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U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515–6216
One Hundred Sixteenth Congress

July 10, 2019

Mr. Michael M. Purpura
Deputy Counsel to the President
The White House
1600 Pennsylvania Ave, N.W.
Washington, D.C. 20002

Dear Mr. Purpura:

I write in response to your July 5, 2019 letter directing Ann Donaldson to defy a lawfully issued Congressional subpoena by blocking her from providing substantive answers to over 200 of the Judiciary Committee's written questions. The White House has not asserted any legally cognizable privileges, and has no basis to prevent Ms. Donaldson from answering any of the Committee's questions, let alone over 200 of them.

As you know, the Committee issued a subpoena to Ms. Donaldson on May 21, 2019, instructing her to appear before the Committee for a transcribed interview on June 24, 2019. At Ms. Donaldson's request based upon medical considerations, the Committee, Ms. Donaldson and the White House agreed to an accommodation whereby Ms. Donaldson would provide written answers to written questions from the Committee in exchange for deferring her in-person appearance to a date later in the fall.

The White House's July 5 letter directs Ms. Donaldson to refuse to answer over 200 of the Committee's questions on the basis that the answers would "implicate constitutionally-based Executive Branch confidentiality interests." President Trump, however, has not actually asserted a claim of executive privilege with respect to any portion of Ms. Donaldson's responses. The bare assertion that Ms. Donaldson's responses might implicate vague confidentiality interests does not absolve Ms. Donaldson of her legal duty to comply with the Committee's subpoena and answer its written questions. To the contrary, the law is clear that Ms. Donaldson is "not excused from compliance with the Committee's subpoena by virtue of a claim of executive privilege that may ultimately be made."[1] For these reasons, the White House's direction to Ms. Donaldson to violate the Committee's subpoena was clearly improper.

There is no valid executive privilege invocation that could be asserted regarding the subjects of the Special Counsel's report. The White House long ago made the strategic decision to not invoke executive privilege with respect to Ms. Donaldson's interviews with the Special Counsel, and the publication of the Special Counsel's report, including portions describing Ms. Donaldson's interview and handwritten notes in detail. As a result, any executive privilege that

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[1] *Comm. on the Judiciary, U.S. House of Reps. v. Miers*, 558 F. Supp. 2d 53, 106 (D.D.C. 2008).

could be asserted has clearly been waived.[2] The White House's prior decision to not object to Ms. Donaldson confirming to the Special Counsel the accuracy of her statements, as disclosed in the Special Counsel's report, is an obvious recognition that executive privilege has been waived. Nevertheless, the White House improperly prevented Ms. Donaldson from answering any further questions regarding that same information released in the report without any legal basis to do so since publication of such information "waives [] privileges for the document or information specifically released."[3]

Finally, even if there could have been a proper invocation of executive privilege, it cannot apply to questions that do not require the provision of confidential communications. Ms. Donaldson was even directed to refuse to identify the individuals with whom she shared copies of her notes. It is difficult to imagine how by providing a list of people with whom she shared her notes, Ms. Donaldson would reveal confidential deliberations made as part of the President's "process of shaping policies and making decisions" in the performance of his official duties.[4] As you know, the White House has waived its claims of privilege in a number of ways, including by voluntarily providing documents to outside parties.[5] The White House cannot counter that waiver claim by refusing to disclose who received which documents and by claiming that those facts are themselves privileged. In fact, the White House itself has previously disclosed in similar circumstances whether it gave a specific document to a former cabinet official's private counsel—evidently because it viewed itself as obligated to do so.[6]

Like any other citizen, Ms. Donaldson is legally bound to comply with the Committee's subpoena by answering its questions. She cannot avoid that duty by invoking legally unrecognized and overbroad privilege claims at the White House's behest. We therefore request that you provide by July 17, 2019 a revised list of the objections in your July 5 letter that is consistent with the law and does not improperly interfere with Ms. Donaldson's obligation and agreement to comply with the Committee's subpoena.

Sincerely,

Jerrold Nadler
Chairman
Committee on the Judiciary

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[2] *In re Sealed Case*, 121 F.3d 729, 741 (D.C. Cir. 1997).

[3] *Id.*

[4] *Nixon v. Administrator of General Services*, 433 U.S. 425, 449 (1977) (quoting *United States v. Nixon*, 418 U.S. 683, 708 (1974)); *see also, e.g., Judicial Watch v. Dep't of Justice*, 365 F.3d 1108, 1113 (D.C. Cir. 2004).

[5] *In re Sealed Case*, 121 F.3d 729, 741-42.

[6] *Id.*

Cc: Hon. Doug Collins, Ranking Member
Sandra Moser, Esq., Counsel for Ann Donaldson