

THE WHITE HOUSE

WASHINGTON

July 15, 2019

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

Dear Chairman Cummings:

I write concerning the subpoena issued by the Committee on Oversight and Reform (the “Committee”) to Kellyanne Conway on June 26, 2019. The subpoena directs Ms. Conway to testify before the Committee on Monday, July 15, 2019, at 4 p.m. As you are aware, Ms. Conway is currently serving as a senior adviser to the President in the White House, holding the titles of Assistant to the President and Senior Counselor to the President. The subpoena appears to seek testimony from Ms. Conway concerning her service in the White House. As you know, in accordance with long-standing, bipartisan precedent, Ms. Conway cannot be compelled to testify before Congress with respect to matters related to her service as a senior adviser to the President.

The Department of Justice (the “Department”) has advised me that Ms. Conway is absolutely immune from compelled congressional testimony with respect to matters related to her service as a senior adviser to the President. See Letter to Pat A. Cipollone, Counsel to the President, from Steven A. Engel, Assistant Attorney General, Office of Legal Counsel (July 12, 2019). The Department has long taken the position—across administrations of both political parties—that “the President’s immediate advisers are absolutely immune from congressional testimonial process.” *Immunity of the Assistant to the President and Director of the Office of Political Strategy and Outreach from Congressional Subpoena*, 38 Op. O.L.C. __, *1 (July 15, 2014); see also *Testimonial Immunity Before Congress of the Former Counsel to the President*, 43 Op. O.L.C. __, *2 (May 20, 2019) (“[T]he White House has opposed sending senior advisers to testify for almost as long as there has been an Executive Office of the President.”); *Immunity of the Counsel to the President from Compelled Congressional Testimony*, 20 Op. O.L.C. 308, 308 (1996). That immunity arises from the President’s position as head of the Executive Branch and from Ms. Conway’s position as a senior adviser to the President, specifically Assistant to the President and Senior Counselor to the President. “Subjecting a senior presidential advisor to the congressional subpoena power would be akin to requiring the President himself to appear before Congress on matters relating to the performance of his constitutionally assigned executive functions.” *Assertion of Executive Privilege with Respect to Clemency Decision*, 23 Op. O.L.C. 1, 5 (1999).

As the Department has recognized, “[w]hile a senior presidential adviser, like other executive officials, could rely on executive privilege to decline to answer specific questions at a hearing, the privilege is insufficient to ameliorate several threats that compelled testimony poses to the independence and candor of executive councils.” *Testimonial Immunity Before Congress of*

the Former Counsel to the President, 43 Op. O.L.C. at *6. “[C]ompelled congressional testimony ‘create[s] an inherent and substantial risk of inadvertent or coerced disclosure of confidential information,’ despite the availability of claims of executive privilege with respect to the specific questions asked during such testimony.” *Id.* (quoting *Immunity of the Assistant to the President and Director of the Office of Political Strategy and Outreach from Congressional Subpoena*, 38 Op. O.L.C. at *4). In addition, the threat of compelled interrogation about confidential communications with the President or his senior staff “could chill presidential advisers from providing unpopular advice or from fully examining an issue with the President or others.” *Id.* Furthermore, given the frequency with which testimony of a senior presidential adviser would fall within the scope of executive privilege, compelling such an adviser’s appearance is unlikely to promote any valid legislative interests. *Id.* at *6-7. Compelling senior presidential advisers to testify in situations where they must repeatedly cite executive privilege and decline to provide answers would be inefficient and contrary to good-faith governance. *See id.* at *7. Finally, the constitutional immunity of current and former senior advisers to the President exists to protect the institution of the Presidency, and as stated by former Attorney General Janet Reno, “may not be overborne by competing congressional interests.” *Assertion of Executive Privilege with Respect to Clemency Decision*, 23 Op. O.L.C. at 5.

Because of this constitutional immunity, and in order to protect the prerogatives of the Office of the President, the President has directed Ms. Conway not to appear at the Committee’s scheduled hearing on Monday, July 15, 2019. The long-standing principle of immunity for senior advisers to the President is firmly rooted in the Constitution’s separation of powers and protects the core functions of the Presidency. We are adhering to this well-established precedent in order to ensure that future Presidents can effectively execute the responsibilities of the Office of the President.

Thank you for your attention to this matter. Please do not hesitate to contact me or Mike Purpura if you have any questions.

Sincerely,

A handwritten signature in black ink, reading "Pat A. Cipollone". The signature is written in a cursive, flowing style with a large initial "P" and "C".

Pat A. Cipollone
Counsel to the President

cc: The Honorable Jim Jordan, Ranking Member