

THE WHITE HOUSE

WASHINGTON

May 21, 2019

The Honorable Elijah E. Cummings
Chairman
Committee on Oversight and Reform
House of Representatives
Washington, D.C. 20515

Dear Chairman Cummings:

I write in response to the Committee's letters of April 29, 2019, and May 7, 2019, to former Kansas Secretary of State Kris Kobach. According to those letters, the Committee seeks to conduct a transcribed interview of Mr. Kobach regarding "the addition of a citizenship question to the 2020 Census." The Committee's letters indicate that topics covered during the interview will include Mr. Kobach's conversations with the President and other Administration officials. We understand that the interview will occur by telephone tomorrow at 9:30 a.m.

It is a well-established legal principle, rooted in the constitutional separation of powers, that the President's communications seeking advice or information in connection with the discharge of his duties are highly confidential and not ordinarily subject to disclosure. As the Supreme Court explained over forty years ago, "[a] President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately." *United States v. Nixon*, 418 U.S. 683, 708 (1974). In light of this long-standing precedent, Mr. Kobach's conversations with the President and with senior White House advisers who advise the President are confidential, and he would not be permitted to discuss those conversations during a transcribed interview. This position is consistent with governing Supreme Court precedent and the long-standing practice of administrations from both political parties.

The Committee claims that Mr. Kobach's conversations with the President and senior White House advisers are not subject to executive privilege because "Mr. Kobach was not an employee of the Executive Branch, and the communications at issue did not relate to presidential decision-making." However, the Executive Branch's confidentiality interests are not limited solely to communications directly involving the President and other Executive Branch officials. Rather, a President and his senior advisers must frequently consult with individuals outside of the Executive Branch, and those communications are also subject to protection. *See Assertion of Executive Privilege Concerning the Dismissal and Replacement of U.S. Attorneys*, 31 Op. O.L.C. 1, 5 (2007) ("That the communications involve individuals outside the Executive Branch does not undermine the President's confidentiality interests."). Moreover, contrary to the Committee's claim, the protections for presidential conversations are not limited to presidential decision-making. Rather, they sweep more broadly and include all communications relating to the President's performance of his official duties and responsibilities. *See Nixon v. Administrator of*

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General Services, 433 U.S. 425, 449 (1977) (Executive Branch confidentiality interests cover “communications in performance of a President’s responsibilities”) (internal quotation marks and citation omitted). Of course, those duties and responsibilities include supervising federal agencies and having discussions with advisers about what actions those agencies should take.

Accordingly, if the Committee wishes to proceed with a transcribed interview of Mr. Kobach, the White House will instruct Mr. Kobach not to discuss the substance of any conversations he had with the President or senior White House advisers about official government matters, including “the addition of a citizenship question to the 2020 Census.”

Finally, as a matter of basic courtesy and respect for a co-equal branch of our government, I request that you direct your staff to work through the Office of the White House Counsel to request information of the nature you seek from Mr. Kobach. Consulting with this office will ensure that the Committee efficiently obtains access to the information to which it is entitled and that any disclosure of privileged information to Congress is properly authorized. As always, I am happy to discuss any of the issues raised in this letter at your convenience.

Sincerely,



Michael M. Purpura
Deputy Counsel to the President

cc: The Honorable Jim Jordan, Ranking Member