

ONE HUNDRED NINETEENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-6906
judiciary.house.gov

July 21, 2025

Mr. Thomas Windom
Former Senior Assistant Special Counsel
c/o Mr. Preston Burton
Orrick, Herrington & Sutcliffe LLP
2100 Pennsylvania Ave NW
Washington, DC 20037

Dear Mr. Windom:

On April 7, 2025, the Committee requested your voluntary cooperation with our oversight into the programs and operations of the Department of Justice under the Biden-Harris Administration.¹ In particular, you were asked to testify regarding your role as a prosecutor on former Special Counsel Jack Smith's team.² On June 12, 2025, during your transcribed interview with the Committee, you declined to answer multiple questions on the basis that the Department had not authorized testimony about those topics. You also declined to answer several questions asserting that your answers would implicate Rule 6(e) of the Federal Rules of Criminal Procedure (FRCP). The Committee is not persuaded by either your assertion that the Department's authorization is a necessary precondition for your testimony or by your overly expansive interpretation of Rule 6(e). Therefore, due to your refusal to answer these questions during your voluntary transcribed interview, the Committee has decided to issue compulsory process to obtain your testimony about these matters.

A. Your refusal to provide testimony based on the Department's authorization letter is unfounded.

The Committee's April 7 letter requested your testimony on "your role as a prosecutor on former Special Counsel Jack Smith's team" and other related matters.³ The letter provided a non-exhaustive list of examples of misconduct by the Special Counsel's Office that the Committee sought to examine in greater detail.⁴ The Committee's request did not limit the scope of the information sought or condition your testimony on authorization from the Department. As an

¹ Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Thomas Windom, Former Senior Assistant Special Counsel, (Apr. 7, 2025).

² *Id.*

³ *Id.*

⁴ *Id.*

accommodation to you and in an effort to ensure your thorough and unconstrained testimony, on three occasions—April 24, May 27, and June 2—the Committee provided your attorney topics that it anticipated would be discussed during your transcribed interview.⁵

Despite these accommodations and efforts to ensure that you provided comprehensive testimony, you declined to answer questions on the basis that the Department had not authorized your testimony on those matters.⁶ Your reasoning is unpersuasive. As an initial matter, authorization from an Executive Branch entity is not a necessary condition for a witness to testify before Congress.⁷ The Committee is not aware of any such Constitutional or statutory requirement, and you have offered none, conditioning a witness's cooperation with a Congressional committee on the basis of the express authorization from his former employer.⁸ Such a requirement would contravene fundamental principles of separation of powers and severely restrict Congress's ability to conduct oversight of the Executive Branch.

However, even assuming the Department is required to authorize your testimony, it did so here. In an email dated May 29, 2025—two weeks prior to your testimony—the Department provided your attorney with the anticipated scope for the Committee's interview, a list that included four broad topics and 20 subtopics.⁹ On June 4, the Department consolidated and organized these items into five topics, and granted you specific, written authorization to "provide unrestricted testimony to the Committees [*sic*], irrespective of potential privilege," on these topics.¹⁰ Rather than raise concerns or seek clarification about the nature and scope of the Department's authorization and/or the Committee's inquiry in the hope of resolving them prior to your testimony, your attorney chose to lodge unfounded and conspiratorial accusations about amorphous conflicts of interest that allegedly prevented the Department from properly authorizing your testimony.¹¹

During your transcribed interview, you relied on an unreasonably narrow interpretation of the testimonial authorization to decline to answer questions about topics specifically identified by the Department as part of the scope of the Committee's inquiry.¹² Those topics included,

⁵ Phone Call Between Comm. Staff, H. Comm. on the Judiciary, and Preston Burke, Counsel for Mr. Thomas Windom (April 24, 2025, 2:00 p.m.); Phone Call Between Comm. Staff, H. Comm. on the Judiciary, and Mr. Preston Burke, Counsel for Mr. Thomas Windom (May 27, 2025, 3:00 p.m.); Phone Call Between Comm. Staff, H. Comm. on the Judiciary, and Mr. Preston Burke, Counsel for Mr. Thomas Windom (June 2, 2025, 2:00 p.m.).

⁶ *See, e.g.*, Transcribed Interview of Thomas Windom, Senior Assistant Special Counsel USAO D.C., at 23, 34, 35, 39-40, 112, 116 (June 12, 2025) [hereinafter Windom Interview].

⁷ *See generally* *Watkins v. United States*, 354 U.S. 178, 187-88 (1957) ("It is unquestionably the duty of all citizens to cooperate with the Congress in its efforts to obtain the facts needed for intelligent legislative action.").

⁸ In fact, Congress has repeatedly protected the ability of witnesses to testify freely and fully. *See, e.g.*, Pub. L. No. 118-47, Further Consolidated Appropriations Act Div. B, § 713 (2024); Pub. L. No. 118-83, Continuing Appropriations and Extension Act, 2025 (2024) (extending § 713); Pub. L. No. 119-4, Full-Year Continuing Appropriations and Extensions Act, 2025 (2025) (same).

⁹ Email from Ernesto Sampera, Office of Legis. Aff., U.S. Dep't of Just., to Preston Burton, Orrick, Herrington & Sutcliffe LLP (May 29, 2025, 07:37 EST) (on file with the Committee) [hereinafter DOJ Email].

¹⁰ Letter from Brian Nieves, Office of the Deputy Att'y Gen., U.S. Dep't of Just., to Thomas Windom, Esq., (June 4, 2025) (on file with the Committee) [hereinafter Authorization Letter].

¹¹ *See* Letter from Preston Burton to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, 2 (June 11, 2025).

¹² DOJ Email, *supra* note 9.

among others, your interactions with (i) the partisan January 6th Select Committee, (ii) Fulton County District Attorney employees, (iii) the National Archives and Records Administration, and (iv) the U.S. Postal Service.¹³ In addition, you invoked an absurd and indefensible interpretation of the Department's authorization, refusing to testify about communications with Federal Bureau of Investigation (FBI) officials on the grounds that FBI officials were not included in the definition of "DOJ officials."¹⁴ This position is nonsensical because the FBI is a component of the Department of Justice and the Department specifically informed your attorney that the Committee would inquire about communications with FBI officials.¹⁵ Finally, you refused to provide certain details, including names, about the other prosecutors you worked with during your investigation into President Trump citing lack of specific Department authorization.¹⁶ These positions are in direct conflict with the Department's clear direction to provide "unrestricted testimony" about the topics under inquiry.¹⁷

B. Your reliance on an overbroad interpretation of FRCP Rule 6(e) is misplaced.

The Department did note a limited exception for "information subject to FRCP Rule 6(e)," which protects the secrecy of "matter[s] occurring before the grand jury."¹⁸ However, during your transcribed interview, you adopted an expansive interpretation of Rule 6(e) to decline to answer questions that were, at most, only tangentially related to grand jury proceedings.¹⁹ On this basis, you refused to answer certain questions related to materials obtained from and interactions you may have had with the partisan January 6th Select Committee, as well as your interactions with the FBI to obtain billing records from the Willard Hotel.²⁰

Federal courts have been clear that Rule 6(e) does not "require . . . that a veil of secrecy be drawn over *all matters* occurring in the world that happen to be investigated by a grand jury."²¹ The "mere fact that information has been presented to the grand jury does not itself permit withholding."²² Documents and testimony created for an independent purpose, "not directly related to the prospect of a grand jury"²³ do not constitute a "matter before a grand jury"

¹³ See Windom Interview, *supra* note 6, at 35, 39-40, 112, 116.

¹⁴ See Windom Interview, *supra* note 6, at 34; see also Authorization Letter, *supra* note 10, at 1.

¹⁵ DOJ Email, *supra* note 9. In fact, federal law authorizes the Attorney General, the head of the Department of the Justice, to investigate violation of criminal laws, see 28 U.S.C. § 533, an authority that has been delegated to the Director of the FBI. 28 C.F.R. § 0.85. It is simply a bad-faith interpretation of the Department's authorization letter to assert that FBI employees are not included within the meaning of "DOJ officials."

¹⁶ Windom Interview, *supra* note 6, at 23.

¹⁷ Authorization Letter, *supra* note 10, at 2.

¹⁸ Authorization Letter, *supra* note 10, at 2; Fed. R. Crim. P. 6(e)(2)(B).

¹⁹ See Windom Interview, *supra* note 6, at 16, 19-21, 33, 34-35, 68, 93, 112-113, 114-115, 124, 129-130. In response to some questions, you listed multiple reasons for refusing to answer the Committee's questions, including unidentified court orders and the Department's authorization letter, in addition to your interpretation of Rule 6(e), and did not make clear your specific basis of refusal. *Id.* at 93, 112-113, 114-116, 129.

²⁰ Windom Interview, *supra* note 6, at 19-21, 33-34, 92-93, 113-114.

²¹ SEC v. Dresser Indus., Inc., 628 F.2d 1368, 1382 (D.C. Cir. 1980) (emphasis added).

²² Labow v. Dep't of Justice, 831 F.3d 523, 529 (D.C. Cir. 2016).

²³ SEC v. Dresser Indus., Inc., 628 F.2d 1368, 1383 (D.C. Cir. 1980).

and are thus not protected by Rule 6(e).²⁴ Quite simply, “there is no *per se* rule against disclosure of any and all information which has reached the grand jury chambers.”²⁵

During your transcribed interview, you relied on Rule 6(e) as a shield to deny the Committee information that is not properly implicated by Rule 6(e). For example:

- You declined to answer any questions about your knowledge of a February 2021 proposal that J.P. Cooney brought to the FBI to investigate President Trump and the individuals within his orbit on the ground that Rule 6(e) covers all matters in “the course of an investigation.”²⁶ However, the Committee specifically caveated the question to exclude “information you learned from a grand jury,”²⁷ and your personal knowledge about a potential FBI investigative matter does not constitute a “matter before the grand jury.”²⁸
- You declined to answer questions about your interactions with FBI officials related to potential evidence in the possession of the Willard Hotel.²⁹ Our questions on this topic related to your general knowledge and interactions with Department officials, including ADIC Steven D’Antuono, about obtaining this material.³⁰ Your discussions with Department officials and your general knowledge of potential evidence do not properly qualify as Rule 6(e) material.
- Your counsel advised you against testifying about communications between the Special Counsel’s office and the partisan January 6th Select Committee, asserting that they were covered by Rule 6(e) because it was “for the purpose of the investigation.”³¹ Here, too, there is no serious argument that these interactions could qualify as “matter[s] before the grand jury.”³²

Because these, and similar, questions did not seek to “reveal anything concerning the innerworkings of the grand jury,”³³ there is no legitimate basis for you to refuse to testify about these topics on the basis of Rule 6(e).

The Committee has conducted transcribed interviews of several other current and former Department employees who provided testimony about these and other topics without revealing material protected by Rule 6(e). For example, former Special Counsel’s Office senior prosecutor J.P. Cooney testified that he “had communication with staff on the Select Committee about

²⁴ Fed R. Crim. P. 6(e)(2)(B).

²⁵ Senate of Commonwealth P.R. v. Dep’t of Just., 823 F.2d 574, 582 (D.C. Cir. 1987).

²⁶ Windom Interview, *supra* note 6, at 19-21.

²⁷ Windom Interview, *supra* note 6, at 21, 33.

²⁸ Fed. R. Crim. P. 6(e)(2)(B).

²⁹ Windom Interview, *supra* note 6, at 33-34.

³⁰ *Id.*

³¹ Windom Interview, *supra* note 6, at 130.

³² Fed. R. Crim. P. 6(e)(2)(B).

³³ Labow v. Dep’t of Justice, 831 F. 3d 523, 583.

obtaining information.”³⁴ Likewise, Department tax attorneys Jack Morgan and Mark Daly testified about their interactions with the FBI, including investigatory steps and evidence collection.³⁵ Viewed in context of these transcribed interviews, your over-broad interpretation of Rule 6(e) needlessly hampers the Committee’s oversight.

C. Your reliance on unidentified court orders is insufficient.

The Department also included a narrow exception regarding the disclosure of information that is “prohibited by law or court.”³⁶ During your interview, you relied on this narrow exception to refuse to answer questions on certain topics without ever identifying the particular cases or judicial orders preventing your testimony.³⁷ For example, you asserted vaguely that “potentially the protective order in the case” and “possibly other orders” prohibited you from answering questions related to the partisan January 6th Select Committee and your interactions with congressional staffers.³⁸ Without offering any specific reference to a court order, the Committee is unable to assess independently whether your testimony would be covered by such order and whether that order still remains in effect. Your reliance on generalized and unspecified court orders is an insufficient basis on which to refuse to testify.

* * *

Pursuant to Rule X of the House of Representatives, the Committee has jurisdiction to conduct oversight of the Department to inform potential legislative reforms.³⁹ These reforms may include, among other proposals, changes to the Special Counsel regulations and codifying language that would prevent the Department from selectively prosecuting current and former elected officials. The Committee sought your voluntary cooperation with our inquiry because, due to your service as a senior official on Special Counsel Jack Smith’s team, it believes you possess information that is vital to oversight on this matter. Your refusal to answer several questions in your transcribed interview impedes the Committee’s oversight, and your stated bases for declining to cooperate fully are not persuasive.

Accordingly, please find enclosed a subpoena compelling your attendance at a deposition at 10:00 a.m. on September 30, 2025.

³⁴ Transcribed Interview of J.P. Cooney, Deputy Special Counsel, at 66 (June 24, 2025).

³⁵ See, e.g., Transcribed Interview of Jack Morgan, Trial Attorney, Dep’t of Just., Tax Div., at 27 (May 22, 2025); Transcribed Interview of Mark Daly, Senior Litigation Counsel, Dep’t of Just., Tax Div., at 69-70, 124 (May 7, 2025).

³⁶ Authorization Letter, *supra* note 10, at 2.

³⁷ Windom Interview, *supra* note 6, at 93, 114-115, 129.

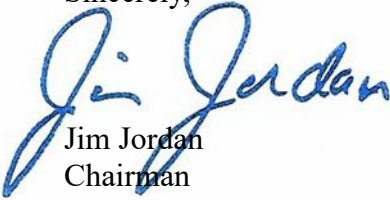
³⁸ Windom Interview, *supra* note 6, at 93, 115.

³⁹ Rules of the House of Representatives R. X.

Mr. Thomas Windom
July 21, 2025
Page 6

Thank you for your prompt attention to this matter.

Sincerely,



Jim Jordan
Chairman

cc: The Honorable Jamie Raskin, Ranking Member

Enclosure