

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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July 10, 2023

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

Dear Attorney General Garland:

On June 21, Special Counsel John Durham appeared before the House Committee on the Judiciary to testify under oath about the results of his four-year, over \$6.5 million probe into the Federal Bureau of Investigation (FBI) and Department of Justice (DOJ) investigation of Russian interference in the 2016 election.¹ Mr. Durham testified about the two criminal indictments that were brought because of his investigation, which both ended in acquittals when two juries rejected his claims at trial.² In addition to these two failed criminal prosecutions, Mr. Durham was asked about another criminal investigation that he pursued during his time as Special Counsel, but which he did not disclose in his report.³

Mr. Durham and then-Attorney General William Barr traveled to Italy on two separate occasions in 2019 and met with Italian intelligence officials as part of Mr. Durham's

¹ *Hearing on the Report of Special Counsel John Durham: Hearing Before the H. Comm. on the Judiciary*, 118th Cong. (Jun. 21, 2023); Hannah Rabinowitz, *Special counsel Durham has spent at least \$6.5 million on inquiry into Trump-Russia probe*, CNN (Dec. 23, 2022), <https://cnn.com/2022/12/23/politics/john-durham-special-counsel/index.html>.

² In September 2021, Durham charged attorney Michael Sussman with lying to the FBI regarding an "alleged secret channel of communications between the Trump Organization and a Russian bank." Press Release, *Grand Jury Indicts D.C. Attorney with Making False Statements to the FBI in 2016 Regarding Alleged Communications Between Trump Organization and Russian Bank*, U.S. DEP'T OF JUSTICE (Sep. 16, 2021), <https://www.justice.gov/sco/pr/grand-jury-indicts-dc-attorney-making-false-statements-fbi-2016-regarding-alleged>. Mr. Sussman was acquitted of all charges in May 2022. Eric Tucker, *Clinton 2016 campaign lawyer acquitted of lying to the FBI*, ASSOC. PRESS (May 31, 2022), <https://apnews.com/article/russia-ukraine-hillary-clinton-john-durham-presidential-elections-59158f83bd6a9159b420f2b04848b77f>. In November 2021, Durham charged Igor Danchenko with five counts of "making false statements to" Christopher Steele. Press Release, *Russian National Indicted for Making False Statements to the FBI*, U.S. DEP'T OF JUSTICE (Nov. 4, 2021), <https://www.justice.gov/sco/pr/russian-national-indicted-making-false-statements-fbi>. Mr. Danchenko was also acquitted on all counts at trial. Matthew Barakat, *Analyst acquitted at trial over discredited Trump dossier*, ASSOC. PRESS (Oct. 18, 2022), <https://apnews.com/article/russia-ukraine-donald-trump-think-tanks-john-durham-1150104ba00e16beb428299f2d130f60>.

³ John H. Durham, *Report on Matters Related to Intelligence Activities and Investigations Arising Out of the 2016 Presidential Campaigns*, U.S. DEP'T OF JUSTICE (May 12, 2023), <https://www.justice.gov/storage/durhamreport.pdf>.

investigation.⁴ According to public reporting, during those meetings, Italian officials shared credible evidence implicating former President Donald Trump in potential financial crimes.⁵ Because of the strength and seriousness of this evidence, Attorney General Barr acknowledged that the Department was compelled to investigate, but instead of allowing the investigation to proceed through normal channels, he asked Mr. Durham to handle the investigation secretly.⁶

Mr. Durham admitted in his testimony before the Committee “that investigative steps were taken, and grand jury subpoenas were issued” with respect to this secret investigation into former President Trump’s alleged financial crimes.⁷ However, when asked by Democratic Members of the Committee to explain his decision not to pursue further action with respect to former President Trump, Mr. Durham could only say that “it came to nothing” and that the matter was “outside the scope” of his report.⁸ When asked why information about the investigative trip to Italy and the allegations about the former president’s financial misconduct were not included in his final report, Mr. Durham answered, “I don’t know why I would have put that in a report.”⁹

As you know, the Justice Department’s use of a Special Counsel to investigate sensitive matters is meant to provide independence from political pressure and to ensure public confidence in the fairness of an investigation. In this instance, it appears that Attorney General Barr turned the Special Counsel regulations on their head and used the Special Counsel not to promote independence and fairness, but to bury a potentially significant criminal investigation from the public. Mr. Durham’s refusal to explain his decision not to charge former President Trump after secretly investigating him for alleged financial crimes is highly concerning, especially considering Mr. Durham’s extensive public discussion of evidence that was rejected by juries which acquitted the defendants that he charged.

⁴ “Mr. Ivey. I did want to follow up on your prior testimony about the trip that you and the Attorney General Barr took to Italy. And I wanted to ask you to elaborate on that. I take it that was at the point prior to you becoming Special Counsel, but not by much. Is that right?”

Mr. Durham. It was prior to that. I think it was a while before.

Mr. Ivey. The dates I’ve got, just to help out, August 15 and September 27, 2019. Does that sound about right?

Mr. Durham. Yeah, and I was appointed Special Counsel in October of 2020, so more than a year before that.” *Hearing on the Report of Special Counsel John Durham: Hearing Before the H. Comm. on the Judiciary*, 118th Cong. (Jun. 21, 2023).

⁵ Charlie Savage, Adam Goldman, & Katie Benner, *How Barr’s Quest to Find Flaws in the Russia Inquiry Unraveled*, N.Y. TIMES (Jan. 26, 2023), <https://www.nytimes.com/2023/01/26/us/politics/durham-trump-russia-barr.html>.

⁶ *Id.*

⁷ *Hearing on the Report of Special Counsel John Durham: Hearing Before the H. Comm. on the Judiciary*, 118th Cong. (Jun. 21, 2023).

⁸ “Ms. Lofgren. You -- I thought it was down a rabbit’s hole, but you and Attorney General Barr went to Italy to take a look at some allegation about foreign servers and Italian officials gave you evidence that they said linked Donald Trump to certain financial crimes. Did the Attorney General ask you to investigate that matter that the Italians referred to you and if so did you take any investigative steps and did you file charges, or if not did you file a declination memo for a decision not to charge in this case?”

Mr. Durham. The question is outside the scope of what I think I’m authorized to talk about. It’s not part of the report. I can tell you this, that investigative steps were taken, and grand jury subpoenas were issued and it came to nothing.” *Id.*

⁹ *Hearing on the Report of Special Counsel John Durham: Hearing Before the H. Comm. on the Judiciary*, 118th Cong. (Jun. 21, 2023).

I am writing now for answers to the following questions, which Mr. Durham refused to answer during last month's Judiciary Committee hearing:

1. What tips or evidence did Italian officials share with Attorney General Barr or Mr. Durham implicating former President Trump in alleged financial crimes?
2. When was this evidence received?
3. Why was this evidence not passed through typical channels to the FBI and/or the DOJ for investigation in the regular course?
4. Why was Mr. Durham tasked with investigating these allegations as part of his Special Counsel investigation?
5. Was there a grand jury investigation convened in this matter in the District of Columbia, or elsewhere?
6. How many grand jury subpoenas were issued in this investigation?
7. What individuals or organizations were the subjects or targets of this grand jury investigation?
8. What, if any, criminal charges were the grand jury asked to consider?
9. Why did Mr. Durham decide not to bring any criminal charges in this investigation?
10. Why didn't Mr. Durham write a declination memo explaining his decision not to charge former President Trump?
11. Why was the matter excluded from Special Counsel Durham's report?

Please provide a response to each of these questions as soon as possible, but not later than 5:00 p.m. on July 24, 2023.

Sincerely,



Jerrold Nadler
Ranking Member
Committee on the Judiciary

cc: The Honorable Jim Jordan, Chairman, Committee on the Judiciary