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ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
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September 27, 2023

The Honorable Fani T. Willis
District Attorney
Fulton County District Attorney's Office
141 Pryor Street SW
Atlanta, GA 30303

Dear Ms. Willis:

We received your letter dated September 7, 2023.[1] Your letter reinforces the Committee's concern that your prosecutorial conduct is geared more toward advancing a political cause and your own notoriety than toward promoting the fair and just administration of the law. Congress in general, and this Committee in particular, have a strong legislative interest in ensuring that popularly elected local prosecutors do not misuse their law-enforcement authority to target federal officials for political reasons. We can only conclude from your hostile response to the Committee's oversight that you are actively and aggressively engaged in such a scheme.

Contrary to the arguments in your letter, this matter does not only implicate *local* or *state* interests.[2] Rather, the indictment of a former President of the United States and other former senior federal officials by an elected local prosecutor of the opposing political party, who will face the prospect of re-election, implicates substantial *federal* interests. If state or local prosecutors can engage in politically motivated prosecutions of senior federal officers for acts they performed while in federal office, this could have a profound impact on how federal officers choose to exercise their powers. Indeed, as the full report from your Special Purpose Grand Jury demonstrates, you contemplated an even more extensive intrusion into federal interests, targeting U.S. Senators—including the current Ranking Member of the Senate Judiciary Committee—for actions they undertook in their official capacities.[3]

Many of the baseless assertions raised in your September 7 letter have already been considered and rejected in federal court earlier this year. Federal court precedent, up to and including the Supreme Court, is clear that Congress may conduct oversight of matters, like this

[1] Letter from District Att'y Fani T. Willis, Fulton Co. District Att'y's Off., to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, (Sept. 7, 2023) (hereinafter "Willis Letter").
[2] *Id.*.
[3] Stanley Dunlap, *Fulton grand jury recommended charges against Perdue and Loeffler in 2020 election case*, OHIO CAPITAL J. (Sept. 11, 2023).

one, on which legislation may be had and that your reasons for noncompliance with the Committee's requests have no merit. We trust the information in this letter helps you to understand the relevant Constitutional and legal authorities.

I. The Committee Has the Constitutional Authority to Conduct Oversight of Your Apparently Politically Motivated Prosecution.

Article I of the Constitution grants Congress "[a]ll legislative [p]owers."[4] Federal courts have clearly explained that Congress's "power to secure needed information . . . has long been treated as an attribute of the power to legislate."[5] Consequently, "[t]here can be no doubt as to the power of Congress, by itself or through its committees, to investigate matters and conditions relating to contemplated legislation."[6] The Supreme Court of the United States has described the congressional power of inquiry as "broad" and "indispensable."[7] Without this power, the Court has stated, "Congress would be . . . unable to legislate 'wisely or effectively.'"[8]

As the United States District Court for the Southern District of New York reiterated earlier this year in a matter also involving an elected local prosecutor's office, "congressional committees have constitutional authority to conduct investigations and [request information from potential witnesses] because 'each House has power to "secure needed information" in order to legislate.'"[9] Indeed, "[t]his power of inquiry—with process to enforce it—is an *essential* and *appropriate* auxiliary to the legislative function."[10] Accordingly, the court appropriately recognized that "[t]he power of the Congress to conduct [its] investigations is inherent in the legislative process."[11]

Your letter contends that the Committee, by conducting oversight into apparently politicized local prosecutions, is "obstruct[ing] a Georgia criminal proceeding" and "advanc[ing] outrageous partisan misrepresentations."[12] Your position is wrong. The Supreme Court has held

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[4] U.S. CONST. amend. I, § 1.
[5] *McGrain v. Daugherty*, 273 U.S. 135, 161 (1927) ("[T]here is no provision expressly investing either house [of Congress] with power to make investigations and exact testimony, to the end that it may exercise its legislative function advisedly and effectively. [However,] [i]n actual legislative practice, power to secure needed information . . . has long been treated as an attribute of the power to legislate. It was so regarded in the British Parliament and in the colonial Legislatures before the American Revolution, and a like view has prevailed and been carried into effect in both houses of Congress and in most of the state Legislatures.").
[6] *Quinn v. U.S.*, 349 U.S. 155, 160 (1955) ("This power, deeply rooted in American and English institutions, is indeed co-extensive with the power to legislate.").
[7] *Watkins v. U.S.*, 354 U.S. 178, 181) (1957) ("We are mindful of the complexities of modern government and the ample scope that must be left to the Congress as the sole constitutional depository of legislative power. Equally mindful are we of the indispensable function, in the exercise of that power, of congressional investigations. The conclusions we have reached in this case will not prevent the Congress, through its committees, from obtaining any information it needs for the proper fulfillment of its role in our scheme of government.").
[8] *McGrain*, 273 U.S. at 175.
[9] *Bragg v. Jordan*, No. 1:23-CV-03032-MKV, 2023 WL 2999971, at *10 (S.D.N.Y. Apr. 19, 2023) (citing *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2031 (2020)).
[10] *Id.* at 10-11 (emphasis in original) (citing *McGrain v. Daugherty*, 273 U.S. 135, 161 (1927)).
[11] *Id.* at 11 (citing *Watkins v. U.S.*, 354 U.S. 178, 187 (1957)).
[12] Willis Letter, *supra* note 1, at 1.

that "Congress may conduct inquiries into the administration of existing laws, studies of proposed laws, and . . . surveys of defects in our social, economic or political system for the purposes of enabling Congress to remedy them."[13] More directly, Congress "has authority to consider, and to investigate," "legislative reforms to insulate current and former presidents from state prosecutions."[14] Even if one could argue any such legislation would be unconstitutional, a proposition with which we would strongly disagree, federal courts "will not, and indeed cannot, block congressional investigation into *hypothetical* future legislation based on [any] speculation that such legislation would not pass constitutional muster."[15]

II. Your Reliance Upon *Mazars* to Reject the Committee's Oversight is Misplaced.

In your September 7 letter, you asserted that the Committee's oversight "implicates core federalism and separation of powers concerns," and argued, wrongly, that the "careful inquiry" test adopted by the Court in *Mazars* "constricts [the Committee's] lawful authority."[16] *Mazars* addressed unique separation-of-powers concerns within the federal government arising from a congressional inquiry of a *sitting* President for his "personal information."[17] Among other things, the Supreme Court stated that "[t]he President is the only person who alone composes a branch of government."[18] That is not the case here. To begin with, this matter does not even involve a conflict between two branches of the federal government. You do not alone compose a branch of any government. And as the U.S. District Court for the Southern District of New York explained earlier this year, the *Mazars* factors do not apply whenever a party argues that an inquiry "implicat[es] significant separation-of-powers concerns."[19] Quite simply, because this matter does not involve the personal information of a sitting President, it does not implicate the same separation-of-powers concerns that were at issue in *Mazars*.

Instead, the appropriate standard, as the Supreme Court first articulated in *Wilkinson v. United States*, is a three-prong test to determine the legal sufficiency of a congressional inquiry. The Court held there that a congressional inquiry is generally sufficient if: "(1) the Committee's investigation of the broad subject matter area must be authorized by Congress; (2) the investigation must be pursuant to 'a valid legislative purpose'; and (3) the specific inquiries involved must be pertinent to the broad subject matter areas which have been authorized by Congress."[20] The Committee's oversight in this matter easily satisfies these three criteria.

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[13] *Bragg*, 2023 WL 2999971, at *11 (citing *Watkins*, 354 U.S. at 187) (internal quotations omitted).
[14] *Id.* (citing *Mazars*, 140 S. Ct. at 2031 (it is legitimate for Congress to conduct "inquiries into the administration of existing laws" and "proposed laws" that seek to address problems "in our social, economic, or political system.")).
[15] *Id.* (citing *Nashville, C. & St. L. Ry. V. Wallace*, 288 U.S. 249, 262 (1933) (courts may not make "abstract determination[s] . . . of the validity of a statute")).
[16] Willis Letter, *supra* note 1, at 3.
[17] *Mazars*, 140 S. Ct. at 2026-27.
[18] *Id.* at 2034.
[19] *Bragg*, 2023 WL 2999971, at *14 (emphasis in original) (discussing *Mazars*, 140 S. Ct. at 2031).
[20] *Wilkinson v. United States*, 365 U.S. 399, 408-09 (1961).

A. The Committee Is Authorized to Conduct This Inquiry.

The Committee is charged by the House of Representatives with upholding fundamental American civil liberties and with promoting fairness and consistency throughout our nation's criminal justice system. Rule X of the Rules of the House of Representatives authorizes the Committee to conduct oversight of criminal justice matters to inform potential legislation.[21] The Committee has an expressed interest in the fair and evenhanded application of justice at both the state and federal level. In the 118th Congress, the Committee has held several hearings and considered legislation on such matters.[22] There is no serious argument that this inquiry does not involve part of the broad subject matter area authorized by Congress.[23]

B. The Inquiry Is on a Matter on Which Legislation Could be Had.

Notwithstanding your unsupported assertion to the contrary,[24] the Committee's oversight has an obvious legitimate legislative purpose and involves "a subject on which legislation could be had."[25] To begin with, as discussed above, Congress has an important interest in preventing politically motivated prosecutions of current and former federal officials, including Presidents, by elected state and local prosecutors. Therefore, the Committee, as a part of its broad authority to develop criminal justice legislation, may consider whether, and how, to draft legislation that would, if enacted, insulate current and former presidents from such improper state and local prosecutions. One potential legislative reform currently pending before the Committee involves, for example, broadening the existing statutory right of removal of certain criminal cases from state court to federal court.[26]

Moreover, in your indictment, you appear to rely on conduct undertaken by federal officers in their official capacities, including actions such as making phone calls, issuing public communications, and arranging meetings, as overt acts to effect the object of an alleged conspiracy to violate Georgia's RICO statute. Your reliance on these official actions in a criminal indictment of federal officials raises serious concerns under the Constitution's Supremacy Clause. Congress has recognized the potential for states to target certain federal officials,[27] and legislative proposals before the Committee could further protect federal interests in such cases. Indeed, the U.S. District Court for the Middle District of Georgia recently recognized that the intersection of Georgia's RICO statute with this case raised "a novel

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[21] Rules of the U.S. House of Representatives, R. X(l)(5) (2023).
[22] *See, e.g., Victims of Violent Crime in Manhattan:* Hearing Before the H. Comm. on the Judiciary, 118th Cong. 3-5 (2023) (statement of Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary).
[23] *See McGrain*, 47 S. Ct. at 328.
[24] *See* Willis Letter, *supra* note 1, at 4.
[25] *See, e.g., Mazars*, No. 140 S. Ct. at 12 (internal quotation marks and citations omitted).
[26] *See, e.g.* No More Political Prosecutions Act, H.R. 2553, 118th Cong. § 2 (2023).
[27] *See Willingham v. Morgan*, 395 U.S. 402, 406 (1969); 28 U.S.C. § 1442(a)(1); *Watson*, 551 U.S. at 150 ("[T]he removal statute's 'basic' purpose is to protect the Federal Government from the interference with its 'operations' that would ensue were a State able, for example, to 'arres[t]' and bring 'to trial in a State cour[t] for an alleged offense against the law of the State,' 'officers and agents' of the Federal Government 'acting ... within the scope of their authority.'" (alterations in original) (citation omitted)).

question" with respect to the federal removal statute,[28] and the Committee could develop legislative reforms to the federal removal statute, or clarify the immunity of federal officials, to address the use of such broad statutes to target federal officials.

Your decision to indict a former President also raises the potential for conflict between federal and local law-enforcement authorities. Federal law requires the United States Secret Service to protect a former President.[29] Therefore, your indictment raises the potential for conflict between the federal law-enforcement officials required to protect President Trump and local law-enforcement officials required to enforce your indictment and exercise control of him throughout his presence in the local criminal justice system. Such a collision of competing law-enforcement interests is certainly a matter on which the Committee may legislate.

In addition, as we explained in our initial letter, the Committee has an interest in how local law enforcement agencies distribute and expend federal public safety funds appropriated by Congress. To the extent that you are receiving federal funds and are choosing to prioritize apparent political prosecutions over commonsense public safety measures, the Committee certainly may consider legislation to tie federal funds to improved public safety metrics. If our oversight determines that improper partisan or political considerations are motivating your prosecutorial decisions, the Committee may consider legislation to place conditions on federal funding for state and local law-enforcement jurisdictions to ensure that funds are not used to engage in discrimination based on partisan affiliation or political beliefs.

Finally, there are credible reports that your investigation and indictment was coordinated with the Department of Justice and Special Counsel Jack Smith.[30] The Committee must understand this coordination and may consider legislative reforms to the authorities and activities of special counsels and better delineate their relationships with other prosecuting entities.

C. The Requests Are Pertinent to the Inquiry.

The Committee's inquiry satisfies *Wilkinson*'s third prong of pertinence to the oversight. Federal courts have interpreted this prong broadly, requiring "only that the specific inquiries be reasonably related to the subject matter under investigation."[31] The information that we seek will allow us to assess the extent to which your indictment is politically motivated and whether Congress should therefore draft legislative reforms to, among other things, protect former and current Presidents from politically motivated prosecutions. The requests will also allow us to understand the extent to which your office has coordinated with the Department of Justice or other federal entities in your investigation and prosecution and thus allow us to assess whether Congress should draft legislative reforms regarding the authorities of special counsels.

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[28] *Georgia v. Meadows*, No. 1:23-CV-03621-SCJ, 2023 WL 5829131, at *5 (N.D. Ga. Sept. 8, 2023).
[29] 18 U.S.C. § 3056.
[30] Josh Gerstein, *Prosecutor in Trump documents case has history pursuing prominent politicians*, POLITICO (June 13, 2023); Jerry Dunleavy, *Trump special counsel Jack Smith was involved in Lois Lerner IRS scandal*, WASHINGTON EXAMINER (Nov. 25, 2022).
[31] MORTON ROSENBERG, WHEN CONGRESS COMES CALLING: A STUDY ON THE PRINCIPLES, PRACTICES, AND PRAGMATICS OF LEGISLATIVE INQUIRY 18 (2017).

III. The Committee's Inquiry Does Not Intrude on Federalism Because Congress Is Exercising Its Core Authority to Legislate.

Your letter raised baseless objections to our oversight based on federalism—arguing, in part, that our requests seek to "interfere with a state criminal matter" and "obstruct a Georgia criminal proceeding."[32] You also asserted that the Committee is attempting to "intrud[e] upon the State of Georgia's criminal authority," violate constitutional principles of federalism," and "offend[] principles of state sovereignty."[33] Contrary to your assertions, this inquiry does not infringe on Georgia's sovereignty.

As an initial matter, the Committee is requesting documents and communications between your office and federal Executive Branch officials, including those in the Office of Special Counsel Jack Smith. If such documents and communications do not exist, you would have nothing to produce. But if they do exist, this fact indicates that the Executive Branch of the federal government has been involved in your investigation and, given that fact, you cannot decline to produce responsive materials to Congress in the name of protecting state sovereignty on the theory that your investigation and prosecution have nothing to do with the federal government. Accordingly, your assertion that "[w]hat is true of federal courts is doubly true of federal legislators; given state sovereignty over state criminal law, Congress has hardly any role in meddling with its sound administration,"[34] is not relevant here and in any event does not accurately describe what is taking place. As discussed above, this matter implicates substantial federal interests. Moreover, the cases that you cite, *Younger v. Harris*, 401 U.S. 37 (1971), and *Cameron v. Johnson*, 390 U.S. 611 (1968), involve the question of when federal courts can enjoin prosecutions of state law. Here, however, you concede that Congress is not a federal court, and the Committee's oversight requests do no such thing. Rather, we are simply seeking information to carry out our constitutional duties.

Moreover, contrary to your assertions, our oversight requests do not trigger what is commonly referred to as the "deliberative process privilege."[35] The Committee is not seeking any documents internal to the District Attorney's Office concerning your decision to charge any individual.[36] Instead, the Committee seeks from you two categories of material that concern your office's engagement with the federal government: (1) documents evidencing communications between your office and federal officials and (2) documents evidencing your office's receipt and use of federal funds.[37]

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[32] Willis Letter, *supra* note 1, at 1.
[33] *Id.* at 2.
[34] *Id.*
[35] *Id.* at 4.
[36] Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Fulton County District Att'y Fani Willis, at 4 (Aug. 24, 2023).
[37] *Id.*

Nevertheless, even if it applied in this case, the deliberative process privilege is a qualified privilege, not an absolute one.[38] Indeed, federal courts explain that "where there is reason to believe the documents sought may shed light on government misconduct, the privilege is routinely denied, on the grounds that shielding internal government deliberations in [such] context does not serve the public's interest in honest, effective government."[39] Alternatively, the privilege "can be overcome by a sufficient showing of need," and such "need determination is to be made flexibly on a case-by-case, ad hoc basis." Although one federal district court has held that "the privilege could be properly invoked in response to a legislative demand," it explained that a "blanket assertion of the privilege . . . [can] not stand . . . ."[40] Instead, the party asserting the privilege must make an individual showing for withheld documents that each document "satisfied the legal prerequisites for the application of the privilege."[41] You have refused to do so in this case.

IV. The Committee's Inquiry Does Not Usurp Executive Powers.

In your letter, you cited *Watkins v. United States* for the proposition that "Congress . . . is barred by precedent from using investigations for 'law enforcement purposes."[42] But in this case, the Committee does not seek to utilize law enforcement authorities. Rather, as explained, we are exercising the broad Constitutional powers afforded to Congress to conduct oversight to inform potential legislative reforms. This power

> encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them. It comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste.[43]

Furthermore, the Supreme Court has made clear that Congress may exercise its investigative powers even if its inquiry could have an impact on ongoing litigation. In *Sinclair v. United States*, the Court stated

> It may be conceded that Congress is without authority to compel disclosures for the purpose of aiding the prosecution of pending suits; but the authority of that body, directly or through its committees, to require pertinent disclosures in aid of its own

[38] *See Comm. on Oversight & Government Reform, U.S. House of Representatives v. Lynch*, 156 F.Supp.3d 101, 105 (D.D.C. 2016) ("the deliberative process privilege is a qualified privilege . . . ."); *In re Sealed Case*, 121 F.3d at 737.
[39] *In re Sealed Case*, 121 F.3d at 738.
[40] *Comm. on Oversight and Gov't Reform, U.S. H. of Representatives v. Sessions*, 344 F.Supp.3d 1, 4 (D.D.C. 2018).
[41] *Id.*
[42] Willis Letter, *supra* note 1, at 2 (citing *Watkins*, 354 U.S. at 187).
[43] *Watkins*, 354 U.S. at 187.

> constitutional power is not abridged because the information sought to be elicited may also be of use in such suits.[44]

Accordingly, your refusal to cooperate with our oversight due to an ongoing prosecution is unpersuasive.

In addition, your appeal to the Department of Justice's purported policy of preventing the confirmation or denial of "pending investigations in response to congressional requests or providing non-public information about our investigations" is also unfounded. [45] The Department and its component entities, including the Federal Bureau of Investigation (FBI), routinely respond to congressional oversight requests for documents and testimony. In fact, congressional committees have regularly received testimony from line-level law-enforcement official in the past, including testimony relating to ongoing matters.[46] The assertion that a law-enforcement entity may prevent Congress from conducting oversight related to an ongoing investigation "rests on no constitutional privilege or case law authority" but rather on opinions issued by the Justice Department.[47] There is ample legal and historical precedent contradicting this position—that is, congressional committees conducting oversight of matters that are the subjects of ongoing investigations.[48] The historical record is replete with examples of the Department providing

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[44] 279 U.S. 263, 295 (1929).
[45] Willis Letter, *supra* note 1, at 3.
[46] *See, e.g.*, Transcribed Interview of Special Agent Larry Alt, Fed. Bureau of Investigation (Apr. 27, 2011); Transcribed Interview of Gary Grindler, U.S. Dep't of Justice (Dec. 14, 2011); Transcribed Interview of Jack Smith, U.S. Dep't of Justice (May 29, 2014); Transcribed Interview of Richard Pilger, U.S. Dep't of Justice (May 6, 2014); Transcribed Interview Maame Frimpong, U.S. Dep't of Justice (July 19, 2016); Transcribed Interview of Lisa Page, Fed. Bureau of Investigation (July 13, 2018); Transcribed Interview with Handling Agent 1, Fed. Bureau of Investigation (Mar. 2, 2020); Transcribed Interview of Stephen C. Laycock, Fed. Bureau of Investigation (June 15, 2020); Transcribed Interview of Michael B. Steinbach, U.S. Dep't of Justice (June 16, 2020); Transcribed Interview of Bruce Ohr, U.S. Dep't of Justice (June 30, 2020); Transcribed Interview of Stuart Evans, U.S. Dep't of Justice (July 31, 2020); Transcribed Interview of Supervisory Special Agent 1, Fed. Bureau of Investigation (Aug. 27, 2020); Transcribed Interview of Jonathan Moffa, Fed. Bureau of Investigation (Sept. 9, 2020); Transcribed Interview of Deputy Chief, Counterintelligence and Export Control Section, U.S. Dep't of Justice (Sept. 18, 2020); Transcribed Interview of Case Agent 1, Fed. Bureau of Investigation (Sept. 25, 2020); Transcribed Interview of Supervisory Intelligence Analyst, Fed. Bureau of Investigation (Oct. 29, 2020); Transcribed Interview of Jennifer L. Moore, Fed. Bureau of Investigation (June 2, 2023).
[47] *Obstruction of Justice: Does the Justice Department Have to Respond to Lawfully Issued and Valid Congressional Subpoenas, Hearing Before the H. Comm. on Oversight and Gov't Reform*, 112th Cong. (2011) [hereinafter *Hearing on Obstruction of Justice*] (statement of Morton Rosenberg, Fellow, Const. Project). *See also* 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.").
[48] *See generally* MORTON ROSENBERG, WHEN CONGRESS COMES CALLING: A STUDY ON THE PRINCIPLES, PRACTICES, AND PRAGMATICS OF LEGISLATIVE INQUIRY, CONST. PROJECT, at 75–82 (2017) [hereinafter WHEN CONGRESS COMES CALLING]. *See also* Christopher R. Smith, *I Fought the Law and the Law Lost: The Case for Congressional Oversight Over Systemic DOJ Discovery Abuse in Criminal Cases*, 9 CARDOZO PUB. L. POL'Y & ETHICS J. 85, 107 (2010) ("To preclude Congress from investigating prosecutorial misconduct because of open investigations would completely undermine Congress's constitutional duty to investigate government misconduct, an important legislative branch check on the executive branch."); Tristan Leavitt & Jason Foster, *No, Appointing A 'Special Counsel' Is Not A License For DOJ To Obstruct Congress*, THE FEDERALIST (Aug. 21, 2023) (listing "just a

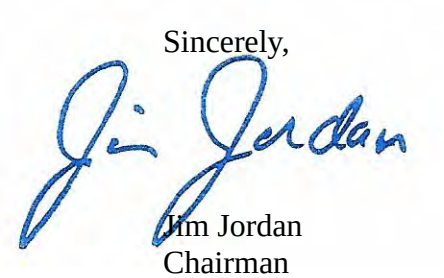
information related to ongoing criminal investigations to congressional committees,[49] including the exact type of evidence the Committee is looking for in this investigation.[50] The suggestion that a law enforcement entity may somehow dictate the nature of the Committee's oversight because of the continuing nature of an *ongoing investigation* lacks any valid legal basis and the Committee does not accept it as a legitimate reason to delay its oversight efforts.

V. The Committee Requires Additional Information to Advance Our Oversight.

Although we appreciate that you produced to the Committee a rough spreadsheet outlining several federal grants utilized by your office, this spreadsheet alone does not satisfy our oversight requests. The Committee is also examining whether legislative reforms are necessary to insulate former and current Presidents from politically motivated prosecutions by state and local officials, and whether the Department of Justice coordinated with your office on your indictments. As such, the Committee requires additional material to adequately carry out our oversight. Accordingly, we reiterate the requests in our August 24 letter and ask that you comply in full as soon as possible, but no later than October 11, 2023. As an accommodation to you, we are willing to prioritize the production of documents and communications reflecting the coordination between your office and the Department of Justice.

Thank you for your prompt attention to this matter.

Sincerely,



Jim Jordan
Chairman

cc: The Honorable Jerrold Nadler, Ranking Member

handful of the dozens [of instances] from the past century" in which Congress "obtained testimony and documents from prosecutors involved in active probes, including deliberative prosecutorial memoranda").

[49] *See Hearing on Obstruction of Justice* (statement of Louis Fisher, Scholar in Residence, Const. Project) ("Congress has often obtained records related to ongoing criminal investigations."); WHEN CONGRESS COMES CALLING, at 83 ("[T]he oft-repeated claim that the [D]epartment [of Justice] never has allowed congressional access to open or closed litigation files or other 'sensitive' internal deliberative process matters is simply not accurate.").

[50] WHEN CONGRESS COMES CALLING, at 76–77 (stating that over the past century congressional committees have "sought and obtained a wide variety of evidence, including: deliberative prosecutorial memoranda; . . . [and] memoranda and correspondence prepared while cases were pending").