

## House Calendar No. 26

116TH CONGRESS }  
*1st Session*

HOUSE OF REPRESENTATIVES

{ REPORT  
116-105

RESOLUTION RECOMMENDING THAT THE  
HOUSE OF REPRESENTATIVES FIND WIL-  
LIAM P. BARR, ATTORNEY GENERAL, U.S.  
DEPARTMENT OF JUSTICE, IN CONTEMPT  
OF CONGRESS FOR REFUSAL TO COMPLY  
WITH A SUBPOENA DULY ISSUED BY THE  
COMMITTEE ON THE JUDICIARY

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R E P O R T

OF THE

COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES

TOGETHER WITH

DISSENTING VIEWS



JUNE 6, 2019.—Referred to the House Calendar and ordered to be printed

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Mr. NADLER, from the Committee on the Judiciary,  
submitted the following

### R E P O R T

together with

### DISSENTING VIEWS

The Committee on the Judiciary, having considered this Report, report favorably thereon and recommend that the Report be approved.

The form of Resolution that the Committee on the Judiciary would recommend to the House of Representatives for citing William P. Barr, Attorney General, U.S. Department of Justice, for contempt of Congress pursuant to this Report is as follows:

*Resolved*, That William P. Barr, Attorney General of the United States, shall be found to be in contempt of Congress for failure to comply with a congressional subpoena.

*Resolved*, That pursuant to 2 U.S.C. §§ 192 and 194, the Speaker of the House of Representatives shall certify the report of the Committee on the Judiciary, detailing the refusal of William P. Barr, Attorney General, U.S. Department of Justice, to produce documents to the Committee on the Judiciary as directed by subpoena, to the United States Attorney for the District of Columbia, to the end that Mr. Barr be proceeded against in the manner and form provided by law.

*Resolved*, That the Speaker of the House shall otherwise take all appropriate action to enforce the subpoena.

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### Purpose and Summary

The Committee on the Judiciary (“the Committee”) is currently engaged in an investigation into alleged obstruction of justice, public corruption, and other abuses of power by President Donald Trump, his associates, and members of his Administration. Relatedly, the Committee is considering what legislative, oversight, or constitutional responses may be appropriate in response to any possible misconduct uncovered. For these purposes, the Committee has sought to obtain from Attorney General William Barr and the Department of Justice (“DOJ” or “Department”) a complete and unredacted copy, including exhibits and attachments, of the “Report On The Investigation Into Russian Interference In The 2016 Presidential Election” (“Mueller Report”) submitted to the Attorney General pursuant to 28 C.F.R. § 600.8(c) by Special Counsel Robert S. Mueller, III, as well as access to the underlying and supporting evidence and investigatory materials cited in the Mueller Report, and to other materials collected and produced by the Special Counsel’s office.

Since first communicating its need to obtain this information, the Committee has acknowledged the Attorney General’s legal and policy concerns regarding release of these materials and has sought to negotiate an accommodation acceptable to both the Attorney General and the Committee. Nevertheless, Attorney General Barr failed to comply with the Committee’s request for these documents and thereby has hindered the Committee’s constitutional, oversight, and legislative functions. Following Attorney General Barr’s decision to provide only a redacted version of the Mueller Report to Congress—despite numerous entreaties to work toward a mutually acceptable accommodation—the Committee issued a subpoena on April 19, 2019 directing the Attorney General to produce an unredacted copy of the Mueller Report as well as the underlying materials by May 1, 2019. Attorney General Barr failed to comply with the Committee’s subpoena.

The redacted Mueller Report contains numerous findings, including: (1) the Russian government attacked the 2016 U.S. presidential election in “sweeping and systematic fashion”<sup>1</sup> through a social media campaign, and releasing hacked documents;<sup>2</sup> (2) Russian intelligence services intentionally focused on state and local databases of registered voters, and state and local websites affiliated with voter registration; for example, “[t]he GRU compromised the computer network of the Illinois State Board of Elections . . .

<sup>1</sup> Robert S. Mueller, III, *Report On The Investigation Into Russian Interference In The 2016 Presidential Election* (Mar. 2019), Vol. I, at 1 (hereinafter “Mueller Report”).

<sup>2</sup> *Id.* Vol. I, at 4.

then gained access to a database containing information on millions of registered Illinois voters, and extracted data related to thousands of U.S. voters before the malicious activity was identified”;<sup>3</sup> (3) there were numerous links between the Russian government and the presidential campaign of Donald J. Trump (“Trump Campaign” or “Campaign”), which “consisted of business connections, offers of assistance to the Campaign, invitations for candidate Trump and Putin to meet in person, invitations for Campaign officials and representatives of the Russian government to meet, and policy positions seeking improved U.S.-Russian relations”;<sup>4</sup> (4) evidence of repeated attempts to obstruct justice by the President, including “multiple acts by the President that were capable of exerting undue influence over law enforcement investigations, including the Russian-interference and obstruction investigations,”<sup>5</sup> which were “often carried out through one-on-one meetings in which the President sought to use his official power outside of usual channels”;<sup>6</sup> (5) substantial evidence that President Trump’s attempts to remove the Special Counsel were linked to investigations that involved the President’s conduct and that once the President “became aware that his own conduct was being investigated in an obstruction-of-justice inquiry, he engaged in a second phase of conduct, involving public attacks on the investigation, non-public efforts to control it, and efforts in both public and private to encourage witnesses not to cooperate with the investigation”;<sup>7</sup> and (6) multiple instances where the President sought to prevent his associates from cooperating with investigations, including “substantial evidence . . . that in repeatedly urging [White House Counsel Donald F.] McGahn to dispute that he was ordered to have the Special Counsel terminated, the President acted for the purpose of influencing McGahn’s account in order to deflect or prevent further scrutiny of the President’s conduct towards the investigation.”<sup>8</sup>

The redacted version of the Mueller Report presents grave concerns about the susceptibility of the nation’s democratic institutions to foreign disinformation campaigns and the vulnerability of our election infrastructure. It also demonstrates a compelling need to strengthen laws to improve election security. The redacted Mueller Report, however, does not provide sufficient details for the Committee to perform its own constitutional duty and engage in a thorough independent investigation based on the Mueller Report’s findings. It is imperative that the Committee have access to all of the facts contained in the full Mueller Report, to the evidentiary and investigatory materials cited in the Mueller Report, and to other materials produced and collected by the Special Counsel’s office. Access to these materials is essential to the Committee’s ability to effectively investigate possible misconduct, and consider appropriate legislative, oversight, or other constitutionally warranted responses. Attorney General Barr’s refusal to comply with the Committee’s subpoena or to engage in a meaningful accommodations process therefore continues to thwart the Committee’s ability to fulfill its responsibilities.

<sup>3</sup>*Id.* Vol. I, at 50.

<sup>4</sup>*Id.* Vol. I, at 5.

<sup>5</sup>*Id.* Vol. II, at 157.

<sup>6</sup>*Id.*

<sup>7</sup>*Id.* Vol. II, at 7.

<sup>8</sup>*Id.* Vol. II, at 120.

## Background and Need for the Legislation

### I. BACKGROUND

#### A. ORIGINS OF THE SPECIAL COUNSEL'S INVESTIGATION AND THE MUELLER REPORT

On January 6, 2017, the Office of the Director of National Intelligence released an intelligence assessment on “Assessing Russian Activities and Intentions in Recent U.S. Elections.”<sup>9</sup> The assessment concluded that “Russian President Vladimir Putin ordered an influence campaign in 2016 aimed at the U.S. presidential election,” and that the goals of this campaign were, *inter alia*, “to undermine public faith in the U.S. Democratic process.”<sup>10</sup>

On March 2, 2017, Attorney General Jeff Sessions recused himself from any possible DOJ investigations related to the 2016 presidential campaign, given Mr. Sessions’s own involvement with the Trump Campaign and his failure to disclose during his confirmation hearing his contacts with Russian Ambassador Sergey Kislyak while serving in his capacity as the Trump Campaign’s National Security Committee Chairman.<sup>11</sup> Later that month, at a hearing before the House Permanent Select Committee on Intelligence, Director of the Federal Bureau of Investigation (FBI) James Comey testified that he was authorized by DOJ to confirm that the FBI was currently investigating Russian interference in the 2016 election, as well as whether there was any coordination between individuals associated with the Trump Campaign and the Russian government.<sup>12</sup>

On May 9, 2017, President Trump fired Director Comey and subsequently provided conflicting explanations for Mr. Comey’s dismissal.<sup>13</sup> On May 17, 2017, Acting Attorney General Rod Rosenstein, pursuant to DOJ regulations,<sup>14</sup> appointed former FBI Director Robert Mueller to serve as Special Counsel.<sup>15</sup> Mr. Rosenstein’s order stated that the purpose of Special Counsel Mueller’s appointment was “to ensure a full and thorough investigation of the Russian government’s efforts to interfere in the 2016 presidential election,” as well as to investigate “any links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump.” Special Counsel Mueller’s jurisdiction also included authority to investigate “any matters that arose or may arise directly from the investigation,” and “any other matters within the scope of 28 C.F.R. § 600.4(a).” Section 600.4(a) of the Code of Federal Regulations reads in relevant part that “[t]he jurisdiction of a Special Counsel shall also include the authority to investigate and prosecute federal crimes committed in the course of, and with intent to interfere with, the Special Coun-

<sup>9</sup> *Assessing Russian Activities and Intentions in Recent U.S. Elections*, Report of the Office of the Director of National Intelligence (Jan. 6, 2019).

<sup>10</sup> *Id.* at ii.

<sup>11</sup> Karoun Demirjian, Ed O’Keefe, Sari Horwitz, & Matt Zapotosky, *Attorney General Jeff Sessions will recuse himself from any probe related to 2016 presidential campaign*, WASH. POST, Mar. 2, 2017.

<sup>12</sup> Matthew Rosenberg, Emmarie Huettelman & Michael S. Schmidt, *Comey Confirms F.B.I. Inquiry on Russia; Sees No Evidence of Wiretapping*, N.Y. TIMES, Mar. 20, 2017.

<sup>13</sup> Michelle Ye Hee Lee, *All of the White House’s conflicting explanations for Comey’s firing: A timeline*, WASH. POST, May 12, 2017.

<sup>14</sup> 28 C.F.R. § 600 *et. seq.* (2019).

<sup>15</sup> Office of the Deputy Attorney General, U.S. Dep’t of Justice, Order No. 3915–2017 (2017).

sel's investigation, such as perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses." The Special Counsel's investigation resulted in the indictment of 34 individuals and three companies, seven guilty pleas, and one conviction following a jury trial.

According to DOJ regulations, upon the conclusion of the Special Counsel's investigation, "he or she shall provide the Attorney General with a confidential report explaining the prosecution or declination decisions reached by the Special Counsel."<sup>16</sup> The Attorney General, in turn, is required to notify the Chairman and Ranking Member of the House and Senate Judiciary Committees when the Special Counsel concludes an investigation.<sup>17</sup> On March 22, 2019, Attorney General Barr notified the Committee that he had received the Report from Special Counsel Mueller.<sup>18</sup> On March 24, 2019, Attorney General Barr provided the Committee his summary of principal conclusions of the Mueller Report.<sup>19</sup> On April 18, 2019, nearly four weeks after Special Counsel Mueller submitted his confidential Report, the Attorney General released a redacted copy of the Report to Congress and the public.

B. REQUESTS FOR INFORMATION FROM THE DEPARTMENT OF JUSTICE REGARDING THE MUELLER REPORT AND SUBPOENA ISSUED TO ATTORNEY GENERAL WILLIAM BARR

In February 2019, well before Attorney General Barr received the Mueller Report, the Committee commenced the process of informing DOJ that it sought an unredacted copy of the Mueller Report once it was completed as well as access to the underlying materials. As described below, the Committee has from that time to the present also expressed its willingness to consider the Department's legal and policy concerns related to the release of such materials and offered to negotiate mutually acceptable solutions.

On February 22, 2019, Chairman Jerrold Nadler along with five other committee chairs wrote a letter to Attorney General Barr indicating their expectation that DOJ would disclose the Mueller Report to the public "to the maximum extent permitted by law," and requesting that "to the extent that the Department believes that certain aspects of the report are not suitable for immediate public release," the Department provide that information to Congress "along with your reasoning for withholding the information from the public."<sup>20</sup> The letter further stated the expectation that DOJ would provide "to our Committees, upon request and consistent with applicable law, other information and material obtained or

<sup>16</sup> 28 C.F.R. §§ 600.8(c) (2019).

<sup>17</sup> 28 C.F.R. § 600.9(a)(3) (2019).

<sup>18</sup> Letter to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary; Hon. Lindsey Graham, Chairman, S. Comm. on the Judiciary; Hon. Doug Collins, Ranking Member, H. Comm. on the Judiciary; Hon. Dianne Feinstein, Ranking Member, S. Comm. on the Judiciary, from William Barr, Attorney General, U.S. Dep't of Justice (Mar. 22, 2019) (hereinafter "Notification Letter").

<sup>19</sup> Letter to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary; Hon. Lindsey Graham, Chairman, S. Comm. on the Judiciary; Hon. Doug Collins, Ranking Member, H. Comm. on the Judiciary; Hon. Dianne Feinstein, Ranking Member, S. Comm. on the Judiciary, from William Barr, Attorney General, U.S. Dep't of Justice (Mar. 24, 2019).

<sup>20</sup> Letter to Hon. William Barr, Attorney General, U.S. Dep't of Justice, from Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary; Hon. Adam Schiff, Chairman, H. Permanent Select Comm. on Intelligence; Hon. Elijah Cummings, Chairman, H. Comm. on Oversight and Reform; Hon. Eliot Engel, Chairman, H. Comm. on Foreign Affairs; Hon. Maxine Waters, Chairwoman, H. Comm. on Financial Services & Hon. Richard Neal, Chairman, H. Comm. on Ways and Means (Feb. 22, 2019).

produced by the Special Counsel.”<sup>21</sup> Thereafter, the full House of Representatives unanimously endorsed this view.<sup>22</sup> On March 14, 2019, the House voted 420 to 0 in favor of a resolution calling for “the public release of any report . . . except to the extent the public disclosure of any portion thereof is expressly prohibited by law” and for “the full release to Congress of any report, including findings, Special Counsel Mueller provides to the Attorney General.”<sup>23</sup>

In spite of these reasonable requests from the House and the Committee to receive the unredacted Mueller Report and the underlying materials, as well as the House’s position that it is entitled to information beyond what might be made publicly available, Attorney General Barr’s communications during this period drew no distinction between Congress and the public, and ignored the Committee’s requests for materials underlying the Mueller Report. In his March 22, 2019 notification letter, Attorney General Barr indicated that he would in short order “advise” the Committee of the Special Counsel’s “principal conclusions” and that he would consult with Deputy Attorney General Rosenstein and Special Counsel Mueller “to determine what other information from the report can be released to Congress and the public consistent with the law, including the Special Counsel regulations, and the Department’s longstanding policies and practices.”<sup>24</sup>

On March 24, 2019, Attorney General Barr wrote a letter summarizing the Mueller Report’s “principal conclusions.”<sup>25</sup> The letter also briefly discussed the status of the Department’s review of the Mueller Report. Again, the Attorney General failed to address the Committee’s stated expectation that it receive an unredacted copy and access to the Mueller Report’s underlying materials. Instead, the Attorney General reiterated his intent to “release as much of the Special Counsel’s report as I can consistent with applicable law, regulations, and Departmental policies,” and indicated his intent to withhold material that “is or could be subject to Federal Rule of Criminal Procedure 6(e).”<sup>26</sup>

In response, on March 25, 2019, Chairman Nadler along with the chairs of five other committees wrote a letter to Attorney General Barr formally requesting that he “release the Special Counsel’s full report to Congress no later than Tuesday, April 2 [2019]” and that he begin “transmitting the underlying evidence and materials to the relevant committees at that time.”<sup>27</sup> The letter further expressed the committees’ willingness to accommodate the Attorney General’s concerns, noting that “[t]o the extent that you believe applicable law limits your ability to comply, we urge you to begin the

<sup>21</sup> *Id.*

<sup>22</sup> 165 Cong. Rec. H2731–32 (daily ed. Mar. 14, 2019).

<sup>23</sup> H.Con.Res.24, Expressing the Sense of Congress that the Report of Special Counsel Mueller Should Be Made Available to the Public and to Congress, 116th Cong. (2019).

<sup>24</sup> Notification Letter.

<sup>25</sup> Letter to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary; Hon. Lindsey Graham, Chairman, S. Comm. on the Judiciary; Hon. Doug Collins, Ranking Member, H. Comm. on the Judiciary; Hon. Dianne Feinstein, Ranking Member, S. Comm. on the Judiciary, from William Barr, Attorney General, U.S. Dep’t of Justice (Mar. 24, 2019).

<sup>26</sup> *Id.*

<sup>27</sup> Letter to Hon. William Barr, Attorney General, U.S. Dep’t of Justice, from Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary; Hon. Adam Schiff, Chairman, H. Permanent Select Comm. on Intelligence; Hon. Elijah Cummings, Chairman, H. Comm. on Oversight and Reform; Hon. Elliot Engel, Chairman, H. Comm. on Foreign Affairs; Hon. Maxine Waters, Chairwoman, H. Comm. on Financial Services & Hon. Richard Neal, Chairman, H. Comm. on Ways and Means (Mar. 25, 2019).



process of consultation with us immediately in order to establish shared parameters for resolving those issues without delay.”<sup>28</sup>

The committee chairs’ March 25 letter also addressed the reasons underlying their request. The chairs explained that “the release of the full report and the underlying evidence and documents is urgently needed” by the committees “to perform their duties under the Constitution.” As the chairs explained, “[t]hose duties include evaluating the underlying facts and determining whether legislative or other reforms are required—both to ensure that the Justice Department is able to carry out investigations without interference or obstruction by the President and to protect our future elections from foreign interference.”<sup>29</sup>

On March 29, 2019, Attorney General Barr responded to Chairman Nadler’s March 25 letter, but failed to address the committee chairs’ requests and their explicit offer to begin consultations over access to the Mueller Report’s underlying materials.<sup>30</sup> Instead, the Attorney General reiterated that the Department was preparing the Mueller Report for release by making what he described as “the redactions that are required.”<sup>31</sup> The Attorney General described four categories of information he intended to withhold from both Congress and the public: (1) material subject to Federal Rule of Criminal Procedure 6(e); (2) material that the intelligence community identifies as potentially compromising sensitive sources and methods; (3) material whose release could affect ongoing matters; and (4) information that would unduly infringe on the personal privacy and reputational interests of “peripheral third parties.”<sup>32</sup> The Attorney General indicated the Mueller Report would be released “in mid-April, if not sooner,” and offered to testify before the House Judiciary Committee on May 2, 2019.<sup>33</sup>

During this period, Committee majority staff engaged in discussions with DOJ Office of Legislative Affairs (OLA) officials in an attempt to begin the accommodations process offered in the chairs’ March 25 letter, but the parties were ultimately unable to reach an agreement. OLA officials eventually informed Committee majority staff on March 29, 2019 that the Department had no plans to share redacted portions of the Mueller Report with Congress, but indicated that further negotiations could proceed following the Mueller Report’s public release.

On April 1, 2019, Chairman Nadler and the chairs of the five other committees again wrote to Attorney General Barr urging him to “begin the process of consultation with us immediately” and to inform him that the Judiciary Committee “plans to begin the process of authorizing subpoenas for the report and underlying evidence and materials.”<sup>34</sup> The letter contained a detailed appendix

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Letter to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, & Hon. Lindsey Graham, Chairman, S. Comm. on the Judiciary from Hon. William Barr, Attorney General, U.S. Dep’t of Justice (Mar. 29, 2019).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Letter to Hon. William Barr, Attorney General, U.S. Dep’t of Justice, from Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary; Hon. Adam Schiff, Chairman, H. Permanent Select Comm. on Intelligence; Hon. Elijah Cummings, Chairman, H. Comm. on Oversight and Reform; Hon. Eliot Engel, Chairman, H. Comm. on Foreign Affairs; Hon. Maxine Waters, Chair-

describing the nature of the committees' need for the Mueller Report and the underlying evidence, noting that "[t]he longer the delay in obtaining this information, the more harm will accrue to Congress's independent duty to investigate misconduct by the President and to assure public confidence in the independence of federal law enforcement operations."<sup>35</sup> The letter further explained that neither Rule 6(e) nor any applicable privilege barred disclosure of these materials to Congress. Additionally, the letter stated that to the extent the Department believed it was unable to produce any materials due to Rule 6(e), which pertains to grand jury secrecy, then "it should seek leave from the district court to produce those materials to Congress—as it has done in analogous situations in the past."<sup>36</sup>

That same day, Chairman Nadler announced a markup to authorize the issuance of a subpoena for the Mueller Report and the underlying material, and released a statement that "Attorney General Barr has thus far indicated he will not meet the April 2 deadline set by myself and five other committee chairs, and refused to work with us to provide the full report, without redactions, to Congress."<sup>37</sup> On April 3, 2019, the Committee, by a vote of 24 to 17, authorized Chairman Nadler to issue a subpoena for the Mueller Report and the underlying evidence. The Chairman did not, however, issue the subpoena pending further efforts to reach an accommodation with DOJ.

At an appearance before the House Appropriations Committee on April 9, 2019, Attorney General Barr stated that he had no intention of accommodating the Committee's request until after the Mueller Report's public release.<sup>38</sup> When directly asked whether DOJ would request the district court to approve the release of grand jury material to the Committee, Attorney General Barr responded, "My intention is not to ask for it at this stage."<sup>39</sup>

On April 11, 2019, Chairman Nadler, along with Chairman Adam Schiff, Speaker of the House Nancy Pelosi, Senate Minority Leader Charles Schumer, Senate Judiciary Committee Ranking Member Dianne Feinstein, and Senate Intelligence Committee Vice Chairman Mark Warner, wrote to Attorney General Barr to reiterate that "as a matter of law, Congress is entitled to the full report . . . as well as the underlying evidence," and to remind him that "the Department of Justice has an obligation to work with the relevant committees of the House and Senate to reach an accommodation on the full report and the underlying evidence."<sup>40</sup> They further noted that "we have received no direct response, and you have

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woman, H. Comm. on Financial Services & Hon. Richard Neal, Chairman, H. Comm. on Ways and Means (Apr. 1, 2019).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Press Release, H. Comm. on the Judiciary, Wednesday: House Judiciary to Hold Markup to Authorize Subpoenas for Full Mueller Report and Related Matters, *available at* <https://judiciary.house.gov/news/press-releases/wednesday-house-judiciary-hold-markup-authorize-subpoenas-full-mueller-report>.

<sup>38</sup> Ellis Kim, *AG Barr: No Plans to Ask Court to Release Grand Jury Info in Mueller Report*, NAT'L L. J., Apr. 9, 2019.

<sup>39</sup> *Id.*

<sup>40</sup> Letter to Hon. William Barr, Attorney General, U.S. Dep't of Justice, from Hon. Nancy Pelosi, Speaker, U.S. House of Representatives; Hon. Charles Schumer, Minority Leader, U.S. Senate; Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary; Hon. Adam Schiff, Chairman, H. Permanent Select Comm. on Intelligence; Hon. Dianne Feinstein, Ranking Member, S. Comm. on the Judiciary & Hon. Mark Warner, Vice Chairman, S. Select Comm. on Intelligence (Apr. 11, 2019).

made no effort to work with us to accommodate our concerns. This work should not wait until after you have provided a redacted report.”<sup>41</sup>

Attorney General Barr released a redacted version of the Mueller Report to Congress and to the public on April 18, 2019. The substance of even the redacted Report expressly affirmed Congress’ independent authority to conduct its own investigation pursuant to its legislative, oversight, and other constitutional prerogatives. Specifically, the Special Counsel noted the need not to “preempt constitutional processes for addressing presidential misconduct,” affirmed that “Congress can validly make obstruction-of-justice statutes applicable to corruptly motivated official acts of the President,” and rejected President Trump’s “statutory and constitutional defenses to the potential application of the obstruction-of-justice statutes to the President’s conduct.”<sup>42</sup>

Although the Committee had requested the unredacted Mueller Report on numerous occasions and had requested in multiple letters to begin consultation regarding access to redacted and underlying materials, Attorney General Barr refused to engage the Committee. In fact, Attorney General Barr did not make a direct, concrete offer to accommodate the Committee’s request until after he released the redacted Mueller Report. In his letter accompanying the Mueller Report, Attorney General Barr finally acknowledged that “you have expressed an interest in viewing an unredacted version of the report,” but offered only to make a less redacted version of the Mueller Report available for review with grand jury information still withheld.<sup>43</sup>

Furthermore, in a separate letter written on April 18, 2019, Assistant Attorney General Stephen Boyd detailed the specific terms of Attorney General Barr’s offer.<sup>44</sup> The Attorney General would only permit the majority and minority leaders of the House and Senate, and Chairs and Ranking Members of select House and Senate Committees, including Chairman Nadler and Ranking Member Collins, along with a single staff member each, to review at the Department of Justice “certain material redacted in the publicly released report” and for a limited period of time between April 22 and April 26, 2019.<sup>45</sup> The Department further offered to permit review of a less-redacted version of the Mueller Report to the same limited group on Capitol Hill for a one-week period starting on April 29, 2019.<sup>46</sup> The Department insisted that any notes taken would also have to remain at the Department in a secure facility.<sup>47</sup>

On April 19, 2019, Chairman Nadler informed Attorney General Barr that although “the current proposal is not workable, we are open to discussing a reasonable accommodation with the Department that would protect law enforcement sensitive information

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<sup>41</sup>*Id.*

<sup>42</sup> Mueller Report Vol. II, at 1, 171, 159.

<sup>43</sup> Letter to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary; Hon. Lindsey Graham, Chairman, S. Comm. on the Judiciary; Hon. Doug Collins, Ranking Member, H. Comm. on the Judiciary; Hon. Dianne Feinstein, Ranking Member, S. Comm. on the Judiciary, from William Barr, Attorney General, U.S. Dep’t of Justice (Apr. 18, 2019).

<sup>44</sup> Letter to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary & Hon. Lindsey Graham, Chairman, S. Comm. on the Judiciary, from Stephen Boyd, Assistant Attorney General, U.S. Dep’t of Justice (Apr. 18, 2019).

<sup>45</sup>*Id.*

<sup>46</sup>*Id.*

<sup>47</sup>*Id.*

while allowing Congress to fulfill its constitutional duties.”<sup>48</sup> On that same day, Chairman Nadler issued a subpoena to Attorney General Barr for: (1) the full Mueller Report, including any exhibits or attachments; (2) all materials referenced in the Mueller Report; and (3) all materials obtained or produced by the Special Counsel’s office. The subpoena required production of these materials by May 1, 2019. In a statement released to the public, Chairman Nadler explained, “I am open to working with the Department to reach a reasonable accommodation for access to these materials, however I cannot accept any proposal which leaves most of Congress in the dark, as they grapple with their duties of legislation, oversight and constitutional accountability.”<sup>49</sup> To emphasize Congress’ willingness to accommodate the Department’s concerns, Speaker Pelosi on May 1, 2019, wrote the Attorney General directly to urge that initial proposals for resolving the dispute that had been raised at an in-person meeting of Congressional and Department staff on April 29, 2019 “be given serious consideration by you so we can work together productively.”<sup>50</sup>

On May 1, 2019, the Department informed the Committee that it would not comply with Chairman Nadler’s subpoena.<sup>51</sup> On May 3, 2019, Chairman Nadler responded to the Department’s May 1 letter, noting:

[T]he Department has never explained why it is willing to allow only a small number of Members to view a less-redacted version of the report, subject to the condition that they cannot discuss what they have seen with anyone else. The Department also remains unwilling to work with the Committee to seek a court order permitting disclosure of materials in the report that are subject to Federal Rule of Criminal Procedure 6(e). And the Department has offered no reason whatsoever for failing to produce the evidence underlying the report, except for a complaint that there is too much of it and a vague assertion about the sensitivity of law enforcement files.<sup>52</sup>

Chairman Nadler also observed that Attorney General Barr’s “proposed conditions are a departure from accommodations made by previous Attorneys General of both parties.”<sup>53</sup> The letter notes that the Department “produced more than 880,000 pages of sensitive investigative materials pertaining to its investigation of Hillary Clinton, as well as much other material relating to the then-ongoing Russia investigation.”<sup>54</sup> The letter further notes that pro-

<sup>48</sup> Letter to Hon. William Barr, Attorney General, U.S. Dep’t of Justice, from Hon. Nancy Pelosi, Speaker, U.S. House of Representatives; Hon. Charles Schumer, Minority Leader, U.S. Senate; Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary; Hon. Adam Schiff, Chairman, H. Permanent Select Comm. on Intelligence; Hon. Dianne Feinstein, Ranking Member, S. Comm. on the Judiciary & Hon. Mark Warner, Vice Chairman, S. Select Comm. on Intelligence (Apr. 19, 2019).

<sup>49</sup> Press Release, H. Comm. on the Judiciary, Chairman Nadler Issues Subpoena for Full Mueller Report and Underlying Materials, *available at* <https://judiciary.house.gov/news/press-releases/chairman-nadler-issues-subpoena-full-mueller-report-and-underlying-materials>.

<sup>50</sup> Letter to Hon. William Barr, Attorney General, U.S. Dep’t of Justice, from Hon. Nancy Pelosi, Speaker, U.S. House of Representatives (May 1, 2019).

<sup>51</sup> Letter to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, from Stephen Boyd, Assistant Attorney General, U.S. Dep’t of Justice (May 1, 2019).

<sup>52</sup> Letter to Stephen Boyd, Assistant Attorney General, U.S. Department of Justice, from Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary (May 3, 2019).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

duction “included highly classified material, notes from FBI interviews, internal text messages, and law enforcement memoranda” and that in the “most recent prior instance in which the Department conducted an investigation of a sitting President, Kenneth Starr produced a 445-page report to Congress along with 18 boxes of accompanying evidence.”<sup>55</sup>

Chairman Nadler nonetheless communicated his continued willingness to “negotiate a reasonable accommodation with the Department.”<sup>56</sup> Chairman Nadler renewed his request that the “Department work jointly with Congress to seek a court order permitting disclosure of materials covered by Rule 6(e)”; offered to prioritize a “specific, defined set of underlying investigative and evidentiary materials for immediate production,” namely the “investigative and evidentiary materials specifically cited in the report”; and indicated he was “prepared to discuss limiting and prioritizing our request . . . for other underlying evidence obtained by the Special Counsel’s office.”<sup>57</sup>

On the evening before the scheduled date of the Committee’s meeting to consider a resolution holding the Attorney General in contempt, and while negotiations were ongoing, the Committee received a letter from Assistant Attorney General Stephen E. Boyd that stated, “In the face of the Committee’s threatened contempt vote, the Attorney General will be compelled to request that the President invoke executive privilege with respect to the materials subject to subpoena.” He then requested that “the Committee hold the subpoena in abeyance and delay any vote on whether to recommend a citation of contempt for noncompliance with the subpoena, pending the President’s determination of this question.” Although Mr. Boyd clarified that this request was “not itself an assertion of executive privilege,” he did explain that should the Committee decide “to proceed in spite of this request . . . the Attorney General will advise the President to make a protective assertion of executive privilege over the subpoenaed material, which undoubtedly includes material covered by executive privilege.” Today, during the Committee’s meeting, the Committee received a letter from Mr. Boyd stating “that the President has asserted executive privilege over the entirety of the subpoenaed materials,” and that this was a “protective assertion” of the privilege. Mr. Boyd attached a letter dated the day of the Committee’s meeting, from Attorney General William P. Barr to the President requesting that the President “make a protective assertion of executive privilege.” No other evidence of the President’s assertion of the privilege was provided.

The Committee has a number of concerns about the validity of this assertion: (1) the purported protective assertion is not a valid claim of privilege, including because executive privilege has been broadly waived in this case as a matter of law and fact; (2) the proposed assertion could have been made previously and at the very least, by May 1, 2019, the subpoena return date; (3) the correspondence does not contain a statement by the President himself asserting the privilege; (4) it is not credible that “the entirety of the subpoenaed material” consists of “communications authored or solicited and received by those members of an immediate White

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<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

House adviser's staff who have broad and significant responsibility for investigating and formulating the advice to be given the President on the particular matter to which the communications relate"<sup>58</sup>; (5) it is not credible that the entirety of the materials are subject to other constitutionally recognized privileges; (6) the assertion is suspect with respect to redacted portions of the Report because the Attorney General himself has indicated a willingness to allow an arbitrarily limited number of Members to view those materials; (7) the Department of Justice has failed to provide any details by which the Committee might evaluate the applicability of the privilege, such as the senders and recipients of the documents, or the privilege log and other information called for by the subpoena; (8) even if the assertion of the privilege were valid as an initial matter, which it is not, the assertion has been overcome here, as: (i) the Committee has demonstrated a sufficient need for the documents as they are likely to contain evidence critical to the Committee's inquiry; (ii) the documents sought cannot expeditiously be obtained any other way; and (iii) any executive privilege that could be asserted to the report has been waived when the President previously made the decision not to assert executive privilege over any portion of the report, as announced by the Attorney General; (9) there is substantial evidence indicating that the President engaged in obstruction of justice and other misconduct, and therefore the public interest in the fair administration of justice outweighs the President's generalized interest in confidentiality; (10) and without these documents, the Committee cannot fully perform its vital legislative, oversight and constitutional duties. Accordingly, the last-minute claims of the "protective" blanket assertion of executive privilege over the entirety of the subpoenaed materials does not change the fact that Attorney General William P. Barr is in contempt of Congress today for failing to turn over lawfully subpoenaed documents.

## II. NEED FOR THE LEGISLATION

### A. AUTHORITY AND LEGISLATIVE PURPOSE

The Committee on the Judiciary is a standing Committee of the House of Representatives, duly established pursuant to the Rules of the House of Representatives, which are adopted pursuant to the Rulemaking Clause of the Constitution.<sup>59</sup> House rule X(l) grants to the Committee legislative and oversight jurisdiction over, *inter alia*, "judicial proceedings, civil and criminal," "criminal law enforcement"; the "application, administration, execution, and effectiveness of laws and programs addressing subjects within its jurisdiction"; the "operation of Federal agencies and entities having responsibilities for the administration and execution of laws and programs addressing subjects within its jurisdiction"; and any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation addressing subjects within its jurisdiction."

House rule XI specifically authorizes the Committee and its subcommittees to "require, by subpoena or otherwise, the attendance

<sup>58</sup>In re Sealed Case, 121 F.3d 729, 752 (D.C. Cir 1997).

<sup>59</sup>U.S. CONST., Art. I, § 5, Cl. 2.

and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as it considers necessary.” The rule also provides that the “power to authorize and issue subpoenas” may be delegated to the Committee Chairman.

The investigation into the alleged obstruction of justice, public corruption, and other abuses of power by President Donald Trump, his associates, and members of his Administration and related concerns is being undertaken pursuant to the full authority of the Committee under rule X(l) and applicable law. The purposes of this investigation include: (1) investigating and exposing any possible malfeasance, abuse of power, corruption, obstruction of justice, or other misconduct on the part of the President or other members of his Administration; (2) considering whether the conduct uncovered may warrant amending or creating new federal authorities, including among other things, relating to election security, campaign finance, misuse of electronic data, and the types of obstructive conduct that the Mueller Report describes; and (3) considering whether any of the conduct described in the Special Counsel’s Report warrants the Committee in taking any further steps under Congress’ Article I powers. That includes whether to approve articles of impeachment with respect to the President or any other Administration official, as well as the consideration of other steps such as censure or issuing criminal, civil or administrative referrals. No determination has been made as to such further actions, and the Committee needs to review the unredacted report, the underlying evidence, and associated documents so that it can ascertain the facts and consider its next steps.<sup>60</sup>

#### B. URGENCY

Although the Committee has attempted to engage in accommodations with Attorney General Barr for several months, it can no longer afford to delay, and must resort to contempt proceedings. The Committee urgently requires access to the full, unredacted Mueller Report and to the investigatory and evidentiary materials cited in the Report. The Mueller Report describes the Russian government’s extensive efforts to interfere in the 2016 presidential election “in sweeping and systematic fashion.”<sup>61</sup> First, a Russian entity known as the “Internet Research Agency” (IRA) carried out a social media influence operation to “sow discord in the U.S. political system through what it termed ‘information warfare.’”<sup>62</sup> Second, Russia’s intelligence services hacked into computer networks associated with the Clinton campaign, stole hundreds of thousands of e-mails and other documents, and released those documents online.<sup>63</sup> Third, Russian intelligence services successfully compromised state computer networks; for example, they “gained access to a database containing information on millions of registered

<sup>60</sup> Several bills relevant to the legislative purpose of this investigation have already been introduced and referred to the Committee, including but not limited to: the Special Counsel Independence and Integrity Act, H.R. 197, 116th Cong. (2019); the Special Counsel Reporting Act, H.R. 1357, 116th Cong. (2019); the Presidential Pardon Transparency Act, H.R. 1348, 116th Cong. (2019); and the For the People Act of 2019, H.R. 1, 116th Cong. (2019) (now pending in the Senate).

<sup>61</sup> Mueller Report Vol. I, at 1.

<sup>62</sup> *Id.* Vol. I, at 4.

<sup>63</sup> *Id.* Vol. I, at 4–5.

Illinois voters, and extracted data related to thousands of U.S. voters,” and “targeted employees of . . . voting technology company that developed software used by numerous U.S. counties to manage voter rolls, and installed malware on the company network.”<sup>64</sup>

Russia’s hostile actions against the United States and its democratic institutions are ongoing. The Justice Department has indicated in at least one other case that Russian influence efforts continued into the 2018 midterm elections.<sup>65</sup> With the 2020 elections looming, this threat to our democracy is at risk of recurrence, and Congress must act immediately to address it. Just recently, FBI Director Christopher Wray warned that Russia continues to pose a “very significant counterintelligence threat,” and that the U.S. government “view[ed] 2018 as just kind of a dress rehearsal for the big show in 2020.”<sup>66</sup> Earlier this year, the Director of National Intelligence similarly warned that Russia and other adversaries “probably are already looking to the 2020 U.S. election” to conduct malign influence operations and that “Moscow may employ additional influence toolkits—such as spreading disinformation, conducting hack-and-leak operations, or manipulating data—in a more targeted fashion to influence U.S. policy, actions, and elections.”<sup>67</sup>

In the face of these efforts, and with the 2020 elections approaching, the Committee requires the most complete possible understanding of Russia’s influence and hacking operations. Among other things, the Committee must be permitted to assess whether the Department and the FBI are devoting sufficient resources to the growing threat, and to consider remedial legislation such as criminal penalties targeting election interference activities or the use of illegally acquired data. In its current form, sections of the Mueller Report describing the structure and actions taken by the IRA are heavily redacted.<sup>68</sup> Sections of the Mueller Report describing the hacking activities undertaken by Russian intelligence services likewise contain significant redactions, which impair the ability of the Committee to gain a complete understanding of Russia’s actions.<sup>69</sup> Without this information, the Committee is unable to fully perform its responsibility to protect the impending 2020 elections—and thus our democracy itself—from a recurrence of Russian interference.

President Trump’s repeated efforts to obstruct and derail the Special Counsel’s investigations also pose grave concerns. Volume II of Special Counsel Mueller’s Report details “multiple acts by the President that were capable of exerting undue influence over law enforcement investigations, including the Russian-interference and obstruction investigations.”<sup>70</sup> The President’s efforts increased in intensity over time. Once he “became aware that his own conduct was being investigated in an obstruction-of-justice inquiry, he engaged in a second phase of conduct, involving public attacks on the

<sup>64</sup> *Id.* Vol. I, at 50–51.

<sup>65</sup> See Criminal Complaint ¶14, *United States v. Khusyaynova*, No. 1:18-mj-464 (E.D. Va. Sept. 28, 2018) (alleging Russian national participated in a conspiracy “to interfere with U.S. political and electoral processes, including the 2018 U.S. elections”).

<sup>66</sup> Transcript, *A Conversation with Christopher Wray*, Council on Foreign Relations (Apr. 26, 2019).

<sup>67</sup> Daniel R. Coats, Director of National Intelligence, *Worldwide Threat Assessment of the U.S. Intelligence Community* (Jan. 29, 2019).

<sup>68</sup> Mueller Report, Vol. I, at 15–35.

<sup>69</sup> *Id.* Vol. I, at 35–51.

<sup>70</sup> *Id.* Vol. II, at 157.



investigation, non-public efforts to control it, and efforts in both public and private to encourage witnesses not to cooperate with the investigation.”<sup>71</sup> These actions “ranged from efforts to remove the Special Counsel and to reverse the effect of the Attorney General’s recusal; to the attempted use of official power to limit the scope of the investigation; to direct and indirect contacts with witnesses with the potential to influence their testimony.”<sup>72</sup> In order to carry out this campaign of obstruction, President Trump “sought to use his official power outside of usual channels,” including by conducting “one-on-one meetings” with Administration officials or other advisors and by contacting the Attorney General about the Russia investigation after he had been explicitly counseled against doing so.<sup>73</sup>

The Mueller Report contains evidence that in the wake of an attack by a hostile nation against American democratic institutions, President Trump’s response was to undermine the investigation rather than take action against the perpetrators. The facts recounted in the Mueller Report make clear the Committee’s interest in obtaining further, more detailed information. For example, the Mueller Report states that when the President learned that he himself was under investigation for obstruction, the President “directed McGahn to call Rosenstein to have the Special Counsel removed.”<sup>74</sup> At one point the President went so far as to direct White House Counsel Don McGahn to call Deputy Attorney General Rosenstein and inform him that “Mueller has conflicts and can’t be the Special Counsel.”<sup>75</sup> The President later “asked McGahn in [a] meeting why he had told Special Counsel’s Office investigators that the President had told him to have the Special Counsel removed”<sup>76</sup> and ordered Mr. McGahn to issue a “statement denying that he had been asked to fire the Special Counsel and that he had threatened to quit in protest.”<sup>77</sup>

Furthermore, the Mueller Report notes that the President attempted to have Attorney General Sessions reverse his recusal [and] take control of the Special Counsel’s investigation.”<sup>78</sup> The President repeatedly tried to order Attorney General Sessions to interfere in or limit the Special Counsel investigation, including meeting with Sessions alone and “suggest[ing] that Sessions should ‘unrecuse’ from the Russia investigation,”<sup>79</sup> and attempting to send a message through campaign advisor Corey Lewandowski asking that “Sessions limit the scope of the Russia investigation.”<sup>80</sup> The President’s “position as the head of the Executive Branch provided him with unique and powerful means of influencing official proceedings, subordinate officers, and potential witnesses.”<sup>81</sup> This conduct also included discouraging associates such as his former personal attorney, Michael Cohen, from cooperating by using “induce-

<sup>71</sup>*Id.* Vol. II, at 7.

<sup>72</sup>*Id.* Vol. II, at 157.

<sup>73</sup>*Id.*; see also e.g., *id.* Vol. II at 50–51 (President Trump pulled Attorney General Sessions aside to ask that he “unrecuse” himself from the Russia investigation after the White House Counsel’s office directed that Sessions should not be contacted about the matter).

<sup>74</sup>*Id.* Vol. II, at 88.

<sup>75</sup>*Id.*

<sup>76</sup>*Id.* Vol. II, at 117.

<sup>77</sup>*Id.* Vol. II, at 114.

<sup>78</sup>*Id.* Vol. II, at 107.

<sup>79</sup>*Id.* Vol. II, at 51.

<sup>80</sup>*Id.* Vol. II, at 90.

<sup>81</sup>*Id.* Vol. II, at 7.

ments in the form of positive messages in an effort to get Cohen not to cooperate, and then turn[ing] to attacks and intimidation to deter the provision of information or undermine Cohen’s credibility once Cohen began cooperating.”<sup>82</sup> This also included using his private attorneys to dangle potential pardons to discourage former campaign chairman Paul Manafort from cooperating, such as by having Rudolph Giuliani make “repeated statements suggesting that a pardon was a possibility for Manafort, while also making it clear that the President did not want Manafort to ‘flip’ and cooperate with the government.”<sup>83</sup>

In order to protect the rule of law, the Committee requires an immediate and more detailed accounting of these and other actions taken by the President. The Special Counsel “conducted a thorough factual investigation in order to preserve the evidence when memories were fresh and documentary materials were available.”<sup>84</sup> As a result, the Committee has sought access to the fruits of that work—including investigative materials, such as interview reports, as well as evidence, such as contemporaneous notes taken by fact witnesses. The Committee urgently requires access to those materials to perform its core constitutional functions. The Special Counsel has expressly noted the need to avoid “preempt[ing] constitutional processes for addressing presidential misconduct,”<sup>85</sup> and affirmed that “Congress can validly make obstruction-of-justice statutes applicable to corruptly motivated official acts of the President without impermissibly undermining his Article II functions.”<sup>86</sup> If the Committee is to proceed, it requires the unredacted Mueller Report and underlying materials without further delay.

As the Special Counsel further noted, the Department has a policy against indicting a sitting president, which the Special Counsel “accepted for purposes of exercising prosecutorial jurisdiction.”<sup>87</sup> Congress is therefore the only body able to hold the President to account for improper conduct in our tripartite system, and urgently requires the subpoenaed material to determine whether and how to proceed with its constitutional duty to provide checks and balances on the President and Executive Branch. Otherwise, the President remains insulated from legal consequences and sits above the law. As the Special Counsel emphasized, in our system, “no person in this country is so high that he is above the law.”<sup>88</sup>

### Hearings

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress, the Committee’s May 2, 2019 hearing on “Oversight of the U.S. Department of Justice: Report by Special Counsel Robert S. Mueller, III on the Investigation Into Russian Interference in the 2016 Presidential Election and Related Matters” was used to develop this Report. Attorney General Barr was scheduled to appear at this hearing, but failed to do so. In addition, the Committee held a related hearing on February 8, 2019 entitled “Oversight of the U.S. Department of Justice.” Matthew Whitaker, Acting Attorney

<sup>82</sup>*Id.* Vol. II, at 154.

<sup>83</sup>*Id.* Vol. II, at 131.

<sup>84</sup>*Id.* Vol. II, at 2.

<sup>85</sup>*Id.* Vol. II, at 1.

<sup>86</sup>*Id.* Vol. II, at 171.

<sup>87</sup>*Id.*

<sup>88</sup>*Id.* Vol. II at 181–82 (citations, quotation marks and brackets omitted).

General, on behalf of U.S. Department of Justice, was the sole witness. The hearing considered various matters, including the Justice Department's role with respect to Special Counsel Mueller's investigation and his then-anticipated report.

Lastly, the Committee's Subcommittee on the Constitution, Civil Rights, and Civil Liberties held a hearing on March 27, 2019 on "Examining the Constitutional Role of the Pardon Power." The witnesses included Caroline Fredrickson, President, American Constitution Society for Law and Policy; Justin Florence, Legal Director, Protect Democracy; Andrew Kent, Professor of Law, Fordham University School of Law; and James Pfiffner, University Professor in the Schar School of Policy and Government, George Mason University. Despite the Committee's repeated outreach, it was unable to secure a Department witness from the Office of the Pardon Attorney for the hearing. The hearing considered the potential constitutional and legal limits on the president's power to grant clemency.

#### **Committee Consideration**

On May 8, 2019, the Committee met in open session and ordered the Report favorably reported with an amendment, by a rollcall vote of 24 to 16, a quorum being present.

#### **Committee Votes**

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following rollcall votes occurred during the Committee's consideration of the Report:

1. A question of consideration raised by Mr. Sensenbrenner was agreed to by a rollcall vote of 22 to 12.

Roll Call No. \_\_\_\_\_

Date: 5/6/14

COMMITTEE ON THE JUDICIARY  
House of Representatives  
116<sup>th</sup> Congress

Subject: Question of Consideration

PASSED

FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)	✓		
Zoe Lofgren (CA-19)	✓		
Sheila Jackson Lee (TX-18)	✓		
Steve Cohen (TN-09)	✓		
Hank Johnson (GA-04)	✓		
Ted Deutch (FL-02)	✓		
Karen Bass (CA-37)	✓		
Cedric Richmond (LA-02)	✓		
Hakeem Jeffries (NY-08)	✓		
David Cicilline (RI-01)	✓		
Eric Swalwell (CA-15)	✓		
Ted Lieu (CA-33)	✓		
Jamie Raskin (MD-08)	✓		
Pramila Jayapal (WA-07)	✓		
Val Demings (FL-10)	✓		
Lou Correa (CA-46)	✓		
Mary Gay Scanlon (PA-05)	✓		
Sylvia Garcia (TX-29)	✓		
Joseph Neguse (CO-02)	✓		
Lucy McBath (GA-06)	✓		
Greg Stanton (AZ-09)	✓		
Madeleine Dean (PA-04)	✓		
Debbie Mucarsel-Powell (FL-26)	✓		
Veronica Escobar (TX-16)	✓		
	AYES	NOS	PRES.
Doug Collins (GA-27)		✓	
James F. Sensenbrenner (WI-05)		✓	
Steve Chabot (OH-01)		✓	
Louie Gohmert (TX-01)		✓	
Jim Jordan (OH-04)		✓	
Ken Buck (CO-04)		✓	
John Ratcliffe (TX-04)		✓	
Martha Roby (AL-02)		✓	
Matt Gaetz (FL-01)		✓	
Mike Johnson (LA-04)		✓	
Andy Biggs (AZ-05)		✓	
Tom McClintock (CA-04)		✓	
Debbie Lesko (AZ-08)		✓	
Guy Reschenthaler (PA-14)		✓	
Ben Cline (VA-06)		✓	
Kelly Armstrong (ND-AL)		✓	
Greg Steube (FL-17)		✓	
	AYES	NOS	PRES.
TOTAL	22	12	

2. An amendment by Mr. Nadler to the Amendment in the Nature of a Substitute describing the Committee's response to: (1) a letter received by the Committee on the evening of May 7, 2019 from Assistant Attorney General Stephen E. Boyd requesting the Committee hold the subpoena in abeyance and delay any vote on whether to recommend a citation of contempt for noncompliance with such subpoena; and (2) a letter received by the Committee on the morning of May 8, 2019 from Assistant Attorney General Boyd stating that the President has asserted executive privilege over the entirety of the subpoenaed materials and that this was a protective assertion of the privilege passed by a rollcall vote of 20 to 12.

Roll Call No. 2

Date: 5/8/19

COMMITTEE ON THE JUDICIARY  
House of Representatives  
116<sup>th</sup> Congress

Amendment # 3 ( ) to ANS offered by Rep. Nadler

PASSED

FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)	✓		
Zoe Lofgren (CA-19)	✓		
Sheila Jackson Lee (TX-18)	✓		
Steve Cohen (TN-09)	✓		
Hank Johnson (GA-04)	✓		
Ted Deutch (FL-02)	✓		
Karen Bass (CA-37)			
Cedric Richmond (LA-02)			
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)			
Eric Swalwell (CA-15)	✓		
Ted Lieu (CA-33)	✓		
Jamie Raskin (MD-08)	✓		
Pramila Jayapal (WA-07)	✓		
Val Demings (FL-10)	✓		
Lou Correa (CA-46)	✓		
Mary Gay Scanlon (PA-05)	✓		
Sylvia Garcia (TX-29)	✓		
Joseph Neguse (CO-02)	✓		
Lucy McBath (GA-06)	✓		
Greg Stanton (AZ-09)	✓		
Madeleine Dean (PA-04)	✓		
Debbie Mucarsel-Powell (FL-26)	✓		
Veronica Escobar (TX-16)	✓		
	AYES	NOS	PRES.
Doug Collins (GA-27)		✓	
James F. Sensenbrenner (WI-05)		✓	
Steve Chabot (OH-01)		✓	
Louie Gohmert (TX-01)		✓	
Jim Jordan (OH-04)		✓	
Ken Buck (CO-04)		✓	
John Ratcliffe (TX-04)		✓	
Martha Roby (AL-02)			
Matt Gaetz (FL-01)			
Mike Johnson (LA-04)			
Andy Biggs (AZ-05)		✓	
Tom McClintock (CA-04)		✓	
Debbie Lesko (AZ-08)		✓	
Guy Reschenthaler (PA-14)		✓	
Ben Cline (VA-06)		✓	
Kelly Armstrong (ND-AL)		✓	
Greg Steube (FL-17)		✓	
	AYES	NOS	PRES.
TOTAL	20	12	

3. A motion by Mr. Nadler to report the Committee Report for the Resolution Recommending that the House of Representatives Find William P. Barr, Attorney General, U.S. Department of Justice, in Contempt of Congress for Refusal to Comply with a Subpoena Duly Issued by the Committee on the Judiciary, as amended, favorably to the House passed by a rollcall vote of 24 to 16.

Roll Call No. 3

Date: 5/8/19

COMMITTEE ON THE JUDICIARY  
House of Representatives  
116<sup>th</sup> Congress

Final Passage on Committee Report

- PASSED
- FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)	✓		
Zoe Lofgren (CA-19)	✓		
Sheila Jackson Lee (TX-18)	✓		
Steve Cohen (TN-09)	✓		
Hank Johnson (GA-04)	✓		
Ted Deutch (FL-02)	✓		
Karen Bass (CA-37)	✓		
Cedric Richmond (LA-02)	✓		
Hakeem Jeffries (NY-08)	✓		
David Cicilline (RI-01)	✓		
Eric Swalwell (CA-15)	✓		
Ted Lieu (CA-33)	✓		
Jamie Raskin (MD-08)	✓		
Pramila Jayapal (WA-07)	✓		
Val Demings (FL-10)	✓		
Lou Correa (CA-46)	✓		
Mary Gay Scanlon (PA-05)	✓		
Sylvia Garcia (TX-29)	✓		
Joseph Neguse (CO-02)	✓		
Lucy McBath (GA-06)	✓		
Greg Stanton (AZ-09)	✓		
Madeleine Dean (PA-04)	✓		
Debbie Mucarsel-Powell (FL-26)	✓		
Veronica Escobar (TX-16)	✓		
	AYES	NOS	PRES.
Doug Collins (GA-27)		✓	
James F. Sensenbrenner (WI-05)		✓	
Steve Chabot (OH-01)		✓	
Louie Gohmert (TX-01)		✓	
Jim Jordan (OH-04)		✓	
Ken Buck (CO-04)		✓	
John Ratcliffe (TX-04)		✓	
Martha Roby (AL-02)		✓	
Matt Gaetz (FL-01)		✓	
Mike Johnson (LA-04)		✓	
Andy Biggs (AZ-05)		✓	
Tom McClintock (CA-04)		✓	
Debbie Lesko (AZ-08)		✓	
Guy Reschenthaler (PA-14)		✓	
Ben Cline (VA-06)		✓	
Kelly Armstrong (ND-AL)		✓	
Greg Steube (FL-17)		✓	
	AYES	NOS	PRES.
TOTAL	24	16	



### **Committee Oversight Findings**

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this Report.

### **New Budget Authority and Tax Expenditures and Congressional Budget Office Cost Estimate**

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this Report from the Director of the Congressional Budget Office. The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this Report contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

### **Duplication of Federal Programs**

No provision of the Report establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

### **Performance Goals and Objectives**

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the purpose of the Report is to enforce the Committee's authority to subpoena and obtain the unredacted Mueller Report, and its underlying investigative and evidentiary materials.

### **Advisory on Earmarks**

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, the Report does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

### **Rule of Construction**

No provision in this Resolution or Report shall be construed as a directive for the Attorney General to violate Federal law or rules, including but not limited to Rule 6 of the Federal Rules of Criminal Procedure.

## Dissenting Views

On the Resolution and Report Recommending to the U.S. House of Representatives that Attorney General William P. Barr be cited for contempt of Congress

May 8, 2019

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### I. INTRODUCTION

On May 6, 2019, Chairman Nadler noticed a business meeting to consider a report to the U.S. House of Representatives holding Attorney General William P. Barr in contempt of Congress for failing to fully comply with a congressional subpoena (the “subpoena”) by the House Committee on the Judiciary (the “Committee”). The celerity of the Chairman’s decision to take this step is unprecedented and unwarranted—the temerity of the actions demanded of the Attorney General even more so because they demand that he violate federal law.

On March 22, 2019, Special Counsel Robert S. Mueller, III (the “Special Counsel”) delivered his report (the “Report” or the “Mueller Report”) on Russian interference in the 2016 election to the Attorney General. On March 25, 2019, the Chairman requested the full Report from the Attorney General. On April 18, 2019, the Attorney General provided the Report to the Chairman and the public. This version of the Report contained four types of redactions consistent with the law and to protect United States Department of Justice (the “Department”) equities, including ongoing prosecutions. The Department also offered to the Chairman a chance to review a less-redacted version of the report. On April 19, 2019, the Chairman publicly refused the Department’s offer and issued the subpoena for the full Report and its underlying evidence. On May 6, 2019, just 17 days later, the Chairman announced a Committee vote to hold the Attorney General in contempt of Congress for not fully complying with the subpoena.

The Chairman’s haste to hold the Attorney General in contempt has not allowed for any accommodations between the Committee and the Attorney General. This process—a staple of congressional oversight for generations—is imperative to filing suit in federal court attempting to have a subpoena enforced.

The Chairman’s rush to contempt is not an action befitting the Committee. Such action underscores the tenuous legal strategy that the Chairman advocates. Setting substantive arguments aside, solely on the bases of precedent, constitutional norms, and the general notion that Congress should not encourage the populace—let alone the chief law enforcement officer of the nation—to violate federal law, the prognosis for an outcome favorable to the Chairman’s legal position is dim.

## II. FACTUAL BACKGROUND

According to the contempt citation, the Committee “is currently engaged in an investigation into alleged obstruction of justice, public corruption, and other abuses of power by President Donald Trump, his associates, and members of his Administration.” This investigation is an abuse of congressional oversight authority.<sup>2</sup> The power to investigate and prosecute crimes is reserved for the executive branch.<sup>3</sup> The Chairman has failed to articulate a valid legislative purpose for his sweeping demands of the executive branch and the Attorney General.<sup>4</sup>

In February 2019, media reports indicated the Special Counsel was nearing the end of his investigation. On February 22, 2019, the Chairman and other Democratic leaders wrote the Attorney General expressing “in the strongest possible terms, our expectation that the Department of Justice will release to the public the report of Special Counsel Mueller submits to you—without delay and to the maximum extent permitted by law.”<sup>5</sup> On March 14, 2019, H. Con. Res. 24 was agreed to in the House, directing that the Report would be made available to the public and Congress. On March 22, 2019, the Attorney General notified the Chairmen and Ranking Members of the House and Senate Judiciary Committees (the “Judiciary Committees”) the Special Counsel had concluded his investigation and submitted to the Attorney General a confidential report, as required under the pertinent regulations.<sup>6</sup> The Attorney General also confirmed the Special Counsel did not take any action contrary to Department practices.<sup>7</sup> The Attorney General made this

<sup>2</sup>Letter from Hon. Doug Collins, Ranking Member, H. Comm. on the Judiciary, to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary (Mar. 7, 2019) available at <https://republicans-judiciary.house.gov/press-release/collins-to-nadler-democrat-investigation-an-abuse-of-power-assault-on-rule-of-law/> (last visited May 7, 2019).

<sup>3</sup>*Id.* at 3 (citing *Kilburn v. Thompson*, 103 U.S. 168 (1881); *Quinn v. U.S.*, 349 U.S. 155, 161 (1955)).

<sup>4</sup>*Id.* at 2 (citing *Wilkinson v. United States*, 365 U.S. 399 (1961)).

<sup>5</sup>Letter from Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary; Hon. Adam Schiff, Chairman, H. Permanent Select Committee on Intelligence; Hon. Elijah E. Cummings, Chairman, H. Committee on Oversight & Reform; Hon. Eliot Engel, Chairman, H. Foreign Affairs Comm.; Hon. Maxine Waters, Chairwoman, H. Comm. Financial Serv.; Hon. Richard Neal, Chairman, H. Ways & Means Comm. to Hon. William P. Barr, Attorney General, U.S. Dep’t of Justice (Feb. 22, 2019).

<sup>6</sup>Letter from Hon. William P. Barr, Attorney General, U.S. Dep’t of Justice to Hon. Lindsey Graham, Chairman, S. Comm. on the Judiciary; Hon. Dianne Feinstein, Ranking Member, S. Comm. on the Judiciary; Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary; Hon. Doug Collins, Ranking Member, H. Comm. on the Judiciary (Mar. 22, 2019).

<sup>7</sup>*Id.*

communication to Congress public, something he is not required to do under the regulations.

On March 24, 2019, the Attorney General wrote to the Judiciary Committees to provide the Special Counsel's principal conclusions. He said the Special Counsel found no conspiracy or coordination between Donald Trump's campaign and Russia.<sup>8</sup> He said the Special Counsel did not reach a conclusion on obstruction: "The Special Counsel states that 'while this report does not conclude that the President committed a crime, it also does not exonerate him.'"<sup>9</sup> The Attorney General and the Deputy Attorney General reviewed the evidence and concluded there was not enough evidence to charge the President with obstruction.<sup>10</sup> An Office of Legal Counsel opinion stating a sitting president cannot be indicted was not a factor in the Attorney General's decision.<sup>11</sup>

On March 25, 2019, the Chairman and other Democratic leaders wrote the Attorney General "formally request[ing] that [he] release the Special Counsel's full report to Congress no later than Tuesday, April 2. We also ask that [the Attorney General] begin transmitting the underlying evidence and materials to the relevant committees at that time."<sup>12</sup> In this letter, the Chairman and other Democratic leaders failed to state a valid legislative purpose for their request.<sup>13</sup> On March 29, 2019, the Attorney General wrote to the Judiciary Committees about the release of the Special Counsel's report.<sup>14</sup> He said the Judiciary Committees would receive the report in mid-April. If not sooner.<sup>15</sup> He also said he was coordinating with the Special Counsel and the Deputy Attorney General on redactions to ensure compliance with the law and Department regulations requiring the protection of: (1) grand jury material; (2) classified material; (3) ongoing investigative material; and (4) "information that would unduly infringe on the personal privacy and reputational interests of peripheral third parties."<sup>16</sup> Lastly, the Attorney General offered to testify before the Senate Judiciary Committee on May 1, 2019, and the Committee on May 2, 2019.<sup>17</sup>

On April 1, 2019, the Chairman and other Democratic leaders sent a letter to the Attorney General demanding the full Mueller Report.<sup>18</sup> This letter failed to state a legislative purpose for requir-

<sup>8</sup>Letter from Hon. William P. Barr to Hon. Lindsey Graham, Chairman, S. Comm. on the Judiciary, Hon. Dianne Feinstein, Ranking Member, S. Comm. on the Judiciary, Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, & Hon. Doug Collins, Ranking Member, H. Comm. on the Judiciary (Mar. 24, 2019).

<sup>9</sup>*Id.*

<sup>10</sup>*Id.*

<sup>11</sup>*Id.*

<sup>12</sup>Letter from Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary; Hon. Adam Schiff, Chairman, H. Permanent Select Committee on Intelligence; Hon. Elijah E. Cummings, Chairman, H. Committee on Oversight & Reform; Hon. Eliot Engel, Chairman, H. Foreign Affairs Comm.; Hon. Maxine Waters, Chairwoman, H. Comm. Financial Serv.; Hon. Richard Neal, Chairman, H. Ways & Means Comm. to Hon. William P. Barr, Attorney General, U.S. Dep't of Justice (Mar. 25, 2019).

<sup>13</sup>*Id.*

<sup>14</sup>Letter from Hon. William P. Barr to Hon. Lindsey Graham, Chairman, S. Comm. on the Judiciary, Hon. Dianne Feinstein, Ranking Member, S. Comm. on the Judiciary, Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, & Hon. Doug Collins, Ranking Member, H. Comm. on the Judiciary, Mar. 29, 2019.

<sup>15</sup>*Id.* at 1.

<sup>16</sup>*Id.* at 1.

<sup>17</sup>*Id.* at 2.

<sup>18</sup>Letter from Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary; Hon. Adam Schiff, Chairman, H. Permanent Select Committee on Intelligence; Hon. Elijah E. Cummings, Chairman, H. Committee on Oversight & Reform; Hon. Eliot Engel, Chairman, H. Foreign Affairs Comm.; Hon. Maxine Waters, Chairwoman, H. Comm. Financial Serv.; Hon. Richard Neal,

ing the Report.<sup>19</sup> On April 11, 2019, Speaker of the House Nancy P. Pelosi (the “Speaker”), the Chairman, and other Democratic leaders wrote the Attorney General claiming that Congress is entitled to the full Report and among other things, “to express profound concern about your [the Attorney General’s] comments before the Senate Appropriations Committee regarding your apparent review of the investigation into Russia’s interference in the 2016 election.”<sup>20</sup> Also on April 11, 2019, the Chairman wrote to the Attorney General reiterating his request for the Report.<sup>21</sup> This letter also did not provide a valid legislative purpose for requiring the Report.<sup>22</sup>

On April 18, 2019, the Attorney General released the Report with appropriate redactions to Congress and the public. The Attorney General also offered certain Members of Congress the opportunity to view *in camera* a less-redacted version of the Report (containing only grand-jury materials as redactions). The version offered to certain Members—which the Chairman has refused to see—would “permit review of 98.5% of the [R]eport, including 99.9% of Volume II, which discusses the President’s actions.”<sup>23</sup> The same day, April 18, 2019, the Chairman signed a subpoena *duces tecum* to the Attorney General.<sup>24</sup> On April 19, 2019, Committee staff for the majority served the Attorney General with the previously signed subpoena.<sup>25</sup> Also on April 19, 2019, the Speaker, the Chairman, and other Democratic leaders wrote to the Attorney General informing him that “your [the Attorney General’s] proposed accommodation—which among other things would prohibit discussion of the full report, even with other Committee Members—is not acceptable.”<sup>26</sup> The correspondence did not state a legislative purpose for demanding the full Report and other investigative materials but opined on Congress’ need for this information to fulfill “its functions as intended in the Constitution.”<sup>27</sup>

On April 25, 2019, the Committee noticed a hearing for May 2, 2019, entitled “Oversight of the U.S. Department of Justice: Report by Special Counsel Robert S. Mueller, III on the Investigation Into Russian Interference in the 2016 Presidential Election; and Related Matters” with the Attorney General as the sole witness.<sup>28</sup> On April

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Chairman, H. Ways & Means Comm. to Hon. William P. Barr, Attorney General, U.S. Dep’t of Justice (Apr. 1, 2019).

<sup>19</sup> *Id.*

<sup>20</sup> Letter from Hon. Nancy Pelosi, Speaker, H. of Representatives, Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary; Hon. Adam Schiff, Chairman, H. Permanent Select Committee on Intelligence; Hon. Charles E. Schumer, S. Democratic Leader; Hon. Dianne Feinstein, Ranking Member, S. Comm. on the Judiciary; Hon. Mark Warner, Vice Chairman, S. Select Comm. on Intelligence to Hon. William P. Barr, Attorney General, U.S. Dep’t of Justice (Apr. 11, 2019).

<sup>21</sup> Letter from Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary to Hon. William P. Barr, Attorney General, U.S. Dep’t of Justice (Apr. 11, 2019).

<sup>22</sup> *Id.*

<sup>23</sup> Letter from Hon. Stephen E. Boyd, Ass’t Attorney General, U.S. Dep’t of Justice, to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary (May 1, 2019).

<sup>24</sup> Press Release, H. Comm. on the Judiciary, Chairman Nadler Issues Subpoena for Full Mueller Report and Underlying Materials, available at <https://judicial.house> (last visited May 7, 2019).

<sup>25</sup> *Id.*

<sup>26</sup> Letter from Hon. Nancy Pelosi, Speaker, H. of Representatives, Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary; Hon. Adam Schiff, Chairman, H. Permanent Select Committee on Intelligence; Hon. Charles E. Schumer, S. Democratic Leader; Hon. Dianne Feinstein, Ranking Member, S. Comm. on the Judiciary; Hon. Mark Warner, Vice Chairman, S. Select Comm. on Intelligence to Hon. William P. Barr, Attorney General, U.S. Dep’t of Justice (Apr. 19, 2019).

<sup>27</sup> *Id.* at 1.

<sup>28</sup> Email from Committee Clerk to Members, H. Comm. on the Judiciary (Apr. 25, 2019 at 2:19 p.m.).

29, 2019, the Democratic leadership convened a meeting in the Speaker’s office that included the Department and the FBI.<sup>29</sup> On May 1, 2019, Assistant Attorney General for Legislative Affairs Stephen E. Boyd (the “Assistant Attorney General”) wrote the Chairman explaining the extraordinary steps taken by the Department to accommodate the Committee’s demands for the full Report, the underlying materials, and the Special Counsel’s investigative files.<sup>30</sup> Yet, the Department did not close the door on negotiations.<sup>31</sup> Also on May 1, 2019, the Committee held a business meeting to authorize staff questioning of the Attorney General at the May 2, 2019 hearing.<sup>32</sup> Outside of impeachment proceedings, staff has not asked questions of witnesses before the Committee.<sup>33</sup> Department staff informally conveyed to the Committee staff that the Attorney General would not appear if the Chairman insisted on allowing unprecedented staff questioning of a cabinet official.<sup>34</sup>

On May 3, 2019, the Chairman responded to the Assistant Attorney General’s May 1, 2019, letter. This response gave the Department a deadline of May 6, 2019—just one business day—to respond. The letter did not articulate a legislative purpose for demanding information related to the Special Counsel’s work. Also, on May 3, 2019, majority staff informed minority staff that a contempt resolution markup would be noticed on May 6, 2019—despite having sent a letter to the Department that morning and not yet having heard back from the Department on a response.<sup>35</sup>

On May 6, 2019, the Committee noticed a business meeting of the “Committee Report for Resolution Recommending that the House of Representatives Find William P. Barr, Attorney General, U.S. Department of Justice, in Contempt of Congress for Refusal to Comply with a Subpoena Duly Issued by the Committee on the Judiciary.”<sup>36</sup> Also, on May 6, 2019, the Assistant Attorney General responded to the Chairman’s letter from May 3, 2019.<sup>37</sup> The Assistant Attorney General wrote: “we emphasize the Department of Justice’s (Department) continued willingness to engage in good faith with the Committee on these issues consistent with its obligation under the law” and he invited Committee staff to the Department on May 8, 2019, “to negotiate an accommodation that meets the legitimate interests of each of our coequal branches of government.”<sup>38</sup> The Department noted that “to make the meeting productive” the Chairman should view the less-redacted version of the report *in camera* in advance.<sup>39</sup> The Chairman did not read that version of the Report.

<sup>29</sup> E-mail from H. Comm. on the Judiciary Majority staff, to H. Comm. on the Judiciary Minority Staff (May 3, 2019, 12:55 p.m.).

<sup>30</sup> Letter from Stephen E. Boyd, Ass’t Attorney General, U.S. Dep’t of Justice, to Hon. Jerrold Nadler, Chairman; H. Comm. on the Judiciary (May 1, 2019).

<sup>31</sup> *Id.* at 4.

<sup>32</sup> Business Meeting, H. Comm. On the Jud., Motion to permit additional hour of questioning, equally divided between the Majority and Minority, by either Members or Committee staff . . . , May 1, 2019 available at <https://judiciary.house.gov/legislation/markups/motion-permit-additional-hour-questioning-equally-divided-between-majority-and> (last visited May 7, 2019).

<sup>33</sup> See *supra*, note 30.

<sup>34</sup> *Id.*

<sup>35</sup> Phone call between Majority Staff and Minority Staff, May 3, 2019.

<sup>36</sup> Email from Committee Clerk to Members, H. Comm. on the Judiciary (May 6, 2019, 9:44 a.m.).

<sup>37</sup> Letter from Stephen E. Boyd, Ass’t Attorney General, U.S. Dep’t of Justice, to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary (May 6, 2019).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 2.

On May 7, 2019, at 1:00 p.m., Department staff, including the Assistant Attorney General, came to Capitol Hill to meet with Committee staff to discuss a path forward. The Assistant Attorney General said the Department was willing to ease restrictions on the existing offer.<sup>40</sup> Specifically, the Department offered the following: (1) to allow an additional staffer for each Member currently permitted to view the Report to be granted access; (2) Members and staff permitted to view the Report could take their notes with them after viewing the Report; (3) Members permitted to view the Report could discuss amongst themselves the lesser redacted version; and (4) the Department offered to bring the lesser redacted version to Capitol Hill to facilitate the review process.<sup>41</sup> This offer was contingent upon the Committee postponing the vote on holding the Attorney General in contempt.

After the Department made this offer, the Chairman's staff responded favorably, and additional potential accommodations were discussed. The Department stated they would be happy to continue discussions the following week, and the parties then discussed memorializing the agreement.

At some point later in the afternoon and into the evening, the Chairman decided to press forward with his hastily concocted contempt proceeding in the Committee. Further, the Chairman placed additional demands on the Department, demanding access to the lesser-redacted version of the Report not only for all Judiciary Committee Members, but also to all Members of the House Permanent Select Committee on Intelligence. This new eleventh-hour demand was the first time the Chairman had asked for this, moving the goalposts further away from the Department's accommodations.

On May 7, 2019, at approximately 10:00 p.m., after outlining their accommodations in a letter, the Department expressed consternation at the Committee for "escalating its unmeasurable demands and scheduling a committee vote . . . [for] contempt of Congress."<sup>42</sup> The Assistant Attorney General warned the President may be forced to invoke executive privilege due to the nature and volume of the documents demanded by the subpoena. He made one last entreaty to the Chairman to hold off on proceeding with a vote on contempt.<sup>43</sup>

On May 8, 2019, the Assistant Attorney General sent the Chairman a letter expressing disappointment that the Chairman rejected the "Department of Justice's request to delay the vote of the Committee on the Judiciary on a contempt finding against the Attorney General this morning."<sup>44</sup> The Assistant Attorney General stated that in taking this significant step, the Chairman "terminated our ongoing negotiations and abandoned the accommodation process with respect to your [Chairman Nadler's] April 18, 2019, subpoena of confidential Department of Justice materials related to the in-

<sup>40</sup> Meeting between Majority Staff H. Judiciary Comm., Minority Staff H. Comm. on the Judiciary, & Staff of the U.S. Dep't of Justice, May 7, 2019, 1:00 p.m. notes on file with the H. Judiciary Comm.

<sup>41</sup>*Id.*

<sup>42</sup> Letter from Hon. Stephen E. Boyd, Ass't Attorney General, U.S. Dep't of Justice, to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary (May 7, 2019).

<sup>43</sup>*Id.*

<sup>44</sup> Letter from Hon. Stephen E. Boyd, Ass't Attorney General, U.S. Dep't of Justice, to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary (May 8, 2019).

investigation conducted by Special Counsel Robert S. Mueller, III.”<sup>45</sup> The Assistant Attorney General concluded by advising the Chairman that the “President has asserted executive privilege over the entirety of the subpoenaed materials.”<sup>46</sup> He called this a protective assertion in the vein of a 1996 Office of Legal Counsel opinion under Attorney General Janet Reno.<sup>47</sup>

### III. SUMMARY OF SPECIAL COUNSEL REGULATIONS, INVESTIGATION, AND REPORT

This Committee has either failed to appreciate or endeavored to obfuscate what was required by the Special Counsel, the Attorney General, and the legislature itself relative to the Special Counsel’s investigation and any resulting work product.

Pursuant to 28 C.F.R. § 600, the Special Counsel functions as a constituent office of the Department. Incumbent upon the Special Counsel is the responsibility to exercise “the full power and independent authority to exercise all investigative and prosecutorial functions of any United States Attorney.”<sup>48</sup> The Special Counsel is required to provide the Attorney General two categories of notice or documentation: (i) notification “of events in the course of [the Special Counsel’s] investigation with respect to Urgent Report[]”, and (ii) a confidential report, to be delivered after the conclusion of the Special Counsel’s work, “explaining the prosecution or declination decisions reached by the Special Counsel.”<sup>49</sup>

The Attorney General is required to provide notification to the Judiciary Committees’ chairmen and ranking members with an explanation for each action in the following three situations: (i) the appointment of a Special Counsel, (ii) the removal of a Special Counsel, and (iii) “upon conclusion of the Special Counsels [sic] investigation, including, to the extent consistent with applicable law, a description and explanation of instances (if any) in which the Attorney General concluded that a proposed action by a Special Counsel was so inappropriate or unwarranted under established Departmental practices that it should not be pursued.”<sup>50</sup>

Finally, the regulations give the Attorney General discretion to provide to the public the aforementioned reports if the Attorney General determines such a release “would be in the public interest, to the extent that release would comply with applicable legal restrictions.”<sup>51</sup>

The Special Counsel was appointed by the Acting Attorney General on May 17, 2017.<sup>52</sup> He provided his confidential report to the Attorney General on March 22, 2019 pursuant to 28 C.F.R. § 600.8. That same day, pursuant to 28 C.F.R. § 600.9(a)(3), the Attorney General provided to Congress notice that the Special Counsel had concluded his investigation and provided the Attorney General with a confidential report.<sup>53</sup>

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* (citing *Protective Assertion of Executive Privilege Regarding White House Counsel’s Office Documents*, 20 Op. O.L.C. I (1996) (opinion of Attorney General Janet Reno)).

<sup>48</sup> 28 C.F.R. § 600.7.

<sup>49</sup> 28 C.F.R. § 600.8.

<sup>50</sup> 28 C.F.R. § 600.9(a)(1)–(3).

<sup>51</sup> 28 C.F.R. § 600.9(c). (emphasis added)

<sup>52</sup> See Order No. 3915–2017 by Acting Attorney General Rod J. Rosenstein.

<sup>53</sup> Letter to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary; Hon. Lindsey Graham, Chairman, S. Comm. on the Judiciary; Hon. Doug Collins, Ranking Member, H. Comm.



By providing that notice, the Attorney General fulfilled his obligations under the regulations governing the Special Counsel. Any action by the Attorney General subsequent to March 22, 2019 has been the discretion of the Attorney General under 28 C.F.R. § 600.9(c).

The decisions to provide the conclusions of the Report to Congress, to release the Report to the public and to Congress, and to testify before Congress have been made at the discretion of the Attorney General. But, in keeping with the Special Counsel regulation, the Attorney General is not permitted to release information unless the release “would comply with applicable legal restrictions.”<sup>54</sup> The Committee’s demand to release information subject to grand jury secrecy is a demand for the Attorney General to violate the law.

#### IV. CONTEMPT OF CONGRESS IS NOT APPROPRIATE UNDER THE CIRCUMSTANCES

The threat to hold the Attorney General in contempt of Congress for his refusal to violate the law is unprecedented. The following sections explain why holding the Attorney General in contempt is premature, hasty, and without legal basis.

##### A. BY THE CHAIRMAN’S OWN ADMISSION, THE SUBPOENA IS OVERBROAD

At the Committee business meeting to discuss the contempt citation, Chairman Nadler acknowledged a difference between the intent of the subpoena and the language in the actual subpoena itself. Amidst a discussion about grand jury (“6(e)”) material—which would require the Attorney General to break the law in order to produce to the Committee—the Chairman stated:

The reason that was in the subpoena was to increase our clout in court in getting the 6(e) material, hopefully with the Attorney General’s support, but it is in no way meant to force him to give that support.<sup>55</sup>

This astonishing admission strikes at the heart of the matter: the Chairman is not interested in obtaining documents through the accommodations process but rather positioning himself for litigation.

Further, after acknowledging it was not the Chairman’s intent to include this grand jury material, he stated:

No, we are not going to issue a new subpoena. We have no intention and never had any intention of enforcing—of trying to force the Attorney General or anyone else to give us 6(e) material without going to court.<sup>56</sup>

The Chairman also stated:

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on the Judiciary; Hon. Dianne Feinstein, Ranking Member, S. Comm. on the Judiciary, from William Barr, Attorney General, U.S. Dep’t of Justice (Mar. 22, 2019).

<sup>54</sup> 28 C.F.R. § 600.9(c).

<sup>55</sup> Business Meeting of the H. Comm. on the Judiciary, Committee Report for Resolution Recommending that the House of Representatives Find William P. Barr, Attorney General, U.S. Dep’t of Justice, in Contempt of Congress for Refusal to Comply with a Subpoena Duly Issued by the Committee on the Judiciary, 116th Cong., 1st Session, May 8, 2019 at 175 [hereinafter May 8 Committee Business Meeting].

<sup>56</sup> *Id.*

. . . it has never been our intention, as we have stated before, to ask the Attorney General to violate the law. We have always intended and we have made it very clear that we wanted him to come to court with us to ask for an exemption to Rule 6(e).<sup>57</sup>

These statement indicates the Chairman’s goal all along was to go to court and not engage in the accommodations process. If the Chairman believed the material could not be obtained absent going to court, he could have carved out language to that effect in the subpoena or an accompanying cover letter. He did not do this. Instead, he expects the Attorney General to go to court seeking this material—something the Chairman has provided no precedent for—and moved to hold him in contempt in part because the Attorney General did not do this.

The Chairman also had a chance to issue a subpoena specifically excluding responsive documents implicating grand jury material. Such a subpoena would have obviated the fight over 6(e) material the Committee now finds itself in. On April 3, 2019, the Committee held a business meeting to consider a resolution authorizing the Chairman to issue the subpoena. At that business meeting, Mr. Buck offered an amendment stating in full:

This Resolution shall not be construed as authorizing the Chairman to issue a subpoena for the production of information where such production would violate Rule 6(e) of the Federal Rules of Criminal Procedure.<sup>58</sup>

The Chairman voted against the amendment, which was defeated by a vote of 24–16.

Additionally, the Ranking Member noted the Chairman’s intentions are meaningless when contrasted with the specific language of the subpoena. The vote on the amendment in the April 3, 2019 business meeting was an opportunity for the Chairman to vote on his intent. The Ranking Member stated:

We vote on words on paper, not intent. We vote on words on paper, and what words on paper say matter, and it may intend that we ask for this. It may intend we don’t want to do it, but that is not what we vote on in this Congress.<sup>59</sup>

B. THE COMMITTEE IS MOVING AT UNPRECEDENTED SPEED, AND BY THE CHAIRMAN’S OWN ADMISSION THE ACCOMMODATIONS PROCESS HAS YET TO TAKE PLACE

The speed at which the majority has moved from issuing a subpoena to voting on contempt is unprecedented and highlights the unwillingness of the Committee to engage meaningfully with the Department on reasonable accommodations. The extraordinary nature of the Committee’s actions is highlighted by comparing the Committee’s process here to the prior instances where Congress held an executive branch official in contempt for failing to comply with a congressional subpoena.

<sup>57</sup> *Id.* at 115.

<sup>58</sup> Markup of Resolution authorizing issuance of subpoena, H. Comm. on the Judiciary, 116th Cong., 1st Session, Apr. 3, 2019, Amendment—Buck 2, available at: <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=109260>.

<sup>59</sup> May 8 Committee Business Meeting at 145.

Here, the Attorney General received the Report on March 22, 2019.<sup>60</sup> Three days later, on March 25, the Chairman joined a letter with other Democratic leaders in the House requesting from the Attorney General an unredacted copy of the Report.<sup>61</sup> The Attorney General subsequently released a redacted version of the Report to Congress and the public on April 18. The Chairman served a subpoena for the unredacted Report on the Attorney General the next day on April 19.<sup>62</sup> The subpoena set May 1, 2019 as the response deadline—less than the two weeks normally afforded recipients of congressional subpoenas.<sup>63</sup> After declining multiple accommodations from the Department,<sup>64</sup> the Committee scheduled a May 8, 2019 business meeting to consider a contempt citation—a mere 19 days after the subpoena was issued and 44 days after the Chairman first requested an unredacted copy of the Report.

By comparison, on June 22, 2012, the House Committee on Oversight and Government Reform voted to cite then-Attorney General Eric Holder for contempt of Congress for failing to comply with a subpoena.<sup>65</sup> That was 255 days after the subpoena was issued, and 464 days after the first request to the Department for information.<sup>66</sup>

On July 25, 2007, the Committee voted to cite former White House Counsel Harriet Miers for contempt of Congress for failing to comply with a subpoena.<sup>67</sup> That was 42 days after the subpoena was issued and 138 days after the first request for information.<sup>68</sup> This table provides a visual comparison.

	First Request until Contempt	Subpoena until Contempt
William Barr .....	44 days .....	19 days
Eric Holder .....	464 days .....	255 days
Harriet Miers .....	138 days .....	42 days

The majority's actions this Congress, in voting to cite the Attorney General for contempt of Congress 19 days after issuing a subpoena, is unprecedented and further calls into question the sincerity of the majority's demands.

Perhaps even more extraordinary than the speed with which this Committee has moved to hold the Attorney General in contempt is the Chairman's own admission that the accommodations process has yet to take place. At the Committee business meeting to consider the contempt citation, he stated:

<sup>60</sup>Letter to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary; Hon. Lindsey Graham, Chairman, S. Comm. on the Judiciary; Hon. Doug Collins, Ranking Member, H. Comm. on the Judiciary; Hon. Dianne Feinstein, Ranking Member, S. Comm. on the Judiciary, from William P. Barr, Attorney General, U.S. Dep't of Justice, (March 22, 2019).

<sup>61</sup>Letter to Hon. William P. Barr, Attorney General, U.S. Dep't of Justice from Hon. Jerrold Nadler, Chairman, H. Comm. On the Judiciary, et al. (March 25, 2019).

<sup>62</sup>Apr. 19, 20 19, Subpoena.

<sup>63</sup>*Id.*

<sup>64</sup>*See, e.g.*, Letter from Stephen E. Boyd, Ass't Attorney General, U.S. Dep't of Justice, to Hon. Jerrold Nadler, Chairman, H. Comm. On the Judiciary (May 6, 2019).

<sup>65</sup>*See* H. Rep. NO. 11 2–546, 112th Cong. (2012), available at <https://www.congress.gov/112/crpt/hrpt546/CRPT-112hrpt546.pdf>.

<sup>66</sup>*Id.*

<sup>67</sup>*See* H. REP. NO. 110–423, 110th Cong. (2007), available at <https://www.congress.gov/110/crpt/hrpt423/CRPT-110hrpt423.pdf>.

<sup>68</sup>*Id.* The full house subsequently voted to issue the contempt citation on February 14, 2008, 246 days after the subpoena was issued and 342 days after the first request for information. *See* Philip Shenon, "House Votes to Issue Contempt Citations," NY TIMES, Feb. 15, 2008 available at <https://www.nytimes.com/2008/02/15/washington/15contempt.html?hp>.

The subpoena is written as the beginning of a dialogue process, as with any other process to talk to the attorney general and DOJ and ultimately to go to court, but it's designed to be the foundation of a dialogue and not designed to force our hand.<sup>69</sup>

In other words, the dialogue the Chairman claims to have had prior to the issuance of the subpoena is irrelevant and moot; it was not until the subpoena was issued did the Chairman expect to begin a dialogue with the Department. Moreover, while the subpoena may not have been designed to “force” the Chairman’s hand, by rushing to contempt in only 19 days after the subpoena’s issuance—and only one week after the return date on the subpoena—the Committee is trying to force the Department’s hand.

The Department has acknowledged the Committee demanded production of “millions of pages of classified and unclassified documents, bearing upon more than two dozen criminal cases and investigations, many of which are ongoing.”<sup>70</sup> Such a demand in a compressed timeframe is simply impossible for the Department to meet. The Chairman knows this, but nevertheless forged ahead with a contempt citation.

In making the contrast to the contempt process with Attorney General Holder, one Member of the Committee Majority stated the purpose of moving to contempt so quickly was so that the President would not receive assistance during his re-election campaign. He stated:

Yes, we simply do not have 400 days to wait before making sure that we are protected in the 2020 election. We know that in 2016, the Russians interfered with our election so that they could help Donald Trump get elected. Donald Trump will stand for reelection again in a very short period of time, and we don’t have 400 days to wait to determine whether or not we are in shape to withstand any additional attempts for the Russians to try to interfere to help Trump get reelected.<sup>71</sup>

#### C. THE CHAIRMAN’S STATED RATIONALE FOR NEEDING THE REPORT IS LACKING

As a rationale for demanding the unredacted Report, the Chairman’s contempt citation notes the Committee is “currently engaged in an investigation into alleged obstruction of justice, public corruption, and other abuses of power by President Donald Trump, his associates, and members of his Administration.” This “investigation” began on March 4, 2019, when the Chairman issued document requests to 81 individuals and organizations. The Attorney General was not one of the 81 recipients.

Just over half of those recipients (52) responded to the Chairman, and far fewer (23) provided documents to the Committee. It is unclear if any documents obtained by the Committee are “new” documents, i.e., were not already submitted to other congressional committees or the Special Counsel’s Office.

<sup>69</sup> May 8 Committee Business Meeting.

<sup>70</sup> Letter from Hon. Stephen Boyd, Asst. Attorney General, U.S. Dep’t of Justice, to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, May 7, 2019.

<sup>71</sup> May 8 Committee Business Meeting at 148.

It is also unclear if this “investigation” is still ongoing. Since the March 4 launch, the Committee has not taken any witness testimony. The Chairman has not sent a single follow-up letter to any of the 81 recipients either requesting additional information or full compliance with the original request. The only subsequent Committee activity in this “investigation” was the authorization of subpoenas for five individuals who previously worked in the White House—all who responded in a timely manner—and the issuance of a subpoena to Don McGahn after the public release of the Mueller Report.<sup>72</sup>

The lack of activity surrounding the Chairman’s “investigation”—and the specific targeting of White House personnel with subpoenas—makes clear the Chairman does not in fact intend to investigate “alleged obstruction of justice, public corruption, and other abuses of power.”<sup>73</sup> Rather, the Chairman intends to specifically target the President and is using his dormant investigation as an excuse to claim a legitimate purpose for demanding the unredacted Mueller Report.

The Chairman’s contempt citation also states the “substance of even the redacted Report expressly affirmed Congress’ independent authority to conduct its own investigation pursuant to its legislative, oversight, and other constitutional prerogatives.”<sup>74</sup> This statement does not contain a citation, and simply stating it does not make it so. To the contrary, as discussed in the Ranking Member’s April 22, 2019 letter to the Chairman, the Mueller Report does not expressly affirm Congress’ independent authority to investigate.<sup>75</sup> Rather, the misunderstood section in the Mueller Report summarizes an esoteric legal argument about Congress’ authority generally to legislate regarding obstruction of justice laws.<sup>76</sup>

Furthermore, the Chairman has also failed to demonstrate an overarching need for either the full Mueller Report or its underlying materials.<sup>77</sup> Many of the underlying materials can be obtained via other sources through the Chairman’s “investigation” he began on March 4. The Committee can interview many of the same witnesses interviewed by the Special Counsel’s Office, and the Committee can ask for many of the same documents produced voluntarily to the Special Counsel’s Office. To wit, the Committee has already authorized a subpoena for Annie Donaldson, whose notes the Special Counsel’s Office relied on heavily in writing the Mueller Report, though the subpoena has yet to be issued.<sup>78</sup>

The Chairman’s contempt citation attempts to describe the Committee’s need for the full Report to “require[] the most complete possible understanding of Russia’s influence and hacking operations” to consider possible future legislation. Yet, it is this exact material, “describing the structure and actions taken by the IRA,”

<sup>72</sup> *Id.*

<sup>73</sup> *See supra*, note 1.

<sup>74</sup> *See supra*, note 2.

<sup>75</sup> Letter from Hon. Doug Collins, Ranking Member, H. Comm. On the Judiciary, to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, April 22, 2019, *available at*: [https://gallery.mailchimp.com/0275399506e2bdd8fe2012b77/files/a90397dc-8c16-425d-9cea-9e92ac6a9e7d/04.22.19NadlerDAC.pdf?utm\\_source=Collins+Judiciary+Press+List&utm\\_campaign=28b1003f7c-EMAIL\CAMPAIGN\2019\04\21\11\\_149&utm\\_medium=email&utm\\_term=0ff92df788e-28b1003f7c-168924225](https://gallery.mailchimp.com/0275399506e2bdd8fe2012b77/files/a90397dc-8c16-425d-9cea-9e92ac6a9e7d/04.22.19NadlerDAC.pdf?utm_source=Collins+Judiciary+Press+List&utm_campaign=28b1003f7c-EMAIL\CAMPAIGN\2019\04\21\11_149&utm_medium=email&utm_term=0ff92df788e-28b1003f7c-168924225) (last visited May 7, 2019).

<sup>76</sup> *Id.* at 2.

<sup>77</sup> *See supra*, note 2.

<sup>78</sup> Business Meeting, H. Comm. On the Jud., Resolution authorizing issuance of subpoenas, April 3, 2019.

that the Department offered the Chairman to review *in camera*. The Chairman has refused to do so, deliberately depriving himself access to material he claims he needs to make determinations about future legislation.<sup>79</sup>

Moreover, the Chairman’s public comments regarding the need for the full Mueller Report are in stark contrast to the contempt citation’s claim the Committee needs the report for legislative purposes. For example, on April 7, 2019, the Chairman said “Congress has a right to the entire report with no redactions whatsoever so we can see what’s there [ . . . ] We’re entitled to see it because Congress represents the nation. And Congress has to take action on any of it. So we’re entitled to see all of it.”<sup>80</sup> On April 19, 2019, the Chairman said, in a statement, “My committee needs and is entitled to the full version of the report and the underlying evidence consistent with past practice [ . . . ] It now falls to Congress to determine the full scope of that alleged misconduct and to decide what steps we must take going forward.”<sup>81</sup> These public comments do not support a consistent need for the full report as outlined in the contempt citation and give rise to questions as to whether the Chairman is simply playing politics or whether there is a true need for full compliance with the subpoena.

#### D. THE COMMITTEE’S SUBPOENA REQUIRES THE ATTORNEY GENERAL TO VIOLATE FEDERAL LAW

The underlying quandary foisted upon the Attorney General by the majority of this Committee and the root of the disagreement between the Attorney General and the majority is that by providing the information the subpoena demands, the Attorney General would be violating federal law. To demand a version of the Report without grand jury redactions is nothing less than a directive from Congress to the Attorney General to break the law.

Under the Federal Rules of Criminal Procedure, material collected or retained in connection with a grand jury proceeding must remain secret.<sup>82</sup> There are several disclosure exceptions (with sub-categories for some of the exceptions).<sup>83</sup> Nothing in this Committee’s recitation of the facts meets any of the exceptions provided in the rule, read even with the most expansive interpretation. The U.S. Court of Appeals for the District of Columbia Circuit recently held the exceptions to the general rule of secrecy are explicit and narrow; there is no implied exception for a congressional inquiry.<sup>84</sup>

The Federal Rules of Criminal Procedure permit the disclosure of certain grand jury materials—as one of the limited exceptions to the general secrecy directive inherent to grand jury materials—

<sup>79</sup> See *supra*, note 20.

<sup>80</sup> CBS News.

<sup>81</sup> Politico. *Nadler Subpoenas DOJ for Full Version of the Mueller Report* (April 19, 2019), available at <https://www.politico.com/story/2019/04/19/nadler-subpoena-full-mueller-report-1282969> (last accessed May 7, 2019).

<sup>82</sup> FRCP Rule 6(e)(2).

<sup>83</sup> FRCP Rule 6(e)(3).

<sup>84</sup> See *McKeever v. Barr*, 920 F.3d 842, 844 (D.C. Cir. 2019) (“Federal Rule of Criminal Procedure 6(e) ‘makes quite clear that disclosure of matters occurring before the grand jury is the exception and not the rule’ and ‘sets forth in precise terms to whom, under what circumstances and on what conditions grand jury information may be disclosed.’”) (Internal citations omitted.); see also *Andrus v. Glover Constr. Co.*, 446 U.S. 608 616–18 (1980) (“Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent.”).

“preliminary to or in connection with a judicial proceeding.”<sup>85</sup> Congressional investigations do not fit within this exception.<sup>86</sup>

The inquiry into the impeachment of a president has been considered preliminary to a judicial proceeding.<sup>87</sup> Any other action proposed or taken by the majority of this Committee does not fall under the judicial proceeding exception (or any other exception under the Federal Rules of Criminal Procedure 6(e) that would grant it access to grand jury material).<sup>88</sup>

E. THE DEPARTMENT OF JUSTICE HAS BEEN EXTRAORDINARILY TRANSPARENT. IN CONTRAST, THE CHAIRMAN REFUSED THE DEPARTMENT’S ACCOMMODATIONS AND NEGOTIATIONS AND IS PLOWING FORWARD WITH CONTEMPT PROCEEDINGS.

On April 18, 2019, the Chairman signed a subpoena *duces tecum* compelling the Attorney General to produce an unredacted version of the Mueller Report as well as all underlying documents many of which are likely covered by both common law and constitutional privileges.<sup>89</sup> On April 18, 2019, the Assistant Attorney General sent the Chairman a letter offering for certain Members of Congress and one staff person to review *in camera* an unredacted version, save information used during grand jury proceedings.<sup>90</sup> The Chairman refused the offer, and instead, on April 19, 2019, served the subpoena to the Attorney General.<sup>91</sup>

On May 1, 2019, the Assistant Attorney General wrote the Chairman providing a litany of reasons for not complying with the subpoena.<sup>92</sup> The Assistant Attorney General said compliance with the subpoena was problematic because the Attorney General had already gone to great lengths to be transparent by releasing a nearly unredacted version of the report and offering to testify before the Committee on May 2, 2019.<sup>93</sup> In addition, “these requests [referring to the demands in the subpoena] would pose a fundamental threat to the confidentiality of law enforcement files and the Department’s commitment to keep law enforcement investigations free of political interference.”<sup>94</sup> Finally, the Committee’s subpoena calls for the disclosure of grand jury information, which is prohibited by law.<sup>95</sup> The Assistant Attorney General wrote:

Rule 6(e) of the Federal Rules of Criminal Procedure provides that matters occurring before a grand jury must be kept secret, except in certain specifically enumerated

<sup>85</sup> FRCP 6(e)(3)(E)(1).

<sup>86</sup> *E.g., In re Grand Jury Investigation of Uranium Indus.*, No. 78–0173, 1979 WL 1661, at \*1 (D.D.C. Aug. 16, 1979) (holding that a congressional investigation was not “preliminary to or in connection with a judicial proceeding.”).

<sup>87</sup> *See, e.g., United States Court of Appeals for the District of Columbia Circuit, Division No. 94–1, Order in Consideration of the Ex Parte Motion for Approval of Disclosure of Matters Occurring Before a Grand Jury*, July 7, 1998.

<sup>88</sup> *Id.*

<sup>89</sup> H. Comm. on the Judiciary Subpoena Hon. William P. Barr, Attorney General, U.S. Dep’t of Justice, Apr. 19, 2019, at 2 [hereinafter Apr. 19, 2019, Subpoena].

<sup>90</sup> Letter to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary; Hon. Lindsey Graham, Chairman, S. Comm. on the Judiciary; Hon. Doug Collins, Ranking Member, H. Comm. on the Judiciary; Hon. Dianne Feinstein, Ranking Member, S. Comm. on the Judiciary, from Stephen E. Boyd, Ass’t Attorney General, U.S. Dep’t of Justice, (Apr. 18, 2019).

<sup>91</sup> Apr. 19, 2019, Subpoena.

<sup>92</sup> Letter from Stephen E. Boyd, Ass’t Attorney General, U.S. Dep’t of Justice, to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary (May 1, 2019).

<sup>93</sup> *Id.* at 1.

<sup>94</sup> *Id.* at 2.

<sup>95</sup> *Id.* at 4.

circumstances. Rule 6(e) contains no exception that would permit the Department to provide grand-jury information to the Committee in connection with its oversight role. Therefore, the Department may not provide the grand-jury information that the subpoena requests. The Department has, however, provided you and the Ranking Member (as well as other members of leadership in the House and Senate) with access to a version of the report that redacts only the grand-jury information that cannot be disclosed under Rule 6(e).<sup>96</sup>

Compliance with the Committee's subpoena is contrary to law and the Chairman is not acting in good faith by declining *in camera* review of the virtually unredacted Report.

The May 1, 2019, letter from the Assistant Attorney General offered to continue the dialogue with the Chairman and his staff.<sup>97</sup> Specifically, the Assistant Attorney General wrote:

In reaching this conclusion, we do not close the door on engaging with the Committee about potential further accommodations in response to a properly focused and narrowed inquiry that is supported by a legitimate legislative purpose.<sup>98</sup>

The Chairman did not communicate with the Department in writing after issuing the Nadler subpoena. No negotiations occurred in writing between service of the April 19, 2019 subpoena and May 3, 2019, when the Chairman sent a letter to the Attorney General threatening him with contempt of Congress.<sup>99</sup> The Chairman wrote: "But if the Department persists in its baseless refusal to comply with a validly issued subpoena, the Committee will move to contempt proceedings and seek further legal recourse."<sup>100</sup>

On April 29, 2019, a meeting occurred in the Speaker's Office involving House Majority leadership, the Department, and the FBI.<sup>101</sup> Finally, Committee staff claims to be in contact with the Department's Office of Legislative Affairs "in writing, by telephone, and in person" almost every day and sometimes multiple times a day.<sup>102</sup> We have no information to substantiate these claims, and the Chairman's May 3, 2019, letter contains no citations to, or evidence of, these purported communications.<sup>103</sup> Similarly, the contempt citation fails to cite any meaningful negotiations and accommodations engaged in by the Chairman.<sup>104</sup>

Accordingly, any impasse in negotiations regarding the Mueller Report between the Committee and the Department can be attributed solely to the Committee. The Department has made multiple accommodations to the Committee, but the Committee has not

<sup>96</sup>*Id.* at 4 (internal citations to case law omitted).

<sup>97</sup>*Id.* at 4.

<sup>98</sup>*Id.* at 4.

<sup>99</sup> Letter from Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, to Hon. William P. Barr, Attorney General, U.S. Dep't of Justice (May 3, 2019) [hereinafter the May 3, 2019 Nadler Letter].

<sup>100</sup>*Id.* at 3.

<sup>101</sup> E-mail from H. Comm. on the Judiciary Majority Staff, to H. Comm. on the Judiciary Minority Staff (May 3, 2019, 12:55 p.m.).

<sup>102</sup>*Id.*

<sup>103</sup> May 3, 2019 Nadler Letter.

<sup>104</sup> See Resolution Recommending that the House of Representatives Find William P. Barr, Attorney General, U.S. Department of Justice, in Contempt of Congress for Refusal to Comply with a Subpoena Duly Issued by the Committee on the Judiciary, May 8, 2019.



budged from its demand of production of the full report and all associated underlying documents.

The Chairman's contempt citation also references communications between the Chairman and the Department dating back to February 2019, more than a month before the Attorney General received the Mueller Report. These communications are irrelevant to the negotiations between the Committee and the Department because the Committee was asking for material that the Attorney General did not yet have in his possession. Indeed, neither the Attorney General nor the Committee knew what information the Report would contain. For example, the Report could have been a single page listing prosecution and declination decisions, which would have been sufficient for the Special Counsel to meet his regulatory obligations. The Attorney General did not receive the Mueller Report until March 22, 2019. On March 25—still without having seen the Report or knowing its length or contents—the Chairman, for the first time, formally requested the Report once it was in the Attorney General's possession. Therefore, communications prior to March 25 are irrelevant to the current negotiations.

F. CONTEMPT IS A RARE AND EXTREME REMEDY. GIVEN THE COMMITTEE'S REJECTION OF THE ATTORNEY GENERAL'S EFFORTS AT ACCOMMODATION AND THE COMMITTEE'S UNPRECEDENTED TIMEFRAME, CONTEMPT IS PREMATURE.

Even considering prior criminal contempt of Congress proceedings, there has not ever been a more brazen edict by the legislature to the executive branch to break the laws the former is tasked with crafting and the latter is charged with enforcing. The speed at which the majority of this Committee has both made demands and, without hesitation, rejected any attempt by the Attorney General at accommodation is unprecedented. The majority of this Committee's continuous insertion of the word "accommodation" in every demand letter to the Attorney General does not *eo ipso* mean there has been any good-faith effort to negotiate with him or his staff. The traditional attempts at compromise, respect for separation of powers, and substantive exchange and negotiation have been abandoned by the majority of this Committee.

We believe the Chairman threatens to undermine the collegiality of this Committee by holding the Attorney General in contempt of Congress when he has already demonstrated his commitment to transparency through the release of the Mueller Report to the public generally, his provision of a less-redacted Report to select Members of Congress, and his offer to testify before the Committee. At every phase, he has been met with the kneejerk response by the Chairman that his overtures were insufficient. In the few contempt of Congress proceedings that have been brought against an executive agent or department head, there have been significantly greater efforts to negotiate. We believe the Chairman should not hasten to a contempt of Congress action simply because the Attorney General has not acquiesced to his every whim but, instead, has fulfilled his duty to enforce the laws drafted by Congress. Furthermore, the Attorney General has fulfilled his duty under the pertinent regulatory framework. The encouragement for him to neglect these duties—and, in fact, violate the law—is beneath the integrity of this body.

G. MORE APPROPRIATE AND EFFECTIVE AVENUES EXIST TO PURSUE THIS INFORMATION

There are alternatives to a contempt citation that provide more appropriate and effective means for seeking access to the requested information under the circumstances here. If the Chairman was serious about gaining access to the information requested in the subpoena, as opposed to simply trying to pick fights with the Executive Branch for the sake of headlines, it would pursue these alternative avenues rather than hold the Attorney General in contempt.

First, Congress can amend the law to create an exception to Rule 6(e) of the Federal Rules of Criminal Procedure that would allow for Congress to gain access to grand jury materials. As described above, the current law prohibits the Attorney General from giving grand jury materials to Congress. The Chairman has not taken this step.

Second, if the Chairman sincerely believes, despite the plain language of the law and D.C. Circuit precedent, Congress is lawfully entitled to the requested materials, the Committee can seek to enforce the subpoena in court by asking for a civil judgment declaring the Attorney General is obligated to comply with the subpoena.<sup>105</sup> As described above, however, the Committee would likely lose in court because Rule 6(e) does not include an exception for Congress. The Committee must consider all litigation risks. Any litigation could result in a court decision that would set bad precedent for future Congresses and weaken Congress's power. The best course forward is to engage meaningfully with the Department on reasonable accommodations.

Third, Congress can enact laws to create alternative mechanisms to enforce congressional subpoenas. For example, legislation was proposed during the 115th Congress to expedite enforcement of congressional subpoenas.<sup>106</sup> That legislation, "Congressional Subpoena Compliance and Enforcement Act of 2017," passed this Committee. We encourage the Chairman to re-introduce that bill. However, rather than pursue a legislative agenda, the Chairman continues to pursue a redo of the Special Counsel's investigation.

V. CONCLUSION

Fully complying with the Committee's subpoena would require the Attorney General to break the law. The Department has offered multiple accommodations to the Chairman, but the Chairman has been unyielding in his demand for the full Report and underlying evidence. The Department has offered the Chairman to review the report *in camera*, giving the Chairman access to 99.9 percent of Volume II of the report and 98.5 percent of Volume I of the report. In essence, the Chairman issued a subpoena for material to which he already has access but refuses to see.

The Chairman has not articulated a valid legislative purpose for the materials demanded by the subpoena, nor has he shown his in-

<sup>105</sup> See *Comm. on the Judiciary v. Miers*, 558 F. Supp. 2d 53, 77–88 (D.D.C. 2008); see also House Rule II(8)(b); 165 CONG. REC. H30 (daily ed. Jan. 3, 2019) (statement of Rep. McGovern) ("If a Committee determines that one or more of its duly issued subpoenas has not been complied with and that civil enforcement is necessary, the BLAG, pursuant to House Rule 11(8)(b), may authorize the House Office of General Counsel to initiate civil litigation on behalf of this Committee to enforce the Committee's subpoena(s) in federal district court.").

<sup>106</sup> H.R. 4010, 115th Cong. § 2 (2017).

ability to obtain the required information from any other source. The two sides are not at an impasse; indeed, the Department has moved off its negotiating position on multiple occasions. The Chairman's lack of good faith in negotiating, impossible deadlines, and a rush to contempt, however, has swallowed any efforts by the Department to reach a resolution.

For these reasons, enforcement of the subpoena and the contempt resolution fail constitutionally.

DOUG COLLINS, *Ranking  
Member.*

STEVE CHABOT.

JIM JORDAN.

JIM SENSENBRENNER.

LOUIS GOHMERT.

KEN BUCK.

JOHN RATCLIFFE.

MATT GAETZ.

ANDY BIGGS.

DEBBIE LESKO.

BEN CLINE.

W. GREGORY STEUBE.

MARTHA ROBY.

MIKE JOHNSON.

TOM MCCLINTOCK.

GUY RESCHENTHALER.

KELLY ARMSTRONG.

