



U.S. Department of Justice
Civil Division, Appellate Staff
950 Pennsylvania Ave. NW, Rm. 7252
Washington, DC 20530

MBS:ACWright

Abby Wright
Abby.Wright@usdoj.gov

Tel: (202) 514-0664

August 1, 2017

Mr. Mark Langer
Clerk of the Court
U.S. Court of Appeals for the
District of Columbia Circuit
E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue N.W.
Washington, DC 20001
VIA CM/ECF

Re: *Treasury v. Black*, No. 17-5142

Dear Mr. Langer:

We write in response to the Court's order of July 26, 2017, directing Treasury to explain whether it is asserting the presidential communications privilege "(1) on behalf of the Office of the President, (2) on behalf of former President Barack Obama, or (3) on some other ground. *See Dellums v. Powell*, 561 F.2d 242, 247-248 (D.C. Cir. 1977)."

The government invoked the presidential communications privilege on behalf of the Office of the President in a declaration by a Deputy White House Counsel on August 6, 2015, *see* Stay Add. 51, and continues to assert the privilege on behalf of the Office of the President. As this Court explained in *Dellums*, the privilege "inher[es] in the institution of the Presidency, and not in the President personally." *Dellums*, 561 F.2d at 247 n.14. In *Dellums*, the privilege had not been invoked by the government on behalf of the Office of the President. It was asserted solely by a President who had already left office and was not supported by the succeeding administration. The Court cited the institutional nature of the privilege as a reason to question whether the privilege could properly be asserted by a former President. *Id.*; *see id.* at 245, 248

(deciding the case without resolving the question). In this case, in contrast, the privilege has been invoked on behalf of the Office of the President, and the institutional nature of the privilege is not altered by a change of presidential administrations.

Sincerely,

/s/ Abby C. Wright
Abby C. Wright
Counsel for Treasury

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on August 1, 2017, I electronically served and filed the foregoing document with the Clerk of the Court by using the appellate CM/ECF system. I also hereby certify that the participants in the case are registered CM/ECF users and will be served via the CM/ECF system.

/s/ Abby C. Wright
Abby C. Wright
Counsel for Treasury