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May 31, 2024

Merrick Garland
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Re: Revocation of twin Office of Legal Counsel (OLC) Opinions Concluding Incumbent Presidents of the United States Are Constitutionally Immune From Criminal Indictment Or Prosecution

Dear General Garland:

We, the undersigned, strongly urge you to revoke the twin opinions of the Office of Legal Counsel that an incumbent President of the United States is constitutionally immune from indictment or prosecution. See Memorandum for the Attorney General (Oct. 16, 2000), and Memorandum from Robert G. Dixon, Jr., Assistant Attorney General, Office of Legal Counsel, *Re: Amenability of the President, Vice President and other Civil Officers to Federal Criminal Prosecution while in Office* (Sept. 24, 1973).

We submit the reasoning of the OLC opinions are unconvincing, atextual, and in tension with the President's duty to faithfully execute the laws. Moreover, OLC confronted a conflict of interest because it acts as the lawyer for the executive branch with a practice of aggrandizing executive power. Further, the opinions were issued outside an Article III concrete case or controversy. They never confronted adversarial challenges. Finally, recent history shows that the twin OLC opinions embolden presidents to become laws unto themselves notwithstanding their constitutional duties to take care that the laws be faithfully executed. See B. Fein, *Congressional Surrender*, 2023.

We note that OLC opinions have been previously revoked with more sober and deliberate second thoughts. Assistant Attorney General Jack Goldsmith withdrew the August 2002 "Torture Memo" opinion of Deputy Assistant Attorney General John Yoo in June 2004. In his 2007 Memoir, Mr. Goldsmith characterized the withdrawn opinion as follows:

"How could OLC have written opinions that, when revealed to the world weeks after the Abu Ghraib scandal broke, made it seem as though the administration was

giving official sanction to torture, and brought such dishonor on the United States, the Bush administration, the Department of Justice, and the CIA? How could its opinions reflect such bad judgement, be so poorly reasoned, and have such terrible tone?... The main explanation is fear [of a new attack]. Fear explains why OLC pushed the envelope. And in pushing the envelope, OLC took shortcuts in its opinion-writing procedures.”

We believe in addition that you should seek the advice of outside constitutional experts, singly or collectively, regarding these proposed revocations of the twin OLC opinions.

We respectfully ask and expect a reasoned response.

Sincerely,

Ralph Nader Esq.

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