

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**CABLE NEWS NETWORK, INC.**

1050 Techwood Drive, NW  
Atlanta, GA 30318

Plaintiff,

v.

**U.S. DEPARTMENT OF JUSTICE,**

950 Pennsylvania Avenue NW  
Washington, DC 20530

Defendant.

Case No. 24-CV-961

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff Cable News Network, Inc. (“CNN”) brings this suit against Defendant the U.S. Department of Justice (“DOJ”) and states as follows:

**INTRODUCTION**

1. This is an action brought pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, for declaratory, injunctive, and other appropriate relief.
2. Through FOIA, CNN seeks all audio and video recordings of President Joseph R. Biden, Jr.’s five-hour interview with Special Counsel Robert K. Hur in October 2023.
3. These recordings will help the public evaluate Hur’s decision not to charge Biden and to close the investigation into classified documents found at Biden’s former office and private residence. In particular, they will shed light on Hur’s controversial characterization of Biden as an “elderly man with a poor memory,” which Hur claimed would make it “difficult to convince a jury that they should convict him.” *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.* at 6, Special Counsel’s Office (Feb. 2024) (the “Hur Report”).<sup>1</sup>

4. Hur’s description of Biden caught the attention of the public and the White House alike. *See, e.g.,* Kaanita Iyer, *Biden slams special counsel Hur for raising son Beau’s death*, CNN (Feb. 8, 2024).<sup>2</sup> But without access to any of the interview records, the press and public initially could not form their own conclusions about Hur’s characterization of Biden.

5. The subsequent release of the interview transcript has made it possible for the press and public to somewhat assess Hur’s description of Biden for themselves. *See, e.g.,* Matt Viser, *Full transcript of Biden’s special counsel interview paints nuanced portrait*, The Washington Post (Mar. 12, 2024).<sup>3</sup> Transcripts, however, are no substitute for recordings, which reveal “intonations, hesitations, inflections, and tone of voice.” *See, e.g., United States v. Criden*, 648 F.2d 814, 824 (3d Cir. 1981). Those qualities amount to “a substantial part of the real record,” which is completely “lost to public scrutiny” when only a transcript is released. *Id.*

6. To better assess Hur’s characterization of Biden, therefore, CNN requested copies of the interview recordings as well. Releasing these recordings would greatly inform the public about “what their government is up to,” *Dep’t of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773 (1989), with respect to Hur’s decision not to charge Biden.

7. CNN now brings this lawsuit to compel DOJ to satisfy its obligations under FOIA and release the recordings of Biden’s interview with Hur.

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<sup>1</sup> Available at <https://www.justice.gov/storage/report-from-special-counsel-robert-k-hur-february-2024.pdf>.

<sup>2</sup> Available at <https://www.cnn.com/2024/02/08/politics/biden-special-counsel-beau-death/index.html>.

<sup>3</sup> Available at <https://www.washingtonpost.com/politics/2024/03/12/biden-hur-transcript-classified-documents/>.

## **PARTIES**

8. Plaintiff CNN owns and operates numerous news platforms and services, including the television network known as CNN and the website [www.cnn.com](http://www.cnn.com).<sup>4</sup>

9. Defendant DOJ is an agency within the meaning of 5 U.S.C. § 552(f)(1). DOJ has possession and control of records requested by CNN.

## **JURISDICTION AND VENUE**

10. This action arises under FOIA. This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B) & (a)(6)(C)(i). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

11. Venue is proper in this judicial district under 5 U.S.C. § 552(a)(4)(B).

## **FACTUAL ALLEGATIONS**

### **The Special Counsel's Investigation**

12. On January 9, 2023, the public learned that Biden's personal attorneys had come across documents marked classified two months earlier while packing up files at the Penn Biden Center for Diplomacy and Global Engagement in Washington, DC. *See, e.g.,* Adriana Diaz et al., *U.S. attorney reviewing documents marked classified from Joe Biden's vice presidency found at Biden think tank*, CBS News (Jan. 10, 2023).<sup>5</sup> The public also learned that Attorney General Merrick Garland had initially assigned John Lausch, U.S. Attorney for the Northern District of Illinois, "to find out how the material marked classified ended up at the Penn Biden Center." *Id.*

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<sup>4</sup> CNN anticipates that nearly a dozen other press organizations that have submitted similar FOIA requests to DOJ will seek to join this lawsuit if and when their requests ripen.

<sup>5</sup> Available at <https://www.cbsnews.com/news/biden-center-classified-documents/>.

13. Three days later, on January 12, 2023, the White House confirmed that Biden’s attorneys had located a second set of documents bearing classification markings at Biden’s private residence in Wilmington, Delaware. *See, e.g., Ben Gittleson, More classified documents found in garage at Biden’s Wilmington home, White House says*, ABC News (Jan. 12, 2023).<sup>6</sup>

14. That same day, Garland announced that he had appointed Hur “to serve as Special Counsel for the United States Department of Justice” and “conduct the investigation” into the “possible unauthorized removal and retention of 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.” *See Order No. 5588-2023, Appointment of Robert K. Hur as Special Counsel, Dep’t of Justice* (Jan. 12, 2023).<sup>7</sup>

15. In August 2023, eight months into the resulting investigation, news reports revealed that Hur’s office and Biden’s attorneys were negotiating “over the terms under which [Biden] would be interviewed,” including “whether the interview would be in person and, if so, where it might happen – as well as the range of topics and questions that would be covered.” *See, e.g., Monica Alba & Carol E. Lee, Biden attorneys in talks with federal prosecutors over terms of his interview in classified documents case*, NBC News (Aug. 11, 2023).<sup>8</sup>

16. Hur ultimately interviewed Biden in person – for approximately five hours, split across two days – on October 8-9, 2023. The interview was recorded, though as of this filing DOJ has not yet made public whether that recording was solely audio or both audio and video.

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<sup>6</sup> Available at <https://abcnews.go.com/Politics/classified-documents-found-bidens-wilmington-home-garage-white/story?id=96390141>.

<sup>7</sup> Available at <https://www.justice.gov/d9/2023-01/Order.Appointment%20of%20Robert%20Hur.11223%20%28002%29.pdf>.

<sup>8</sup> Available at <https://www.nbcnews.com/politics/joe-biden/biden-attorneys-negotiating-special-counsel-interview-terms-rcna99360>.

## The Hur Report

17. On February 5, 2024, Hur transmitted to Garland a ““confidential report explaining the prosecution or declination decisions”” that Hur had reached as to Biden. *See* Hur Report at 1 (quoting 28 C.F.R. § 600.8(c)).

18. On February 7, 2024, Garland notified House and Senate Judiciary Committee leadership that Hur had concluded his investigation. *See* Ltr. from Att’y Gen. Garland to Sen. Durbin et al. (Feb. 7, 2024).<sup>9</sup> Garland stated that he is “committed to making as much of the [Hur Report] public as possible, consistent with legal requirements and Department policy.” *Id.*

19. On February 8, 2024, DOJ released the Hur Report, which declined to charge Biden in connection with the classified documents investigation. *See, e.g.,* Evan Perez et al., *Special counsel report concludes Biden willfully retained classified information but will not face charges*, CNN (Feb. 8, 2024).<sup>10</sup>

20. One section of the Hur Report that caught the public’s interest was the description of Biden’s interview with Hur. In explaining his decision not to charge Biden, Hur wrote:

We have also considered that, at trial, Mr. Biden would likely present himself to a jury, as he did during our interview of him, as a sympathetic, well-meaning, elderly man with a poor memory. Based on our direct interactions with and observations of him, he is someone for whom many jurors will want to identify reasonable doubt. It would be difficult to convince a jury that they should convict him—by then a former president well into his eighties—of a serious felony that requires a mental state of willfulness.

Hur Report at 6. Indeed, the Hur Report repeatedly characterized Biden’s memory in negative terms, calling it “hazy” and “faulty” and stating that Biden exhibited “diminished faculties in

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<sup>9</sup> Available at <https://www.justice.gov/d9/2024-02/Attorney%20General%20Letter%20to%20Judiciary%20Committees%202024.pdf>.

<sup>10</sup> Available at <https://www.cnn.com/2024/02/08/politics/white-house-special-counsels-report-response/index.html>.

advancing age.” *Id.* at 208, 248, 242. In particular, Hur wrote that Biden “did not remember when he was vice president” and that “[h]e did not remember, even within several years, when his son Beau died.” *Id.* at 208.

21. In correspondence released with the Hur Report, White House counsel challenged Hur’s characterization of Biden’s memory, writing that they “do not believe that the report’s treatment of President Biden’s memory is accurate or appropriate” and that “there is ample evidence from your interview that the President did well in answering your questions about years-old events over the course of five hours.” *Id.* at 384.

22. In remarks to the press, Biden likewise forcefully disputed Hur’s characterization of his memory. *See, e.g.,* Justin Gomez & Luke Barr, *Biden rages that ‘you think I would ... forget the day my son died?’ after special counsel report*, ABC News (Feb. 9, 2024).<sup>11</sup>

23. Biden’s remarks further increased public interest in and scrutiny of his memory, however, as he “mistakenly referred to Egyptian President Abdel Fattah El-Sisi as the leader of Mexico.” *See, e.g.,* Akayla Gardner, *Biden’s Attempt to Address Memory Issue Backfires With New Gaffe*, Bloomberg (Feb. 9, 2024).<sup>12</sup>

### **The Interview Transcripts**

24. On March 12, 2024, Hur testified before the House Judiciary Committee about his investigation and decision not to charge Biden and “stood steadfastly by the assessments in his 345-page report that questioned Biden’s age and mental competence.” *See, e.g.,* Zeke Miller

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<sup>11</sup> Available at <https://abcnews.go.com/Politics/president-biden-reacts-special-counsels-comments-memory/story?id=107083455>.

<sup>12</sup> Available at <https://www.bloomberg.com/news/articles/2024-02-09/biden-assails-special-counsel-for-questioning-his-mental-acuity>.

et al., *Congressional hearing on the Biden classified documents probe turns into a proxy campaign battle*, AP (Mar. 13, 2024).<sup>13</sup>

25. That same day, DOJ and Congress released transcripts of Biden’s interview with Hur. *Id.* Those transcripts “provide[] a fuller picture of the five-hour conversation between the two and context around some of the statements that appeared in the report,” including that “[w]hile the president did stumble over some dates and facts, he recalled many others clearly, frequently describing events or details from years ago.” *See, e.g.,* Kaia Hubbard & Robert Legare, *Robert Hur defends special counsel report at tense House hearing on Biden documents probe*, CBS News (Mar. 12, 2024).<sup>14</sup>

26. During the hearing, Rep. Jim Jordan questioned Hur about “the audio tapes of the people you interviewed during your investigation” and asked, “Is there any reason you can see why the American people and their representatives in the United States Congress should not have access to those tapes?” Hur responded: “What I can tell you is that my assessment that went into my conclusions that I describe in my report was based not solely on the transcript. It was based on all of the evidence, including the audio recordings,” and that “the audio recordings were part of the evidence, of course, that I considered in coming to my conclusions.” *See Former Special Counsel Hur Testifies on Biden Classified Documents Report at 3:33:09 – 3:34:45, C-SPAN* (Mar. 12, 2024).<sup>15</sup>

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<sup>13</sup> Available at <https://apnews.com/article/classified-documents-biden-hur-special-counsel-122526da6d89d7bf4d6ccfc54590312b>.

<sup>14</sup> Available at <https://www.cbsnews.com/news/special-counsel-robert-hur-testify-house-biden-documents-report/>.

<sup>15</sup> Available at <https://www.c-span.org/video/?534073-1/special-counsel-hur-testifies-biden-classified-documents-report-part-1>.

### **CNN's FOIA Request**

27. On February 16, 2024, CNN submitted multiple FOIA requests to DOJ for records related to Hur's investigation. One of those requests, assigned tracking number FOIA-2024-01345, sought in part "[a]ny video and audio recordings from the SCO's interview with President Joe Biden on October 8 and 9, 2023, as well as the transcript of the interview."

28. In correspondence with DOJ via email on March 14-15, 2024, CNN agreed to narrow that request (the "CNN Request") to seek only the "video and audio recordings" of the Hur/Biden interview, and DOJ agreed to "consider this request to be [CNN's] top priority." A true and correct copy of this correspondence is attached hereto as Exhibit A.

29. On March 15, 2024, DOJ notified CNN that the CNN Request "require[s] a search in and/or consultation with another Office," and, as a result, the request "falls within 'unusual circumstances'" such that DOJ "need[s] to extend the time limit to respond to [CNN's] request beyond the ten additional days provided by the statute." A true and correct copy of DOJ's letter is attached hereto as Exhibit B.

30. To date, DOJ has not produced any records responsive to the CNN Request.

31. To date, DOJ has not informed CNN as to the scope of the records, if any, that the agency will produce in response to the CNN Request.

32. To date, DOJ has not provided a timetable for the production of any records in response to the CNN Request.

### **CLAIM FOR RELIEF**

#### **COUNT I**

#### **Declaratory and Injunctive Relief: Constructive Denial in Violation of FOIA, 5 U.S.C. § 552**

33. CNN realleges and incorporates by reference all previous paragraphs as if fully set forth herein.



34. FOIA provides this Court with “jurisdiction to enjoin [an] agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” 5 U.S.C. § 552(a)(4)(B).

35. The withheld records that CNN seeks, which are the subject of the CNN Request, are agency records within DOJ’s control.

36. DOJ received the CNN Request on February 16, 2024. *See* Ex. B at 1.

37. Pursuant to FOIA, DOJ was required to make and communicate to CNN a “determination” on its request no later than March 18, 2024. 5 U.S.C. § 552(a)(6)(A)(ii).

38. Even with the ten additional working days that FOIA provides for agencies to respond in “unusual circumstances,” 5 U.S.C. § 552(a)(6)(B)(i), DOJ was required to make and communicate to CNN a “determination” on its request no later than April 1, 2024.

39. To date, DOJ has not made and communicated to CNN a “determination” on the CNN Request within the meaning of 5 U.S.C. § 552(a)(6)(A)(ii).

40. DOJ has instead failed to respond to the CNN Request, and thus constructively denied it.

41. DOJ has not cited any basis under FOIA for withholding, in whole or in part, the interview recordings that CNN has requested. Nor could any FOIA exemption apply to those records given that DOJ has already released the corresponding interview transcripts. DOJ has wrongfully withheld these agency records in violation of FOIA.

42. CNN requests a declaratory judgment that DOJ has violated FOIA and that CNN is entitled to immediately receive the requested records.

43. CNN further requests that, pursuant to 5 U.S.C. § 552(a)(4)(B), the Court issue an injunction directing DOJ to produce the requested records in full and setting a deadline for compliance.

**REQUEST FOR RELIEF**

WHEREFORE, CNN respectfully requests that this Court:

- A. Declare DOJ's failure to provide responsive records unlawful under FOIA;
- B. Enter an injunction, pursuant to 5 U.S.C. § 552(a)(4)(B), directing DOJ to make the requested records available to CNN without further delay, and setting a deadline for compliance;
- C. Provide for expeditious proceedings in this action;
- D. Award CNN its costs and reasonable attorneys' fees incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- E. Grant such other and further relief as the Court may deem just and proper.

Dated: April 4, 2024

Respectfully submitted,

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