



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, DC 20530

The Honorable Jim Jordan
Chairman
Committee on Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Jordan:

This responds to your letter of June 29, 2023, to the Department of Justice (Department) expressing interest in an individual ongoing criminal investigation and prosecution conducted by David Weiss, the U.S. Attorney for the District of Delaware. U.S. Attorney Weiss has consistently made clear in his letters to the House Judiciary Committee (Committee) and Members of Congress that he has ultimate authority over the matter, including the authority to bring a case in any jurisdiction, consistent with federal law, the Principles of Federal Prosecution, and Department regulations. U.S. Attorney Weiss said he welcomes the opportunity to meet with the Committee at an appropriate time, consistent with the law and Department policy. The Department, with this letter, affirms that commitment. The Office of Legislative Affairs will reach out to your staff tomorrow to discuss the appropriate timeline and scope of such an appearance.

Interest in an individual ongoing criminal investigation

The Department respects and gives due weight to your interest in this matter, and we can provide the following information at this time. Your letter refers generally to assertions made by two Internal Revenue Service investigators regarding U.S. Attorney Weiss's investigation. U.S. Attorney Weiss was appointed by President Donald J. Trump. He began this investigation during the previous administration. After the change in administrations, U.S. Attorney Weiss was asked to remain in his position to continue his leadership of the investigation.¹

U.S. Attorney Weiss brought charges in this case for two misdemeanor tax offenses and for a felony firearms offense. Mr. Robert Hunter Biden agreed to enter a plea of guilty to the tax offenses and to enter into a pre-trial diversion agreement with regard to the firearm charge.² A hearing is scheduled for July 26, 2023, in the U.S. District Court for the District of Delaware to

¹ Letter from U.S. Attorney David Weiss to Chairman Jim Jordan (June 7, 2023) ("June 7 Letter").

² Press Release, United States Attorney's Office for the District of Delaware, Tax and Firearm Charges Filed Against Robert Hunter Biden (June 20, 2023), <https://www.justice.gov/usao-de/pr/tax-and-firearm-charges-filed-against-robert-hunter-biden>.

consider a plea agreement between the United States and Mr. Robert Hunter Biden. Sentencing will follow upon entry of a guilty plea.

U.S. Attorney Weiss has clearly stated that he has been “granted ultimate authority over this matter, including responsibility for deciding where, when and whether to file charges and for making decisions necessary to preserve the integrity of the prosecution, consistent with federal law, the Principles of Federal Prosecution, and Departmental regulations.”³ He has said he has “never been denied the authority to bring charges in any jurisdiction.”⁴ U.S. Attorney Weiss has assured that his “decisions have been made—and with respect to the matter must be made—without reference to political considerations.”⁵

U.S. Attorney Weiss also made clear that he has “not requested Special Counsel designation pursuant to 28 CFR § 600 *et seq.*”⁶ U.S. Attorney Weiss further explained that if he wanted to bring charges outside the District of Delaware, he could either “partner” with the U.S. Attorney’s Office for the other district, or seek “Special Attorney” status pursuant to 28 U.S.C. § 515.⁷ Section 515 provides that “any attorney specially appointed by the Attorney General under law, may, when specifically directed by the Attorney General, conduct any kind of legal proceeding, civil or criminal . . . which United States attorneys are authorized by law to conduct, whether or not he is a resident of the district in which the proceeding is brought.” As U.S. Attorney Weiss explained, he was assured that he “would be granted this authority if it proved necessary.”⁸ That assurance “came months before the October 7, 2022, meeting referenced throughout the whistleblowers’ allegations.”⁹ As Attorney General Garland has testified, U.S. Attorney Weiss “has full authority” to make “referrals” to other districts “or to bring cases in other jurisdictions if he feels it’s necessary.”¹⁰

The Office of Legislative Affairs will work with your staff to discuss the appropriate timing and scope for providing further information from U.S. Attorney Weiss.¹¹ In determining the timing and scope, the Department must consider the integrity of the ongoing criminal investigation and prosecution and the Department’s longstanding policy that we seek “whenever possible to provide information about closed, rather than open, matters.”¹² Indeed, legal barriers

³ June 7 Letter.

⁴ Letter from U.S. Attorney David Weiss to Senator Lindsey Graham (July 10, 2023) (“July 10 Letter”).

⁵ June 7 Letter.

⁶ July 10 Letter. Attorney General William Barr also addressed questions about whether to appoint a special counsel in the matter. In December 2020, Attorney General Barr said, “I think it’s being handled responsibly and professionally currently within the department, and to this point I have seen no reason to appoint a special counsel, and I have no plan to do so before I leave.” See Ryan Lucas, *Barr Says No Need For Special Counsel For Hunter Biden Probe, Election Fraud Claims*, NPR (Dec. 21, 2020), <https://www.npr.org/2020/12/21/948787251/barr-says-no-need-for-special-counsel-for-hunter-biden-probe-election-fraud-clai>.

⁷ Letter from U.S. Attorney David Weiss to Chairman Jim Jordan (June 30, 2023) (“June 30 Letter”).

⁸ July 10 Letter.

⁹ *Id.*

¹⁰ March 1, 2023, Senate Judiciary Committee Hearing (“March 1, 2023 Testimony”); April 26, 2022, Senate Appropriations Subcommittee Hearing. See also February 22, 2021, Senate Judiciary Committee Hearing (“February 22, 2021 Testimony”).

¹¹ June 30 Letter.

¹² Letter from Assistant Attorney General Robert Raben to Chairman John Linder (Jan. 27, 2000) (“Linder Letter”) at 3.

and ethics obligations prevent the Department from discussing the particulars of a criminal prosecution while it remains pending in court.

Oversight of the Department's programs and operations

Your letter also identifies general areas where the Committee may have legislative oversight authority: the Department's "programs and operations" within the "jurisdiction" of the Committee. The Department respects that the Rules of the 118th Congress grant the Committee jurisdiction to initiate legislative inquiries regarding a range of the Department's work and administration.¹³ We also respect the scope of Congress's oversight authorities in service of its legislative responsibilities.¹⁴

As the Department explained in its letter of January 20, 2023, courts have long held that the Constitution "requires each Branch to engage in a 'realistic evaluation of [one another's] needs'" when Congress seeks Executive Branch information, and that "[t]he Committee can assist the Department in making this process as efficient as possible by helping the Department understand the scope of its interests."¹⁵ The Office of Legislative Affairs is available to meet with your staff so we can understand the legislative purpose and scope of your inquiry into the Department's programs and operations, which your letter does not specify.¹⁶ Providing that information is a necessary first step to enable the Department and the Committee to begin a process of accommodation, as appropriate.

In any accommodation process, the Department applies its longstanding policies and practices to protect the integrity of our work, as the Department conveyed to the Committee at the outset of this Congress.¹⁷ Subject to the necessary discussions referenced above, those principles apply to your requests for transcribed interviews with several Department personnel, including line agents and prosecutors. As noted, the Department safeguards non-public information about open investigations, sensitive law enforcement information, and internal deliberations.¹⁸ Moreover, the longstanding policy of the Department is to "ensur[e] that

¹³ See H.R. Rules, 118th Cong., Rule X, cl. 1(*l*) (identifying nineteen subjects over which the Committee has been delegated "legislative jurisdiction"); *id.* Rule X, cl.2 (assigning standing committees "general oversight responsibilities" on the subjects within the scope of their legislative jurisdiction).

¹⁴ See *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2031 (2020) (The Supreme Court has "held that each House has power 'to secure information in order to legislate,'" and that this "power is 'broad' and 'indispensable.'" (quoting *McGrain v. Daugherty*, 273 U.S. 135, 161 (1927), and *Watkins v. United States*, 354 U.S. 178, 187 (1957)). See also U.S. CONST. art. I, § 1.

¹⁵ Letter from Assistant Attorney General Carlos Uriarte to Chairman Jim Jordan (Jan. 20, 2023) ("January 20 Letter") (quoting *United States v. AT&T Co.*, 567 F.2d 121, 127 (D.C. Cir. 1977)).

¹⁶ See *Trump*, 140 S. Ct. at 2031 – 32 ("Because this power [to conduct investigations] is 'justified solely as an adjunct to the legislative process,'" it is subject to several limitations, including that a congressional request for information "must serve a 'valid legislative purpose,'" that it cannot be "for the purpose of 'law enforcement'" or other "powers are assigned under our Constitution to the Executive or the Judiciary," and also that recipients of such requests retain protections such as constitutional rights as well as certain "common law and constitutional privileges." (cleaned up)).

¹⁷ January 20 Letter.

¹⁸ See generally Linder Letter. See also, e.g., letter from Deputy Attorney General Rod Rosenstein to Senator Chuck Grassley (June 27, 2018) ("Regardless of political affiliation, thoughtful former Department leaders recognize that departures from our confidentiality policies pose an extraordinary threat to the Department's independence and

appropriate supervisory personnel, rather than line attorneys and agents, answer Congressional questions about Department actions.”¹⁹ Where a congressional committee has requested the testimony of the Department’s line personnel pursuant to a legitimate oversight inquiry, the Department has historically been able to meet a committee’s informational needs by providing documents, testimony or briefings from supervisory personnel, or written responses.

Conclusion

We hope you find this response helpful, and we hope you will accept our invitation to meet with your staff. Please do not hesitate to contact this office if we can provide further assistance regarding this or any other matter.

Sincerely,

CARLOS
URIARTE

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Carlos Felipe Uriarte
Assistant Attorney General

cc:

The Honorable Jerrold L. Nadler
Ranking Member
Committee on Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable James Comer
Chairman
Committee on Oversight and Reform
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integrity . . . Requiring the Department of Justice to disclose details about criminal investigations would constitute a dangerous departure from important principles.”); *Position of the Executive Department Regarding Investigative Reports*, 40 Op. Att’y Gen. 45, 46 (1941) (“It is the position of this Department, restated now with the approval of and at the direction of the President, that all investigative reports are confidential documents of the executive department of the Government, to aid in the duty laid upon the President by the Constitution to ‘take care that the laws be faithfully executed,’ and that congressional or public access to them would not be in the public interest.” (quoting U.S. CONST. art. 2, § 3)); Memorandum for Edward L. Morgan, Deputy Counsel to the President from Thomas E. Kauper, Deputy Assistant Attorney General, Office of Legal Counsel (Dec. 19, 1969)) (“[T]he Executive cannot effectively investigate if Congress is, in a sense, a partner in the investigation. If a congressional committee is fully apprised of all details of an investigation as the investigation proceeds, there is a substantial danger that congressional pressures will influence the course of the investigation.”).

¹⁹ Linder Letter at 3, 6.

The Honorable Jim Jordan

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The Honorable Jamie Raskin

Ranking Member

Committee on Oversight and Reform

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The Honorable Jason Smith

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The Honorable Richard Neal

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