



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, DC 20530

June 14, 2024

The Honorable Mike Johnson
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Speaker Johnson:

As you know, the President asserted executive privilege and directed the Attorney General not to release materials subpoenaed by the House Committees on the Judiciary and Oversight and Accountability (Committees) related to the investigation conducted by Special Counsel Robert K. Hur. That directive was based on a legal opinion from the Department of Justice (Department) advising that asserting privilege would be legally proper. The President's directive was issued after the Department produced materials responsive to all four requests in the Committees' subpoenas. The Department provided Special Counsel Hur's report without any additional redactions and facilitated his congressional testimony. The Department also produced transcripts of the Special Counsel's interviews of the President and Mark Zwonitzer, the two classified documents that the Committees requested, and correspondence regarding the Special Counsel's report that the Committees requested.

Notwithstanding the Department's efforts to accommodate the Committees' requests and the Committees' lack of a sufficient need for the audio files that would further a legitimate congressional purpose, and despite the President's directive, on May 16, 2024, the Committees adopted resolutions recommending that the House of Representatives (House) cite the Attorney General for contempt. On May 24, 2024, the Committee on the Judiciary referred its report on its resolution to the full House, and on May 31, 2024, the Committee on Oversight and Accountability referred its report on its resolution to the full House. On June 12, 2024, the House adopted a contempt resolution, which calls upon you to refer the report to the U.S. Attorney for the District of Columbia for prosecution under the contempt of Congress statute, 2 U.S.C. §§ 192, 194.

The longstanding position of the Department is that we will not prosecute an official for contempt of Congress for declining to provide subpoenaed information subject to a presidential assertion of executive privilege, as explained in our May 16, 2024, letter to the Committees.¹ Across administrations of both political parties, we have consistently adhered to the position that

¹ Letter for Hon. Jim Jordan and Hon. James Comer from Asst. Att'y Gen. Carlos Uriarte (May 16, 2024).

“the contempt of Congress statute was not intended to apply and could not constitutionally be applied to an Executive Branch official who asserts the President’s claim of executive privilege.” *Prosecution for Contempt of Congress of an Executive Branch Official Who Has Asserted a Claim of Executive Privilege*, 8 Op. O.L.C. 101, 102 (1984). *See also Application of 28 U.S.C. § 458 to Presidential Appointments of Federal Judges*, 19 Op. O.L.C. 350, 356 (1995); *Whether the Department of Justice May Prosecute White House Officials for Contempt of Congress*, 32 Op. O.L.C. 65, 65-69 (2008); *Attempted Exclusion of Agency Counsel from Congressional Depositions of Agency Employees*, 43 Op. O.L.C. ___, *14 (May 23, 2019); Submission of Deputy Attorney General William P. Rogers, Availability of Information from Federal Departments and Agencies: Hearings Before a Subcomm. of the House Comm. on Gov’t Operations, 84th Cong. 2891, 2933 (1956).

For instance, the Department relied on this longstanding position in 2008, in declining to prosecute two White House officials who were the subject of a contempt of Congress referral from the House. After President George W. Bush asserted executive privilege and directed Joshua Bolten and Harriett Miers not to release certain documents or provide related testimony subpoenaed by the Committee on the Judiciary, the House adopted a contempt resolution, which Speaker Nancy Pelosi referred for prosecution. Attorney General Michael Mukasey informed Speaker Pelosi that “the Department has determined that the non-compliance by Mr. Bolten and Ms. Miers with the Judiciary Committee subpoenas did not constitute a crime, and therefore the Department will not bring the congressional contempt citations before a grand jury or take any other action to prosecute Mr. Bolten or Ms. Miers.” Letter for Nancy Pelosi, Speaker, from Michael B. Mukasey, Attorney General at 2 (Feb. 29, 2008).

The Department took the same position in 2012 after President Barack Obama asserted executive privilege and directed Attorney General Eric Holder not to release certain documents responsive to a subpoena in connection with an investigation of the Committee on Oversight and Government Reform. After the House voted to hold Attorney General Holder in contempt of Congress for non-compliance with the subpoena, the Department informed Speaker John Boehner that “the Attorney General’s response to the subpoena issued by the Committee on Oversight and Government Reform does not constitute a crime, and therefore the Department will not bring the congressional contempt citation before a grand jury or take any other action to prosecute the Attorney General.” Letter for John A. Boehner, Speaker, from James M. Cole, Deputy Attorney General at 2 (June 28, 2012).

The Department also took the same position in 2019 after President Donald Trump asserted executive privilege and directed Attorney General William Barr and Secretary of Commerce Wilbur Ross not to release certain documents responsive to subpoenas issued by the Committee on Oversight and Reform. Notwithstanding President Trump’s directive and the Department’s efforts to accommodate the Committee, the House voted to hold the Attorney General and the Secretary in contempt. After that vote, the Department informed Speaker Pelosi that “the responses by the Attorney General and Secretary of Commerce to the subpoenas issued by the Committee on Oversight and Reform did not constitute a crime, and accordingly the Department will not bring the congressional contempt citation before a grand jury or take any other action to prosecute the Attorney General or the Secretary.” Letter for Nancy Pelosi, Speaker, from Jeffrey A. Rosen, Deputy Attorney General at 2 (July 24, 2019).

Consistent with this longstanding position and uniform practice, the Department has determined that the responses by Attorney General Garland to the subpoenas issued by the Committees did not constitute a crime, and accordingly the Department will not bring the congressional contempt citation before a grand jury or take any other action to prosecute the Attorney General.

Please do not hesitate to contact the Department if you would like to discuss this matter further.

Sincerely,



Carlos Felipe Uriarte
Assistant Attorney General

cc:

The Honorable Hakeem Jeffries
Minority Leader
U.S. House of Representatives
Washington, DC 20515