

‘Are you kidding me?’: Biden-appointed judge torches DOJ for blowing off Hunter Biden-related subpoenas from House GOP

- **Judge Ana Reyes also dinged the House for seeking testimony that is clearly privileged.**

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A federal judge tore into the Justice Department on Friday for blowing off Hunter Biden-related subpoenas issued in the impeachment probe of his father, President Joe Biden, pointing out that a former aide to Donald Trump is sitting in prison for similar defiance of Congress.

U.S. District Judge Ana Reyes, a Biden appointee on the federal District Court in Washington, spent nearly an hour accusing Justice Department attorneys of rank hypocrisy for instructing two other lawyers in the DOJ Tax Division not to comply with the House subpoenas.

“There’s a person in jail right now because you all brought a criminal lawsuit against him because he did not appear for a House subpoena,” Reyes said, referring to the [recent imprisonment of Peter Navarro](#), a former Trump trade adviser, for defying a subpoena from the Jan. 6 select committee. “And now you guys are flouting those subpoenas. ... And you don’t have to show up?”

“I think it’s quite rich you guys pursue criminal investigations and put people in jail for not showing up,” but then direct current executive branch employees to take the same approach, the judge added. “You all are making a bunch of arguments that you would never accept from any other litigant.”

It was a remarkable, frenetic thrashing in what was expected to be a relatively routine, introductory status conference after the House Judiciary Committee sued last month to enforce its subpoena of DOJ attorneys Mark Daly and Jack Morgan over their involvement in the investigation of Hunter Biden’s [alleged tax crimes](#).

Republicans are demanding the two attorneys testify and say it’s crucial for their ongoing impeachment probe of the elder Biden. But the Justice Department argues that subpoenaing two rank-and-file, or “line,” attorneys to seek details about an ongoing investigation would be a violation of the separation of powers.

Reyes has been on the bench for just over a year. Rarely seeming to stop to catch her breath, she repeatedly dressed down DOJ attorney James Gilligan as he sought to explain the department’s position, scolding him at times for interrupting her before continuing a torrid tongue-lashing that DOJ rarely receives from the bench. She delved

into great detail about the nuances of House procedure — like the chamber’s rule against allowing executive branch lawyers to attend depositions — and even asked whether the Judiciary Committee had followed internal rules requiring that the ranking Democrat on the panel be notified of the subpoena to the DOJ attorneys before it was issued.

Yet, perhaps even more remarkably, Reyes seemed inclined to support DOJ’s central argument that the line attorneys cannot be compelled to answer substantive questions from Congress. They just need to show up and assert privileges on a question-by-question basis, she said — the type of thing, she said, that DOJ demands from others “seven days a week ... and twice on Sunday.”

Indeed, while Reyes was withering in her attacks on the DOJ’s position, she was similarly unflinching in her criticism of the House for its stance in the dispute — particularly its claim that line lawyers working on the Hunter Biden tax probe are not entitled to attorney-client privilege. She also said she thought it absurd for the House to argue that privilege was waived because it was obscuring some crime or fraud within the executive branch.

“I don’t think you’re going to win that fight,” the judge told House Counsel Matthew Berry, saying at one point that she “can’t imagine” ruling for the House on that issue.

At bottom, Reyes said she viewed it as unlikely that the two DOJ attorneys would ultimately be required to answer anything of substance from Congress, but that the department’s effort to prevent them from showing up at all was a brazen affront.

“I imagine that there are hundreds, if not thousands of defense attorneys ... who would be happy to hear that DOJ’s position is, if you don’t agree with a subpoena, if you believe it’s unconstitutional or unlawful, you can unilaterally not show up,” the judge said.

Gilligan suggested that the employees subpoenaed in the dispute at issue are current employees, while Navarro and another Trump adviser who was convicted of similar charges, Steve Bannon, were no longer on the government’s payroll when their testimony was demanded.

The judge didn’t seem impressed with that distinction and downplayed the significance of a Trump-era [Office of Legal Counsel opinion](#) contending that executive branch employees could defy such subpoenas if Justice Department lawyers were not allowed to be present.

“Last time I checked, the Office of Legal Counsel was not the court,” she said.

Reyes also sounded stunned when Gilligan refused to commit to instructing the two subpoenaed lawyers to show up if the House dropped its objection to allowing government counsel to sit in the room.

“It would be a different situation,” Gilligan said. “I cannot answer that now.”

“Are you kidding me?” the judge responded.

Reyes ultimately ordered the Justice Department to send lawyers to the Capitol next week to confer with Berry and attempt to hammer out a workable agreement. And she said that if the two sides did not work out a deal, she planned to require them to estimate the total cost to the taxpayers of continuing the legal fight, which past precedent suggests could drag out for years.

“I don’t think the taxpayers want to fund a grudge match between the executive and the legislative,” she said. “Bad cases make bad law. ... This is a bad, bad case for both of you.”