



United States Department of State

Washington, D.C. 20520

October 25, 2019

Ms. Margaret E. Daum  
Squire Patton Boggs  
2550 M Street NW  
Washington DC 20037

Dear Ms. Daum:

We understand that you have been retained by Ambassador Phillip Reeker, the Department's Acting Assistant Secretary for European and Eurasian Affairs, as his private counsel for a transcribed interview or deposition to be conducted jointly by three House Committees "[p]ursuant to the House of Representatives' impeachment inquiry."

While the Department has longstanding respect for the oversight role of the Congress, this inquiry presents issues of unique concern. Counsel to the President Pat Cipollone sent the attached letter to the Committees on October 8, 2019 explaining several procedural, legal and constitutional infirmities in the process by which the Committees are pursuing their inquiry. Among other things, the Committees have refused to allow counsel from the Department to be present during the testimony of current and former employees, a practice that the Executive Branch has previously recognized to be unconstitutional. *See Attempted Exclusion of Agency Counsel from Congressional Depositions of Agency Employees*, 43 Op. O.L.C. (May 23, 2019), available at <https://www.justice.gov/olc/file/1171671/download>. Mr. Cipollone also expressed the President's view that the impeachment inquiry—lacking a delegation of such authority by House Rule or Resolution—was “contrary to the Constitution of the United States and all past bipartisan precedent” and “violates fundamental fairness and constitutionally mandated due process.”

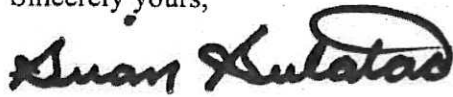
Pursuant to Mr. Cipollone's letter and in light of these defects, we are writing to inform you and Ambassador Reeker of the Administration-wide direction that Executive Branch personnel “cannot participate in [the impeachment] inquiry under these circumstances.” Given the Committees' refusal to date to permit the attendance of Executive Branch counsel at such appearances to help ensure that classified information and potentially privileged communications are safeguarded, we must also note that any appearance by Ambassador Reeker before the Committees would remain subject to standing obligations of U.S. government employees to protect such information. Please note in this context that the confidential communications between Ambassador Reeker and foreign government officials may be classified and may be subject to claims of privilege. Likewise, the Department's internal communications, or those with other Executive Branch officials, related to foreign affairs may be classified and privileged.

Finally, with respect to any Committee request to your client for documents that constitute official State Department records, in the absence of an opportunity for the Department to review

such documents, Ambassador Reeker is not authorized to disclose to Congress any records relating to official duties. As stated in the October 1 letter from Secretary Pompeo, "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." See 5 FAM 414.8, 5 FAM 474.1(a) and 12 FAM 543. Moreover, any such document request is likely to duplicate the subpoena that was previously served on the Secretary. The Department is the legal custodian of these records and is responsible for determining whether and what to produce in response to the subpoena. The Department is in the process of collecting such records and will respond to the Committees, as appropriate and consistent with Mr. Cipollone's letter.

Please contact us if you have any further questions or would like to discuss this matter further.

Sincerely yours,

A handwritten signature in black ink that reads "Brian Bulatao". The signature is written in a cursive style with a large, looping initial "B".

Brian Bulatao  
Under Secretary of State