

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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MEMORANDUM

February 24, 2019

To: Democratic Members of the Committee on Oversight and Reform

Fr: Majority Staff

Re: Hearing with Michael Cohen, Former Attorney to President Donald Trump

On Wednesday, February 27, 2019, at 10:00 a.m., in room 2154 of the Rayburn House Office Building, the Committee will hold a hearing with President Donald Trump's longtime personal attorney Michael Cohen.

Due to the possibility of procedural and other motions, Committee Members are requested to attend and stay for the entire hearing. Lounge and conference rooms may be made available for Member use during the hearing upon request.

Because the Committee wants to take great care not to inappropriately interfere with any ongoing investigation or prosecution, Members are strongly advised to consult closely with Committee staff in advance about potential lines of questioning.

I. HEARING BACKGROUND

A. Scope

After consulting with the Department of Justice and with Rep. Adam Schiff, the Chairman of the House Permanent Select Committee on Intelligence, Chairman Cummings set the scope for the Oversight Committee's hearing with Mr. Cohen to address the following issues:

- the President's debts and payments relating to efforts to influence the 2016 election;
- the President's compliance with financial disclosure requirements;
- the President's compliance with campaign finance laws;
- the President's compliance with tax laws;
- the President's potential and actual conflicts of interest;
- the President's business practices;
- the Trump International Hotel in Washington, D.C.;
- the accuracy of the President's public statements;

- potentially fraudulent or inappropriate practices by the Trump Foundation; and
- public efforts by the President and his attorney to intimidate Mr. Cohen or others not to testify.

Mr. Cohen has agreed to testify voluntarily and in public before the Oversight Committee. He will not be under subpoena.

On February 28, 2019, the day after Mr. Cohen testifies before the Oversight Committee, he will appear in closed session before the Intelligence Committee. The scope of the Oversight Committee's open public hearing will not include questions relating to the Intelligence Committee's investigation of efforts by Russia and other foreign entities to influence the U.S. political process during and since the 2016 U.S. election, and the counterintelligence threat arising from any links or coordination between U.S. persons and the Russian government, including any financial or other compromise or leverage foreign actors may possess over Donald Trump, his family, his business interests, or his associates. Among other lines of inquiry within its jurisdiction and the investigative parameters it announced on February 6, 2019,¹ the Intelligence Committee's closed interview will also examine in depth Mr. Cohen's prior false statements to the Intelligence Committee.

B. Scheduling

The Committee originally invited Mr. Cohen to testify on February 7, 2019, but his attorney announced that Mr. Cohen wanted to postpone his appearance due to public statements made by the President and the President's personal attorney, Rudy Giuliani, regarding members of Mr. Cohen's family. Mr. Cohen's attorney reported that Mr. Cohen was concerned about the safety of his family members and believed the statements were meant to intimidate him from testifying. Mr. Cohen is now willing to appear for a rescheduled hearing on February 27, 2019.

The threats against Mr. Cohen's family are discussed in detail in section VI below.

II. MICHAEL COHEN'S ROLE

A. Cohen's Role in the Trump Organization

Mr. Cohen joined the Trump Organization in 2007 and held the titles of Executive Vice President and Special Counsel to then-businessman Donald Trump.² Previously, Mr. Cohen worked as an attorney and businessman, but he was hired by Mr. Trump after successfully intervening in a board dispute at a Trump property.³ As a self-described "fixer" to Mr. Trump,

¹ House Permanent Select Committee on Intelligence, *Chairman Schiff Statement on House Intelligence Committee Investigation* (Feb. 6, 2019) (online at <https://intelligence.house.gov/news/documentsingle.aspx?DocumentID=447>).

² Department of Justice, U.S. Attorney's Office for the Southern District of New York, Government's Sentencing Memorandum, 5 (Dec. 7, 2018), *United States v. Cohen*, S.D.N.Y. (No. 1:18 CR 00602).

³ *How Michael Cohen, Trump's Fixer, Built a Shadowy Business Empire*, New York Times (May 5, 2018)

Mr. Cohen stated: “Anything that he needs to be done, any issues that concern him, I handle.”⁴ This included negotiating domestic and international real estate deals and responding to negative press stories that threatened Mr. Trump.⁵

During the 2016 presidential campaign, Mr. Cohen acted as an informal advisor and surrogate to the Trump Campaign.⁶ After President Trump’s inauguration, Mr. Cohen resigned from the Trump Organization, but continued to hold himself out as President Trump’s “personal attorney.”⁷ In an interview, Mr. Cohen stated: “I’m the guy who protects the President and the family. I’m the guy who would take a bullet for the President.”⁸

B. Cohen Pleads Guilty to Campaign Finance Violations and Other Crimes

On August 21, 2018, Mr. Cohen pleaded guilty to eight criminal charges in the Southern District of New York, which included two campaign finance violations for payments during the 2016 presidential campaign to silence women alleging extramarital affairs with then-candidate Trump.⁹ These charges were unrelated to the investigation being conducted by the Special Counsel’s Office. According to federal prosecutors, Mr. Cohen played a central role in arranging:

- a \$150,000 payment by the *National Enquirer*’s parent, American Media Inc. (AMI), to Karen McDougal, a former model and actress, in August 2016 as part of a so-called “catch-and-kill,” so her story would never be published;¹⁰ and
- a \$130,000 payment by Mr. Cohen to Stephanie Clifford, a/k/a Stormy Daniels, through a shell company he created called Essential Consultants LLC in October 2016.¹¹

(online at www.nytimes.com/2018/05/05/business/michael-cohen-lawyer-trump.html).

⁴ *Intelligence Dossier Puts Longtime Trump Fixer in Spotlight*, Wall Street Journal (Jan. 11, 2017) (online at www.wsj.com/articles/intelligence-dossier-puts-longtime-trump-fixer-in-spotlight-1484178320).

⁵ *Michael Cohen: Inside the Strange World of Trump’s Fixer*, Guardian (May 26, 2018) (online at www.theguardian.com/us-news/2018/may/26/michael-cohen-profile-trump-russia).

⁶ Department of Justice, U.S. Attorney’s Office for the Southern District of New York, Government’s Information, 11-12 (Aug. 21, 2018), *United States v. Cohen*, S.D.N.Y. (No. 1:18 CR 00602).

⁷ Department of Justice, U.S. Attorney’s Office for the Southern District of New York, Government’s Sentencing Memorandum, 5 (Dec. 7, 2018), *United States v. Cohen*, S.D.N.Y. (No. 1:18 CR 602).

⁸ *Michael Cohen Would Take a Bullet for Donald Trump*, Vanity Fair (Sept. 6, 2017) (online at www.vanityfair.com/news/2017/09/michael-cohen-interview-donald-trump).

⁹ In addition to the campaign finance charges, Mr. Cohen also pleaded guilty in the Southern District of New York to evading taxes on more than \$4 million in income over five years and making false statements to banks in connection with loan applications.

¹⁰ Department of Justice, U.S. Attorney’s Office for the Southern District of New York, Government’s Information, 12-14 (Aug. 21, 2018), *United States v. Cohen*, S.D.N.Y. (No. 1:18 CR 00602).

¹¹ *Id.* at 14-16.

Mr. Cohen admitted in open court that he made both payments “in coordination with, and at the direction of” President Trump “for the principal purpose of influencing the election.”¹²

Mr. Cohen was reimbursed \$420,000 by a company—widely reported to be the Trump Organization—in 12 monthly installments of \$35,000 during 2017. This amount included \$130,000 for the hush-money payment to Ms. Clifford and \$50,000 for “tech services,” which were “‘gross[ed] up’ ... to \$360,000 for tax purposes,” as well as a \$60,000 “bonus.”¹³ According to federal prosecutors, the company “falsely accounted for these payments as ‘legal expenses.’”¹⁴

For the McDougal transaction, after AMI purchased the rights to Ms. McDougal’s story, Mr. Cohen reached an agreement with David Pecker, AMI’s Chairman and a close personal friend of President Trump, to purchase the rights to Ms. McDougal’s non-disclosure agreement. According to the Justice Department’s immunity agreement with Mr. Pecker, after the deal was signed, “Pecker contacted Cohen and told him that the deal was off and that Cohen should tear up the assignment agreement.”¹⁵

On November 29, 2018, Mr. Cohen also pleaded guilty in the Special Counsel’s investigation to one count of lying to Congress about the duration of negotiations to build a Trump Tower in Moscow and the extent of President Trump’s involvement.¹⁶ According to prosecutors in that case, from August to October 2017, Mr. Cohen submitted false statements in writing, and then falsely testified to the Senate Intelligence Committee and the House Intelligence Committee that the Moscow Trump Tower Project was “terminated in January of 2016, which occurred before the Iowa caucus and before the very first primary.”¹⁷ In fact, Mr. Cohen continued to work on the project and discussed it with then-candidate Trump through at least June 2016, well into the campaign.¹⁸ This issue will be addressed by the Intelligence Committee the day after the Oversight Committee’s hearing.

¹² U.S. District Court, Southern District of New York, Transcript of Court Proceedings, Defendant’s Plea, 23 (Aug. 21, 2018), *United States v. Cohen*, S.D.N.Y. (No. 1:18 CR 00602) (online at <https://assets.documentcloud.org/documents/4780185/Cohen-Court-Proceeding-Transcript.pdf>).

¹³ Department of Justice, U.S. Attorney’s Office for the Southern District of New York, Government’s Sentencing Memorandum, 16 (Dec. 7, 2018), *United States v. Cohen*, S.D.N.Y. (No. 1:18 CR 00602).

¹⁴ *Id.*

¹⁵ Department of Justice, Non-Prosecution Agreement between the U.S. Attorney for the Southern District of New York and American Media, Inc., 5 (Sept. 20, 2018) (online at <https://assets.documentcloud.org/documents/5540792/American-Media-Inc-Ami-Non-Prosecution-Agreement.pdf>).

¹⁶ Plea Agreement, Special Counsel’s Office (Nov. 29, 2018), *United States v. Michael Cohen*, S.D.N.Y. (No. 1:18 CR 00850) (online at www.justice.gov/file/1115566/download).

¹⁷ Department of Justice, Special Counsel’s Office, Government’s Sentencing Memorandum, 2 (Dec. 7, 2018), *United States v. Cohen*, S.D.N.Y. (No. 1:18 CR 00850).

¹⁸ Department of Justice, Special Counsel’s Office, Government’s Information (Nov. 29, 2018), *United States v. Cohen*, S.D.N.Y. (No. 18 Cr. 850).

C. Cohen's Cooperation and Sentencing

The Special Counsel's Office revealed that Mr. Cohen has gone "to significant lengths to assist ... on core topics under investigation."¹⁹ Mr. Cohen reportedly met with attorneys in the Special Counsel's Office on at least seven occasions and provided 70 hours of interviews. While federal prosecutors in New York previously expressed dissatisfaction with the extent of Mr. Cohen's cooperation in their investigation, Mr. Cohen's attorney recently stated: "Michael is now cooperating the best he can."²⁰

On December 12, 2018, Mr. Cohen was sentenced to three years in prison, and he is scheduled to report for his sentence on May 6, 2019.²¹

III. THE PRESIDENT'S DENIAL OF PAYMENTS TO COHEN

The President and his aides have offered varying explanations for the payments made to Mr. Cohen to silence women alleging extramarital affairs during the 2016 presidential campaign.

In March 2018, after the *Wall Street Journal* reported that Mr. Cohen had created Essential Consultants LLC to facilitate the \$130,000 payment to Stephanie Clifford, White House spokesperson Sarah Huckabee Sanders stated that "I've had conversations with the President about this" and that "there was no knowledge of any payments from the President, and he has denied all these allegations."²²

On April 5, 2018, while aboard Air Force One, a reporter asked President Trump: "Did you know about the \$130,000 payment to Stormy Daniels?" The President answered: "No."²³

On May 2, 2018, President Trump's personal attorney, Rudy Giuliani, made a startling admission when he stated that President Trump had, in fact, reimbursed Mr. Cohen for his payments to Ms. Clifford. Mr. Giuliani claimed that these payments were part of a "retainer" agreement with Mr. Cohen for legal services. He stated: "They funneled through a law firm,

¹⁹ Department of Justice, Special Counsel's Office, Government's Sentencing Memorandum (Dec. 7, 2018), *United States v. Cohen*, S.D.N.Y. (No. 18 Cr. 850).

²⁰ *Michael Cohen Attorney Lanny Davis' Interview on ABC News 'The Investigation' Podcast*, ABC News (Feb. 19, 2019) (online at <https://abcnews.go.com/Politics/transcript-michael-cohen-attorney-lanny-davis-interview-abc/story?id=61147828>).

²¹ *Judge Agrees to Postpone Michael Cohen's Prison Surrender Date*, NBC News (Feb. 20, 2019) (online at www.nbcnews.com/politics/justice-department/judge-agrees-postpone-michael-cohen-s-prison-surrender-date-n973661).

²² *Trump Lawyer Obtained Restraining Order to Silence Stormy Daniels*, New York Times (Mar. 7, 2018) (online at www.nytimes.com/2018/03/07/us/politics/stormy-daniels-trump.html).

²³ *Trump: I Knew Nothing about Cohen's \$130,000 Payment to Stormy Daniels*, RealClearPolitics (Apr. 6, 2018) (online at www.realclearpolitics.com/video/2018/04/06/trump_i_knew_nothing_about_cohens_130000_payment_to_stormy_daniels.html).

and the president repaid it.” He added: “That was money that was paid by his lawyer. . . . The president reimbursed that over the period of several months.”²⁴

The next day, on May 3, 2018, President Trump confirmed the payments to Mr. Cohen in a carefully worded tweet, stating that Mr. Cohen “received a monthly retainer” and “entered into, through reimbursement, a private contract between two parties, known as a non-disclosure agreement, or NDA.”²⁵

IV. NEW DOCUMENTS SHOW “EVOLVING STORIES” TO ETHICS OFFICIALS

The Committee has obtained internal documents from the Office of Government Ethics (OGE)—the office charged with overseeing the President’s financial disclosure forms—showing that lawyers representing the President appeared to provide false information to ethics officials, including “Evolving Stories” about whether payments were made to Cohen and the purposes of those payments.²⁶

Under the Ethics in Government Act of 1978, federal officials—including the President—must publicly disclose financial liabilities that could impact their decision-making.²⁷ On June 14, 2017, the President filed his financial disclosure report with OGE covering the period from January 2016 to April 15, 2017. His report made no mention of any liability owed to Mr. Cohen. The President personally signed that report, certifying that his statements were “true, complete, and correct to the best of my knowledge.”²⁸

Beginning in late March 2018, President Trump’s personal attorney, Sheri Dillon, and the Deputy White House Counsel for Ethics and Compliance, Stefan Passantino, discussed the President’s 2018 financial disclosure report with OGE officials and specifically, whether President Trump owed any money to Mr. Cohen in 2016 and 2017.

The notes from those calls reflect that after Mr. Giuliani publicly claimed that President Trump reimbursed Mr. Cohen as part of a “retainer,” Ms. Dillon also claimed that “all payments

²⁴ *Rudy Giuliani on Potential Trump Interview for Mueller*, Fox News (May 2, 2018) (online at www.foxnews.com/transcript/rudy-giuliani-on-potential-trump-interview-for-mueller); *Giuliani Says Trump Repaid Cohen for Stormy Daniels Hush Money*, New York Times (May 2, 2018) (online at www.nytimes.com/2018/05/02/us/politics/trump-michael-cohen-stormy-daniels-giuliani.html).

²⁵ Donald J. Trump (@realdonaldtrump), Twitter (May 3, 2018) (online at <https://twitter.com/realdonaldtrump/status/991992302267785216?lang=en>).

²⁶ Committee on Oversight and Reform, *President’s Lawyers Provided False Information to Government Officials on Stormy Daniels Payment, New Documents Show* (Feb. 15, 2019) (online at <https://oversight.house.gov/news/press-releases/president-s-lawyers-provided-false-information-to-government-officials-on-stormy>).

²⁷ 5 U.S.C. app. § 102(a)(4).

²⁸ Office of Government Ethics, *Form 278e for President Donald J. Trump* (June 14, 2017) (online at www.documentcloud.org/documents/3867112-Trump-Financial-Disclosure-2017.html).

are in connection with legal services.”²⁹ She stated that “Cohen incurred expenses, Trump reimbursed for those expenses.”³⁰ She likened the expenses to “routine vendor payments, not overdue and unpaid.”³¹ She further “analogized the payments to payments for a kitchen remodel.”³² Ms. Dillon stated “unequivocally that Michael Cohen did not loan President Trump money in the natural sense of the word.”³³ She also noted: “let the facts come out as they may and let the criticism fall on the President.”³⁴

Stefan Passantino, the Deputy White House Counsel for Compliance and Ethics, stated:

My understanding [sic] that in course of legal services, he was authorized to outlay and that was part of retainer agreement. Legal fees charged on monthly basis. Sees it as revolving credit as what shouldn't be disclosed.³⁵

On August 21, 2018, federal prosecutors in the Southern District of New York revealed that there was no “retainer agreement” in place between President Trump and Mr. Cohen covering the payments to silence women alleging extramarital affairs during the 2016 presidential campaign. The complaint stated: “In truth and in fact, there was no such retainer agreement.”³⁶

On May 15, 2018, President Trump submitted his financial disclosure form for the calendar year 2017. In a footnote to his filing, President Trump disclosed payments to Mr. Cohen of up to \$250,000, stating:

In the interest of transparency, while not required to be disclosed as “reportable liabilities” on Part 8, in 2016 expenses were incurred by one of Donald J. Trump’s attorneys, Michael Cohen. Mr. Cohen sought reimbursement of those expenses and Mr. Trump fully reimbursed Mr. Cohen in 2017. The category of value would be \$100,001-\$250,000 and the interest rate would be zero.³⁷

²⁹ Office of Government Ethics, *Notes to File* (received Jan. 31, 2019) (0027).

³⁰ *Id.* at 0027.

³¹ *Id.*

³² *Id.* at 0028.

³³ *Id.* at 0029.

³⁴ *Id.* at 0028.

³⁵ *Id.* at 0020.

³⁶ Department of Justice, U.S. Attorney’s Office for the Southern District of New York, Government’s Information (Aug. 21, 2018), *United States v. Cohen*, S.D.N.Y. (No. 1:18 CR 00602).

³⁷ Office of Government Ethics, *OGE Form 278e for President Donald J. Trump* (May 15, 2018) (online at www.documentcloud.org/documents/4464412-Trump-Donald-J-2018Annual278.html).

V. COMMITTEE REQUESTS FOR INFORMATION

The Committee has sent multiple requests for information relating to President Trump’s failure to report hundreds of thousands of dollars in payments and liabilities to Mr. Cohen. On January 8, 2019, Chairman Cummings wrote to the White House and Trump Organization renewing requests from four months earlier for documents relating to these matters.³⁸ Neither the White House nor the trump Organization produced the requested documents.

On February 15, 2019, the Committee sent follow-up letters requesting that the White House and Trump Organization inform the Committee whether they intend to comply voluntarily with the Committee’s requests or whether the Committee should consider alternative means to obtain compliance.³⁹

To date, neither the White House nor the Trump Organization has produced any of the requested documents. On February 22, 2019, the White House permitted Committee staff to review *in camera* 30 pages of documents—more than half of which were either entirely redacted or already publicly available. The Trump Organization has refused to produce any documents to date.⁴⁰

VI. THE PRESIDENT’S ATTACKS ON COHEN

President Trump has engaged in unprecedented and repeated attacks on Mr. Cohen and his family for Mr. Cohen’s cooperation with law enforcement authorities and Congress.

- On December 16, 2018, the President tweeted that Mr. Cohen was a “Rat” for admitting to his criminal actions on behalf of the President.⁴¹ This attack was almost identical to a previous attack by Roger Stone, the President’s longtime

³⁸ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Pat Cipollone, Counsel to the President, The White House (Jan. 8, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-01-08.EEC%20to%20Cipollone-WH%20re%20Cohen%20Payments.pdf>); Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to George A. Sorial, Executive Vice President and Chief Compliance Officer, The Trump Organization (Jan. 8, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-01-08.EEC%20to%20Sorial-Trump%20Org%20re%20Cohen%20Payments.pdf>).

³⁹ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Pat Cipollone, Counsel to the President, The White House (Feb. 15, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-02-15.EEC%20to%20Cipollone-WH%20re%20Cohen%20Payments_0.pdf); Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to The Trump Organization c/o Mr. Alan S. Futerfas (Feb. 15, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-02-15.EEC%20to%20Futerfas-Trump%20Org%20re%20Cohen%20Payments.pdf>).

⁴⁰ Letter from Alan Futerfas, Counsel to the Trump Organization, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Feb. 22, 2019).

⁴¹ Donald J. Trump (@realdonaldtrump), Twitter (Dec. 13, 2018, 6:39 AM), <https://twitter.com/realDonaldTrump/status/1074313153679450113>

confidante, who called another witness a “rat,” according to documents obtained by federal prosecutors.⁴²

- On January 12, 2019, after Mr. Cohen agreed to testify before the Oversight Committee, President Trump stated on national television: “He should give information maybe on his father-in-law, because that’s the one that people want to look at. Because where does that money—that’s the money in the family. And I guess he didn’t want to talk about his father-in-law.”⁴³
- On January 20, 2019, the President’s attorney, Rudy Giuliani, stated on national television that Mr. Cohen’s father-in-law is a “criminal” and suggested that he was involved with “organized crime.”⁴⁴

In response to these attacks, Chairman Cummings issued a joint statement with Intelligence Committee Chairman Schiff, declaring that “efforts to intimidate witnesses, scare their family members, or prevent them from testifying before Congress are textbook mob tactics.”⁴⁵ Their joint statement added:

[W]hen our Committees began discussions with Mr. Cohen’s attorney, not appearing before Congress was never an option. We will not let the President’s tactics prevent Congress from fulfilling our constitutionally mandated oversight responsibilities.⁴⁶

VII. WITNESS

Michael Cohen

Former Executive Vice President, Trump Organization

Staff contact: Democratic Staff at (202) 225-5051.

⁴² Department of Justice, Special Counsel’s Office, Indictment, 20 (Jan. 24, 2019), *United States v. Stone*, D.D.C. (No. 1:19 CR 18) (online at www.cnn.com/2019/01/25/politics/read-roger-stone-indictment-fbi/index.html).

⁴³ *Justice with Judge Jeanine*, Fox News (Jan. 12, 2019) (online at www.foxnews.com/transcript/house-minority-leader-rep-kevin-mccarthy-reacts-to-president-trumps-latest-comments-on-fixing-the-border-crisis)

⁴⁴ *State of the Union*, CNN (Jan. 20 2019) (online at <http://transcripts.cnn.com/TRANSCRIPTS/1901/20/sotu.01.html>)

⁴⁵ Committee on Oversight and Reform, *Cummings and Schiff Statement on Intimidation of Michael Cohen* (Jan. 23, 2019) (online at <https://oversight.house.gov/news/press-releases/cummings-and-schiff-statement-on-intimidation-of-michael-cohen>).

⁴⁶ *Id.*