiaries (including undistributed profits of non-U.S. subsidiaries and the movement of cash among U.S. and non-U.S. subsidiaries)."), [[https://www.sec.gov/Archives/edgar/data/18230/0000018230150000/cat\\_10-kx12312014.htm](https://www.sec.gov/Archives/edgar/data/18230/0000018230150000/cat_10-kx12312014.htm)].

<sup>3</sup> *CATERPILLAR'S OFFSHORE TAX STRATEGY*: Majority Staff report, U.S. Senate, Permanent Subcommittee on Investigations, Homeland Security and Governmental Affairs Committee, [[https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/Caterpillar's%20Offshore%20Tax%20Strategy%20\(4-1-14,%208-28-14%20FINAL\).pdf](https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/Caterpillar's%20Offshore%20Tax%20Strategy%20(4-1-14,%208-28-14%20FINAL).pdf)].

<sup>4</sup> Caterpillar Inc.; *2015 Annual Report* (Form 10-K), at 22, (Feb. 15, 2016)

<sup>5</sup> *Id.*

<sup>6</sup> *Federal Agents Search Caterpillar Locations*, Wall Street Journal, Mar. 3, 2017, [<https://www.wsj.com/article/federal-agents-search-caterpillar-locations-1488475293>].

<sup>7</sup> Caterpillar Inc.; *2022 Annual Report* (Form 10-K), at 115, (Feb. 15, 2023)

Revenue Service Criminal Investigation Division (IRS-CI) and the Department of Commerce Office of Export Enforcement and the Federal Deposit Insurance Corporation Inspector General (FDIC IG). Just days after the raid, CAT issued a press release announcing that it had hired former Attorney General Bill Barr to “take a fresh look at Caterpillar’s disputes with the government.”<sup>8</sup> CAT also disclosed that in January 2018, the IRS sent the company a notice indicating that it was seeking to recover \$2.3 billion in unpaid taxes and penalties from the company.<sup>9</sup>

Despite this significant investigatory effort, these matters appear to have been resolved in a highly favorable manner for CAT. When we first inquired about the handling of this investigation in December 2020, DOJ stated that it was unable to provide information regarding CAT because “it is longstanding policy of the Department not to comment on matters that are pending.”<sup>10</sup> However, the investigation now appears closed, resulting in no criminal charges against CAT. The DOJ Tax Division informed the company on November 28, 2022 that “it does not have a pending criminal tax matter involving the company.”<sup>11</sup>

CAT settled its dispute with the IRS for a fraction of what the IRS was originally seeking and without penalties. On October 27, 2022, CAT announced that it had reached a settlement with the IRS resolving all issues for tax years 2007 – 2016 for \$740 million, less than 35 percent of the \$2.3 billion the IRS originally sought.<sup>12</sup>

### **Reports that tax division leadership blocked criminal investigation into CAT**

The New York Times recently published new information concerning the DOJ’s handling of a major criminal investigation into CAT.<sup>13</sup> These reports included disturbing new details of

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<sup>8</sup> *New Caterpillar CEO Asks Former U.S. Attorney General to Assess and Help Address Ongoing Government Investigation*, Caterpillar/CisionPRNewswire, Mar. 16, 2017, [<https://www.prnewswire.co.uk/news-releases/new-caterpillar-ceo-asks-former-us-attorney-general-to-assess-and-help-address-ongoing-government-investigation-616370284.html>].

<sup>9</sup> Caterpillar, Inc., *2018 Annual Report* (Form 10-K), at 102, (Feb. 15, 2019), (“On January 31, 2018, we received a Revenue Agent’s report from the IRS indicating [...] proposed increases to tax and penalties for these years of approximately \$2.3 billion.”), [[https://sec.gov/Archives/edgar/data/18230/000001823018000042/cat\\_10-kx12312017](https://sec.gov/Archives/edgar/data/18230/000001823018000042/cat_10-kx12312017)].

<sup>10</sup> Letter from Deputy Assistant Attorney General Joe Gaeta, U.S. Department of Justice, Office of Legislative Affairs to Senators Ron Wyden and Sheldon Whitehouse, Nov. 18, 2021. (“We regret that we are unable to provide information regarding Caterpillar at this time. As you may know, it is the longstanding policy of the Department not to comment on matters that are pending.”)

<sup>11</sup> Caterpillar Inc.; *2022 Annual Report* (Form 10-K), at 115, (Feb. 15, 2023) (“The Tax Division of the U.S. Department of Justice conducted a review of the grand jury investigation and informed the Company on November 28, 2022 that it does not have a pending criminal tax matter involving the Company. In January 2023, the government began returning to the Company the documents and information seized under the search warrants, which, as noted, related to both tax and export issues, as well as the documents and information the Company produced under the grand jury subpoenas.”)

<sup>12</sup> *Caterpillar’s 15 year tax saga ends with \$740 million IRS settlement*, Bloomberg, Oct. 27, 2022, [<https://www.bloomberg.com/news/articles/2022-10-27/caterpillar-s-15-year-tax-saga-ends-with-740-million-irs-settlement?embedded-checkout=true>]; *Caterpillar settles tax dispute with IRS, Will pay no penalties*, The Wall Street Journal, Sep. 8, 2022, [<https://www.wsj.com/articles/caterpillar-settles-tax-dispute-with-irs-will-pay-no-penalties-11662680622>]

<sup>13</sup> *How Trump’s Justice Dept. Derailed an Investigation of a Major Company*, The New York Times, Mar. 9, 2024 available online at <https://www.nytimes.com/2024/03/09/business/caterpillar-tax-trump-barr.html>

political interference in the investigation and highly unusual interventions by Trump administration appointees. The report claims these interventions prevented prosecutors and federal agents from interviewing a key witness and reviewing evidence lawfully obtained through a court ordered search warrant.

The reports revealed that just days after Bill Barr was nominated to serve as Attorney General, Principal Deputy Assistant Attorney General Richard Zuckerman (PDAAG Zuckerman) personally ordered federal agents to cancel a long planned interview of a former CAT employee in the Netherlands.<sup>14</sup> Disturbingly, it appears that the order to cancel the interview by PDAAG Zuckerman was made just 16 hours before the interview was scheduled to take place.<sup>15</sup> A team of federal law enforcement agents was already on the ground in Amsterdam when the order was given.<sup>16</sup> PDAAG Zuckerman did not consult with the lead prosecutor in the case prior to cancelling the interview and intervened just days after meeting with CAT's attorneys.

The federal prosecutor in Illinois assigned to the case, Eugene Miller, claims he was blindsided by PDAAG Zuckerman's directive and asked for explanations as to why the interview had been cancelled. He reportedly wrote to DOJ tax division officials attempting to move forward with the interview and stated "perhaps if we understood the underlying reasoning, we could address those concerns and still conduct the interview."<sup>17</sup> Offering no explanation, senior DOJ officials told Mr. Miller two hours later that "no further action," including the interview, should be taken on the investigation "until further notice."<sup>18</sup> The interview of the key witness in the Netherlands, a former CAT manager with firsthand knowledge of the company's activities, never occurred.<sup>19</sup>

In addition to cancelling the interview in the Netherlands, PDAAG Zuckerman reportedly ordered prosecutors to halt their investigation into CAT just days after Bill Barr's nomination was announced. On or around December 13, 2018, PDAAG Zuckerman contacted the U.S. attorney for the Central District of Illinois and "directed him not to conduct any further investigation into Caterpillar."<sup>20</sup> It appears that internal DOJ records indicate this decision was

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<sup>14</sup> *Id.* ("A week before the agents were to interview the witness in the Netherlands, President Donald J. Trump nominated Mr. Barr to return to the Justice Department as the next Attorney General. Mr. Zuckerman then ordered the interview to be canceled and the inquiry halted, without getting input from the prosecutor overseeing the Caterpillar investigation, according to the emails.")

<sup>15</sup> *Id.* ("In December 2018, a team of federal law enforcement agents flew to Amsterdam to interview a witness in a yearslong criminal investigation into Caterpillar, which had avoided billions of dollars in income taxes by shifting profits to a Swiss subsidiary. A few hours before the interview was set to begin, the agents were startled to hear that the Justice Department was telling them to cancel the long-planned meeting.")

<sup>16</sup> *Id.* ("Agents had already landed in the Netherlands, and two more were about to board a flight to join them. The interview with a former Caterpillar manager was due to start in 16 hours.")

<sup>17</sup> *Id.* ("Mr. Miller made a plea for an explanation about why the investigation was being paused. 'Perhaps if we understood the underlying reasoning, we could address those concerns and still conduct the interview,' which had taken months to arrange, he wrote.")

<sup>18</sup> *Id.* ("Two hours after Mr. Miller sent the email, he got a response: Senior Justice Department officials had decided 'that no further action,' including the planned interview, should be taken 'until further notice.'")

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* ("Five days later, internal emails show, Mr. Zuckerman contacted the U.S. attorney in the central district of Illinois. Mr. Zuckerman directed him not to conduct any further investigation into Caterpillar. The U.S. attorney relayed the order to Mr. Miller.")

influenced by a meeting between PDAAG Zuckerman and CAT lawyer Jim Cole, a former Deputy Attorney General who worked closely with Barr on the matter. Several experts noted it is highly unusual for the DOJ tax division to stop an investigation based on representations made by defense counsel without first having a discussion with the lead prosecutor.

Mr. Miller was not the only individual involved in the investigation who was disturbed with PDAAG Zuckerman's conduct. Judith Friedman, a DOJ lawyer who helped arrange the planned interview, reportedly wrote to a federal law enforcement official that she was "very concerned about this case and would like to be assured there is no political interference going on."<sup>21</sup>

Additionally, FDIC IG Special Agent Jason LeBeau raised red flags regarding the tax division's refusal to allow investigators involved in the case to review records seized from CAT during the execution of a search and seizure warrant on CAT's offices in Illinois. In 2017, federal agents obtained thousands of documents related to CAT's tax planning and other matters under investigation. LeBeau noted in a letter to Justice Department Inspector General Michael Horowitz that investigators were never allowed by the DOJ tax division to review most of the records seized from CAT, which he described as "completely unprecedented" in his 22-year career as a federal agent.<sup>22</sup>

### **Questions regarding existence of a criminal referral from the IRS**

Recent reports also raise new questions as to whether IRS Criminal Investigation (IRS CI) made a referral to the DOJ tax division for criminal tax violations related to Caterpillar. According to the New York Times, "The IRS, too, sought the Justice Department's approval to open a criminal investigation, though it is not clear whether the agency got that clearance."

While it has long been known that IRS agents were involved in the criminal investigation into CAT, it is not clear whether the involvement of those agents was related to the investigation of Title 26 criminal tax violations or other non-tax criminal violations by CAT. As you are aware, IRS CI is authorized to investigate Title 26 federal criminal tax violations, which includes abusive tax schemes and tax fraud generally. IRS CI also has authority to investigate other financial crimes, including money laundering, bank fraud and sanctions evasion.

It would be deeply concerning if IRS CI made a referral to the DOJ seeking authorization to open a Title 26 criminal tax investigation into CAT but was prevented from pursuing the matter due to political interference by Trump Administration officials. The existence of a referral from IRS CI would indicate that IRS agents had reason to believe there was enough evidence to open an investigation for potential criminal tax violations by CAT. Accordingly, we demand

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<sup>21</sup> *Id.* ("Judith Friedman, a Justice Department lawyer who had helped arrange the canceled interview in the Netherlands, was disturbed. 'I am very concerned about this case and would like to be assured that there is no political interference going on,' she wrote to a law enforcement colleague that month in an email reviewed by The Times.")

<sup>22</sup> *Id.* ("In his letter to the Justice Department's inspector general, Mr. Lebeau said that investigators had not even been allowed to review most of the seized records, which he said was 'completely unprecedented' in his 22-year career.")

answers to determine whether the DOJ tax division prevented federal agents from fully investigating potential tax fraud by CAT.

### **Conclusion**

Based on reporting in the New York Times, as well as information received from whistleblowers by Senate investigators, it appears that senior Trump DOJ appointees squashed a criminal investigation into CAT, one of the world's largest corporations, when President Trump nominated CAT's lawyer Bill Barr to be U.S. Attorney General. Trump appointees undermined prosecutors by interfering with a legally-authorized witness interview and preventing the review of evidence collected through a court-authorized warrant. Evidence we have reviewed corroborates recent reporting on the matter.

Furthermore, it appears this political interference may have also prevented an investigation into a multibillion-dollar corporate tax fraud scheme. In short, it appears that Bill Barr's work on behalf of CAT minimizing its exposure to federal investigation became the official policy of the Trump DOJ.

Mega-corporations and the ultra-wealthy have long exploited their access to the best lawyers money can buy to avoid criminal prosecution. Based on the available information, it would be difficult to imagine a case that illustrates that exploitation in practice more clearly than this matter involving CAT and the Trump DOJ. Such blatant political mischief furthers the narrative that there is a two-tiered system of justice in the United States and undermines the American people's faith in our institutions.

In order to better understand the DOJ Tax Division's handling of the investigation into CAT, please provide answers to the following questions no later than \_\_\_\_:

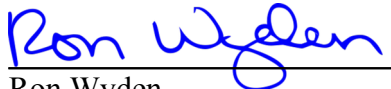
1. Did IRS-CI make a Title 26 tax referral to the DOJ Tax Division related to CAT? Please provide a copy of any criminal referrals regarding CAT made by the IRS to the DOJ Tax Division.
2. If a Title 26 referral was made by IRS-CI, what was the resolution? If the DOJ Tax Division declined to open a criminal tax investigation into CAT after receiving a referral from IRS-CI, please explain why. Please also provide a copy of any written reply that the DOJ provided to the IRS. If the DOJ Tax Division disagreed with the IRS's interpretation of relevant tax laws, please provide an analysis of any substantive policy disagreements with the IRS position.
3. Please provide copies of all non-Title 26 criminal referrals regarding CAT made by IRS CI to the DOJ. Please specify whether these referrals recommended criminal investigations into securities fraud, money laundering or wire fraud.
4. Did DOJ prevent the pursuit of any non-tax related criminal investigations into CAT?

5. Did DOJ prevent agents and/or prosecutors from reviewing information obtained through a court-authorized search and seizure warrant? If so, please explain why federal agents or assistant U.S. attorneys in Illinois were not allowed to review documents obtained through a warrant approved by a court.
6. Did the documents seized from CAT's offices in Illinois during a court-authorized search and seizure warrant include internal CAT tax documents?
7. On or around December 13, 2018, did PDAAG Zuckerman and Deputy AG jointly come to the decision that no further action, including the interview in the Netherlands, was to be taken on the CAT matter until further notice? If so, was this decision communicated to prosecutors as a decision made jointly by the Tax Division and the Office of the Deputy Attorney General?
8. Please explain why PDAAG Zuckerman instructed prosecutors to cancel a planned December 14, 2018 interview of a key witness in the Netherlands. Did DOJ ever allow this interview to be rescheduled? If not, please explain why.
9. Did PDAAG Zuckerman and Deputy AG Rosenstein decline to provide an explanation to prosecutors or agents in the Netherlands regarding the last-minute cancellation of the planned interview of the witness? Was an explanation as to why the interview was cancelled ever provided to the investigative team that had travelled to the Netherlands to conduct the interview?
10. Please explain the role of Deputy AG Rosenstein in the decision to cancel the interview of a key witness in the CAT investigation in the Netherlands.
11. Please provide a list of meetings between Deputy AG Rosenstein and attorneys representing CAT, including Bill Barr, Jim Cole and Mark Matthews.
12. Did DOJ make a Mutual Legal Assistance Treaty request to the Netherlands in order for IRS agents to conduct an interview related to the CAT investigation in the Netherlands?
13. Did the team of federal law enforcement agents who had already flown to the Netherlands to conduct the cancelled interview of the witness in the CAT investigation include IRS agents?
14. Did CAT's attorneys ever communicate to DOJ leadership any objections to the involvement of IRS agents in the DOJ's criminal investigation into CAT? If so, please describe why CAT objected to the presence of IRS agents in the criminal investigation into the company.

15. Please provide any and all documents related to any meetings that took place between PDAAG Zuckerman and counsel to CAT, Jim Cole, Bill Barr and Mark Matthews, including any and all documents related to discussions concerning the interview of the witness in the Netherlands.
16. After April 25, 2019, was the filter team review for the documents seized during the search warrant executed on CAT offices on March 2-3, 2017 ever allowed to move forward? If yes, please clarify when and whether the filter review team was allowed to conduct a filter review of all of the documents obtained through the execution of the search and seizure warrant.
17. Did Attorney General Bill Barr fully recuse himself from all investigations into CAT? If not, please explain why and whether the department took formal steps to limit his involvement in the matter.
18. Please provide a list of all meetings between CAT's representatives (including outside counsel) and the following individuals: Richard Zuckerman, Rod Rosenstein, Jesse Panuccio, Jorge Almonte, and Larry Wszalek.
19. Please provide a copy of all letters or memoranda describing the DOJ's decision to decline to bring criminal charges against CAT.
20. Is there an ongoing investigation by the United States Department of Justice Office of Inspector General into the DOJ's handling of the criminal investigation into CAT?

Thank you for your attention to this important matter. Should you have any questions please direct them to Patricio Gonzalez from Chairman Wyden's Finance Committee staff.

Sincerely,



Ron Wyden  
United States Senator  
Chairman, Committee on  
Finance



Sheldon Whitehouse  
United States Senator  
Chairman, Senate Committee  
on the Budget



