[ORAL ARGUMENT SCHEDULED FOR JANUARY 3, 2020]

No. 19-5288

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

IN RE:

APPLICATION OF THE COMMITTEE ON THE JUDICIARY, U.S. HOUSE OF REPRESENTATIVES, FOR AN ORDER AUTHORIZING THE RELEASE OF CERTAIN GRAND JURY MATERIALS

On Appeal from the United States District Court for the District of Columbia
(No. 1:19-gj-48) (Hon. Beryl Howell, Chief District Judge)

CORRECTED BRIEF OF THE COMMITTEE ON THE JUDICIARY OF THE UNITED STATES HOUSE OF REPRESENTATIVES

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), undersigned counsel certifies as follows:

A. Parties and Amici

The appellant is the U.S. Department of Justice. The appellee is the Committee on the Judiciary, U.S. House of Representatives. Representative Doug Collins and the Constitutional Accountability Center appeared as *amici* in the district court. The Constitutional Accountability Center has appeared as an *amicus* in this Court as well.

B. Ruling Under Review

The ruling under review is the October 25, 2019 order of the district court (Howell, C.J.), granting the Committee's application for the disclosure of certain grand-jury material. The opinion is available at 2019 WL 5485221.

C. Related Cases

This case has not previously been before this Court or any other court. A *pro se* litigant who was denied leave to intervene in district court, David Andrew Christenson, has filed an appeal of that denial, which is currently pending before this Court. *See* No. 19-5219 (D.C. Cir.). There are no other related cases within the meaning of D.C. Circuit Rule 28(a)(1)(C).

/s/ Douglas N. Letter
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GLOSSARY

Committee	Committee on the Judiciary of the United States House of Representatives
DOJ	United States Department of Justice
FBI	Federal Bureau of Investigation

INTRODUCTION

The Department of Justice (DOJ) takes extraordinary positions in this case. It does so to avoid disclosing grand-jury material needed for the House's impeachment of President Trump and the Senate's trial to remove him from office. This Court should reject DOJ's efforts to insulate the President from Congress's impeachment power and should promptly affirm Chief Judge Howell's order providing for staged and limited disclosure of grand-jury materials to the House.

First, as this Court has already held, an impeachment trial is a "judicial proceeding" for purposes of Federal Rule of Criminal Procedure 6(e). The text of the Constitution demonstrates that impeachment is a judicial function, and an array of other authority—from Supreme Court precedent to the Federalist Papers to centuries of historical practice to the decisions of this Court—confirms what the Constitution's text makes clear. DOJ asks this Court to ignore this authority and proposes to place Congress in a worse position than every other litigant who seeks grand-jury material for use in run-of-the-mill litigation—a proposal that DOJ itself previously described as "fatuous." And DOJ urges this position even though it succeeded in persuading this Court to *reject* this same position earlier this year, when it argued that this Court has already held that impeachment is a judicial proceeding under Rule 6(e).

Second, as Chief Judge Howell ruled, the Committee on the Judiciary (the Committee) has established the requisite particularized need for the material. The particularized-need test requires the Court to "balance" the public interest in

disclosure against the countervailing interest in secrecy. *See Douglas Oil Co. of Cal. v. Petrol Stops Nw.*, 441 U.S. 211, 223 (1979). The balance in this case is not close. The withheld material bears specifically on whether the President engaged in serious misconduct; will help to establish whether witnesses perjured themselves before the Committee; and is vital to ensuring that Congress performs what is perhaps its most solemn function—impeachment and removal of a sitting President—in a manner that can claim the public's confidence. The secrecy interests in this case, by contrast, are unusually weak because the grand-jury proceedings have ended and the Committee has adopted protocols to avoid unwarranted disclosure. In arguing otherwise, DOJ invents an unrecognizable standard that would all but require applicants for grand-jury material to know what the withheld material says before they can obtain it.

The need for the withheld material grows more urgent by the day. Chief Judge Howell's order will have been stayed for ten critical weeks as of the date this appeal is set for oral argument. The Court should not countenance DOJ's effort to run out the clock on impeachment, and should affirm Chief Judge Howell's decision without delay. If necessary, the Court should issue an immediate order vacating the stay and affirming the decision below, with opinion to follow.

STATEMENT OF JURISDICTION

The district court had jurisdiction over the Committee's application pursuant to 28 U.S.C. § 1331. The district court entered an opinion and judgment on October 25,

2019. DOJ filed a timely notice of appeal on October 28, 2019. This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

Article I of the Constitution provides: "The House of Representatives … shall have the sole Power of Impeachment." U.S. Const., Art. I, § 2, cl. 5.

Article I further provides: "The Senate shall have the sole Power to try all Impeachments…. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present…. Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States[.]" *Id.*, Art. I, § 3, cl. 6-7.

Article III of the Constitution provides: "The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury[.]" *Id.*, Art. III, § 2, cl. 3.

The applicable text of Federal Rule of Criminal Procedure 6(e) is contained in the addendum to DOJ's Brief.

STATEMENT OF THE ISSUES

1. Whether a Senate impeachment trial is a "judicial proceeding" within the meaning of Rule 6(e)(3)(E)(i).
2. Whether Chief Judge Howell properly exercised her discretion in finding that the Committee has a "particularized need" for the withheld grand-jury material.
3. Whether this case is justiciable.

STATEMENT OF THE CASE

A. Legal Background

Grand-jury testimony is ordinarily confidential to protect important interests, but "[g]rand jury secrecy is not unyielding." *In re Grand Jury Subpoena, Judith Miller*, 438 F.3d 1138, 1140 (D.C. Cir. 2006). At common law, courts permitted disclosure "where the ends of justice require[d] it." *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 234 (1940). Courts adopted rules permitting "limited disclosure of grand jury materials under appropriate circumstances." Sara Sun Beale *et al.*, *Grand Jury Law and Practice* § 5:1 (2d ed. 2019). Grand-jury materials were repeatedly disclosed to Congress for purposes of Congressional investigations, including impeachment investigations. *See* Brief of Constitutional Accountability Center as *Amicus Curiae* at 14-15.

Federal Rule of Criminal Procedure 6(e) was enacted in 1946 to codify and formalize the common-law practice regarding grand-jury disclosures. *See United States v. Sells Eng'g, Inc.*, 463 U.S. 418, 425 (1983). Rule 6(e) "establishes a 'General Rule of Secrecy,'" but authorizes "certain disclosures that are otherwise prohibited by" the general rule. *Illinois v. Abbott & Assocs., Inc.*, 460 U.S. 557, 566-67 (1983).

Rule 6(e) permits grand-jury material to be shared without supervision by a court in various circumstances, all involving disclosures within the Federal Government. For example, grand-jury material may be provided to "an attorney for the government for use in performing that attorney's duty"; to "any government

personnel … that an attorney for the government considers necessary to assist in performing that attorney's duty to enforce federal criminal law"; and to government attorneys for use in certain civil forfeiture proceedings. Fed. R. Crim. P. 6(e)(3)(A).

Rule 6(e) additionally authorizes disclosure of grand-jury material with supervision by a court in certain circumstances. Most of the court-supervised disclosures contemplated by Rule 6(e) involve disclosure to government officials—for example, "when sought by a foreign court or prosecutor for use in an official criminal investigation," or when the material "may disclose a violation of State, Indian tribal, or foreign criminal law." Fed. R. Crim. P. 6(e)(3)(E)(iii)-(iv).

As relevant here, Rule 6(e) also permits courts to authorize disclosure of grand-jury material "preliminarily to or in connection with a judicial proceeding." Fed. R. Crim. P. 6(e)(3)(E)(i). Courts permit disclosure under this provision where the applicant can show a "particularized need" for the material, such that the need for the material "outweigh[s] the countervailing policy" in grand-jury secrecy. *United States v. Procter & Gamble Co.*, 356 U.S. 677, 682-83 (1958).

Since the adoption of Rule 6(e), courts have on numerous occasions authorized disclosure of grand-jury material to Congress preliminarily to impeachment. In 1974, Judge Sirica (at DOJ's urging) ordered disclosure of the so-called Watergate Roadmap grand-jury report to the House Judiciary Committee. *See In re Report & Recommendation of June 5, 1972 Grand Jury*, 370 F. Supp. 1219, 1230 (D.D.C. 1974) (hereinafter *Watergate Roadmap Decision*). Sitting en banc, this Court declined to overturn that

decision. *See Haldeman v. Sirica*, 501 F.2d 714 (D.C. Cir. 1974) (en banc). In 1987, the Eleventh Circuit authorized disclosure of grand-jury material to the Committee for use in the impeachment of a federal judge. *See In re Request for Access to Grand Jury Materials Grand Jury No. 81-1*, 833 F.2d 1438 (11th Cir. 1987). And in 2009, the Fifth Circuit authorized disclosure of grand-jury material to the Committee for use in the impeachment of another federal judge. *See* Order, *In re Grand Jury Proceeding*, No. 09-30737 (5th Cir. Nov. 12, 2009).

B. Factual Background

1. This case involves a Congressional request for grand-jury material bearing on the impeachment of President Trump.

As Special Counsel Robert Mueller concluded, the "Russian government interfered in the 2016 presidential election in sweeping and systematic fashion." JA504. The Trump Campaign welcomed Russia's interference because it "expected it would benefit electorally from information stolen and released through Russian efforts." JA504-05. High-level Trump Campaign officials engaged with agents of the Russian government in the hope of receiving damaging information about then-candidate Clinton, and there is "evidence suggesting that then-candidate Trump may have received advance information about Russia's interference activities." JA6.

In May 2017, the Acting Attorney General appointed Mueller to serve as Special Counsel to investigate Russian interference in the 2016 election, "whether individuals associated with the Trump Campaign [had] coordinat[ed] with the Russian

government" in this interference, and other matters "aris[ing] directly from the investigation." JA504.

President Trump recognized that this investigation "would uncover facts about the campaign and the President personally that the President could have understood to be crimes or that would give rise to personal and political concerns." JA679; *see also* JA681 ("Oh my God…. This is the end of my Presidency."). As the Mueller Report recounts, the President thereafter committed "multiple acts … that were capable of exerting undue influence over" Mueller's investigation. JA684. These acts included: President Trump's decision to fire the Director of the FBI, *see* JA655; his "efforts to remove the Special Counsel and to reverse the effect of the Attorney General's recusal" from the matter, JA684; his "attempted use of official power to limit the scope of the investigation," *id.*; his "direct and indirect contacts with witnesses with the potential to influence their testimony," *id.*; and his efforts to "encourage witnesses not to cooperate with the investigation," JA658.

Special Counsel Mueller transmitted a confidential version of his report to the Attorney General in March 2019. The Attorney General publicly released a redacted version of the report in April.

Volume I of the Mueller Report describes Russia's successful efforts to interfere in the 2016 election on President Trump's behalf. It describes the "links or coordination between the Russian government and individuals associated with the Trump Campaign." JA504. It concludes that, while "the Russian government

perceived it would benefit from a Trump presidency," and the Trump Campaign "expected it would benefit electorally from information stolen and released through Russian efforts," there was not enough information to establish "that members of the Trump Campaign conspired or coordinated with the Russian government in its election interference activities." JA508.

Volume II of the Mueller Report describes the results of Mueller's inquiry into whether President Trump obstructed justice in attempting to impede the investigation. Volume II concludes that President Trump's conduct raised serious questions "about whether he had obstructed justice." JA652. Volume II "does not exonerate [the President]"—and, tellingly, Mueller stated that if he "had confidence after a thorough investigation of the facts that the President clearly did not commit obstruction of justice, [h]e would so state." JA653. But Volume II stops short of determining whether President Trump obstructed justice given that a DOJ Office of Legal Counsel opinion provides that a "sitting President may not be prosecuted" and that Mueller did not want to "preempt constitutional processes for addressing presidential misconduct"—i.e., impeachment. JA652.

The public version of the Mueller Report contains numerous redactions, including redactions made under Rule 6(e) to protect the secrecy of grand-jury material. These Rule 6(e) redactions withhold information about President Trump's knowledge of his campaign's contacts with Russian officials and WikiLeaks, *see* JA668-69, and therefore bear on whether the President committed impeachable offenses by

obstructing the Special Counsel's investigation into those activities. In addition, certain redacted materials pertain to a Trump Campaign member's dealings with Ukraine, *see* JA616, and bear on whether the President committed impeachable offenses by soliciting Ukrainian interference in the 2020 Presidential election.

2. After the Attorney General declined a series of requests from the Committee for material, the Committee issued a subpoena for an unredacted version of the Mueller Report and certain grand-jury material underlying those redactions. Consistent with President Trump's blanket declaration that the Executive Branch is "fighting all the subpoenas," however, DOJ refused to comply with the subpoena. *See Remarks by President Trump Before Marine One Departure*, White House (Apr. 24, 2019). Although DOJ had always previously taken the position that Rule 6(e)'s provision authorizing disclosures preliminarily to a "judicial proceeding" permitted disclosure of grand-jury material to Congress for use in impeachment, DOJ reversed course and argued for the first time that Rule 6(e) contains no exception permitting disclosure to the Committee in connection with impeachment.

After the House adopted a resolution authorizing the Committee to initiate litigation to obtain the withheld material, Chairman Nadler issued protocols to protect the confidentiality of any grand-jury material obtained. *See* JA122-23. These protocols limit staff access to grand-jury material; require storage of such material in a secure location; and provide that such material may not be publicly disclosed absent a majority vote by the Committee. *See id.* These protocols resemble the protocols

adopted by the Committee to protect the Watergate Roadmap grand-jury report, which the Committee has not released in the more than 45 years since obtaining it.

DOJ separately permitted certain Members of Congress and certain staff to review portions of the Mueller Report that had been redacted to prevent "harm to ongoing matters." JA73. DOJ identified only one portion of the text that was withheld both under Rule 6(e) and to prevent harm to ongoing matters. *See* JA717. Accordingly, with the exception of one redaction, Members of Congress and some staff reviewed the portions of the Mueller Report that DOJ believed could interfere with ongoing proceedings. DOJ nevertheless refused to allow Congress to view the Rule 6(e) redactions.

C. Prior Proceedings

1. In July 2019, the Committee filed the present application pursuant to Rule 6(e)(3)(E)(i) seeking release of three categories of withheld grand-jury material. The Committee requested release of (1) portions of the Mueller Report redacted under Rule 6(e); (2) any underlying grand-jury transcripts or exhibits referenced in those redactions; and (3) any underlying grand-jury testimony and exhibits that relate directly to certain individuals and events described in the Mueller Report. In a thorough opinion, Chief Judge Howell granted the Committee's application as to the first two categories.

Chief Judge Howell first concluded that Rule 6(e)'s provision authorizing disclosure preliminarily to "a judicial proceeding" encompasses disclosures in advance

of a Senate impeachment trial. The court noted that "historical practice, the Federalist Papers, the text of the Constitution, and Supreme Court precedent all make clear" that "impeachment trials are judicial in nature and constitute judicial proceedings." JA26. The court further explained that "binding D.C. Circuit precedent forecloses any conclusion other than that an impeachment trial is a 'judicial proceeding.'" JA37 (capitalization altered). The court added that DOJ "has changed its longstanding position regarding whether impeachment trials are 'judicial proceedings,'" but reasoned that "consideration of whether DOJ's new position is estopped is unnecessary" given that the new position is meritless. JA42-43 n.30.

Chief Judge Howell also found that the Committee possesses the requisite "particularized need" for the withheld material. Chief Judge Howell first observed that it "would be difficult to conceive of a more compelling need than that of this country for an unswervingly fair inquiry based on all the pertinent information" related to impeachment. JA64-65 (quotation marks omitted). She then concluded that specific features of the investigation make the Committee's need "especially particularized and compelling." JA65. As she explained, certain topics described in the Mueller Report are "of particular interest" to the Committee's impeachment investigation—including "the Trump Tower Meeting," "Paul Manafort's sharing of internal polling data with a Russian business associate," and "information about what candidate Trump knew in advance about WikiLeaks' dissemination in July 2016 of stolen emails from democratic political organizations and the Clinton Campaign."

JA65. After reviewing a sealed declaration from DOJ outlining the contents of some of the withheld Rule 6(e) material, *see* JA726, Chief Judge Howell explained that "Rule 6(e) material was redacted from the descriptions of *each of these events* in the Mueller Report." JA66 (emphasis added). She added that obtaining grand-jury testimony would help "shed[] light on inconsistencies or even falsities" in the testimony of witnesses called in the impeachment inquiry who had also testified before the grand jury. *Id.*

Chief Judge Howell therefore ordered a "'focused and staged disclosure'" of the first two categories of material requested by the Committee, to be followed as necessary by disclosure of the third category. JA64.

2. Chief Judge Howell declined to issue a stay pending appeal, explaining that DOJ was "especially unlikely to succeed" on the merits of its appeal in light of "[t]he serious infirmities in [its] arguments." JA733.

DOJ filed an emergency motion for a stay pending appeal in this Court, and this Court granted an administrative stay "to give the court sufficient opportunity to consider" the motion. *See* Order (Oct. 29, 2019). This Court heard oral argument on the stay request on November 18, but it did not rule on the request and instead ordered expedited briefing on the merits of the appeal, with the administrative stay to remain in effect until further order. The Court has yet to issue such an order. Thus, although the Court has not held that DOJ satisfies the requirements for "the extraordinary relief of a stay pending appeal," *CREW v. FEC*, 904 F.3d 1014, 1017

(D.C. Cir. 2018), Chief Judge Howell's decision will have been stayed for ten weeks as of the date this appeal is scheduled for oral argument.

While this Court's administrative stay has been in place, the Committee voted to refer Articles of Impeachment to the House without the benefit of the requested material. The House is expected to vote on those Articles soon. If the House approves Articles of Impeachment, relevant grand-jury material that the Committee obtains in this litigation could be used during the subsequent Senate proceedings. And the Committee continues its impeachment investigation into Presidential misconduct—in part because obstruction by the Trump Administration has left many critical questions about the President's conduct unanswered. Material that the Committee obtains in this litigation could be used in that investigation as well.

SUMMARY OF THE ARGUMENT

I. This Court has twice held that Rule 6(e)'s reference to "judicial proceedings" encompasses Senate impeachment trials. In *Haldeman*, the Court rejected the argument "that impeachment does not fall into [the judicial proceedings] category." 501 F.2d at 715. Earlier this year, this Court reaffirmed that *Haldeman* is best understood to hold that impeachment "fit[s] within the Rule 6 exception for 'judicial proceedings.'" *McKeever v. Barr*, 920 F.3d 842, 847 n.3 (D.C. Cir. 2019). Even if there were any doubt about whether this Court has construed the judicial-proceedings exception to encompass impeachment, DOJ would be estopped from pressing its contrary argument. In *McKeever*, DOJ successfully argued that this Court has treated

Haldeman as standing "for the proposition that an impeachment proceeding may qualify as a 'judicial proceeding' for purposes of Rule 6(e)." Brief for Appellee at 37, *McKeever v. Barr*, 920 F.3d 842 (D.C. Cir. 2019) (No. 17-5149) (emphasis added). That representation cannot be reconciled with DOJ's new position that the Court has not resolved this question and that an impeachment proceeding is not a judicial proceeding.

The decisions in *Haldeman* and *McKeever* are correct. The Constitution's text—which refers to a Senate impeachment proceeding as a "trial" at which the "Chief Justice shall preside" and during which the Senate can "convict" the accused and render a "judgment"—makes clear that an impeachment trial is a judicial proceeding.

Other interpretive tools confirm what the constitutional text makes clear. The Federalist Papers refer to the "judicial character" of the Senate's role in impeachments. The Federalist No. 65 (Alexander Hamilton). The Supreme Court has recognized that the Senate exercises the "judicial power of trying impeachments." *Kilbourn v. Thompson*, 103 U.S. 168, 191 (1880). Grand-jury materials were provided to Congress for use in impeachments on numerous occasions before Rule 6(e)'s enactment, and Rule 6(e) was enacted to codify that historical practice. Every court to consider a Congressional request for grand-jury material for use in impeachments post-dating Rule 6(e)'s enactment has therefore authorized disclosure. And DOJ's contrary approach would yield the absurd result that grand-jury material may be

released to private litigants for use in run-of-the-mill litigation, but not to Congress for use in the impeachment of the President.

This Court should not consider DOJ's argument that constitutional avoidance counsels against construing Rule 6(e) to authorize disclosure, which DOJ forfeited by raising for the first time on appeal. But if the Court addresses that argument, the Court should reject it. The Court would create, rather than avoid, constitutional problems by denying Congress the right to obtain grand-jury material to which every other litigant is entitled. To the extent the Court is concerned about placing conditions on the use of grand-jury material disclosed to Congress, that concern could be avoided by ordering an appropriately narrow category of material disclosed to Congress in the first instance, as Chief Judge Howell did here.

II. The Committee has shown a particularized need for the material. The particularized-need test requires a "balanc[ing]" of interests to "accommodate the competing needs for secrecy and disclosure," and turns on whether disclosure would serve the "public interest." *Douglas Oil*, 441 U.S. at 221, 223. The public interest in this case obviously favors disclosure.

It is difficult to imagine a case involving more compelling needs for disclosure. The withheld material bears directly on whether the President obstructed the Special Counsel's investigation and continued his pattern of encouraging foreign election interference by improperly pressuring Ukraine to interfere in the 2020 election on his behalf. The material is also necessary to enable the Committee to determine whether

certain witnesses perjured themselves before the Committee. And the Committee needs this information in the context of an impeachment of the President, a matter of surpassing public importance.

The interests in secrecy, by contrast, are especially weak. The grand-jury proceedings and related prosecutions have concluded, which means that the principal interests served by secrecy—such as the interest in preventing suspects from fleeing and the interest in avoiding witness tampering—are not implicated. The only interest that DOJ can plausibly claim is the generalized interest in encouraging candid testimony by future grand-jury witnesses. But that interest is minimal here given that disclosure in this extraordinary case is unlikely to influence future witnesses in run-of-the-mill cases, and it is rendered all the weaker by the protocols the Committee has adopted to avoid unwarranted public disclosures.

Finally, the disclosure was appropriately tailored. Chief Judge Howell ordered "a focused and staged disclosure" starting with only two of the three categories of material sought. Chief Judge Howell did not order entire grand-jury transcripts released, nor did she order release of testimony of witnesses not relevant to the investigation. Instead, she appropriately ordered release of only the specific Rule 6(e) redactions in the Mueller Report and underlying grand-jury material supporting those specific redactions. In arguing that this disclosure was insufficiently tailored, DOJ ignores Supreme Court decisions authorizing disclosure in circumstances less compelling than this one. DOJ's approach to particularized need is unrecognizable,

and would place applicants for grand-jury material in the impossible position of having to know what the requested material says before they can obtain it.

III. This case is justiciable, as DOJ acknowledges. Courts routinely adjudicate requests for grand-jury material by private litigants and Executive Branch officials, and requests by Congress implicate no justiciability concerns not present in these other cases. That the Constitution vests the House with the "sole Power of Impeachment" confirms that Congress may obtain grand-jury material for use in impeachments. The Constitution prohibits the other branches from encroaching on Congress's impeachment power. Grave separation-of-powers concerns would arise if the Executive Branch could deny Congress the right to obtain grand-jury material for use in carrying out its impeachment and removal functions.

STANDARD OF REVIEW

This Court reviews de novo the district court's legal conclusion that an impeachment trial qualifies as a "judicial proceeding" under Rule 6(e). *See United States v. McIlwain*, 931 F.3d 1176, 1181 (D.C. Cir. 2019). This Court reviews for abuse of discretion the district court's finding that the Committee has a particularized need for the withheld materials. *See Douglas Oil*, 441 U.S. at 223.

ARGUMENT

I. THIS COURT HAS CORRECTLY HELD THAT RULE 6(E)'S REFERENCE TO JUDICIAL PROCEEDINGS ENCOMPASSES IMPEACHMENT TRIALS.

Rule 6(e)(3)(E)(i) authorizes disclosure of grand-jury material "preliminarily to … a judicial proceeding." This Court has considered whether impeachment trials qualify as "judicial proceedings" under the Rule on two occasions, and both times the Court answered in the affirmative. Earlier this year, the Court reached that conclusion at the urging of DOJ itself. Both of those decisions construing Rule 6(e) are correct.

A. This Court Has Twice Held That Impeachment Trials Qualify As Judicial Proceedings.

As Chief Judge Howell recognized, this Court has twice held that Rule 6(e)'s reference to "judicial proceedings" encompasses impeachment trials.

In *Haldeman*, the Court rejected the argument "that impeachment does not fall into [the judicial proceedings] category." 501 F.2d at 715. Judge Sirica had concluded that Rule 6(e)'s judicial-proceedings exception encompasses impeachment, and this Court, sitting en banc, expressed "general agreement with his handling of these matters" and felt "no necessity to expand his discussion." *Id.*

That *Haldeman* arose on mandamus does not deprive it of precedential force. The mandamus standard is not mentioned in *Haldeman*'s discussion of the judicial-proceedings question, "although this standard comes up repeatedly in *other* parts of the opinion." JA41. This Court accordingly has treated *Haldeman* as binding

precedent. *See McKeever*, 920 F.3d at 847 n.3. Other cases that definitively resolve legal issues in a mandamus posture are similarly treated as precedent—as some rather notable examples confirm. *See, e.g.*, *Marbury v. Madison*, 5 U.S. 137, 154 (1803) ("the present motion is for a mandamus"). And when this Court wishes to avoid resolving disputed legal questions in a mandamus posture, it says so. *See, e.g.*, *In re al-Nashiri*, 791 F.3d 71, 85-86 (D.C. Cir. 2015) (explaining that "[w]e do not resolve these open questions today" because petitioner failed to show the "'clear and indisputable' right needed for mandamus relief").

This Court resolved any doubts about the proper interpretation of *Haldeman* earlier this year in *McKeever*, which addressed whether district courts possess inherent authority outside of the exceptions listed in Rule 6(e) to order disclosure of grand-jury material. This Court held that district courts lack such inherent authority, distinguishing *Haldeman* on the ground that the disclosure in that case had been ordered pursuant to Rule 6(e)'s exception for judicial proceedings. *See McKeever*, 920 F.3d at 847 n.3. The Court in *McKeever* held that *Haldeman* is best understood to hold that impeachment "fit[s] within the Rule 6 exception for 'judicial proceedings.'" *Id.*

McKeever's interpretation of *Haldeman* was central to its holding. Had *Haldeman* been decided on inherent authority grounds rather than Rule 6(e) grounds, "the *McKeever* panel would have had no choice but to apply that precedent faithfully." JA42. Indeed, Judge Srinivasan's dissent in *McKeever* rested principally on the belief that *Haldeman* held "that a district court retains discretion to release grand jury

materials outside the Rule 6(e) exceptions." *McKeever*, 920 F.3d at 855 (Srinivasan, J., dissenting). In reaching the contrary conclusion, the *McKeever* majority necessarily interpreted *Haldeman* to have involved an application of Rule 6(e) rather than an exercise of inherent authority.

DOJ is in any event foreclosed from "chang[ing] its longstanding position regarding whether impeachment trials are 'judicial proceedings.'" JA42-43 n.30. In its brief to this Court in *McKeever*, DOJ represented that this Court has treated *Haldeman* as standing "for the proposition that an impeachment proceeding *may qualify as a 'judicial proceeding' for purposes of Rule 6(e)*." Brief for Appellee at 37, *McKeever v. Barr*, 920 F.3d 842 (D.C. Cir. 2019) (No. 17-5149) (emphasis added). DOJ in *McKeever* had no choice but to argue that *Haldeman* involved an application of Rule 6(e) because, had *Haldeman* instead involved inherent authority, it would have foreclosed DOJ's argument that courts lack such authority. DOJ's representation in *McKeever* cannot be reconciled with DOJ's new position that this Court has yet to decide whether Rule 6(e) encompasses impeachment proceedings and that impeachment trials are not judicial proceedings. Having persuaded this Court to accept its interpretation of the relevant precedent in *McKeever*, DOJ may not now, "simply because [its] interests have changed, assume a contrary position." *Temple Univ. Hosp. v. NLRB*, 929 F.3d 729, 733 (D.C. Cir. 2019) (quotation marks omitted).

B. This Court's Decisions Are Correct.

The interpretation of Rule 6(e) that this Court recently reaffirmed in *McKeever* is correct. Senate impeachment trials qualify as "judicial proceedings" under Rule 6(e). DOJ does not dispute that an impeachment trial is a "proceeding." The question is whether impeachment is a "judicial" proceeding. Every relevant tool of statutory interpretation confirms that it is.

Begin with the constitutional text. Article I provides that "[t]he Senate shall have the sole Power to *try* all Impeachments." U.S. Const., Art. I, § 3, cl. 6 (emphasis added). It further states that when the President "is *tried*, the *Chief Justice* shall *preside*." *Id.* (emphases added). It describes a "*Judgment* in *Cases* of Impeachment." *Id.*, Art. I, § 3, cl. 7 (emphases added). And it refers to "the *Party convicted*." *Id.* (emphasis added). Article III similarly describes an impeachment trial as a type of "*Trial* of all *Crimes*." *Id.*, Art. III, § 2, cl. 3 (emphases added). Quite plainly, a *trial* for a *crime* at which the *Chief Justice presides* and during which the Senate *convicts* the accused and renders a *judgment* qualifies as a judicial proceeding. DOJ suggests (Br. 27) that the Framers did not mean what they said and instead merely "borrow[ed] terms from the judicial sphere." But the Framers "must be understood to have employed words in their natural sense, and to have intended what they have said." *Gibbons v. Ogden*, 22 U.S. 1, 188 (1824). It is rare to encounter an argument as dismissive of the constitutional text as the one DOJ advances in this case.

Consider next the contemporaneous understanding of the Constitution's text by those who wrote it. The Framers understood impeachment to involve the exercise of judicial power. James Madison described the Senate as the "depositary of *judicial power* in cases of impeachment." The Federalist No. 47 (James Madison) (emphasis added). Alexander Hamilton similarly referred to the "*judicial character* [of the Senate] *as a court* for the trial of impeachments." The Federalist No. 65 (Alexander Hamilton) (emphases added). When Hamilton addressed the argument that authorizing the Senate to conduct impeachment trials "confounds legislative and judiciary authorities in the same body," he did not dispute that this arrangement produces an "intermixture" of "legislative and judiciary authorities," but instead explained that vesting the Senate with judicial power is "not only proper but necessary to the mutual defense of the several members of the government against each other." The Federalist No. 66 (Alexander Hamilton).

Consider also authoritative precedent dating to the Founding construing impeachment as an exercise of judicial power. The Supreme Court in 1792 accepted that "no judicial power of any kind appears to be vested [in Congress], *but the important one relative to impeachments*." *Hayburn's Case*, 2 U.S. 408, 410 n.* (1792) (emphasis added and capitalization altered). The Supreme Court later explained that "[t]he Senate … exercises the *judicial power of trying impeachments*." *Kilbourn*, 103 U.S. at 191 (emphasis added). And the Supreme Court later noted that Congress's contempt power can be "transformed into *judicial authority*" when a "committee contemplat[es] impeachment."

Marshall v. Gordon, 243 U.S. 521, 547 (1917) (emphasis added). Lower courts have adopted the same understanding. *See, e.g.*, *Brown v. Griesenauer*, 970 F.2d 431, 437 (8th Cir. 1992) ("We think impeachment proceedings are essentially judicial or adjudicatory in nature, even though the decision-making body and the form of the proceedings are legislative."); *see also Trump v. Mazars USA, LLP*, 940 F.3d 710, 749 (D.C. Cir. 2019) (Rao, J., dissenting) (the "power to investigate pursuant to impeachment … has always been understood as a limited judicial power"), *cert. granted,* No. 19-715 (Dec. 13, 2019). DOJ does not attempt to explain how an impeachment trial could involve an exercise of "judicial power" and yet not be a "judicial proceeding."

The historical practice of disclosing grand-jury material to Congress affirms that Rule 6(e)'s reference to judicial proceedings encompasses impeachments. Rule 6(e) was adopted to "codif[y] the traditional rule of grand jury secrecy" that was applied at common law. *Sells Eng'g*, 463 U.S. at 425. That history includes numerous examples of Congress obtaining grand-jury material for use in impeachment and other investigations. As early as 1811, a grand jury in Mississippi forwarded to the House its presentment of charges against a federal judge for use in an impeachment investigation. *See* 3 *Hinds' Precedents of the House of Representatives* § 2488, at 984-85 (1907). Reviewing the history, Judge Sirica concluded that there is "convincing precedent to demonstrate that common-law practice permits the disclosure" of grand-jury information to Congress for use in impeachment. *Watergate Roadmap Decision*, 370 F. Supp. at 1230 & n.47. Although DOJ quibbles (Br. 29-32) with some of the

historical examples cited by Chief Judge Howell, DOJ does not dispute that Congress repeatedly obtained grand-jury information for use in impeachment and other investigations prior to the enactment of Rule 6(e). *See* Brief of Constitutional Accountability Center as *Amicus Curiae* at 14-15.

The practice of grand-jury disclosures post-dating Rule 6(e)'s enactment tells the same story. Courts have authorized disclosure of grand-jury materials to Congress for use in impeachment proceedings every time the issue has arisen. That is because, as one court explained, "[t]here can be little doubt that an impeachment trial by the Senate is a 'judicial proceeding' in every significant sense." *In re Grand Jury Proceedings of Grand Jury No. 81-1 (Miami)*, 669 F. Supp. 1072, 1075 (S.D. Fla. 1987); *see also* Sara Sun Beale *et al.*, *Grand Jury Law and Practice* § 5:11 (courts have permitted "disclosure of grand jury materials preliminary to impeachment proceedings").

Until its recent change of position, DOJ likewise understood the judicial-proceedings exception to authorize disclosure in the impeachment context, explaining to Judge Sirica that impeachment satisfies Rule 6(e) because it "results in a judicial trial before the Senate sitting as a Court of Impeachment with the Chief Justice of the United States presiding." JA259. When pressed about the matter in district court, counsel for DOJ conceded "that if that same [Watergate Roadmap] case came today, a different result would obtain"—a stunning statement reflecting that DOJ "is taking an extraordinary position in this case." D. Ct. Dkt. 38 (Tr. at 89-90).

Consider next the text of Rule 6(e). "The term judicial proceeding has been given a broad interpretation by the courts." *In re Sealed Motion*, 880 F.2d 1367, 1379 (D.C. Cir. 1989). This Court has approvingly quoted a decision providing that the term "includes every proceeding of a judicial nature before a competent court or before a tribunal or officer clothed with judicial or quasi judicial powers." *Id.* at 1380. Courts have construed the term, for example, to encompass proceedings before administrative courts, *see Patton v. CIR*, 799 F.2d 166, 172 (5th Cir. 1986), and to encompass even a court's receipt and publication of an independent counsel report, *see In re North*, 16 F.3d 1234, 1244 (D.C. Cir. 1994). An impeachment trial likewise fits comfortably within this "broad" definition.

The structure of Rule 6(e) lends further support to this conclusion. The other exceptions in Rule 6(e) permit disclosure of grand-jury material in circumstances comparable to this one—where government officials seek the material for use in connection with their official duties. Because statutory terms "are often known by the company they keep," *Lagos v. United States*, 138 S. Ct. 1684, 1688-89 (2018), the judicial-proceedings exception should be understood to allow for disclosure to the Committee for use in impeachment. Contrary to DOJ's new view (Br. 19-20), the fact that Rule 6's other references to "judicial proceedings" appear to contemplate litigation does not confine the meaning of that term here. As DOJ recognizes (Br. 19), it is the "context" of the Rule's other references to judicial proceedings that

suggests that those references contemplate litigation. For the reasons already explained, the context of the judicial-proceedings exception suggests just the opposite.

Consider finally the absurd results that DOJ's proposed rule would produce. DOJ agrees (Br. 24) that Rule 6(e) authorizes disclosure of grand-jury material in run-of-the-mill litigation and attorney disciplinary investigations. As Judge Sirica noted during Watergate, it would be "incredible" if grand-jury material were "available to disbarment committees and police disciplinary investigations" but "unavailable to the House of Representatives in a proceeding of so great import as an impeachment investigation." *Watergate Roadmap Decision*, 370 F. Supp. at 1230. DOJ agreed, informing the court: "It would be fatuous to contend that Rule 6(e) relegates the need of a Presidential impeachment inquiry to a lower priority than" a "civil antitrust inquiry," "a state bar grievance" proceeding, or a "police disciplinary investigation." JA258. DOJ was correct.

C. Constitutional Avoidance Weighs In Favor Of Construing Rule 6(e) To Encompass Impeachments.

For the first time in this litigation, DOJ advances (Br. 21-23) a constitutional avoidance argument. Because DOJ made no hint of this argument in its filings below, Chief Judge Howell did not address it. Nor did DOJ press this argument in its papers or at oral argument during the stay stage in this Court. The argument is therefore forfeited, and this Court should not consider it. *See Bd. of Cty. Comm'rs v. FHFA*, 754 F.3d 1025, 1031 (D.C. Cir. 2014). Indeed, this Court has recognized that the reasons

"for recognizing the forfeiture of arguments are especially strong where the alleged error is constitutional." *Id.*

In any event, DOJ's constitutional avoidance argument makes no sense. DOJ appears to believe (Br. 22-23) that, because Congress would have substantial power over grand-jury material once a court orders the material disclosed, Congress should be understood to have no power to obtain grand-jury material in the first place. That argument would transform a constitutional provision that *empowers* Congress to conduct impeachments, *see Nixon v. United States*, 506 U.S. 224, 229 (1993) (hereinafter *Walter Nixon*), into one that *debilitates* Congress from obtaining information it needs to conduct impeachments. And that argument would deprive Congress of material that *every other litigant* is entitled to seek under Rule 6(e). DOJ is apparently "undisturbed by the manifest inequity of treating a committee of Congress less favorably than a litigating private citizen when it comes to identifying the appropriate mechanisms for the vindication of established legal rights." *Comm. on the Judiciary v. McGahn*, — F. Supp. 3d —, No. 19-cv-2379, 2019 WL 6312011, at *31 (D.D.C. Nov. 25, 2019), *appeal pending*, No. 19-5331 (D.C. Cir.).

DOJ's alleged concern about the difficulty of adjudicating Congressional requests for grand-jury material is misplaced. When presented with requests for grand-jury material related to impeachment, courts have had no trouble issuing appropriate relief. That was true of this Court and Judge Sirica when they authorized the release of grand-jury material to the Committee during Watergate; it was true of

the Fifth Circuit when it ordered grand-jury material released to the Committee for the impeachment of Judge Porteous; and it was true of the Eleventh Circuit when it ordered grand-jury material released to the Committee for the impeachment of Judge Hastings. Insofar as DOJ is concerned about courts placing "conditions" on Congress's use of material (Br. 22), courts can avoid such concerns by ordering an appropriately narrow category of material disclosed to the Committee in the first place—as Chief Judge Howell did here.

It is DOJ's interpretation of Rule 6(e) that raises constitutional concerns. "The investigative authority of [Congress] with respect to presidential conduct has an express constitutional source." *Senate Select Comm. on Presidential Campaign Activities v. Nixon*, 498 F.2d 725, 732 (D.C. Cir. 1974). The Court should be wary of interpreting Rule 6(e) in a manner that would authorize the Executive Branch to withhold material that the House needs to carry out its impeachment function.[1]

II. THE COMMITTEE HAS A PARTICULARIZED NEED FOR THE WITHHELD MATERIAL.

The withheld grand-jury material is needed to inform Congress's determination whether the President committed impeachable offenses. Chief Judge Howell considered the relevant evidence and concluded in a thorough opinion that the

[1] If the Court concludes that Rule 6(e)'s judicial-proceedings exception does not apply, the Court should nevertheless exercise its inherent authority to order disclosure of the material to the Committee. We recognize that this argument is foreclosed by *McKeever,* but we preserve the argument for purposes of possible further review.

withheld material was "indispensable" to the Committee. JA68. That conclusion was correct, and it certainly was not an abuse of discretion.

Because this Court effectively stayed the decision below pending appeal, the Committee voted to refer Articles of Impeachment to the House without the benefit of the grand-jury material to which it was entitled. Those Articles underscore the Committee's urgent need for the withheld material. As the Committee recently explained, should the Committee obtain the withheld material, "it would be utilized, among other purposes, in a Senate trial on these articles of impeachment, if any." *See Staff of the H. Comm. on the Judiciary, 116th Cong., Rep. on the Impeachment of Donald J. Trump, President of the United States* 167 n.928 (2019) (hereinafter *Impeachment Report*), https://perma.cc/3S55-3HLG. And the Committee "has continued and will continue [its impeachment] investigations consistent with its own prior statements respecting their importance and purposes." *Id.* The withheld material could inform those investigations as well.

A. Chief Judge Howell Applied The Proper Legal Standard.

DOJ's claim (Br. 38) that Chief Judge Howell applied the wrong legal standard is mistaken. Because DOJ's brief distorts the applicable standard, we begin by describing that standard in detail.

1. A party seeking grand-jury material under Rule 6(e) must show (1) "that the material they seek is needed to avoid a possible injustice in another judicial proceeding," (2) "that the need for disclosure is greater than the need for continued

secrecy," and (3) "that their request is structured to cover only material so needed." *Douglas Oil*, 441 U.S. at 222.

These factors require a "balanc[ing]" to "accommodate the competing needs for secrecy and disclosure." *Id.* at 223. "The *Douglas Oil* standard is a highly flexible one, adaptable to different circumstances and sensitive to the fact that the requirements of secrecy are greater in some situations than in others." *Sells Eng'g*, 463 U.S. at 445. That means that, "as the considerations justifying secrecy become less relevant, a party asserting a need for grand jury [material] will have a lesser burden in showing justification." *Douglas Oil*, 441 U.S. at 223. And the ultimate touchstone of particularized need is whether disclosure would serve the "public interest." *Id.*; *see also Procter & Gamble*, 356 U.S. at 682 (disclosure is warranted where the applicant would be "greatly prejudiced" or where, without the material, "an injustice would be done").

Because the particularized-need standard turns on the public interest, the standard is more easily satisfied in cases like this one involving requests by the government for information. On the one hand, as to the interest in disclosing the information, district courts "may weigh the public interest, if any, served by disclosure to a governmental body." *Sells Eng'g*, 463 U.S. at 445 (quotation marks omitted). On the other hand, as to the countervailing secrecy interests, "the concerns that underlie the policy of grand jury secrecy are implicated to a much lesser extent" when disclosure is to the government. *United States v. John Doe, Inc. I*, 481 U.S. 102, 112 (1987). The reduced secrecy interest reflects that disclosure to the government "poses

less risk of further leakage or improper use than would disclosure to private parties or the general public." *Sells Eng'g*, 463 U.S. at 445.

The requisite showing for particularized need is further "reduced" in a case like this where "the grand jury has ended its activities." *Douglas Oil*, 441 U.S. at 222. Because the interests underlying grand-jury secrecy are largely directed to preventing interference with ongoing proceedings, "the fact that the grand jury ha[s] already terminated mitigates the damage of a possible inadvertent disclosure." *John Doe*, 481 U.S. at 114. "[A]fter the grand jury's functions are ended, disclosure is wholly proper where the ends of justice require it." *Socony-Vacuum*, 310 U.S. at 234.

A district court's application of this standard is committed to the court's "considered discretion." *Douglas Oil*, 441 U.S. at 228. The Supreme Court has "repeatedly stressed that wide discretion must be afforded to district court judges in evaluating whether disclosure is appropriate." *John Doe*, 481 U.S. at 116.

2. Courts, including the Supreme Court, have applied this standard to authorize disclosure based on showings of need far less compelling than the Committee's showing here.

The Supreme Court's decision in *John Doe* is illustrative. In that case the Court "review[ed] a concrete application of the 'particularized need' standard" in the context of a request by DOJ Antitrust Division attorneys to share grand-jury information with their DOJ Civil Division colleagues in advance of a civil fraud suit. 481 U.S. at 104. The Court explained that the "question that must be asked is whether the public

benefits of the disclosure in this case outweigh the dangers created by the limited disclosure requested." *Id.* at 113. As to the benefits, the Court noted that the "public purposes served by the disclosure—efficient, effective, and evenhanded enforcement of federal statutes"—supported disclosure. *Id.* As to the dangers, the Court explained that the harm from disclosure was minimal, stressing that disclosure to select government attorneys "does not pose the same risk of a wide breach of grand jury secrecy" as disclosure to the public at large, and that the harm was further mitigated because "the grand jury has already terminated." *Id.* at 114.

The Court therefore held that "disclosure in this case [would] not seriously threaten the values of grand jury secrecy." *Id.* at 115. And the Court authorized disclosure even "assum[ing] that *all of the relevant material* could have been obtained through the civil discovery tools available to the Government." *Id.* at 116 (emphasis added). As the Court explained, its decisions "do not establish a *per se* rule against disclosure," but rather afford "wide discretion … to district court judges in evaluating whether disclosure is appropriate." *Id.*

The Supreme Court took a similar approach in *Dennis v. United States*, 384 U.S. 855 (1966). In that case, which involved the disclosure of grand-jury material to a defendant in a criminal case, the Court authorized disclosure of the grand-jury testimony of four witnesses, reasoning that the applicant was entitled to "all relevant aid which is reasonably available" to ascertain the substance of certain statements at issue in the case. *Id.* at 872-73. The Court reversed—as an abuse of discretion—the

district court's refusal to disclose this material, observing that "it is especially important that the defense, the judge and the jury should have the assurance that the doors that may lead to truth have been unlocked," and that the applicant's showing of need "goes substantially beyond the minimum required by Rule 6(e) and the prior decisions of this Court." *Id.* at 873.

Consistent with this Supreme Court precedent, courts have easily found the particularized-need standard satisfied in the impeachment context. In the *Watergate Roadmap Decision*, Judge Sirica concluded that the release of grand-jury material to the Committee was "eminently proper, and indeed, obligatory" due to the "public interest" at stake and because "any prejudice to [the President's] legal rights caused by disclosure to the Committee would be minimal." 370 F. Supp. at 1227. He explained that the public interest in the materials "might well justify even a public disclosure," but that the public interest was "certainly ample basis for disclosure to [the Committee]" given its "precautions to insure against unnecessary and inappropriate disclosure of these materials." *Id.* at 1230. This Court, sitting en banc, agreed with that judgment. *See Haldeman*, 501 F.2d at 715.

Similarly, in litigation over the Judge Hastings impeachment, the Eleventh Circuit authorized disclosure of "the *entire* record of the grand jury that indicted Judge Hastings" given the "unique investigatory mission and the necessity that, when the investigation is over, the public be assured that it was complete." *In re Petition to Inspect & Copy Grand Jury Materials*, 735 F.2d 1261, 1273 (11th Cir. 1984). In a subsequent

request for the Hastings grand-jury material by the Committee, the Eleventh Circuit concluded that the Committee "has asserted a particularized need sufficient to warrant disclosure in this case"—i.e., "an interest in conducting a full and fair impeachment inquiry." *In re Request for Access to Grand Jury Materials*, 833 F.2d at 1442.

3. DOJ's assertion (Br. 38) that Chief Judge Howell "applied the wrong standard" is therefore manifestly incorrect. To the contrary, DOJ's approach would radically reinvent the standard that the Supreme Court articulated in *Douglas Oil* and that federal courts have applied ever since.

To a striking degree, DOJ ignores the respects in which *Douglas Oil* undermines its position. DOJ does not acknowledge that particularized need turns on a "balance" of the interests in secrecy and disclosure, 441 U.S. at 223, and makes no effort to engage in the necessary balancing. DOJ disregards the Supreme Court's instruction that courts "properly consider[] the strong 'public interests served' through disclosure," *John Doe*, 481 U.S. at 116, and it has no answer to the fact that obtaining information about the President's misconduct for purposes of impeachment is obviously an interest of the highest order. DOJ does not acknowledge the Supreme Court's admonition that the need for secrecy is "implicated to a much lesser extent" when the grand jury has "already terminated," or when the disclosure is to the government, *id.* at 112, 114, and DOJ accordingly all but ignores that the grand-jury proceedings in this case have ended and that disclosure to the Committee poses less risk than disclosure to the public at large.

DOJ does not simply ignore inconvenient aspects of the governing standard; it presses arguments contradicted by that standard. DOJ suggests (Br. 40) that Chief Judge Howell was required to find that the materials were "unavailable to the Committee" through means other than a Rule 6(e) request. For one thing, Chief Judge Howell *did* find that the materials were otherwise unavailable. She explained that DOJ's arguments that the needed information could be obtained otherwise "smack of farce" because "DOJ and the White House have been openly stonewalling the House's efforts to get information by subpoena and by agreement, and the White House has flatly stated that the Administration will not cooperate with congressional requests for information." JA70. For another thing, the Supreme Court in *John Doe* rejected the argument DOJ presses here, holding that disclosure was appropriate "[e]ven if we assume that all of the relevant material could have been obtained through" other means. 481 U.S. at 116.

Other arguments pressed by DOJ strain credulity. DOJ's argument (Br. 44) that the interest in secrecy "is at its peak" when Presidential misconduct is being investigated is incorrect, and would allow a President to shield himself from scrutiny by the very body that the Constitution empowers to check against Presidential misconduct. DOJ's similar claim (Br. 46) that the importance of Congress's impeachment function should somehow "heighten[] [the Committee's] burden to show a strong and particularized need" is exactly backwards: The Supreme Court has made clear that the importance of the material sought weighs in favor of disclosing

the material rather than keeping it secret. *See Dennis*, 384 U.S. at 873. Equally puzzling is DOJ's repeated assertion (Br. 9, 40-41) that because most of the Mueller Report *was not* redacted, the Committee does not have a particularized need for the material that *was* redacted.

DOJ's standard would require a degree of specificity that no court has required and that few applicants could hope to satisfy. DOJ faults the Committee (Br. 37) for making its case for particularized need by "guess[ing] at what the redactions contain." But the Committee of course does not know what the redactions contain; that is why it has sought to have them unredacted. DOJ's proposed approach—in which an applicant for grand-jury materials would be required to establish a specific need for every word of withheld material, line-by-line, redaction-by-redaction—would in effect require an applicant to know what the withheld material says before the applicant can obtain it. That is an unrecognizable approach to particularized need.

B. Chief Judge Howell Correctly Found That The Committee Showed A Particularized Need For The Withheld Material.

The Committee's showing of particularized need was far more specific than the showings the Supreme Court has deemed sufficient in circumstances implicating less significant public interests. Chief Judge Howell properly found that the Committee has the requisite need for the withheld material.

1. Interest in Disclosure. The withheld material is "needed to avoid a possible injustice" in the impeachment proceeding. *See Douglas Oil*, 441 U.S. at 222.

DOJ errs in asserting (Br. 38) that Chief Judge Howell made only a conclusory finding that the Committee needed "all relevant evidence" to assist with impeachment. DOJ supports that assertion by plucking quotations from Chief Judge Howell's opinion out of context and ignoring pages of subsequent analysis regarding the Committee's particularized need. Chief Judge Howell conducted this analysis after reviewing a sealed declaration from DOJ describing in detail the redacted material in Volume II of the Mueller Report. *See* JA726-29. That analysis refutes DOJ's assertion (Br. 39) that the district court's decision "verge[s] on a *per se* rule" that disclosure is warranted in cases involving impeachment. The Committee has in fact specified several specific needs for the withheld material.

First, the withheld material is vital to understanding the President's solicitation of foreign interference in the 2016 election and to establishing whether President Trump obstructed Special Counsel Mueller's investigation afterward. The material is needed to inform both the Committee's ongoing impeachment investigation and the consideration of the Articles of Impeachment that the Committee has referred to the House. *See* H. Res. 755, 116th Cong. (2019) (Article II) (President Trump's obstruction is "consistent with [his] previous efforts to undermine United States Government investigations into foreign interference in United States elections"); *see also Impeachment Report* 167-68 (understanding President Trump's efforts to obstruct the Mueller investigation, "and the pattern of misconduct they represent, sheds light

on the particular conduct set forth in Article II as sufficient grounds for the impeachment of President Trump").

As Chief Judge Howell explained, the Committee has a strong interest in obtaining information about specific events described in the Mueller Report, including "the Trump Tower Meeting," "Paul Manafort's sharing of internal polling data with a Russian business associate," "the Seychelles meeting," and "information about what candidate Trump knew in advance about Wikileaks' dissemination in July 2016 of stolen emails from democratic political organizations and the Clinton Campaign." JA65. The Committee needs this information to determine the extent of President Trump's involvement in these events—and his motive to obstruct the investigation that followed them. But "Rule 6(e) material was redacted from the descriptions of *each of these events* in the Mueller Report." JA66 (emphasis added). The Committee cannot know the extent to which President Trump obstructed the investigation without access to this material.

An example will help illustrate the Committee's need. One set of redactions in Volume II of the Mueller Report relates to then-candidate Trump's knowledge about his campaign's coordination with WikiLeaks. During the 2016 campaign, WikiLeaks disseminated thousands of internal Democratic Party documents that were stolen from the Democratic National Committee. In his written answers to questions from Mueller, President Trump asserted that he did "not recall being aware during the campaign of any communications" between his campaign and WikiLeaks. D. Ct. Dkt.

20-9 (App. C-18). The Mueller Report undermines that assertion by describing a conversation between Paul Manafort, President Trump's 2016 Campaign Manager, and then-candidate Trump, in which Trump asked Manafort to "keep Trump updated" about future WikiLeaks activity. JA669. Critically, however, the Mueller Report's citation for that claim was redacted pursuant to Rule 6(e). *Id.* The Committee has a specific need to obtain that information and underlying evidence to determine whether President Trump lied to the Special Counsel. That need is heightened by evidence produced in the recent trial of former Trump Campaign advisor Roger Stone, which provides further reason to believe President Trump was kept "updat[ed]" on WikiLeaks' plans during the campaign. *See* 11/12 Tr. at 938, *United States v. Stone*, No. 19-cr-18 (D.D.C.).

Second, the withheld material is needed to evaluate President Trump's solicitation of an announcement by Ukraine that it was launching an investigation into former Vice President Joe Biden, President Trump's political rival, and into alleged Ukrainian interference in the 2016 U.S. Presidential election. Understanding the circumstances surrounding President Trump's solicitation of those investigations is vital to informing the consideration of the Articles of Impeachment. *See* H. Res. 755 at 5, 7 (Article I) (describing a pattern of "invitations of foreign interference in United States elections"); *see also Impeachment Report* 132-34.

Again, examples illustrate the need for this material. Volume I of the Mueller Report contains a lengthy account related to Manafort, who was ousted from the

Trump Campaign after the media reported that he received substantial payments from pro-Russian entities in Ukraine. After his ouster, Manafort propagated a false claim that Ukraine framed him regarding these payments in order to harm then-candidate Trump—a claim that has been promoted by Russia to distract from its own election interference during the 2016 election. President Trump later solicited the government of Ukraine to investigate that false claim, and withheld vital military aid and an Oval Office meeting to pressure Ukraine to do so. *See Impeachment Report* 82-84. The Mueller Report refers to discussions between Manafort and one of his employees, whom the FBI assesses has ties to Russian intelligence, relating to the false Russian claim of Ukraine's election meddling in 2016. JA614-17. But the Mueller Report contains significant Rule 6(e) redactions throughout this discussion. *See, e.g.*, JA616 (redactions surrounding discussion of "so-called 'black ledger' payments to Manafort" from pro-Russian entities in Ukraine). Understanding the nature of these discussions is important to understanding President Trump's subsequent insistence that Ukraine publicly claim to be investigating this false theory.

Volume I of the Mueller Report also describes Manafort's discussions with the same Russia-linked associate regarding a purported "peace plan" for resolving the conflict between Ukrainian and Russian forces in eastern Ukraine in a manner that would have given Russia *de facto* control of the disputed territory. JA612-16. The military assistance that President Trump later withheld from Ukraine in order to pressure its government into announcing his desired investigations was intended to

support Ukraine in that same conflict. But Rule 6(e) material is redacted throughout the Mueller Report's description of Manafort's discussions of that topic. *See* JA612-13; JA615 n.949; JA616. That redacted material could provide important context about President Trump's decision to withhold the military assistance.

Third, as Chief Judge Howell noted, obtaining grand-jury testimony of witnesses who testified before the Committee is "necessary here to prevent witnesses from misleading" Congress. JA67. As part of its inquiry, the Committee questioned individuals who may have previously testified before the grand jury and who had a strong motive to lie about their role in the events being investigated. As Chief Judge Howell observed, disclosure of grand-jury material to avoid misleading the trier of fact "is a paradigmatic showing of 'particularized need.'" *Id.*

The prospect that individuals lied to the Committee is not, as DOJ suggests (Br. 41-43), mere speculation. One witness who testified before another committee of Congress—Michael Cohen—has already pleaded guilty to making false statements to that committee regarding the events at issue in the Mueller Report. JA66. Two other witnesses—Michael Flynn and George Papadopoulos—pleaded guilty to providing false statements to the FBI regarding these same events. *Id.* The Committee has a specific and substantial interest in determining whether other witnesses with similar motivations may have also lied.

Fourth, the Committee's need for the withheld information is augmented by the extraordinary importance of impeachment. As Judge Sirica explained in ordering

grand-jury material disclosed during Watergate, "[i]t would be difficult to conceive of a more compelling need than that of this country for an unswervingly fair inquiry based on all the pertinent information." *Watergate Roadmap Decision*, 370 F. Supp. at 1230. DOJ agreed, urging that the "'need' for the House to be able to make its profoundly important judgment on the basis of all available information is as compelling as any that could be conceived." JA258. What was true during Watergate remains true today.

To be clear, the Court need not apply a unique particularized-need test in cases involving impeachment. Rather, "[t]he standard for government movants remains one of particularized need, but under this standard [courts] may weigh the public interest served by disclosure." *In re Request for Access to Grand Jury Materials*, 833 F.2d at 1441. The public's representatives in Congress have determined that they require the withheld information to permit an informed determination regarding whether the President committed impeachable offenses. This Court should not lightly second-guess that determination.

Finally, a unique feature of impeachment heightens the Committee's need. In a criminal case, grand-jury material is available to a prosecutor tasked with deciding whether to seek an indictment. In an impeachment, the House assumes the role of the prosecutor, and must make a comparable judgment about whether to approve articles of impeachment. The House should have access to the relevant grand-jury evidence before making its decision. It would not be "justifiable for the [Executive

Branch] to have exclusive access" to materials that bear on the President's fitness for office during an impeachment proceeding. *See Dennis*, 384 U.S. 872-73.

That conclusion is particularly apparent given DOJ's view that a sitting President cannot be indicted. The Mueller Report stopped short of drawing a "traditional prosecutorial judgment" or "ultimate conclusions about the President's conduct" in part because Mueller felt bound by DOJ's view that the President could not be indicted. JA67. That decision was justifiable only because of the other "constitutional processes for addressing presidential misconduct"—i.e., impeachment. JA652; *see also A Sitting President's Amenability to Indictment and Criminal Prosecution*, 24 Op. O.L.C. 222, 257 (2000) ("the constitutionally specified impeachment process ensures that the immunity [from prosecution] would not place the President 'above the law'"). Given Mueller's decision to draw no conclusions about whether the President acted unlawfully, Congress alone can hold the President to account for the misconduct Mueller uncovered. Congress "cannot fairly and diligently carry out this responsibility" without access to the material that Mueller himself considered in drafting his report. JA67.

2. Interest in Secrecy. The secrecy interests implicated by this case are minimal. Accordingly, the "need for disclosure is greater than the need for continued secrecy." *See Douglas Oil*, 441 U.S. at 222.

The public interest in grand-jury secrecy is "reduced" where, as here, the underlying grand-jury proceedings have ended. *Id.* Grand-jury secrecy principally

seeks to protect the integrity of ongoing grand-jury proceedings, but here those proceedings have terminated. There is accordingly no need "[t]o prevent the escape of those whose indictment may be contemplated" or "to prevent persons subject to indictment or their friends from importuning the grand jurors." *Procter & Gamble*, 356 U.S. at 681 n.6.

Moreover, because DOJ does not point to any ongoing prosecutions stemming from the grand-jury proceedings, there is no need "to prevent subornation of perjury or tampering with witnesses who may testify before the grand jury and later appear at the trial of those indicted by it." *Id.* To the extent DOJ suggests (Br. 11-12) that disclosure of the grand-jury material could interfere with unspecified ongoing investigations, that suggestion is implausible. The Mueller Report was separately redacted to protect ongoing investigations, and DOJ *already disclosed* that material to certain House Members and staff, with only one exception.

Nor can DOJ claim a substantial need "to protect innocent parties" from disclosure of "the fact that they have been under investigation." *Id.* Some grand-jury witnesses—like Manafort, Gates, and Flynn—have been convicted, and they hardly have a cognizable interest in hiding that they were once under investigation. Others—like Steve Bannon—are already known to have testified before the grand jury. Indeed, DOJ *itself* recently introduced Bannon's grand-jury testimony at Roger Stone's trial—including Bannon's testimony about conversations with Stone regarding WikiLeaks. *See* 11/8 Tr. at 851, *United States v. Stone*, No. 19-cr-18 (D.D.C.). It would

be curious if a breach of grand-jury secrecy were warranted to secure the conviction of an associate of the President but not to inform Congress's consideration of whether to impeach and remove the President himself.

DOJ is therefore left to assert only the generalized interest in encouraging "free and untrammeled disclosures by persons who have information with respect to the commission of crimes." *Procter & Gamble*, 356 U.S. at 681 n.6. Because this generalized interest is "always present" when grand-jury information is revealed, *In re Request for Access to Grand Jury Materials*, 833 F.2d at 1441, it is doubtful that this interest could ever justify withholding grand-jury information in a case where the need for disclosure is so compelling. *See id.* at 1444 ("a merely generalized assertion of secrecy in grand jury materials must yield to a demonstrated, specific need for evidence in a pending impeachment investigation"). In any event, this interest is particularly weak here.

It is unlikely that disclosure of grand-jury material in the exceptional circumstances of this case would deter future grand-jury witnesses from testifying frankly. First, grand-jury proceedings involving matters of this significance are rare. There is no serious risk that future witnesses will believe that disclosure of material to Congress in this case would have any bearing on the secrecy of their own testimony in run-of-the-mill proceedings. Even in the rare situation in which a grand jury investigates comparably significant events, it is fanciful to think that jurors who would otherwise be willing to testify truthfully about Presidential misconduct would be

deterred by the prospect that Congress might seek portions of their testimony in deciding whether to impeach.

Second, the Committee has adopted protocols to prevent improper disclosure of the material. As Chief Judge Howell recognized, "a high degree of continued secrecy could in fact be maintained under" those protocols, which provide for storage of the material in a secure location, restriction of access to the materials to Members of Congress, and limitations on access by staff. JA72 (quotation marks omitted). History shows that such protocols are not an empty gesture. As Chief Judge Howell noted, "Congress has *still* not publicly disclosed the entirety of the Watergate grand jury report that Chief Judge Sirica ordered be given to [the Committee] forty-five years ago, in 1974." JA734. And while DOJ suggests (Br. 44-45) that these protocols should make no difference, the Supreme Court has in fact encouraged district courts to consider that disclosure to the government "poses less risk of further leakage or improper use than would disclosure to private parties or the general public." *Sells Eng'g*, 463 U.S. at 445.

3. Tailoring. The Committee's request was narrowly tailored—and Chief Judge Howell narrowed the request further still. Chief Judge Howell's order was "structured to cover only material so needed." *See Douglas Oil*, 441 U.S. at 222.

The Committee's application requested three categories of material: (1) the portions of the Mueller Report redacted pursuant to Rule 6(e); (2) underlying transcripts or exhibits referenced in those redactions; and (3) other grand-jury

information relating to certain individuals and events at issue in the Mueller Report. Chief Judge Howell ordered "a focused and staged disclosure, starting with categories one and two of the requested grand jury information and, following [the Committee's] review of that material, moving to category three." JA64 (quotation marks omitted). This limited disclosure was an entirely appropriate means of providing the Committee with the material for which it has an immediate need while protecting material for which it has no such need.

In arguing (Br. 35-36, 42) that Chief Judge Howell's order was not appropriately tailored, DOJ principally analogizes to cases in which parties sought grand-jury material to refresh witnesses' recollection or impeach witnesses with their prior inconsistent testimony. *See In re Grand Jury Testimony*, 832 F.2d 60, 63 (5th Cir. 1987). But the Committee here does not seek the redactions with a view to buttressing or discrediting a particular witness's trial testimony, but rather to obtain information critical to its investigation. In cases in which a party has sought material to inform its investigation, the Supreme Court has never required a showing regarding how each specific piece of material sought would be employed. In *John Doe*, for example, the Court authorized disclosure of grand-jury transcripts to give DOJ counsel "the full benefit of the experience and expertise" of other government attorneys. 481 U.S. at 113. And in *Dennis*, the Court authorized disclosure of transcripts of grand-jury material on the ground that "it is especially important that the defense, the judge and the jury should have the assurance that the doors that may

lead to truth have been unlocked." 384 U.S. at 873. DOJ has no answer to these cases, neither of which it cites in its brief.

DOJ next compares (Br. 42) Chief Judge Howell's decision to cases in which a court ordered the disclosure of an *entire* grand-jury transcript even though only a portion of the transcript was needed. *See United States v. Fischbach & Moore, Inc.*, 776 F.2d 839, 841 (9th Cir. 1985) (remanding where the district court "granted disclosure of the entire transcripts of the grand jury testimony of the six witnesses"). Disclosure of an entire transcript is appropriate where the applicant has a particularly compelling need for it. *See, e.g.*, *In re Petition to Inspect & Copy Grand Jury Materials*, 735 F.2d at 1273 ("Here we believe the [applicant] established its need for access to the *entire* record of the grand jury that indicted Judge Hastings."). But Chief Judge Howell ordered no such disclosure of each witness's grand-jury transcript, and instead disclosed the narrower portions of the transcripts underlying the Rule 6(e) redactions.

DOJ also invokes (Br. 42) a case in which a court disclosed the testimony of numerous witnesses based on a showing of need as to only a few. *See In re Special Grand Jury 89-2*, 143 F.3d 565, 571 (10th Cir. 1998) (faulting the district court for "generalizing a need for the testimony of all, based on a showing relevant to a small sample"). But in *Dennis*, the Supreme Court authorized disclosure of four witnesses' grand-jury transcripts based in part on evidence that "[o]ne witness" had made prior inconsistent statements. 384 U.S. at 873. And in any event, Chief Judge Howell

limited disclosure to select portions of the testimony of witnesses as to whom the Committee has established a need.

DOJ asserts (Br. 37) that the Committee broadly sought the testimony of individuals even though they did not testify before the grand jury, citing Donald McGahn as an example. The Committee had no way of knowing who testified before the grand jury when it made its request. But DOJ is in any event incorrect. The Committee did not request McGahn's grand-jury testimony, but rather requested "any underlying grand jury testimony and any grand jury exhibits that *relate directly to*" McGahn. JA17; *see also* JA135. And the Committee made that request in the third category of materials it sought, which Chief Judge Howell *declined* to disclose at this stage. Chief Judge Howell's decision not to require immediate disclosure of this material underscores that her order was properly tailored.

Finally, DOJ maintains (Br. 3, 38) that counsel for the Committee at oral argument in district court acknowledged that the Committee could forego the material underlying one specific redaction—out of the more than 240 redactions—in the Mueller Report. That is true but entirely unremarkable. DOJ cites no case—and the Committee is aware of none—in which a court required an applicant for grand-jury material to establish a specific need for *every word* of the underlying materials sought. Any such requirement would be impossible to apply given that the applicant cannot know what it will find in the material it seeks. Courts instead ask whether the applicant has established a specific need for the grand-jury information and whether

the information sought is reasonably tailored to that need. Chief Judge Howell properly followed that approach here. Her inquiry into individual redactions shows that she engaged in an appropriately particularized analysis.

4. Abuse of discretion. Even if some of these questions were close, this Court cannot reverse except on a finding that the district court abused its discretion.

While DOJ claims (Br. 38) that Chief Judge Howell applied the wrong legal standard, that gambit to evade abuse-of-discretion review fails. Chief Judge Howell announced the proper *Douglas Oil* standard and then applied it, step by step. *See Douglas Oil*, 441 U.S. at 223 (holding that the district court did not "err[] in the standard by which it assessed the request for disclosure under Rule 6(e)" because it "made clear that the question before it was whether a particularized need for disclosure outweighed the interest in continued grand jury secrecy"). To obtain reversal, DOJ bears the burden of showing that Chief Judge Howell abused her discretion.

DOJ does not come close to meeting that burden. The Supreme Court has "repeatedly stressed that wide discretion must be afforded to district court judges in evaluating whether disclosure is appropriate." *John Doe*, 481 U.S. at 116. In *Douglas Oil* itself, the Court "emphasize[d] that a court called upon to determine whether grand jury transcripts should be released necessarily is infused with substantial discretion." 441 U.S. at 223. In light of that discretion, courts of appeals have reviewed disclosure orders with considerable deference. *See In re Grand Jury Subpoenas*

Duces Tecum, 904 F.2d 466, 468 (8th Cir. 1990) ("Though the specifics of the particularized need showing are not known to this court, it is clear … that the district court applied the particularized need test and found the government's showing to be sufficient."); Sara Sun Beale *et al.*, *Grand Jury Law and Practice* § 5:11 ("district courts are accorded substantial leeway in balancing the need for disclosure against the interests of grand jury secrecy"). Chief Judge Howell's decision was correct, and when reviewed with the proper deference it certainly was not an abuse of discretion.

III. THIS CASE IS JUSTICIABLE.

This case is justiciable, as DOJ agrees. Courts routinely adjudicate requests for grand-jury material by private parties, *see Douglas Oil*, 441 U.S. at 221, as well as by the Executive Branch itself, *see Sells Eng'g*, 463 U.S. at 435, without facing justiciability concerns. And courts—including this Court—have similarly adjudicated disputes involving Congressional requests for grand-jury materials for use in impeachment proceedings without any indication that these cases are nonjusticiable. *See Haldeman*, 501 F.2d at 714; *In re Request for Access to Grand Jury Materials*, 833 F.2d at 1442. Congressional requests for grand-jury material—however they might bear on impeachment—call on courts to apply the familiar standards applied to other litigants in other contexts.

The Constitution's grant to the House of the "sole power of Impeachment," U.S. Const., Art. I, § 2, cl. 5, confirms the House's authority to obtain grand-jury information necessary to impeachment. The House's authority is at its peak when it

exercises its impeachment power. *See Walter Nixon*, 506 U.S. at 233. Operating at the height of its power, the House has the right shared by every other litigant to seek a court order for disclosure of grand-jury material.

The Supreme Court's decision in *Walter Nixon* confirms rather than undermines that conclusion. In *Walter Nixon*, a federal judge challenged the manner in which the Senate had chosen to receive evidence for his impeachment trial. The Supreme Court rejected that challenge as nonjusticiable, holding that the Constitution's grant to Congress of the "sole" power to conduct and try impeachments prevented courts from second-guessing how Congress exercised that power within its constitutional authority. 506 U.S. at 233. The Court reasoned that courts may not review Congress's "actions" when carrying out its impeachment responsibilities, and may not encroach on Congress's impeachment power by imposing a "check" on that power. *Id.*

This case does not implicate those concerns. It does not call on the Court to review Congress's conduct of an impeachment or to encroach on Congress's impeachment power in any respect. As DOJ correctly explains (Br. 47-48), the Committee's request does not require the Court "to exercise review over any aspect of the impeachment power textually committed to Congress." The Committee instead asks this Court to interpret and apply Rule 6(e)—which is "a familiar judicial exercise." *See Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 196 (2012). There is

no risk that resolving the Committee's request would require the Court "to supplant a … decision of the political branches with [its] own unmoored determination." *Id.*

Contrary to DOJ's assertion, courts would not tread on "perilous ground" (Br. 49-50) by adjudicating requests for grand-jury material in the context of impeachment. To the contrary, serious separation-of-powers concerns would arise if courts were to *deprive* Congress of information necessary to carry out its impeachment function. It is inconceivable that the same Constitution that gives Congress the power to impeach a sitting President prohibits Congress from informing its decision though the use of its traditional investigative tools. This Court has therefore been particularly solicitous of Congressional requests for information in the context of impeachment, recognizing that the "investigative authority of [Congress] with respect to presidential conduct has an express constitutional source." *Senate Select Comm.*, 498 F.2d at 732. That solicitude warrants affirmance of the district court's order disclosing to Congress grand-jury material needed for use in an impeachment proceeding.

CONCLUSION

For the foregoing reasons, the Court should vacate its administrative stay and affirm the district court's order. We request that the Court do so quickly, such as by immediately vacating the stay and issuing the Court's order with an opinion to follow.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with Fed. R. App. P. 32(a)(7)(B) because it contains 12,987 words excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Circuit Rule 32(e)(1).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word Professional Plus 2016 in 14-point Garamond type.

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CERTIFICATE OF SERVICE

I certify that on December 17, 2019, I filed the foregoing Corrected Brief of the Committee on the Judiciary of the U.S. House of Representatives via the CM/ECF system of the United States Court of Appeals for the District of Columbia Circuit, which I understand caused service on all registered parties.

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