

THE WHITE HOUSE

WASHINGTON

November 3, 2019

Bill Burck, Esq.
Quinn Emanuel Urquhart & Sullivan, LLP
1300 I Street, N.W., Suite 900
Washington, D.C. 20005

Dear Mr. Burck:

I write in response to your request regarding the subpoena issued to your client, John A. Eisenberg, by the Permanent Select Committee on Intelligence of the United States House of Representatives (the “Committee”) on November 1, 2019. The subpoena directs Mr. Eisenberg to appear to testify at a deposition at 9:00 a.m. on Monday, November 4, 2019.

The Department of Justice (the “Department”) has advised me that Mr. Eisenberg is absolutely immune from compelled congressional testimony with respect to matters related to his 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 (Nov. 3, 2019). The Department has long taken the position—across administrations of both political parties—that “the President and his immediate advisers are absolutely immune from testimonial compulsion by a Congressional committee.” *Immunity of the Former Counsel to the President from Compelled Congressional Testimony*, 31 Op. O.L.C. 191, 191 (2007) (quoting *Assertion of Executive Privilege with Respect to Clemency Decision*, 23 Op. O.L.C. 1, 4 (1999) (opinion of Attorney General Janet Reno)); *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 it extends to Mr. Eisenberg due to his position as a senior adviser to the President, specifically Assistant to the President, Deputy Counsel to the President for National Security Affairs, and Legal Advisor to the National Security Council.

As the Department’s letter states, Mr. Eisenberg qualifies as a senior presidential adviser entitled to immunity. The Department’s opinions on this topic have consistently recognized that this immunity extends to immediate advisers “‘who customarily meet with the President on a regular or frequent basis,’ and upon whom the President relies directly for candid and sound advice.” *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 *2 (June 15, 2014) (quoting Memorandum from William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, *Re: Power of Congressional Committee to Compel Appearance or Testimony of “White House Staff”* at 7 (Feb. 5, 1971)). Accordingly, Mr. Eisenberg cannot be compelled to appear before the Committee because “[s]ubjecting a senior presidential adviser to the congressional subpoena power would be akin to requiring the President himself to appear before Congress on matters

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relating to the performance of his constitutionally assigned executive functions.” *Assertion of Executive Privilege with Respect to Clemency Decision*, 23 Op. O.L.C. at 5. 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 Reno, “may not be overborne by competing congressional interests.” *Id.*

Accordingly, in order to protect the prerogatives of the Office of President today and in the future, and in response to your request, the President directs Mr. Eisenberg not to appear at the Committee’s deposition on Monday, November 4, 2019. This long-standing principle is firmly rooted in the Constitution’s separation of powers and protects the core functions of the Presidency, and this office is adhering to this well-established precedent in order to allow future Presidents to effectively execute the responsibilities of the Office of President. I also attach the letter opinion provided by the Department regarding Mr. Eisenberg’s immunity.

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 that reads "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