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January 23, 2020

By **CM/ECF**

Mark Langer
Clerk of Court
U.S. Court of Appeals for the D.C. Circuit
333 Constitution Ave. N.W.
Room 5205
Washington, D.C. 20001

Re: *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*, No. 19-5288

Pursuant to Rule 28(j), we write to inform the Court that the impeachment trial of President Trump commenced on January 21. These proceedings confirm the Committee's legal entitlement to the withheld grand-jury materials.

First, the proceedings underscore that an impeachment trial is a "judicial proceeding" under Rule 6(e). The Chief Justice opened the proceedings by stating "[t]he Senate will convene the *court of impeachment*." Tr. of Senate Trial, Day 2 pt. 1 at 00:00-03, *In Re Impeachment of President Donald J. Trump* (Jan. 21, 2020) (emphasis added). Each party has filed a "trial memorandum"; the "record" will be transferred to the Senate; the parties may make pretrial "motions"; the record materials may be "admitted into evidence"; President Trump may make "objections"; and the Chief Justice may adjudicate these objections. This describes a judicial proceeding.

Second, one of President Trump's defenses in the impeachment is that the House should have gone to court to obtain the information he withheld. The House did exactly that here. In response, DOJ reversed its decades-old position, defied the longstanding consensus of all three Branches, and argued that grand-jury materials are unavailable to Congress in advance of an impeachment trial. DOJ counsel went further at oral argument, contending that it could be "unconstitutional as applied" for courts even to adjudicate Rule 6(e) requests in the impeachment context. Tr. 87. The suggestion that courts could not adjudicate Congressional requests for documents

related to impeachment is undermined by President Trump's own argument that the courts should resolve the House's entitlement to withheld material.

Third, the commencement of the impeachment trial underscores the Committee's urgent need for the withheld material. The particularized-need standard turns on the "public interest," and it is difficult to conceive of a public interest more substantial than ensuring that the House obtains the evidence it needs to present its case regarding whether the President of the United States should be removed from office. The district court concluded nearly three months ago that the Committee has an entitlement to the material, and this Court has not stayed that ruling pending appeal. We respectfully urge the Court to rule expeditiously.

Respectfully submitted,

/s/ Douglas N. Letter

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CERTIFICATE OF SERVICE

I certify that on January 23, 2020, I caused the foregoing document to be filed via the U.S. Court of Appeals for District of Columbia Circuit CM/ECF system, which I understand caused a copy to be served on all registered parties.

/s/ Douglas N. Letter
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