

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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<http://oversight.house.gov>

April 10, 2019

The Honorable William P. Barr  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20230

Dear Mr. Attorney General:

I am writing in response to a letter sent yesterday by Assistant Attorney General Stephen Boyd regarding the Committee's deposition of Department of Justice official John Gore, which is scheduled for tomorrow, April 11, 2019.

Mr. Boyd's letter states that "the Attorney General has determined that Mr. Gore will not appear at the April 11 deposition unless a Department representative may accompany him."<sup>1</sup>

You appear to be instructing Mr. Gore to defy a duly authorized congressional subpoena approved by the Committee on a bipartisan basis, as well as rules adopted unanimously by the Committee in January that have been in place for more than a decade.

The Committee expects Mr. Gore to testify in accordance with the Committee's lawful subpoena and the Committee's rules. If Mr. Gore fails to comply with the subpoena, the Committee will consider him to be in contempt of Congress.

### Background

On April 2, 2019, the Committee voted on a bipartisan basis to authorize a subpoena to require Mr. Gore to testify at a deposition on April 11, 2019, in connection with the Committee's investigation of the addition of a citizenship question to the 2020 Census. I issued the subpoena the same day, and the Department accepted service on Mr. Gore's behalf.

Before issuing the subpoena, the Committee sought repeatedly to obtain the information voluntarily. On March 7, 2019, Committee staff conducted a transcribed interview with Mr.

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<sup>1</sup> Letter from Stephen E. Boyd, Assistant Attorney General, Department of Justice, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Apr. 9, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-4-9%20HOCR%27s%20subpoena%20to%20John%20Gore%20%28CRT%29%20-%20Cummings%20%234235573.pdf>).

Gore, but Mr. Gore refused to answer more than 150 questions at the direction of Department counsel.

The Department did not assert—and has not asserted—any valid privilege, but instead has been making vague claims of executive branch confidentiality interests and ongoing litigation concerns. The Committee has already explained on multiple occasions that these are not valid legal privileges that may be asserted to withhold information from this Committee.<sup>2</sup>

After the interview, as an accommodation, Committee staff identified 18 key questions that Mr. Gore had refused to answer and invited him to return voluntarily to address that narrow set of questions. The Department refused to make him available, which made the subpoena necessary.

Committee Rule 15, which governs depositions, was adopted unanimously on January 29, 2019. Rule 15(e) states:

Witnesses may be accompanied at a deposition by counsel to advise them of their rights. No one may be present at depositions except members, Committee staff designated by the Chair of the Committee or the Ranking Minority Member of the Committee, an official reporter, the witness, and the witness's counsel. ***Observers or counsel for other persons, or for agencies under investigation, may not attend.***<sup>3</sup>

Mr. Boyd's letter states: "We do not understand the basis for such a rule."<sup>4</sup> The basis for this rule is straightforward: it ensures that the Committee is able to depose witnesses in furtherance of its investigations without having in the room representatives of the agency under investigation. The rule nevertheless protects the rights of witnesses by allowing them to be accompanied by personal counsel. In fact, Mr. Gore is represented by private counsel in this matter.

Mr. Boyd's letter asserts that the Committee's rule "would unconstitutionally infringe upon the prerogatives of the Executive Branch."<sup>5</sup> That claim is erroneous.

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<sup>2</sup> See, e.g., Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Stephen E. Boyd, Assistant Attorney General, Department of Justice (Apr. 2, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-04-02.EEC%20to%20Boyd-DOJ%20re%20Census.pdf>); Email from Majority Staff, Committee on Oversight and Reform, to Staff, Department of Justice (Mar. 7, 2019); Email from Majority Staff, Committee on Oversight and Reform, to Staff, Department of Justice, and Minority Staff, Committee on Oversight and Reform (Mar. 4, 2019).

<sup>3</sup> Rules of the Committee on Oversight and Reform for the 116th Congress (emphasis added) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/COR%20Rules%20-%20passed.pdf>).

<sup>4</sup> Letter from Stephen E. Boyd, Assistant Attorney General, Department of Justice, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Apr. 9, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-4-9%20HOG%27s%20subpoena%20to%20John%20Gore%20%28CRT%29%20-%20Cummings%20%234235573.pdf>).

<sup>5</sup> *Id.*

The Committee's rules are adopted pursuant to Congress' constitutional authority to "determine the Rules of its Proceedings."<sup>6</sup>

The rule in question has been in place for more than a decade under both Democratic and Republican chairmen.<sup>7</sup> During that time, the Committee has conducted multiple depositions with federal officials without agency counsel present, including during the current Administration.<sup>8</sup>

Moreover, the Department has had ample opportunity to protect its interests in connection with tomorrow's deposition. The Department is well aware of the scope of the deposition, based on the issues raised at Mr. Gore's March 7 interview and the list of 18 questions provided by Committee staff.

To the extent the Department believes that an issue that will be raised at the deposition may implicate a valid privilege, the Department may seek to assert that privilege with the Committee. To date, however, the Department has not done so.

As an additional accommodation, the Committee will make available a separate room in the Committee's offices for Department counsel during the deposition. If necessary, Mr. Gore or his counsel may request a break during the deposition to consult with Department counsel.

If you have any additional questions, please contact Committee staff at (202) 225-5051.

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<sup>6</sup> U.S. Const., Art I, sec. 5, cl. 2.

<sup>7</sup> Committee on Oversight and Government Reform, Rule 15(e), 115th Congress (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/OGR-Cmte-Rules-115-FINAL.pdf>); Committee on Oversight and Government Reform, Rule 15(d), 114th Congress (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/OGR%20Rules%20114th%20.pdf>); Committee on Oversight and Government Reform, Rule 15(d), 113th Congress (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/OGR%20Committee-Rules-113th-Congress.pdf>); Committee on Oversight and Government Reform, Rule 15(d), 112th Congress (online at [https://web.archive.org/web/20110604181945/http://oversight.house.gov/images/stories/Other\\_Documents/ogr%20committee%20rules%20resolution.pdf](https://web.archive.org/web/20110604181945/http://oversight.house.gov/images/stories/Other_Documents/ogr%20committee%20rules%20resolution.pdf)); Committee on Oversight and Government Reform, Rule 22, 111th Congress (online at <https://web.archive.org/web/20090625011541/http://oversight.house.gov/rules/>); Committee on Oversight and Government Reform, Rule 22 (110th Congress) (online at <https://web.archive.org/web/20071226191125/http://oversight.house.gov/rules/>). The Committee had previously adopted the same rule in 1998, when the Committee was granted deposition authority as part of its investigation into fundraising issues in the Clinton Administration. See Committee on Government Reform Rule 20, 105th Congress (online at [www.govinfo.gov/content/pkg/CPRT-105HPRT49381/pdf/CPRT-105HPRT49381.pdf](http://www.govinfo.gov/content/pkg/CPRT-105HPRT49381/pdf/CPRT-105HPRT49381.pdf)).

<sup>8</sup> For example, in September 2018, under Republican Chairman Trey Gowdy, the Committee conducted a deposition of Principal Deputy General Counsel of the Department of Homeland Security, Joseph Maher. Mr. Maher's personal counsel attended, but agency counsel did not. Similarly, in 2007, under Chairman Henry Waxman, the Committee conducted depositions of White House employees Sara Taylor, Matt Schlapp, and Mindy McLaughlin. Personal counsel attended each deposition, but the White House Counsel's Office did not.

Sincerely,

A handwritten signature in blue ink, reading "Elijah E. Cummings". The signature is stylized and cursive, with the first name "Elijah" being larger and more prominent than the last name "Cummings".

Elijah E. Cummings  
Chairman

cc: The Honorable Jim Jordan, Ranking Member