

House Calendar No. 79

118TH CONGRESS }
2d Session } HOUSE OF REPRESENTATIVES { REPORT
118-533

RESOLUTION RECOMMENDING THAT THE HOUSE OF REPRESENTATIVES
FIND UNITED STATES ATTORNEY GENERAL MERRICK B. GARLAND IN
CONTEMPT OF CONGRESS FOR REFUSAL TO COMPLY WITH A SUBPOENA
DULY ISSUED BY THE COMMITTEE ON OVERSIGHT AND ACCOUNT-
ABILITY

MAY 31, 2024. Referred to the House Calendar and ordered to be printed

Mr. COMER, from the Committee on Oversight and Accountability,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

The Committee on Oversight and Accountability (Oversight Committee), having considered this Report, reports favorably thereon and recommends that the Report be approved.

The form of the Resolution that the Oversight Committee would recommend to the House of Representatives citing Merrick B. Garland, Attorney General, U.S. Department of Justice, for contempt of Congress pursuant to this Report is as follows:

Resolved, That Merrick B. Garland, Attorney General, U.S. Department of Justice, shall be found to be in contempt of Congress for failure to comply with a congressional subpoena.

Resolved, That pursuant to 2 U.S.C. §§ 192 and 194, the Speaker of the House of Representatives shall certify the report of the Oversight Committee, detailing the refusal of Merrick B. Garland, Attorney General, U.S. Department of Justice, to produce documents, records, and materials to the Oversight Committee as directed by subpoena, to the United States Attorney for the District of Columbia, to the end that Attorney General Merrick B. Garland be proceeded against in the manner and form provided by law.

Resolved, That the Speaker of the House shall otherwise take all appropriate action to enforce the subpoena.

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Executive Summary

In the weeks following the February 5, 2024, release of Special Counsel Robert K. Hur’s report, the three House Committees conducting an impeachment inquiry to determine whether to draft articles of impeachment against President Joseph R. Biden¹ engaged with the Department of Justice to obtain a limited set of documents and records related to the report. After the Department declined to provide the Committees with the relevant documents and records, the Committee on the Judiciary (Judiciary Committee) and the Oversight Committee issued identical subpoenas on February 27, 2024, to Attorney General Merrick B. Garland compelling production of four specific categories of documents and records, including audio and video recordings of Special Counsel Hur’s interviews with President Biden and his ghostwriter, Mark Zwonitzer.² The Oversight Committee subpoenaed these materials for several reasons—including to determine whether sufficient grounds exist to draft articles of impeachment against President Biden for consideration by the full House of Representatives and to determine if legislation is needed to ensure that federal agencies, including the National Archives and Records Administration (NARA), adequately account for records and documents meant to be returned to the federal government upon an executive branch employee’s departure from office.

During Special Counsel Hur’s investigation, his team uncovered evidence that President Biden “willfully retained and disclosed classified materials after his vice presidency when he was a private citizen.”³ Special Counsel Hur found that then-Vice President Biden had “strong motivations” to flout the rules for properly handling classified materials.⁴ In particular, Special Counsel Hur observed that “months before leaving office” as vice president, President Biden decided to write a book for “an advance of \$8 million.”⁵ The classified materials retained by President Biden were an “in-

¹H.R. Res. 918, 118th Cong. (2023).

²Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, and Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability, to Hon. Merrick B. Garland, Att’y Gen., U.S. Dep’t of Justice (Feb. 27, 2024) (hereinafter “Subpoena Letter”).

³REPORT 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., SPECIAL COUNSEL ROBERT K. HUR, U.S. DEP’T OF JUSTICE AT 1 (Feb. 2024) (hereinafter “Hur Report”).

⁴*Id.* at 231.

⁵*Id.* at 141, 231.

valuable resource that he consulted liberally” while writing his book so that he could give his ghostwriter “raw material . . . detailing meetings and events that would be of interest to prospective readers and buyers of his book.”⁶ Additionally, Special Counsel Hur observed that President Biden viewed the classified materials “as an irreplaceable contemporaneous record of some of the most important moments of his vice presidency[,]” which “was valuable to him for many reasons, including to help defend his record and buttress his legacy as a world leader.”⁷ Despite this evidence, Special Counsel Hur ultimately concluded that no criminal charges were warranted.⁸

President Biden has vehemently denied the findings in Special Counsel Hur’s report and he and his legal team have attempted to frame Special Counsel Hur’s mention of President Biden’s poor memory as “gratuitous.”⁹ Yet during his testimony before the Committee, Special Counsel Hur stated that, “[t]he evidence and the President himself put his memory squarely at issue.”¹⁰ In his report, Special Counsel Hur noted that, during both his and Zwonitzer’s interviews with President Biden, the President’s “memory was significantly limited,” and he “struggl[ed] to remember events and strain[ed] at times to read and relay his own notebook entries.”¹¹ Special Counsel Hur also observed that President Biden “did not remember when he was vice president, forgetting on the first day of the interview when his [vice presidential] term ended,” and “did not remember, even within several years, when his son Beau died.”¹²

The Department continues to withhold key material responsive to the subpoenas from the Oversight and Judiciary Committees—specifically the audio recordings of Special Counsel Hur’s interviews with President Biden and Zwonitzer. Its failure to fully comply with the Committees’ subpoenas has hindered the House’s ability to adequately conduct oversight over Special Counsel Hur regarding his investigative findings and the President’s retention and disclosure of classified materials and impeded the Committees’ impeachment inquiry.

Authority and Purpose

The Constitution vests the House of Representatives with the “sole Power of Impeachment”¹³ and provides that the “President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Trea-

⁶*Id.* at 231.

⁷*Id.* at 231–32.

⁸*Id.* at 345.

⁹Rebecca Beitsch, et al., *Special counsel overstepped mandate with ‘gratuitous’ Biden slams, say ex-DOJ Dems*, THE HILL (Feb. 12, 2024) (“When the inevitable conclusion is that the facts and the evidence don’t support any charges,” said Ian Sams, a spokesman for the White House’s special counsel office, “you’re left to wonder why this report spends time making gratuitous and inappropriate criticisms of the president.”); see Letter from Mr. Richard Sauber, Special Counsel to the President, The White House, and Mr. Bob Bauer, Personal Counsel to Joseph R. Biden, Jr., to Mr. Bradley Weinsheimer, Assoc. Deputy Att’y Gen., U.S. Dep’t of Justice at 2–3 (Feb. 12, 2024) (“This is the very definition of a derogatory comment . . .”).

¹⁰Hearing on the Report of Special Counsel Robert Hur: Hearing Before the H. Comm. on the Judiciary, 118th Cong. 17 (2024) (statement of Special Counsel Robert K. Hur, U.S. Dep’t of Justice) (hereinafter “Hearing on Hur Report”).

¹¹Hur Report, *supra* note 3, at 5, 207.

¹²*Id.* at 208.

¹³U.S. CONST. art. I, §2, cl. 5.

son, Bribery, or other high Crimes and Misdemeanors.”¹⁴ As the U.S. Court of Appeals for the District of Columbia Circuit has stated, “[t]o level the grave accusation that a President may have committed ‘Treason, Bribery, or other high Crimes and Misdemeanors,’ U.S. Const. art. II, §4, the House must be appropriately informed.”¹⁵ Congress’s authority to access information during an impeachment investigation is broader in certain instances than in a purely legislative investigation,¹⁶ a fact that the executive branch traditionally has recognized.¹⁷ Investigating and collecting all relevant evidence is the traditional means by which the House begins an impeachment inquiry.¹⁸ Indeed, conducting an impeachment inquiry without all pertinent evidence would be an affront to the Constitution and irreparably damage public faith in the impeachment process.¹⁹

On September 27, 2023, pursuant to the directive of the Speaker, the Chairs of three House Committees (the Oversight, Judiciary, and Ways and Means Committees) released a memorandum setting forth the justification for and scope of the inquiry into whether sufficient grounds exist to draft articles of impeachment against President Biden.²⁰ On December 13, 2023, the House of Representatives adopted House Resolution 918, directing these three Committees to continue the ongoing impeachment inquiry.²¹ By approving House Resolution 918, the House also adopted House Resolution 917,²² which provided that “[t]he authority provided by clause 2(m) of Rule XI of the Rules of the House of Representatives to the Chairs

¹⁴*Id.* art. II, § 4.

¹⁵*Comm. on Judiciary of U.S. House of Representatives v. McGahn*, 968 F.3d 755, 765 (D.C. Cir. 2020) (en banc).

¹⁶TODD GARVEY, CONG. RSCH. SERV.: LEGAL SIDEBAR, 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 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”).

¹⁷*See* GARVEY, *supra* note 16 (“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.”).

¹⁸*See, e.g.*, H.R. Rep. No. 116–346, at 28 (2019) (“Here, consistent with historical practice, the House divided its impeachment inquiry into two phases, first collecting evidence and then bringing that evidence before the Judiciary Committee for its consideration of articles of impeachment.”); H.R. Rep. No. 111–427, at 7 (2010) (“[T]he impeachment inquiry was referred by the Committee on the Judiciary to a Task Force on Judicial Impeachment . . . , comprised of 12 Committee Members, to conduct the investigation.”). *See also Hearing on the Basis for the Impeachment Inquiry of President Joseph R. Biden: Before the H. Comm. on Oversight & Accountability*, 118th Cong. (Sept. 28, 2023) (statement of Jonathan Turley, Professor, The George Washington University Law School); Memorandum from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability, and Rep. Jason Smith, Chairman, H. Comm. on Ways & Means, to Members of the H. Comm. on the Judiciary, H. Comm. on Oversight & Accountability, and H. Comm. on Ways & Means (Sept. 27, 2023) (hereinafter “Sept. 27 Memo”).

¹⁹*See In re Application of Comm. on 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.”).

²⁰Sept. 27 Memo, *supra* note 18.

²¹H.R. Res. 918, 118th Cong. (2023).

²²H.R. Res. 917, 118th Cong. (2023).

of the Committees . . . included, from the beginning of the existing House of Representatives impeachment inquiry . . . and continues to include, so long as the impeachment inquiry is ongoing, the authority to issue subpoenas on behalf of such Committees for the purpose of furthering the impeachment inquiry.”²³

The subpoenas issued to the Department by the Oversight and Judiciary Committees are part of the House’s impeachment inquiry. As explained in detail below, the requested documents and materials are necessary to determine whether sufficient grounds exist to draft articles of impeachment against President Biden.

However, the impeachment inquiry is not the only purpose underlying the Oversight Committee’s subpoena; it was also issued pursuant to the Committee’s authority to conduct legislative oversight.²⁴ Article I of the Constitution vests in Congress a “broad” and “indispensable” power to conduct oversight and investigations that “encompasses inquiries into the administration of existing laws, studies of proposed laws, and surveys in our social, economic or political system for the purpose of enabling Congress to remedy them.”²⁵ Pursuant to the Rules of the House of Representatives, the Oversight Committee has broad authority to investigate “any matter” at “any time,” and specific legislative jurisdiction over the management of government operations and activities, NARA, and public information and records.²⁶ The House Rules also charge the Oversight Committee with reviewing and studying the operation of government activities at all levels, including the Executive Office of the President.²⁷

To further the Committee’s constitutionally mandated oversight and legislative duties, the Committee must ensure compliance with duly authorized congressional subpoenas. As the principal investigatory committee of the U.S. House of Representatives, the Oversight Committee has authority to investigate the Special Counsel’s activities with respect to President Biden.²⁸ The Committee on Oversight and Accountability is the principal oversight committee of the U.S. House of Representatives. In addition, the Committee is investigating matters that are necessary to consider potential legislative reforms. These potential legislative reforms may include, among other things, assessing whether additional requirements are necessary to properly account for sensitive or classified materials in the possession of executive branch officials and whether reforms are necessary to the Presidential Records Act and Federal Records Act to ensure sensitive or classified materials are not accessed by unauthorized parties. The Oversight Committee is considering whether certain federal agencies, such as NARA, require reform to

²³ *Id.*

²⁴ See Rules of the U.S. House of Representatives, R. XI, cl. 2(m)(1) (2023) (providing that “a committee or subcommittee is authorized . . . (B) to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as it considers necessary”); Rules of the H. Comm. on Oversight & Accountability, R. 12(g) (“The Chair of the Committee shall . . . [a]uthorize and issue subpoenas as provided in House Rule XI, clause 2(m), in the conduct of any investigation or activity or series of investigations or activities within the jurisdiction of the Committee.”); Rules of the H. Comm. on the Judiciary, R. IV(a) (“A subpoena may be authorized and issued by the Chair, in accordance with clause 2(m) of rule XI of the House of Representatives, in the conduct of any investigation or activity or series of investigations or activities within the jurisdiction of the Committee, following consultation with the Ranking Minority Member.”).

²⁵ *Watkins v. United States*, 354 U.S. 178, 187, 215 (1957).

²⁶ Rules of the House of Representatives, R. X, 118th Cong. (2023).

²⁷ *Id.*

²⁸ See *id.*

adequately account for records and documents meant to be returned to the federal government upon an executive branch employee's departure from office. The Oversight Committee has conducted transcribed interviews of witnesses related to this investigation and has sought additional transcribed interviews with current White House officials. The Committee has issued a subpoena to the former White House counsel who was involved in the mishandling of classified documents.²⁹ The evidence the Department is withholding will provide insight necessary to further the Oversight Committee's legislative goals.

Background on the Investigation

According to the report of Special Counsel Robert K. Hur, in November 2022, Patrick Moore, one of President Biden's personal attorneys, discovered 44 pages of documents "classified up to the Top Secret level" stemming from his tenure as Vice President at President Biden's office in Washington, D.C., located at the Penn Biden Center.³⁰ Moore notified Bob Bauer, who then notified White House Counsel Stuart Delery.³¹ The same day, the White House Counsel's Office passed the information along to NARA, which retrieved the documents, and referred the case to the Department, and on November 9, the Federal Bureau of Investigation (FBI) "opened an initial assessment to begin investigating the matter."³² Additionally, between December 2022 and January 2023, Bauer and another Biden personal counsel, Jennifer Miller, discovered additional classified materials, also from his tenure as Vice President, in the garage, basement den, and office of President Biden's personal residence in Wilmington, Delaware.³³ Between January and June 2023, FBI agents located additional materials with classification markings in two locations at the University of Delaware.³⁴

After receiving notification from NARA of the discovery of classified documents at the Penn Biden Center, on November 14, 2022, Attorney General Garland assigned John Lausch, then the U.S. Attorney for the Northern District of Illinois, to lead an investigation into President Biden's retention of classified materials and "assess whether the Attorney General should appoint a special counsel to investigate the matter."³⁵ After further discoveries of classified material at President Biden's home and the University of Delaware, Lausch determined that the appointment of a special counsel was necessary.³⁶

Accordingly, on January 12, 2023, Attorney General Garland appointed Robert K. Hur to serve as special counsel to investigate whether President Biden unlawfully retained classified information

²⁹The Oversight Committee conducted a transcribed interview of Kathy Chung on Apr. 4, 2023. Additionally, the Oversight Committee has interviewed employees of Penn Biden Center related to its investigation. In a pattern of obstructionist efforts, the White House has refused to allow Dana Remus, President Biden's former White House Counsel, and other White House employees to testify during its investigation. The Department appears to be as recalcitrant as the White House regarding President Biden's mishandling of classified materials.

³⁰Hur Report, *supra* note 3, at 19–20 (The classification marks on the documents "dat[ed] to [President Biden]'s vice presidency.").

³¹*Id.*

³²*Id.*

³³*Id.* at 24–25.

³⁴*Id.* at 28.

³⁵*Id.* at 21.

³⁶*Id.* at 26.

when he left office after the vice presidency.³⁷ During his investigation, Special Counsel Hur conducted 173 interviews of 147 witnesses, including President Biden himself and his memoir ghost-writer, Mark Zwonitzer.³⁸ Special Counsel Hur collected over seven million documents, including e-mails, text messages, photographs, videos, toll records, and other materials from both classified and unclassified sources.³⁹ On February 8, 2024, Attorney General Garland released Special Counsel Hur’s 375-page report, which concluded that although there was evidence that President Biden had “willfully retained and disclosed classified materials . . . when he was a private citizen,”⁴⁰ criminal charges were not warranted because, among other things, President Biden is an “elderly man with a poor memory.”⁴¹

As a part of the Committees’ inquiry into whether sufficient grounds exist to draft articles of impeachment against President Biden, the Committees have sought information regarding President Biden’s mishandling of classified information.⁴² The Committees have sought this information to determine whether President Biden willfully retained classified information and documents related to, among other places, Ukraine to assist his family’s business dealings or to enrich his family.⁴³ Doing so would be an abuse of his office of public trust.

Evidence gathered during the Committees’ impeachment inquiry raises the prospect that President Biden willfully retained classified information relating to his family’s business dealings in Ukraine. Then-Vice President Biden served as the “point man” for the Obama Administration’s anti-corruption efforts in Ukraine at the same time that his son, Hunter Biden, served on the board of a notoriously corrupt Ukrainian energy company.⁴⁴ By 2015, Ukrainian prosecutors had opened an “unlawful enrichment” investigation into Burisma’s owner, Mykola Zlochevsky.⁴⁵ Mr. Zlochevsky informed Hunter Biden that the investigations placed significant pressure on the company and asked Hunter Biden if he could help alleviate such pressure.⁴⁶ Testimony provided to the Oversight Committee shows that Hunter Biden subsequently “called D.C.”⁴⁷ After this phone call, while traveling to Ukraine in December 2015, Vice President Biden “‘called an audible’—he changed the plan” in Ukraine by conditioning a \$1 billion loan

³⁷ *Id.*

³⁸ *Id.* at 29.

³⁹ *Id.*

⁴⁰ *Id.* at 1.

⁴¹ *Id.* at 219.

⁴² See Subpoena Letter, *supra* note 2; Letter from Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability; Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary; Jason Smith, Chairman, H. Comm. on Ways & Means, to Merrick Garland, Att’y Gen., Dep’t of Justice (Feb. 12, 2024) (hereinafter “Feb. 12 Letter”); Letter from Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability, to Robert K. Hur, Special Counsel, Dep’t of Justice (Oct. 16, 2023).

⁴³ *Id.*

⁴⁴ Alan Cullison, *Bidens in Ukraine: An Explainer*, WALL ST. J. (Sept. 22, 2019).

⁴⁵ Paul Sonne, et al., *The gas tycoon and the vice president’s son: The story of Hunter Biden’s foray into Ukraine*, WASH. POST (Sept. 28, 2019).

⁴⁶ Transcribed Interview of Mr. Devon Archer at 33–34 (July 31, 2023), available at https://oversight.house.gov/wp-content/uploads/2024/02/Hunter-Biden-Transcript_Redacted.pdf.

⁴⁷ *Id.* at 36.

guarantee on the ouster of Ukrainian Prosecutor General Viktor Shokin.⁴⁸

Special Counsel Hur's report shows that at least two documents, identified in the report as "A9" and "A10," which were made available to the Committees *in camera*, concerned President Biden's 2015 interactions with the Ukrainian government.⁴⁹ According to Special Counsel Hur, document "A9" was "a [t]elephone [c]all [s]heet setting forth the purpose of and talking points for a call with Ukrainian Prime Minister Yatsenyuk," and document "A10" was a "document in the format of a transcript documenting the substance of a December 11, 2015[,] call between [Vice President] Biden and Ukrainian Prime Minister Yatsenyuk."⁵⁰ Given that Hunter Biden's business dealings in Ukraine were still active when Joe Biden left the vice presidency, President Biden's retention of these classified documents raises questions about whether he purposefully took them when he left office in order to benefit his family.

There is also the prospect that President Biden in general willfully retained classified documents in order to enrich himself and his family. President Biden's 2017 memoir, *Promise Me, Dad*, discussed, among other things, President Biden's thoughts on foreign policy.⁵¹ While working with Zwonitzer on his memoir, President Biden read from classified materials "nearly verbatim," and such classified materials included "meeting notes summariz[ing] the actions and views of U.S. military leaders and the CIA Director relating to a foreign country," "notebook entries related to many classified meetings, including National Security Council meetings, CIA briefings, Department of Defense briefings, and other meetings and briefings with foreign policy officials."⁵² Notably, Special Counsel Hur's report found that President Biden received an advance of \$8 million to produce a memoir.⁵³ To the extent that President Biden willfully took classified information when he left office in order to help him write a book and make a large amount of money for himself and his family, that could constitute an abuse of his office of public trust.

On February 12, 2024, approximately four days after the release of Special Counsel Hur's report, the Chairs of the Oversight Committee, the Judiciary Committee, and the Committee on Ways and Means sent a letter to Attorney General Garland requesting four categories of documents and records: (1) all documents and communications, including audio and video recordings, related to the Special Counsel's interview of President Biden; (2) all documents and communications, including audio and video recordings, relating to the Special Counsel's interview of 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, including the Office of the Special Counsel, the

⁴⁸ Glenn Kessler, *Inside VP Biden's linking of a loan to a Ukraine prosecutor's ouster*, WASH. POST (Sept. 15, 2023).

⁴⁹ Hur Report, *supra* note 3, at A-2.

⁵⁰ *Id.*

⁵¹ *See, e.g., id.* at 97.

⁵² *Id.* at 97-106.

⁵³ *Id.* at 141.

Executive Office of the President, and President Biden’s personal counsel referring or relating to Special Counsel Hur’s report.⁵⁴

On February 16, 2024, the Department responded to the Committees’ February 12 letter but failed to produce any of the requested material—stating, instead, that it was “working to gather and process” responsive documents.⁵⁵ The Department offered no timeframe or commitment for the production of requested documents and information.⁵⁶ Accordingly, on February 27, 2024, the Oversight and Judiciary Committees issued identical subpoenas to Attorney General Garland compelling the production of the four categories of materials:

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.⁵⁷

The subpoenas set a return date of March 7, 2024. On that date, the Department produced an incomplete set of documents comprising only correspondence exchanged between President Biden’s legal counsel and the Department, along with an offer to review two classified documents *in camera*.⁵⁸ Two days later, the Committees notified the Department that its initial production in response to the subpoenas was inadequate.⁵⁹ In this letter, the Committees specifically noted that the Department had failed to produce unredacted transcripts and audio recordings of Special Counsel Hur’s interviews of President Biden or Zwonitzer.⁶⁰ Because Special Counsel Hur was scheduled to testify in front of the Judiciary Committee on March 12, 2024, the Committees offered to accept a production of all materials responsive to the Committees’ subpoenas by March 11, 2024, at 3:00 p.m.⁶¹ The Department failed to comply with the Committees’ revised deadline,⁶² and instead in-

⁵⁴ Feb. 12 Letter, *supra* note 42.

⁵⁵ 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).

⁵⁶ *Id.*

⁵⁷ Subpoena Letter, *supra* note 2.

⁵⁸ Letter from Hon. Carlos F. Uriarte, Assistant Att’y Gen., Office of Legislative Affairs, U.S. Dep’t of Justice, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (Mar. 7, 2024); Letter from Hon. Carlos F. Uriarte, Assistant Att’y Gen., Office of Legislative Affairs, U.S. Dep’t of Justice, to Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability (Mar. 7, 2024); DOJ–HJC–HUR–0000001–0000032.

⁵⁹ Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, and Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability, to Hon. Merrick B. Garland, Att’y Gen., U.S. Dep’t of Justice (Mar. 9, 2024) (hereinafter “Mar. 9 Letter.”).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Letter from Hon. Carlos F. Uriarte, Assistant Att’y Gen., Office of Legislative Affairs, U.S. Dep’t of Justice, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (Mar. 12, 2024);

formed the Committees that an “interagency review” for classified and confidential information was pending.⁶³

Next, a little more than two hours before Special Counsel Hur’s scheduled testimony in front of the Judiciary Committee on the morning of March 12, 2024, the Department produced to the Committees two redacted transcripts of Special Counsel Hur’s interviews with President Biden.⁶⁴ Significantly, the Department failed to produce the audio recordings of the interviews. In its letter accompanying the two redacted transcripts, which was transmitted to the Committees at approximately 7:45 a.m., the Department represented to the Committees that it had just completed the “standard interagency review process” earlier that morning, thereby allowing the material to be released.⁶⁵ Despite the Department’s representation, however, it was apparent that several news outlets had received and reviewed the transcripts before they were produced to the Committees.⁶⁶

The Committees next wrote to Attorney General Garland on March 25, 2024, regarding the Department’s continued withholding of material responsive to the Committees’ subpoenas, particularly the audio recordings of Special Counsel Hur’s interviews with President Biden and the transcripts and audio recordings of Special Counsel Hur’s interviews with Zwonitzer.⁶⁷ The letter again reminded Attorney General Garland about the legal obligations imposed upon him by the Committees’ subpoenas and directed him to produce all responsive materials no later than 12:00 p.m. on April 8, 2024 to avoid further action on this matter, including the invocation of contempt of Congress proceedings.⁶⁸

The Department replied on April 8, 2024, but again flouted the Committees’ subpoenas, choosing instead to produce only the transcripts of Special Counsel Hur’s two interviews with Zwonitzer, but not the audio recordings.⁶⁹ In a letter to the Committees, the Department explained why it decided to withhold the audio recordings—not because of any applicable legal privilege, but instead based on the Department’s unfounded accusations regarding the Committees’ motives and its self-interested determination that the audio recordings were “cumulative” of other material already produced.⁷⁰ Rather than engaging with the Committees and addressing their articulated reasons for seeking the audio recordings, the

Letter from Hon. Carlos F. Uriarte, Assistant Att’y Gen., Office of Legislative Affairs, U.S. Dep’t of Justice, to Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability (Mar. 12, 2024) (collectively “March 12 Letters”).

⁶³ *Id.*

⁶⁴ Email from Office Staff, Office of Legislative Affairs, Dep’t of Justice, to Comm. Staff, H. Comm. on Oversight & Accountability (Mar. 12, 2024, 7:48 a.m.); Email from Office Staff, Office of Legislative Affairs, Dep’t of Justice, to Comm. Staff, H. Comm. on Oversight & Accountability (Mar. 12, 2024, 7:52 a.m.); Email from Office Staff, Office of Legislative Affairs, Dep’t of Justice, to Comm. Staff, H. Comm. on Oversight & Accountability (Mar. 12, 2024, 7:53 a.m.).

⁶⁵ March 12 Letters, *supra* note 62.

⁶⁶ Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, and Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability, to Hon. Merrick B. Garland, Att’y Gen., U.S. Dep’t of Justice (Apr. 15, 2024) (hereinafter “Apr. 15 Letter”).

⁶⁷ Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, and Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability, to Hon. Merrick B. Garland, Att’y Gen., U.S. Dep’t of Justice (Mar. 25, 2024).

⁶⁸ *Id.*

⁶⁹ Letter from Hon. Carlos F. Uriarte, Assistant Att’y Gen., U.S. Dep’t of Justice, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, and Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability (Apr. 8, 2024) (hereinafter “Apr. 8 Letter”); DOJ–HJC–HUR–0000291–556.

⁷⁰ Apr. 8 Letter, *supra* note 69.

Department took it upon itself to dictate to the Committees what materials fulfilled the House’s informational needs.⁷¹

The Committees addressed the Department’s excuses for failing to comply with the subpoenas in a subsequent letter to Attorney General Garland dated April 15, 2024, writing that his response to the subpoenas suggests he is “withholding records for partisan purposes and to avoid political embarrassment for President Biden.”⁷² In that letter, the Committees rejected the Department’s unsupported assertion that the audio recordings were “cumulative,” explaining how audio recordings are materially distinct from written transcripts and reminding the Attorney General that federal courts have held that Congress requires “all relevant evidence” in an impeachment inquiry.⁷³ The Committees also pointed out that the Department has asserted no constitutional or legal privilege shielding the disclosure of the audio recordings and that any applicable privilege had been waived by the release of the written transcripts to the media.⁷⁴ The Committees also rejected the Department’s unsupported speculation about the Committees’ motives for obtaining the audio recordings, explaining their evidentiary value and highlighting the Department’s hypocritical insistence on a standard of compliance here that it would never allow for a private party.⁷⁵ The Committees offered the Department until April 25 to produce the withheld materials or else they would consider invoking contempt of Congress proceedings.⁷⁶

The Department again refused to comply. On April 25, 2024, the Department responded to the Committees’ letter and argued, among other things, that the Committees “have not articulated a legitimate congressional need to obtain audio recordings from Mr. Hur’s investigation[,]” and that releasing the audio recordings “would harm law enforcement and the evenhanded administration of justice” because it “would compound the likelihood that future prosecutors will be unable to secure th[e] level of cooperation” that was important to Special Counsel Hur’s investigation.⁷⁷

The Attorney General’s Failure to Produce the Subpoenaed Records Warrants Contempt

The Committees have articulated the impeachment and legislative purposes for their subpoenas to the Attorney General. The Department, at the Attorney General’s direction, continues to withhold relevant records that have been subpoenaed—despite the Committees’ repeated attempts to explain the valid basis for seeking the records.

In the two months since the Committees’ initial requests to the Department, and following the release of Special Counsel Hur’s report, the Department has produced only five letters from President Biden’s White House and personal counsel to the Department, one letter from the Department to President Biden’s White House and

⁷¹ *Id.*

⁷² Apr. 15 Letter, *supra* note 66.

⁷³ *Id.* at 2–3.

⁷⁴ *Id.* at 3.

⁷⁵ *Id.* at 4.

⁷⁶ *Id.*

⁷⁷ Letter from Hon. Carlos F. Uriarte, Assistant Att’y Gen., U.S. Dep’t of Justice, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, and Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability (Apr. 25, 2024) (internal quotation marks omitted).

personal counsel, redacted transcripts of Special Counsel Hur's two interviews with President Biden, and redacted transcripts of Special Counsel Hur's two interviews with Zwonitzer. Additionally, the Department has made available two classified documents in camera to the Committees.

The Department's production of letters and redacted transcripts does not relieve it of its obligation to produce all responsive records, including the audio recordings of Special Counsel Hur's interviews with President Biden and Zwonitzer.⁷⁸ During his "dozens of hours of interviews with Zwonitzer," President Biden "read from notebook entries related to many classified meetings[.]"⁷⁹ Further, the boxes of documents discovered in President Biden's personal possession included classified materials regarding foreign policy issues in, among other places, Ukraine, China, Iraq, Afghanistan, Pakistan, and Egypt.⁸⁰ In his interviews with Special Counsel Hur, President Biden discussed some of these and other foreign policy issues as well as the retention and handling of the documents containing some of this classified information.⁸¹ Similarly, Zwonitzer discussed President Biden's description and recollection of these issues during his interviews with Special Counsel Hur.⁸² Although the Department has produced transcripts of President Biden's and Zwonitzer's interviews with Special Counsel Hur, it has failed to produce the audio recordings of the interviews.

The audio recordings of Special Counsel Hur's interviews of President Biden and Zwonitzer are of superior evidentiary value regarding the specific issues the Committees are investigating. While the text of the Department-created transcripts purport to reflect the words uttered during these interviews, they do not reflect important verbal context, such as tone or tenor, or nonverbal context, such as pauses or pace of delivery. For instance, when interviewed, a subject's pauses and inflections can provide indications of a witness's ability to recall events, or whether the individual is intentionally giving evasive or nonresponsive testimony to investigators. The verbal nuances in President Biden's answers about his mishandling of classified information would assist the Committees' inquiry into whether he abused his office of public trust for his family's financial gain. In short, the audio recordings would offer unique and important information to advance the Committees' impeachment inquiry.

Moreover, contrary to the Department's assertion that the audio recordings are "cumulative" of the transcripts, an audio recording is the best evidence of a witness interview. Where audio recordings and transcripts diverge, because of "inflection in a speaker's voice, or by inaccuracies in the transcript," the audio recordings, not the transcripts, control.⁸³ Such a divergence does occur and, in fact, it

⁷⁸ Subpoena Letter, *supra* note 2; Mar. 9 Letter, *supra* note 59.

⁷⁹ Hur Report, *supra* note 3, at 106.

⁸⁰ *Id.* at A-1-22.

⁸¹ See Recorded Interview Between Special Counsel Robert K. Hur, et al., and President Joseph R. Biden, Jr., at 132-36, DOJ-HJC-HUR-0000164-68 (Oct. 8, 2023); see Recorded Interview Between Special Counsel Robert K. Hur, et al., and President Joseph R. Biden, Jr., at 31-32, 49-54, DOJ-HJC-HUR-0000222-23, 240-45 (Oct. 9, 2023).

⁸² See Recorded Interview Between Special Counsel Robert K. Hur, et al., and Mr. Mark Zwonitzer at 123-27, DOJ-HJC-HUR-0000413-17 (July 31, 2023); see Recorded Interview Between Special Counsel Robert K. Hur, et al., and Mr. Mark Zwonitzer at 42-47, DOJ-HJC-HUR-0000518-23 (Jan. 4, 2024).

⁸³ Don Zupanec, *Using Transcripts of Recordings as a Demonstrative Aid*, 23 No. 7 FED. LITIGATOR 13 (July 2008) ("The tape recording is evidence for you to consider. The transcript, how-

occurred very recently with President Biden. A video and audio recording taken of President Biden’s speech on April 24, 2024, reflects him reading a teleprompter instruction to pause, saying: “Imagine what we could do next. Four more years, *pause*.”⁸⁴ However, the official White House transcript of that same speech initially did not reflect that President Biden uttered the word “pause.”⁸⁵ In this case, the video and audio recording is the best evidence of the words that President Biden actually spoke.

While the Department has claimed that production of the audio recordings of Special Counsel Hur’s interviews with President Biden and Zwonitzer to the Committees is not necessary because “any information in [the audio] files that is relevant to the Committees” stated purposes is cumulative of the information” produced in the provided transcripts, the Department’s own actions cut against this view.⁸⁶ During Watergate, for example, the Department subpoenaed audio recordings of conversations between President Nixon and his advisors. Although the President publicly released more than 1,200 pages of edited transcripts of these conversations after the subpoena was issued, the Department maintained the subpoena for the audio recordings. In *United States v. Nixon*, the Supreme Court rejected President Nixon’s attempt to quash that subpoena, and its own actions demonstrate that it understands that audio recordings are not simply cumulative of transcripts produced by a party that is itself under investigation.⁸⁷

The audio recordings would also inform the Oversight Committee as to the need for additional reforms at NARA to account for records and documents meant to be returned by executive branch employees after leaving federal government. Special Counsel Hur’s interview with President Biden focused extensively on his handling of government documents during and after his vice presidency. For example, during Special Counsel Hur’s interview with President Biden, Special Counsel Hur asked about materials found in the President’s garage that he possessed after leaving the executive branch. The colloquy went as follows:

Mr. Hur: But do you remember how these materials got into this box and then how that box got into the garage?

President Biden: No, I don’t remember how it got—I don’t remember how a beat-up box got in the garage.

Mr. Hur: Okay. And do you remember how things like the Beau Iowa binder got into—

President Biden: No, I—

ever, is not evidence.”). See, e.g., *United States v. Hogan*, No. 2:06-CR-10, 2008 WL 2074112, at *1 (E.D. Tenn. May 14, 2008) (“[T]his Court will instruct the jury as to the limited use of the transcripts, as the transcripts are not the evidence but the audio recordings are the actual evidence.”).

⁸⁴ See Anders Hagstrom, *Biden appears to read script instructions out loud in latest teleprompter gaffe: ‘Four more years, pause,’* FOX NEWS (Apr. 24, 2024).

⁸⁵ See The White House, Remarks by President Biden at the North America’s Building Trades Union National Legislative Conference (Apr. 24, 2024), <https://web.archive.org/web/20240425002537/https://www.whitehouse.gov/briefing-room/speeches-remarks/2024/04/24/remarks-by-president-biden-at-the-north-americas-building-trades-unions-national-legislative-conference/> (“Folks, imagine what we can do next. Four . . . more years (inaudible).”). The White House subsequently updated the transcript after public attention on the omission. The White House, Remarks by President Biden at the North America’s Building Trades Union National Legislative Conference (Apr. 24, 2024), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2024/04/24/remarks-by-president-biden-at-the-north-americas-building-trades-unions-national-legislative-conference/>.

⁸⁶ Apr. 8 Letter, *supra* note 69, at 4.

⁸⁷ *U.S. v. Nixon*, 418 U.S. 683 (1974).

Mr. Hur:—this spot?

President Biden: Somebody must've, packing this up, just picked up all the stuff and put it in a box, because I didn't.

Mr. Hur: Okay. Do you have any idea where this material would've been before it got moved into the garage?

President Biden: Well, if it was 2013—when did I stop being Vice President?

Ms. Cotton: 2017.

President Biden: So I was Vice President. So it must've come from Vice President stuff. That's all I can think of.

Mr. Hur: So it does have some material in here that relate to your activities post-vice presidency,—

Mr. Hur:—like the Washington Speakers Bureau material. And there's also material in here that relates to the book, *Promise Me, Dad*, with Mark Zwonitzer. So there is some that dates after—

President Biden: See, that's what makes me think just people gathered up whatever they found, and whenever the last thing was being moved. So the stuff moving out of the Vice President's residence, at the end of the day, whatever they found, they put—they didn't separate it out, you know, Speakers Bureau and Penn or whatever the hell it is, or Beau. They just put it in a single box. That's the only thing I can think of.⁸⁸

This colloquy is just one example of how this interview is relevant to whether legislative reforms are necessary to ensure that materials are properly accounted for after executive branch officials, particularly high-ranking officials, leave office, and if so, what those reforms should be. And the best evidence of what was actually said during that interview is the audio recording required by the subpoena.

The Constitution does not permit the executive branch to dictate to Congress how to proceed with an impeachment inquiry or to conduct its oversight.⁸⁹ Rather, “congressional committees have significant discretion in how they approach an investigation[,]”⁹⁰ and, in the context of an impeachment inquiry, federal courts emphasize that Congress must possess all pertinent evidence.⁹¹ The Committees are engaged in an inquiry to assess whether to draft articles of impeachment against President Biden, who is the head of the ex-

⁸⁸ Recorded Interview Between Special Counsel Robert K. Hur, et al., and President Joseph R. Biden, Jr., at 146–47, DOJ–HCOA–HUR–0000178–79 (Oct. 8, 2023).

⁸⁹ See Linda D. Jellum, “Which Is to be Master,” *the Judiciary or the Legislature? When Statutory Directives Violate Separation of Powers*, 56 UCLA L. REV. 837, 884 (2009) (“Each branch of government deserves the autonomy necessary to carry out its functions within the constitutional scheme, and each branch should enjoy a protected sphere of control over its internal affairs. No branch should be able to regulate the inner workings of any other branch. Rather, each branch must be master in its own house.”) (cleaned up).

⁹⁰ TODD GARVEY, CONG. RSCH. SERV., COMMITTEE DISCRETION IN OBTAINING WITNESS TESTIMONY 2 (2023).

⁹¹ See *In re Application of Comm. on Judiciary*, 414 F. Supp. 3d 129, 176 (D.D.C. 2019) (“Impeachment based on anything less than all relevant evidence would compromise the public's faith in the process.”), *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) (“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.”).

ecutive branch of the federal government. The Committees are under no obligation to rely exclusively on transcripts created, refined, and produced by executive agencies subordinate to the President, especially when, as here, there exists superior evidence—audio recordings—that would ensure an accurate and complete record of the interviews. The Department’s refusal to produce the audio recordings amounts to a demand that the Committees trust that the Department-curated interview transcripts are accurate and complete, despite recent evidence of an executive branch entity manipulating a transcript of the President’s statements and only fixing the error after being caught.

On May 16, 2024, before the start of the Committee’s meeting to consider a resolution holding the Attorney General in contempt of Congress, letters from both Mr. Edward N. Siskel, Counsel to President Joe Biden, and the Justice Department arrived, informing the Committee that the President has asserted executive privilege over certain documents and materials covered by the subpoena.⁹² The Committee has numerous concerns about the validity of this assertion, including:

1. The President has waived executive privilege by releasing the contents of his interview with Special Counsel Hur to the media and public on or around March 11, 2024;
2. The assertion of privilege is three months late and, therefore, is not valid. To have been timely, any privilege should have been asserted by March 7, 2024, the subpoena return date, and;
3. Even if the privilege were valid, which it is not, it certainly has been overcome here, as: (i) the Committee has demonstrated a sufficient need for the audio recordings as they are likely to contain evidence important to the Committee’s inquiry and, (ii) the audio recordings sought cannot be obtained any other way. The audio recordings are uniquely in the possession of the Justice Department.

Further, President Biden has already waived any potential assertion of executive privilege over the information discussed in his interviews with Special Counsel Hur. This conclusion is consistent with *U.S. v. Mitchell*, which rejected a presidential claim of privilege over audio recordings including, as here, “portions of subpoenaed recordings which the President has caused to be reduced to transcript form and published.”⁹³ Mitchell concluded that “the privilege claimed [was] non-existent since the conversations are no longer confidential.”⁹⁴ Moreover, the Justice Department could have taken steps to protect the confidentiality of the transcripts, but failed to do so when they released them to the press prior to providing them to the Committee.

In Mr. Siskel’s letter to the Committee, the President did not set forth any valid reasons for invoking executive privilege. Instead, Mr. Siskel stated that the President “has a duty to safeguard the

⁹² Letter from Mr. Edward N. Siskel, Counsel to the President, to Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability, et al. (May 16, 2024) (hereinafter “Siskel Letter”); Letter from Asst. Att’y Gen. Carlos Felipe Uriarte, U.S. Dep’t of Justice, to Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability, and Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (May 16, 2024).

⁹³ See *U.S. v. Mitchell*, 377 F. Supp. 1326, 1330 (D.D.C. 1974) (citing *Nixon v. Sirica*, 487 F.2d 700, 718 (D.C. Cir. 1973)).

⁹⁴ See *id.*

integrity and independence of Executive Branch law enforcement functions and protect them from undue partisan influence that could weaken those functions in the future.”⁹⁵ Mr. Siskel also stated that “the Attorney General has warned that the disclosure of materials like these audio recordings risks harming future law enforcement investigations by making it less likely that witnesses in high-profile investigations will voluntarily cooperate.”⁹⁶ Both of these arguments have already been evaluated and overruled by the Committee.⁹⁷

Without these audio recordings, the Committee’s important legislative work will continue to be stymied. The audio recordings are necessary to evaluate what government reform is necessary within the Justice Department to avoid the problems uncovered by the investigation in the future.

The President has now asserted executive privilege. This assertion, however, does not change the fact that Attorney General Merrick B. Garland is in contempt of Congress today for failing to turn over lawfully subpoenaed materials.

Conclusion

Special Counsel Hur’s report makes clear, despite its conclusion that criminal charges are not warranted, that President Biden willfully and unlawfully retained classified materials while he was a private citizen. The Committees subpoenaed Attorney General Garland to produce documents and materials responsive to four specific requests concerning Special Counsel Hur’s investigation on February 27, 2024. To date, despite numerous requests from the Committees for certain audio recordings responsive to the subpoena, and a specific warning that failure to produce the audio recordings would result in contempt proceedings, Attorney General Garland has failed to do so. Attorney General Garland’s willful refusal to comply with the Committees’ subpoenas constitutes contempt of Congress and warrants referral to the appropriate United States Attorney’s Office for prosecution as prescribed by law.

Committee Consideration

On May 16, 2024, the Committee met in open session and ordered the report favorably reported, as amended, to the House by a recorded vote of 24 to 20, a quorum being present.

Committee Votes

In compliance with clause 3(b) of House rule XIII, the Committee states that the following recorded votes occurred during the Committee’s consideration of the Report:

1. An amendment offered by Chairman James Comer to amend the report to reflect that the White House has now asserted a privilege regarding the subject matter of the report, which was agreed to by a recorded vote of 24 ayes and 19 noes (Rollcall No. 4).

⁹⁵ Siskel Letter, *supra* note 92, at 2.

⁹⁶ *Id.*

⁹⁷ See Letter from Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability, et al., to Hon. Merrick B. Garland, Att’y Gen., U.S. Dep’t of Justice (Apr. 15, 2024).

2. An amendment offered by Rep. Dan Goldman (D-NY) to amend the report to state that the Department of Justice has complied with the Committee's request, which was not agreed to by a recorded vote of 19 ayes and 23 noes (Rollcall No. 6).

3. An amendment in the nature of a substitute to the report offered by Chairman James Comer that made certain technical edits to the Report was agreed to, as amended, by a recorded vote of 23 ayes to 19 noes (Rollcall No. 7).

4. A motion by Chairman James Comer to report the Report for a Resolution Recommending That the House of Representatives Find Attorney General Merrick B. Garland in Contempt of Congress for Refusal to Comply with a Subpoena Duly Issued by the Committee on Oversight and Accountability favorably to the House, as amended, was agreed to by a recorded vote of 24 ayes to 20 noes (Rollcall No. 8).

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY
 118TH CONGRESS
 RATIO 26-21
 ROLL CALL

Vote on: Motion to Adopt the Comer Amendment to the ANS to the Contempt Report
 Date: 5/16/2024

VOTE #: 4

Republicans	Aye	No	Present	Democrats	Aye	No	Present
MR. COMER (KY) <i>(Chairman)</i>	X			MR. RASKIN (MD) <i>(Ranking Member)</i>		X	
MR. JORDAN (OH)	X			MS. NORTON (DC)		X	
MR. TURNER (OH)				MR. LYNCH (MA)		X	
MR. GOSAR (AZ)	X			MR. CONNOLLY (VA)		X	
MS. FOXX (NC)	X			MR. KRISHNAMOORTHY (IL)		X	
MR. GROTHMAN (WI)	X			MR. KHANNA (CA)			
MR. CLOUD (TX)	X			MR. MFUME (MD)		X	
MR. PALMER (AL)	X			MS. OCASIO-CORTEZ (NY)		X	
MR. HIGGINS (LA)	X			MS. PORTER (CA)		X	
MR. SESSIONS (TX)	X			MS. BUSH (MO)			
MR. BIGGS (AZ)	X			MS. BROWN (OH)		X	
MS. MACE (SC)	X			MS. STANSBURY (NM)		X	
MR. LATURNER (KS)	X			MR. GARCIA (CA)		X	
MR. FALLON (TX)	X			MR. FROST (FL)		X	
MR. DONALDS (FL)	X			MS. LEE of PENNSYLVANIA (PA)		X	
MR. PERRY (PA)	X			MR. CASAR (TX)		X	
MR. TIMMONS (SC)	X			MS. CROCKETT (TX)		X	
MR. BURCHETT (TN)	X			MR. GOLDMAN (NY)		X	
MS. GREENE OF GEORGIA (GA)	X			MR. MOSKOWITZ (FL)		X	
MRS. MCCLAIN (MI)				MS. TLAIB (MI)		X	
MS. BOEBERT (CO)	X			MS. PRESSLEY (MA)		X	
MR. FRY (SC)	X						
MRS. LUNA (FL)	X						
MR. LANGWORTHY (NY)	X						
MR. BURLISON (MO)	X						
MR. WALTZ (FL)	X						

Roll Call Totals: Ayes: 24 Nays: 19 Present:
 Passed: X Failed: _____

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY
 118TH CONGRESS
 RATIO 26-21
 ROLL CALL

Vote on: Goldman Amendment to the ANS to the Contempt Report

Date: 5/16/2024

VOTE #: 6

Republicans	Aye	No	Present	Democrats	Aye	No	Present
MR. COMER (KY) <i>(Chairman)</i>		X		MR. RASKIN (MD) <i>(Ranking Member)</i>	X		
MR. JORDAN (OH)				MS. NORTON (DC)	X		
MR. TURNER (OH)				MR. LYNCH (MA)	X		
MR. GOSAR (AZ)		X		MR. CONNOLLY (VA)	X		
MS. FOXX (NC)		X		MR. KRISHNAMOORTHY (IL)	X		
MR. GROTHMAN (WI)		X		MR. KHANNA (CA)			
MR. CLOUD (TX)		X		MR. MFUME (MD)	X		
MR. PALMER (AL)		X		MS. OCASIO-CORTEZ (NY)	X		
MR. HIGGINS (LA)		X		MS. PORTER (CA)	X		
MR. SESSIONS (TX)		X		MS. BUSH (MO)			
MR. BIGGS (AZ)		X		MS. BROWN (OH)	X		
MS. MACE (SC)		X		MS. STANSBURY (NM)	X		
MR. LATURNER (KS)		X		MR. GARCIA (CA)	X		
MR. FALLON (TX)		X		MR. FROST (FL)	X		
MR. DONALDS (FL)		X		MS. LEE of PENNSYLVANIA (PA)	X		
MR. PERRY (PA)		X		MR. CASAR (TX)	X		
MR. TIMMONS (SC)		X		MS. CROCKETT (TX)	X		
MR. BURCHETT (TN)		X		MR. GOLDMAN (NY)	X		
MS. GREENE OF GEORGIA (GA)		X		MR. MOSKOWITZ (FL)	X		
MRS. MCCLAIN (MI)				MS. TLAIB (MI)	X		
MS. BOEBERT (CO)		X		MS. PRESSLEY (MA)	X		
MR. FRY (SC)		X					
MRS. LUNA (FL)		X					
MR. LANGWORTHY (NY)		X					
MR. BURLISON (MO)		X					
MR. WALTZ (FL)		X					

Roll Call Totals: Ayes: 19 Nays: 23 Present: _____
 Passed: _____ Failed: X _____

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY
 118TH CONGRESS
 RATIO 26-21
 ROLL CALL

Vote on: ANS to the Contempt Report
 Date: 5/16/2024

VOTE #: 7

Republicans			Democrats		
Aye	No	Present	Aye	No	Present
MR. COMER (KY) <i>(Chairman)</i>	X		MR. RASKIN (MD) <i>(Ranking Member)</i>		X
MR. JORDAN (OH)			MS. NORTON (DC)		X
MR. TURNER (OH)			MR. LYNCH (MA)		X
MR. GOSAR (AZ)	X		MR. CONNOLLY (VA)		X
MS. FOXX (NC)	X		MR. KRISHNAMOORTHY (IL)		X
MR. GROTHMAN (WI)	X		MR. KHANNA (CA)		
MR. CLOUD (TX)	X		MR. MFUME (MD)		X
MR. PALMER (AL)	X		MS. OCASIO-CORTEZ (NY)		X
MR. HIGGINS (LA)	X		MS. PORTER (CA)		X
MR. SESSIONS (TX)	X		MS. BUSH (MO)		
MR. BIGGS (AZ)	X		MS. BROWN (OH)		X
MS. MACE (SC)	X		MS. STANSBURY (NM)		X
MR. LATURNER (KS)	X		MR. GARCIA (CA)		X
MR. FALLON (TX)	X		MR. FROST (FL)		X
MR. DONALDS (FL)	X		MS. LEE of PENNSYLVANIA (PA)		X
MR. PERRY (PA)	X		MR. CASAR (TX)		X
MR. TIMMONS (SC)	X		MS. CROCKETT (TX)		X
MR. BURCHETT (TN)	X		MR. GOLDMAN (NY)		X
MS. GREENE OF GEORGIA (GA)	X		MR. MOSKOWITZ (FL)		X
MRS. MCCLAIN (MI)			MS. TLAIB (MI)		X
MS. BOEBERT (CO)	X		MS. PRESSLEY (MA)		X
MR. FRY (SC)	X				
MRS. LUNA (FL)	X				
MR. LANGWORTHY (NY)	X				
MR. BURLISON (MO)	X				
MR. WALTZ (FL)	X				

Roll Call Totals: Ayes: 23 Nays: 19 Present:
 Passed: X Failed:

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY
 118TH CONGRESS
 RATIO 26-21
 ROLL CALL

Vote on: Favorably Reporting the Contempt Report
 Date: 5/16/2024

VOTE #: 8

Republicans	Aye	No	Present	Democrats	Aye	No	Present
MR. COMER (KY) <i>(Chairman)</i>	X			MR. RASKIN (MD) <i>(Ranking Member)</i>		X	
MR. JORDAN (OH)	X			MS. NORTON (DC)		X	
MR. TURNER (OH)				MR. LYNCH (MA)		X	
MR. GOSAR (AZ)	X			MR. CONNOLLY (VA)		X	
MS. FOXX (NC)	X			MR. KRISHNAMOORTHY (IL)		X	
MR. GROTHMAN (WI)	X			MR. KHANNA (CA)			
MR. CLOUD (TX)	X			MR. MFUME (MD)		X	
MR. PALMER (AL)	X			MS. OCASIO-CORTEZ (NY)		X	
MR. HIGGINS (LA)	X			MS. PORTER (CA)		X	
MR. SESSIONS (TX)	X			MS. BUSH (MO)		X	
MR. BIGGS (AZ)	X			MS. BROWN (OH)		X	
MS. MACE (SC)	X			MS. STANSBURY (NM)		X	
MR. LATURNER (KS)	X			MR. GARCIA (CA)		X	
MR. FALLON (TX)	X			MR. FROST (FL)		X	
MR. DONALDS (FL)	X			MS. LEE of PENNSYLVANIA (PA)		X	
MR. PERRY (PA)	X			MR. CASAR (TX)		X	
MR. TIMMONS (SC)	X			MS. CROCKETT (TX)		X	
MR. BURCHETT (TN)	X			MR. GOLDMAN (NY)		X	
MS. GREENE OF GEORGIA (GA)	X			MR. MOSKOWITZ (FL)		X	
MRS. MCCLAIN (MI)				MS. TLAIB (MI)		X	
MS. BOEBERT (CO)	X			MS. PRESSLEY (MA)		X	
MR. FRY (SC)	X						
MRS. LUNA (FL)	X						
MR. LANGWORTHY (NY)	X						
MR. BURLISON (MO)	X						
MR. WALTZ (FL)	X						

Roll Call Totals: Ayes: 24 Nays: 20 Present:
 Passed: X Failed: _____

Committee Oversight Findings

In compliance with clause 3(c)(1) of House rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

The Committee finds the requirements of clause 3(c)(2) of rule XIII and section 308(a) of the *Congressional Budget Act of 1974*, and the requirements of clause 3(c)(3) of rule XIII and section 402 of the *Congressional Budget Act of 1974*, to be inapplicable to this Report. Accordingly, the Committee did not request or receive a cost estimate from the Congressional Budget Office and makes no findings as to the budgetary impacts of this Report or costs incurred to carry out the Report.

Duplication of Federal Programs

Pursuant to clause 3(c)(5) of House rule XIII, no provision of this Report establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of House rule XIII, this Report is to enforce the Committee's authority to subpoena and obtain testimony related to determining whether sufficient grounds exist to impeach President Joseph R. Biden Jr., and legislative reforms to how executive branch agencies adequately account for classified records and documents meant to be returned to the federal government upon an employee's departure from office.

Advisory on Earmarks

In accordance with clause 9 of House rule XXI, this Report does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e), or 9(f) of House rule XXI.

Dissenting Views

The Committee on Oversight and Accountability (the "Committee") has been conducting an impeachment inquiry into President Joe Biden for a year and a half—essentially the entire duration of the 118th Congress. To date, the Committee has amassed more than 3.8 million pages of documents and 80 hours of testimony from transcribed interviews and depositions of 19 witnesses. Nowhere in this mountain of material is there any evidence of wrongdoing by the President—let alone an impeachable offense. In fact, after 17 months of investigating, Chairman James Comer has *still not articulated* any specific high crime or misdemeanor that he believes President Biden has committed.

Among the millions of pages of documents that Committee Republicans have already received is a full transcript of President Biden's interview with Special Counsel Robert K. Hur. This tran-

script, which was produced to the Committee by the Department of Justice (DOJ), accounts for the entirety of President Biden’s voluntary five-hour interview with the Special Counsel. Nowhere in the transcript’s 250 pages is there any evidence that President Biden committed an impeachable offense.

Desperate to blame someone—*anyone*—for the utter failure of this impeachment inquiry, Republicans have contrived an allegation that Attorney General Merrick Garland has impeded their impeachment inquiry by preventing them from hearing President Biden’s interview with Special Counsel Hur by withholding the audio recording. In fact, Republicans, and the American public, can already read the full content of that interview. We know what the President said. Hearing the President’s words rather than reading them will not change those words and certainly won’t suddenly reveal some new evidence of an impeachable offense. The Attorney General has given the Committee the information it sought: the contents of the President’s interview with Special Counsel Hur.

In fact, Attorney General Garland and the Biden Administration have made substantial efforts to accommodate the Committee’s interest in Special Counsel Hur’s investigation, working in good faith to provide the Committee with all the information it requested. In addition to the transcript of the President’s interview, the DOJ provided the entirety of the Special Counsel’s report; provided the full transcript of the Special Counsel’s interview with the President’s ghost writer, Mark Zwonitzer; made available the two classified documents requested by the Committee; and provided requested correspondence regarding the Special Counsel’s report. In addition, the DOJ facilitated the Special Counsel’s testimony about his report and investigation to the Committee on the Judiciary. In other words, the DOJ and the Administration have demonstrated extraordinary cooperation in providing the Committee with all the information it sought. Yet Republicans have responded by attempting to hold the Attorney General in contempt based on meritless and posterous claims of obstruction.

I. CONSIDERATION OF MERITLESS CONTEMPT RESOLUTION “WAS NOT A GOOD LOOK FOR CONGRESS”

The after-hours Committee business meeting Chairman Comer convened to consider this baseless contempt resolution was marred by indecorous outbursts from Republican Members and truncated debate that was abruptly cut off after consideration of two Republican amendments and only a single Democratic amendment—a violation of decades-long Committee precedent.

On Monday, May 13, 2024, Chairman Comer issued notice that the Committee would hold a business meeting on Thursday, May 16, 2024, at 11:00 a.m., to consider a resolution recommending that the House of Representatives hold Attorney General Merrick Garland in contempt.¹ The Republican Majority of the Committee on the Judiciary also announced that it would hold a business meeting

¹ Committee on Oversight and Accountability, *Business Meeting Notice* (May 13, 2024) (online at <https://docs.house.gov/meetings/GO/GO00/20240516/117325/HMKP-118-GO00-20240516-SD001.pdf>).

that same day at 10:00 a.m. to consider a substantially similar resolution.²

On Wednesday, May 15, 2024, at approximately 7:15 p.m.—the night before the Committee meeting—Chairman Comer published a notice stating without explanation that the business meeting would be postponed to 8:00 p.m.³ It soon became evident that Chairman Comer had postponed the meeting to accommodate Republicans Members’ travel schedules. Several Republican Committee Members planned to travel to New York City to attend the criminal trial of former President Donald Trump, who is charged with 34 counts of falsifying business records for his alleged participation in a hush money scheme intended to silence his former mistresses prior to the 2016 presidential election.⁴

At approximately 8:00 p.m., on May 16, 2024, Chairman Comer convened the Oversight Committee to consider the contempt resolution. By the time the Oversight Committee began its business meeting, the Judiciary Committee had already favorably reported their contempt resolution, rendering the Oversight Committee’s consideration of the analogous resolution both duplicative and moot. Nonetheless, Chairman Comer proceeded with the Committee’s business meeting.⁵

It appears that immediately prior to the business meeting, the James Comer for Congress committee—in collaboration with WinRed, a Republican fundraising platform—circulated an email “[f]rom the desk of Oversight Chairman James Comer” seeking campaign donations that referenced Chairman Comer’s efforts to hold Attorney General Garland in contempt of Congress and asserting that “Biden and his advisors are terrified that I will release the recordings.”⁶ The letter was signed: “James Comer, Chairman, House Oversight Committee.” During the Committee meeting, Chairman Comer refused to recognize Rep. Stephen Lynch’s point of order requesting the opinion of the parliamentarian as to whether a motion to refer the Chairman’s conduct to the House Committee on Ethics would be in order.⁷

²See Committee on the Judiciary, *Markup of Report Recommending that the House of Representatives Cite Attorney General Merrick Garland for Contempt of Congress* (May 16, 2024) (online at <https://judiciary.house.gov/committee-activity/markups/markup-report-recommending-house-representatives-cite-attorney-general>).

³Committee on Oversight and Accountability, *Time Change: Business Meeting Notice* (May 15, 2024) (online at <https://docs.house.gov/meetings/GO/GO00/20240516/117325/HMKP-118-GO00-20240516-SD003.pdf>).

⁴*Id.* These charges stand in addition to the numerous other federal and state criminal charges pending against Donald Trump in forums across the country, including four counts related to the January 6 attack on the Capitol and efforts to overturn the results of the 2020 election, ten counts related to efforts to reverse the 2020 election results in Georgia, and 40 counts related to possession of classified documents and obstructing federal efforts to retrieve them. See *Keeping Track of the Trump Criminal Cases*, New York Times (May 8, 2024) (online at www.nytimes.com/interactive/2023/us/trump-investigations-charges-indictments.html); *Oversight Delays Garland Contempt Hearing for Members to Attend Trump Trial*, The Hill (May 15, 2024) (online at <https://thehill.com/homenews/4667089-oversight-delays-merrick-garland-contempt-hearing-members-attend-donald-trump-trial/>).

⁵See Committee on Oversight and Accountability, *Full Committee Business Meeting* (May 16, 2024) (online at <https://oversight.house.gov/markup/full-committee-business-meeting-73/>).

⁶See *As GOP Demands Biden/Hur Audio, James Comer Gives Away the Game*, MSNBC (May 17, 2024) (online at www.msnbc.com/rachel-maddow-show/maddowblog/gop-demands-bidenhur-audio-james-comer-gives-away-game-rcna152752); see also Acyn (@Acyn), X (May 17, 2024) (online at <https://x.com/Acyn/status/1791323954168414469>) (“Moskowitz’s dramatic reading of Comer’s fundraising email is definitely worth a watch”); Committee on Oversight and Accountability, *Full Committee Business Meeting* (May 16, 2024) (online at <https://oversight.house.gov/markup/full-committee-business-meeting-73/>).

⁷Committee on Oversight and Accountability, *Full Committee Business Meeting* (May 16, 2024) (online at <https://oversight.house.gov/markup/full-committee-business-meeting-73/>).

During the Committee meeting, after Republican Rep. Marjorie Taylor Greene denigrated the appearance of Rep. Jasmine Crockett and refused to apologize for her clear breach of decorum and basic decency, the Chairman refused to rule Rep. Greene had violated the rule against engaging in personalities, finding her comments were merely “indecorous.”⁸ Later, a separate disparaging comment by Rep. Greene, this one directed at Rep. Alexandria Ocasio-Cortez, was ruled out of order by the Chairman, who ordered that her words be stricken from the record. However, with the exception of one Member, all Committee Republicans voted to allow Rep. Greene to proceed in order. As such, Rep. Greene was permitted to continue participating in the business meeting and did not face any consequences for repeatedly insulting fellow Members of the Committee during the debate.⁹ Even the Speaker of the House, Mike Johnson, concluded that the disarray Chairman Comer allowed during the business meeting “was not a good look for Congress.”¹⁰

Three hours into the Committee meeting, much of it wasted by Committee Republicans’ indecorous antics, and after just three amendments—two Republican and one Democratic—had been offered, Committee Republicans voted to cut off all debate and the consideration of any further amendments by calling the previous question. In doing so, Committee Republicans broke a decades-long precedent, honored by Chairs of both parties, of allowing fulsome debate and the consideration of all germane amendments at Committee business meetings. At the time Rep. Jake LaTurner moved the previous question, Chairman Comer knew that Democratic Members intended to offer two further amendments pursuant to a unanimous consent agreement to limit debate being negotiated by the Committee’s Republican and Democratic staffs at the request of the Chairman. Over Democratic Members’ vociferous objection to prematurely cutting off debate and the consideration of amendments, Chairman Comer called a vote on Rep. LaTurner’s motion to move the previous question, forcing immediate votes on the pending amendments and the underlying contempt report recommending that Attorney General Garland be held in contempt. The report was adopted on a party line vote with all Democratic Members opposed.¹¹

Under Chairman Comer’s leadership, the Committee’s consideration of the resolution to hold Attorney General Garland in contempt was a late-night spectacle unbecoming of the Committee and indeed of the House of Representatives in which Democratic Members were insulted and then prevented from debating and offering amendments to the Chairman’s baseless contempt report.

II. REPUBLICANS ARE TRYING TO HOLD THE ATTORNEY GENERAL IN CONTEMPT FOR INFORMATION THE DEPARTMENT OF JUSTICE HAS ALREADY PROVIDED

Committee Republicans assert that Attorney General Garland should “be found to be in contempt of Congress for failure to com-

⁸*Id.*

⁹*Id.*

¹⁰*Johnson Slams Raucous Congressional Hearing Sparked by Marjorie Taylor Greene’s Fake Eyelashes’ Comment*, ABC News (May 17, 2024) (online at <https://abcnews.go.com/Politics/johnson-disappointed-house-committee-meeting-devolved-chaos-greenes/story?id=110337266>).

¹¹Committee on Oversight and Accountability, *Full Committee Business Meeting* (May 16, 2024) (online at <https://oversight.house.gov/markup/full-committee-business-meeting-73/>).

ply with a congressional subpoena” issued in identical form by Oversight Committee Chairman Comer and Judiciary Committee Chairman Jim Jordan.¹² Specifically, Committee Republicans speciously allege that the Attorney General has “impeded [their] impeachment inquiry” against President Biden by failing to provide audio recordings of President Biden’s voluntary interview with Special Counsel Hur, as well as the audio recording of Special Counsel Hur’s interview with his ghostwriter, Mark Zwonitzer.¹³

To be clear, the DOJ and the Biden Administration have provided the information sought by each of the subpoena’s four requests, including by providing full transcripts of the Special Counsel’s interviews of President Biden and Mr. Zwonitzer. These transcripts already provide the Committee with the content of these interviews. Hearing these interviews on an audio tape rather than reading them in a transcript will not change the content of these interviews.

A. DOJ AND THE BIDEN ADMINISTRATION HAVE FULLY COOPERATED
WITH THE COMMITTEE’S SUBPOENA

On February 12, 2024, the Chairmen of the Committee on Oversight and Accountability, Committee on the Judiciary, and Committee on Ways and Means requested information from the DOJ regarding Special Counsel Hur’s investigation of the President, including documents and communications related to the Special Counsel’s interviews of President Biden and his ghostwriter, Mark Zwonitzer.¹⁴ The DOJ responded to the Chairmen’s request four days later, explaining that “several of the materials listed in [the] February 12 letter require review for classification and protection of national defense information” and, consistent with usual practice, the DOJ would conduct a “review to assess confidentiality interests” involving other Executive Branch agencies.¹⁵

Despite the DOJ’s prompt response, Chairmen Comer and Jordan each issued a subpoena on February 27, 2024, for the following documents and information:

1. All documents and communications, including audio and video recordings, related to the Special Counsel’s interview of President Joseph R. Biden Jr.;
2. All documents and communications, including audio and video recordings, related to the Special Counsel’s interview of Mr. Mark Zwonitzer;
3. The documents identified as “A9” and “A10” in Appendix A of Mr. Hur’s report, which relate to President Biden’s De-

¹² Committee on Oversight and Accountability, *Resolution Recommending that the House of Representatives Find United States Attorney General Merrick B. Garland in Contempt of Congress for Refusal To Comply with a Subpoena Duly Issued by the Committee on Oversight and Accountability* (May 2024) (online at <https://oversight.house.gov/wp-content/uploads/2024/05/Garland-Contempt-Report-re-Hur-Report.pdf>).

¹³ *Id.*

¹⁴ Letter from Chairman James Comer, Committee on Oversight and Accountability, Chairman Jim Jordan, Committee on the Judiciary, and Chairman Jason Smith, Committee on Ways and Means, to Attorney General Merrick Garland, Department of Justice (Feb. 12, 2024) (online at https://oversight.house.gov/wp-content/uploads/2024/02/DOJ-Transcript-video-letter-02122024.FINAL_.pdf).

¹⁵ Letter from Department of Justice to Chairman James Comer, Committee on Oversight and Accountability, and Chairman Jim Jordan, Committee on the Judiciary, and Chairman Jason Smith, Committee on Ways and Means (Feb. 16, 2024) (online at <https://oversightdemocrats.house.gov/sites/evo-subsites/democrats-oversight.house.gov/files/evo-media-document/DOJ.240216%2CResponse%20to%20Comer%20Jordan%20Smith%20re%20Biden%20Classified%20Docs%20-%20Hur%20021224.pdf>).

ember 11, 2015, call with then-Ukrainian Prime Minister Arseniy Yatsenyuk; and

4. All communications between or among representatives of the DOJ, 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.¹⁶

The DOJ subsequently produced documents and information responsive to each of the subpoena’s four requests. On March 7, the Department produced documents responsive to requests 3 and 4 of the Committee’s February 27 subpoena, including “the two documents cited in the report that were requested by the Committee,” which the Department offered to make available “through an in camera production in a facility appropriate for viewing classified information,” and “communications between the Department and the Executive Office of the President or President Biden’s personal counsel referring or relating to Mr. Hur’s report.”¹⁷ On March 12, the Department produced the full transcript—totaling more than 250 pages—of the voluntary interview Special Counsel Hur conducted with President Biden on October 8, 2023, and October 9, 2023, responsive to request 1 of the Committee’s subpoena.¹⁸ On April 8, 2024, the Department produced the transcript of Special Counsel Hur’s interview with Mark Zwonitzer, responsive to request 2 of the Committee’s subpoena.¹⁹

DOJ’s responses to the Chairman’s subpoena continued the Biden Administration’s demonstrated cooperation with Congress’s oversight of Special Counsel Hur’s investigation. This cooperation began with the Special Counsel’s report itself. President Biden “did not assert executive privilege over any portion of Special Counsel Hur’s final report, which the Department provided promptly and in full to Congress.” In addition, the DOJ “readily agreed to allow Special Counsel Hur to testify publicly” before the Committee on the Judiciary.²⁰ Special Counsel Hur spent more than five hours answering congressional questions under oath.²¹

¹⁶ Letter from Chairman James Comer, Committee on Oversight and Accountability, and Chairman Jim Jordan, Committee on the Judiciary, to Attorney General Merrick Garland, Department of Justice (Feb. 27, 2024) (online at <https://oversight.house.gov/wp-content/uploads/2024/02/Subpoena-Cover-Letter-to-AG-Garland-Hur-Report-Materials-Joint-Letter-2-27-24.pdf>).

¹⁷ Letter from Department of Justice to Chairman James Comer, Committee on Oversight and Accountability (Mar. 7, 2024) (online at https://oversightdemocrats.house.gov/sites/evo-subsites/democrats-oversight.house.gov/files/evo-media-document/2024.03.07-OUT-Comer-SCO%20Subpoena_0.pdf).

¹⁸ Letter from Department of Justice to Chairman James Comer, Committee on Oversight and Accountability, (Mar. 12, 2024) (online at <https://oversightdemocrats.house.gov/sites/evo-subsites/democrats-oversight.house.gov/files/evo-media-document/DOJ.240312.Response%20to%20Comer%20re%20Subpoena%20-%20Hur%20and%20Biden%20Classified%20Docs.pdf>).

¹⁹ Letter from Department of Justice to Chairman James Comer, Committee on Oversight and Accountability, and Chairman Jim Jordan, Committee on the Judiciary (Apr. 8, 2024). (online at <https://oversightdemocrats.house.gov/sites/evo-subsites/democrats-oversight.house.gov/files/evo-media-document/2024.04.08-OUT-Jordan-Comer-Re%20SCO%20Hur.pdf>).

²⁰ Letter from Edward Siskel, Counsel to the President, to Chairman James Comer, Committee on Oversight and Accountability, and Chairman Jim Jordan, Committee on the Judiciary (May 16, 2024) (online at www.politico.com/f/?id=0000018f-8149-d166-a5af-df5b358d0001).

²¹ Committee on the Judiciary, *Hearing on the Report of Special Counsel Robert K. Hur* (Mar. 12, 2024) (online at <https://judiciary.house.gov/committee-activity/hearings/hearing-report-special-counsel-robert-k-hur>).

B. THE COMMITTEE HAS A FULL TRANSCRIPT OF THE PRESIDENT’S VOLUNTARY INTERVIEW, AND NO NEW EVIDENCE WILL MATERIALIZE FROM AN AUDIO RECORDING OF HIS INTERVIEW

As discussed above, the DOJ has produced to the Committee a full, 250-page transcript of President Biden’s voluntary, five-hour interview with Special Counsel Hur.²² The Department has also produced the transcripts of Special Counsel Hur’s interview with Mark Zwonitzer.²³

By definition, the written transcript of the President’s voluntary interview with Special Counsel Hur contains content that will be identical to audio recordings of the same event, and Republicans therefore already know everything the President said in the interview. Chairman Comer asserts, however, that contempt proceedings against Attorney General Garland are warranted because the DOJ did not provide the information in the Chairman’s preferred format—an audio recording rather than a written transcript.

Committee Republicans have provided no reasonable explanation of how receiving information in audio format would provide any evidence relevant to the Committee’s impeachment inquiry that is absent from the written transcript. The Committee has simply asserted that its impeachment inquiry “will suffer” without the audiotapes because the tapes are purportedly a “unique and invaluable medium of information that capture vocal tone, pace, inflections, verbal nuance, and other idiosyncrasies.”²⁴ Incomprehensibly, Republicans have further asserted that “verbal nuances in President Biden’s answers about his mishandling of classified information would assist the Committees’ inquiry into whether he abused his office of public trust for his family’s financial gain” and therefore “audio recordings would offer unique and important information to advance the Committees’ impeachment inquiry.”²⁵ To be clear, the full transcript of the President’s voluntary interview reports all of the words he said, and these words do not show any evidence that the President abused his office—or committed any high crime or misdemeanor. Republicans’ assertion that verbal nuances that a written transcript cannot capture could possibly reveal evidence of impeachable conduct is simply ludicrous.

²² Letter from Department of Justice to Chairman James Comer, Committee on Oversight and Accountability, and Chairman Jim Jordan, Committee on the Judiciary, and Chairman Jason Smith, Committee on Ways and Means (Mar. 12, 2024) (online at <https://oversightdemocrats.house.gov/sites/evo-subsites/democrats-oversight.house.gov/files/evo-media-document/DOJ.240312.Response%20to%20Comer%20re%20Subpoena%20-%20Hur%20and%20Biden%20Classified%20Docs.pdf>). Those interview transcripts are now publicly available. See *Read the Full Transcript of Robert Hur’s Interview with President Biden*, Washington Post (Mar. 12, 2024) (online at www.washingtonpost.com/national-security/2024/03/12/biden-hur-transcript-classified-documents-memory/).

²³ Letter from Department of Justice to Chairman James Comer, Committee on Oversight and Accountability, and Chairman Jim Jordan, Committee on the Judiciary, and Chairman Jason Smith, Committee on Ways and Means, (Apr. 8, 2024) (online at <https://oversightdemocrats.house.gov/sites/evo-subsites/democrats-oversight.house.gov/files/evo-media-document/2024.04.08-OUT-Jordan-Comer-Re%20SCO%20Hur.pdf>).

²⁴ Letter from Chairman James Comer, Committee on Oversight and Accountability, and Chairman Jim Jordan, Committee on the Judiciary, to Attorney General Merrick Garland, Department of Justice (Apr. 15, 2024) (online at <https://oversightdemocrats.house.gov/sites/evo-subsites/democrats-oversight.house.gov/files/evo-media-document/2024-04-15.Comer%20Jordan%20to%20Garland-DOJ%20re%20Hur%20-Subpoena%20follow-up%202.pdf>).

²⁵ Committee on Oversight and Accountability, *Resolution Recommending that the House of Representatives Find United States Attorney General Merrick B. Garland in Contempt of Congress for Refusal To Comply with a Subpoena Duly Issued by the Committee on Oversight and Accountability* (May 2024) (online at <https://oversight.house.gov/wp-content/uploads/2024/05/Garland-Contempt-Report-re-Hur-Report.pdf>).

It is also notable that the Republicans' contempt report includes a lengthy quote from the written transcript of the President's interview and, based on the excerpt, concludes that "this interview is relevant to whether legislative reforms are necessary"—an apparent concession that the written transcript is sufficient to satisfy the Committee's legislative needs.²⁶

It further appears that the DOJ's cooperation was so fulsome that it exceeded the Committee's need for information. Indeed, it appears neither the Chairman nor the Committee's Republican staff ever made arrangements to review the documents identified as "A9" and "A10" identified in Request 3 of the Committee's subpoena, which the DOJ offered to make available for *in camera* review.

As the DOJ noted, Committee Republicans have also failed to explain why the information they seek "outweighs the serious harms to the Department's articulated law enforcement interests."²⁷ The DOJ has repeatedly emphasized its need to protect sensitive law enforcement information, explaining that "producing the audio files would compound the likelihood that future prosecutors will be unable to secure" the type of exceptional cooperation afforded by President Biden to Special Counsel Hur in his classified documents investigation.²⁸

The DOJ has also explained that it must:

[A]lso take seriously the harm producing [the audio files] 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.²⁹

Further, prior to the May 16 Committee meeting, President Biden asserted executive privilege over the requested audio files at Attorney General Garland's request.

The White House transmitted a letter to Chairman Comer asserting this privilege and explaining that "because of the President's longstanding commitment to protecting the integrity, effectiveness, and independence of the Department of Justice and its

²⁶ *Id.*

²⁷ Letter from Department of Justice to Chairman James Comer, Committee on Oversight and Accountability, and Chairman Jim Jordan, Committee on the Judiciary (Apr. 25, 2024) (online at <https://oversightdemocrats.house.gov/sites/evo-subsites/democrats-oversight.house.gov/files/evo-media-document/HJC%20COA%20Response%20-%204.25.24.pdf>).

²⁸ Letter from Department of Justice to Chairman James Comer, Committee on Oversight and Accountability, and Chairman Jim Jordan, Committee on the Judiciary (Apr. 8, 2024) (online at <https://oversightdemocrats.house.gov/sites/evo-subsites/democrats-oversight.house.gov/files/evo-media-document/2024.04.08-OUT-Jordan-Comer-Re%20SCO%20Hur.pdf>).

²⁹ Letter from Department of Justice to Chairman James Comer, Committee on Oversight and Accountability, and Chairman Jim Jordan, Committee on the Judiciary (Apr. 25, 2024) (online at <https://oversightdemocrats.house.gov/sites/evo-subsites/democrats-oversight.house.gov/files/evo-media-document/HJC%20COA%20Response%20-%204.25.24.pdf>).

law enforcement investigations, he has decided to assert executive privilege over the recordings.”³⁰

Committee Republicans decided to move ahead with contempt despite this assertion of privilege by claiming the assertion of privilege was untimely, that the White House waived privilege by providing the transcripts, and that the “audio recordings [. . .] are likely to contain evidence important to the Committee’s inquiry.”³¹ These claims are, however, internally inconsistent. Committee Republicans appear to be claiming both (1) that the transcripts and audio recording contain the same information, such that by producing one, the White House has waived privilege as to both; and (2) that they are different information, such that despite already having the transcript, the audio recordings contain “evidence important to the Committee’s inquiry” that somehow is not captured by the transcript.³²

Despite Committee Republicans’ claims to the contrary, it is clear that the Committee has received extraordinary cooperation from the DOJ throughout its impeachment inquiry and has received or been given access to all of the information it subpoenaed. The assertion that the Attorney General has in some way obstructed the Committee’s investigation—or that there is any new evidence to be found in an audio recording of an interview for which the Committee already has a full transcript—is simply false.

C. THE DOJ AND BIDEN ADMINISTRATION’S RECORD OF EXTRAORDINARY COOPERATION WITH THE COMMITTEE’S INVESTIGATION STAND IN STARK CONTRAST TO THE TRUMP ADMINISTRATION’S RECORD OF OBSTRUCTION

The DOJ’s record of extraordinary cooperation with Republicans’ impeachment inquiry against President Biden stands in stark contrast to the Trump Administration’s record of obstructing congressional investigations and refusing to comply with congressional subpoenas.³³ In fact, one study found that the Trump Administration refused to provide information in more than 100 congressional investigations and inquiries from 2017 to 2021.³⁴

Unlike the Biden Administration, the Trump Administration refused to comply with the 2019 impeachment inquiry into then-President Trump. President Trump ordered his entire Administration not to cooperate with the House’s impeachment inquiry’s requests for interviews of federal officials with factual knowledge relevant to the investigation.³⁵ In total, 12 federal officials refused to testify before Congress, ten of whom defied congressional sub-

³⁰ Letter from Edward Siskel, Counsel to the President, to Chairman James Comer, Committee on Oversight and Accountability, and Chairman Jim Jordan, Committee on the Judiciary (May 16, 2024) (online at www.politico.com/f/?id=0000018f-8149-d166-a5af-df5b358d0001).

³¹ Chairman James Comer, Committee on Oversight and Accountability, *Amendment to the Amendment in the Nature of a Substitute to the Committee Report for the Resolution Recommending that the House of Representatives Find Attorney General Merrick B. Garland in Contempt of Congress for Refusal to Comply with a Subpoena Duly Issued by the Committee on Oversight and Accountability* (May 16, 2024) (online at <https://docs.house.gov/meetings/GO/GO00/20240516/117325/BILLS-118-ANStoContemptReport-C001108-Amdt-2.pdf>).

³² *Id.*

³³ See *House Holds Barr and Ross in Contempt over Census Dispute*, New York Times (July 17, 2019) (online at www.nytimes.com/2019/07/17/us/politics/barr-ross-contempt-vote.html).

³⁴ Co-Equal, *Trump Administration Oversight Precedents* (Mar. 2024) (online at www.co-equal.org/guide-to-congressional-oversight/trump-administration-oversight-precedents).

³⁵ House Permanent Select Committee on Intelligence, *The Trump-Ukraine Impeachment Inquiry Report* (Dec. 2019) (online at www.govinfo.gov/content/pkg/GOVPUB-Y4_IN8_18-PURL-gpo129303/pdf/GOVPUB-Y4_IN8_18-PURL-gpo129303.pdf).

poenas.³⁶ Similarly, the White House explained in correspondence to Congress that it would not comply with congressional subpoenas issued to it for relevant documents as part of the impeachment inquiry.³⁷

During the Trump Administration, under then-Attorney General William Barr, the DOJ, itself refused to cooperate with multiple congressional investigations. For example, in 2018, the Committee on Oversight and Reform launched an investigation into the Department of Commerce’s effort to include a citizenship question in the upcoming 2020 census.³⁸ Attorney General Barr, together with then-Secretary of Commerce Wilbur Ross, obstructed the Committee’s investigation by refusing to provide key documents specifically identified in bipartisan Committee subpoenas. Further, during the investigation, information emerged that a DOJ official, John Gore, had pressured the Department of Commerce to include the citizenship question at the direction of President Trump.³⁹ After Mr. Gore refused to answer more than 150 questions during a transcribed interview in March 2019, the Committee issued a bipartisan subpoena for his deposition testimony.⁴⁰ Attorney General Barr instructed Mr. Gore not to appear at the deposition as required by the subpoena, and several subsequent attempts by the Committee to obtain Mr. Gore’s deposition testimony failed.⁴¹ Accordingly, the Committee voted to hold Attorney General Barr, as well as Secretary Ross, in contempt of Congress in June 2019, and the full House approved the contempt resolutions in July 2019.⁴²

In another instance, in April 2019, reports emerged that Special Counsel Robert Mueller had written to Attorney General Barr expressing concern that a publicly released memorandum written by Attorney General Barr summarizing the Special Counsel’s investigation into Russian interference in the 2016 presidential election “did not fully capture the context, nature, and substance of this Office’s work and conclusions” and urging Mr. Barr to release the full content of the Special Counsel’s report.⁴³ Only one month later did Attorney General Barr release a version of the Special Counsel’s report.⁴⁴ This publicly released report contained significant redactions. Subsequently, the House Judiciary Committee sought to convene a hearing to review the Special Counsel’s findings, includ-

³⁶ *Id.*

³⁷ *Id.*

³⁸ Committee on Oversight and Accountability, *Resolution Recommending that the House of Representatives Find William P. Barr, Attorney General of the United States, and Wilbur L. Ross, Jr., Secretary of Commerce, in Contempt of Congress for Refusal to Comply with Subpoenas Duly Issued by the Committee on Oversight and Reform*, 116th Cong. (2019) (online at www.govinfo.gov/content/pkg/CRPT-116hrpt125/pdf/CRPT-116hrpt125.pdf).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*; *House Votes to Hold Attorney General Barr, Commerce Secretary Ross in Contempt for Failing to Comply with Subpoena on 2020 Census*, Washington Post (July 17, 2019) (online at www.washingtonpost.com/politics/house-to-vote-to-hold-barr-ross-in-contempt-over-2020-census-citizenship-question/2019/07/17/8dbeb35c-a89c-11e9-a3a6-ab670962db05_story.html).

⁴³ See *Mueller Complained that Barr’s Letter Did Not Capture ‘Context’ of Trump Probe*, Washington Post (Apr. 30, 2019) (online at www.washingtonpost.com/world/national-security/mueller-complained-that-barrs-letter-did-not-capture-context-of-trump-probe/2019/04/30/d3c8fdb6-6b7b-11e9-a66d-a82d3f3d96d5_story.html); see also *Read Attorney General William Barr’s Summary of the Mueller Report*, New York Times (Mar. 24, 2019) (online at www.nytimes.com/interactive/2019/03/24/us/politics/barr-letter-mueller-report.html).

⁴⁴ *Mueller Reveals Trump’s Attempts to Choke off Russia Probe*, Associated Press (Apr. 18, 2019) (online at <https://apnews.com/article/north-america-donald-trump-ap-top-news-politics-russia-48f9d5132d7a4e2d823edad8fc407979>).

ing the Attorney General’s role in their release, but Attorney General Barr refused to testify.⁴⁵

Former President Trump and the Trump Administration provide clear examples of what actual obstruction of a congressional investigation looks like. By contrast, the Biden Administration, Attorney General Garland, and the DOJ have already provided all of the information Republicans have sought about Special Counsel Hur’s investigation, including about President Biden’s interview with the Special Counsel, and there is no new information that Republicans can learn about the contents of this interview from audio tapes of it.

III. UNABLE TO IDENTIFY ANY WRONGDOING BY THE PRESIDENT, REPUBLICANS ARE BASELESSLY TRYING TO BLAME THE ATTORNEY GENERAL FOR THE FAILURE OF A BASELESS IMPEACHMENT EFFORT THAT FELL APART MONTHS AGO

Republicans are desperate both to performatively insinuate that some evidence against the President still remains to be uncovered and to claim that their 17-month impeachment effort failed to find any evidence of an impeachable offense because someone has withheld that evidence. As such, Republicans have manufactured the allegation that Attorney General Garland has obstructed their impeachment inquiry by withholding the tape of President Biden’s interview with Special Counsel Hur. In fact, as previously discussed, no new evidence of an impeachable offense will emerge from an audio tape of an interview for which Republicans already have a full transcript. And, to be clear, Republicans know the full content of that interview because the DOJ gave them a transcript of it that records precisely how President Biden answered every question he was asked.

A. REPUBLICANS’ SHAM IMPEACHMENT EFFORT HAS BEEN BASED ON RUSSIAN DISINFORMATION DEBUNKED BY THE FORMER TRUMP ADMINISTRATION

Former President Trump, who was impeached twice by the House of Representatives, instructed House Republicans to get revenge by impeaching President Biden, and he even publicly conveyed the allegations that were to become the basis of House Republicans’ failed effort.⁴⁶ In August 2023, former President Trump posted the following on social media:

The Republicans in Congress, though well meaning, keep talking about an Impeachment “Inquiry” on Crooked Joe Biden. Look, the guy got bribed, he paid people off, and he wouldn’t give One Billion Dollars to Ukraine unless they “got rid of the Prosecutor.” Biden is a Stone Cold Crook—You don’t need a long INQUIRY to prove it, it’s already proven. These lowlifes Impeached me TWICE (I WON!), and Indicted me FOUR TIMES—For NOTHING!

⁴⁵ Co-Equal, *Trump Administration Oversight Precedents* (Mar. 2024) (online at www.co-equal.org/guide-to-congressional-oversight/trump-administration-oversight-precedents).

⁴⁶ H.Res. 755, 116th Cong. (2019); H.Res. 24, 117th Cong. (2021).

Either IMPEACH the BUM, or fade into OBLIVION.
THEY DID IT TO US!⁴⁷

In an effort to fulfill Donald Trump’s demand and support his presidential campaign, Republicans eagerly embraced the unsworn, unverified allegations contained in a tipsheet called an FD–1023 falsely claiming—just as former President Trump had—that Joe Biden took bribes from a Ukrainian energy company called Burisma on whose board his son, Hunter Biden, served.⁴⁸

Critically, allegations that Joe Biden acted corruptly in Ukraine had already been repeatedly debunked and revealed as Russian disinformation by numerous federal entities—including by Donald Trump’s own Department of the Treasury and by the intelligence community—long before House Republicans made them the centerpiece of their impeachment inquiry.⁴⁹ In 2021, the Trump Administration’s Secretary of State, Michael Pompeo, denounced the Russian-backed individuals who “coordinated dissemination and promotion of fraudulent or unsubstantiated allegations involving a U.S. political candidate” (Joe Biden) and “repeated public statements advancing malicious narratives that U.S. Government officials have engaged in corrupt dealings in Ukraine.”⁵⁰

Nonetheless, Chairman Comer claimed the FD–1023 tipsheet was so central to the Committee’s ongoing investigation of President Biden that he falsely accused the DOJ of “seeking to bury this record to protect the Bidens.”⁵¹ And Judiciary Committee Chairman Jordan made it explicitly clear that the FD 1023 was “the heart of this matter.”⁵²

Republicans continued to trumpet the allegations in the FD–1023 until February 2024, when Alexander Smirnov, the confidential human source behind the allegations the tipsheet recorded, was arrested for lying to the Federal Bureau of Investigation about Joe Biden and Hunter Biden. According to Special Counsel David Weiss, Mr. Smirnov admitted that “officials associated with Russian intelligence were involved in passing a story about Business

⁴⁷ Donald J. Trump, @realDonaldTrump, Truth Social (Aug. 27, 2023) (online at <https://truthsocial.com/@realDonaldTrump/posts/110963746628215974>).

⁴⁸ Hannity, *Fox News* (Jan. 11, 2024) (online at www.foxnews.com/video/6344716486112).

⁴⁹ U.S. Department of the Treasury, *Press Release: Treasury Sanctions Russia-Linked Election Interference Actors* (Sept. 10, 2020) (online at <https://home.treasury.gov/news/press-releases/sm1118>); U.S. Department of the Treasury, *Press Release: Treasury Takes Further Action Against Russian-Linked Actors* (Jan. 11, 2021) (online at <https://home.treasury.gov/news/press-releases/sm1232>); U.S. Department of State, *Sanctioning Russia-Linked Disinformation Network for Its Involvement in Attempts to Influence U.S. Election* (Jan. 11, 2021) (online at <https://2017-2021.state.gov/sanctioning-russia-linked-disinformation-network-for-its-involvement-in-attempts-to-influence-u-s-election/>); National Counterintelligence and Security Center, *Press Release: Statement by NCSC Director William Evanina: Election Threat Update for the American Public* (Aug. 7, 2020) (online at <https://www.odni.gov/index.php/newsroom/press-releases/press-releases-2020/3473-statement-by-ncsc-director-william-evanina-election-threat-update-for-the-american-public>); National Intelligence Council, *Foreign Threats to the 2020 US Federal Elections* (Mar. 10, 2021) (online at www.dni.gov/files/ODNI/documents/assessments/ICA-declass-16MAR21.pdf); Special Counsel Robert S. Mueller, III, *Report on the Investigation into Russian Interference in the 2016 Presidential Election* (Mar. 2019) (online at www.justice.gov/archives/sco/file/1373816/dl).

⁵⁰ U.S. Department of State, *Sanctioning Russia-Linked Disinformation Network for Its Involvement in Attempts to Influence U.S. Election* (Jan. 11, 2021) (online at <https://2017-2021.state.gov/sanctioning-russia-linked-disinformation-network-for-its-involvement-in-attempts-to-influence-u-s-election/>).

⁵¹ Senator Chuck Grassley, *Press Release: Grassley Obtains & Releases FBI Record Alleging VP Biden Foreign Bribery Scheme* (July 20, 2023) (online at www.grassley.senate.gov/news/news-releases/grassley-obtains-and-releases-fbi-record-alleging-vp-biden-foreign-bribery-scheme).

⁵² Hannity, *Fox News* (Jan. 11, 2024) (online at www.foxnews.com/video/6344716486112).

person 1 [Hunter Biden].”⁵³ Critically, the Special Counsel has warned that “Smirnov’s efforts to spread misinformation about a candidate of one of the two major parties in the United States continues” [*sic*] and “[h]e is actively peddling new lies that could impact U.S. elections after meeting with Russian intelligence officials in November.”⁵⁴

At the request of Committee Democrats, Rudy Giuliani’s right-hand man, Lev Parnas voluntarily testified at the Committee’s second impeachment hearing in March 2024. In his testimony, Mr. Parnas explained that “Rudy Giuliani, on behalf of then President Donald Trump, tasked me with a mission to travel the globe, finding dirt on the Bidens so then an array of networks could spread misinformation about them, thus securing the 2020 election for Donald J. Trump.” Despite Mr. Parnas’ best efforts, however, “In nearly a year traveling the world and interviewing officials in different countries, I found precisely zero evidence of the Bidens corruption in Ukraine.” Mr. Parnas also made clear that “[t]he only information ever pushed on the Bidens in Ukraine has come from one source and one source only: Russia and Russian agents.”⁵⁵

Stunningly, even two Republican Committee Chairmen have also warned that Republican Members of Congress are amplifying Russian propaganda and disinformation. In a recent interview, House Foreign Affairs Committee Chairman Michael McCaul stated: “I think Russian propaganda has made its way into the United States, unfortunately, and it’s infected a good chunk of my party’s base.”⁵⁶ House Permanent Select Committee on Intelligence Chairman Michael Turner similarly warned: “We see directly coming from Russia attempts to mask communications that are anti-Ukraine and pro-Russia messages, some of which we even hear being uttered on the House floor.”⁵⁷

Despite the overwhelming evidence that the allegations at the heart of their impeachment inquiry are thoroughly discredited Russian disinformation, the Majority’s contempt resolution against Attorney General Garland *again repeats* the same Burisma-Ukrainian conspiracy theory pushed by Russian agents and Rudy Giuliani.⁵⁸

B. REPUBLICANS HAVE REPEATEDLY MISREPRESENTED AND WITHHELD EVIDENCE THROUGHOUT THEIR IMPEACHMENT INQUIRY

House Republicans, including Chairman Comer, have frequently misrepresented the evidence they have collected in their investiga-

⁵³ Government’s Application for Review of Magistrate Judge’s Bail Order, Memorandum of Points and Authorities, 5 (Feb. 21, 2024) *United States of America v. Alexander Smirnov*, Central District of California (No. CR 2:24-cr-00091-ODW) (online at https://storage.courtlistener.com/recap/gov.uscourts.cacd.915062/gov.uscourts.cacd.915062.11.0_4.pdf).

⁵⁴ *Id.* at 20–21.

⁵⁵ Committee on Oversight and Accountability, Testimony of Lev Parnas, *Hearing on Influence Peddling: Examining Joe Biden’s Abuse of Public Office* (Mar. 20, 2024) (online at <https://oversight.house.gov/wp-content/uploads/2024/03/Parnas-Lev-Written-Statement.pdf>).

⁵⁶ *McCaul to Action*, PUCK (Apr. 2, 2024) (online at <https://puck.news/ukraine-aid-q-and-a-rep-mccaul-on-republican-support-for-bill/>); see *Luxury Yachts and Other Myths: How Republican Lawmakers Echo Russian Propaganda*, NBC News (Apr. 14, 2024) (online at www.nbcnews.com/politics/luxury-yachts-myths-republican-lawmakers-echo-russian-propaganda-rcna147293).

⁵⁷ *State of the Union*, CNN (Apr. 7, 2024) (online at www.cnn.com/videos/title-2248506); See *State of the Union Transcripts*, CNN (Apr. 7, 2024) (online at <https://transcripts.cnn.com/show/sotu/date/2024-04-07/segment/01>).

⁵⁸ Committee on Oversight and Accountability, *Resolution Recommending that the House of Representatives Find United States Attorney General Merrick B. Garland in Contempt of Congress for Refusal To Comply with a Subpoena Duly Issued by the Committee on Oversight and Accountability* (May 2024) (online at <https://oversight.house.gov/wp-content/uploads/2024/05/Garland-Contempt-Report-re-Hur-Report.pdf>).

tion of Joe Biden—and selectively withheld evidence—in order to smear President Biden with false allegations.

For example, in November 2023, Chairman Comer selectively released one page of a four-page internal bank email chain and, on the basis of that single page, falsely claimed that regulators were concerned that Hunter Biden’s financial activities amounted to money laundering. In fact, the three other pages of the email chain—which contain later emails directly contradicting the Chairman’s public claims—explicitly state that the transactions at issue were “reasonable and consistent with the business profile” and that the entity was “transparent.”⁵⁹

In December 2023, Chairman Comer blatantly mischaracterized transaction records showing Hunter Biden repaid his father for car payments that Joe Biden—who was at the time a private citizen—made on Hunter Biden’s behalf while Hunter Biden was in and out of rehabilitation for drug addiction. In fact, the *Wall Street Journal* confirmed that Joe and Hunter Biden purchased the vehicle in June 2018 from Bay shore Ford Truck Sales in Delaware, even interviewing the now-retired salesman who organized the deal and who confirmed that Joe Biden signed for the financing of the vehicle.⁶⁰ The *Wall Street Journal* article includes a photograph of Hunter Biden shaking hands with the salesman as Joe Biden looks on, and notes that even “[m]essages on Hunter Biden’s abandoned laptop also support details about the transaction and the monthly repayments from Hunter Biden to his father.”⁶¹ As *CNN* reported:

Republicans on the House Oversight Committee released a document showing payment from Hunter Biden’s business entity, Owasco PC, to President Joe Biden when he was not in office, but neglected to include evidence that the president’s son was repaying his father for a car.⁶²

Similarly, Chairman Comer misrepresented checks from James Biden to his brother, Joe Biden—when both were private citizens—to insinuate that they showed President Biden “profited” from his family’s business. Chairman Comer even claimed that Joe Biden had engaged in “bribery” and “money laundering.” In fact, the checks, as well as other bank records in the Committee’s possession all make clear that James Biden was simply repaying his brother for a short-term, interest-free loan that was extended and repaid when both were private citizens. The Chairman’s false claims to the contrary were immediately fact-checked by at least ten different news outlets, including *Washington Examiner* and *CNN*.⁶³

⁵⁹ Oversight Committee Democrats (@Oversight), X (Nov. 29, 2023) (online at <https://twitter.com/OversightDems/status/1730011731986927930?s=20>) (citing Oversight Committee (@GOPoversight), X (Nov. 29, 2023) (online at <https://twitter.com/GOPoversight/status/1729983592648855652>)).

⁶⁰ *GOP Sees Skulduggery in Hunter Biden Paying His Father Back for Truck*, *Wall Street Journal* (Dec. 4, 2023) (online at www.wsj.com/politics/gop-sees-skulduggery-in-hunter-biden-paying-his-father-back-for-truck-5d40741a).

⁶¹ *Id.*

⁶² *House Oversight GOP Release Document Showing Payments Made by Hunter Biden to His Dad; Documents Say They Were for a Car*, *CNN* (Dec. 5, 2023) (online at www.cnn.com/2023/12/04/politics/oversight-committee-hunter-biden-car-payments/index.html).

⁶³ *Joe Biden May Have Lent James Biden Money to Justify ‘Loan’ Repayments, Bank Records Show*, *Washington Examiner* (Nov. 8, 2023) (online at www.washingtonexaminer.com/news/house/bank-records-show-joe-biden-paid-james-biden); *Fact Check: Evidence Supports Democrats’ Case that Joe Biden Made a Personal Loan to His Brother*, *CNN* (Oct. 31, 2023) (online at

True to form, Republicans have also misrepresented the conclusions of Special Counsel Hur’s investigation. For example, Judiciary Committee Chairman Jordan alleged that Joe Biden had retained classified documents after serving as Vice President because “he had 8 million reasons to ignore the rules”—referring to the \$8 million advance Joe Biden and his wife received to write three books.⁶⁴ In fact, Special Counsel Hur wrote in his report that President Biden’s “published book is not known to contain classified information” and that “the Afghanistan documents and the 2009 troop surge played no role in *Promise Me, Dad*, the book Mr. Biden wrote.”⁶⁵

Republicans have not limited their misrepresentations about the classified documents investigation to the Hur Report. The Committee’s contempt report references four transcribed interviews that the Committee conducted with Gary Stern, National Archives and Records Administration (NARA) General Counsel; Kathy Chung, a former executive assistant to President Biden; and two employees of the Penn Biden Center.⁶⁶ Committee Republicans have refused to release the transcripts of these interviews and have instead mischaracterized these witnesses’ testimony for over a year. In particular, Chairman Comer falsely asserted that Ms. Chung was specifically hired to move classified documents on the recommendation of Hunter Biden. As reflected in the interview transcript, Ms. Chung’s attorney explained, in a letter to the Chairman, that she was “hired as an Assistant to the Vice President responsible for office affairs,” and not “for the purpose of helping with moving documents.”⁶⁷ When Ms. Chung’s attorney demanded that Chairman Comer correct his “absurd statements” about Ms. Chung, Republican staff privately conceded that the Chairman “misspoke.”⁶⁸ However, Chairman Comer failed to publicly retract his false claims. Chairman Comer has also repeatedly promoted racist and xenophobic conspiracy theories about Ms. Chung, falsely suggesting a connection between Ms. Chung and the Chinese Communist Party.⁶⁹

www.cnn.com/2023/10/31/politics/fact-check-evidence-supports-democrats-case-that-joe-biden-made-a-personal-loan-to-his-brother/index.html.

⁶⁴ *The Fact Checker: How Jim Jordan Tried to Connect the Dots on Biden’s \$8 Million Book Deal*, Washington Post (May 18, 2024) (online at www.washingtonpost.com/politics/2024/05/18/how-jim-jordan-connected-dots-bidens-8-million-book-deal/).

⁶⁵ 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.* (Feb. 2024) (online at www.justice.gov/storage/report-from-special-counsel-robert-k-hur-february-2024.pdf).

⁶⁶ Committee on Oversight and Accountability, *Resolution Recommending that the House of Representatives Find United States Attorney General Merrick B. Garland in Contempt of Congress for Refusal To Comply with a Subpoena Duly Issued by the Committee on Oversight and Accountability* (May 2024) at 6 (online at <https://oversight.house.gov/wp-content/uploads/2024/05/Garland-Contempt-Report-re-Hur-Report.pdf>).

⁶⁷ Letter from William W. Taylor, III, Zuckerman Spaeder LLP, to Chairman James Comer, Committee on Oversight and Accountability (Mar. 14, 2023) (online at <https://oversightdemocrats.house.gov/sites/evo-subsites/democrats-oversight.house.gov/files/2023-03-14%20Correspondence%20to%20Chairman%20Comer.PDF>); See also Memorandum from Committee on Oversight and Accountability Democratic Staff to Democratic Members of the Committee on Oversight and Accountability re Oversight Committee Investigation into Presidential and Classified Records and Transcribed Interview of Former Executive Assistant to then-Vice President Biden (May 3, 2023) (online at <https://oversightdemocrats.house.gov/sites/evo-subsites/democrats-oversight.house.gov/files/5.3.2023%20Chung%20Memo%20-%20FINAL.pdf>).

⁶⁸ Call with Staff, Committee on Oversight and Accountability, and Counsel for Ms. Chung, Zuckerman Spaeder LLP (Mar. 27, 2023).

⁶⁹ *Congressman Comer Joined Jenn Pellegrino on Newsmax Tonight*, Newsmax (Jan. 24, 2023) (online at www.facebook.com/CongressmanComer/videos/573322927985215/).

Republicans have also falsely alleged that the DOJ's decision to prosecute former President Trump for mishandling classified information—but not to prosecute President Biden—proves that DOJ is biased and actively protecting President Biden. For example, House Speaker Mike Johnson previously said, “remember now, the DOJ is indicting one president with politically motivated charges and they are now carrying the water for another amid very similar allegations.”⁷⁰

To be clear, Special Counsel Hur is a registered Republican who served as a senior political appointee in the Trump Administration.⁷¹ Prior to his appointment as Special Counsel to investigate President Biden, Mr. Hur served as Associate Deputy Attorney General at the DOJ from 2017 to 2018, during the Trump Administration.⁷² Mr. Hur was subsequently appointed by Donald Trump to serve as U.S. Attorney for the District of Maryland in 2018.⁷³

Special Counsel Hur affirmed during his testimony before the Judiciary Committee that “Attorney General Garland did not interfere with my efforts and I was able to conduct a fair, thorough and independent investigation,” and that “[p]artisan politics had no place whatsoever in my work.”⁷⁴ In fact, in his report, the Special Counsel laid out the clear differences between the conduct of Donald Trump and President Biden, noting:

It is not our role to assess the criminal charges pending against Mr. Trump, but several material distinctions between Mr. Trump's case and Mr. Biden's are clear. Unlike the evidence involving Mr. Biden, the allegations set forth in the indictment of Mr. Trump, proven, would clearly establish not only Mr. Trump's willfulness but also serious aggravating facts. Most notably, after being given multiple chances to return classified documents avoid prosecution, Mr. Trump allegedly did the opposite. According to the indictment, he not only refused to return documents for months, but he also obstructed justice by enlisting others to destroy evidence and then to lie about it. In contrast, Mr. Biden alerted authorities, turned in classified documents to the National Archives and the Department of Justice in 2022 and 2023, consented to the search of multiple locations including his homes, permitted the seizure and review of handwritten notebooks he believed to be his personal property, and in numerous other ways cooperated with the investigation.⁷⁵

⁷⁰ FactCheck.Org, *Republicans Distort Facts on Special Counsel Decision Not to Charge Biden* (Feb. 16, 2024) (online at www.factcheck.org/2024/02/republicans-distort-facts-on-special-counsel-decision-not-to-charge-biden/); C-SPAN, *House Republican Leadership News Conference* (Feb. 14, 2024) (online at www.c-span.org/video/?533580-1/house-republican-leadership-news-conference).

⁷¹ *Who is Robert Hur, Special Counsel for Biden Classified Documents Probe?*, Washington Post (Feb. 16, 2024) (online at www.washingtonpost.com/national-security/2023/01/12/special-counsel-robert-hur-biden-classified-documents/).

⁷² *Who is Robert Hur? A Look at the Special Counsel Due to Testify on Biden Classified Documents Case*, Associated Press (Mar. 11, 2024) (online at <https://apnews.com/article/robert-hur-biden-special-counsel-classified-documents-0f8e4a9d99f8b7d035f75f78e9b8d3d3>).

⁷³ *Id.*

⁷⁴ *Hur Says Garland Did Not Interfere—Live Updates*, Politico (Mar. 12, 2024) (online at www.politico.com/live-updates/2024/03/12/congress/hur-says-garland-did-not-interfere-00146565); *Hur Defends His Findings as Political Knives Come Out*, New York Times (Mar. 12, 2024) (online at www.nytimes.com/live/2024/03/12/us/hur-biden-testimony).

⁷⁵ Special Counsel Robert K. Hur, *Report on the Investigation into Unauthorized Removal, Retention, and Disclosure of Classified Documents Discovered at Locations Including the Penn*

In sum, there is simply no basis to hold Attorney General Garland in contempt. Far from impeding the Committee, the Attorney General has cooperated with the Committee's investigation and provided it with all the information it has sought, including the complete, 250-page transcript of the President's voluntary, five-hour interview with Special Counsel Hur. The audio recording of that interview will not in any way change the President's words, nor will it miraculously reveal the evidence of impeachable conduct that Committee Republicans have vainly sought in the 3.8 million pages of documents and 80 hours of testimony collected as part of their 17-month impeachment inquiry. These contempt proceedings are a transparent effort to find a scapegoat for the embarrassing failure of this sham impeachment effort.

JAMIE RASKIN,
Ranking Member.

