

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
MINORITY (202) 225-5051
<http://oversight.house.gov>

September 20, 2018

The Honorable Trey Gowdy
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing to request that you issue a subpoena to compel the Director of the Office of Personnel Management (OPM) to testify at a deposition regarding actions being taken by OPM to bring federal agencies into compliance with a federal court order striking down substantial portions of President Trump's recent Executive Orders that sought to attack federal employees.

On May 25, 2018, President Trump signed three Executive Orders that sought to impose sweeping and destructive limits on the rights of federal employees, the ability of whistleblowers to report abuses, the scope of collective bargaining, and merit system principles of personnel management.¹ On July 5, 2018, OPM issued three guidance memos implementing the Executive Orders.²

¹ Exec. Order No. 13836, 83 Fed. Reg. 25329 (June 1, 2018) (online at www.federalregister.gov/documents/2018/06/01/2018-11913/developing-efficient-effective-and-cost-reducing-approaches-to-federal-sector-collective-bargaining) ; Exec. Order No. 13837, 83 Fed. Reg. 25335 (June 1, 2018) (online at www.federalregister.gov/documents/2018/06/01/2018-11916/ensuring-transparency-accountability-and-efficiency-in-taxpayer-funded-union-time-use); Exec. Order No. 13839, 83 Fed. Reg. 25343 (June 1, 2018) (online at www.federalregister.gov/documents/2018/06/01/2018-11939/promoting-accountability-and-streamlining-removal-procedures-consistent-with-merit-system-principles).

² Memorandum from Dr. Jeff T.H. Pon, Director, Office of Personnel Management, to Heads of Executive Departments and Agencies, *Guidance for Implementation of Executive Order 13836—Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining* (July 5, 2018) (online at <https://chcoc.gov/content/guidance-implementation-executive-order-13836-developing-efficient-effective-and-cost>); Memorandum from Dr. Jeff T.H. Pon, Director, Office of Personnel Management, to Heads of Executive Departments and Agencies, *Guidance for Implementation of Executive Order 13837—Ensuring Transparency, Accountability, Efficiency in Taxpayer-Funded Union Time Use* (July 5, 2018) (online at <https://chcoc.gov/content/guidance-implementation-executive-order-13837-%E2%80%93ensuring-transparency-accountability-and>); Memorandum from Dr. Jeff T.H. Pon, Director, Office of Personnel Management, to Heads of Executive Departments and Agencies, *Guidance for Implementation of Executive Order 13839—Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles* (July 5, 2018) (online at <https://chcoc.gov/content/guidance-implementation-executive-order-13839-promoting-accountability-and-streamlining>).

On August 25, 2018, a federal judge ruled that key provisions of these Executive Orders are “an improper exercise of his statutory authority” and conflict directly with the laws Congress passed decades earlier. The court found that “many of the challenged provisions of the Orders at issue here effectively reduce the scope of the right to bargain collectively as Congress has crafted it, or impair the ability of agency officials to bargain in good faith as Congress has directed, and therefore cannot be sustained.”³

In ruling against the Executive Orders, the court expressly enjoined the “President’s subordinates from implementing or giving effect” to the invalidated provisions.⁴

On August 29, 2018, OPM issued a brief, one-page memo notifying the heads of federal agencies that it was rescinding the portions of its previous guidance memos relating to the invalidated sections of the Executive Orders.⁵

OPM’s short revision did not address what agencies should do about illegal actions they have already taken to implement the invalidated sections of the Executive Orders. For example, on July 9, 2018, the Social Security Administration’s Office of Labor-Management and Employee Relations issued “Technical Guidance for Union Officials” which implemented the now-invalidated provisions arbitrarily restricting official time, expelling unions from office space, and restricting use of computers.⁶

On August 31, 2018, I wrote to OPM Director Jeff T.H. Pon and Office of Management and Budget (OMB) Director Mick Mulvaney requesting a briefing about their plans to bring agencies into compliance with—and reverse actions that violate—the court’s order.⁷

On September 17, 2018, Director Pon responded by refusing my request for a briefing. The only explanation he offered was that the case in which the Court struck down portions of the

³ *American Federation of Government Employees v. Trump*, No. 1:18-CV-1261, slip op. (D.D.C. Aug. 25, 2018).

⁴ *Id.*

⁵ Memorandum from Director Jeff T.H. Pon, Office of Personnel Management, to Heads of Executive Departments and Agencies, *Updated Guidance Relating to Enjoinment of Certain Provisions of Executive Orders 13836, 13847 and 13839* (Aug. 29, 2018) (online at <https://chcoc.gov/content/updated-guidance-relating-enjoinment-certain-provisions-executive-orders-13836-13837-and>).

⁶ Office of Human Resources/Office of Labor-Management and Employee Relations, Social Security Administration, *Technical Guidance for Union Officials, Implementation of the Executive Orders, Actions Effective July 9, 2018* (July 6, 2018) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/Union%20Guidance%20on%20EOs%20Effective%20070918.pdf>).

⁷ Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, to Director Jeff T.H. Pon, Office of Personnel Management, and Director Mick Mulvaney, Office of Management and Budget (Aug. 31, 2018) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2018-08-31.EEC%20to%20Pon-OPM%20Mulvaney-OMB%20re%20Executive%20Orders.pdf>).

President's Executive Orders is ongoing: "Due to the pending and ongoing litigation, a briefing on this issue would be premature at the present time."⁸

Under the court's order, federal agencies are prohibited from implementing the invalidated provisions of the Executive Orders. To date, the Trump Administration has not filed an appeal or a motion to stay the court's decision. We are not requesting any information about the agency's litigation strategy—we are asking for basic information about how the Trump Administration is complying with the law.

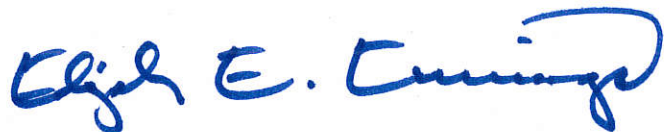
For these reasons, I ask that you issue a subpoena to compel Director Pon to testify at a deposition on the following topics:

- (1) actions being taken by OPM and OMB to restore the *status quo ante* at agencies where the invalidated provisions of the Executive Orders were imposed before the judge's decision;
- (2) a timeline of actions planned by OPM or OMB to bring federal agencies into compliance with the judge's decision; and
- (3) next steps that are being contemplated by the Trump Administration.

If you choose not to issue this subpoena yourself, then I ask that you place this matter on the agenda for our next regularly scheduled business meeting so all Committee Members will have the opportunity to vote on a motion to issue this subpoena.

Thank you for your consideration of this request.

Sincerely,



Elijah E. Cummings
Ranking Member

⁸ Letter from Director Jeff T.H. Pon, Office of Personnel Management, to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (received on Sept. 17, 2018) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/RM%20Cummings%20Response%20-%2031AUG2018%20Letter.pdf>).