



**U.S. Department of Justice**

Office of Legislative Affairs

*Office of the Assistant Attorney General*

*Washington, DC 20530*

The Honorable Jim Jordan  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

The Honorable James Comer  
Chairman  
Committee on Oversight and Accountability  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Jordan and Chairman Comer:

This letter responds to the letter from the Committee on the Judiciary (Judiciary Committee) and the Committee on Oversight and Accountability (Oversight Committee) to the Department of Justice (Department), dated April 15, 2024, regarding Special Counsel Robert K. Hur's (Special Counsel) investigation of matters related to classified documents or other records discovered at the Penn Biden Center for Diplomacy and Global Engagement and the Wilmington, Delaware, private residence of President Joseph R. Biden, Jr.<sup>1</sup>

The Committees' letter threatens contempt proceedings to enforce a subpoena to which the Department has already responded. We have repeatedly invited the Committees to identify how these audio recordings from law enforcement files would serve the purposes for which you say you want them. We have also repeatedly urged the Committees to avoid unnecessary conflict and to respect the public interest in the Department's ability to conduct effective investigations by protecting sensitive law enforcement files. The Committees have repeatedly failed to explain your needs or to demonstrate respect for the Department's law enforcement functions.

By contrast, the Department's record of accommodation speaks for itself. In addition to providing the Special Counsel's report and his testimony, we produced the two classified documents the Committees requested, the transcripts of the Special Counsel Office interviews of the President and of Mark Zwonitzer you requested, and the correspondence regarding the

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<sup>1</sup> This letter also supplements the Department's April 8, March 12, March 7, and February 16, 2024, responses to your related letters sent on March 25, March 9, February 27, and February 12, 2024.

Special Counsel's report you requested. This is consistent with our strong record of cooperation this Congress. In producing more than 92,000 pages of documents and making dozens of witnesses available for hearings, interviews, and briefings before the Committees, the Department has been guided by the constitutionally mandated accommodation process, which requires each of our co-equal branches to acknowledge the other's legitimate needs.

Despite our many requests, the Committees have not articulated a legitimate congressional need to obtain audio recordings from Mr. Hur's investigation, let alone one that outweighs the Department's strong interest in protecting the confidentiality of law enforcement files. The Department will continue to cooperate reasonably and appropriately, but we will not risk the long-term integrity of our law enforcement work.

### ***The Committees Have Repeatedly Failed to Explain Their Need for the Files***

The Committees already have a significant amount of information regarding the Special Counsel's investigation. Specifically, the Committees have received the Special Counsel's report, have heard hours of testimony from the Special Counsel, and have received transcripts of the Special Counsel's interviews with the President and Mark Zwonitzer. That is, you know what the Special Counsel concluded, know why he made those determinations, and have had an opportunity to ask him about his investigation. The Committees also know what was asked of the President and Mr. Zwonitzer and how they answered.

In the Department's last response on April 8, we addressed the Committees' stated reasons for seeking audio recordings but encouraged you to explain why you believe you "have a remaining need for the information in these files."<sup>2</sup> The Department committed that we would "evaluate any further articulated need by the Committees in good faith and will continue to engage with the Committees to explore possible opportunities to meet your remaining informational needs while protecting sensitive law enforcement information."<sup>3</sup> Despite now sending us your fifth letter since the close of the Special Counsel's investigation, the Committees have yet to provide an explanation.

The Department takes its oversight obligations seriously. We have studied the Committees' correspondence carefully to ensure we have not overlooked any justifications or reasoning you have offered for your requests. We understand the Committees are seeking information in support of the following stated purposes, none of which would be served by these law enforcement files:

- *Whether "President Biden may have retained sensitive documents related to specific countries involved in his family's foreign business dealings."*<sup>4</sup> Nothing in the interview

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<sup>2</sup> Letter from Hon. Carlos Uriarte, Assistant Att'y Gen., Off. of Legis. Aff., to Hon. Jim Jordan, Chairman, U.S. H. Comm. on the Judiciary, and Hon. James Comer, Chairman, U.S. H. Comm. on Oversight & Accountability (April 8, 2024).

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

<sup>4</sup> Letter from Hon. Jim Jordan, Chairman, U.S. H. Comm. on the Judiciary & Hon. James Comer, U.S. H. Comm. on Oversight & Accountability Chairman, to Attorney General Garland (Feb. 27, 2024).

transcripts the Department has already produced speaks to or supports the Committees' speculation on this point, and nothing in the audio file of the same conversations would do so either. Nothing in Special Counsel Hur's report or his testimony indicates any support for this speculation, either.

- *Whether President Biden took official actions or provided access to himself or his office "in exchange for payments to his family or him," or "obstructed the criminal investigation of Hunter Biden."*<sup>5</sup> The Committees have offered no explanation why the audio of interviews, for which the Department has already produced transcripts, would address these questions. The Committees also requested, and the Department has produced, the two classified documents cited in Mr. Hur's report relating to "President Biden's December 11, 2015 call with then-Ukrainian Prime Minister Arseniy Yatsenyuk."<sup>6</sup> Despite the Committees' assertion that these documents are necessary for your investigation, and despite other requestors accepting our offer to review these documents, the Chair of the Oversight Committee has not yet taken us up on our offer, which we made over two months ago. Nonetheless, he has been publicly speculating (inaccurately) about their contents.<sup>7</sup> We remain available to produce the two documents at his convenience should he wish to receive the information, which would resolve the concerns the Committees have raised about whether these calls involved any inappropriate conduct.

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<sup>5</sup> 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). The Department notes that this asserted investigative purpose was not expressly cited in the Committees' correspondence on this matter, and it is not clear that this would qualify as a purpose actually identified by the Committees for seeking the audio files. But in an effort to give the Committees every opportunity to establish a legitimate justification for your requests, we have assessed whether this stated purpose provides a basis for your current demands, given your letters' citation to H. Res. 918.

<sup>6</sup> Letter from Hon. Jim Jordan, Chairman, U.S. H. Comm. on the Judiciary & Hon. James Comer, Chairman, U.S. H. Comm. on Oversight & Accountability to Attorney General Garland (Feb. 12, 2024). The classified documents were identified as "A9" and "A10" in Appendix A of Mr. Hur's report. As stated in Mr. Hur's report, Document A9 is a December 2015 "call sheet setting forth the purpose of a call between the Ukrainian Prime Minister and Mr. Biden and talking points," and document A10 "documents the substance of that call in the format of a non-verbatim transcript." Mr. Hur's report stated that "no jury could reasonably find that the substance of the call between Mr. Biden and the Ukrainian Prime Minister was national defense information. The two exchanged pleasantries and the Prime Minister heaped praise upon Mr. Biden for his December 9, 2015 speech to Ukraine's parliament. They did not engage in a substantive policy discussion." Special Counsel Robert K. Hur, U.S. Dep't of Just., *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.*, 310, 311 (Feb. 2024). The U.S. Embassy in Kiev provided a contemporaneous public summary of this call. U.S. Embassy in Ukraine, Readout of the Vice President's Call with Prime Minister Arseniy Yatsenyuk (Dec. 11, 2015), [ua.usembassy.gov/readout-vice-presidents-call-prime-minister-arseniy-yatsenyuk/](https://ua.usembassy.gov/readout-vice-presidents-call-prime-minister-arseniy-yatsenyuk/).

<sup>7</sup> The Bottom Line, Apr. 9, 2024 ("We have a lot of questions about this . . . . We believe that some of those classified documents that Joe Biden mishandled, that were in his possession, [stored] in various locations all across the East Coast, may have been part of the influence peddling schemes that his family was involved in, and we need all of that evidence including the audio tape to be able to complete our investigation."), available at <https://twitter.com/BottomLineFBN/status/1777837568987484346> (last visited April 25, 2024).

- *Whether “the 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.”*<sup>8</sup> Nothing in the interview transcripts the Department has already produced speaks to or supports the Committees’ speculation on this point, and nothing in the audio file of the same conversations would do so either. Moreover, nothing in Special Counsel Hur’s report or his testimony indicates any support for this speculation.
- *Whether there is any relevant information regarding the Department’s “commitment to impartial justice” and “handling of the investigation and prosecution” of former President Trump.*<sup>9</sup> There is no relevant information in the transcripts the Department produced regarding the ongoing criminal investigation, prosecution, or judicial proceedings regarding former President Trump. But other information the Department provided does address the Committees’ interest on this matter. In his report, Special Counsel Hur stated that although it was not his team’s “role to assess the criminal charges pending against Mr. Trump,” he noted “several material distinctions between Mr. Trump’s case and Mr. Biden’s,” including regarding the level of cooperation Special Counsel Hur received.<sup>10</sup> You also had the opportunity to question Special Counsel Hur on this matter during his testimony. In any event, the Committees have offered no explanation of how the audio of these interviews conducted by the Special Counsel and his team would have any relevance to this question.
- *Whether there is a basis for legislative reforms to “codify[] certain qualifications and requirements of special counsels appointed by the Attorney General.”*<sup>11</sup> The Committees have not identified, and the Department has been unable to construct, any relationship of pertinence between the interview audio and the appointment process or requirements for Special Counsels. Even if there were some relationship, that information would be available in the transcripts we have already produced. The Department did, however, produce the Special Counsel’s confidential report and agreed for him to testify publicly before the Committees.

The foregoing rationales for the Committees’ requests all predate the Committees’ most recent letter on April 15. Despite having been asked to make a greater or more specific showing of need for the audio files, the Committees did neither. At most, the Committees state that audio files are “materially different from transcripts, offering a unique and invaluable medium of

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<sup>8</sup> Letter from Hon. Jim Jordan, Chairman, U.S. H. Comm. on the Judiciary & Hon. James Comer, Chairman, U.S. H. Comm. on Oversight & Accountability to Attorney General Garland at 1, 2 (Feb. 27, 2024).

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

<sup>10</sup> Special Counsel Robert K. Hur, U.S. Dep’t of Just., *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.*, 310, 311 (Feb. 2024).

<sup>11</sup> Letter from Hon. Jim Jordan, Chairman, U.S. H. Comm. on the Judiciary & Hon. James Comer, Chairman, U.S. H. Comm. on Oversight & Accountability to Attorney General Garland at 2 (Feb. 27, 2024).

information that capture vocal tone, pace, inflections, verbal nuance, and other idiosyncrasies.”<sup>12</sup> But these generic characterizations of audio files lack any connection to the Committees’ articulated purposes.

You have offered no explanation of how these specific files would provide any information pertinent to the Committees’ stated purposes. And even if they did have pertinent information, you have not explained how that information isn’t already available from the transcripts we produced as an extraordinary accommodation to the Committees. As Acting Attorney General Paul Clement explained nearly two decades ago, the principles of the accommodation process “should and do encourage, rather than punish, such accommodation by recognizing that Congress’s need” for executive branch files “is reduced to the extent similar materials have been provided voluntarily as part of the accommodation process.”<sup>13</sup>

Moreover, the Committees fail to provide an explanation of why such information isn’t readily available elsewhere, or why any remaining need for these specific files outweighs the serious harms to the Department’s articulated law enforcement interests. In fact, the Committees offer little more than an assertion that your inquiries “will suffer.”<sup>14</sup> This is not only an insufficient justification, it is no justification at all. The Committees’ inability to identify a need for these files is fatal to the legitimacy of any contempt citation.

### ***Releasing the Files Would Harm Law Enforcement and the Evenhanded Administration of Justice***

The treatment of past investigations matters for future ones. As the Department explained in its April 8 letter, “producing the audio files would compound the likelihood that future prosecutors will be unable to secure th[e] level of cooperation” that Special Counsel Hur said was important to his investigation.<sup>15</sup> “They might have a harder time obtaining consent to an interview at all. It is clearly not in the public interest to render such cooperation with prosecutors and investigators less likely in the future.”<sup>16</sup> Even if the Committees had identified a remaining congressional need for these audio files, we must also take seriously the harm producing them could do to the public’s interest in effective law enforcement investigations. Although some risks diminish once an investigation closes or a case resolves, the production of sensitive law enforcement files from a closed matter can still harm prosecutorial decision-making, privacy and reputational interests of witnesses and uncharged parties, and sources and methods, among other law enforcement concerns that the public has a strong interest in protecting.

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<sup>12</sup> Letter from Hon. Jim Jordan, Chairman, U.S. H. Comm. on the Judiciary & Hon. James Comer, Chairman, U.S. H. Comm. on Oversight & Accountability to Attorney General Garland at 3 (Apr. 15, 2024).

<sup>13</sup> Assertion of Executive Concerning the Dismissal and Replacement of U.S. Attorneys, 31 Op. O.L.C. 1, 8 (2007).

<sup>14</sup> Letter from Hon. Jim Jordan, Chairman, U.S. H. Comm. on the Judiciary & Hon. James Comer, Chairman, U.S. H. Comm. on Oversight & Accountability to Attorney General Garland (Apr. 15, 2024).

<sup>15</sup> Letter from Hon. Carlos Uriarte, Assistant Att’y Gen., Off. of Legis. Aff., to Hon. Jim Jordan, Chairman, U.S. H. Comm. on the Judiciary, and Hon. James Comer, Chairman, U.S. H. Comm. on Oversight & Accountability (April 8 2024).

<sup>16</sup> *Id.*

The Department has repeatedly explained the reasons for its longstanding approach of safeguarding sensitive law enforcement information. Congressional demands for law enforcement files can create the perception of improper influence on the law enforcement process. This concern is deeply rooted in the Department's principles and has been articulated by administrations of both parties. As Attorney General Mukasey explained regarding a congressional demand for interview records with Vice President Cheney and other senior White House officials, the Department is deeply concerned "about the prospects of committees of Congress obtaining confidential records from Justice Department criminal investigative files for the purpose of addressing highly politicized issues in public committee hearings."<sup>17</sup> Although political considerations may be present in congressional investigations, they should have no role in criminal investigations.

Further, producing sensitive, nonpublic law enforcement files to Congress or the public risks undermining confidence in the Department's ability to protect sensitive law enforcement information. Producing sensitive materials, such as the audio files of a person's interview with a prosecutor, sends a message to the public that the Department cannot be trusted to keep law enforcement files confidential, or to respect the many established protections and rights that govern the conduct of criminal investigations. The Department is required to make decisions based on objective evidence of an individual's culpability, according to the professional and legal standards under case law, professional rules, and Department policies, including the Principles of Federal Prosecution and the Federal Bureau of Investigation's Domestic Investigations and Operations Guide. And when we do bring charges, we are subject to the rigorous supervision of the federal judiciary and legal guardrails like the rules of evidence and criminal procedure. We are dedicated to conducting investigations and prosecutions according to these professional, legal, and constitutional standards, all of which prohibit political considerations in our work.

The decision to sit down with investigators and prosecutors should not include a tacit invitation for the Committees to participate, comment, or apply selective hindsight. It would be severely chilling if the decision to cooperate with a law enforcement investigation required individuals to submit themselves to public inquest by politicians, particularly because congressional investigations are not subject to the same standards and checks as the Department's. Indeed, the Committees have frequently objected to even the suggestion that your investigative powers are subject to any requirement to justify your requests according to objective standards or limit your demands to avoid harming other values and interests.<sup>18</sup>

The Department is particularly concerned about the chilling effect of producing the specific files requested here. Special Counsel Hur was able to obtain the voluntary agreement of the President and Mr. Zwonitzer to be interviewed, and for those interviews to be recorded. But if potential witnesses expected that volunteering for an interview and allowing it to be recorded might result in the release of that recording to Congress or the public, that could dissuade them

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<sup>17</sup> Assertion of Executive Concerning the Dismissal and Replacement of U.S. Attorneys, 31 Op. O.L.C. 1, 8 (2007).

<sup>18</sup> E.g., Letter from Hon. Jim Jordan, Chairman, U.S. H. Comm. on the Judiciary & Hon. James Comer, Chairman, U.S. H. Comm. on Oversight & Accountability to Attorney General Garland at 2 (Apr. 15, 2024).

from cooperating or agreeing to be recorded. This would undermine the ability of prosecutors to obtain such cooperation, including audio recording, in the future.

Moreover, even if prosecutors are able to obtain cooperation for interviews and audio recording, the risk of public or congressional disclosure may impact how interview subjects respond. Knowing an audio recording could be broadcasted publicly or examined by Congress could severely impact an interview, including the breadth of answers someone provides. Indeed, high-ranking government officials have already at times declined to appear for interviews voluntarily, even if they are key witnesses or subjects in special counsel investigations. It is not in the public's interest for the Department to further disincentivize valuable cooperation from such individuals.

Such concerns are not new and have been raised by the Department during administrations of both parties. As the Department explained in its April 8 letter, after the conclusion of Special Counsel Robert S. Mueller's investigation into Russian election interference, the Department produced only summaries of certain witness interviews, many in redacted form, and many only for review *in camera*.<sup>19</sup> And, at the conclusion of the 2008 investigation by Special Counsel Patrick Fitzgerald into the disclosure of the identity of Central Intelligence Agency officer Valerie Plame Wilson, the Department declined to produce to Congress summaries of the President's and the Vice President's interviews with the Special Counsel's Office, citing concerns for potential chilling effects such disclosure would create for such high-ranking officials to submit to voluntary interviews in future law enforcement investigations.<sup>20</sup>

The potential chilling effect on cooperation from producing the audio of someone's voice is serious, particularly for uncharged parties who are recorded in the sensitive and potentially high-pressure context of a law enforcement interview. As courts have recognized, the privacy interest in one's voice—including tone, pauses emotional reactions, and cues—is distinct from the privacy interest in a written transcript of one's conversation.<sup>21</sup> In addition, the clear

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<sup>19</sup> Letter from Hon. Carlos Uriarte, Assistant Att'y Gen., Off. of Legis. Aff., to Hon. Jim Jordan, Chairman, U.S. H. Comm. on the Judiciary, and Hon. James Comer, Chairman, U.S. H. Comm. on Oversight & Accountability (April 8, 2024); see *In re Application of the Committee on the Judiciary, U.S. House of Representatives, for an Order Authorizing the Release of Grand Jury Materials*, case no. 1:19-GJ-00048 (D.D.C.), Dkt. 37, Supplemental Submission Regarding Accommodation Process, 2 (Oct. 8, 2019).

<sup>20</sup> Letter from Principal Deputy Assistant Attorney General Keith B. Nelson to Hon. Henry A. Waxman (July 16, 2008) ("Moreover, the Committee's demand to obtain copies of these reports raise a serious additional separation of powers concern relating to the integrity and effectiveness of future law enforcement investigations by the Department. Were future Presidents, Vice Presidents, and senior White House staff to perceive that providing voluntary interviews in the course of Justice Department investigations would create records that would likely be made available to Congress (and then possibly disclosed publicly outside of judicial proceedings such as a trial), there would be an unacceptable risk that such knowledge could adversely impact their willingness to cooperate fully and candidly in voluntary interviews."). See also *Assertion of Executive Privilege Concerning the Special Counsel's Interviews of the Vice President and Senior White House Staff*, 32 Op. O.L.C. 7, at 13 (2008) (noting the "chilling effect that compliance with the Committee's subpoena [for the FBI record of the Vice President' interview with the Special Counsel] would have on future White House deliberations and White House cooperation with future Justice Department investigations").

<sup>21</sup> See, e.g., *N.Y. Times Co. v. NASA*, 920 F.2d 1002 (D.C. Cir. 1990) (en banc).

possibility of manipulation and abuse of audio files increase these privacy concerns and may reduce the willingness of an interview subject to cooperate if they believe their audio file could be made publicly available. The “potential for misuse” of an audio recording, such as through “cutting, erasing, and splicing,” have also been recognized by courts for decades.<sup>22</sup> The dangers of deepfakes and wide online distribution of manipulated audio files make these concerns particularly acute today.

The loss to law enforcement from chilling such cooperation, including audio recording, would be significant. There are many reasons why prosecutors prefer to document an interview through audio recording, as opposed to relying on a stenographer or not documenting the interview verbatim at all. For example, the attorneys in the room, both for the witness and the government, may have different recollections of what was said during the interview. Reviewing the audio tape as an investigative tool after the interview may help investigators resolve issues that develop later in the investigation. Audio recording also enables greater confidentiality and candor by reducing the number of people who need to be in the interview room. This can be particularly important in investigations that involve sensitive information or where interview subjects may be concerned about leaks or disclosure of their participation in the investigation.

***The Department Remains Concerned That the Committees Demands May Arise From Purposes Incompatible With the Appropriate Treatment of Law Enforcement Files***

Protecting sensitive law enforcement files from the reality or perception of political treatment has been the Department’s approach for decades. We are not “withholding records for partisan purposes,” as the Committees suggest in your April 15 letter. Rather, we are taking our standard approach. Assessing investigations according to the party affiliation of individuals involved may be familiar to the Committees, but it is foreign to the Department.<sup>23</sup> The question is not whether the Department is acting outside the norm, but rather why, after receiving extraordinary cooperation from the Department, the Committees are pushing for more.

The Committees’ inability to identify a need for these audio files grounded in legislative or impeachment purposes raises concerns about what other purposes they might serve. The Department recognizes that the Committees have invested significant time and taxpayer resources pursuing these investigations. As the Department has previously noted, although the Supreme Court has acknowledged that “[t]he very nature of the investigative function—like any research—is that it takes the searchers up some ‘blind alleys’ and into nonproductive

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<sup>22</sup> *United States v. McDougal*, 103 F.3d 651, 658 (8th Cir. 1996); *see also Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 608 (1978).

<sup>23</sup> The Justice Manual provides that “Federal prosecutors and agents may never select the timing of any action, including investigative steps, criminal charges, or statements, for the purpose of affecting any election, or for the purpose of giving an advantage or disadvantage to any candidate or political party,” U.S. Dep’t of Just., Just. Manual § 9-85.500, and “in determining whether to commence or recommend prosecution or take other action against a person, the attorney for the government may not be influenced by: the person’s . . . political association, activities, or beliefs.” U.S. Dep’t of Just., Just. Manual § 9-27.260.

enterprises,” that does not mean the Committees must keep going.<sup>24</sup> Certainly, initiating contempt proceedings is not a substitute for evidence to support one’s claims.

In addition, the Committees have demanded information you know we have principled reasons to protect, and then accused us of obstruction for upholding those principles. This deepens our concern that the Committees may be seeking conflict for conflict’s sake. The Department has responded substantively and substantially to all four requests in the Committees’ subpoenas. In the normal course of the accommodation process, providing such comprehensive information to a committee would deescalate tensions and result in an earnest assessment by a committee of its remaining needs. But the Department’s cooperation and accommodation has instead resulted in repeated contempt threats. This approach is hardly consistent with your obligations under the accommodation process.<sup>25</sup>

“The accommodation required is not simply an exchange of concessions or a test of political strength. It is an obligation of each branch to make a principled effort to acknowledge, and if possible to meet, the legitimate needs of the other branch.”<sup>26</sup> “The process of accommodation requires that each branch explain to the other why it believes its needs to be legitimate. Without such an explanation, it may be difficult or impossible to assess the needs of one branch and relate them to those of the other.”<sup>27</sup> This should be “no great burden,”<sup>28</sup> so the Committees’ failure to articulate—or the decision not to articulate—your reasons is noteworthy.

Finally, we previously raised concerns that “the Committees’ interests may not be in receiving information in service of legitimate oversight or investigatory functions, but to serve political purposes that should have no role in the treatment of law enforcement files.”<sup>29</sup> This concern has only deepened with the Committees’ failure to identify a legitimate purpose that would be served by production of these files.<sup>30</sup> As we have said repeatedly, the Department does not make decisions or take investigative steps for political reasons. We do not obtain evidence for criminal investigations so that it may later be deployed for political purposes.

### ***The Department’s Strong and Consistent Record of Cooperation Underscores the Impropriety of a Contempt Threat***

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<sup>24</sup> Letter from Asst. Att’y Gen. Carlos Uriarte to Hon. Jim Jordan at 3 (Feb. 28, 2024) (quoting *Eastland v. U.S. Servicemen’s Fund*, 421 U.S. 491, 509 (1975).)

<sup>25</sup> For example, in 2023 the House Oversight Committee threatened contempt over the production of a confidential FBI form even though, according to the Committee, you had already received it.

<sup>26</sup> *Assertion of Executive Privilege in Response to a Congressional Subpoena*, 5 Op. O.L.C. 27, 31 (1981).

<sup>27</sup> *Congressional Requests for Confidential Executive Branch Information*, 13 Op. O.L.C. 153, 158-59.

<sup>28</sup> *Id.*

<sup>29</sup> Letter from Hon. Carlos Uriarte, Assistant Att’y Gen., Off. of Legis. Aff., to Hon. Jim Jordan, Chairman, U.S. H. Comm. on the Judiciary, and Hon. James Comer, Chairman, U.S. H. Comm. on Oversight & Accountability at 3 (April 8, 2024).

<sup>30</sup> See, e.g., Hannity interview with Hon. Jim Jordan, Chairmain, .U.S. H. Comm. on the Judiciary (Apr. 10, 2024) (“We would like to hear the audio tapes and frankly I think the American people would like to know here six months before the most important election we have who’s going to be our next commander in chief”), available at <https://www.facebook.com/SeanHannity/videos/comer-jordan-threaten-to-hold-garland-in-contempt-of-congress/404421815681451/> (last visited April 25, 2024).

Finally, the Committees' threat to initiate contempt proceedings cannot be squared with the Department's extensive cooperation with Congress. The Department has continued to fulfill the promise we made at the very beginning of this Congress to cooperate in good faith with your information requests.<sup>31</sup> The Department has followed through on this commitment, providing documents and testimony on a near-constant basis for over a year:

- We have provided well over 150 hours of testimony, more than 92,000 pages of documents, and other information in response to the Judiciary Committee's wide-ranging requests contained in more than 100 letters and 16 subpoenas, which together contain more than 500 separate requests for documents, testimony, or other information.
- We have supported appearances at 13 hearings before both Committees by senior Department officials, including the Attorney General, the FBI Director, the U.S. Attorney for the District of Columbia, and the heads of the Department's Civil Rights and Antitrust Divisions, the Drug Enforcement Administration, the United States Marshals Service, and the Bureau of Alcohol, Tobacco, Firearms, and Explosives.
- We have supported 24 transcribed interviews by current Department officials before the Judiciary Committee, including taking the extraordinary step of making Special Counsel David Weiss available to address the Committee's questions about the scope of his authority in his ongoing investigation and prosecution, and have scheduled transcribed interviews of three additional Department personnel on a range of topics as of the date of this letter.
- We have also provided 40 briefings to the Committees and provided information through informal means such as emails and calls.

In addition, the Committees have sent the Department more than 20 letters on a wide range of topics—many of them new—since the close of Special Counsel Hur's investigation. From China to immigration to the Foreign Agents Registration Act, the Committees are demanding and receiving substantive engagement and cooperation from the Department on a near-daily basis.

It is unjustifiable for the Committees to threaten criminal contempt against the backdrop of such widespread, thorough, and consistent cooperation. We urge the Committees to deescalate and to work with the Department in the same mode of cooperation and respect that we have shown Congress for over a year. Furthermore, the Department is eager to make good use of the remaining time in this Congress, such as by working together with the Committees on legislative priorities that can make real, tangible progress for the American people.

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<sup>31</sup> Letter from the Hon. Carlos F. Uriarte, Assistant Att'y Gen., Off. of Legis. Aff., U.S. Dep't of Just., to the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary (Jan. 20, 2023).

If the Committees' goal is to receive information from the Department in furtherance of your investigations, that goal has been more than met. Our cooperation has been extraordinary. The Committees have not responded in kind. It seems that the more information you receive, the less satisfied you are, and the less justification you have for contempt, the more you rush towards it.

Lacking a justification for complaint—never mind contempt—in the actual record, the Committees' threats deepen our concern that you are seeking to create a false narrative of obstruction that weakens, rather than strengthens, the American people's confidence in our government and the rule of law. It also deepens our concern that the Committees' true aim is to use law enforcement files for purposes contrary to the principles of apolitical and evenhanded administration of justice, to which we are dedicated. The Department will not shirk from our duty to protect the public's interest in the integrity of law enforcement work.

We hope you find this information helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

Carlos Felipe Uriarte  
Assistant Attorney General

Enclosure

cc:

The Honorable Jerrold L. Nadler  
Ranking Member  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Jamie Raskin  
Ranking Member  
Committee on Oversight and Accountability  
U.S. House of Representatives  
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