

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

April 24, 2020

The Honorable William P. Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Barr:

In recent days and weeks, President Trump has repeatedly suggested he may use unspecified emergency powers in response to the COVID-19 pandemic. On March 12, for example, that he told reporters that he has “the right to do a lot of things that people don’t even know about,” including “a lot of emergency actions that I can take.”¹ On March 16, he claimed to have “very strong emergency powers” that could be used to close the southern and northern borders of the United States.² During an April 14 press briefing, the President asserted “total” authority to force state and local governments to rescind public health measures.³ When challenged about his claims, President Trump said his Administration would “write up papers” or a “legal brief” justifying these positions.⁴

While it remains unclear what the President is referring to when he describes authorities “that people don’t even know about,” his remarks suggest that his Administration has produced or may soon produce documents purporting to support the use of extraordinary legal authorities in response to the pandemic. Such documents would likely undergo review by the Justice Department’s Office of Legal Counsel (OLC). The President may also be referencing “Presidential Emergency Action Documents” (PEADs), which may contain contingency plans by this Administration or its predecessors for the government’s response to a pandemic. Public

¹ “Remarks by President Trump and Prime Minister Varadkar of Ireland Before Bilateral Meeting,” White House (Mar. 12, 2020).

² “Remarks by President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press Briefing,” White House (Mar. 16, 2020).

³ “Remarks by President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press Briefing,” White House (Apr. 14, 2020).

⁴ *Id.*

disclosures indicate that between 50 and 60 PEADs have been drafted by prior Administrations to address various emergency scenarios, and those documents are typically reviewed by OLC.⁵

In light of the President's threats to invoke these hidden emergency powers, we request that the Department provide the Judiciary Committee with the following:

1. A briefing (by teleconference if needed) about the Administration's anticipated use of emergency powers during the COVID-19 pandemic;
2. Any PEADs in the Department's possession that address contingency planning for pandemics; and
3. Any other documents or communications in the Department's possession that describe or analyze the legality of the President's potential use of emergency authorities in response to the COVID-19 pandemic.

Thank you for your prompt attention to this important matter. While the federal government must respond swiftly and energetically to protect the public health during this pandemic, the President cannot use the current crisis to assert secret and unreviewable powers.

Sincerely,



Jerrold Nadler
Chairman



Steve Cohen
Chairman
Subcommittee on the Constitution,
Civil Rights, and Civil Liberties

cc: The Honorable Jim Jordan
Ranking Member, House Committee on the Judiciary

The Honorable Mike Johnson
Ranking Member, Subcommittee on the Constitution, Civil Rights, and Civil Liberties

⁵ See Elizabeth Goitein & Andrew Boyle, *Trump Has Emergency Powers We Aren't Allowed to Know About*, N.Y. TIMES (Apr. 10, 2020).