THE WHITE HOUSE

WASHINGTON

December 1, 2019

The Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Nadler:

I write in response to your letter of November 26, 2019, to President Trump regarding the purported "impeachment inquiry" currently being conducted by Democrats in the House of Representatives ("House"). As you know, this baseless and highly partisan inquiry violates all past historical precedent, basic due process rights, and fundamental fairness. Your letter asked that the President notify the House Committee on the Judiciary ("Judiciary Committee" or "Committee") by December 1, 2019, whether the Administration intends to participate in a hearing scheduled for December 4, 2019. You scheduled this initial hearing—no doubt purposely—during the time that you know the President will be out of the country attending the NATO Leaders Meeting in London.

Your letter provides little information about the upcoming hearing. It vaguely indicates that you intend to hold a hearing to discuss the "historical and constitutional basis of impeachment." We understand from rumors and press reports (though not from any notice provided in your letter or in the official notice of the hearing) that the hearing will consist of an academic discussion by law professors. We understand this to mean that your initial hearing will include no fact witnesses at all.

You also sent another letter on November 29, 2019, setting a different deadline of December 6 for the President to provide notice as to whether the Administration intends to participate in additional, unspecified hearings that apparently will occur after that date and to specify the rights the President wishes to exercise at these additional hearings. Again, your letter provided no information whatsoever as to the dates these hearings will occur, what witnesses will be called, what the schedule will be, what the procedures will be, or what rights, if any, the Committee intends to afford the President. In other words, you have given no information regarding your plans, set arbitrary deadlines, and then demanded a response, all to create the false appearance of providing the President some rudimentary process. In any event, this letter responds only to your letter of November 26 and fully reserves the right to respond further when and if you release more information about the December 4 hearing. We will respond separately to your letter of November 29 by your requested deadline of Friday, December 6.

As an initial matter, your letter of November 26 only exacerbates the complete lack of due process and fundamental fairness afforded the President throughout this purported impeachment inquiry. Although your letter attempts to invoke precedent from the Clinton impeachment inquiry, you have completely ignored not only the process followed then, but all other historical precedent. For example, when the Judiciary Committee scheduled a similar hearing during the Clinton impeachment process, it allowed those questioning the witnesses two-and-a-half weeks' notice to prepare, and it scheduled the hearing on a date suggested by the President's attorneys.[1] Today, by contrast, you have afforded the President no scheduling input, no meaningful information, and so little time to prepare that you have effectively denied the Administration a fair opportunity to participate. Although the hearing is set to occur in just three days, you still have not disclosed the identities of the witnesses who will appear. Press reports as late as this afternoon indicate that the identities of these witnesses, apparently all academics, have not even been provided to other Democrats on the Judiciary Committee. These reports also indicate that you currently intend to call three academic witnesses, but will allow Republicans to call only one such witness. Worse, while providing no information, you have demanded a response from the President. Your letter does not even attempt to explain the reason for this.

The Committee's unfair process regarding this hearing follows numerous other violations of due process by the House—both before and since the adoption of House Resolution ("H. Res.") 660—including the outright prohibition on participation by the President at any stage in the proceedings before the House Permanent Select Committee on Intelligence ("HPSCI"). There, Chairman Schiff attempted to concoct a false narrative through selective citation of the testimony of witnesses of his choosing, after vetting them during closed-door depositions hidden from both the President and the American public. The President was not allowed to present evidence, to call witnesses, to cross examine witnesses, or even to see transcripts until weeks after testimony had been taken, and he was allowed absolutely no participation in the public hearings that followed. Further, witness requests made by Republicans were denied. In addition, certain questioning of the witnesses who did testify was censored by Democrats.

Despite the fundamental unfairness of those hearings, the facts that emerged even from Chairman Schiff's carefully controlled and blatantly unfair process served only to further confirm that the President has done nothing wrong and that there is no basis for continuing your inquiry. Inviting the Administration now to participate in an after-the-fact constitutional law seminar—with yet-to-be-named witnesses—only demonstrates further the countless procedural deficiencies that have infected this inquiry from its inception and shows the lack of seriousness with which you are undertaking these proceedings. An academic discussion cannot retroactively fix an irretrievably broken process.

Moreover, your November 26 letter threatens that "[w]hile we invite you to this hearing, we remind you that if you continue to refuse to make witnesses and documents available to the committees of jurisdiction, under H. Res. 660, 'the chair shall have the discretion to impose additional remedies.'" Any attempt by the Judiciary Committee to deny the President procedural

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[1] *See* Letter from Charles F.C. Ruff, Counsel to the President, et al., to Henry J. Hyde, Chairman, House Judiciary Committee, and John J. Conyers, Jr., Ranking Member, House Judiciary Committee (Oct. 21 1998); Guy Gugliotta, "House Hearing Set on Impeachment History," *Wash. Post* (Oct. 24, 1998), *available at* https://www.washingtonpost.com/wp-srv/politics/special/clinton/stories/impeach102498.htm.

rights based on the President's assertion of the longstanding constitutional rights and privileges of the Executive Branch is equivalent to denying the President his procedural rights altogether.

Your letter also wrongly claims an equivalence between the procedures applicable to past impeachment inquiries and the procedures adopted by H. Res. 660. Past inquiries, however, did not authorize one set of committees to conduct two rounds of hearings with witnesses (one round in secret and another in public) while prohibiting the President from any opportunity to participate. Nor did these past inquiries continue to deny those rights to the President even in a *third* round of hearings before yet another committee, the Judiciary Committee. In other impeachment proceedings, the President's counsel was not excluded from the hearings that took testimony from fact witnesses, nor was the President denied the right of cross examination during those hearings.[2]

It is also demonstrably false for you to claim that the procedures provided in H. Res. 660 for the Judiciary Committee's hearings are "consistent with those used by the Committee in the Nixon and Clinton impeachments." First and foremost, nothing in the procedures for those impeachment inquiries permitted the Chairman to deny the President the ability to participate or to deny any other procedural rights as a punishment for asserting Executive Branch constitutional privileges.[3] Both Presidents in those proceedings had asserted numerous privileges,[4] but it never even occurred to the Judiciary Committee that offering the opportunity to present a defense and to have a fair hearing should be conditioned on forcing the President to abandon the longstanding constitutional rights and privileges of the Executive Branch. This would cause significant and lasting institutional harm. Second, in both of those proceedings, the minority party had co-equal subpoena authority.[5] Here, by contrast, the ranking member of this Committee cannot force a vote on subpoenas that you choose to issue, but you can force committee votes on the ranking member's subpoenas.[6] All of this is an unprecedented and extremely troubling denial of basic due process that destroys the legitimacy and credibility of your inquiry.

Lastly, what past impeachment proceedings make clear is that the Judiciary Committee must hear and assess evidence for itself. In 1998, you pointed out that the Committee cannot simply receive a report compiled by another entity and proceed on the basis of that report. That, you explained, "would be to say that the role of this committee of the House is a mere

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2 *See* Impeachment Inquiry Procedures, Authorization of an Inquiry into Whether Grounds Exist for the Impeachment of William Jefferson Clinton, President of the United States, 105th Cong. 220 (Comm. Print 1998); Impeachment Inquiry Procedures, Deschler's Precedents ch. 14, § 6.5.

3 *See* Impeachment Inquiry Procedures, Authorization of an Inquiry into Whether Grounds Exist for the Impeachment of William Jefferson Clinton, President of the United States, 105th Cong. 220 (Comm. Print 1998).

4 *See* Cong. Research Serv., R42670, *Presidential Claims of Executive Privilege: History, Law, Practice, and Recent Developments* 24-26 (Dec. 15, 2014).

5 H. Res. 581, 105th Cong., § 2(b) (1998); H. Res. 803, 93rd Cong., § 2(b) (1974).

6 H. Res. 660, 116th Cong., § 4 (2019).

transmission belt or rubber stamp."[7] At that time, President Clinton was allowed to call fourteen witnesses.[8] Here, with the hearings before the Committee set to begin a mere five days from the date of your latest letter, it still remains unclear whether the Judiciary Committee actually intends to permit the President or your Republican colleagues to call witnesses at all. In fact, you have not even provided simple notice of the process that will be followed or the schedule for the Judiciary Committee's hearings.

It is too late to cure the profound procedural deficiencies that have tainted this entire inquiry. Nevertheless, if you are serious about conducting a fair process going forward, and in order to protect the rights and privileges of the President, we may consider participating in future Judiciary Committee proceedings if you afford the Administration the ability to do so meaningfully. As you have acknowledged, the House's "power of impeachment . . . demands a rigorous level of due process," and in this context "due process mean[s] . . . the right to confront witnesses against you, to call your own witnesses, and to have the assistance of counsel."[9] So far, all of these rights have been violated. Even at this late date, it is not yet clear whether you will afford the President at least these basic, fundamental rights or continue to deny them.

As for the hearing scheduled for December 4, we cannot fairly be expected to participate in a hearing while the witnesses are yet to be named and while it remains unclear whether the Judiciary Committee will afford the President a fair process through additional hearings. More importantly, an invitation to an academic discussion with law professors does not begin to provide the President with any semblance of a fair process. Accordingly, under the current circumstances, we do not intend to participate in your Wednesday hearing.

We will respond separately to your letter of November 29 by the deadline you indicated of Friday, December 6. In the meantime, and in order to assess our ability to participate in future proceedings, please let us know at least the following: (i) whether you intend to allow for fact witnesses to be called, including the witnesses requested by HPSCI Ranking Member Nunes on November 9, 2019 (whom Chairman Schiff, without explanation, declined to call) as well as other witnesses we may choose to call; (ii) whether you intend to allow members of the Judiciary Committee and the President's counsel the right to cross examine fact witnesses (including those who have already testified and any others called before the Judiciary Committee); and (iii) whether your Republican colleagues on the Judiciary Committee will be allowed to call witnesses of their choosing. Other procedural protections to which the President would be entitled will depend on the scope and nature of the proceedings that will be held in your Committee. As of yet, however, you have failed to provide this basic information to us. We stand ready to meet with you to discuss a plan for these proceedings at your convenience. As

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7 Impeachment Inquiry: William Jefferson Clinton, President of the United States, Consequences of Perjury and Related Crimes, 105th Cong. 19 (1998) (statement of Rep. Nadler).

8 *Hearing on Impeachment Inquiry Pursuant to H. Res. 581 Before the H. Comm. on the Judiciary: Presentation on Behalf of the President*, 105th Cong. 3 (Dec. 8–9, 1998).

9 *Examining the Allegations of Misconduct Against IRS Commissioner John Koskinen (Part II): Hearing Before the H. Comm. on the Judiciary*, 114th Cong. 3 (2016) (statement of Rep. Jerrold Nadler); *Background and History of Impeachment: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 105th Cong. 17 (1998) (statement of Rep. Jerrold Nadler).

you know, it is your responsibility as the Chairman of the House Judiciary Committee to ensure that due process rights are protected and to conduct a fair and just process.

Thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions.

Sincerely,

Pat A. Cipollone
Counsel to the President

cc: The Honorable Doug Collins, Ranking Member