

No. 21-932

In the
Supreme Court of the United States

DONALD J. TRUMP, IN HIS CAPACITY AS THE
45th PRESIDENT OF THE UNITED STATES,
Petitioner,

v.

BENNIE G. THOMPSON, IN HIS OFFICIAL
CAPACITY AS CHAIRMAN OF THE UNITED
STATES HOUSE SELECT COMMITTEE TO
INVESTIGATE THE JANUARY 6TH ATTACK ON
THE UNITED STATES CAPITOL, et al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE D.C. CIRCUIT

SUPPLEMENTAL BRIEF FOR PETITIONER

JUSTIN CLARK
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SUPPLEMENTAL BRIEF FOR PETITIONER

President Donald J. Trump files this supplemental brief to his Petition for a Writ of Certiorari pursuant to Supreme Court Rule 15. On December 23, 2021, hours after President Trump filed his petition, the *Washington Post* published an article titled “Thompson says Jan. 6 committee focused on Trump’s hours of silence during attack, weighing criminal referrals.”¹ The article details how the Select Committee to Investigate the January 6 Attack on the United States Capitol is looking to find evidence that could provide the basis for a criminal referral to the United States Department of Justice.

In the article, the *Post* interviewed the Select Committee’s Chairman Bennie Thompson, who admitted his goal of uncovering information that could result in a criminal referral to the Department of Justice. The interview disclosed that he is seeking to access tape recordings of President Trump from the afternoon of January 6, 2021, which, he alleges, will reveal that President Trump was reluctant to issue a message to protesters asking them to leave the Capitol. The *Post* quotes Chairman Thompson remarking: “That dereliction of duty causes us real concern . . . And one of those concerns is that whether or not it was intentional, and whether or not that lack

¹ Tom Hamburger, Jacqueline Alemany, Josh Dawsey, and Matt Zapotosky, *Thompson says Jan. 6 committee focused on Trump’s hours of silence during attack, weighing criminal referrals*, WASHINGTON POST (Dec. 23, 2021 at 7:00 P.M. EST), https://www.washingtonpost.com/politics/january-6-thompson-trump/2021/12/23/36318a92-6384-11ec-a7e8-3a8455b71fad_story.html.

of attention for that longer period of time, would warrant a referral.”²

In his petition, President Trump explained that the Committee is acting as an inquisitorial tribunal seeking evidence of criminal activity. Pet. for Writ of Certiorari, 16-17, *Trump v. Thompson, et al.*, (Dec. 23, 2021). Such a purpose is outside of any of Congress’s legislative powers. See U.S. Const., Art. I, Sect. 8. Now the *Washington Post* has confirmed what was already apparent—the Committee is indeed seeking any excuse to refer a political rival for criminal charges, and they are using this investigation to do so.

The Committee cannot make a mockery of Congress’s constitutional mandate that its requests and investigation be supported by a “valid legislative purpose.” It cannot embark on what is essentially a law enforcement investigation with the excuse that it might legislate based on information it turns up in the course of the exploration. *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2032 (2020). Yet that is precisely what is happening here.

Even the *Post* understood the concerning ramifications of this latest revelation. The article specifically recognized that Chairman Thompson’s admission that the Committee is engaged in a criminal inquiry is legally problematic. Indeed, it acknowledged that “the committee’s focus on criminal referrals could also boost the claims of those resisting subpoenas that lawmakers’ inquiry doesn’t have a legislative purpose, but rather, is meant to uncover

² *Id.*

crimes.”³ Given Chairman Thompson’s comment, as well as those of Committee members Adam Schiff, Adam Kinzinger, and others, there is no subtlety left; the Committee is engaging in an inappropriate inquiry. Consequently, its requests violate the Presidential Records Act, separation of powers, and executive privilege. A vague recitation of some amorphous legislative goal is insufficient to meet statutory or constitutional muster, especially since Committee members have been speaking so freely about their true goals of exposure for its own sake and criminal prosecution. To ensure that this abuse of legislative power is not left unchecked to fester and grow, the Court should grant President Trump’s petition.

CONCLUSION

For the foregoing reasons and for those explained in the petition, the Court should grant the petition for a writ of certiorari.

³ *Id.* (quoting an unnamed legal source stating, “I think the downside in a case like this is, it’s going to feed into any claim from Trump or anyone else who might be charged that this is really just a political witch hunt.”).

Respectfully submitted,

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