

PAUL HASTINGS



October 17, 2019

Adam B. Schiff
Chairman
Permanent Select Committee on Intelligence
United States House of Representatives
Washington, DC 20515

Elijah E. Cummings
Chairman
Committee on Oversight and Reform
United States House of Representatives
Washington, DC 20515

Eliot L. Engel
Chairman
Committee on Foreign Affairs
United States House of Representatives
Washington, DC 20515

Re: Document Subpoena

Dear Chairmen Schiff, Cummings, and Engel:

I write in response to your letter dated October 14, 2019, regarding the subpoena issued to Ambassador Gordon Sondland by the House Committees.

As we have discussed, all of the responsive documents you have requested are federal records under the Federal Records Act. *See* 44 U.S.C. §3301. Ambassador Sondland has taken pains to ensure that all potentially responsive documents, regardless of the device or platform on which they were created, have been turned over to the State Department in accordance with applicable regulations. These records are in the possession, custody, and control of the State Department. Under law and the State Department regulations, Ambassador Sondland is precluded, in his personal capacity, from producing these official records. Respectfully, therefore, Ambassador Sondland cannot comply with the Committees' document requests.

The State Department has asserted that disclosure of these materials may implicate executive privilege, confidentiality, and other constitutional interests of the executive branch. On that basis and others, the State Department has directed Ambassador Sondland and other similarly situated employees not to provide documents without State Department's approval. *See* Letter from Michael R. Pompeo, Secretary of State, to Eliot L. Engel, Chairman, United States House of Representatives Committee on Foreign Affairs (Oct. 1, 2019); Letter from Brian Bulatao, Under Secretary of State, State Department, to Robert Luskin, Attorney, Paul Hastings (Oct. 16, 2019); *see also* 12 FAM 543(c) (requiring State Department employees to "be sure that [any]

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distribution [of non-classified sensitive business information] is permissible and, when required, specifically authorized”).

The White House has also taken the view that “[i]t is not up to an individual employee or former employee to undertake that analysis herself and to disclose privileged information based on her own individual assessments.” Letter from Michael M. Purpura, Deputy Counsel, White House, to Lee S. Wolosky, Boies Schiller Flexner LLP (October 14, 2019).

As a matter of law, Ambassador Sondland is not free to substitute his views on this matter for those of his employer, the State Department. The courts have consistently affirmed the view that the Executive and Legislative branches should resolve any such disclosure issues among themselves. See *United States v. American Tel. & Tel. Co.*, 567 F.2d 121 (D.C. Cir. 1977); *Comm. on the Judiciary v. Miers*, 558 F. Supp. 2d 53, 57 (D.D.C. 2008) (“strongly encourage[ing] the political branches to resume their discourse and negotiations in an effort to resolve their differences constructively”).

Ambassador Sondland has encouraged the State Department to provide the Committees with the requested documents in advance of his deposition. He strongly believes that disclosure will lead to a more fulsome and accurate inquiry into the matters at issue and will corroborate the testimony that he will give in key respects. However, the choice is not his to make, and so we must regretfully decline to produce the documents that the Committees have requested from Ambassador Sondland.

Sincerely,



Robert D. Luskin
Kwame J. Manley

PAUL HASTINGS LLP