



**U.S. Department of Justice**

Office of Legal Counsel

Office of the Assistant Attorney General

Washington, D.C. 20530

November 7, 2019

Pat A. Cipollone  
Counsel to the President  
The White House  
Washington, DC 20500

Dear Mr. Cipollone:

On November 7, 2019, the Permanent Select Committee on Intelligence of the House of Representatives issued a subpoena seeking to compel Mick Mulvaney, Assistant to the President and Acting White House Chief of Staff, to testify at a deposition on Friday, November 8. The Committee subpoenaed Mr. Mulvaney as part of its impeachment inquiry into the conduct of the President. *See* H.R. Res. 660, 116th Cong. (2019). You have asked whether the Committee may compel him to testify. We conclude that Mr. Mulvaney is absolutely immune from compelled congressional testimony in his capacity as a senior adviser to the President.

The Executive Branch has taken the position for decades that “Congress may not constitutionally compel the President’s senior advisers to testify about their official duties.” *Testimonial Immunity Before Congress of the Former Counsel to the President*, 43 Op. O.L.C. \_\_\_, at \*1 (May 20, 2019). The immunity applies to those “immediate advisers . . . who customarily meet with the President on a regular or frequent basis.” Memorandum for John D. Ehrlichman, Assistant to the President for Domestic Affairs, 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) (“Rehnquist Memorandum”). We recently advised you that this immunity applies in an impeachment inquiry just as in a legislative oversight inquiry. *See* Letter for Pat A. Cipollone, Counsel to the President, from Steven A. Engel, Assistant Attorney General, Office of Legal Counsel at 2 (Nov. 3, 2019). “Even when impeachment proceedings are underway,” we explained, “the President must remain able to continue to discharge the duties of his office. The testimonial immunity of the President’s senior advisers remains an important limitation to protect the independence and autonomy of the President himself.” *Id.*

This immunity applies in connection with the Committee’s subpoena for Mr. Mulvaney’s testimony. The Committee intends to question Mr. Mulvaney about matters related to his official duties at the White House—specifically the President’s conduct of foreign relations with Ukraine. *See* Letter for Mick Mulvaney from Adam B. Schiff, Chairman, House Permanent Select Committee on Intelligence, et al. (Nov. 5, 2019). And Mr. Mulvaney, as Acting Chief of Staff, is a “top presidential adviser[],” *In re Sealed Case*, 121 F.3d 729, 757 (D.C. Cir. 1997), who works closely with the President in supervising the staff within the Executive Office of the President and managing the advice the President receives. *See* David B. Cohen & Charles E. Walcott, White House Transition Project, Report 2017-21, *The Office of Chief of Staff* 15–26

(2017). Mr. Mulvaney meets with and advises the President on a daily basis about the most sensitive issues confronting the government. Thus, he readily qualifies as an “immediate adviser[]” who may not be compelled to testify before Congress. Rehnquist Memorandum at 7.

This conclusion also follows from this Office’s prior recognition that certain *Deputy* White House Chiefs of Staff were immune from compelled congressional testimony. *See* Letter for Pat A. Cipollone, Counsel to the President, from Steven A. Engel, Assistant Attorney General, Office of Legal Counsel (Sept. 16, 2019) (former Deputy Chief of Staff for Policy Implementation Rick Dearborn); Letter for Fred F. Fielding, Counsel to the President, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel (Aug. 1, 2007) (Deputy White House Chief of Staff Karl Rove). In addition, as we have noted with respect to other recently issued subpoenas, testimonial immunity is particularly justified because the Committee seeks Mr. Mulvaney’s testimony about the President’s conduct of relations with a foreign government. *See, e.g.*, Letter for Pat A. Cipollone, Counsel to the President, from Steven A. Engel, Assistant Attorney General, Office of Legal Counsel at 2–3 (Oct. 25, 2019); *see also Harlow v. Fitzgerald*, 457 U.S. 800, 812 n.19 (1982) (“[A] derivative claim to Presidential immunity would be strongest in such ‘central’ Presidential domains as foreign policy and national security, in which the President could not discharge his singularly vital mandate without delegating functions nearly as sensitive as his own.”).

Please let us know if we may be of further assistance.

A handwritten signature in black ink, appearing to read "S. Engel", with a long horizontal flourish extending to the right.

Steven A. Engel  
Assistant Attorney General