

Turner	Walberg	Williams (GA)
Underwood	Waltz	Williams (NY)
Valadao	Wasserman	Williams (TX)
Van Drew	Schultz	Wilson (FL)
Van Duyne	Waters	Wilson (SC)
Van Orden	Weber (TX)	Wittman
Vargas	Webster (FL)	Womack
Vasquez	Wenstrup	Yakym
Veasey	Westerman	Zinke
Velázquez	Wexton	
Wagner	Wild	

NAYS—26

Biggs	Davidson	Moore (AL)
Bishop (NC)	Good (VA)	Nehls
Boebert	Gosar	Norman
Brecheen	Greene (GA)	Ogles
Burchett	Hageman	Perry
Burlison	Harris	Posey
Cloud	Higgins (LA)	Rosendale
Clyde	Massie	Roy
Crane	Mooney	

NOT VOTING—14

Armstrong	Jackson Lee	Peters
Bowman	Johnson (SD)	Smith (NE)
Evans	Mace	Smith (NJ)
Granger	Mfume	Watson Coleman
Grijalva	Murphy	

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE
The SPEAKER pro tempore (during the vote). There are 2 minutes remaining.

□ 1121

So (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

ELECTING MEMBERS TO CERTAIN
STANDING COMMITTEES OF THE
HOUSE OF REPRESENTATIVES

Mr. KILDEE. Mr. Speaker, by direction of the Democratic Caucus, I offer a privileged resolution and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1291

Resolved, That the following named Member be, and is hereby, elected to the following standing committee of the House of Representatives:

COMMITTEE ON VETERANS' AFFAIRS: Mr. Kennedy.

Mr. KILDEE (during the reading). Mr. Speaker, I ask unanimous consent that the resolution be considered as read.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

PERMISSION FOR MEMBER TO BE
CONSIDERED AS PRIMARY SPONSOR OF H.R. 4205

Mr. BIGGS. Mr. Speaker, I ask unanimous consent that I may hereafter be considered to be the primary sponsor of H.R. 4205, a bill originally introduced by Representative Santos of New York, for the purpose of adding cosponsors and requesting reprintings pursuant to clause 7 of rule XII.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

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 THE JUDICIARY

Mr. JORDAN. Mr. Speaker, by direction of the Committee on the Judiciary, I call up the report (H. Rept. 118-527) and accompanying 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 the Judiciary, and ask for its immediate consideration in the House.

The Clerk read the title of the report. The SPEAKER pro tempore. Pursuant to House Resolution 1287, the report is considered read.

The text of the report is as follows:

The Committee on the Judiciary, having considered this Report, reports favorably thereon and recommends that the Report be approved.

The form of the Resolution that the Committee on the Judiciary 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 Committee on the Judiciary, detailing the refusal of Merrick B. Garland, Attorney General, U.S. Department of Justice, to produce documents, records, and materials to the Committee on the Judiciary 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.

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 Committee on Oversight and Accountability ("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 Judiciary 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 codify procedures governing the Department's special counsel investigations or to strengthen the Department's commitment to impartial justice. To date, the Department has refused to produce the audio recordings.

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 "invaluable 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

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.

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

Continued

¹H.R. Res. 918, 118th Cong. (2023).

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 "struggle[d] to remember events and strain[ed] at times to read and relay his own [handwriting]." ¹¹ Special Counsel Hur also observed that President Biden "did not remember when he was vice president," "for[got] 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 Judiciary and Oversight 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, Treason, 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 Judiciary, Oversight, 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 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 Judiciary and Oversight 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 Committee's subpoena; it was also issued pursuant to the Committee's authority to conduct legislative oversight. ²⁴ Article I of the Constitution

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.");

²⁰ Sept. 27 Memo, *supra* note 18.

²¹ H.R. Res. 918, 118th Cong. (2023).

²² H.R. Res. 917, 118th Cong. (2023).

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

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 Committee on the Judiciary is authorized to conduct oversight of the Department and of criminal justice matters in the United States to inform potential legislative reforms. ²⁶

To further the Committee's constitutionally mandated oversight and legislative duties, the Committee must ensure compliance with duly authorized congressional subpoenas. The information that the Committee requires, and the Department is in possession of, is necessary for the Committee to consider potential legislative reforms to the Department and its use of special counsels to conduct investigations of current and former Presidents of the United States. These potential legislative reforms may include, among other things, codifying certain procedures governing the Department's special counsel investigations to better ensure that the Department pursues impartial justice. The circumstances of Special Counsel Hur's investigative findings and President Biden's public denial of these findings demonstrate why such potential legislative reforms may be necessary.

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. ²⁷ Moore notified his colleague Bob Bauer, who then notified White House Counsel Stuart Delery. ²⁸ The same day, the White House Counsel's Office passed the information along to the National Archives and Records Administration (NARA), which retrieved the documents, and referred the case to the Department and Federal Bureau of Investigation (FBI). ²⁹ Additionally, between December 2022 and January 2023, Bauer, Moore, 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. ³⁰ Between January and June 2023, FBI agents located additional materials with classification markings at the Morris Library and Biden Institute at the University of Delaware. ³¹

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 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 U.S. House of Representatives, R. X, cl. 1(1) (2023).

²⁷ Hur Report, *supra* note 3, at 19 (The classification marks on the documents "dat[ed] back to [President Biden's] vice presidency").

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 24-25.

³¹ *Id.* at 28.

Robert K. Hur, U.S. Dep't of Justice) (hereinafter "Hearing on Hur Report").

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

¹² *Id.* at 207-08.

¹³ U.S. CONST. art. I, § 2, cl. 5.

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).

¹⁶ TODD 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 been 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

the Attorney General should appoint a special counsel to investigate the matter.”³² 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.³³

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 when he left office after the vice presidency.³⁴ During his investigation, Special Counsel Hur conducted 173 interviews of 147 witnesses, including President Biden himself and his memoir ghostwriter, Mark Zwonitzer.³⁵ 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.³⁶ 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” as a private citizen,³⁷ criminal charges were not warranted because, among other things, President Biden is an “elderly man with a poor memory.”³⁸

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.³⁹ 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.⁴⁰ 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.⁴¹ By 2015, Ukrainian prosecutors had opened an “unlawful enrichment” investigation into Burisma and its owner, Mykola Zlochevsky.⁴² Shortly thereafter, Mr. Zlochevsky and other Burisma executives approached Hunter Biden, informed him that the investigations placed significant pressure on the company, and asked Hunter Biden if he could help alleviate such pressure.⁴³ Testimony provided to the Committees shows that Hunter Biden subsequently

“called D.C.”⁴⁴ After this phone call, in November and December 2015, Vice President Biden purportedly took official actions concerning Ukraine—including meeting with Ukrainian Prime Minister Arseniy Yatsenyuk—and conditioning the United States’s \$1 billion loan “to fight corruption” on the firing of Prosecutor General Shokin.⁴⁵ Withholding the loan guarantee on this condition was contrary to the overwhelming consensus of the Obama Administration.⁴⁶

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.⁴⁷ 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.”⁴⁸ 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.⁴⁹ While working with Zwonitzer on his memoir, President Biden read from classified materials “verbatim,” and such classified materials included notes on matters of foreign policy, “meeting notes summariz[ing] the actions and views of U.S. military leaders and 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.”⁵⁰ Notably, Special Counsel Hur’s report found that President Biden received an advance of \$8 million to produce a memoir.⁵¹ 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 Judiciary Committee, the Oversight 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 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 Executive Office of the President, and President Biden’s personal counsel referring or relating to Special Counsel Hur’s report.⁵²

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.⁵³ The Department offered no timeframe or commitment for the production of requested documents and information.⁵⁴ Accordingly, on February 27, 2024, the Judiciary Committee and the Oversight Committee 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 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.⁵⁵

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*.⁵⁶ Two days later, the Committees notified the Department that its initial production in response to the subpoenas was inadequate.⁵⁷ 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.⁵⁸ 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.⁵⁹ The Department failed to

³² *Id.* at 21.

³³ *Id.* at 26.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 29.

³⁷ *Id.* at 1.

³⁸ *Id.* at 220.

³⁹ See Subpoena Letter, *supra* note 2; Letter from Rep. Jamie 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. Jamie Comer, Chairman, H. Comm. on Oversight & Accountability, to Robert K. Hur, Special Counsel, Dep’t of Justice (Oct. 16, 2023).

⁴⁰ *Id.*

⁴¹ Alan Cullison, *Bidens in Ukraine: An Explainer*, WALL ST. J. (Sept. 22, 2019).

⁴² 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).

⁴³ Transcribed Interview of Mr. Devon Archer at 33–34 (July 31, 2023) (on file with Committee).

⁴⁴ *Id.* at 36.

⁴⁵ Glenn Kessler, *Inside VP Biden’s linking of a loan to a Ukraine prosecutor’s ouster*, WASH. POST (Sept. 15, 2023).

⁴⁶ See *id.* (“On the plane, according to a person who participated in the conversation, Biden ‘called an audible’—he changed the plan.”).

⁴⁷ Hur Report, *supra* note 4, at A–2.

⁴⁸ *Id.*

⁴⁹ See, e.g., *id.* at 97.

⁵⁰ *Id.* at 97–106.

⁵¹ *Id.*

⁵² Feb. 12 Letter, *supra* note 39.

⁵³ 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).

⁵⁴ *Id.*

⁵⁵ Subpoena Letter, *supra* note 2.

⁵⁶ 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.

⁵⁷ 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”).

⁵⁸ *Id.*

⁵⁹ *Id.*

comply with the Committees' revised deadline,⁶⁰ and instead informed the Committees that an "interagency review" for classified and confidential information was pending.⁶¹

On March 12, 2024, a little more than two hours before Special Counsel Hur's scheduled testimony in front of the Judiciary Committee, the Department produced to the Committees two redacted transcripts of Special Counsel Hur's interviews with President Biden.⁶² 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 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.⁶³ 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.⁶⁴

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.⁶⁵ 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.⁶⁶

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.⁶⁷ 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.⁶⁸ Rather than engaging with the Committees and addressing their articulated reasons for seeking the audio recordings, the Department took it upon itself to dictate to the Committees what materials fulfilled the House's informational needs.⁶⁹

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."⁷⁰ 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.⁷¹ 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.⁷² 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.⁷³ The Committees offered the Department until April 25 to produce the withheld materials or else they would consider invoking contempt of Congress proceedings.⁷⁴

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.⁷⁵

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

The Committees have articulated the impeachment and legislative purpose 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 Committee's repeated attempts to explain the valid basis for seeking the records.

In the two months since the Committees' initial requests to the Department, and fol-

lowing 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 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 do 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.⁷⁶ During his "dozens of hours of interviews with Zwonitzer," President Biden "read from notebook entries related to many classified briefings" along with "foreign policy issues in Ukraine, Central America, and Iraq. . . ." ⁷⁷ 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.⁷⁸ 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.⁷⁹ Similarly, Zwonitzer discussed President Biden's description and recollection of these issues during his interviews with Special Counsel Hur.⁸⁰ 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,⁸¹ 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.

This verbal nuance is also important to the Committees' legislative oversight investigation. Special Counsel Hur concluded that although there was evidence that President Biden's conduct satisfied the elements of willfully retaining classified information, justice would not be served by indicting President Biden because he would appear to

⁷⁶ Subpoena Letter, *supra* note 2; Mar. 9 Letter, *supra* note 57.

⁷⁷ Hur Report, *supra* note 4, at 97, 106.

⁷⁸ *Id.* at A-1-22.

⁷⁹ 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).

⁸⁰ 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).

⁸¹ Hur Report, *supra* note 3, at 6.

⁶⁰ 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); 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").

⁶¹ Letter from Hon. Merrick Garland, Att'y Gen., U.S. Dep't of Justice, to Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability, Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, and Rep. Jason Smith, Chairman, H. Comm. on Ways and Means at 2 (Feb. 16, 2024); Email from Office Staff, Office of Legislative Affairs, U.S. Dep't of Justice, to Comm. Staff, H. Comm. on the Judiciary (Mar. 11, 2024, 3:12 p.m.).

⁶² Email from Office Staff, Office of Legislative Affairs, Dep't of Justice, to Comm. Staff, H. Comm. on the Judiciary (Mar. 12, 2024, 7:43 a.m.) (hereinafter "DOJ OLA 7:43 a.m. Email"); Email from Office Staff, Office of Legislative Affairs, Dep't of Justice, to Comm. Staff, H. Comm. on the Judiciary (Mar. 12, 2024, 7:44 a.m.); Email from Office Staff, Office of Legislative Affairs, Dep't of Justice, to Comm. Staff, H. Comm. on the Judiciary (Mar. 12, 2024, 7:45 a.m.); DOJ-HJC-HUR-0000033-0000290.

⁶³ March 12 Letters, *supra* note 60.

⁶⁴ 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"); DOJ OLA 7:43 a.m. Email, *supra* note 53; Mark Swanson, *Rep. Jordan to Newsmax: WH Sat on Biden-Hur Transcripts*, NEWSMAX (Mar. 12, 2024).

⁶⁵ 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).

⁶⁶ *Id.*

⁶⁷ Letter from Hon. Carlos F. Uriarte, Assistant Att'y Gen., U.S. Dep't of Justice, to Rep. Jim Jor-

dan, 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.

⁶⁸ Apr. 8 Letter, *supra* note 67.

⁶⁹ *Id.*

⁷⁰ Apr. 15 Letter, *supra* note 64.

⁷¹ *Id.* at 2-3.

⁷² *Id.* at 3.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ 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).

a jury to be a “sympathetic, well-meaning elderly man with a poor memory.”⁸² President Biden’s personal attorneys and the White House Counsel’s office have contested Special Counsel Hur’s assessment.⁸³ However, Special Counsel Hur stood by his assessment during his sworn testimony before the Judiciary Committee.⁸⁴ The transcripts provided to the Committee are insufficient to arbitrate this dispute as to President Biden’s mental state, an issue which goes directly to his culpability and whether Special Counsel Hur appropriately pursued justice by declining to bring an indictment.

This is especially important because while Special Counsel Hur declined to bring charges against President Biden, at the same time, the Department, through another Special Counsel’s office, is prosecuting a former President and declared candidate for that office for allegedly mishandling classified information.⁸⁵ The Committee must assess whether Special Counsel Hur’s declination decision, which was based on President Biden’s poor mental state, was consistent with the Department’s commitment to impartial justice or whether legislative reforms are necessary regarding Special Counsel investigations because they are not leading to impartial outcomes. The transcripts produced by the Department, due to their inherent limitations, are not sufficient for that purpose.

In short, the audio recordings would offer unique and important information to advance the Committees’ impeachment inquiry and inform the Judiciary Committee as to the need for legislative reforms to the operations of the Department or the conduct of Special Counsel investigations. 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.⁸⁶ Such a divergence does occur and, in fact, it 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*.”⁸⁷ However, the official White House transcript of that same speech initially did not reflect that President Biden uttered the word “*pause*.”⁸⁸ 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.⁸⁹ 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.⁹⁰ The Department has relied upon this decision repeatedly in support of its own subpoenas,⁹¹ 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.

On May 16, 2024, a mere two hours 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 is it 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.

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/>.

⁸⁹ Apr. 8 Letter, *supra* note 67, at 4.

⁹⁰ *U.S. v. Nixon*, 418 U.S. 683 (1974).

⁹¹ See, e.g., *United States v. Hussain*, No. CR 16-462 (CRB), 2018 WL 6695574 at *2-3 (Nov. 25, 2018) (citing *Nixon* in opposition to a criminal defendant’s motion to quash the Department’s subpoena).

⁹² Letter from Mr. Edward N. Siskel, Counsel to the President, to Rep. Jim Jordan, Chairman, H. Comm. On the Judiciary, et al. (May 16, 2024) [hereinafter “Siskel Letter”]; Letter from Asst. Att’y Gen. Carlisle Felipe Uriarte, 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 (May 16, 2024).

This conclusion is consistent with *U.S. v. Mitchell*, which rejected a presidential claim of privilege over audio recordings involving, 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 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.

The Constitution does not permit the executive branch to dictate to Congress how to proceed with an impeachment inquiry or to conduct its oversight.⁹⁸ Rather, “congressional committees have significant discretion in how they approach an investigation[.]”⁹⁹ and, in the context of an impeachment inquiry, federal courts emphasize that Congress must possess all pertinent evidence.¹⁰⁰ The Committees are engaged in

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.*

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

⁹⁶ *Id.*

⁹⁷ See Letter from Rep. Jim Jordan, Chairman, H. Comm. On the Judiciary, et al., to Hon. Merrick B. Garland, Att’y Gen., U.S. Dep’t of Justice (April 15, 2024).

⁹⁸ 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).

⁹⁹ TODD GARVEY, CONG. RSCH. SERV., COMMITTEE DISCRETION IN OBTAINING WITNESS TESTIMONY 2 (2023).

¹⁰⁰ 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*

Continued

⁸² *Id.* at 219.

⁸³ Betsy Woodruff Swan, *White House lawyers wrote Garland slamming Hur’s report before its’ release*, POLITICO (Feb. 15, 2024).

⁸⁴ Hearing on Hur Report, *supra* note 10, at 18 (“My assessment in the report about the relevance of the President’s memory was necessary and accurate and fair.”).

⁸⁵ Katherine Faulders, et al., *Timeline: Special counsel’s investigation into Trump’s handling of classified documents*, ABC News (Apr. 5, 2024).

⁸⁶ 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, however, 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.”).

⁸⁷ See Anders Hagstrom, *Biden appears to read script instructions out loud in latest teleprompter gaffe: ‘Four more years, pause,’* Fox News (Apr. 24, 2024).

⁸⁸ 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

an inquiry to assess whether to draft articles of impeachment against President Biden, who is the head of the executive 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.

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 ma-

terials 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 to the House with an amendment in the nature of a substitute by a recorded vote of 18 to 15, 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. Vote on Amendment #1 to the Report ANS offered by Mr. Nadler—failed 8 ayes to 17 nays.
2. Vote on Amendment #2 to the Report ANS offered by Mr. Johnson—failed 5 ayes to 12 nays.
3. Vote on Amendment #3 to the Report ANS offered by Ms. Dean—failed 5 ayes to 12 nays.
4. Vote on Amendment #4 to the Report ANS offered by Mr. Johnson—failed 5 ayes to 12 nays.
5. Vote on Amendment #5 to the Report ANS offered by Ms. Dean—failed 5 ayes to 12 nays.
6. Vote on Amendment #6 to the Report ANS offered by Mr. Ivey—failed 8 ayes to 9 nays.
7. Vote on Amendment #7 to the Report ANS offered by Mr. Swalwell—failed 9 ayes to 12 nays.
8. Vote on Amendment #8 to the Report ANS offered by Ms. Scanlon—failed 9 ayes to 12 nays.
9. Vote on Amendment #9 to the Report ANS offered by Mr. Armstrong—passed 15 ayes to 11 nays.
10. Vote on favorably reporting the Report, as amended—passed 18 ayes to 15 nays.

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.”).

COMMITTEE ON THE JUDICIARY
118th CONGRESS
24-19
ROLL CALL

Date: 5/16/24

Vote on: Nadler Amends #1 to Contempt Report ANS Roll Call #: 1

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>		✓		MR. NADLER (NY) <i>Ranking Member</i>	✓		
MR. ISSA (CA)		✓		MS. LOFGREN (CA)			
MR. GAETZ (FL)				MS. JACKSON LEE (TX)			
MR. BIGGS (AZ)				MR. COHEN (TN)			
MR. McCLINTOCK (CA)		✓		MR. JOHNSON (GA)	✓		
MR. TIFFANY (WI)		✓		MR. SCHIFF (CA)	✓		
MR. MASSIE (KY)		✓		MR. SWALWELL (CA)	✓		
MR. ROY (TX)		✓		MR. LIEU (CA)			
MR. BISHOP (NC)				MS. JAYAPAL (WA)			
MS. SPARTZ (IN)				MR. CORREA (CA)			
MR. FITZGERALD (WI)		✓		MS. SCANLON (PA)	✓		
MR. BENTZ (OR)		✓		MR. NEGUSE (CO)			
MR. CLINE (VA)		✓		MS. McBATH (GA)			
MR. ARMSTRONG (ND)		✓		MS. DEAN (PA)	✓		
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)	✓		
MR. VAN DREW (NJ)		✓		MS. ROSS (NC)			
MR. NEHLS (TX)				MS. BUSH (MO)			
MR. MOORE (AL)		✓		MR. IVEY (MD)	✓		
MR. KILEY (CA)		✓		MS. BALINT (VT)			
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)		✓					
MS. LEE (FL)							
MR. HUNT (TX)							
MR. FRY (SC)		✓					
VACANT							

Roll Call Totals: Ayes: 8 Nays: 17 Present: X
Passed: _____ Failed: _____

COMMITTEE ON THE JUDICIARY

Date: 5/14/24

118th CONGRESS

24-19

ROLL CALL

Vote on: Johnson Amndt #12 to Contempt Report ANS Roll Call #: 2

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>		✓		MR. NADLER (NY) <i>Ranking Member</i>	✓		
MR. ISSA (CA)				MS. LOFGREN (CA)			
MR. GAETZ (FL)				MS. JACKSON LEE (TX)			
MR. BIGGS (AZ)				MR. COHEN (TN)			
MR. McCLINTOCK (CA)		✓		MR. JOHNSON (GA)	✓		
MR. TIFFANY (WI)		✓		MR. SCHIFF (CA)			
MR. MASSIE (KY)		✓		MR. SWALWELL (CA)			
MR. ROY (TX)				MR. LIEU (CA)			
MR. BISHOP (NC)				MS. JAYAPAL (WA)			
MS. SPARTZ (IN)		✓		MR. CORREA (CA)			
MR. FITZGERALD (WI)		✓		MS. SCANLON (PA)			
MR. BENTZ (OR)		✓		MR. NEGUSE (CO)			
MR. CLINE (VA)				MS. McBATH (GA)			
MR. ARMSTRONG (ND)		✓		MS. DEAN (PA)	✓		
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)	✓		
MR. VAN DREW (NJ)		✓		MS. ROSS (NC)			
MR. NEHLS (TX)				MS. BUSH (MO)			
MR. MOORE (AL)		✓		MR. IVEY (MD)	✓		
MR. KILEY (CA)				MS. BALINT (VT)			
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)							
MS. LEE (FL)							
MR. HUNT (TX)							
MR. FRY (SC)							
VACANT							

Roll Call Totals: Ayes: 5 Nays: 12 Present: X
Passed: _____ Failed: _____

COMMITTEE ON THE JUDICIARY

Date: 5/16/24

118th CONGRESS

24-19

ROLL CALL

Vote on: Dean Amndt #3 to Contempt Report ANS Roll Call #: 3

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>				MR. NADLER (NY) <i>Ranking Member</i>	✓		
MR. ISSA (CA)		✓		MS. LOFGREN (CA)			
MR. GAETZ (FL)				MS. JACKSON LEE (TX)			
MR. BIGGS (AZ)				MR. COHEN (TN)			
MR. McCLINTOCK (CA)				MR. JOHNSON (GA)	✓		
MR. TIFFANY (WI)		✓		MR. SCHIFF (CA)			
MR. MASSIE (KY)				MR. SWALWELL (CA)			
MR. ROY (TX)		✓		MR. LIEU (CA)			
MR. BISHOP (NC)				MS. JAVAPAL (WA)			
MS. SPARTZ (IN)		✓		MR. CORREA (CA)			
MR. FITZGERALD (WI)		✓		MS. SCANLON (PA)			
MR. BENTZ (OR)		✓		MR. NEGUSE (CO)			
MR. CLINE (VA)		✓		MS. McBATH (GA)			
MR. ARMSTRONG (ND)		✓		MS. DEAN (PA)	✓		
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)			
MR. VAN DREW (NJ)				MS. ROSS (NC)			
MR. NEHLS (TX)				MS. BUSH (MO)			
MR. MOORE (AL)		✓		MR. IVEY (MD)	✓		
MR. KILEY (CA)		✓		MS. BALINT (VT)	✓		
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)							
MS. LEE (FL)							
MR. HUNT (TX)							
MR. FRY (SC)							
VACANT							

Roll Call Totals: Ayes: 5 Nays: 12 Present: 1
Passed: _____ Failed: _____

COMMITTEE ON THE JUDICIARY

Date: 5/10/24

118th CONGRESS

24-19

ROLL CALL

Vote on: Johnson Amndt #4 to Contempt Report ANS Roll Call #: 4

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>		✓		MR. NADLER (NY) <i>Ranking Member</i>	✓		
MR. ISSA (CA)		✓		MS. LOFGREN (CA)			
MR. GAETZ (FL)				MS. JACKSON LEE (TX)			
MR. BIGGS (AZ)				MR. COHEN (TN)			
MR. McCLINTOCK (CA)				MR. JOHNSON (GA)	✓		
MR. TIFFANY (WI)		✓		MR. SCHIFF (CA)			
MR. MASSIE (KY)				MR. SWALWELL (CA)			
MR. ROY (TX)		✓		MR. LIEU (CA)			
MR. BISHOP (NC)				MS. JAYAPAL (WA)			
MS. SPARTZ (IN)		✓		MR. CORREA (CA)			
MR. FITZGERALD (WI)				MS. SCANLON (PA)			
MR. BENTZ (OR)		✓		MR. NEGUSE (CO)			
MR. CLJNE (VA)		✓		MS. McBATH (GA)			
MR. ARMSTRONG (ND)		✓		MS. DEAN (PA)	✓		
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)			
MR. VAN DREW (NJ)				MS. ROSS (NC)			
MR. NEHLS (TX)				MS. BUSH (MO)			
MR. MOORE (AL)		✓		MR. IVEY (MD)	✓		
MR. KILEY (CA)		✓		MS. BALINT (VT)	✓		
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)							
MS. LEE (FL)							
MR. HUNT (TX)							
MR. FRY (SC)							
VACANT							

Roll Call Totals: Ayes: 5 Nays: 12 Present: X Failed: _____

COMMITTEE ON THE JUDICIARY
118th CONGRESS
24-19

Date: 5/10/21

ROLL CALL

Vote on: *Dear Amrdt #5 to Contempt Report ANS*

Roll Call #: 5

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>		✓		MR. NADLER (NY) <i>Ranking Member</i>	✓		
MR. ISSA (CA)		✓		MS. LOFGREN (CA)			
MR. GAETZ (FL)				MS. JACKSON LEE (TX)			
MR. BIGGS (AZ)				MR. COHEN (TN)			
MR. McCLINTOCK (CA)				MR. JOHNSON (GA)	✓		
MR. TIFFANY (WI)		✓		MR. SCHIFF (CA)			
MR. MASSIE (KY)				MR. SWALWELL (CA)			
MR. ROY (TX)		✓		MR. LIEU (CA)			
MR. BISHOP (NC)				MS. JAYAPAL (WA)			
MS. SPARTZ (IN)		✓		MR. CORREA (CA)			
MR. FITZGERALD (WI)				MS. SCANLON (PA)			
MR. BENTZ (OR)		✓		MR. NEGUSE (CO)			
MR. CLINE (VA)		✓		MS. McBATH (GA)			
MR. ARMSTRONG (ND)		✓		MS. DEAN (PA)	✓		
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)			
MR. VAN DREW (NJ)				MS. ROSS (NC)			
MR. NEHLS (TX)				MS. BUSH (MO)			
MR. MOORE (AL)		✓		MR. IVEY (MD)	✓		
MR. KILEY (CA)				MS. BALINT (VT)	✓		
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)							
MS. LEE (FL)		✓					
MR. HUNT (TX)							
MR. FRY (SC)							
VACANT							

Roll Call Totals: Ayes: 5 Nays: 12 Present: X
Passed: _____ Failed: _____

COMMITTEE ON THE JUDICIARY

Date: 5/16/29

118th CONGRESS

24-19

ROLL CALL

Vote on: Ivey Amndt #16 to Contempt Report ANS

Roll Call #: 60

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>		✓		MR. NADLER (NY) <i>Ranking Member</i>	✓		
MR. ISSA (CA)				MS. LOFGREN (CA)			
MR. GAETZ (FL)				MS. JACKSON LEE (TX)			
MR. BIGGS (AZ)				MR. COHEN (TN)	✓		
MR. McCLINTOCK (CA)				MR. JOHNSON (GA)	✓		
MR. TIFFANY (WI)		✓		MR. SCHIFF (CA)			
MR. MASSIE (KY)		✓		MR. SWALWELL (CA)	✓		
MR. ROY (TX)		✓		MR. LIEU (CA)			
MR. BISHOP (NC)				MS. JAYAPAL (WA)			
MS. SPARTZ (IN)				MR. CORREA (CA)			
MR. FITZGERALD (WI)				MS. SCANLON (PA)	✓		
MR. BENTZ (OR)		✓		MR. NEGUSE (CO)			
MR. CLINE (VA)		✓		MS. McBATH (GA)			
MR. ARMSTRONG (ND)		✓		MS. DEAN (PA)	✓		
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)			
MR. VAN DREW (NJ)				MS. ROSS (NC)			
MR. NEHLS (TX)				MS. BUSH (MO)			
MR. MOORE (AL)				MR. IVEY (MD)	✓		
MR. KILEY (CA)				MS. BALINT (VT)	✓		
MS. HAGEMAN (WY)							
MR. MORAN (TX)							
MS. LEE (FL)		✓					
MR. HUNT (TX)							
MR. FRY (SC)							
VACANT							

Roll Call Totals: Ayes: 8 Nays: 9 Present: X
Passed: Failed: X

COMMITTEE ON THE JUDICIARY

Date: 5/16/24

118th CONGRESS

24-19

ROLL CALL

Vote on: Swalwell Amendment #7 to Contempt Report ANS Roll Call #: 7

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>		✓		MR. NADLER (NY) <i>Ranking Member</i>			
MR. ISSA (CA)				MS. LOFGREN (CA)	✓		
MR. GAETZ (FL)				MS. JACKSON LEE (TX)			
MR. BIGGS (AZ)				MR. COHEN (TN)	✓		
MR. McCLINTOCK (CA)				MR. JOHNSON (GA)	✓		
MR. TIFFANY (WI)		✓		MR. SCHIFF (CA)	✓		
MR. MASSIE (KY)		✓		MR. SWALWELL (CA)	✓		
MR. ROY (TX)		✓		MR. LIEU (CA)			
MR. BISHOP (NC)				MS. JAYAPAL (WA)			
MS. SPARTZ (IN)				MR. CORREA (CA)			
MR. FITZGERALD (WI)				MS. SCANLON (PA)	✓		
MR. BENTZ (OR)		✓		MR. NEGUSE (CO)			
MR. CLINE (VA)		✓		MS. McBATH (GA)			
MR. ARMSTRONG (ND)		✓		MS. DEAN (PA)			
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)			
MR. VAN DREW (NJ)		✓		MS. ROSS (NC)	✓		
MR. NEHLS (TX)				MS. BUSH (MO)			
MR. MOORE (AL)				MR. IVEY (MD)	✓		
MR. KILEY (CA)				MS. BALINT (VT)	✓		
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)							
MS. LEE (FL)		✓					
MR. HUNT (TX)							
MR. FRY (SC)		✓					
VACANT							

Roll Call Totals: Ayes: 9 Nays: 12 Present: X
Passed: _____ Failed: _____

COMMITTEE ON THE JUDICIARY

Date: 5/16/24

118th CONGRESS

24-19

ROLL CALL

Vote on: Scanlon Amndt to Contempt Report ANS #8

Roll Call #: 8

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>				MR. NADLER (NY) <i>Ranking Member</i>			
MR. ISSA (CA)				MS. LOFGREN (CA)	✓		
MR. GAETZ (FL)				MS. JACKSON LEE (TX)			
MR. BIGGS (AZ)				MR. COHEN (TN)	✓		
MR. McCLINTOCK (CA)				MR. JOHNSON (GA)	✓		
MR. TIFFANY (WI)		✓		MR. SCHIFF (CA)	✓		
MR. MASSIE (KY)		✓		MR. SWALWELL (CA)	✓		
MR. ROY (TX)		✓		MR. LIEU (CA)			
MR. BISHOP (NC)		✓		MS. JAYAPAL (WA)			
MS. SPARTZ (IN)				MR. CORREA (CA)			
MR. FITZGERALD (WI)		✓		MS. SCANLON (PA)	✓		
MR. BENTZ (OR)		✓		MR. NEGUSE (CO)			
MR. CLINE (VA)		✓		MS. McBATH (GA)			
MR. ARMSTRONG (ND)		✓		MS. DEAN (PA)			
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)			
MR. VAN DREW (NJ)		✓		MS. ROSS (NC)	✓		
MR. NEHLS (TX)				MS. BUSH (MO)			
MR. MOORE (AL)				MR. IVEY (MD)	✓		
MR. KILEY (CA)				MS. BALINT (VT)	✓		
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)							
MS. LEE (FL)		✓					
MR. HUNT (TX)							
MR. FRY (SC)							
VACANT							

Roll Call Totals: Ayes: 9 Nays: 12 Present: X
Passed: _____ Failed: _____

COMMITTEE ON THE JUDICIARY

Date: 5/10/24

118th CONGRESS

24-19

ROLL CALL

Vote on: *Armstrong Amndt #9 to Contempt Report ANS*

Roll Call #: 9

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>	✓			MR. NADLER (NY) <i>Ranking Member</i>			
MR. ISSA (CA)	✓			MS. LOFGREN (CA)		✓	
MR. GAETZ (FL)				MS. JACKSON LEE (TX)			
MR. BIGGS (AZ)				MR. COHEN (TN)		✓	
MR. McCLINTOCK (CA)				MR. JOHNSON (GA)		✓	
MR. TIFFANY (WI)	✓			MR. SCHIFF (CA)		✓	
MR. MASSIE (KY)				MR. SWALWELL (CA)		✓	
MR. ROY (TX)	✓			MR. LIEU (CA)		✓	
MR. BISHOP (NC)				MS. JAYAPAL (WA)		✓	
MS. SPARTZ (IN)				MR. CORREA (CA)		✓	
MR. FITZGERALD (WI)	✓			MS. SCANLON (PA)		✓	
MR. BENTZ (OR)				MR. NEGUSE (CO)			
MR. CLINE (VA)	✓			MS. McBATH (GA)		✓	
MR. ARMSTRONG (ND)	✓			MS. DEAN (PA)			
MR. GOODEN (TX)	✓			MS. ESCOBAR (TX)			
MR. VAN DREW (NJ)	✓			MS. ROSS (NC)			
MR. NEHLS (TX)	✓			MS. BUSH (MO)			
MR. MOORE (AL)	✓			MR. IVEY (MD)			
MR. KILEY (CA)	✓			MS. BALINT (VT)		✓	
MS. HAGEMAN (WY)	✓						
MR. MORAN (TX)							
MS. LEE (FL)	✓						
MR. HUNT (TX)							
MR. FRY (SC)	✓						
VACANT							

Roll Call Totals: Ayes: 15 Nays: 11 Present: _____ Failed: _____

COMMITTEE ON THE JUDICIARY
118th CONGRESS
24-19
ROLL CALL

Vote on: *Fund passage of the Contempt Report, as amended* Roll Call #: *10* Date: *5/16/24*

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>	✓			MR. NADLER (NY) <i>Ranking Member</i>		✓	
MR. ISSA (CA)	✓			MS. LOFGREN (CA)		✓	
MR. GAETZ (FL)				MS. JACKSON LEE (TX)			
MR. BIGGS (AZ)				MR. COHEN (TN)		✓	
MR. McCLINTOCK (CA)				MR. JOHNSON (GA)		✓	
MR. TIFFANY (WI)	✓			MR. SCHIFF (CA)		✓	
MR. MASSIE (KY)	✓			MR. SWALWELL (CA)		✓	
MR. ROY (TX)	✓			MR. LIEU (CA)		✓	
MR. BISHOP (NC)	✓			MS. JAYAPAL (WA)		✓	
MS. SPARTZ (IN)	✓			MR. CORREA (CA)		✓	
MR. FITZGERALD (WI)	✓			MS. SCANLON (PA)		✓	
MR. BENTZ (OR)				MR. NEGUSE (CO)			
MR. CLINE (VA)	✓			MS. McBATH (GA)		✓	
MR. ARMSTRONG (ND)	✓			MS. DEAN (PA)			
MR. GOODEN (TX)	✓			MS. ESCOBAR (TX)		✓	
MR. VAN DREW (NJ)	✓			MS. ROSS (NC)		✓	
MR. NEHLS (TX)	✓			MS. BUSH (MO)		✓	
MR. MOORE (AL)	✓			MR. IVEY (MD)			
MR. KILEY (CA)	✓			MS. BALINT (VT)		✓	
MS. HAGEMAN (WY)	✓						
MR. MORAN (TX)							
MS. LEE (FL)	✓						
MR. HUNT (TX)							
MR. FRY (SC)	✓						
VACANT							

Roll Call Totals: Ayes: *18* Nays: *15* 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 Robinette Biden Jr., and legislative reforms to the Department of Justice and its use of a special counsel to conduct investigations of current and former Presidents of the United States.

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

I. INTRODUCTION

The Majority is clearly disappointed that Special Counsel Robert Hur declined to bring charges against President Biden, the latest blow in a long line of apparent disappointments. After spending more than twenty million taxpayer dollars on a weaponization

subcommittee going nowhere, after conducting dozens of witness interviews, and after reviewing millions of pages of documents, the Majority has failed to find even a shred of evidence of wrongdoing by the President. Their impeachment investigation fizzled out before they could even clearly articulate a charge. A total lack of policy accomplishments only compounds their obvious frustration as we approach the last months of this do-nothing Republican Congress.

Against this backdrop of failure, the Majority makes one, last-ditch effort to make it look at least like a member of President Biden's cabinet did something wrong. To be clear, the contempt citation the Majority recommends against U.S. Attorney General Merrick Garland is an absolute farce.

The Attorney General and the Department of Justice have provided the Committee with all the information it requires to conduct any legitimate oversight activity. The only discrepancy between what the Majority requested and what the Department has produced is a set of audio files—recordings of the interviews the Special Counsel conducted with President Biden and his ghost writer. The Majority has never demonstrated a legitimate reason for obtaining these audio files and certainly cannot justify a contempt citation on this ground alone.

For a start, the Department of Justice has long since produced written transcripts of these interviews. The Department has also expressed serious and legitimate concern that releasing the audio files would have a chilling effect on high-profile witnesses in future criminal investigations. To that end, the President, in consultation with the Attorney General, has claimed Executive Privilege over the remaining audio files.

It seems painfully obvious that the Majority wants these recordings because they hope to find something they can use to embarrass President Biden. They have certainly amplified manipulated audio and video evidence for political purposes in the past. The only surprise is that—after so many of their members have admitted that their single motivation is to provide political cover for Donald Trump—the Majority still feels the need to hide behind a half-hearted interest in “vocal tone, pace, inflections, verbal nuance, and other idiosyncrasies.” What a sham.

This contempt proceeding is a political stunt and nothing more. It should be roundly defeated.

II. BACKGROUND

On January 12, 2023, Attorney General Merrick Garland appointed Robert Hur, formerly the Trump-appointed U.S. Attorney for the District of Maryland, as Special Counsel charged with investigating President Biden's handling of classified documents.¹ Hur focused on five categories of documents: (1) documents related to Afghanistan, in particular a handwritten memo from then-Vice President Biden to President Obama dated November 28, 2009, detailing his concerns about deploying additional troops to the country;² (2) personal notebooks from the President's time as Vice President;³ (3)

certain documents found at the Penn Biden Center, including documents related to negotiations about the Iran nuclear deal;⁴ (4) documents found at the University of Delaware dating to the President's time as a senator;⁵ and (5) other documents found in the President's Delaware home, including briefing binders from trips that the President took while he was vice president.⁶ Over the course of Hur's 15-month probe, his investigators conducted 173 interviews of 147 witnesses and reviewed more than seven million documents. Hur submitted his 345-page final report to Attorney General Garland on February 5, 2024, and Garland publicly released it in full on February 8, 2024.

The Hur Report exonerates President Biden of any prosecutable charges. Specifically, to be charged with the unauthorized retention of national defense information under the Espionage Act, the government must show that “(1) the defendant had unauthorized possession of a document, writing or note; (2) the document, writing, or note related to the national defense; and (3) the defendant willfully retained the document, writing, or note and failed to deliver it to an employee or officer entitled to receive it.”⁷ Hur found that there was no evidence that the President willfully retained classified information. He also found that the President likely did not know certain information was classified and that he likely believed he was permitted to retain certain documents as personal records. Hur's report also distinguished Biden's conduct from that of President Trump.⁸

On February 7, 2024, the Attorney General notified the Committee that Special Counsel Hur had concluded his investigation.⁹ The following day, the Attorney General produced the entire unredacted report to Congress and made it available to the public.¹⁰ Four days later, Chairman Jordan, along with House Oversight Chairman James Comer, and House Ways & Means Chairman Jason Smith wrote to the Attorney General and demanded that he produce to the Committees:

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, related to the Special Counsel's interview of Mark Zwonitzer;

3. The documents identified as “A9” and “A10” in Appendix A of Mr. Hur's report, which relate to 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 Mr. Hur's report.¹¹

On February 16, 2024, the Department of Justice responded noting that “[s]everal of the materials listed in your February 12 letter require review for classification and protection of national defense information” and informed the Members that “the Department

will conduct a review to assess confidentiality interests and will share materials with Executive Branch entities with equities in the content of the materials to determine whether those other entities will assert any confidentiality interests of their own.”¹²

On February 27, 2024, the Chairmen Jordan and Comer responded to the DOJ by issuing a subpoena for the requested documents, claiming that the Department “offered no timeframe by which it expected to make productions” or “any commitment that it would produce all of the material requested.”¹³

The DOJ responded to the subpoena on March 7, 2024, with two productions requested by the Committees: (1) the documents identified as “A9” and “A10” in Appendix A of the Hur Report, and (2) communications between the DOJ and the Executive Office of the President or President Biden's personal counsel related to Special Counsel Hur's report.¹⁴ The DOJ also expressed disappointment that the Committee chose to serve a subpoena “less than three weeks after Mr. Hur's report was transmitted to Congress and only seven business days after the Department made clear it was working expeditiously to respond in good faith to congressional requests” and said that the subpoena was “premature and unnecessary given the amount of information the committee has already received and the Department's proactive efforts to prepare for responding to congressional requests on this matter.”¹⁵

On March 9, 2024, the Chairmen Jordan and Comer wrote yet another letter to the Attorney General claiming that the DOJ had yet to fully comply with their subpoenas.¹⁶ On March 12, before Special Counsel Hur was set to testify before the Judiciary Committee, the DOJ produced the transcripts of Special Counsel Hur's interview of President Biden.¹⁷

On March 25, 2024, Chairmen Jordan and Comer once again notified the DOJ that their compliance with the subpoena was deficient and requested that the Department provide audio recordings of Special Counsel Hur's interview of President Biden and transcripts and audio recordings of Special Counsel Hur's interview of President Biden's ghostwriter, Mark Zwonitzer.¹⁸

On April 8, 2024, the DOJ provided the transcripts of Special Counsel Hur's interviews of ghostwriter Mark Zwonitzer, which took place on July 31, 2023 and January 4, 2024.¹⁹

¹²Letter from Carlos Felipe Uriarte, Asst. Att'y Gen., to the Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability, et al. (Feb. 16, 2024).

¹³Letter from the Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability, & the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary, to the Hon. Merrick B. Garland, Att'y Gen. (Feb. 27, 2024), <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2024-02-27%20JDJ%20to%20DOJ%20re%20subpoena.pdf>.

¹⁴See Letter from Carlos Felipe Uriarte, Asst. Att'y Gen., to the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary (Mar. 7, 2024).

¹⁵*Id.* at 2.

¹⁶Letter from the Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability, & the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary, to the Hon. Merrick B. Garland, Att'y Gen. (Mar. 9, 2024).

¹⁷See Letter from Carlos Felipe Uriarte, Asst. Att'y Gen., to the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary (Mar. 12, 2024).

¹⁸Letter from the Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability, & the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary, to the Hon. Merrick B. Garland, Att'y Gen. (Mar. 25, 2024).

¹⁹See Letter from Carlos Felipe Uriarte, Asst. Att'y Gen., to the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary & the Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability (Apr. 8, 2024).

¹Press Release, *Appointment of Robert K. Hur as Special Counsel*, U.S. DEP'T OF JUSTICE (Jan. 12, 2023), <https://www.justice.gov/d9/2023-01/Order.Appointment%20ofm%20Robert%20Hur.11223%20%28002%29.pdf>.

²Special 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.*, U.S. DEP'T OF JUSTICE at 145-48 (Feb. 8, 2024), <https://www.justice.gov/storage/report-from-special-counsel-robert-k-hur-february-2024.pdf> [Hereinafter Hur Report].

³*Id.* at 2-3.

⁴*Id.* at 256-311.

⁵*Id.* at 312-25.

⁶*Id.* at 326-33.

⁷*Id.* at 178 (citation omitted).

⁸*Id.* at 10-11, 250.

⁹Letter from the Hon. Merrick B. Garland, Att'y Gen., to the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary, et al. (Feb. 7, 2024).

¹⁰See Letter from the Hon. Merrick B. Garland, Att'y Gen., to the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary, et al. (Feb. 8, 2024).

¹¹Letter from the Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability, et al. to the Hon. Merrick Garland, Att'y Gen. (Feb. 12, 2024).

The DOJ's cover letter notes that the Committees have responded to the Department's productions with "escalation and threats of criminal contempt."²⁰ Further, the DOJ wrote, "We are therefore concerned that the Committees are disappointed not because you didn't receive information, but because you did. We urge the Committees to avoid conflict rather than seek it."²¹ The Committees responded on April 15, 2024, claiming that the DOJ's "response to the subpoenas remains inadequate, suggesting that you are withholding records for partisan purposes and to avoid political embarrassment for President Biden."²²

On May 16, 2024, the Department responded again to the Committee's requests, including the February 27, 2024, subpoena, to inform the Committees "that the President has asserted executive privilege over the requested audio recordings and is making a protective assertion of privilege over any remaining materials responsive to the subpoenas that have not already been produced."²³ In an accompanying letter, the Attorney General explained that the Department has a vested interest in protecting "materials related to a closed criminal investigation where disclosure is likely to damage future law enforcement efforts," which "is the case here."²⁴ The Attorney General further expressed concern that producing audio recordings to the Committees "would raise an unacceptable risk of undermining the Department's ability to conduct similar high-profile criminal investigations—in particular, investigations where the voluntary cooperation of White House officials is exceedingly important."²⁵ Further, the Attorney General explained that the Committees' "articulated need for the audio recordings is insufficient to meet any potentially applicable standard," and that the audio recordings will "not reveal any information relevant to the Committees' stated needs that is not available in the transcripts and other documents that are already in the Committees' possession."²⁶ The Attorney General requested that the President make a protective assertion of executive privilege.²⁷

On May 16, 2024, the White House also wrote to the Committees explaining that "the President's longstanding commitment to protecting the integrity, effectiveness, and independence of the Department of Justice and its law enforcement investigations" caused his assertion of executive privilege.²⁸ The White House noted the obvious partisan motivations behind the Committees' actions, writing, "[t]he absence of a legitimate need for the audio recordings lays bare your likely goal—to chop them up, distort them, and use them for partisan political purposes."²⁹

III. CONCERNS

A. THE MAJORITY MISREPRESENTS THE FACTUAL RECORD

As a threshold matter, the Majority severely misrepresents the record throughout its report in numerous material respects. It is undisputed that Republican-appointed Special Counsel Hur exonerated President Biden. Hur found insufficient evidence to prove beyond a reasonable doubt that President Biden willfully retained any of the classified documents, and in some cases that the documents themselves were not even classified. The Majority's shameful portrayal of President Biden as senile or "incompetent" is also false and not supported by the special counsel's own record. President Biden's age was not a material aspect of Hur's decision to decline prosecution, contrary to assertions by members of the Majority. Finally, the report ignores clear historical context provided by the special counsel regarding President Biden's retention and use of his notebook, which other Presidents have done.

1. President Biden was Cleared from any Criminal Charges

Special Counsel Hur focused on five categories of documents in the investigation: (1) documents related to Afghanistan, in particular a handwritten memo from then-Vice President Biden to President Obama dated November 28, 2009, detailing his concerns about deploying additional troops to the country;³⁰ (2) personal notebooks from the President's time as Vice President;³¹ (3) certain documents found at the Penn Biden Center, including documents related to negotiations about the Iran nuclear deal;³² (4) documents found at the University of Delaware dating to the President's time as a senator;³³ and (5) other documents found in the President's Delaware home, including briefing binders from trips that the President took while he was vice president.³⁴ With respect to each category of documents, Hur found that there was no evidence that the President willfully retained any classified information, and in some cases found that the information was not actually classified.

a. Afghanistan Documents

After leaving the vice presidency in 2017, now-President Biden retained folders of documents related to the 2009 troop surge in Afghanistan, including a handwritten memo he drafted opposing the surge and documents supporting that position. Hur determined that "the evidence falls short of establishing . . . beyond a reasonable doubt" that Biden willfully retained these classified documents.³⁵

During a February 16, 2017, recorded interview with the ghostwriter for his book, *Promise Me*, Biden said that he had just found classified material "downstairs," and the context indicated that those documents might relate to foreign policy in Afghanistan.³⁶ At the time of the interview, Biden was in a rental home in Virginia. The FBI ultimately recovered the Afghanistan documents from Biden's Delaware residence in 2022, while Biden was the sitting president and thus authorized to have classified documents in his residence. Special Counsel Hur determined that because Biden was permitted to have classified documents in his residence in 2022, the only possible charges related to the Afghanistan documents would

have had to have come from Biden willfully possessing them in Virginia in 2017.

Hur concluded that he could not prove that Biden willfully possessed these documents:

(1) Biden could have found the classified documents in Virginia in 2017 and forgotten them soon after, because finding classified documents so soon after leaving the vice presidency "may not have been something he found memorable. Mr. Biden, after all, had seen classified documents nearly every day for the previous eight years."³⁷

(2) There was "no definitive evidence" that the classified Afghanistan documents were stored in Biden's Virginia home.³⁸ Specifically, Hur determined that other than the ghostwriter recording, there was "no witness, photo, text message, or other evidence [that] establishes that the documents were ever stored in Virginia."³⁹

(3) Biden might have been referring to a folder containing documents which were marked classified in 2009, but "there are serious questions about whether those particular documents remain sensitive today, or when Mr. Biden met with [the ghostwriter] in 2017."⁴⁰ With respect to the handwritten memo in particular, Hur noted that Biden "said he did not consider the memo classified when he discussed it with his ghostwriter," and that "the memo concerned deliberations from more than seven years earlier about the Afghanistan troop surge, and in the intervening years those deliberations had been widely discussed in public, so Mr. Biden could have reasonably expected that the memo's contents became less sensitive over time."⁴¹

Hur also noted that it would be difficult for prosecutors to win a case based on the Afghanistan documents because it could be hard to prove that "the documents still contain sensitive national defense information" and because at trial he would present credibly to a jury.

b. President Biden's Personal Notebooks

As vice president, Biden regularly took handwritten notes in notebooks during briefings, including during classified briefings.⁴² After leaving office, he kept these notebooks with him at his residence.⁴³ Hur determined that he would not be able to prove beyond a reasonable doubt that Biden willfully retained the classified information in the notebooks.

Specifically, Hur found that Biden "thought his notebooks were his personal property and that he was allowed to take them home after his vice presidency, even if they contained classified information." Hur noted that Biden "was emphatic, declaring that his notebooks are 'my property,' and that 'every president before me has done the exact same thing.'" ⁴⁴ Hur noted that "at least one former president," Ronald Reagan, "and the Department of Justice also have concluded that a former president may keep handwritten notes even if they contain classified information." ⁴⁵ As a result, "[m]ost jurors would likely find this precedent and Mr. Biden's claimed reliance on it . . . to be compelling evidence that Mr. Biden did not act willfully." ⁴⁶

²⁰ Letter from Carlos Felip Uriarte, Asst. Att'y Gen., to the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary & the Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability at 1 (Apr. 8, 2024).

²¹ *Id.*

²² Letter from the Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability, & the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary, to the Hon. Merrick B. Garland, Att'y Gen. at 1 (Apr. 15, 2024).

²³ 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 at 1 (May 16, 2024).

²⁴ Letter from the Hon. Merrick B. Garland, Att'y Gen. to The President at 1 (May 15, 2024).

²⁵ *Id.* at 3-4.

²⁶ *Id.* at 3, 9.

²⁷ *Id.* at 11.

²⁸ Letter from Edward N. Siskel, Counsel to the President, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, and Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability at 1 (May 16, 2024).

²⁹ *Id.* at 2.

³⁰ *Id.* at 145-148.

³¹ *Id.* at 2-3.

³² *Id.* at 256-311.

³³ *Id.* at 312-325.

³⁴ *Id.* at 326-333.

³⁵ *Id.* at 204.

³⁶ *Id.* at 108.

³⁷ *Id.* at 205.

³⁸ *Id.* at 211.

³⁹ *Id.*

⁴⁰ *Id.* at 216.

⁴¹ *Id.* at 221.

⁴² *Id.* at 53.

⁴³ *Id.*

⁴⁴ *Id.* at 232.

⁴⁵ *Id.* at 239.

⁴⁶ *Id.* at 240-41.

c. Penn Biden Center Documents, University of Delaware Documents, and other Documents Found in Biden's Residence

The FBI also recovered marked classified documents from Biden's time as vice president at the Penn Biden Center and in his Delaware residence, and documents from Biden's time as senator in papers at the University of Delaware. In each case, the special counsel determined that Biden did not willfully retain the documents and that they were likely brought to their respective locations by mistake.⁴⁷ In reaching these conclusions, the special counsel referred to "the numerous previous instances in which marked classified documents have been discovered intermixed with the personal papers of former Executive Branch officials and members of Congress."⁴⁸

2. President Biden was in Command and the Record Does Not Support the Majority's Accusation of Memory or Age-Related Issues

The Majority has doubled down on its partisan strategy to portray and attack President Biden as being elderly or having memory issues based on superfluous dicta in the report. The Majority has, for example, repeatedly accused President Biden of not being able to recall the date of his son Beau's death. To be clear, Special Counsel Hur's reference to President Biden's age and memory was not only wildly inappropriate, but it was unsupported by the actual record. The transcript of Mr. Biden's interview clearly shows he *did* recall the date. In the interview transcripts, President Biden clearly recalled the date of his son's death, saying: "what month did Beau die? Oh God, May 30."⁴⁹ The special counsel's decision to make this deeply personal and emotional response from the President part of his report was completely out of bounds and wrong. The Majority's effort to exploit this response for partisan political gain is dishonest and shameful.

The transcript shows that President Biden was in clear command of his cognitive functions and that he was able to recall items with specific detail during 5 hours of interview when an international crisis was unfolding in the Middle East.⁵⁰ In fact, Special Counsel Hur himself remarked that the president had a "photographic understanding and recall" in response to certain questions.⁵¹ President Biden was also able to provide detailed and vivid responses regarding events that occurred over 15 years ago including detailed discussions of debates regarding Afghanistan policy.⁵² He was able to provide detailed descriptions of how the Naval Observatory was laid out and his office.⁵³ He was able to provide detailed explanations of the layout of his Wilmington home.⁵⁴ Hur observed: "[W]e expect the evidence of Mr. Biden's state of mind to be compelling," pointing to his "clear, forceful testimony."⁵⁵

3. The Majority's Accusations Regarding President Biden's Notebooks Ignore the Clear

Findings and Historical Context as Described in the Hur Report

The Majority's report repeatedly references the executive summary of Special Counsel Hur's report, which claims that the investigation "uncovered evidence that Biden willfully retained and disclosed classified materials after his vice presidency when he was a private citizen" including "notebooks containing Mr. Biden's handwritten entries about issues of national security and foreign policy."⁵⁶ However, the Majority ignores Hur's determination that the evidence would not "meet the government's burden at trial, particularly the requirement to prove that Mr. Biden intended to do something the law forbids."⁵⁷

Hur's investigation clearly shows that President Biden "believed he was allowed to keep the notebooks in his home"⁵⁸ and explains that "this view finds some support in historical practice."⁵⁹ According to Hur's report, "the clearest example is President Reagan, who left the White House in 1989 with eight years' worth of handwritten diaries, which he appears to have kept at his California home even though they contained Top Secret information."⁶⁰

Like President Biden's notebooks, Reagan's diaries were used as a source for several books and were read aloud in the den of his home after leaving office. According to Hur's report, Reagan's diaries "served as sources for at least three publications that Mr. Reagan or his representatives authorized: (1) *An American Life*, Mr. Reagan's autobiography published in 1990; (2) *Dutch*, a biography authored by Edmund Morris and published in 1999; and (3) *The Reagan Diaries*, a collection of the diaries themselves first published in 2007 after Mr. Reagan's death."⁶¹ Hur's report also acknowledges that *An American Life* includes "dozens of verbatim quotations from Mr. Reagan's diaries"⁶² and acknowledges that "[f]or several years after their return to California, the Reagans would often sit together in their den after dinner, reading aloud from their diaries and reminiscing about their White House years."⁶³

4. The Majority Falsely Alleges that President Biden's Age was a Material Reason for Special Counsel's Exoneration

The Majority's Report falsely claims that the special counsel found President Biden to have met the elements of a crime, but that justice would not be served because of his age and memory.⁶⁴ During the committee markup, Members even peddled blatant falsehoods that the special counsel found President Trump "incompetent" to stand trial.⁶⁵ Nowhere in the report did Special

Counsel Hur write anything even close to these false accusations. As explained above, Special Counsel Hur exonerated President Biden for each of the categories of documents for reasons because there lacked evidence beyond a reasonable doubt that he had willfully retained any classified documents. President Biden's memory is not an element of any crime that Special Counsel Hur was charged with investigating.

B. THE MAJORITY HAS NOT ARTICULATED A LEGITIMATE BASIS TO OVERCOME A VALID ASSERTION OF EXECUTIVE PRIVILEGE TO PROTECT SENSITIVE LAW ENFORCEMENT MATERIALS

As more fully explained in the Attorney General's May 15, 2024 letter to the Committees, the President has affirmatively asserted Executive Privilege over the audio recording of the special counsel's interviews. The Attorney General explained that producing those recordings "would raise an unacceptable risk of undermining the Department's ability to conduct similar high-profile criminal investigations—in particular, investigations where the voluntary cooperation of White House officials is exceedingly important."⁶⁶ When Executive Privilege is invoked, Congress, a separate and co-equal branch of government, must overcome the privilege by demonstrating a legitimate need.⁶⁷

The Majority has offered no valid explanation for why it needs these audio recordings, particularly when it has received copies of transcripts for both interviews. The Majority's main argument is that the recordings are of "superior evidentiary value regarding the specific issues the Committees are investigating."⁶⁸ While Republicans acknowledge possession of the transcripts, they complain that those documents "do not reflect important verbal context, such as tone or tenor, or nonverbal context, such as pauses or pace of delivery."⁶⁹ The Majority's Report explains:

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 Committee's inquiry into whether he abused his office of public trust for his family's financial gain.⁷⁰

These strained arguments are part of the Majority's continuing efforts to rewrite Special Counsel Hur's report and have nothing to do with any legitimate purpose. Notably, Hur personally attended and conducted the interview with President Biden, and evaluated each of these elements himself before determining that President Biden could not be charged with a crime. By contrast, Congress is not a law enforcement agency, and there is no legitimate reason why Members of Congress would need to evaluate "tone or tenor, or nonverbal context" to second guess Special Counsel Hur's exercise of prosecutorial discretion. Moreover, producing the audio files risks having a chilling effect on future witnesses' willingness to participate in voluntary interviews and/or to be recorded.⁷¹

⁶⁶ Letter from Att'y Gen. Garland to Committees, *supra* n. 24 at 3.

⁶⁷ As described in the letter from the Attorney General, the Committees did not meet any of the potential applicable standards to overcome an assertion of Executive Privilege. *See id.* at 7, n. 2.

⁶⁸ *Id.* at 12.

⁶⁹ *Id.* 12–13 (citation omitted).

⁷⁰ *Id.* at 12–13.

⁷¹ Letter from Carlos Felix Uriarte, Asst. Att'y Gen., to the Hon. Jim Jordan, Chairman, H. Comm. Continued

⁴⁷ *Id.* at 12.

⁴⁸ *Id.*

⁴⁹ Interview with President Joseph R. Biden, Jr. at Day 1, p. 82 (October 8, 2023) (on file with Committee).

⁵⁰ The day of the interview, October 8, 2023, was the day after the horrific and deadly Hamas-led attack on Israel. Mr. Hur at the beginning of the interview remarked: "... Well Mr. President, I do want to take an additional minute and thank you for being here and making this time for us. I know there's a lot of other things in the world going on that demand your attention." *Id.* at Day 1, p. 3. President Biden subsequently acknowledged that he had "just got off the phone with Bibi Netanyahu." *Id.*

⁵¹ *Id.* at Day 1, pp. 47, 92.

⁵² *Id.* at Day 2, pp. 18–19, 49–50.

⁵³ *Id.* at Day 1, pp. 31–32, 32–33.

⁵⁴ *Id.* at Day 1, pp. 42–45.

⁵⁵ Hur Rept. *supra* at 233.

⁵⁶ *Id.* at 1.

⁵⁷ *Id.* at 8.

⁵⁸ *Id.*

⁵⁹ *Id.* at 9.

⁶⁰ *Id.*

⁶¹ *Id.* at 197.

⁶² *Id.*

⁶³ *Id.* at 196; *See also*: Ronald Reagan, *THE REAGAN DIARIES* x (Douglas Brinkley ed., First Harper Perennial ed. 2009).

⁶⁴ *See, e.g.*, Garland Contempt Report at 13.

⁶⁵ For example, Rep. Van Drew stated at the May 7, 2024 Committee Markup: "Because if our commander-in-chief is so incompetent that he cannot stand trial, he is not fit to stand trial, then he is too incompetent, for God's sake, to be the leader of the most powerful nation on the face of the earth." Rep. Nehls stated: "I want everybody to understand we're either saying that our current President is cognitively impaired, incompetent, unable to stand trial even though he broke the law." Rep. Bentz commented: "It just seems to me that Mr. Hur was saying that we don't exonerate. What we are going to do is say that, that the President is an older gentleman who is incompetent, and we don't think we can get a conviction. Therefore, we are not going to prosecute."

Likewise, the Majority claims that they need access to the audio files as part of their “impeachment inquiry.”⁷² But as Special Counsel Hur notes in his report, the laws on handling classified material do not apply to a sitting president or vice president.⁷³ Accordingly, even if Hur had determined that there was criminal conduct at issue here—which he did not—it would have pertained to the time *before* Biden was elected president. As perennial Republican witness and legal scholar Jonathan Turley noted when he testified before the House Oversight Committee last year:

The use of pre-office conduct [in impeachment proceedings] remains controversial and should be approached with great circumspection and abundant caution. Absent continuing misconduct in office, even criminal acts that occur in private life should not be the subject of an inquiry. If that were the case, the House could launch investigations for any crime committed by an individual as a private citizen before taking office. It would convert impeachment into a rationalization for subjecting officials to limitless inquiries.⁷⁴

The Majority incorrectly cites Supreme Court case *United States v. Nixon* as precedent for their demand that DOJ hand them audio recordings that they already have transcripts for. The *Nixon* case is a starkly different scenario and not on point to the matter of contempt before this Committee. In *Nixon*, the dispute was over whether a special prosecutor, pursuant to Rule 17(c) of the Federal Rules of Criminal Procedure, was able to defeat a Motion to Quash of a Grand Jury subpoena seeking tape recordings and documents relating to the President’s conversations with aides and advisers. The Court held:

We conclude that when the ground for asserting privilege as to subpoenaed materials sought for use in a criminal trial is based only on the generalized interest in confidentiality, it cannot prevail over the fundamental demands of due process of law in the fair administration of criminal justice. The generalized assertion of privilege must yield to the demonstrated, specific need for evidence in a pending criminal trial.⁷⁵

Here, Congress is not investigating or prosecuting a criminal case pursuant to Rule 17(c) of the Federal Rules. Moreover, the tapes in *Nixon* memorialized the actual commission of a crime. Eighteen and a half minutes of those tapes were deleted, meaning that eighteen and a half minutes of a crime were not available to investigators. By contrast, the files the Majority seeks are of interviews conducted by the Special Counsel. Transcripts of the interviews have already been produced and there are no allegations that any portions of the interviews have been deleted.

Perhaps more fatal to their claim, the Majority has also been unable to articulate exactly how the audio files would aid any of their so-called stated purposes of inquiry. For example, the Majority has generally claimed it desires to ascertain whether President Biden “willfully retained classified information and documents . . . to assist his

family’s business dealings or to enrich his family” or whether there were any scope limitations placed on the interviews by the attorneys. Seemingly absent is any explanation for how important “verbal context” such as “tone or tenor, or nonverbal context, such as pauses or pace of delivery” would provide the Majority with any information not otherwise available in the transcript or other sources.

The Majority has also charged that it is interested in determining whether there should be reforms to the special counsel regulations to ensure impartial justice or whether there should be policy changes regarding the return of presidential documents. Again, there is no explanation for how the “tone or tenor, or nonverbal context, such as pauses or pace of delivery” would assist the Committees in either of these policy determinations. Moreover, the Majority was able to secure the entire unredacted transcript of the special counsel report, 5 hours of testimony by the special counsel himself, and all the additional information requested (including transcripts of the interview). Finally, the Majority suggests it needs to ensure the accuracy of the transcript. The transcript was prepared by the special counsel’s office for criminal proceedings where accuracy was of paramount importance. The Majority has no reason to believe that inaccuracies exist between the audio and transcribed versions.

C. WAIVER

The Majority also wrongly claims that the Executive Branch waived its ability to claim privilege by producing the transcript of Special Counsel Hur’s interviews with President Biden and Mr. Zwonitzer. As the Attorney General explained in his letter to the President, “audio recordings have distinct features and law enforcement uses, which implicate privacy interests and risks of misuse to a greater degree than transcripts, and disclosure to Congress of the recordings would have a chilling effect on future cooperation in similar investigations.”⁷⁶

Finally, the Majority discounts that the Department has released transcripts in good faith as part of the accommodations practice. The Attorney General has expressed concern that finding waiver here would “incentivize less Executive Branch cooperation and broader privilege assertions.”⁷⁷ The Minority is similarly concerned that a finding of waiver here risks seriously damaging the accommodation process going forward.

D. THE DEPARTMENT PROVIDED THE MAJORITY ALL THE INFORMATION IT ASKED FOR—THE TRUE INTENTION OF THE MAJORITY IN SEEKING THE AUDIO IS TO AID DONALD TRUMP

As established above, the Majority’s justifications for overcoming the claim of privilege are both pretextual and insufficient. In reality, the Department took extraordinary measures to provide the Majority with all the information it asked for. Within two days of Special Counsel Hur’s submitted report, the Department released an unredacted copy to Congress. Shortly thereafter, the Department also agreed to allow Mr. Hur to testify before the Committee, which he did for over five hours at a March 12, 2024, hearing. In response to the Majority’s Subpoena, the Department: (1) made available the classified documents listed as A9 and A10 in the appendix of the report; (2) provided communications between the Department and the Executive Office of the President and President Biden’s personal counsel regarding Special Counsel Hur’s report; (3) produced the transcripts of President Biden’s voluntary

interview with Special Counsel Hur; and (4) produced the transcripts of Mr. Zwonitzer’s voluntary interviews with Special Counsel Hur.

The Majority is truly interested in the audio recordings because they believe it will provide them with an opportunity to embarrass President Joe Biden in the months leading up to an election—a justification which falls far short of the Executive Branch interests expressed by the White House and the Attorney General.

The Majority’s unwillingness to respect these interests is particularly ironic when members of the Majority, including the Chairman himself, have previously protested similar invasions of presidential privacy. Notably, Chairman Jordan expressed “grave concern” about protecting President Trump’s privacy when Congress issued a subpoena to Mazars for his tax records. Specifically, in an April 15, 2019 Memorandum, the Chairman, then serving as Ranking Member of the House Oversight and Government Reform Committee, wrote:

I have concerns that if Chairman Cummings obtains highly sensitive, personal information about the President’s finances, he will selectively release the information publicly in a misleading fashion to create a false narrative for partisan political gain.⁷⁸

Mr. Jordan proceeded to argue that the “partisan” request for Mr. Trump’s tax records was not a responsible use of the Committee’s oversight power. He argued:

The Supreme Court has cautioned that Congress does not have ‘general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress.’”⁷⁹ He also added, “Quite simply, Chairman Cummings seems to be seeking this sensitive, personal information in a pursuit to satisfy his preconceived and unsupported conclusions.”⁸⁰

Later in that same Memorandum, he stated:

The Democrat obsession with the President and his family is gravely dangerous and counterproductive to the work of our Committee. The American people can now see that Democrats’ pursuit of the truth is clouded by their obsession with attacking the President and the First Family. None of our actions would be necessary if not for Chairman Cummings’s decision to pursue reckless, partisan investigations designed to attack the President and his family.⁸¹

Moreover, while the Majority has argued that the Committee needs audio files from the Department because they “are the best evidence of witness interviews,” the Majority has refused to release even basic transcripts to the American people from nearly all the 120 transcribed interviews the Committee has taken to date. The Majority has also refused to provide audio and video copies of the transcribed interviews to the Minority. The reason is self-evident—the Majority does not care about the “best evidence” of a witness interview when it might contradict or disprove its cherry-picked and manipulated Committee reports or out-of-context sound bites leaked to the media for partisan political gain.

⁷⁸ Republican Staff Memorandum, *Chairman Cummings’s Unprecedented Subpoena of Mazars USA LLP*, H. COMM. ON OVERSIGHT AND REFORM (April 15, 2019), <https://oversight.house.gov/wp-content/uploads/2019/04/2019-04-15-JD-J-to-EEC-re-Mazars-Subpoena.pdf>.

⁷⁹ *Id.* (citing *Watkins v. United States*, 354 U.S. 178, 187 (1957)).

⁸⁰ *Id.*

⁸¹ *Id.*

on the Judiciary & the Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability at 4–5 (Apr. 8, 2024); Letter from Att’y Gen. Garland to Committees, *supra* n. 24 at 3.

⁷² E.g., Garland Contempt Report at 13.

⁷³ Hur Report *supra* n. 2, at 15.

⁷⁴ *The Basis for an Impeachment Inquiry of President Joseph R. Biden, Jr.: Hearing Before the H. Comm. on Oversight Accountability*, 118th Cong. (Sep. 28, 2023) (written statement of Jonathan Turley at 31), <https://docs.house.gov/meetings/GO/GO00/20230928/116415/HRG-118-GO00-Wstate-TurleyP-20230928.pdf>.

⁷⁵ *United States v. Nixon*, 418 U.S. 683, 713 (U.S. 1974).

⁷⁶ Letter from the Hon. Merrick B. Garland, Att’y Gen. to The President, *supra* n. 24, at 7.

⁷⁷ *Id.*

E. AMENDMENTS

During the markup of this report, various amendments were offered to correct or provide context to the highly partisan language of the report, which were all defeated on party lines.

I offered an amendment to reflect the assertion of Executive Privilege by the President based on his substantial interest in protecting sensitive law enforcement investigation files.

Representative Johnson (D-GA) introduced an amendment highlighting disturbing public gaffes by Republican presidential candidate Donald Trump, which draw serious concerns about his mental competency. Because the Majority has fixated on their so-called need to evaluate President Biden's age and memory, it is only appropriate to juxtapose President Trump at a recent rally praising a fictional character from the film *Silence of the Lambs*: "The late, great Hannibal Lecter, he's such a wonderful man." The record should be clear that the Majority's report does not appear to be concerned when a presidential candidate shows serious signs of cognitive impairment if his name is Donald Trump.

Representative Dean (D-PA) offered an amendment to demonstrate the Majority's proclivity to push false narratives to malign their perceived political enemies with the assistance of manipulated audio. The Amendment pointed out that this is the true reason for the Majority's fervent actions to obtain the audio tape and not because they are legitimately interested in the President's "vocal tone, pace, inflections, verbal nuance, and other idiosyncrasies." The Amendment also pointed out the devastating effects of these shameful tactics, by telling the story of Ms. Nina Jankowicz, who appeared for a deposition before the committee last year.⁸² Years earlier, Ms. Jankowicz had participated in an hour-long roundtable in which she was asked about a nascent Twitter program through which users could add context to misleading tweets. In the full video, she explained what the program was and criticized it. After Ms. Jankowicz was appointed to a position at DHS, the Chairman retweeted a sliced-and-diced one minute clip of her comments which made it sound like she endorsed the program and mocked President Trump's Twitter followers. In reality, she did neither of these things. But the Chairman tweeted this video with, quote, "1984" as the sole caption, a reference to George Orwell's novel. The Chairman's tweet was subsequently amplified by others, and Ms. Jankowicz faced serious threats, including death threats hurled at her while she was in her third trimester of pregnancy.⁸³

Representative Johnson offered an amendment showing that MAGA Republicans have spent \$20 million on a committee investigating conspiracy theories that has yielded nothing. This is true despite holding 10 hearings before the Select Weaponization of the Federal Government—six of which have been on the same topic—120 transcribed depositions and depositions, 555 hours of staff and witness time in these transcribed interviews and depositions, more than 60 subpoenas to executive branch agencies and private entities, and the solicitation of over 3,000,000 pages of documents from agencies and private entities. Even after all this activity,

MAGA Republicans have failed in its efforts to find any impeachable offense committed by President Biden or misconduct in his administration. This has not stopped right wing media, however, from excoriating the Committee for not doing enough this Congress. This Amendment was offered to add context and accuracy to the report by adding additional backdrop about this protracted and over the top investigation.

Representative Dean offered an amendment proving that President Biden did in fact remember the date of his son Beau's death during the interview with Special Counsel Hur. This amendment sought to set the record straight and point out that Hur's remarks on that exchange were inaccurate, grotesque, and gratuitous. The Majority's efforts to repeat that mischaracterization for political ends is even more distasteful.

Representative Ivey (D-MD) introduced an amendment to provide factual accuracy to the record regarding the stark differences between former President Trump's criminal mishandling of documents versus the circumstances that led to a special counsel investigation into President Biden. Special Counsel Hur noted there were material distinctions between the two scenarios. Hur noted there are "serious aggravating facts" in the Trump case.⁸⁴ "Most notably, after being given multiple chances to return classified documents and avoid prosecution, Mr. Trump allegedly did the opposite. According to the indictment, he not only refused to return the documents for many months, but he also obstructed justice by enlisting others to destroy evidence and then to lie about it."⁸⁵ "In contrast, Mr. Biden turned in classified documents to the National Archives and the Department of Justice, consented to the search of multiple locations including his homes, sat for a voluntary interview, and in other ways cooperated with the investigation."⁸⁶ The amendment was offered to illustrate that, unlike President Biden, Donald Trump intentionally and flagrantly took and concealed highly classified documents. Mr. Trump's actions are extremely serious and warrant the 32 counts of Willful Retention of National Defense Information, Conspiracy to Obstruct Justice, and Making False Statements brought against him. The Majority's efforts to conflate the two cases is morally bankrupt and dishonest. It is, in fact, the Majority that seeks to discredit and undermine the fair administration of justice.

Representative Swalwell (D-CA) introduced an amendment stating that no Member may be permitted to hold any other person in contempt of congress unless they themselves have provided the testimony that has been required of them regarding their participation in the planning and execution of the events that took place at the Capitol on January 6, 2021. The purpose of the Amendment was to show the irony that at least two committee members of Majority have been asked to comply with a subpoena related to January 6.

Representative Scanlon (D-PA) introduced an amendment pointing out that the Majority has no legitimate purpose in furthering their impeachment inquiry because impeachment is not available. As Special Counsel Hur noted specifically in his report, the laws on handling classified material do not apply to a sitting president or vice president. Accordingly, even if Hur had determined that there was criminal conduct at issue here—which he did not—it would have pertained to the time before Biden was elected president. The Majority's perennial witness and legal scholar Jonathan Turley confirmed when he

testified before the House Oversight Committee last year that "even criminal acts that occur in private life should not be the subject of an impeachment."

JERROLD NADLER,
Ranking Member.

Mr. JORDAN. Mr. Speaker, by direction of the Committee on the Judiciary, I call up the resolution (H. Res. 1292) 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 the Judiciary, and ask for its immediate consideration in the House.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. Pursuant to House Resolution 1287, the resolution is considered read.

The text of the resolution is as follows:

H. RES. 1292

Resolved, That Merrick B. Garland, Attorney General, U.S. Department of Justice, shall be found 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 Committee on the Judiciary, detailing the refusal of Merrick B. Garland, Attorney General, U.S. Department of Justice, to produce documents, records, and materials to the Committee on the Judiciary 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.

The SPEAKER pro tempore. The resolution shall be debatable for 1 hour equally divided and controlled by the chair and ranking minority member of the Committee on the Judiciary, or their respective designees.

The gentleman from Ohio (Mr. JORDAN) and the gentleman from New York (Mr. NADLER) each will control 30 minutes.

The chair recognizes the gentleman from Ohio (Mr. JORDAN).

GENERAL LEAVE

Mr. JORDAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to insert extraneous material on this measure.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. JORDAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, on page 1 of his report, Special Counsel Hur said: "President Biden willfully retained and disclosed classified materials after his vice-presidency when he was a private citizen."

Joe Biden not only kept information he wasn't allowed to keep, he shared it with people who weren't allowed to get it.

⁸²Deposition of Nina Jankowicz (Apr. 10, 2023), https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/Jankowicz%20Transcript_Redacted.pdf.

⁸³*Id.*; Heidi Przybyla, "A surreal experience": Former Biden 'disinfo' chief details harassment, *POLITICO* (Mar. 8, 2023), <https://www.politico.com/news/2023/03/08/former-biden-disinfo-chief-details-harassment-00085981>.

⁸⁴Hur Report, *supra* n. 2, at 11.

⁸⁵*Id.*

⁸⁶*Id.*

On page 231, the special counsel told us why President Biden did this. He said: "Mr. Biden had strong motivations to ignore the proper procedures for safeguarding the classified information in his notebooks. He had decided months before leaving office to write a book," a book for which he got paid \$8 million.

So we have motive, an \$8 million motive, and we have the elements of the crime, knowingly keeping classified information, knowingly disclosing classified information.

Despite all this, Special Counsel Hur declined to recommend prosecution for President Biden because Joe Biden is "a sympathetic, well-meaning elderly man with a poor memory."

On page 207 of his report, Special Counsel Hur said: "Mr. Biden's memory also appeared to have significant limitations, both at the time he spoke to [the ghostwriter], Mr. Zwonitzer in 2017, as evidenced by their recorded conversations, and today, as evidenced by his recorded interview with our office."

The committees need the audio recordings to determine whether the Justice Department appropriately carried out justice by not prosecuting the President.

Remember what they told us. The Justice Department said we are going to operate independent of the White House. They said we will be impartial, independent arbiters of the facts.

Maybe so, but what we do know is this: One former President is being charged; Joe Biden is not being charged. We think we are entitled—actually we know we are entitled to all the evidence and the best evidence. The transcripts alone are not sufficient evidence of the state of the President's memory, especially since the executive branch has a history of changing transcripts.

We saw this in late April. The transcript the White House put out didn't match the video and audio recording of President Biden's speech, and only after the White House was caught did they change the transcript.

In that case and in this case, the audio recording is the best evidence of the words that President Biden actually spoke.

□ 1130

Following the release of Special Counsel Hur's report, both the Judiciary Committee and the Oversight Committee issued subpoenas requiring Attorney General Garland to turn over the transcripts of the audio recordings of Special Counsel Hur's interviews with President Biden and his ghostwriter.

To date, the Attorney General has failed to produce those recordings. In fact, he told us last week he wasn't going to do it, and that is why we are here. Despite the committee's best efforts, the Department has continued to withhold the audio recordings of those interviews without providing any constitutional or legal basis to do so.

Just hours before the committee was set to meet and consider the contempt resolution, the Department notified the committee that President Biden had asserted, at the Attorney General's urging, executive privilege over the audio recordings.

It is simple. Attorney General Garland holds information vital to the committee's legislative oversight and the House impeachment's inquiry. Remember, this body voted December 13 of last year to enter that phase of our oversight duty and impeachment inquiry. The Department has a legal obligation to turn over the requested material. Attorney General Garland's willful refusal constitutes contempt of Congress.

This resolution upholds the institutional power of the House by recommending that the House find Attorney General Merrick Garland in contempt of Congress for failing to comply with the committee's subpoena. Our oversight and impeachment responsibilities are too important to allow the Attorney General to willfully disregard this.

I urge my colleagues to support this resolution, and I reserve the balance of my time.

The SPEAKER pro tempore. Members are reminded to refrain from engaging in personalities toward the President.

Mr. NADLER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the dishonesty that we have just heard is illustrated by what Mr. JORDAN just said, his selective quote from Mr. Hur's report. He said: "Our investigation uncovered evidence that President Biden willfully retained and disclosed classified materials after his vice-presidency when he was a private citizen."

The report does say that, but he neglects a sentence a paragraph later: "However, for the reasons summarized below, we conclude that the evidence does not establish Mr. Biden's guilt beyond a reasonable doubt." That is deceptive.

Secondly, as the majority well knows, the President asserted executive privilege in this matter. Maybe that was proper, maybe not, but the way to contest executive privilege is not by a contempt resolution. It is by going to court and letting the court decide whether the exercise of executive privilege is warranted or not. For that reason also, this resolution fails.

Mr. Speaker, the Judiciary Committee, under Republican control, has spent the last 18 months and 20 million taxpayer dollars in a desperate search to find something, anything, that they can use to damage President Biden and to protect Donald Trump.

Other committees have gotten into the act as well, spending untold taxpayer money not to benefit the American people, not to feed hungry children, not to address our housing crisis, and not to improve our healthcare system, but on a single-minded quest to follow every rightwing conspiracy the-

ory in the vain hope that it might lead to some evidence of wrongdoing.

What exactly have they delivered to the American people on their investment? Nothing. No evidence that the conspiracies are true, no indictments, no impeachment, no wins of any significance. The Republican leadership knows that if they don't come up with something to show for the millions of dollars they have spent, the MAGA political base may stay home next November.

They are scrambling in a desperate attempt to look like they have accomplished something. They were fervently hoping that Special Counsel Hur would indict President Biden for mishandling classified documents so that they could attack President Biden and misdirect the American people away from Donald Trump's treacherous handling of classified information.

However, the special counsel cleared Mr. Biden of wrongdoing for reasons that have nothing to do with Mr. Hur's gratuitous and widely contradicted comments about the President's memory.

What do our Republican friends do when an investigation turns up short? Simply put, they engage in fantasy. That is what they are doing here today. Unable to come up with any wrongdoing by the President, they have now trained their sights on the Attorney General. They accuse him of withholding key evidence, but the Attorney General has substantially complied with their every request. Sometimes he has been too responsive, in my opinion, given the obvious bad faith of the MAGA majority.

The DOJ has produced 92,000 pages of documents since Republicans took control of the House last year and has made dozens of witnesses available for interviews, hearings, and briefings. That is more pages of documents and more witnesses than the Trump Justice Department produced to Congress in 4 years. Just last week, the Attorney General himself spent more than 5 hours testifying before the Judiciary Committee.

With respect to the subpoena at issue in this contempt resolution, the Department turned over all the information Republicans asked for. There has been no obstruction, only cooperation. In reality, the Attorney General and DOJ have been fully responsive to Congress in every way that might be material to their long-dead impeachment inquiry.

All that remains are audio files for which the President has asserted executive privilege. In a letter to Chairmen JORDAN and COMER, the Department of Justice noted that producing the audio recordings would "raise an unacceptable risk of undermining the Department's ability to conduct . . . high-profile criminal investigations; in particular, investigations where the voluntary cooperation of the White House officials is exceedingly important."

The chairmen claim that they need those records to understand the pauses,

pace, and tone of the conversation. This is absurd and clearly pretextual. In any event, it does not outweigh the extensive concerns expressed by the President and the Department.

Moreover, with respect to the recording at issue in this report, a complete certified transcript has already been provided to both committees, and no credible allegation has been made that these transcripts have been altered in any material way. The only thing that has not been introduced is the recording itself, something that in the wrong hands can be easily manipulated.

That is not an idle concern. Deepfakes and misleadingly edited videos and recordings have proliferated in recent years. Last year, a witness testifying in a closed-door deposition told us that she was the victim of a manipulated video made by a third party but shared widely by the Republicans on the Judiciary Committee, who refused to take down the video even after it was abundantly clear that it was manipulated. That video contributed to a flood of death threats against the witness.

This isn't really about a policy disagreement with the DOJ. This is about feeding the MAGA base after 18 months of investigations that have produced failure after failure.

Like most of the bills House Republicans have pushed on purely partisan lines, this contempt resolution will do very little other than smear the reputation of Merrick Garland, who will remain a good and decent public servant no matter what Republicans say about him today.

This resolution may boost Donald Trump's spirits before his sentencing, but it will almost certainly not convince the Department of Justice to produce the one remaining file in question. Like the broader impeachment effort before it, this contempt resolution will have been a partisan stunt, destined to fail from the very start. As I said before, if they were really interested in getting this recording, they would contest the assertion of executive privilege in court, not bring a contempt resolution against the Attorney General.

The American people actually need us to do important work. I am tired of these games, and so are the American people. I urge my colleagues to oppose this measure, and I reserve the balance of my time.

Mr. JORDAN. Mr. Speaker, I yield 3 minutes to the gentleman from Kentucky (Mr. COMER), the chairman of the House Oversight Committee and a good friend.

Mr. COMER. Mr. Speaker, I appreciate the gentleman from Ohio for yielding.

Mr. Speaker, I rise in support of the resolution. This is not a complicated matter. The Oversight and Judiciary Committees issued duly authorized legal subpoenas to Attorney General Garland for a certain set of documents, including the audio recordings of Spe-

cial Counsel Hur's interview with President Biden.

The Attorney General has refused to produce these audio recordings. Unlike what my Democratic colleagues keep claiming, this is not just Republicans who need these recordings for their oversight duties. Media outlets, including the AP, CBS, CNN, NBC, and The Washington Post, among others, have filed suit to get these same audio recordings as well because the media, like everyone else, knows there is no substitute for a recording of an interview. Not a transcript, not a summary, not the Attorney General's judgment that Congress doesn't need it.

The Oversight Committee's investigation of these classified documents has already revealed that the White House's official timeline of events regarding these classified materials left out very important details.

For instance, White House employees were entering the Penn Biden Center and moving documents months before the discovery of the classified materials by President Biden's personal attorneys in November 2022. One of those employees was former White House counsel Dana Remus. We issued a subpoena for Ms. Remus' deposition, but the White House has blocked Ms. Remus from speaking to the Oversight Committee. The White House has also blocked other White House employees who visited the Penn Biden Center before November 2022 from speaking to us.

What is the Biden administration trying to hide?

Attorney General Merrick Garland's refusal to produce this evidence establishes a clear pattern of obstruction by the DOJ to cover up President Biden's wrongdoing. President Biden has lied to the American people about his mishandling of classified documents.

He has repeatedly denied not knowing about or being involved in his family's influence-peddling schemes, which the Oversight Committee can now show has raked in \$18 million from foreign individuals and entities for the Biden family members, including President Biden himself. He also met with nearly all his family's foreign associates.

President Biden's Department of Justice appears to be taking every step to insulate him from the consequences, whether it is hiding these audio recordings or attempting to give Hunter Biden a sweetheart plea deal to shield Joe Biden from facing accountability for his role in his family's influence-peddling schemes. This is unacceptable.

The House of Representatives cannot serve as a necessary check on the Presidency if the executive branch is free to ignore the House's subpoenas. I urge my colleagues to hold Attorney General Merrick Garland in contempt of Congress.

The SPEAKER pro tempore. Members are reminded to refrain from engaging in personalities toward the President.

Mr. NADLER. Mr. Speaker, I yield 5 minutes to the gentleman from Maryland (Mr. RASKIN), the distinguished ranking member of the Oversight and Accountability Committee.

Mr. RASKIN. Mr. Speaker, our colleagues invite us today to become the first Congress in the history of the United States to hold someone in contempt for complying with our demands, and their target is the Attorney General of the United States.

Attorney General Garland gave us the special counsel's report on President Biden in full. He made the special counsel available to us in committee for hours of testimony, where he answered all our questions, and he provided the full transcript of the President's voluntary 5-hour interview with the special counsel, all 250 pages of it.

The whole world can read President Biden's interview and his answers unedited, but that is apparently not enough. Now they want to hold the Attorney General in contempt for not turning over the audiotape of the interview that we have the verbatim transcript of.

Why is that important? Well, in case America has lost the thread of this madcap wild goose chase, remember, this is an impeachment investigation. Do they think that the Holy Grail of the 118th Congress evidence of a Presidential high crime and misdemeanor is lurking in the pauses or the background throat clearings and sneezes on the audiotape? Well, of course not.

They know there is no high crime or misdemeanor to be found because they have spent the last 17 months and millions of our taxpayer dollars looking for it, and it simply does not exist. They literally don't even know what they are looking for anymore.

Why do they want it? Well, they are hoping that in the 5 hours of President Biden's testimony, they can find a mispronounced word or phrase or a brief stammer which they can then turn into an embarrassing political TV attack ad.

Get it, America? That is what this is all about. Holding the Attorney General of the United States in contempt is one more useful distraction from the complete and devastating implosion of the Biden impeachment probe which, of course, was the number one priority of these talented leaders.

Remember, they promised to reveal the greatest Presidential high crime and misdemeanor in American history, an act of treachery and deceit that dwarfs even the incitement of a violent mob insurrection and an attempted political coup that took place right here against our Constitution, our Congress, and our Vice President in this Chamber.

However, after their truly prodigious investigation, punctuated admittedly by some unfortunate mishaps like Chinese spies, fake evidence, pornographic displays in committee, and their own witnesses testifying that there were no grounds for Presidential impeachment,

they have nothing to show for their arduous work other than one more debunked Russian disinformation operation and one more indicted GOP informant and star witness.

Rather than admit defeat in this bumbling operation and look for some other way to actually aid the public good, they have decided to flail about in mock outrage against a series of phantom tyrants in the hopes of distracting everyone from this epic flop.

□ 1145

Their first distraction was to impeach Secretary Ale Mayorkas as a paltry consolation prize, but that pathetic decoy action blew up in their hands. Then, the plan was to skip the mundane work of casting votes and actually doing committee business to travel on a collective spiritual pilgrimage on Amtrak to New York City to attend the criminal trial of an unmentionable American felon, 1 of 19 million in the country.

That strange journey to mecca also blew up in their faces when this mystery political false prophet was convicted unanimously by a jury of his peers on dozens of felony criminal counts in a fair American trial.

They tried to salvage the credibility of this bizarre expedition by blaming the American justice system for being weaponized against Republicans, but this political extremism quickly melted away when the son of President Biden, the original target of their wrath, was also prosecuted and convicted, like another disarmed felon whose name may now not be spoken on the floor, apparently, by a unanimous jury of his peers on all counts against him.

That trial, unlike the trial whose very existence must be sent down the Orwellian memory hole to save someone's hurt feelings, was actually tried in the Federal system.

What is left to do now? Well, let's hold the Attorney General of the United States, Merrick Garland, in contempt, of course. This will be sure to placate an unrepentant and anonymous convicted felon from New York and distract everybody else for a day or two.

I confess it is a bit rich, Mr. Speaker, to be asked to hold the Attorney General of the United States in contempt of Congress for overwhelmingly complying with the committee's demands by Members who voted against contempt citations for Steve Bannon and Peter Navarro, two persons subpoenaed by the January 6th Select Committee who never spent a single minute with the January 6th Select Committee.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. NADLER. Mr. Speaker, I yield an additional 1 minute to the gentleman from Maryland.

Mr. RASKIN. Mr. Speaker, Bannon and Navarro never spent a minute with the January 6th Committee and never turned over a single document to our

committee. These people had zero percent compliance with Congress. They demonstrated true contempt, which is why they have been sentenced to jail.

Chairman COMER, in his wisdom, would hold the Attorney General of the United States of America in contempt for what I think is 100 percent compliance, but in any event, it is something like 98 or 99 percent compliance.

If you think a Federal official has not rendered proper compliance, you take them to court. You don't hold them in contempt. It is rich beyond measure, like billionaire rich, to be asked to hold the Attorney General in contempt by people who themselves received subpoenas to testify before the January 6th Committee who never rendered a single document nor a single minute of testimony to the January 6th Committee.

Mr. Speaker, I urge Congress to reject this absurd motion.

The SPEAKER pro tempore (Mr. NORMAN). The Chair would remind Members to refrain from engaging in personalities toward presumptive nominees for the Office of the President.

Mr. JORDAN. Mr. Speaker, I yield myself such time as I may consume.

First of all, I never said I wouldn't testify in front of the January 6th Committee. I just wanted to know what the parameters of that testimony were going to be. I never did say "no" to that.

Second, the speaker before just said we don't know what we are looking for. We are looking for equal treatment under the law. Special Counsel Hur found that Joe Biden knowingly kept classified information and that Joe Biden knowingly disclosed classified information. He told us that on the very first page of his report, and then he told us later why he did so. He said he had strong motivation for ignoring classified procedures because he was writing a book for which he got paid \$8 million.

Again, we have motive, and we have him knowingly disclosing classified information. He doesn't get charged, yet President Trump does. President Trump gets charged by Jack Smith, the guy who had to file with the court a notice saying that he actually altered the order of the documents he seized in the raid of the President's home. He had to tell the court that. The physical documents don't match up with the scanned documents.

You are not allowed to change the sequence of the documents you seize, but Jack Smith did. Jack Smith mishandled the documents he is accusing President Trump of mishandling. You can't make this stuff up.

That is what we are focused on. By the way, we are in the midst of an impeachment inquiry. We are entitled to the best evidence. That is why we want the audiotape.

Mr. Speaker, I yield 3 minutes to the gentleman from Arizona (Mr. BIGGS), the chairman of the Subcommittee on

Crime and Federal Government Surveillance.

Mr. BIGGS. Mr. Speaker, I thank the gentleman for yielding.

During his testimony before the House Judiciary Committee, Special Counsel Hur stated that "the evidence and the President himself put his memory squarely at issue." 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." President Biden has contested that. The Democrats contest that.

In reality, it is the failure to fully comply with committee subpoenas regarding the audio recordings of the Biden and Zwonitzer interviews that 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 it has impeded the committee's impeachment inquiry.

The committee must assess whether Special Counsel Hur's declination decision, which was based on President Biden's poor mental state, was consistent with the Department's commitment to impartial justice or whether legislative reforms are necessary regarding special counsel investigations because they are not leading to impartial outcomes.

In short, the audio recordings would offer unique and important information to advance the committee's impeachment inquiry and inform the Judiciary Committee as to the need for legislative reforms to the operations of the Department or the conduct of special counsel investigations.

Those are legislative purposes. They are constitutional purposes. They justify us getting the audio recordings. Yet, they don't want the audio recordings to come forward. Why is that? It is odd, isn't it? The DOJ admitted in court filings 2 weeks ago that they actually did alter the transcript. They claim there was just filler information. Maybe they were duplicative words. There are blank pauses in there that were not noted in the transcript.

That is why an audio recording is important because the transcripts do not reflect important verbal context such as tone, tenor, or nonverbal context such as pauses or pace of delivery, all of which went into the decision by Mr. Hur not to prosecute a crime that he said was committed.

That prosecutorial discretion is under review by our committee, legitimately and constitutionally. We have the right to that audio recording. The Department has said they are not going to give it to us—odd—because the cases that deal with requiring the audio recording to be turned over, the long skein of cases, turn on various things like the audio recording is the best evidence. They say that. Odd.

They also say that if there is tampering or any kind of editing or altering of the written transcript, which we

now know is true, then the audio recording is mandatory. That is why we should get it. This Department won't give it to us. Merrick Garland is in contempt of this Congress, and he needs to be held in contempt.

The SPEAKER pro tempore. Members are reminded to refrain from engaging in personalities toward the President.

Mr. NADLER. Mr. Speaker, I yield 1 minute to the gentleman from Tennessee (Mr. COHEN).

Mr. COHEN. Mr. Speaker, this is absurd. This is Fellini in the Congress.

Comparing what Joe Biden did to what the other fellow that preceded him in office did in keeping documents in Mar-a-Lago in his bathroom and out in the fancy rooms where all of his billionaire friends go is like comparing somebody that writes a bad check by \$2, an overdraft, to somebody who is a bank robber with guns, weapons, and machine guns going into banks and robbing money.

Biden was a sympathetic figure, said Mr. Hur, a Republican, who Merrick Garland gave the duty to study that case. He was a sympathetic figure.

You don't convict a crime unless there is guilt beyond a reasonable doubt. Mr. Hur found there could not be guilt beyond a reasonable doubt.

What the other fellow did, refusing to comply with requests to give the classified documents up, refusing and refusing and then having to have a search warrant to find them, hundreds of documents, not for the purpose of writing a book—for somebody who can't even read a book—was for purposes that we don't know. We don't know what they were used for, but they were taken illegally and improperly.

Merrick Garland is an honorable and good man who should be in the College of Cardinals and not being tried for contempt by this Felliniesque—

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. NADLER. Mr. Speaker, I yield an additional 30 seconds to the gentleman from Tennessee.

Mr. COHEN. Mr. Speaker, I have not seen a more diligent and honorable Attorney General in the time I have served in Congress. Merrick Garland is a superb individual, and this is just projection, trying to throw things off from the other fellow, Trump, and put them on Biden.

There is no comparison. Once again, it is like comparing a bank robber to a guy who wrote an overdraft.

Mr. MCCLINTOCK. Mr. Speaker, I yield 3 minutes to the gentleman from North Carolina (Mr. BISHOP).

The SPEAKER pro tempore. Before recognizing Mr. BISHOP, the Chair would remind Members again to refrain from engaging in personalities toward presumptive nominees for the Office of the President.

Mr. BISHOP of North Carolina. Mr. Speaker, I thank the gentleman from California for yielding time.

This matter is simple, and in its simplicity is the clarity of its appropriate

resolution. The audio recording of President Biden's interview with Special Counsel Robert Hur is demeanor evidence.

Demeanor is one's outward manner, a way of conducting oneself. One might say his bearing. In some circumstances, demeanor evidence is the most probative, powerful evidence that can be heard. Better than words, it can evidence credibility or evasiveness and avoidance. Especially in this circumstance, it can evidence a witness' capacities to observe, recall, and relate information accurately.

President Biden shared classified information with his ghostwriter in pursuance of securing his \$8 million book advance. Mr. Hur attributed the Justice Department's decision not to recommend prosecution of President Biden for misusing and mishandling classified documents on this and other occasions to the fact that he is an elderly man with poor memory.

A raw transcript doesn't inform the Judiciary Committee sufficiently to evaluate the reasonableness of that determination, especially since President Biden hotly contested Special Counsel Hur's characterization.

Demeanor evidence could powerfully clarify whether that exercise of prosecutorial discretion was politically neutral or politically freighted. In fact, it is the very power of the demeanor evidence in the audio of Biden's interview that Garland inadvertently acknowledges in stubbornly withholding it. If it were nothing more than a duplicate of the transcript, it would never have been refused.

The Justice Department and the Attorney General have not a leg to stand on. Their refusal is the essence of contempt. Garland's own words reflect it in the hearing before the Judiciary Committee the other day. He said "certain members of this committee" have marked up a contempt resolution, but as I pointed out to the Attorney General, it was a majority of the members of the committee. He retracted those words. It was a majority of the committee charged by a majority of this House with inquiring into the existence of grounds to exercise the awesome constitutional power of impeachment.

The Attorney General's reference to "certain members" reflects a political mindset that does not support withholding evidence that the committee seeks that is squarely relevant and essential to its inquiry.

That defiance, the House cannot abide. Therefore, this resolution for contempt must pass this House.

Mr. NADLER. Mr. Speaker, I yield 1 minute to the distinguished gentleman from California (Mr. SCHIFF).

Mr. SCHIFF. Mr. Speaker, contempt: to hold something as beneath the dignity of consideration; something to be scorned; an attitude toward something that is inferior, worthless; open disrespect for something that is vile, despised, disgraced; insolence in the presence of the law.

An apt description not of the subject of this motion but of those who bring it, not of an Attorney General who has upheld our justice system, who has demonstrated a respect for institutions, but of those who mock the idea that we are a nation of laws, not the individual.

When Republicans line up in front of a Manhattan courthouse to denigrate the rule of law in the service of a now-convicted felon, that is contemptuous.

When Republicans peddle the lie that Joe Biden is pulling the levers of Trump's Manhattan prosecution, that is contemptuous.

When Republican committee chairmen ignore their own subpoena but feign indignation when the Attorney General complies with his, that is contemptuous. That is deserving of our scorn. That is beneath the dignity of this body. That is vile, disgraceful, and worthy of derision.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. NADLER. Mr. Speaker, I yield an additional 1 minute to the gentleman from California.

Mr. SCHIFF. Mr. Speaker, those who bring this motion bring contempt, all right, but only upon themselves.

□ 1200

Mr. MCCLINTOCK. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, for the first time in American history, a Presidential administration is trying to jail its opponent, and not just any opponent, but a former President of the United States.

To pursue this objective, Mr. Biden's Attorney General approved an unprecedented armed raid on a former President's home, despite strenuous objections by career officials and the local field office that normally would have had jurisdiction.

He then created a new position without the constitutional requirement of congressional action or Senate confirmation. He filled that position with one Jack Smith, despite the central role Smith had played in the IRS scandal that targeted and harassed Tea Party volunteers and despite a long history of prosecutorial misconduct.

The cooked-up charge was the mishandling of classified documents.

Shortly thereafter, we discovered that as Vice President, Joe Biden had done the same thing, yet, as President, Mr. Trump had absolute authority to declassify materials at will, as Vice President Joe Biden did not.

As President, Mr. Trump had absolute authority to determine what records to keep upon leaving office. As Vice President, Joe Biden did not. Yet, the Biden administration's appointed special counsel in the Biden case concluded that although Biden had "willfully retained and disclosed classified materials . . . when he was a private citizen," criminal charges were not warranted because he is "a sympathetic, well-meaning, elderly man with a poor memory."

Well, the principal justification for this glaring double standard in the handling of these two cases was the interview with Mr. Biden, yet all we have is the unverified transcript to determine the validity of this otherwise inexplicable decision.

Mr. Biden cannot claim executive privilege. This was not a policy discussion, and he has already released the transcript. It is vital that our committee know if the transcript is complete and whether it accurately portrays the circumstances under which that decision was made.

Two Trump officials have been sentenced to prison for their failure to honor congressional subpoenas, and that case was far weaker than this one because at the time, Congress was not exercising oversight or considering legislation.

In this case, the Judiciary Committee is doing both. Yet once again, we have this glaring legal double standard at play.

I expect the Attorney General to thumb his nose at the citation. We have come to expect that of him. However, the House Judiciary Committee is charged with defending and upholding the rule of law and its fundamental principle of equal justice under the law. If we are going to restore them, this resolution is an indispensable step that we must take today.

Mr. Speaker, I reserve the balance of my time.

Mr. NADLER. Mr. Speaker, the gentleman just attacked Special Counsel Smith. This dangerous attempt to demonize anybody who would hold Donald Trump accountable for his actions is despicable and it is a full-out assault on the basic tenets of our democracy.

I want to remind my colleagues that these types of actions have consequences. They affect the lives of many men and women who have dedicated themselves to public service and upholding the rule of law.

Mr. Speaker, I include in the RECORD a June 11, 2024, article from The Washington Post by the Honorable Merrick Garland titled: "Unfounded attacks on the Justice Department must end."

[June 11, 2024]

UNFOUNDED ATTACKS ON THE JUSTICE
DEPARTMENT MUST END
(By Merrick Garland)

Merrick Garland is attorney general of the United States.

Last week, a California man was convicted of threatening to bomb an FBI field office where hundreds of agents and other employees work. In one of his threats to the FBI, the man wrote: "I can go on a mass murder spree. In fact, it would be very explainable by your actions."

These heinous threats of violence have become routine in an environment in which the Justice Department is under attack like never before.

In recent weeks, we have seen an escalation of attacks that go far beyond public scrutiny, criticism, and legitimate and necessary oversight of our work. They are baseless, personal and dangerous.

These attacks come in the form of threats to defund particular department investiga-

tions, most recently the special counsel's prosecution of the former president.

They come in the form of conspiracy theories crafted and spread for the purpose of undermining public trust in the judicial process itself. Those include false claims that a case brought by a local district attorney and resolved by a jury verdict in a state trial was somehow controlled by the Justice Department.

They come in the form of dangerous falsehoods about the FBI's law enforcement operations that increase the risks faced by our agents.

They come in the form of efforts to bully and intimidate our career public servants by repeatedly and publicly singling them out.

They come in the form of false claims that the department is politicizing its work to somehow influence the outcome of an election. Such claims are often made by those who are themselves attempting to politicize the department's work to influence the outcome of an election.

And media reports indicate there is an ongoing effort to ramp up these attacks against the Justice Department, its work and its employees.

We will not be intimidated by these attacks. But it is absurd and dangerous that public servants, many of whom risk their lives every day, are being threatened for simply doing their jobs and adhering to the principles that have long guided the Justice Department's work.

In my first job at the Justice Department some 45 years ago, I worked on what would become the department's first edition of the Principles of Federal Prosecution. That set of rules for prosecutors enshrined what every department employee lives by every single day: an unwavering commitment to the fair and impartial application of our laws. That commitment has been sustained by dedicated career professionals who serve across administrations of both political parties.

The Justice Department makes decisions about criminal investigations based only on the facts and the law. We do not investigate people because of their last name, their political affiliation, the size of their bank account, where they come from or what they look like. We investigate and prosecute violations of federal law—nothing more, nothing less.

We do this not only because of the principles that have long guided our work, but also because we know that our democracy cannot survive without a justice system that ensures the equal protection of law for all its citizens.

The Justice Department will continue to uphold its obligation under the Constitution to fiercely defend the right of all Americans to peacefully express opinions, beliefs and ideas. Disagreements about politics are good for our democracy. They are normal.

But using conspiracy theories, falsehoods, violence and threats of violence to affect political outcomes is not normal. The short-term political benefits of those tactics will never make up for the long-term cost to our country.

Continued unfounded attacks against the Justice Department's employees are dangerous for people's safety. They are dangerous for our democracy. This must stop.

Mr. NADLER. It is absurd and dangerous that public servants, many of whom risk their lives every day, are being threatened for simply doing their jobs and adhering to the principles that have long guided the Justice Department's work. I would also remind my friends on the other side of the aisle that the conviction of Mr. Trump was

in a State court in New York having nothing to do with the Federal Government.

Mr. Speaker, I yield 1 minute to the distinguished gentleman from California (Mr. SWALWELL).

The SPEAKER pro tempore. The Chair would again remind Members to refrain from engaging in personalities toward presumptive nominees for the Office of the President.

Mr. SWALWELL. Mr. Speaker, this is not about the contempt of the Attorney General. It is about MAGA Republicans' contempt for the Constitution, the rule of law, and democracy. It is about who any of us came here to fight for.

MAGA Republicans are fighting for one person at the cost of what your constituents actually care about. You are fighting for a felon. You are fighting for a felon.

On this side, we are fighting for working people. We are fighting for the kids and the teachers and the soldiers and the cops and the firefighters and the bakers and the butchers, the people who go to work every day and count on us to do something for them; and you, you are working for a felon, a felon.

Twelve of his neighbors, people in the community where he committed crimes, made 34 decisions, and 408 straight times they said he was guilty.

Let me make it clear where we stand. We will choose families over felons, verdicts over vengeance, and people over politics.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. NADLER. Mr. Speaker, I yield an additional 1 minute to the gentleman from California.

Mr. SWALWELL. Mr. Speaker, let's talk about subpoenas for just one second because two of your last speakers are 750-plus days in defiance of a subpoena. Get real when Mr. JORDAN and Mr. BIGGS come to this floor and want to talk and get all righteous about subpoenas.

You start honoring your subpoenas, and we can talk about anyone else's subpoenas.

The SPEAKER pro tempore. The Chair would again remind Members to refrain from engaging in personalities toward presumptive nominees for the Office of President and to direct their remarks to the Chair.

Mr. MCCLINTOCK. Mr. Speaker, I yield 4 minutes to the gentleman from California (Mr. ISSA).

Mr. ISSA. Mr. Speaker, I am not going to refer to the current President or the presumptive nominee. For my colleagues, Mr. Speaker, I am going to refer to the history of this body because I think the study of the history of this body should tell Members on both sides of the aisle that this is an appropriate contempt. It will lead eventually to compliance and, again, to holding this body as a coequal branch of government.

I might remind my colleagues, some of them here in the room, Mr. Speaker,

that in 2007, this body held the White House counsel on behalf of the President of the United States, then-President Bush, in contempt for refusing to show up before this very committee, Judiciary.

In 2012, this body held a previous Attorney General—in a very similar situation affecting the same two committees that have been speaking here, Oversight and Accountability and Judiciary—Eric Holder, in contempt because he told us that if we would take 200-and-some documents, that was all that was left, and end our case, he would give them to us. Otherwise, he would withhold them.

We held him in contempt, and Judge Amy Berman Jackson, an appointee of President Obama, held several things, including that President Obama had clearly falsely claimed an executive privilege, probably based on being misled by then-Attorney General Eric Holder.

In fact, 10,000-plus documents were turned over to the United States Congress. The then-Attorney General had lied. The then-Attorney General Eric Holder had lied to this body and to the chairman of the committee and ultimately was held in contempt on a bipartisan basis with 12 Members of the other party voting for that contempt.

After a long period of time, we managed to get the equilibrium this body deserves. I call, Mr. Speaker, on this body and all my colleagues today to live up to the standard that we learned in 2007 when a White House, then of a Republican, refused to deliver a witness.

Then, in 2012, when the Attorney General claimed that we were not entitled to the best documents we sought and that we were entitled to the documents related to Fast and Furious that he believed were appropriate, he failed, and he failed based on a judge appointed by President Obama. Why?

He failed because this body does have the obligation and the right to seek all of the best evidence it believes—not that the other side believes; it believes.

There has been no call for an in-camera review, no call for any kind of compromise. Once again, we are to take the word of an Attorney General working for the current President that there is nothing there.

I have watched a lot of television over the years. I am not going to believe these are not the droids we are looking for. This, in fact, could be important evidence. Whether it is or isn't, isn't germane.

What is important is that this body, in fact, lives up to its obligation. I call on every Member—those on the other side who did or didn't join with me in 2012 but who voted in 2007 to hold the White House in contempt—to consider whether once again we are balancing the power and the rights of this body.

Mr. Speaker, many are arguing against the best interests of the United States House of Representatives, and for that, shame on those who do.

Mr. NADLER. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Georgia (Mr. JOHNSON).

Mr. JOHNSON of Georgia. Mr. Speaker, this contempt vote is MAGA Republicans' desperate attempt to save face following their many failed investigations, including the one about Hunter Biden's laptop.

Do you all remember that?

They promised Trump and the American people that they would impeach President Biden, but after spending more than \$20 million investigating conspiracy theories, MAGA Republicans have nothing to show for it.

This do-nothing Congress can't pass legislation to help the American people and also can't prove any wrongdoing by President Biden. They are running out of time and they are desperate.

Plus, their own Presidential candidate Donald Trump just became a convicted felon according to a jury of his peers. MAGA Republicans are trying to shift the blame to someone else.

Even though the Justice Department produced more than 92,000 pages of documents and made dozens of witnesses available, Republicans have made Attorney General Garland their scapegoat. This is a farce, and the American people can see right through it.

The SPEAKER pro tempore. The Chair would remind members to refrain from engaging in personalities toward presumptive nominees for the Office of the President.

Mr. MCCLINTOCK. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. KILEY), my colleague and neighbor.

Mr. KILEY. Mr. Speaker, this is a textbook example of the executive branch obstructing the oversight function of Congress.

The committees of jurisdiction here have clearly set forth the legal basis for compelling disclosure of President Biden's interviews with Special Counsel Hur. Now the administration has agreed with us inasmuch as they have produced the transcripts of those recordings. However, they have grasped wildly for some basis on which to withhold the recordings themselves. The most telling is that they have given contradictory reasons for doing so.

At first, they said they weren't going to hand over the recordings because they were cumulative of the transcripts, meaning they were so similar to the transcripts that we didn't need them. Later, they argued that, in fact, they are so different from the transcripts that one is privileged and the other is not.

When you have self-contradictory arguments being made, that is a sign that the true purpose here is obstruction.

Perhaps the most absurd argument we have heard is the supposed interest asserted by the administration for withholding the recordings, which is disclosing them might discourage witnesses from cooperating in future high-profile investigations.

In this case, the President is not merely a witness. He is the target of an investigation by his own administration. By the way, Special Counsel Hur testified before our committee that based on that investigation, a reasonable juror could have voted to convict President Biden.

□ 1215

What is the administration arguing the interest here is? It is that if somewhere down the line there might be another President who is subject to an investigation by his own administration, then the argument goes that if that President knows that the transcript will be released, then he will sit for the interview, but if he knows there is a chance that a recording might be released, then he won't cooperate.

This is an absurd proposition, Mr. Speaker, certainly not sufficient to override the legitimate oversight interests of the House of Representatives.

Frankly, this is not how we would like to be spending floor time, but the recalcitrance and obstruction of this administration has made it necessary.

The SPEAKER pro tempore. Members are reminded to refrain from engaging in personalities toward the President.

Mr. NADLER. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Pennsylvania (Ms. DEAN).

Ms. DEAN of Pennsylvania. Mr. Speaker, I thank the gentleman from New York for yielding.

Mr. Speaker, this contempt resolution is the latest attempt to tear down our democracy. The Department of Justice has cooperated with congressional Republicans at every turn, but after 92,000 pages of documents, more than a dozen transcribed interviews, and a 250-page transcript that was verified, my colleagues still aren't satisfied.

They are doing this in service of one man, the disgraced former President, in a misguided attempt to distract from his crimes. On May 30, a jury of stranger-citizens found Mr. Trump guilty of 34 felony charges.

It is beyond disheartening that a former President and now potential Presidential candidate, again, was convicted of coordinating "an unlawful conspiracy" to win the 2016 election and falsifying records to cover his tryst with an adult porn star.

I am grateful that the rule of law prevailed, yet I am deeply concerned that our democratic institutions are under threat. Some of these attacks come from within.

Judiciary Chairman JIM JORDAN has said that a kangaroo court convicted President Trump, and Speaker JOHNSON called the trial a purely political exercise. Mr. Trump apparently pities himself as a so-called political prisoner.

All this is to tear down Americans' faith in the rule of law.

Contrary to his complaints, Mr. Trump was tried and treated fairly.

Justice was served in a courtroom that was open and filled with reporters and a jury that was chosen by the prosecution and defense. This is the rule of law at work.

Political rhetoric and deliberate misinformation, the likes of these and a dangerous many others, erode faith in our institutions and threaten the safety of the American people. These attacks undermine the rule of law, which stands to protect the rights of all people.

The SPEAKER pro tempore. The time of the gentlewoman has expired.

Mr. NADLER. Mr. Speaker, I yield an additional 30 seconds to the gentlewoman from Pennsylvania.

Ms. DEAN of Pennsylvania. Mr. Speaker, when Attorney General Garland was before the Judiciary Committee, he described his career upholding the rule of law. In his own words, that means ensuring that “we treat like cases alike: that we do not have enemies or friends, that we do not pay attention to the political parties or the wealth or the power or the influence of the people that we are investigating, that we follow the facts and the law. This is what distinguishes this country from our adversaries.”

Mr. NADLER. Mr. Speaker, how much time do I have remaining?

The SPEAKER pro tempore. The gentleman from New York has 8½ minutes remaining. The gentleman from California has 6½ minutes remaining.

Mr. NADLER. Mr. Speaker, I reserve the balance of my time.

The SPEAKER pro tempore. The Chair will, again, remind Members to refrain from engaging in personalities toward presumptive nominees for the Office of the President.

Mr. MCCLINTOCK. Mr. Speaker, I yield 4 minutes to the gentleman from Texas (Mr. ROY).

Mr. ROY. Mr. Speaker, I thank the gentleman from California for yielding.

Mr. Speaker, listening to my colleagues discussing the rule of law, I find it shocking because the average American is looking across their country wondering what happened to the rule of law.

I watch my fellow Texans getting destroyed by dangerous cartels and individuals being allowed into the United States who are terrorists and people moving fentanyl into the communities that killed six kids in the school district in which I live. That is happening every single day.

I watched a 75-year-old woman being put in prison by a politically motivated judge in the District of Columbia because she protested in front of an abortion clinic.

I want to say that again: This Department of Justice is putting a 75-year-old woman in jail for 2 years who is dealing with physical infirmities because she was praying and protesting in front of an abortion clinic.

That is astounding. That is what has happened to the rule of law. The American people are watching while statues

are being defaced in the name of being pro-Palestinian, and people who are exercising their so-called free speech rights are advancing the cause of terrorism against our friends in Israel.

All this is happening right here, mere feet from the White House, and the American people are wondering how this world got turned upside down.

Here we sit, and we are debating the issue of the Attorney General of the United States, Merrick Garland, coming before the House Judiciary Committee just a little over 1 week ago. In that hearing, a number of questions were asked.

I engaged with the Attorney General. I asked the Attorney General if he did or did not claim privilege with respect to the transcripts of the audio recording in question when we were talking about Special Counsel Hur looking into the allegations of the abuse of classified materials by the President of the United States before he was President.

I asked him, and he said: No, no. We did not claim executive privilege with respect to the transcripts.

In a separate exchange involving the best evidence rule, the Attorney General was engaging with another colleague, a friend on the Judiciary Committee, about the best evidence rule and, in doing so, articulated and explained how the transcript was admissible under the best evidence rule, which is correct, but in doing so, he kind of gave up the game in which he described and said: They are the same.

He said to the committee: They are the same.

Now, he had just told me that they did not claim executive privilege with respect to the transcript. Then he said to all of us: They are the same. The audio recording and the transcript are the same.

Then he proceeds to say that he must, in defending the rule of law, claim executive privilege on the actual audio, and then he denied the Members of Congress the ability in the middle of an impeachment inquiry, duly constituted and voted on by this body on the House floor, an impeachment inquiry, to then deny us the ability to listen to the audio.

The fact of the matter is there is only one reason why the Attorney General would do that. He doesn't want us to hear it. That is why. There are really only two reasons why that would be the case. Either the transcript doesn't match the audio, or the audio is so bad that he doesn't want us to hear it because Special Counsel Hur put the entirety of his decision not to prosecute, not to pursue, and not to go after the President of the United States for abuse of classified materials entirely on the basis of what we perceive as the demeanor of the President. Only the audio can allow Congress the ability to determine the validity of that determination by the special counsel.

Mr. NADLER. Mr. Speaker, I yield 1 minute to the distinguished gentlewoman from Vermont (Ms. BALINT).

Ms. BALINT. Mr. Speaker, we are here today because of the Republican Party's unrelenting effort to get Donald Trump back into office, no matter the facts and no matter the law.

For over 1 year, Judiciary Committee Republican colleagues have desperately sought evidence of wrongdoing by President Biden. What have they found? They have found nothing. Nothing.

I am sure it was disappointing for my Republican colleagues when Special Counsel Hur cleared the President instead of indicting him, but it is time to move on. We should be on the floor moving gun violence legislation, protecting the right to abortion, and protecting the LGBTQ Americans across the country who are attacked relentlessly by my colleagues on the other side.

This is a colossal waste of time, but more importantly, it is dangerous. What they are doing is dangerous.

When this Congress is over, the only achievements my colleagues on the other side of the aisle will be able to point to will be the things that we, as Democrats, helped them to pass.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. NADLER. Mr. Speaker, I yield an additional 30 seconds to the gentleman from Vermont.

Ms. BALINT. Mr. Speaker, it is my job, and it is all of our jobs, to represent constituents. I thought that is what we are all here for. I implore my Republican colleagues to stop putting the interests of only one man above the interests of Americans.

The truth will out, and history will not look kindly on what you have done here.

The SPEAKER pro tempore. Members are reminded to direct their remarks to the Chair.

Mr. MCCLINTOCK. Mr. Speaker, I reserve the balance of my time.

Mr. NADLER. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Virginia (Mr. CONNOLLY).

Mr. CONNOLLY. Mr. Speaker, I thank my friend for yielding.

Mr. Speaker, if you gave truth serum to my colleagues on the other side of the aisle, I am pretty sure they would admit they would rather not be here today doing this. They would admit that Attorney General Merrick Garland is collateral damage in a failed effort to impeach the President of the United States.

There is no honor in that, and my colleagues are, for the most part, I think, honorable people, so this is not something they want to do, but it is demanded of them nonetheless.

Former President Trump has repeatedly threatened the House Republican Conference that they must impeach President Biden or else. So here we are.

They found the Attorney General in contempt for providing a transcript, a full transcript and not an audio recording, of an interview from an investigation that ended up finding nothing.

By the way, Mr. Speaker, the recording in question is now subject to executive privilege, so their fight is not even with the Attorney General of the United States. It is with the White House.

I take some solace in the fact that many of my Republican friends and colleagues are here doing the dirty work of one individual against their will and better judgment. I know deep down, very deep down, they would rather do the honorable thing and give up this miscarriage of justice today.

Mr. MCCLINTOCK. Mr. Speaker, I am ready to close when the gentleman is finished, and I reserve the balance of my time.

Mr. NADLER. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, House Republicans have spent the last 18 months in a futile effort to dig up dirt on President Biden, which has culminated in their epic failure of an impeachment inquiry. This resolution is nothing more than a desperate attempt to save face with the MAGA-sphere.

They seek to hold the Attorney General in contempt even though he has already turned over all the underlying information they requested in their subpoena. This resolution will not change that fact, but facts have never been the animating force behind their investigations.

It is a show, and apparently, the show must go on even though the script hasn't turned out the way they wanted. Nevertheless, the reviews are in, and it is a flop, so I urge my colleagues to vote "no" on this resolution and to put an end to this farce.

Mr. Speaker, I yield back the balance of my time.

Mr. MCCLINTOCK. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, the American justice system is the pride of our Nation. It is the envy of the world. Its central principle is the equal application of justice under law.

This is why justice is depicted as blindfolded. It doesn't matter who comes before it; all are to be treated equally. It is this central principle that gives the law its legitimacy. Without it, the law becomes raw force devoid of legitimacy, and respect for the law gives way to the law of the jungle. This is the well-trodden path many nations before us have taken to despotism and ruin.

It is the responsibility of the House Judiciary Committee to protect the rule of law and its equal application. It is our responsibility to guard our Nation against the convulsions that have commonly afflicted banana republics whenever a ruling party tries to jail its opponents.

The radically different handling of the documents cases involving Mr. Trump and Mr. Biden should ring alarm bells in every corner of the land.

The principal justification for this radical, unequal application of law is the interview that the Judiciary Com-

mittee seeks through ancient constitutional prerogatives.

It is vital that we understand the whole context of this decision, to verify the accuracy of the transcript, and to determine the extent that this conversation informed the decision that strikes at the heart not only of our rule of law but the right of the American people to guide their own destiny through fair, free, and unfettered elections.

Congress has a constitutional right and a constitutional duty to seek this information, and the Attorney General has a legal obligation to provide it, an obligation he refuses to honor.

□ 1230

This Congress has enforced this prerogative in past cases under far less demanding circumstances than these.

In order to assure that we have discharged our responsibilities, we have to compel the Attorney General to discharge his, and that is what this citation seeks to do.

Mr. Speaker, I urge its adoption, and I yield back the balance of my time.

Mr. ESPAILLAT. Mr. Speaker, I rise today in strong opposition to the resolution recommending that the House of Representatives find Attorney General Merrick Garland in contempt of Congress. This resolution is not only a distraction but a waste of valuable time and resources that could be better spent addressing the pressing needs of the American people.

Firstly, this contempt vote is politically motivated and baseless. Attorney General Garland has consistently cooperated with Congress, providing over 2,500 pages of documents and making senior officials available for testimony. These facts underscore his commitment to transparency and accountability, making the charge of contempt unfounded.

Furthermore, let's consider the broader implications of this resolution. Pursuing this baseless contempt charge diverts attention from the real issues that matter to working-class Americans. According to recent data, policies that directly impact the well-being and opportunities of American families should be our primary focus. For instance:

Economic Support: We should be prioritizing policies that boost economic opportunities. The American Rescue Plan, for example, has already provided significant relief to millions of families. Continued efforts in this vein would better serve our constituents.

Healthcare Access: Expanding access to affordable healthcare remains a critical need. By focusing on comprehensive healthcare reforms, we can ensure that every American has the coverage they need.

Education and Workforce Development: Investing in education and workforce training programs is essential for the future of our economy. These initiatives equip Americans with the skills necessary to compete in a rapidly changing job market.

Infrastructure and Clean Energy: Comprehensive infrastructure projects, including advancements in clean energy, create jobs and promote sustainable growth. These initiatives not only strengthen our economy but also address the urgent issue of climate change.

Instead of engaging in politically charged actions that yield no tangible benefits, we must redirect our efforts toward these meaningful policies. Addressing these key areas will directly enhance the lives of working-class Americans and foster a more prosperous and equitable society.

I urge my colleagues to reject this contempt resolution. Let us focus our energy on policies that deliver real results for our constituents, ensuring that we are truly serving the American people's best interests.

The SPEAKER pro tempore. All time for debate has expired.

Pursuant to House Resolution 1287, the previous question is ordered on the resolution.

Pursuant to clause 1(c) of rule XIX, further consideration of H. Res. 1292 is postponed.

SERVICEMEMBER QUALITY OF LIFE IMPROVEMENT AND NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2025

GENERAL LEAVE

Mr. ROGERS of Alabama. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on H.R. 8070.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Alabama?

There was no objection.

The SPEAKER pro tempore. Pursuant to House Resolution 1287 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the state of the Union for the consideration of the bill, H.R. 8070.

The Chair appoints the gentleman from California (Mr. MCCLINTOCK) to preside over the Committee of the Whole.

□ 1233

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H.R. 8070) to authorize appropriations for fiscal year 2025 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes, with Mr. MCCLINTOCK in the chair.

The Clerk read the title of the bill.

The CHAIR. Pursuant to the rule, the bill is considered read for the first time.

The gentleman from Alabama (Mr. ROGERS), and the gentleman from Washington (Mr. SMITH) each will control 30 minutes.

The Chair recognizes the gentleman from Alabama.

Mr. ROGERS of Alabama. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, for the first time in decades, this year's Defense bill carries a different short title. It is the Servicemember Quality of Life and National Defense Authorization Act.