May 19, 2022

Statement by Lanny J. Davis, attorney for Michael Ingram, in response to May 11, 2022 DOJ referral letter from Reps. Grijalva and Porter of the U.S. House Natural Resources Committee

National telephonic press conference: Thursday, May 19, 2022: 2:00 pm EDT/11:00 am MST

I am Lanny Davis, an attorney in Washington, D.C. I have been a loyal Democrat all my life. My dad was a progressive FDR Democrat, and so am I. Like father, like son.

I represent Mr. Michael Ingram, a widely respected business leader in the Phoenix-Tucson area of Arizona, residential real estate developer, former co-owner of the Arizona Diamondbacks, and philanthropist. Mr. Ingram's politics are different than mine. He favors the Republican Party and backs Republican candidates with campaign contributions and support, exercising his First Amendment right to engage in the political process. But, unlike me, he also supports members of the other party. There are many Democrats who have received donations from Mr. Ingram and consider him a man of high integrity and honesty. That is how I regard Mr. Ingram as well.

My statement today is directed to the full House Natural Resources Committee, Democrats and Republicans, and most specifically, to Arizona Rep. Raúl Grijalva, Chair of the Committee, and California Rep. Katie Porter, Chair of the Oversight and Investigations Subcommittee. I am asking these members to allow me a chance to publicly rebut what I and Mr. Ingram believe are false or misleading accusations of criminal conduct in front of the full Committee. For over a year during the Committee's investigation, Mr. Ingram instructed me to be 100% transparent and cooperative, with no subpoenas required. We voluntarily turned over thousands of pages of documents: emails, correspondence, and records of phone calls and meetings. We also made offers for Mr. Ingram to meet with the Chair.

If we are not given this opportunity for fair rebuttal in public, we will consider asking the bipartisan House Ethics Committee to evaluate whether the Committee Chairs violated the fundamental rules of fairness, due process, and avoidance of abuse of power embedded in the House Rules of Conduct.

To be clear: I will **not** be directing my remarks to the Department of Justice. Mr. Ingram has retained an attorney with extensive experience in the criminal justice system – Mr. Paul Charlton, who served as Arizona United States Attorney from 2001-2007, under the sponsorship and support by the late Senator John McCain. Mr. Charlton will make any presentation to the U.S. Department of Justice, if it is necessary, in response to the Committee's criminal referral letter.

I completely trust the independence and integrity of this Justice Department and this Attorney General, Merrick Garland. I will therefore have no comments about the Justice Department's review.

While trying to give Representatives Grijalva and Porter the benefit of the doubt, I am, however, challenging the objectivity and fairness of the letter they signed. This letter inaccurately accuses my client of committing a serious crime – specifically of making political donations in return for specific government decisions – i.e., the crime of "quid-pro-quo" or "pay for play."

I have always admired the Chairs as progressive Democrats. But they disappointed me greatly when they accused my client of "buying" approval of his company's "The Villages at Vigneto" residential development project in Benson, Arizona through campaign donations.

They made this charge publicly before the Justice Department had determined whether to undertake an investigation, before the results of any such investigation, before indictment, if any, were returned by a Grand Jury and, most objectionably, before trial and due process was afforded to Mr. Ingram.

If a Republican ever did such a thing, we progressive Democrats would denounce such a blatant disrespect for the constitutional presumption of innocence inherent in the Due Process Clause.

This behavior has reminded me of the time I represented President Clinton in the late 1990s. Then, Republicans claimed that because President Clinton accepted campaign donations from Asian Americans who supported immigration reform, and then President Clinton shortly thereafter made a speech in favor of immigration reform, that this meant he was guilty of the same quid-pro-quo crime of bribery.

I stood on the White House lawn when I was asked about this Republican charge that one action, Mr. Clinton's accepting the campaign donation, "caused" the Clinton policy speech – and thus, was a crime.

Someone in the White House had prepared me for a response that everyone would understand.

I said to the reporter: "Just because two events occur, one after the other, doesn't mean the first event influenced or caused the second. That's like saying, because the rooster crows and then the sun rises…therefore, that proves the rooster *causes* the sun to rise."

Mr. Clinton, as it turned out, had always been in favor of immigration reform. The donors were too. That means correlation, not causation, I explained to the reporter. Big difference, I said. The Republicans know that – they take money from conservatives and vote for conservative policies. They know the difference between correlation and causation.

Sadly, it appears these two Democratic Committee Chairs have forgotten that certain hyper-partisan Republican House members used the same faulty "rooster crows-sun rises" syllogism to attack Presidents Clinton and Obama over most of their two terms. I am also reminded of what partisan Republicans did to Secretary Hillary Clinton during year-long congressional hearings, attempting to use all innuendo, no facts, to blame her for the tragic deaths at Benghazi. They knew they had no causation facts. The current minority leader, Rep. McCarthy, admitted openly it was all about politics, not facts.

I would like to think that Rep. Grijalva and Rep. Porter don't want to come close to doing the same thing, even if it involves a Republican who supported Donald Trump as well as some Democrats.

No, it's not ok to claim that they did it to us, so we should do it to them. Not to me at least.

Here is the final key paragraph of the referral letter that the Chairs use to justify their accusation that Mr. Ingram "bought" a policy change favoring his interests.

> "Then, on October 6, three things happened. The Army Corps officially announced the re-evaluation of the Clean Water Act permit; the developer and several others from Arizona made highly unusual out-of-cycle donations that day, and the days immediately prior and subsequent, of $241,600 to the Trump Victory Fund and the Republican National Committee; and Dep. Sec. Bernhardt held a meeting with [the person who allegedly called Mr. Spangle], on an undisclosed topic. A few weeks later, [the U.S. Fish & Wildlife Service] officially reversed its position regarding issuance of the Clean Water Act permit."

Classic. The rooster crows….

It is sad for progressive Democrats, who I know care deeply about civil liberties and due process of law.

To prove that the referral letter is an attempt to select facts that fit a predisposed narrative showing criminal guilt, let's take a look at the facts that the two authors of the letter either omitted entirely or, tellingly, glossed over.

Here are five examples of facts inconsistent with what seemed to be a preconceived conclusion:

FACT ONE: The Clean Water Act permit for Mr. Ingram's community development was allowed to stand **for seven years under President Barack Obama's administration.**

That sentence appears nowhere in the referral letter asserting that the permit was reinstated due to Mr. Ingram's donations. It's an inconvenient fact, but President Obama's Interior Department and Fish & Wildlife Service allowed the Clean Water Act permit to continue consistent with the Endangered Species Act, from 2006 (under

President Bush) to 2016 (seven years under President Obama). Why? Maybe because the permit was justified on the facts and the law.

Is there any evidence cited in the referral letter that facts changed so much in 2016-17 to see a new threat to the only three endangered species – two birds and a snake – such that the project should be killed? I don't see any. The fact that the Clean Water Act permit was allowed to continue for seven years under President Obama is inconvenient if you are trying to use innuendo to prove that after President Trump took office, only corrupt campaign donations allowed the permit to remain in place.

FACT TWO: When Mr. Ingram communicated with senior officials at the Department of the Interior, including an email to the Secretary and a meeting with the Deputy Secretary, he sent along a memorandum of law and facts, and he asked these and other officials to make their decision only on the facts and the law and nothing else, and certainly not politics.

Yet, the referral letter makes only passing reference to this memo. "Passing" perhaps because it was contrary to the predisposed narrative that lobbying and money caused the permit to be reinstated – not the merits of the facts and the law, which, in fact, were the only things Mr. Ingram wanted to be considered.

FACT THREE: The referral letter ignores the import of the Army Corps of Engineers letter of May 26, 2017, written just four months into the Trump Administration, which reached the following conclusion regarding the **only three endangered species possibly at issue: two birds (the western yellow-billed cuckoo and the southwestern willow flycatcher) and one snake (the northern Mexican garter-snake)**: "The proposed action at the Villages at Vigneto Development offsite mitigation parcel [144 acres] may affect, but is not likely to adversely affect [these two birds and a snake]."

Are Reps. Grijalva and Porter actually suggesting that the professional, respected, and apolitical Army Corps of Engineers was politically influenced when it wrote this detailed letter on May 26, 2017? Are they suggesting the Army Corps was politically influenced by a meeting that took place in Montana between Mr. Ingram and the Deputy Interior Secretary almost three months later? Or by political donations made to Trump-related post-election committees and the Republican National Committee more than four months later?

Only innuendo can make that suggestion. No facts. Or logic.

FACT FOUR: The two Chairs also utterly omitted any mention of the Army Corps letter written two years later – on **May 23, 2019**. But this was a very significant letter. It was written just a few weeks after, and in response to, Mr. Spangle going public in the media with his charge of political interference.

This omitted letter was sent to Mr. Spangle's successor as the Fish and Wildlife Service Phoenix office field supervisor – **Mr. Jeffrey A. Humphrey**. The Corps, taking note

of the public controversy after Mr. Spangle's revelations to the media, asked Mr. Humphrey the following:

> "Out of an abundance of caution in light of these recent reports, we ask whether the comments made by Mr. Spangle change the [U.S. Fish & Wildlife Service's] opinion concerning [the Endangered Species Act issues]."

To repeat: The two Chairs entirely omitted any reference to this Army Corps letter. Why? Did it get in the way of their narrative?

FACT FIVE: On June 12, 2019, Mr. Humphrey responded. He wrote, in a detailed two-page letter:

> "We take the allegations [of political interference] made by Mr. Spangle seriously. For this reason, our reevaluation has occurred at the field office level only with no regional or Washington D.C. headquarters review. Mr. Spangle's allegations do not change our previous determinations…"

Mr. Humphrey then explained in some detail his conclusion on the facts and the merits. He specifically explained why the three endangered species (the two birds and the snake) are not likely to be adversely affected in the relevant area.

As important as this letter is – negating the political influence falsely stated to be at work regarding my client's actions and confirming the validity of the project permit under the Endangered Species Act – the committee Chairs relegated its mention to a little more than two lines out of 37 pages and 60 exhibits with thousands of pages.

Why? Did the two Chairs intentionally downplay this critical proof of no political influence on the merits because it ran counter to their predisposed (and inaccurate) narrative of Mr. Ingram's political donations causing the reversal of the decision? Is it conceivable they are suggesting that Mr. Humphrey was also on the take?

Then, something even more curious occurs in the referral letter after this almost invisible mention of Mr. Humphrey's June 12, 2019 letter and Fish and Wildlife's findings that the project is not likely to adversely affect the two birds and the snake.

The next two-line paragraph of the referral letter mentions that almost exactly two years later, the same Mr. Humphrey who took pains to explain his two-page June 12, 2019 decision wrote another letter – this one on June 28, 2021. But this letter was only a one-pager. It was a cryptic, brief, 180-degree reversal of what he wrote two years before. But this time there was no explanation, just two sentences: "The Service has conducted an internal review of the 2017 [letter of concurrence allowing the permit to continue] and the process by which that decision was made. Pursuant to our review, we are rescinding the 2017 [letter of concurrence allowing the permit to continue] effective immediately."

That's it. Over and out.

I am sure that anyone objectively would wonder: Why the 180-degree reversal by Mr. Humphrey without any explanation – with only a cryptic reference to the "Service?"

And why did the two Chairs obscure this surprising outcome within two years? It was a 180-degree reversal by the same man, except one thing was different: there had been a change in administrations.

Is there a possible irony here – that the original decision by Mr. Humphrey two years before to confirm that the permit could continue was entirely on the merits – as he wrote, no consultation with Washington, no politics – whereas this most recent 180-degree reversal in 2021, after the Biden administration took over, to "rescind" and block the project from going forward was, just maybe, about politics? Just maybe?

If anything is clear, it's this: The two Chairs did not do much to help us understand this odd reversal. Indeed, while they attach 60 exhibits to their criminal referral letter, this June 28, 2021 stark letter from Humphrey – is not attached as an exhibit. What happened? Did they forget to attach it?

Throughout the referral letter, of course, are references to emails and calendars and other documents that we as a legal team were instructed by Mr. Ingram to voluntarily, without a subpoena and in the spirit of transparency, turn over to Committee staff. This included the date of Mr. Ingram's breakfast meeting with Deputy Secretary Bernhardt – the very information the two Chairs complained could not be found on Mr. Bernhardt's calendar.

In other words, we know the Committee staff went to great lengths to ask for all emails and communications between Mr. Ingram and everyone relevant to their investigation – and we turned it all over.

But why was there no mention in the referral letter, ever, of seeking all emails and communications with Mr. Humphrey between his June 12, 2019 letter to the Corps reaffirming the Fish & Wildlife Service' support for the project going forward and the abrupt one pager letter rescinding that decision two years later? Weren't they interested in finding out why Mr. Humphrey made this sudden, inexplicable, 180-degree reversal? Did anyone lobby him? Email him? Did his calendar show any meetings with local opponents of the project? Any curiosity here by the two Chairs—even though the answer could be counter to their narrative?

Or, now that I think about it – is there any evidence in the criminal referral that these two Chairs and their investigative staff asked Mr. Spangle for all his emails and records of phone calls of any lobbying to persuade him to go to the media a year or so after his retirement to complain about political pressure from Washington more than a year before? Is there any reason why the Chairs seemed so uninterested in meetings, calendar entries, calls, emails when it came to Mr. Spangle and possible lobbyists who opposed the Villages at Vigneto project?

Further, were there any efforts to obtain correspondence, emails, and information about visits from such groups as Earthjustice and the Center for Biological Diversity, who have filed multiple legal actions to delay the project, to see if there was any untoward lobbying there? I know Rep. Grijalva sits on the advisory board for the Center for Biological Diversity, so it should be easy for him to get such information.

We will never know – since there is no mention of that effort to obtain documents, emails, etc. from those who opposed the Vigneto project. Nothing. No mention could mean nothing happened. Or it could mean they didn't want to find out. Maybe, just maybe… because it was contrary to their "rooster crows and therefore" pre-conceived narrative.

Just maybe.

In closing, I respectfully ask Rep. Grijalva and Rep. Porter: Give me, on behalf of Mr. Ingram, a chance to respond before the full Committee to your charge of criminal conduct by my client – a charge repeated on TV contrary to all rules of fairness and due process.

Give me an opportunity to rebut on behalf of Mr. Ingram.

What harm is there in allowing me to do that to the full Committee, in public? If you and others disagree with me, and find I am wrong on the facts, that's fine. Give me a chance to have it out – in public.

Let's prove that we can agreeably disagree… that facts still matter… that civility and conversations among those who disagree is still possible in Washington, D.C.

That is the fair thing to do. That is the right thing to do.