



June 12, 2019

The Honorable Elijah E. Cummings
Chairman
Committee on Oversight and Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

It is disappointing that you have rejected the Department of Commerce's request to delay the vote of the Committee on Oversight and Reform on a contempt finding against the Secretary this morning. By doing so, you have abandoned the accommodation process with respect to the Committee's January 8, 2019 request for documents and information and April 2, 2019 subpoena for documents concerning the Secretary's decision to reinstate a citizenship question on the 2020 Census.

As explained at length in our numerous communications, the Department has made significant efforts towards accommodation and engaged in good-faith efforts to satisfy the Committee's legislative needs. To date, the Department has produced approximately 14,000 pages of documents, and the Secretary testified before the Committee for nearly seven hours in March. Just yesterday, the Department facilitated the voluntary appearance for a transcribed interview of a former senior Department attorney who testified for approximately six hours. Just last week, the Department agreed to make available its General Counsel and a senior advisor to the Secretary for voluntary transcribed interviews in the next several days.

Until the Committee's abrupt decision to seek a contempt resolution, the Department had identified and was prepared to provide an additional, significant number of documents responsive to the Committee's requests. Unfortunately, rather than allowing the Department to complete its document production, you scheduled an unnecessary contempt vote, which you refused to postpone. Your refusal to postpone came even after other members of the Committee alerted you to procedural infirmities of the vote.

Accordingly, I hereby advise you that the President has asserted executive privilege over the specific subset of the documents identified by the Committee in its June 3, 2019 letter—documents that are clearly protected from disclosure by the deliberative process, attorney-client communications, or attorney work product components of executive privilege. In addition, I advise you that the President has asserted executive privilege over the balance of the Department's documents responsive to the Committee's April 2, 2019 subpoena. As the Attorney General indicated in his letter to you yesterday, this protective assertion of executive privilege ensures the President's ability to make a final decision whether to assert privilege following a full review of these materials. See *Protective Assertion of Executive Privilege Regarding White House Counsel's Office Documents*, 20 Op. O.L.C. 1 (1996) (opinion of

Attorney General Janet Reno). The Department regrets that you have made this assertion necessary by your insistence upon scheduling a premature contempt vote.

Sincerely,



Charles Kolo Rathburn
Performing the duties of the
Assistant Secretary for Legislative
and Intergovernmental Affairs

cc: The Honorable Jim Jordan, Ranking Member