

Congress of the United States
Washington, DC 20515

July 21, 2023

The Honorable Merrick B. Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Attorney General Garland:

In the wake of testimony from brave Internal Revenue Service whistleblowers about special treatment for the son of President Biden during the course of a criminal investigation, our Committees are conducting oversight of the Executive Branch’s commitment to impartial justice, as well as investigating the veracity of statements made in response to congressional inquiries. As part of this oversight, on June 29, 2023, we requested you make eleven Department of Justice officials available for transcribed interviews before the Judiciary Committee.¹ The Department’s July 13 response letter raised several bases for why the Department could not comply immediately with our request.² We write to address these bases and to reiterate our request for the Department’s voluntary cooperation.

The Department’s July 13 response letter questioned the Committees’ legislative purpose in conducting our oversight of the Justice Department’s preferential treatment afforded to Hunter Biden.³ There is no serious dispute that the Committees have a legislative purpose to examine how the Department has handled these matters. The Supreme Court has recognized that Congress has a “broad and indispensable” power to conduct oversight,⁴ and that a legislative purpose is valid if it “concern[s] a subject on which legislation could be had.”⁵ In this matter, Congress may consider a number of legislative proposals including, but not limited to, reforming the “special attorney” statute,⁶ codifying the special counsel regulations,⁷ reforming the Tax Division of the

¹ Letter from Chairmen Jim Jordan, Jason Smith, and James Comer, to Merrick B. Garland, Att’y Gen., U.S. Dep’t of Just. (June 29, 2023).

² Letter from Carlos Felipe Uriarte, Assistant Att’y Gen., U.S. Dep’t of Just., to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (July 13, 2023) [hereinafter July 13 Letter].

³ *Id.*

⁴ *Trump v. Mazars*, 140 S. Ct. 2019, 2031 (2020) (internal quotation marks omitted).

⁵ *Id.* (internal quotation marks omitted).

⁶ 28 U.S.C. § 515.

⁷ 28 C.F.R. § 600 *et seq.*

Department of Justice and its interactions with the IRS, and expanding the ability of the IRS, including whistleblowers, to share certain tax information with Congress.⁸

The Supreme Court has also recognized that a legislative purpose exists where Congress seeks information from the Executive Branch about “corruption, maladministration or inefficiency in agencies of the Government.”⁹ Here, whistleblowers have brought forward numerous concerns, backed by contemporaneous documentary evidence, of corruption (e.g., preferential treatment for the President’s son), maladministration (e.g., retaliation against whistleblowers), and inefficiency (e.g., an investigation so bogged down by delays and micromanagement that the statute of limitations lapsed before prosecutors could file certain charges). These are among the matters about which the Committees require testimony to inform potential legislative reforms.

The Department’s July 13 letter also asserted that it may not engage with Congress about pending investigations.¹⁰ In support of this proposition, the Department cited a nonbinding, twenty-three year old letter to a House subcommittee chairman.¹¹ The Department’s suggestion that it can dictate the “timing and scope” of the Committee’s oversight because of ongoing nature of the Department’s investigation lacks any valid legal basis and the Committees do not accept it as a legitimate reason to delay its oversight efforts.¹² Even assuming the Department is correct, as it has acknowledged, the U.S. District Court for the District of Delaware will consider Hunter Biden’s plea agreement on July 26.¹³ At that time, it is the Committees’ understanding that the Department’s prosecution will have concluded, the matter will be closed, and there will no longer be any reason for the Department to not comply in full with our requests.¹⁴

The Department’s July 13 response endorsed the statements previously made to the Judiciary Committee by U.S. Attorney for the District of Delaware, David Weiss, regarding his authority to investigate and prosecute Hunter Biden. Weiss’s representations about his authority, however, have shifted over time. Initially, in response to a letter addressed to you, Weiss asserted: “I *have been granted ultimate authority* over this matter, including responsibility for deciding where, when, and whether to file charges”¹⁵ Subsequently, in his June 30 letter to the Judiciary Committee, Weiss claimed that his “charging authority is geographically limited to [his] home district” and that “[i]f venue for a case lies elsewhere, common Departmental practice

⁸ See, e.g., 26 U.S.C. § 6103(f).

⁹ *Watkins v. United States*, 354 U.S. 178, 200 n.33 (1957).

¹⁰ July 13 Letter, *supra* note 2.

¹¹ *Id.* (citing Letter from Robert Raben, Assistant Att’y Gen., U.S. Dep’t of Just., to Rep. John Linder, Chairman, Subcomm. on Rules & Orgs. of the H. Comm. on Rules (Jan. 27, 200)).

¹² *Id.* Cf. William McGurn, Opinion, *The ‘Ongoing Investigation’ Dodge on Hunter Biden*, WALL ST. J. (July 10, 2023) (quoting former Assistant U.S. Attorney Andrew McCarthy as stating, “The executive branch response of ‘ongoing investigation’ is really a political objection, rather than a legal one. There is no ‘ongoing investigation’ privilege.”).

¹³ July 13 Letter, *supra* note 2.

¹⁴ See Ed. Bd., *Hunter Biden’s Prosecutor Keeps Dodging Congress*, WALL ST. J. (July 10, 2023) (“In his letter Mr. Weiss again refused to discuss anything further about his ‘ongoing investigation.’ But if he’s settled the case, why is it ‘ongoing?’”).

¹⁵ Letter from David C. Weiss, U.S. Att’y, Dist. of Del., to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (June 7, 2023) (emphasis added).

is to contact the United States Attorney's Office for the district in question and determine whether it wants to partner on the case."¹⁶ If a fellow U.S. Attorney declined to "partner," Weiss explained, he would have had to request "Special Attorney" status, which he claimed to "have been assured that, if necessary" he would receive.¹⁷ Finally, in a July 10 letter to Senator Lindsey Graham, Weiss acknowledged that he had "discussions" with unnamed "Departmental officials" about seeking Special Attorney status and "was assured" the authority would be granted.¹⁸

In other words, in his first letter, Weiss represented to the Judiciary Committee that he *had been* granted ultimate authority with respect to the filing of charges. But in his second letter, Weiss told the Committee that he had been assured by unnamed officials that he *would be* granted that authority in the future if necessary after going through a specified process, and he notably provided no explanation of who would make the determination of necessity. These are inconsistent representations, and it is not possible for both of them to be true.

Weiss's shifting statements about his authority to bring charges against Hunter Biden, especially his authority to bring charges outside of Delaware, suggest that improper political considerations factored into the Department's investigative and prosecutorial function. In addition, at least some of Weiss's statements to the Judiciary Committee contradict his own statement to line-level investigators in October 2022, in which he indicated that he was not the "deciding official" on bringing charges against Hunter Biden.¹⁹ This statement was memorialized contemporaneously in an email sent by IRS whistleblower Gary Shapley; and none of the other participants in the meeting at which Weiss made this assertion have contradicted Shapley's account.

On a recent teleconference with Judiciary Committee staff, the Department confirmed that Weiss would appear before the Committee. While we look forward to Weiss appearing at a hearing at the appropriate time, we must first conduct our investigative work, including conducting the transcribed interview of witnesses identified in our June 29 letter. As we explained in that letter, the Department has made available non-Senate-confirmed and line-level employees for testimony to Congress in the past, and we expect no deviation from this precedent in this matter. Accordingly, we write to reiterate our outstanding requests for transcribed interviews with the Department and FBI officials listed in our June 29 letter.

Please contact the Judiciary Committee as soon as possible, but no later than 5:00 p.m. on July 24, 2023, to schedule these transcribed interviews. Absent cooperation with this request, the Judiciary Committee will issue subpoenas to obtain the required testimony.

¹⁶ Letter from David C. Weiss, U.S. Att'y, Dist. of Del., to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (June 30, 2023).

¹⁷ *Id.*

¹⁸ Letter from David C. Weiss, U.S. Att'y, Dist. of Del., to Sen. Lindsey O. Graham, Ranking Member, S. Comm. on the Judiciary (July 10, 2023).

¹⁹ Transcribed Interview of Gary A. Shapley, Jr., Supervisory Special Agent, Internal Revenue Serv., at 28 (May 26, 2023); Transcribed Interview of [Redacted], Special Agent, Internal Revenue Serv., at 40 (June 1, 2023).

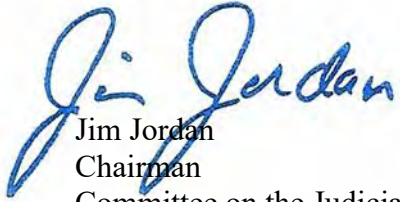
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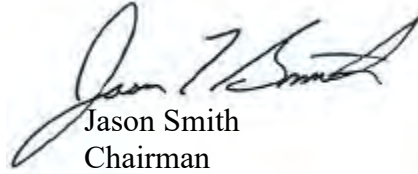
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Thank you for your attention to this matter.

Sincerely,



Jim Jordan
Chairman
Committee on the Judiciary



Jason Smith
Chairman
Committee on Ways and Means



James Comer
Chairman
Committee on Oversight and Accountability

cc: The Honorable Jerrold L. Nadler, Ranking Member
Committee on the Judiciary

The Honorable Richard E. Neal, Ranking Member
Committee on Ways and Means

The Honorable Jamie Raskin, Ranking Member
Committee on Oversight and Accountability

The Honorable Daniel Werfel, Commissioner of the Internal Revenue Service