THE SECRETARY OF STATE
WASHINGTON

October 1, 2019

The Honorable
Adam Schiff, Chairman
Permanent Select Committee on Intelligence
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

We are in receipt of your September 27, 2019 letter requesting the Department to voluntarily make available five current and former Department officials for depositions.

I am concerned with aspects of your request, described more fully below, that can be understood only as an attempt to intimidate, bully, and treat improperly the distinguished professionals of the Department of State, including several career Foreign Service Officers, whom the Committee is now targeting. I have also been made aware that Committee staff has been sending intimidating communications to career Department professionals, who have specifically asked for Committee communications to be channeled through the Bureau of Legislative Affairs, as is customary. Let me be clear: I will not tolerate such tactics, and I will use all means at my disposal to prevent and expose any attempts to intimidate the dedicated professionals whom I am proud to lead and serve alongside at the Department of State.

Your letter also raises significant legal and procedural concerns. First, your letter raises fundamental legal questions related to the authority of the Committee to compel an appearance for a deposition solely by virtue of these letters. Your letter implies that you have sought to compel Department officials to appear for depositions on the identified dates, yet the Committee has not issued any subpoenas for depositions, and we are not aware of any other authority by which the committee could compel appearance at a deposition. The House Rules also require the Committee to provide a Notice of Deposition, but your letter contains no such notice and otherwise fails to meet the requirements of those rules. It therefore appears that your letter may only be read as a request for a voluntary appearance of the five Department officials.

Second, your letter provides a woefully inadequate opportunity for the Department and the requested witnesses to prepare. These individuals have retained, or may be retaining, private counsel, as is their constitutional right, and in the course of the Department's discussions with these individuals, several have indicated that they need more time both to retain and to consult with private counsel. In addition, State Department counsel must consult with these officials and their counsel, once retained, regarding the Department's legitimate interests in safeguarding potentially privileged and classified information. The proposed dates for the depositions do not provide adequate time for the Department and its employees to appropriately prepare.

Third, your letter, and subsequent communications by Committee staff, indicate that the Committee intends to prevent State Department counsel from participating in the depositions of current and former Department officials. This amounts to an attempt to circumvent the Executive Branch's unquestionably legitimate constitutional interest in protecting potentially privileged information related to the conduct of diplomatic relations. This information may also remain subject to federal rules relating to the unauthorized disclosure of classified information. As the Department of Justice has made clear, a congressional committee may not validly prohibit agency counsel from being present during an employee deposition, because such an exclusion "would impair the President's constitutional authority to control the disclosure of privileged information and to supervise the Executive Branch's communications with Congress."[1] Therefore, the five officials subject to your letter may not attend any interview or deposition without counsel from the Executive Branch present to ensure that the Executive Branch's constitutional authority to control the disclosure of confidential information, including deliberative matters and diplomatic communications, is not impaired.

Fourth, the invitations the Committee sent to the five Department officials include requests that each of them personally produce a vast amount of documents. These requests appear to duplicate the subpoena that was previously served on the Secretary of State. The requested records constitute the property of the Department of State and are subject to restrictions on the unauthorized disclosure of classified information and various Executive Branch privileges. By purporting to induce individual Department professionals and career Foreign Service Officers to produce materials that are not theirs to produce – which could potentially constitute a violation of numerous civil and criminal statutes and regulations if proper procedures are not followed – the Committee has engaged in an act of intimidation and an invitation to violate federal records laws.

Finally, you have asserted that failure by Department officials to meet your demonstrably inadequate timeline for voluntary appearances "shall constitute evidence of obstruction." There is no legal basis for such a threat. Given the serious substantive and procedural deficiencies in the Committee's requests, including the Committee's apparent effort to circumvent Executive Branch constitutional interests in having Department counsel present at any depositions, the Committee's assertion lacks any recognized legal basis. I urge you to exercise restraint in making such unfounded statements in the future.

The Department also acknowledges receipt of the subpoena communicated by separate letter dated September 27, 2019 and intends to respond to that subpoena by the noticed return date of October 4, 2019.

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[1] Department of Justice, Office of Legal Counsel, Slip Opinion (May 23, 2019) ("Congress may not constitutionally prohibit agency counsel from accompanying agency employees called to testify about matters that potentially involve information protected by executive privilege.")

Based on the profound procedural and legal deficiencies noted above, the Committee's requested dates for depositions are not feasible. The Department will be in further contact with the Committee in the near future as we obtain further clarity on these matters.

Sincerely yours,

Michael R. Pompeo

Cc: The Honorable Devin Nunes, Ranking Member
House Permanent Select Committee on Intelligence