

ONE HUNDRED EIGHTEENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

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February 27, 2024

The Honorable Merrick B. Garland  
Attorney General  
Department of Justice  
950 Pennsylvania Ave. N.W.  
Washington, DC 20530

Dear Attorney General Garland:

On February 12, 2024, the Committee on the Judiciary (“Judiciary Committee”), along with the Committee on Oversight and Accountability (“Oversight Committee”) and the Committee on Ways and Means, wrote you<sup>1</sup> requesting a narrow and specific set of material in the possession of the Department of Justice relating to Special Counsel Robert K. Hur’s investigation of President Joe Biden’s “willful” mishandling of classified information.<sup>2</sup> On February 16, the Department responded, failing to produce any of the requested material and stating instead that it was “working to gather and process” responsive documents.<sup>3</sup> The Department, however, offered no timeframe by which it expected to make any productions or, indeed, any commitment that it would produce all of the material requested.

The Oversight and Judiciary Committees, in coordination with the Ways and Means Committee, are investigating whether sufficient grounds exist to draft articles of impeachment against President Biden for consideration by the full House.<sup>4</sup> The Committees are concerned that President Biden may have retained sensitive documents related to specific countries involving his family’s foreign business dealings.<sup>5</sup> The Committees further seek to understand whether the

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<sup>1</sup> Letter from Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability, et al., to Attorney Gen. Merrick B. Garland, U.S. Dep’t of Justice (Feb. 12, 2024) (hereinafter “February 12 Letter”).

<sup>2</sup> Special Counsel Robert K. Hur, *Report on the Investigation Into Unauthorized Removal, Retention, and Disclosure of Classified Documents Discovered at Locations Including the Penn Biden Center and the Delaware Private Residence of President Joseph R. Biden, Jr.*, DEPT. OF JUSTICE at 6 (Feb. 8, 2024) (hereinafter “Hur Report”).

<sup>3</sup> Letter from Asst. Attorney Gen. Carlos Felipe Uriarte, U.S. Dep’t of Justice, to Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability, et al. (Feb. 16, 2024).

<sup>4</sup> See H. Res. 918, 118th Cong. (2023); Memorandum from Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability, Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary, & Hon. Jason Smith, Chairman, H. Comm. on Ways & Means, to H. Comm. on Oversight & Accountability, H. Comm. on the Judiciary, & H. Comm. on Ways & Means. Re: Impeachment Inquiry (Sept. 27, 2023) (hereinafter Impeachment Inquiry Memorandum); February 12 Letter, *supra* note 1.

<sup>5</sup> February 12 Letter, *supra* note 1.

White House or President Biden’s personal attorneys placed any limitations or scoping restrictions during the interviews with Special Counsel Hur or Mr. Mark Zwonitzer precluding or addressing any potential statements directly linking President Biden to troublesome foreign payments. Additionally, the Judiciary Committee requires these materials for its ongoing oversight of the Department’s commitment to impartial justice and its handling of the investigation and prosecution of President Biden’s presumptive opponent, President Donald J. Trump, in the November 2024 presidential election. The documents requested are directly relevant to both the impeachment inquiry and the Judiciary Committee’s legislative oversight of the Department.

Congress’s authority to access information is broadest during an impeachment investigation,<sup>6</sup> a fact which even Presidents and other Executive Branch officials have traditionally recognized.<sup>7</sup> Indeed, conducting an impeachment inquiry based on anything less than all pertinent evidence would be an affront to the Constitution and irreparably damage public faith in the impeachment process.<sup>8</sup>

In addition, pursuant to the Rules of the House of Representatives, the Judiciary Committee has jurisdiction to consider potential legislative reforms to the Department of Justice and its use of a special counsel to conduct investigations of current and former Presidents of the United States.<sup>9</sup> Such potential legislative reforms may include, among other things, codifying certain qualifications and requirements of special counsels appointed by the Attorney General. The circumstances of Special Counsel Hur’s investigative findings and President Biden’s public denial of these findings demonstrate why such potential legislative reforms may be necessary.

In its February 16 letter, the Department stated that it was reviewing responsive materials for “classification” and “confidentiality interests.”<sup>10</sup> The Department provided no timeline by

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<sup>6</sup> TODD GARVEY, CONG. RSCH. SERV., LSB11083, IMPEACHMENT INVESTIGATIONS, PART II: ACCESS, at 1 (2023) (“[T]here is reason to believe that invocation of the impeachment power could improve the committees’ legal claims of access to certain types of evidence relevant to the allegations of misconduct against President Biden.”). *See also In re Application of Comm. on the Judiciary*, 414 F. Supp. 3d 129, 176 (D.D.C. 2019) (“[D]enying [the House Judiciary Committee] evidence relevant to an impeachment inquiry could pose constitutional problems.”), *aff’d*, 951 F.3d 589 (D.C. Cir. 2020), *vacated and remanded sub nom. on other grounds DOJ v. House Comm. on the Judiciary*, 142 S. Ct. 46 (2021); *In re Request for Access to Grand Jury Materials*, 833 F.2d 1438, 1445 (11th Cir. 1987) (concluding that “limit[ing] the investigatory power of the House in impeachment proceedings . . . would clearly violate separation of powers principles.”).

<sup>7</sup> *See* GARVEY, *supra* note 6, at 2 (“As a historical matter, all three branches have suggested that the House possesses a robust right of access to information when it is investigating for impeachment purposes.”); Jonathan David Schaub, *The Executive’s Privilege*, 70 DUKE L.J. 1, 87 (2020) (“[P]residents and others have recognized throughout the history of the country that their ability to withhold information from Congress disappears in the context of impeachment.”).

<sup>8</sup> *See In re Application of Comm. on the Judiciary*, 414 F. Supp. 3d at 176 (“Impeachment based on anything less than all relevant evidence would compromise the public’s faith in the process.”); *In re Request for Access to Grand Jury Materials*, 833 F.2d at 1445 (“Public confidence in a procedure as political and public as impeachment is an important consideration justifying disclosure.”); *In re Report and Recommendation of June 5, 1972 Grand Jury*, 370 F. Supp. 1219, 1230 (D.D.C. 1974) (“It would be difficult to conceive of a more compelling need than that of this country for an unswervingly fair [impeachment] inquiry based on all the pertinent information.”).

<sup>9</sup> Rules of the House of Representatives, R. X, 118<sup>th</sup> Cong. (2023).

<sup>10</sup> Letter from Asst. Attorney Gen. Carlos Felipe Uriarte, *supra* note 3.

The Honorable Merrick B. Garland

February 27, 2024

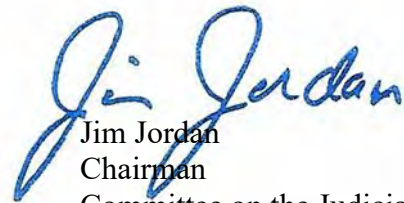
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which its review would be complete or a commitment that it would produce all responsive material following the review. Additionally, the Judiciary and Oversight Committees believe that the information and documents requested are primarily unclassified. To the extent that the subpoenas compel the production of classified material, the Department may produce those materials under separate cover. Accordingly, considering the seriousness of this matter, please find the attached subpoena for the requested materials.

Sincerely,



James Comer  
Chairman  
Committee on Oversight and Accountability



Jim Jordan  
Chairman  
Committee on the Judiciary

cc: The Honorable Jamie Raskin, Ranking Member  
Committee on Oversight and Accountability

The Honorable Jerrold L. Nadler, Ranking Member  
Committee on the Judiciary

Enclosure