



## **The Weaponization of the Federal Trade Commission Part II: Harassment of Elon Musk**

Interim Staff Report of the  
Committee on the Judiciary  
U.S. House of Representatives



October 28, 2024

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## EXECUTIVE SUMMARY

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The Committee on the Judiciary has been investigating the politicization of the Federal Trade Commission (FTC) under far-left Chair Lina Khan. This report details new information about the weaponization of the Biden-Harris FTC, under Chair Khan’s direction, against Elon Musk following his acquisition of social media platform Twitter.<sup>1</sup> Based on new documents obtained from the FTC, the evidence is stark that—contrary to Chair Khan’s denials—the FTC finalized a consent decree against Twitter due to Musk’s pending acquisition. Documents show that although the FTC had been considering potential enforcement for years prior to the acquisition, Chair Khan called for an immediate vote to finalize the consent decree only days after Twitter’s board announced the deal. One contemporaneous email from an attorney advisor to Chair Khan makes the FTC’s motivation crystal clear: “The urgency is due to Elon Musk’s purchase of the company this week.”<sup>2</sup>

This report builds on the Committee’s growing body of evidence that Chair Khan has politicized the FTC, centralized power and control in her office, and made decisions that undermine the credibility and legitimacy of the FTC as a nominally independent federal agency. In March 2023, the Committee issued a report detailing how the FTC used its consumer protection authority and an ongoing consent decree as a pretext to harass Twitter in the months following Elon Musk’s acquisition of the company.<sup>3</sup> The Committee exposed how the Biden-Harris FTC sought detailed information about journalists working to “expose abuses by Big Tech and the federal government.”<sup>4</sup> With Chair Khan’s support, FTC staff sought sensitive operational information about every department in Twitter, regardless of whether the department had anything to do with privacy or data security, among other burdensome demands.<sup>5</sup> The Committee documented how the FTC’s effort was an inherently politically motivated attempt to stifle Twitter at a time when Musk was taking steps to “reorient Twitter around free speech.”<sup>6</sup>

In a separate report in February 2024, the Committee detailed how Chair Khan has neglected and mismanaged the agency “in furtherance of her personal pursuit of political and ideological aims.”<sup>7</sup> After reviewing documents produced by the FTC and interviewing career managers who revealed major leadership deficits at the FTC, the Committee reported that Chair Khan consolidated power in the Chair’s Office, ignored warnings from career staff, and limited operational transparency within the agency.<sup>8</sup> The Committee also found that Chair Khan’s indecision on important, time-sensitive cases along with her tendency to make decisions “for

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<sup>1</sup> In April 2023, Twitter, Inc. was renamed “X Corp.” For simplicity, this report refers to the company as Twitter throughout because that was the name of the company at the time of the events in question. See Derek Saul, *Twitter Tells Corporate Partners It’s Now X Corp Amid Switch To ‘Everything App’*, FORBES (Apr. 18, 2023).

<sup>2</sup> FTC-TW000000875.

<sup>3</sup> THE WEAPONIZATION OF THE FEDERAL TRADE COMMISSION: AN AGENCY’S OVERREACH TO HARASS MUSK’S TWITTER, INTERIM STAFF REPORT, COMM. ON THE JUDIC., U.S. HOUSE OF REPRESENTATIVES (Mar. 7, 2023) (hereinafter “2023 TWITTER HOUSE STAFF REPORT”).

<sup>4</sup> *Id.*

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

<sup>6</sup> *Id.*

<sup>7</sup> ABUSE OF POWER, WASTE OF RESOURCES, AND FEAR: WHAT INTERNAL DOCUMENTS AND TESTIMONY FROM CAREER EMPLOYEES SHOW ABOUT THE FTC UNDER CHAIR LINA KHAN, INTERIM STAFF REPORT, COMM. ON THE JUDIC., U.S. HOUSE OF REPRESENTATIVES (Feb. 22, 2024).

<sup>8</sup> *Id.*

headlines” not only harmed the ability for the FTC to win cases and enforce the antitrust laws, but also cast into doubt whether a bipartisan competition enforcement agency can exist absent significant legislative overhaul.<sup>9</sup> This oversight helped to inform the Committee’s consideration of legislative reforms to help address Chair Khan’s overreach.<sup>10</sup>

In this report, the Committee outlines how the FTC’s attacks on Elon Musk began immediately after Twitter’s board accepted Musk’s offer to buy the company.<sup>11</sup> New, nonpublic documents and information produced by the FTC provide a clear timeline of the FTC’s actions against Twitter both before and after Musk’s acquisition. They show that, after an agreed-upon consent decree was in place in March 2021 to provide additional privacy and security protections, the Biden-Harris FTC did not act for more than a year to finalize the consent decree.<sup>12</sup> Further, documents reveal that even though Republican Commissioners sought updates on the status of the Twitter consent decree, Chair Khan’s senior leadership withheld information about the agreed-upon consent decree from them until the days after Musk’s planned acquisition of the company was made public.<sup>13</sup>

On April 25, 2022, Twitter accepted Musk’s offer to acquire the company.<sup>14</sup> Three days later, on April 28, 2022, an attorney advisor for Chair Khan sent an email to the other Commissioners’ offices requesting that they immediately vote the following day to approve a consent decree with Twitter and impose a modified privacy order on the company.<sup>15</sup> Prior to this email, Chair Khan had not circulated a copy of the consent decree or a memorandum with FTC staff recommendations to the Republican Commissioners—despite having the consent decree all but finalized for over a year.<sup>16</sup> In addition, despite repeated requests, FTC staff had not briefed the Republican Commissioners about contents of the proposed consent decree.<sup>17</sup> In rushing to schedule the vote, Chair Khan sought to ignore the traditional three-week timeline to provide Commissioners sufficient time to understand all the information required for the vote, and instead proposed only a one-day review due to what her staff called “new developments.”<sup>18</sup> When asked why Chair Khan demanded the immediate vote after months of inaction, other Commissioners were told that “[t]he urgency” that Chair Khan required “[was] due to Elon Musk’s purchase of the company [that] week.”<sup>19</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> See e.g. H.R. 7737, the One Agency Act, 118th Cong. (2024).

<sup>11</sup> *Infra* Section III.

<sup>12</sup> *Infra* Section II.

<sup>13</sup> *Infra* Section III.

<sup>14</sup> Press Release, Twitter, Inc., Elon Musk to Acquire Twitter (Apr. 25, 2022).

<sup>15</sup> FTC-TW000003049.

<sup>16</sup> Letter from James Kohm, Ass’t Dir., Enforcement Div., Bureau of Consumer Protection, Fed. Trade Comm’n to Douglas Geho, Chief Counsel for Administrative L., H. Comm. on the Judic. (May 12, 2023).

<sup>17</sup> FTC-TW000003049. Chair Khan routinely applied this tactic, in a break from the long tradition of the FTC, which acted to both undermine staff morale and reduce efficiency in the agency. See, e.g. ABUSE OF POWER, WASTE OF RESOURCES, AND FEAR, *supra* note 7 at 9.

<sup>18</sup> FTC-TW000003049.

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

FTC consent decrees settle claims of wrongdoing and impose specific requirements on a company.<sup>20</sup> A consent decree may last a period of ten years or more, require annual reporting on a company's compliance with the consent decree, impose fines on the company, and require certain actions by the company to correct the alleged violation of law.<sup>21</sup> FTC lawyers can demand information from companies that have entered consent decrees and these companies must respond within a short period of time.<sup>22</sup>

The consent decree, at that time, had been nearly three years in the making. In October 2019, Twitter self-reported a violation of its existing consent decree with the FTC and cooperated with a six-month investigation into its security practices.<sup>23</sup> By March 2021, Twitter and the FTC had tentatively agreed to a settlement to resolve the FTC's security and privacy concerns, but Acting-Chair Rebecca Slaughter did not act to finalize the consent decree.<sup>24</sup> When Chair Khan took over in June 2021, she ordered FTC staff to start again and renegotiate the consent decree.<sup>25</sup> In March 2022, after six additional months of renegotiation, Twitter and FTC staff again tentatively agreed to a consent decree that was virtually identical to the one from 2021.<sup>26</sup> The consent decree then sat dormant for an additional month before Twitter announced its sale to Musk,<sup>27</sup> which Chair Khan's advisor said prompted Chair Khan's demand for an immediate vote to finalize the settlement.<sup>28</sup>

After the FTC voted to approve the consent decree, Chair Khan's FTC began harassing Twitter. As the Committee has previously documented, within the first three months of Musk's ownership of Twitter, the FTC sent a dozen letters containing 350 demands for documents and information—demands, such as every communication in the company by or about Elon Musk, that had little to do with the recently agreed-to consent decree. Musk sought a meeting with Chair Khan to better understand the nature of the FTC's concerns, but Chair Khan refused until Twitter fully complied with *all* the FTC's demands.<sup>29</sup> That is, Chair Khan refused to consider meeting with Musk absent Twitter's full compliance, even when, for example, Twitter's attorneys pointed out that not every communication to, from, or about Musk could reasonably contain information about Twitter's data security and privacy program.<sup>30</sup> The FTC claimed that Twitter was required to produce this material, because any "company-wide communications sent by or at the direction of Musk may contain relevant information," but it did not explain how it may be relevant to privacy and data security.<sup>31</sup> The only reasonable explanation, then, for requiring *all* communications remotely related to Musk would be as a tool for the FTC to harass Musk.

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<sup>20</sup> J. Thomas Rosch, Comm'r, Fed. Trade Comm'n, *Consent Decrees: Is the Public Getting Its Money's Worth?*, Remarks before the XVIIIth St. Gallen International Competition Law Forum (Apr. 7, 2011), at 8.

<sup>21</sup> *See, e.g., id.* *See also* Damien Kieran, *FTC Settlement: Our Commitment to Protecting Your Privacy and Security*, TWITTER (May 25, 2022).

<sup>22</sup> *Division of Enforcement*, FED. TRADE COMM'N, <https://www.ftc.gov/about-ftc/bureaus-offices/bureau-consumer-protection/our-divisions/division-enforcement> (last accessed Oct. 22, 2024).

<sup>23</sup> Letter from James Kohm, *supra* note 16.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> FTC-TW000003049.

<sup>29</sup> FTC-TW000000849.

<sup>30</sup> FTC-TW000001636.

<sup>31</sup> *Id.*

The FTC ultimately found nothing to give the Commission reason to believe Twitter, under Musk, failed to honor its compliance requirements pursuant to the consent decree or engaged in any other conduct to warrant further investigation.<sup>32</sup> This is not surprising because, as Chair Khan should have been aware, early in his tenure as owner of Twitter, Musk relayed to every staff member at Twitter that “Twitter will do whatever it takes to adhere to both the letter and spirit of the FTC consent decree.”<sup>33</sup> Despite investigating Twitter’s compliance with the consent decree for more than a year, and despite Chair Khan’s barrage of harassing letters, the FTC found that Musk’s Twitter honored that commitment.<sup>34</sup>

Evidence available to the Committee also suggests that Chair Khan misled the Committee. Chair Khan claimed in correspondence to the Committee that the Committee was “incorrect in asserting” that her decision to finalize the consent decree “was a result of Elon Musk’s anticipated acquisition of the company.”<sup>35</sup> Internal, contemporaneous FTC email correspondence proves otherwise.<sup>36</sup> Chair Khan also defended the rushed vote by asserting that “Twitter’s counsel urged the [FTC] to approve the order expeditiously.” This assertion, too, is misleading. Twitter initially expected the deal to be finalized in three to six months.<sup>37</sup> When Twitter sought to resolve the consent decree quickly following the announcement of Musk’s acquisition, it made the request to the Bureau of Consumer Protection, which did not relay the message to the Chair’s office until more than half a day *after* Chair Khan demanded an immediate vote on the consent decree.<sup>38</sup> It is therefore simply not accurate to assert that Chair Khan’s demand for an urgent vote on Twitter’s consent decree came at Twitter’s request because the evidence suggests Chair Khan did not know of Twitter’s preference until after she scheduled the vote.

The evidence shows that the Biden-Harris FTC finalized and adopted the stronger consent decree with Twitter, after a year of delay, only *after* news broke that Twitter’s board had accepted Musk’s offer to buy the social media company. The Biden-Harris FTC could have acted on the new consent decree earlier if it was simply good policy or if the FTC wanted to strengthen consumer protections on the platform. Instead, the evidence suggests that Chair Khan pressured her fellow Commissioners to finalize the consent decree with “the urgency required” solely because Elon Musk was taking over Twitter.

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<sup>32</sup> Cat Zakrzewski, *Employees Prevented Musk from Breaking Federal Twitter Order; FTC Finds*, WASH. POST (Feb. 21, 2024).

<sup>33</sup> FTC-TW000001638.

<sup>34</sup> Cat Zakrzewski, *supra* note 32.

<sup>35</sup> See Letter from Lina Khan, Chair, Fed. Trade Comm’n to Jim Jordan, Chair, H. Comm. on the Judic. (Jun. 22, 2023).

<sup>36</sup> FTC-TW000003049.

<sup>37</sup> FTC-TW000002155.

<sup>38</sup> *Id.*

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## I. BACKGROUND

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On March 7, 2023, the Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government released a staff report documenting the FTC’s push, under Chair Lina Khan, to harass Elon Musk in the wake of his acquisition of Twitter.<sup>39</sup> The Committee had learned that, as soon as Musk acquired Twitter in October 2022, the FTC began an aggressive campaign to harass and undermine Twitter during the transition to Musk’s leadership.<sup>40</sup> The FTC’s overly aggressive salvos at Twitter following Musk’s acquisition mirrored other efforts by the Biden-Harris Administration to target Musk:<sup>41</sup> the DOJ is investigating Tesla<sup>42</sup> and SpaceX,<sup>43</sup> the SEC is policing his personal speech on Twitter,<sup>44</sup> and the FCC unilaterally revoked funding from Musk’s Starlink satellite business.<sup>45</sup> Musk’s sin, in the eyes of the Biden-Harris Administration, was a rededication of Twitter to fundamental free speech principles and a rejection of the growing embrace on the radical left of censorship.<sup>46</sup>

The Committee obtained nonpublic information consisting of over a dozen letters sent by the FTC to Twitter within the first three months following Musk’s takeover of the company.<sup>47</sup> The Biden-Harris FTC used these letters to impose more than 350 different demands for documents and information, including a significant number of demands that fell outside the scope of the FTC’s consent decree.<sup>48</sup>

This regulatory assault by the FTC appeared to be politically motivated.<sup>49</sup> As the Committee recounted, when Musk took steps to “reorient Twitter around free speech, the FTC regularly followed soon thereafter with a new demand letter.”<sup>50</sup> The FTC demanded every communication to, from, or about Elon Musk, and required that Twitter turn over information about every department in the company, regardless of whether the department had anything to do with user privacy or data security—the topics at issue in the consent decree.<sup>51</sup> The FTC even demanded detailed information about Twitter’s work with independent journalists who were working to “expose abuses by Big Tech and the federal government.”<sup>52</sup> “The FTC’s harassment of Twitter,” the Committee concluded, “is likely due to one fact: Musk’s self-described ‘absolutist’ commitment to free expression in the digital town square.”<sup>53</sup>

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<sup>39</sup> 2023 TWITTER HOUSE STAFF REPORT, *supra* note 3.

<sup>40</sup> *Id.*

<sup>41</sup> *See generally*, Editorial Board, *The Harassment of Elon Musk*, WALL ST. J. (Sep. 22, 2023).

<sup>42</sup> Tom Krisher, *Tesla Says Justice Department is Expanding Investigations and Issuing Subpoenas for Information*, AP (Oct. 23, 2023).

<sup>43</sup> Stuart Anderson, *SpaceX Court Win Could End DOJ Immigrant Lawsuits*, FORBES (Nov. 28, 2023).

<sup>44</sup> Lawrence Hurley, *Supreme Court Rejects Elon Musk’s Challenge to SEC Agreement to Vet His Social Media Posts*, NBC NEWS (Apr. 29, 2024).

<sup>45</sup> Editorial Board, *The FCC Ambushes Musk’s Starlink*, WALL ST. J. (Dec. 14, 2023).

<sup>46</sup> Liz Peek, *Biden’s Alarming Harassment of Elon Musk*, THE HILL (Dec. 15, 2023) (When asked about Musk’s acquisition of Twitter, Biden said the acquisition “is worth being looked at.”).

<sup>47</sup> 2023 TWITTER HOUSE STAFF REPORT, *supra* note 3 at 4.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 1.

<sup>51</sup> *Id.* at 2.

<sup>52</sup> *Id.* at 5.

<sup>53</sup> *Id.* at 2.

Following the issuance of the Committee’s report revealing the weaponization of the FTC against Twitter, the Committee requested documents and information related to the FTC’s interactions with Twitter.<sup>54</sup> For nearly a year, the Committee faced significant pushback from Chair Khan and the Biden-Harris FTC.<sup>55</sup> Despite producing some limited documents, the FTC has continued to refuse to produce the highest priority documents that the Committee requested and still withholds its staff recommendation memoranda—the key documents that would directly inform the Committee’s oversight.<sup>56</sup> The Committee has made significant accommodations to facilitate the FTC’s production of this narrow set of materials, but Chair Khan still stubbornly refuses to make available the FTC staff recommendation memoranda that would provide the best, contemporaneous evidence for why the FTC targeted Musk’s Twitter.

Separately, the Committee has been investigating serious allegations of a toxic FTC work environment under Chair Khan. The Committee detailed how mismanagement at the FTC from current leadership harmed the ability of FTC staff to win cases and enforce the antitrust laws.<sup>57</sup> After reviewing documents produced by the FTC and interviewing career managers, the Committee found that Chair Khan neglected the FTC’s mission and mismanaged the agency “in furtherance of her personal pursuit of political and ideological aims.”<sup>58</sup> One manager candidly wrote: “I’m not sure being successful (or doing things well) is a shared goal, as the Chair wants to show that we can’t meet our mission mandate without legislative change.”<sup>59</sup> Another career manager wrote that Chair Khan “has a knee-jerk negative reaction to” FTC staff’s work, and staff is afraid to “say things or recommend outcomes because it will upset” the Chair.<sup>60</sup> Further, “managers expressed concerns about Chair Khan ‘directing complaint allegations against the evidence’ and sending staff into court ‘unprepared.’”<sup>61</sup>

Chair Khan’s mismanagement of the FTC has real-world consequences for Americans. During the Trump administration, the FTC initiated investigations and cases against the “largest and arguably most powerful companies in the world.”<sup>62</sup> However, during the Biden-Harris Administration, the Committee found that:

Chair Khan’s radicalism, inexperience, and imprudence squandered the [Trump FTC’s] momentum and continues to hamper the ability of the FTC and career federal civil servants to do their jobs well on behalf of the American people. The documents and other information highlighted in this interim staff report show how the FTC under Chair Lina Khan is in chaos.<sup>63</sup>

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<sup>54</sup> Letter from Jim Jordan, Chair, H. Comm. on the Judic. to Lina Khan, Chair, Fed. Trade Comm’n (Mar. 10, 2023).

<sup>55</sup> *See infra* Section VI.

<sup>56</sup> *Id.*

<sup>57</sup> ABUSE OF POWER, WASTE OF RESOURCES, AND FEAR, *supra* note 7.

<sup>58</sup> *Id.* at 1.

<sup>59</sup> *Id.* at 3.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 5.

<sup>63</sup> *Id.* at 5.



The FTC’s harassment of Twitter in the wake of Elon Musk’s acquisition is one plank in the left’s multi-faceted response to heightened attention of the censorship-industrial complex, which was first exposed by the Twitter Files journalists in December 2022.<sup>64</sup> Following his takeover of Twitter, Musk allowed journalists to expose the “lead role” that the government played in pressuring Twitter and other technology companies, such as Meta, to censor speech online.<sup>65</sup> Through its robust oversight of the Biden-Harris Administration’s censorship efforts, the Committee found that the Administration—up to and including White House employees—pressured technology companies to “change their content moderation policies,”<sup>66</sup> in large part because the technology companies had “other policy concerns” before the Administration.<sup>67</sup>

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<sup>64</sup> See THE CENSORSHIP-INDUSTRIAL COMPLEX: HOW TOP BIDEN WHITE HOUSE OFFICIALS COERCED BIG TECH TO CENSOR AMERICANS, TRUE INFORMATION, AND CRITICS OF THE BIDEN ADMINISTRATION, INTERIM STAFF REPORT, COMM. ON THE JUDIC., U.S. HOUSE OF REPRESENTATIVES (May 1, 2024) (hereinafter “INTERIM STAFF REPORT”).

<sup>65</sup> *Hearing on the Weaponization of the Federal Government, Hearing Before the Select Subcomm. on the Weaponization of the Fed. Gov’t of the H. Comm. on the Judic.*, 118<sup>th</sup> Cong. (Mar. 9, 2023) (testimony of Matt Taibbi); see also Letter from Mark Zuckerberg, CEO, Meta Platforms to Jim Jordan, Chair, H. Comm. on the Judic. (Aug. 26, 2024).

<sup>66</sup> INTERIM STAFF REPORT, *supra* note 64 at 2.

<sup>67</sup> *Id.* at 4.

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## II. FTC AND TWITTER: 2011 TO 2022

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To understand how Chair Lina Khan and the Biden-Harris FTC weaponized its regulatory authority against Elon Musk and Twitter, it is necessary to examine the sequence of events that first subjected Twitter to the FTC's enforcement regime. The FTC's enforcement of Twitter's security and privacy policies began in 2011 when Twitter entered into a consent decree with the FTC.<sup>68</sup> The FTC's initial investigation followed two reports alleging that Twitter's privacy and data security policies were not sufficient to prevent hackers from gaining access to Twitter's administrative controls.<sup>69</sup> This 2011 consent decree "resolved charges that Twitter deceived consumers and put their privacy at risk by failing to safeguard their personal information."<sup>70</sup> As part of the consent decree, the FTC required an independent accessor to audit Twitter's privacy and data security protocols annually for 10 years.<sup>71</sup>

In October 2019, Twitter self-reported a violation of the 2011 consent decree to the FTC and agreed to fully cooperate with the FTC to investigate and resolve the situation.<sup>72</sup> Twitter reported improper use of user information arising from instances where some user email addresses and phone numbers, collected to bolster account security, "may have been inadvertently used for advertising."<sup>73</sup>

The Trump FTC undertook a six-month investigation to assess the scope of the breach, the risks of additional breaches, and the effectiveness of the remedies currently in place.<sup>74</sup> By May 2020, FTC's career staff completed the investigation and was prepared to recommend modifications to the 2011 consent decree that would require Twitter to meet higher privacy and security standards than those previously required.<sup>75</sup>

In general, FTC consent decrees settle claims of wrongdoing and impose specific requirements on a company when the FTC "has reason to believe" that the party to the consent decree has violated the FTC Act.<sup>76</sup> In exchange for the FTC ceasing any litigation or an ongoing investigation against a company, the company can enter into a consent decree that imposes specific requirements on the company for a period of time.<sup>77</sup> For example, a consent decree may last a period of ten years or more, require annual reporting on a company's compliance with the consent decree, impose fines on the company, and require certain actions by the company to correct the alleged violation of law.<sup>78</sup> Additionally, FTC lawyers can demand information from

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<sup>68</sup> Press Release, Fed. Trade Comm'n., FTC Accepts Final Settlement with Twitter for Failure to Safeguard Personal Information (Mar. 11, 2011).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> Letter from James Kohm, *supra* note 16.

<sup>73</sup> Damien Kieran, *FTC Settlement: Our Commitment to Protecting Your Privacy and Security*, TWITTER (May 25, 2022).

<sup>74</sup> Letter from James Kohm, *supra* note 16.

<sup>75</sup> *Id.*

<sup>76</sup> J. Thomas Rosch, *supra* note 20.

<sup>77</sup> *Id.*

<sup>78</sup> *See, e.g., id. See also* Damien Kieran, *supra* note 73.

companies that have entered into consent decrees and the company must respond to these demands within a short period of time.<sup>79</sup>

At that time, career staff briefed then-FTC Chair Joseph Simons and the other Commissioners, and in July 2020 the FTC authorized career staff to engage with Twitter to negotiate a settlement.<sup>80</sup> Twitter requested, and the FTC granted, a pause to the settlement discussions during the 2020 election.<sup>81</sup> Negotiations resumed following the election and by March 2021, FTC staff and Twitter tentatively agreed to a new consent decree that would impose greater reporting requirements.<sup>82</sup> Shortly thereafter, FTC staff recommended the new consent decree to the new Biden-Harris FTC leadership team for Commission approval.<sup>83</sup>

In January 2021, Chair Joseph Simons resigned from the FTC,<sup>84</sup> and Commissioner Rebecca Slaughter, a Democrat appointee, became the Acting Chair of the Biden-Harris FTC.<sup>85</sup> For more than three months, Acting Chair Slaughter took no action to finalize the new consent decree. On June 15, 2021, immediately after she was confirmed by the Senate as a commissioner, President Biden elevated Lina Khan to be the Chair of the FTC.<sup>86</sup>

According to information provided by the FTC, when Chair Khan assumed leadership of the Commission, she demanded that FTC staff renegotiate the new consent decree to obtain additional concessions from Twitter.<sup>87</sup> These renegotiation efforts were not a result of additional information collected by the FTC, new feedback from Commissioners, or any additional findings that the new consent decree was inadequate to remedy any privacy and data security concerns—Chair Khan simply ordered staff to renegotiate it.<sup>88</sup>

Despite Chair Khan’s claims that the FTC won additional concessions through reopening negotiations, suggesting that her actions led to a stronger settlement, the individual leading the Twitter negotiations told the Committee that the negotiations did not lead to a stronger settlement.<sup>89</sup> According to James Kohm, the Associate Director of the Bureau of Consumer Protection’s Enforcement Division, “the FTC staff determined that [the FTC] was unable to obtain additional relief” from the reopened negotiations and staff briefed the Chair about the lack of success in January 2022.<sup>90</sup>

On March 7, 2022, nearly a year after initially reaching an agreement, Twitter agreed to the revised consent decree, which was virtually identical to the tentative agreement from March

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<sup>79</sup> *Division of Enforcement, supra* note 22.

<sup>80</sup> Letter from James Kohm, *supra* note 16.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> Press Release, Fed. Trade Comm’n, FTC Chairman Simons Announces his Resignation and the Departure of Senior Staff (Jan. 19, 2021).

<sup>85</sup> Press Release, Fed. Trade Comm’n, FTC Commissioner Rebecca Kelly Slaughter Designated Acting Chair of the Agency (Jan. 21, 2021).

<sup>86</sup> Press Release, Fed. Trade Comm’n, Lina M. Khan Sworn in as Chair of the FTC (Jun. 15, 2021).

<sup>87</sup> Letter from James Kohm, *supra* note 16.

<sup>88</sup> *Id.*

<sup>89</sup> *Compare* Letter from Lina Khan, *supra* note 35 with Letter from James Kohm, *supra* note 16.

<sup>90</sup> Letter from James Kohm, *supra* note 16.

2021.<sup>91</sup> On March 16, 2022, the new consent decree was sent to the Director of the Bureau of Consumer Protection for review, where it sat until news broke that Twitter’s board had accepted Musk’s offer to acquire the company on April 25, 2022.<sup>92</sup>

The timeline is instructive in showing that the FTC had no urgency in attempting to enforce its consent decree with Twitter until after Musk bought the company. The FTC and Twitter had tentatively agreed to the terms of the new consent decree by March 2021, but the FTC did not move to settle the matter until over a year later. This slow pace stands in stark contrast with the sudden urgency following Musk’s acquisition.

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<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

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**III. CHAIR KHAN’S RUSHED VOTE:  
“THE URGENCY IS DUE TO ELON MUSK’S PURCHASE OF THE COMPANY THIS WEEK.”**

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On Monday, April 25, 2022, news broke that Musk entered an agreement to acquire Twitter, a major social media platform used worldwide.<sup>93</sup> The news prompted an immediate and vitriolic backlash from top Democrats.<sup>94</sup> For example, Senator Elizabeth Warren wildly claimed that “Musk purchasing Twitter is dangerous for our democracy.”<sup>95</sup> The Open Markets Institute, Chair Khan’s former employer, opposed the deal, going so far as to urge the FTC to “block” Musk from purchasing Twitter.<sup>96</sup> Shortly after Twitter accepted the terms, it was reported that the FTC was investigating whether the deal somehow violated the antitrust laws—even though Musk had no controlling holdings in any competing social media company.<sup>97</sup>

Three days later, on the morning of April 28, 2022, the Secretary of the FTC distributed to the Commission the FTC’s Bureau of Consumer Protection recommendation memorandum concerning the revised consent decree with Twitter.<sup>98</sup> As a general matter, the staff recommendation memoranda contain in-depth legal and factual analyses, along with recommendations on options for proceeding, which include discussions of legal and policy risks for taking different courses of action. The recommendation memorandum often also includes additional evidence, such as economic analysis or business documents, as necessary to support the staff’s recommendations.

Prior to Chair Khan’s takeover, the practice of withholding information from Commissioners until the last second was extraordinarily rare, if not unprecedented. Traditionally, unless otherwise instructed by statute,<sup>99</sup> the FTC had afforded at least three weeks to allow Commissioners and their staff to review recommendation memoranda and related evidence and to receive any requested briefings so that their decisions can be fully informed.<sup>100</sup> Although Republican Commissioners had repeatedly requested—but had not received—the recommendation memorandum and the proposed consent decree, Chair Khan, through her attorney advisor, demanded an immediate vote to adopt the consent decree against Twitter.<sup>101</sup>

Documents obtained by the Committee reflect how Chair Khan sought to rush a decision on Twitter without allowing her fellow commissioners adequate time to review the material. Commissioner Noah Phillips was one of the commissioners who had previously asked about the status of the consent decree and sought access to the staff recommendation memos.<sup>102</sup> By email,

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<sup>93</sup> See Max Zahn, *A Timeline of Elon Musk’s Tumultuous Twitter Acquisition*, ABC NEWS (Nov. 11, 2022).

<sup>94</sup> Alexander Bolton, *Musk Buying Twitter Alarms Democrats*, THE HILL (Apr. 26, 2022).

<sup>95</sup> *Id.*

<sup>96</sup> Press Release, Open Market’s Institute, OMI Statement on Elon Musk and Twitter (Apr. 26, 2022).

<sup>97</sup> *Musk’s \$44 bln Buyout of Twitter Faces U.S. Antitrust Review*, REUTERS (May 5, 2022).

<sup>98</sup> FTC-TW000000875.

<sup>99</sup> For example, the Commissioners are bound by the timeline set forth in the Hart-Scott-Rodino Act when reviewing merger filings. See *Premerger Notification and the Merger Review Process*, FED. TRADE COMM’N, <https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/mergers/premerger-notification-merger-review-process> (last accessed Sep. 27, 2024).

<sup>100</sup> See FTC-TW000003049.

<sup>101</sup> *Id.*

<sup>102</sup> FTC-TW000000875.

Phillips’s attorney advisor asked for an explanation for Chair Khan’s sudden rush to vote, explaining that Commissioner Phillips had been regularly requesting to see a recommendation memo.<sup>103</sup> The attorney advisor for Commissioner Phillips wrote:

Given that this matter has been open for quite a while, what’s the urgency? Commissioner Phillips has been very interested in seeing this [recommendation] package and has been regularly asking about it in his meetings with [the Bureau of Consumer Protection], so he’d like to understand the issues that require an accelerated review. It’s an important case and he will want time to get any questions he might have answered and give it thoughtful consideration.<sup>104</sup>

An attorney advisor for Commissioner Christine Wilson expressed similar concerns, writing: “We have repeatedly asked the Bureau about the status of this matter and for updates. This is an important matter for the Commission and she wants sufficient time to review it carefully and discuss with staff.”<sup>105</sup> According to her attorney advisor, Commissioner Wilson had been asking about the matter since at least late 2020.<sup>106</sup>

Chair Khan’s attorney advisor replied to the group that “[t]he urgency is due to Elon Musk’s purchase of the company this week.”<sup>107</sup>

From: [REDACTED]@ftc.gov>  
Sent: Thursday, April 28, 2022 11:40 AM  
To: [REDACTED]@ftc.gov>; [REDACTED]@ftc.gov>; [REDACTED]@ftc.gov>; [REDACTED]@ftc.gov>; [REDACTED]@ftc.gov>; [REDACTED]@ftc.gov>  
Cc: [REDACTED]@ftc.gov>; [REDACTED]@ftc.gov>; [REDACTED]@ftc.gov>; [REDACTED]@ftc.gov>  
Subject: RE: ASSIGNMENT: 202 3062 - Twitter

Hi [REDACTED]

The urgency is due to Elon Musk’s purchase of the company this week.

[REDACTED]

Federal Trade Commission

Commissioner Phillips’s attorney advisor promptly responded seeking further explanation: “I am not trying to be dense, but could you spell that out a bit?”<sup>108</sup> The Chair’s office offered no substantive response and ultimately reiterated the Chair’s demand for quick action: “In light of new developments, this matter still requires urgent action . . . While I can

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> FTC-TW000003049.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

understand there may be some frustration regarding prior delays with this matter, I hope that all [of the Commissioner’s] offices can cooperate and accommodate the urgency required here.”<sup>109</sup>

**From:** ██████████@ftc.gov>  
**Sent:** Thursday, April 28, 2022 11:45 AM  
**To:** ██████████@ftc.gov>; ██████████@ftc.gov>; ██████████@ftc.gov>; ██████████@ftc.gov>; ██████████@ftc.gov>; ██████████@ftc.gov>  
**Cc:** ██████████@ftc.gov>; ██████████@ftc.gov>; ██████████@ftc.gov>; ██████████@ftc.gov>; ██████████@ftc.gov>  
**Subject:** RE: ASSIGNMENT: 202 3062 - Twitter

██████████ handling for our office. I spoke with Commissioner Wilson and she will not be ready to vote tomorrow. She too has been in discussions with staff and BCP front office about this matter since Andrew Smith was Bureau Director. We have repeatedly asked the Bureau about the status of this matter and for updates. This is an important matter for the Commission and she wants sufficient time to review it carefully and discuss with staff.

As I understand it, resolution of this matter involves a number of steps – referral to DOJ, approval by a court, and then an amendment to the admin order by the Commission. As a result, it’s going to take some time so it would be helpful to understand how the Chair envisions the timeline for this matter.

Thanks,  
██████████

That same day, the attorney advisor for Commissioner Wilson wrote that Wilson anticipated needing the “traditional three weeks to thoroughly review this matter,”<sup>110</sup> to which Commissioner Phillips’s attorney advisor agreed and requested the standard timeline to review the proceedings.<sup>111</sup>

Chair Khan’s attorney advisor seemed to ignore these concerns, and continued to pursue the expedited vote timeline, indicating that the latest date that Chair Khan would accommodate for a vote would be May 13, 2022—less than the customary three weeks.<sup>112</sup> On May 13, the FTC voted to accept the settlement agreement and referred the complaint to the Department of Justice (DOJ) as required by the FTC Act.<sup>113</sup> On May 25, the DOJ filed the complaint in federal court on behalf of the FTC,<sup>114</sup> and on May 26, the consent decree became effective.<sup>115</sup>

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<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> Letter from James Kohm, *supra* note 16.

<sup>114</sup> Press Release, U.S. Dep’t of Just., Twitter Agrees with DOJ and FTC to Pay \$150 Million Civil Penalty and to Implement Comprehensive Compliance Program to Resolve Alleged Data Privacy Violations (May 25, 2022).

<sup>115</sup> Letter from James Kohm, *supra* note 16.

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#### IV. CHAIR KHAN'S FALSE EXCUSES ABOUT THE CONSENT DECREE VOTE

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Throughout the Committee's investigation, Chair Khan has repeatedly claimed two things about the FTC's actions against Twitter, both of which are false based on documents produced to the Committee. First, Chair Khan claimed that the timing of Commission's vote on the revised consent decree was not because of Musk's planned acquisition of Twitter.<sup>116</sup> Second, Chair Khan claimed that Twitter—and not the FTC—was the reason for the expedited finalization of the consent decree in advance of closing on the transaction with Musk.<sup>117</sup>

With respect to the role of Musk's acquisition in the timing of the FTC's actions, Chair Khan claimed that the Committee was "incorrect in asserting that the recommendation [to finalize the consent decree] was a result of Elon Musk's anticipated acquisition of the company."<sup>118</sup> However, Chair Khan's assertion that Musk's acquisition of Twitter did not impact the timing and urgency to finalize the consent decree is patently false: as her attorney advisor explained in an email, the only reason Chair Khan was seeking to adopt the consent decree on April 28, 2022, was "due to Elon Musk's purchase of the company . . . ." This contemporaneous document is directly contrary to Chair Khan's assertion to the Committee. To date, the FTC has not provided any evidence to demonstrate that Chair Khan intended to finalize the consent decree at all until immediately after Twitter announced Musk would purchase the company.

Chair Khan also claimed that the statement by two Republican Commissioners about the consent decree proves that the consent decree was not targeting Musk.<sup>119</sup> When writing a statement about the settlement, Commissioners Phillips and Wilson observed that the *content* of the consent decree, in their opinion, had nothing to do with Musk's announced takeover of Twitter.<sup>120</sup> This statement about the substance is not surprising, given that the negotiated consent decree was all but finalized for over a year before Chair Khan decided to act. Commissioners Phillips and Wilson warned, however, that an "observer might ask what took so long, and why now."<sup>121</sup> As Commissioner Phillips and Wilson warned, it now appears that the *timing* of the consent decree was a result of an ulterior motive.

Chair Khan has also claimed that the FTC considered the expedited timeline at the behest of Twitter. In a letter to the Committee, Chair Khan represented:

On April 28, 2023, [*sic*<sup>122</sup>] . . . Twitter's counsel urged the Commission to approve the order expeditiously, to resolve the outstanding issues in the interest of facilitating the acquisition and change in ownership to proceed smoothly. As is customary with companies, going through ownership changes, we considered

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<sup>116</sup> Letter from Lina Khan, *supra* note 35.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> See Christine S. Wilson & Noah Joshua Phillips, Comm'rs, Fed. Trade Comm'n, *Concurring Statement: Twitter* (May 25, 2022).

<sup>122</sup> Although Chair Khan indicated the year to be 2023, the consent decree was finalized in 2022.



whether it was possible to accommodate the request on an expedited timeframe.<sup>123</sup>

Chair Khan's assertions, however, are not supported by the documents that the FTC produced to the Committee. At 10:10 a.m. on April 28, the Bureau of Consumer Protection staff working on the Twitter investigation and consent decree received notification that Chair Khan wanted to vote the next day to finalize the consent decree. Thirty minutes later, at 10:40 a.m., Chair Khan's attorney advisor informed the other Commissioners that Chair Khan wanted to vote the next day.<sup>124</sup> At 11:27 a.m., a Bureau of Consumer Protection staffer on the Twitter investigation team relayed a conversation the staffer had with Twitter's outside counsel that morning to other Bureau of Consumer Protection staffers, writing:

I spoke to [Twitter's outside counsel] this morning, and she said they plan to convey to DOJ during this afternoon's call that Twitter is especially anxious to get everything wrapped up soonest, given the recent Elon Musk developments. She said Twitter's goal is for this new FTC order to be entered and all done before Musk formally takes over (which is expected to happen in 3-6 months).<sup>125</sup>

A couple of hours after this message, at 1:33 p.m., Monica Vaca, Deputy Director for the FTC's Bureau of Consumer Protection, wrote James Kohm asking to relay the message from Twitter's outside counsel to Chair Khan's office. Vaca wrote:

Can I convey to the Chair's office the conversation that [redacted] describes, below? They are trying to get a vote within a short period of time, i.e. a week, but Commissioner Phillips is asking for 3 weeks. This information about Twitter's time pressure could be relevant. What do you think?<sup>126</sup>

The FTC has not provided any documents to the Committee showing that Kohm responded to Vaca's email.

Based on the FTC's documents, it is unlikely that Chair Khan knew about Twitter's request to finalize the consent decree at the time that demanded the immediate FTC vote.<sup>127</sup> The FTC has produced no documents reflecting that Twitter's outside counsel spoke directly with Chair Khan's office about the FTC's vote to finalize the consent decree on the morning of April 28. In addition, the contents of the emails that the FTC did produce would make no sense if Twitter had contacted the Chair's office directly. First, it would be unlikely that Twitter's outside counsel would indicate an intention to communicate with DOJ about the company's desire to "get everything wrapped up soonest" but fail to mention that Twitter had already spoken to the Chair's office. Second, Vaca's email at 1:33 p.m. asking for permission to inform the Chair's

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<sup>123</sup> Letter from Lina Khan, *supra* note 35.

<sup>124</sup> FTC-TW000003049.

<sup>125</sup> FTC-TW000002155.

<sup>126</sup> *Id.*

<sup>127</sup> See Letter from Lina Khan, *supra* note 35; see also FTC-TW000003049.

office would be unnecessary if Twitter had already done so directly. Finally, the FTC itself represented to the Committee that the Chair's office did not routinely interact with Twitter during the investigation, signifying that Chair's office would only learn of developments in the investigation from the Bureau of Consumer Protection.<sup>128</sup>

These contemporaneous emails appear to undercut Chair Khan's assertions to the Committee. Twitter's request cannot be the reason for Chair Khan's urgency that the FTC hold a vote for the day immediately following the circulation of the recommendation memorandum. Documents produced by the FTC show that Chair Khan's demand for an expedited vote came *before* Twitter's request to wrap up the revised consent decree. Other emails suggest that Chair Khan's office did not know of Twitter's preference for an expedited timeline until *after* she requested an expedited vote timeline from the other Commissioners.

Based on the documents that the FTC has produced, Chair Khan demanded that the FTC follow the expedited timeline because Twitter agreed to sell the company to Musk. Chair Khan would later use this new consent decree to harass Musk and Twitter, including questions targeting journalists that could act to chill First Amendment rights including the work of journalists to expose collusion between Big Tech and the federal government to censor Americans' speech online.

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<sup>128</sup> Non-public briefing by James Kohm before Committee staff (May 8, 2023) (notes on file with the Committee).

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## V. THE FTC'S CONTINUED HARASSMENT OF MUSK'S TWITTER UNDER CHAIR KHAN

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With the consent decree in place, Chair Khan's harassment of Musk and Twitter was set to begin. The burdensome demands for documents and information began on October 27, 2022, the day that Musk took over control of Twitter. On that day, the FTC sent a letter to Twitter outlining deficiencies with prior document requests and demanded Twitter's immediate compliance.<sup>129</sup> The FTC sent 12 more letters containing more than 350 additional demands for documents and information, before the end of 2022.<sup>130</sup>

At the time of the takeover, Musk committed to complying with the consent decree. In an email to all Twitter employees, Musk wrote: "I cannot emphasize enough that Twitter will do whatever it takes to adhere to both the letter and spirit of the FTC consent decree. Anything you read to the contrary is false."<sup>131</sup> Then, shortly after taking over Twitter, Musk attempted to meet with Chair Khan to "better understand the issues and to show [Bureau of Consumer Protection staff] and [the FTC] the genuineness of his commitment" to effectively comply with the consent decree as Twitter's new CEO.<sup>132</sup> Chair Khan, however, refused to meet with Musk until "Twitter came into compliance with its discovery obligations," which she continuously augmented by sending new demand letters to Twitter.<sup>133</sup>

The FTC defended Chair Khan's refusal to meet with Musk by claiming that Chair Khan and other politically accountable officials are not involved in the handling of the Twitter investigation. In a briefing to the Committee, Kohm represented that the Bureau of Consumer Protection Front Office, the Chair's office, or Commissioners' offices do not get involved in investigations into consent decree violations.<sup>134</sup>

However, contrary to Kohm's assertion, documents provided to the Committee show that the FTC's political leadership was involved in the investigation of Twitter. On November 15, 2022, the director of the Bureau of Consumer Protection, Samuel Levine, sent Kohm an email with the subject line "Twitter/Musk taking down two-factor authentication?" and wrote "[t]his was just flagged for me but I've not dug in" and added a link to a news story.<sup>135</sup> Kohm replied: "Working on it."<sup>136</sup> Further on January 4, 2023, Kohm received an email with the subject line "Twitter" and was told that Chair Khan "praised [the Twitter] team's assertiveness and momentum in its Twitter investigation" and suggested that "it would be helpful for [the Twitter] team to connect with [the Bureau of Competition.]"<sup>137</sup> In other words, Chair Khan was aware of FTC staff's work and was encouraging it. These emails demonstrate that the politically appointed staff members at the FTC were continuously checking in and directing the investigation into Twitter and attempted to marshal FTC resources from both the Bureau of Consumer Protection and the Bureau on Competition to intimidate and harass Elon Musk and Twitter.

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<sup>129</sup> FTC-TW000001705.

<sup>130</sup> See 2023 TWITTER HOUSE STAFF REPORT, *supra* note 3.

<sup>131</sup> FTC-TW000001638.

<sup>132</sup> FTC-TW000002077.

<sup>133</sup> FTC-TW000000849.

<sup>134</sup> Non-public briefing by James Kohm, *supra* note 128.

<sup>135</sup> FTC-TW000001773.

<sup>136</sup> *Id.*

<sup>137</sup> FTC-TW000001553.

Additionally, the Biden-Harris FTC sought information that extended far beyond the limits of the consent decree and refused to accept reasonable discovery limitations. For example, and as detailed by the Committee previously, the FTC sent a letter to Twitter requesting, among other things, *every* communication from any Twitter employee sent to, from, or about Musk.<sup>138</sup> Despite Chair Khan’s claim that Twitter could “undertake the routine step of calling FTC staff” to “clarify” the FTC’s demands,<sup>139</sup> when Twitter’s attorney’s explained that the request was overly broad and that most communications related to Musk do not relate to data security or privacy, the FTC refused to negotiate.<sup>140</sup> The FTC, in an email sent to Twitter’s attorneys, continued to demand that Twitter produce all company-wide communications related to Musk, regardless of the privacy, data protection, or information security contents, because “company-wide communications sent by or at the direction of Elon Musk may contain relevant information even where they do not relate to Twitter’s privacy, data protection, or information security functions.”<sup>141</sup>

Despite Chair Khan’s claim that Twitter could reach out to the FTC for clarity, the Biden-Harris FTC refused to engage Twitter’s reasonable requests and did not “clarify” why it deemed such information to be relevant. This is another example of where Chair Khan told the Committee one thing—that the FTC is open to holding constructive conversations about demanded documents—and in reality, neither Chair Khan nor the Biden-Harris FTC were willing to engage in even the most “routine” discovery discussions with Twitter once owned by Elon Musk.

Finally, FTC staff discussed using Twitter’s disclosure of information to journalists as a way to get around Twitter’s privilege claim for withholding documents from the FTC. On December 12, 2022, an FTC staff member wrote:

We probably need to press further on understanding with greater certainty and detail exactly what types of access Musk is granting outside journalists, both as a potential argument about their privilege waiver and also as a basic privacy/security access issue. . . .<sup>142</sup>

In this case, the FTC was considering an argument that if Twitter gave certain documents to journalists, then Twitter’s privilege claims could be nullified, and the FTC would be entitled to access information about the journalists who ultimately uncovered the censorship regime perpetrated by the Biden-Harris Administration,<sup>143</sup> including their identities and the documents and information they accessed.

Despite the onerous demands for documents and continued harassment after Musk took over operations of Twitter, the FTC found nothing. Chair Khan claimed that the FTC was

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<sup>138</sup> See 2023 TWITTER HOUSE STAFF REPORT, *supra* note 3.

<sup>139</sup> Letter from Lina Khan, Chair, Fed. Trade Comm’n to Jim Jordan, Chair, H. Comm. on the Judic. (Feb. 21, 2024).

<sup>140</sup> FTC-TW000001636.

<sup>141</sup> *Id.*

<sup>142</sup> FTC-TW000002095.

<sup>143</sup> See ABUSE OF POWER, WASTE OF RESOURCES, AND FEAR, *supra* note 7.

required to investigate Twitter’s compliance with the consent decree because the “broad access to [Twitter’s] systems, communications, and other information” that Musk gave to the journalists investigating the Twitter Files “triggered legal scrutiny” and because “Twitter may have disclosed consumers’ personal information . . . in violation of the FTC’s [consent decree] . . . .”<sup>144</sup> However, the FTC came to find that “Twitter employees took appropriate measures to protect consumers’ private information,”<sup>145</sup> rendering the FTC’s investigation unnecessary. As *The Washington Post* reported in February 2024, “[a]fter investigating his handling of the ‘Twitter Files’ for more than a year, the agency found no evidence the company violated the consent order.”<sup>146</sup>

Further, the FTC investigated the personnel decisions at Twitter following Musk’s takeover of the company because the “workforce reductions significantly impacted the Twitter teams charged with protecting key user data.”<sup>147</sup> However, the FTC has not provided the Committee with any evidence to conclude that workforce reductions led to any violations of the consent decree. Finding nothing, the FTC appears to have closed its investigation into Twitter earlier this year after months of investigating and wasting significant public and private resources.<sup>148</sup>

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<sup>144</sup> Letter from Lina Khan, *supra* note 139.

<sup>145</sup> *Id.*

<sup>146</sup> Cat Zakrzewski, *supra* note 32.

<sup>147</sup> Letter from Lina Khan, *supra* note 139.

<sup>148</sup> *Id.*

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## VI. CHAIR KHAN'S DISREGARD FOR CONGRESSIONAL OVERSIGHT

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Throughout the Committee's investigation, Chair Khan has displayed a flagrant disregard for congressional oversight. Under her leadership, the FTC has slow-walked producing documents, resisted good-faith efforts at accommodation, and outright refused to produce key documents.

On March 10, 2023, the Committee wrote to Chair Khan raising concerns that the FTC was abusing its authority in its conduct toward Twitter.<sup>149</sup> After failing to produce any documents and only providing cursory responses to questions posed by the Committee,<sup>150</sup> including during a public hearing,<sup>151</sup> on April 12, 2023, the Committee issued a subpoena to compel the FTC to produce documents and information related to the FTC's harassment of Twitter.<sup>152</sup>

After failing to comply with the subpoena, and as an accommodation to the FTC, on June 8, 2023, the Committee prioritized the immediate production of "all recommendation memoranda" related to the FTC's investigation into Twitter's compliance with 2011 consent decree.<sup>153</sup> The Committee requested that the FTC make it a priority to produce the recommendation memoranda because they provide the best evidence of the rationale behind the FTC's actions with respect to Twitter, including the legal and policy analysis at the time when the memoranda were circulated.

In response, Chair Khan initially claimed that the recommendation memoranda were outside the scope of the Committee's subpoena. She wrote to the Committee:

In a June 8, 2023, letter, the Committee made additional requests beyond what was requested in the April 2023 subpoena; specifically, it asked for recommendation memoranda and documents relating to the timing of the FTC's investigation. There have been no recommendation memoranda or discussions of timing with regard to Twitter's compliance with the May 2022 Order that is the subject of the Committee's April subpoena.<sup>154</sup>

However, despite Chair Khan's claim that the recommendation memoranda are outside the scope of the subpoena, the FTC produced emails that contained the recommendation memoranda as attachments while omitting the memoranda. Numerous emails produced to the Committee show that the Secretary's Office at the FTC circulated to the Commission a document entitled "RECOMMENDATION TO REFER A COMPLAINT TO THE DEPARTMENT OF JUSTICE AND APPROVE A CONSENT IN SETTLEMENT OF THE COURT ACTION," with

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<sup>149</sup> Letter from Jim Jordan, Chairman, H. Comm. on the Judic., & Ted Cruz, Ranking Member, S. Commerce Comm. to Lina Khan, Chair, Fed. Trade Comm'n (Mar. 10, 2023).

<sup>150</sup> Letter from Lina Khan, Chair, Fed. Trade Comm'n, to Hon. Jim Jordan, Chair, H. Comm. on the Judic. (Mar. 27, 2023).

<sup>151</sup> *Compliance with Committee Oversight: Hearing Before the Subcomm. on Responsiveness & Accountability to Oversight of the H. Comm. on the Judic.*, 118th Cong. (Mar. 29, 2023).

<sup>152</sup> Letter from Jim Jordan, Chair, H. Comm. on the Judic. to Lina Khan, Chair, Fed. Trade Comm'n (Apr. 12, 2023).

<sup>153</sup> Letter from Jim Jordan, Chair, H. Comm. on the Judic. to Lina Khan, Chair, Fed. Trade Comm'n (June 8, 2023).

<sup>154</sup> Letter from Chair Khan, *supra* note 35.

the “Matter Name: Twitter” on April 28, 2022.<sup>155</sup> The Committee has asked for, and the FTC has refused to produce, this or any other recommendation memoranda. Chair Khan cannot withhold the recommendation memoranda on the basis that they are outside the scope of the subpoena while simultaneously producing, pursuant to the subpoena, documents that reference and attach the memoranda.

Further, the Committee’s request for the recommendation memoranda is well within the scope of the subpoena. Among other things, the subpoena requested “items in your possession, custody, or control, from April 1, 2022, to present, in unredacted form: 1. All documents and communications between or among Federal Trade Commission (FTC) officials or employees referring or relating to the FTC’s investigation(s) of Twitter, Inc.”<sup>156</sup> These recommendation materials are important documents to inform the Committee about the FTC’s handling of Twitter because the recommendation memoranda and packages contain important legal and policy analysis prepared by FTC career staff. The recommendation memoranda are the essential resources relied upon by the Commissioners when rendering decisions about how to vote. Given that the FTC has produced documents showing that these recommendation memoranda were distributed to the Commissioner’s offices on April 28, 2022, and that attorney advisors for Commissioners Wilson and Phillips claimed that the Commissioners were carefully reviewing the documents in advance of the vote to finalize the consent decree following a lengthy investigation into Twitter, the recommendation memoranda clearly fall within the subpoena’s specification of documents between FTC officials or employees related to the FTC’s investigation of Twitter.

The FTC’s justification for withholding the recommendation memoranda for being outside of the scope of the subpoena is not only facially wrong but is an inconsistent exclusion relative to responsive material that the FTC has already produced. The recommendation memoranda are documents related to the FTC’s Twitter investigation and fall within the date range required by the subpoena. The FTC effectively conceded the responsiveness of the recommendation memoranda by producing emails where the recommendation memoranda are clearly shown to exist.

The Committee attempted to reasonably accommodate the Biden-Harris FTC from the beginning, but under Chair Khan’s leadership, the FTC has refused to fully comply with the Committee’s subpoena and has imposed inappropriate restrictions on Committee staff throughout this process. The Committee accommodated the FTC by prioritizing the production of the recommendation memoranda, and the FTC refused to produce them.<sup>157</sup> The Committee accommodated the FTC by agreeing to review some “highly sensitive” documents *in camera* instead of insisting on their production<sup>158</sup>—however, the FTC demanded that Committee attorneys and staff not take notes or produce any work product related to the documents reviewed *in camera*.<sup>159</sup> The Committee agreed to the FTC’s demand on the condition that the

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<sup>155</sup> FTC-TW000002811; FTC-TW000000875; FTC-TW000003049.

<sup>156</sup> Letter from Jim Jordan, Chair, H. Comm. on the Judic. to Lina Khan, Chair, Fed. Trade Comm’n (Apr. 12, 2023).

<sup>157</sup> Email from FTC staff to Committee staff (Jun. 21, 2024) (Indicating that the FTC does not intend to produce the recommendation memoranda to the Committee).

<sup>158</sup> Email from Committee staff to FTC staff (May 14, 2024).

<sup>159</sup> Email from Committee staff to FTC staff (Jun. 5, 2024).

recommendation memoranda be available for review, but when Committee staff reviewed the documents under the FTC’s onerous conditions, the FTC refused to allow Committee access to the recommendation memoranda.<sup>160</sup>

Aside from withholding the most important documents necessary for the Committee’s oversight and imposing onerous restrictions on the Committee’s document review, the FTC has produced only 1,448 documents related to the Twitter matter, which lasted several years and included many FTC employees. Very few of these documents produced by the FTC provide substantive insight into the decision-making around the vote on the consent decree. In addition, there is evidence that the FTC has destroyed many documents related to the Twitter investigation. In an email sent on June 14, 2022, the FTC staff that worked on the Twitter investigation that led to the May 2022 consent decree received an email instructing them to “dispose of all materials relating to this matter . . .”<sup>161</sup> Because of this destruction of critical documents related to the FTC’s investigation into Twitter, the Committee and the public may never know the true extent of the political harassment of Twitter.

The Biden-Harris FTC has engaged in a sustained effort to obstruct the Committee’s oversight.<sup>162</sup> Even after the Committee issued a subpoena, the FTC refused to comply, and only began to do so under the threat of contempt.<sup>163</sup> The FTC continues to withhold the internal recommendation memoranda from the Committee.<sup>164</sup>

The FTC’s obstruction of the Committee’s oversight fits an unfortunate pattern. Chair Khan has already misled Congress about her compliance with ethics recommendations;<sup>165</sup> obstructed the Committee’s investigation related to FTC staff morale, forcing the Committee to seek interviews with career staff to obtain any information;<sup>166</sup> misrepresented the agency’s results in merger enforcement;<sup>167</sup> and refused to provide the Committee with recommendation memoranda related to its unlawful non-compete rulemaking.<sup>168</sup> The consistent attempt to limit transparency has undermined Chair Khan’s credibility as an enforcer, and undermined the ability of the FTC to accomplish its mission.

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<sup>160</sup> Email from FTC staff to Committee staff, *supra* note 157.

<sup>161</sup> FTC-TW000003019.

<sup>162</sup> See Email from FTC staff to Committee staff (Nov. 13, 2023) (Indicating that the FTC does not intend to produce internal documents responsive to the subpoena); see also Email from FTC staff to Committee staff, *supra* note 157.

<sup>163</sup> See Letter from Jim Jordan, Chair, H. Comm. on the Judic. to Lina Khan, Chair, Fed. Trade Comm’n (Feb 23, 2024).

<sup>164</sup> Email from FTC staff to Committee staff (Apr. 5, 2024).

<sup>165</sup> Letter from Jim Jordan, Chair, H. Comm. on the Judic. to Lina Khan, Chair, Fed. Trade Comm’n (Sep. 5, 2023)

<sup>166</sup> Letter from Jim Jordan, Chair, H. Comm. on the Judic. to Lina Khan, Chair, Fed. Trade Comm’n (Jul. 28, 2023).

<sup>167</sup> Letter from Jim Jordan, Chair, H. Comm. on the Judic. & Thomas Massie, Chair, Subcomm. on the Administrative State, Regulatory Reform, and Antitrust to Lina Khan, Chair, Fed. Trade Comm’n (Feb. 27, 2024).

<sup>168</sup> Email from FTC staff to Committee staff (April 5, 2024).



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## VII. CONCLUSION

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This report adds to the Committee’s findings that the FTC, under Chair Lina Khan, has engaged in blatant political harassment of Musk and Twitter. Despite Chair Khan’s denials,<sup>169</sup> contemporaneous FTC documents make explicit the reason behind the FTC’s urgency to finalize its action against Twitter. As Chair Khan’s own attorney advisor wrote: “The urgency is due to Elon Musk’s purchase of the company this week.”<sup>170</sup> This unequivocal declaration runs counter to Chair Khan’s assertions to the Committee. It reveals Chair Khan’s enforcement priorities are not to serve the best interest of the American public, but rather to run her agency as a politically weaponized extension of the Biden-Harris Administration.

The First Amendment protection of freedom of speech is a fundamental freedom that is the cornerstone of American democracy. The Biden-Harris Administration has demonstrated time and again a willingness to stifle speech that runs contrary to the prevailing narrative. Amazingly, the Biden-Harris Administration see free speech advocates, such as Elon Musk, as dangerous and worthy of harassment. As the Committee has detailed in this report, Chair Khan’s efforts to punish Twitter and Musk for exposing the Biden-Harris Administration’s censorship apparatus extend to the very moment that the world learned that Musk would transform Twitter into a platform centered around free speech.

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<sup>169</sup> Letter from Lina Khan, *supra* note 35.

<sup>170</sup> FTC-TW000003049.