

ONE HUNDRED EIGHTEENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-6906  
judiciary.house.gov

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

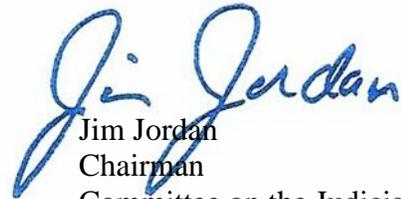
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which its review would be complete or a commitment that it would produce all responsive material following the review. Additionally, the Judiciary and Oversight Committees believe that the information and documents requested are primarily unclassified. 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

**SUBPOENA**

**BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE  
CONGRESS OF THE UNITED STATES OF AMERICA**

To The Honorable Merrick B. Garland, Attorney General, U.S. Department of Justice

You are hereby commanded to be and appear before the  
Committee on the Judiciary

of the House of Representatives of the United States at the place, date, and time specified below.

- to produce the things identified on the attached schedule touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: House Committee on the Judiciary, 2138 Rayburn House Office Building  
Date: March 7, 2024 Time: 9:00 a.m.

- to testify at a deposition touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: \_\_\_\_\_  
Date: \_\_\_\_\_ Time: \_\_\_\_\_

- to testify at a hearing touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: \_\_\_\_\_  
Date: \_\_\_\_\_ Time: \_\_\_\_\_

To The U.S. Marshals Service, or any authorized Member or congressional staff

\_\_\_\_\_ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at

the city of Washington, D.C. this 27<sup>th</sup> day of February, 2024.

[Signature]  
Chairman or Authorized Member

Attest: [Signature]

Clerk

**PROOF OF SERVICE**

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Subpoena for

The Honorable Merrick B. Garland, Attorney General, U.S. Department of Justice

Address 950 Pennsylvania Avenue, N.W. Washington, DC 20530

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before the Committee on the Judiciary

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*U.S. House of Representatives  
118th Congress*

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Served by (print name) \_\_\_\_\_

Title \_\_\_\_\_

Manner of service \_\_\_\_\_

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Date \_\_\_\_\_

Signature of Server \_\_\_\_\_

Address \_\_\_\_\_

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## SCHEDULE A

In accordance with the attached Schedule instructions, you, the Honorable Merrick B. Garland, in your capacity as Attorney General of the United States and the head of the Department of Justice, are required to produce the following items in your possession, custody, or control, in unredacted form:

1. All documents and communications, including audio and video recordings, related to Special Counsel Robert Hur's interview of President Joseph R. Biden, Jr.;
2. All documents and communications, including audio and video recordings, related to Special Counsel Hur's interview of Mr. Mark Zwonitzer;
3. The documents identified as "A9" and "A10" in Appendix A of Special Counsel Hur's report, which relate to Vice President Biden's December 11, 2015 call with then-Ukrainian Prime Minister Arseniy Yatsenyuk; and
4. All communications between or among representatives of the Department of Justice, including the Office of the Special Counsel, the Executive Office of the President, and President Biden's personal counsel referring or relating to Special Counsel Hur's report.

## INSTRUCTIONS

*For the purposes of this Subpoena, please apply the instructions and definitions as set forth below:*

1. In complying with this subpoena, you are required to produce all responsive documents in unredacted form that are in your possession, custody, or control or otherwise available to you, regardless of whether the documents are possessed directly by you.
2. Requested documents responsive to the subpoena shall not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in this subpoena has been, or is currently, known by any other name, the subpoena shall be read also to include such other names under that alternative identification.
4. The Committee's preference is to receive documents responsive to the subpoena in electronic form (i.e., via cloud content services, CD, memory stick, or thumb drive) in lieu of paper productions. Committee staff shall be consulted prior to production to discuss the best production method. If documents are produced in paper form, each document should be produced in a form that may be copied by standard copying machines.
5. Documents produced in electronic format should also be organized, identified, and indexed electronically.
6. Documents produced pursuant to this subpoena shall be produced in the order in which they appear in your files and should not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together should be produced together in the order they appear in your files. Documents produced in response to this subpoena should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this subpoena was issued. Indicate the office or division and person from whose files each document was produced.
7. Documents produced to the Committee should include an index describing the contents of the production and should identify the paragraph(s) and/or clause(s) in the Committee's schedule to which the document responds. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
8. All documents shall be Bates-stamped sequentially and produced sequentially.

9. Responsive documents must be produced regardless of whether any other person or entity possesses non-identical or identical copies of the same document.
10. If any document responsive to this subpoena was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this subpoena, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party.
11. If any document responsive to this subpoena was, but no longer is, in your possession, custody or control, state:
  - a. how the document was disposed of;
  - b. the name, current address, and telephone number of the person who currently has possession, custody or control over the document;
  - c. the date of disposition; and
  - d. the name, current address, and telephone number of each person who authorized said disposition or who had or has knowledge of said disposition.
12. If any document responsive to this subpoena cannot be located, describe with particularity the efforts made to locate the document and the specific reason for its disappearance, destruction, or unavailability.
13. If a date or other descriptive detail set forth in this subpoena referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the subpoena, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
14. This subpoena is continuing in nature and applies to any newly discovered documents, regardless of the date of its creation. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.
15. A cover letter shall be included with each production and shall including the following:
  - a. A total page count for the entire production, including both hard copy and electronic documents;
  - b. A list of custodians, identifying the Bates range for each custodian; and
  - c. All Bates Prefix and Suffix formats for all documents contained in the production.

16. Two sets of the documents should be delivered to the Committee, one set to the majority staff in Room 2138 of the Rayburn House Office Building and one set to the minority staff in Room 2142 of the Rayburn House Office Building. You should consult with Committee majority staff regarding the method of delivery prior to sending any materials.
17. In the event that a responsive document or portion thereof is withheld on any basis, including by a claim of privilege, you should provide a log containing the following information concerning every such document: (i) the reason the document is not being produced; (ii) the type of document; (iii) the general subject matter; (iv) the date, author and addressee; (v) the relationship of the author and addressee to each other; and (vi) any other description necessary to identify the document and to explain the basis for not producing the document. If a claimed privilege applies to only a portion of any document, only that portion should be withheld and the remainder of the document should be produced. As used herein, "claim of privilege" includes, but is not limited to, any claim that a document or portion thereof either may or must be withheld from production pursuant to any legal doctrine, statute, rule, or regulation.
  - a. Any objections or claims of privilege are waived if you fail to provide an explanation of why full compliance is not possible and a log identifying with specificity the ground(s) for withholding each withheld document or portion thereof prior to the subpoena compliance date.
  - b. In complying with this subpoena, be apprised that (unless otherwise determined by the Committee) the Committee does not recognize: any purported non-disclosure privileges associated with the common law including; any purported privileges or protections from disclosure under the Freedom of Information Act; or any purported contractual privileges, such as non-disclosure agreements.
  - c. Any assertion by a subpoena recipient of any such non-constitutional legal bases for withholding documents or other materials, for refusing to answer any deposition question, or for refusing to provide hearing testimony, shall be of no legal force and effect and shall not provide a justification for such withholding or refusal, unless and only to the extent that the Committee (or the chair of the Committee, if authorized) has consented to recognize the assertion as valid.
18. If the subpoena cannot be complied with in full, it should be complied with to the extent possible, which should include an explanation of why full compliance is not possible.
19. Upon completion of the document production, you must submit a written certification, signed by you or your counsel, stating that: (a) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (b) documents responsive to the subpoena have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee since the date of receiving the Committee's subpoena or in anticipation of receiving the Committee's subpoena, and (c) all documents identified during the search

that are responsive have been produced to the Committee, identified in a log provided to the Committee, as described in (17) above, or identified as provided in (10), (11) or (12) above.

20. When representing a witness or entity before the Committee in response to a subpoena, document request, or request for transcribed interview, counsel for the witness or entity must promptly submit to the Committee a notice of appearance specifying the following: (a) counsel's name, firm or organization, and contact information; and (b) each client represented by the counsel in connection with the proceeding. Submission of a notice of appearance constitutes acknowledgement that counsel is authorized to accept service of process by the Committee on behalf of such client(s), and that counsel is bound by and agrees to comply with all applicable House and Committee rules and regulations.

## DEFINITIONS

*The following definitions apply to terms used within the Subpoena, Schedule A, these Instructions, and these Definitions:*

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (“e-mail”), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, power point presentations, spreadsheets, and work sheets, and graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings, and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. The term “document” includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The phrase “possession, custody or control” means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party.
3. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in an in-person meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, encrypted instant messaging application (e.g., Signal, WhatsApp, Telegram, etc.), Discord message, Google Hangouts message, Microsoft Teams message, Slack message, Skype message, Viber message, regular mail, telexes, releases, one-way communications channels (e.g., Teleporter), or otherwise.

4. The terms “and” and “or” should be construed broadly and either conjunctively or disjunctively as necessary to bring within the scope of this subpoena any information which might otherwise be construed to be outside its scope. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders.
5. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, limited liability corporations and companies, limited liability partnerships, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, other legal, business or government entities, or any other organization or group of persons, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.
6. The terms “referring” or “relating,” with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, de facto employee, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, contract employee, contractor, or any other type of service provider.
8. The term “volunteer” means any natural person who willingly undertakes or expresses a willingness to undertake a service or action to benefit a person, candidate, and/or campaign.
9. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; and (b) the individual’s business address and phone number.
10. The term “Administration” means and refers to any department, agency, division, office, subdivision, entity, official, administrator, employee, attorney, agent, advisor, consultant, staff, or any other person acting on behalf or under the control or direction of the Executive Branch.
11. The term “you” or “your” means and refers to you as a natural person and the United States and any of its agencies, offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, contractors, or any other persons acting on your behalf or under your control or direction; and includes any other person(s) defined in the subpoena document request letter.
12. The term “Special Counsel Hur’s report” means the Report of the Special Counsel 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. released publicly by the Department of Justice on February 5, 2024.