



U.S. Department of Justice

Office of Legal Counsel

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Washington, D.C. 20530

May 16, 2024

**MEMORANDUM**

TO: Merrick Garland, Attorney General

FROM: Christopher Fonzzone, Assistant Attorney General CCF  
Jamal Greene, Deputy Assistant Attorney General  
Gillian Metzger, Deputy Assistant Attorney General  
Trisha Anderson, Deputy Assistant Attorney General

RE: The President's Executive Privilege Assertion and the Criminal Contempt of Congress Statute

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On February 27, 2024, the Committee on the Judiciary and the Committee on Oversight and Accountability of the House of Representatives ("Committees") subpoenaed, among other things, audio recordings of two of Special Counsel Robert K. Hur's interviews conducted in connection with his investigation. Earlier today, President Biden asserted executive privilege over the subpoenaed audio recordings and instructed you that they may not be produced to the Committees. President Biden also made a protective assertion of executive privilege with respect to any other materials responsive to the subpoenas that have not already been produced. Based on advice that our Office has previously given to you, the President's assertions of executive privilege were lawful, and he may lawfully direct you not to produce the subpoenaed audio recordings to the Committees. As a result of the President's directive, you may not produce the recordings to the Committees consistent with the responsibilities of your office.

Moreover, as we have also advised you, the Executive Branch has long held the position that the criminal contempt of Congress statute, 2 U.S.C. §§ 192, 194, does not apply to Executive Branch officials who do not comply with a congressional subpoena based on a presidential assertion of executive privilege. As our Office has explained, the "contempt of Congress statute was not intended to apply and could not constitutionally be applied to an executive branch official who asserts the President's claim of executive privilege." *Prosecution for Contempt of Congress of an Executive Branch Official Who Has Asserted a Claim of Executive Privilege*, 8 Op. O.L.C. 101, 102 (1984).

Consistent with this longstanding position, it is our view that the contempt of Congress statute does not apply where, as here, you do not produce the audio recordings to the Committees based on the instruction of the President following his assertion of executive privilege. The contempt of Congress statute also does not apply with respect to the nonproduction of any other materials responsive to the subpoenas over which the President made a protective assertion of privilege.