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January 28, 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 of statements made by President Trump's attorney during the Senate impeachment trial that contradict DOJ's principal argument in this case.

During the Senate impeachment trial, one of President Trump's attorneys opened his remarks by informing the Senators that they do not sit as jurors. He then stated: "Rather, the Senate is a court. In fact, history teaches us that for literally decades, this body was referred to in this context as the high court of impeachment. So we are not a legislative chamber during these proceedings. We are in a tribunal. We are in court." 166 Cong. Rec. S580 (daily ed. Jan. 27, 2020) (statement of Kenneth Starr).

DOJ's principal argument in this case is that a Senate impeachment trial is not a "judicial proceeding" under Rule 6(e) because the Rule refers to proceedings in court. *See, e.g.*, Br. for Appellant at 21 (Dec. 2, 2019) (Rule 6(e) "refers to a proceeding occurring before a court"); DOJ 28(j) Letter at 1 (Jan. 4, 2020) ("[T]he Rule's text and structure demonstrate that it requires proceedings before a court, not the Senate."). That argument has now been contradicted by the President's counsel's statements to the Senate, which confirm that the Senate sits as a "court" rather than a "legislative chamber" during an impeachment trial. Because DOJ's position in this case cannot be reconciled with President's position in the impeachment, DOJ may wish to

withdraw its argument that a Senate impeachment trial does not qualify as a judicial proceeding.

Respectfully submitted,

/s/ Douglas N. Letter

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CERTIFICATE OF SERVICE

I certify that on January 28, 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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