



U.S. Department of Justice

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*Judiciary Center
555 Fourth St., N.W.
Washington, D.C. 20530*

March 31, 2015

The Honorable John A. Boehner
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

On May 7, 2014, you referred the matter of Lois G. Lerner, former Director, Exempt Organizations, Internal Revenue Service (IRS), to the United States Attorney's Office for the District of Columbia, after the U.S. House of Representatives voted to hold Ms. Lerner in contempt of Congress under 2 U.S.C. § 192. *See* H.R. Res. 574, 113th Cong. (2014). As you know, the House did so after Ms. Lerner, on March 5, 2014, asserted her Fifth Amendment privilege not to testify at a hearing held by the House Committee on Oversight and Government Reform. The Committee had previously determined that Ms. Lerner waived this privilege when she made an opening statement during an appearance before the Committee on May 22, 2013. *See* H.R. Rep. No. 113-415, at 11-12 (2014) (the "Committee Report").

Under 2 U.S.C. § 192, a person is guilty of contempt of Congress if he or she, "having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before . . . any committee of either House of Congress, willfully . . . refuses to answer any question pertinent to the question under inquiry." Where the House of Representatives has voted to find a witness in contempt, 2 U.S.C. § 194 directs the Speaker of the House to "certify" the matter "to the appropriate United States attorney, whose duty it shall be to bring the matter before the grand jury for its action."

Upon receipt of your referral, a team of experienced career prosecutors in this United States Attorney's Office was assigned to assess the matter. As discussed in more detail below, after extensive analysis of the facts of this matter and the applicable law, it was the team's conclusion that the Committee followed proper procedures in notifying Ms. Lerner that it had rejected her claim of privilege and gave her an adequate opportunity to answer the Committee's questions. Thus, Ms. Lerner's refusal to answer would be "willful" under Section 192 unless otherwise excused. However, the team also concluded that Ms. Lerner did not waive her Fifth Amendment privilege by making an opening statement on May 22, 2013, because she made only general claims of innocence. Thus, the Fifth Amendment to the Constitution would provide Ms.