BENNIE G. THOMPSON, MISSISSIPPI
CHAIRMAN

ZOE LOFGREN, CALIFORNIA
ADAM B. SCHIFF, CALIFORNIA
PETE AGUILAR, CALIFORNIA
STEPHANIE N. MURPHY, FLORIDA
JAMIE RASKIN, MARYLAND
ELAINE G. LURIA, VIRGINIA
LIZ CHENEY, WYOMING
ADAM KINZINGER, ILLINOIS

U.S. House of Representatives
Washington, DC 20515

january6th.house.gov
(202) 225-7800

One Hundred Seventeenth Congress

Select Committee to Investigate the January 6th Attack on the United States Capitol

February 4, 2022

Mr. Stanley E. Woodward, Jr.
Mr. Stan M. Brand
[redacted]

Dear Messrs. Woodward and Brand,

I write regarding the documents and deposition testimony sought from your client, Daniel J. Scavino, Jr., by the Select Committee to Investigate the January 6th Attack on the U.S. Capitol ("Select Committee"). As you know, in response to the Select Committee's subpoena to Mr. Scavino for this information, you have repeatedly cited the pendency of litigation brought by former President Trump in *Trump v. Thompson* as a rationale for Mr. Scavino's refusal to provide documents and testimony to the Select Committee.[1] Mr. Scavino then failed to appear for his December 1, 2021, deposition.

The Select Committee is in receipt of your December 13, 2021, letter regarding the requested testimony and documents from your client, Mr. Scavino.[2] That letter failed to state a legitimate basis for Mr. Scavino's non-compliance with the Select Committee's demands. In the interim, in *Trump v. Thompson*—the litigation cited in your letters on November 5, 15, and 25, 2021—the Supreme Court declined to halt the production of documents to the Select Committee based on former-President Trump's blanket assertions of executive privilege.[3] In light of these circumstances, we offer Mr. Scavino a final invitation to reconsider his prior refusal to provide documents and testimony to the Select Committee.

The Select Committee has been more than accommodating to Mr. Scavino's requests. Pursuant to the Select Committee's October 6, 2021, subpoena, Mr. Scavino was required to produce documents by October 21, 2021, and to appear for testimony on October 28, 2021.[4] The Select Committee has extended those deadlines five times. Further, throughout several rounds of correspondence,[5] the Select Committee has more than adequately addressed your questions about the jurisdiction of the Select Committee and subjects we intend to address at the deposition.

---

[1] Letter from S. Brand and S. Woodward to Chairman Thompson (Nov. 5, 2021) at pg. 2; Letter from S. Brand and S. Woodward to Chairman Thompson (Nov. 15, 2021), at pg. 3; Letter from S. Brand and S. Woodward to Chairman Thompson (Nov. 26, 2021) at pg. 2.
[2] Letter from S. Brand and S. Woodward to Chairman Thompson (Dec. 13, 2021).
[3] *Trump v. Thompson*, 595 U.S. ___ (2022).
[4] Letter from Chairman Thompson to D. Scavino (Oct. 6, 2021) at pg. 1.
[5] *See* Letter from Chairman Thompson to S. Brand and S. Woodward (Nov. 9, 2021) at pg. 2; Letter from Chairman Thompson to S. Brand and S. Woodward (Nov. 23, 2021) at pg. 3; Letter from Chairman Thompson to S. Brand and S. Woodward (Dec. 9, 2021) at pg. 2.

However, Mr. Scavino has neither produced a single document, nor did he appear for his deposition on December 1, 2021. In a November 30, 2021, phone conversation between counsel, you refused to even concede the pertinence of an inquiry regarding Mr. Scavino's potential knowledge of any planned violence on January 6th, instead asserting that it was likely Mr. Scavino had no such knowledge. When Select Committee counsel attempted to narrow the topics in dispute by requesting that you identify the areas of inquiry for which your client had no responsive information or documents, you declined to do so.

Mr. Scavino's contention that executive privilege exempts him from cooperation with the Select Committee holds no merit. Mr. Trump has never had any correspondence with the Select Committee asserting executive privilege over Mr. Scavino's documents or testimony. However, even if he had, Mr. Scavino would not enjoy absolute immunity from appearing before the Select Committee to assert any privilege claims he may have. All courts that have reviewed this issue have been clear: even senior White House aides who advise the President on official government business are not immune from compelled congressional process simply because executive privilege has been invoked.[6]

Further, as our prior correspondence and communications with you have made clear, the Select Committee seeks information from Mr. Scavino on numerous subjects beyond the scope of executive privilege. The law is clear that executive privilege applies only to communications related to official duties of close presidential advisers, not testimony about unofficial duties.[7] Here, the Select Committee has obtained records demonstrating repeated contacts between Mr. Scavino, campaign officials, and other third parties that are completely unrelated to his official duties or governmental functions. These communications involve messaging and strategy for Mr. Trump's 2020 campaign and subsequent efforts to overturn the election results. Questions regarding these matters, in addition to others also identified in prior correspondence with you, are unrelated to Mr. Scavino's official duties. Additionally, as we have previously noted, the Select Committee has subpoenaed communications on Mr. Scavino's personal social media or other accounts and communications with third-party individuals whose inclusion would mean that they cannot be reached by claims of executive privilege.[8]

Mr. Scavino has a legal obligation to appear before the Select Committee to address these and other topics. Should he continue to object to providing testimony on subjects of the Select Committee's inquiry, he should appear and assert those objections with particularity on the record.

---

[6] *See Committee on the Judiciary v. McGahn*, 415 F.Supp.3d 148, 214 (D.D.C. 2019) (and subsequent history) (''To make the point as plain as possible, it is clear to this Court for the reasons explained above that, with respect to senior-level presidential aides, absolute immunity from compelled congressional process simply does not exist.''); *Committee on the Judiciary v. Miers*, 558 F. Supp.2d 53, 101 (D.D.C. 2008) (holding that White House counsel may not refuse to testify based on direction from the President that testimony will implicate executive privilege).

[7] *Nixon v. Administrator of General Services (GSA)*, 433 U.S. 425, 449 (1977); *In re Sealed Case (Espy),* 121 F.3d 729, 752 (D.C. Cir. 1997).

[8] Letter from Chairman Thompson to S. Brand and S. Woodward (Nov. 9, 2021) at pg. 2; Letter from Chairman Thompson to S. Brand and S. Woodward (Nov. 23, 2021) at pg. 1

Please inform the Select Committee not later than February 8, 2022, whether Mr. Scavino will provide documents and testimony, in accordance with clearly articulated Supreme Court precedent.

Finally, I remind you that Mr. Scavino had a legal obligation to provide to the National Archives any official messages he may have sent on his personal devices. As the Trump Administration's White House Counsel stated—in an attached memorandum—the intentional failure to preserve applicable records may subject him to criminal penalties. Destruction of those materials would be a serious matter; they belong to the United States.[9]

If Mr. Scavino persists in his refusal to meaningfully cooperate with the Select Committee's investigation, the Select Committee will consider enforcement action, including the contempt of Congress procedures in 2 U.S.C. §§192, 194—which could result in a referral from the House to the Department of Justice for criminal charges—as well as the possibility of having a civil action to enforce the subpoena brought against Mr. Scavino in his personal capacity.

Sincerely,

Bennie G. Thompson
Chairman

Enclosures.

[9] Memorandum from Donald McGahn to White House Personnel (Feb. 22, 2017) at pg. 3.

THE WHITE HOUSE

WASHINGTON

February 22, 2017

MEMORANDUM FOR ALL PERSONNEL

THROUGH: DONALD F. McGAHN II
Counsel to the President

FROM: STEFAN C. PASSANTINO
Deputy Counsel to the President, Compliance and Ethics

SCOTT F. GAST
Senior Associate Counsel to the President

JAMES D. SCHULTZ
Senior Associate Counsel to the President

SUBJECT: Presidential Records Act Obligations

Purpose

To remind all personnel of their obligation to preserve and maintain presidential records, as required by the Presidential Records Act ("PRA").

Discussion

The PRA requires that the Administration take steps "to assure that the activities, deliberations, decisions, and policies that reflect the performance of the President's constitutional, statutory, or other official or ceremonial duties are adequately documented and that such records are preserved and maintained." This memorandum outlines what materials constitute "presidential records" and what steps you must take to ensure their preservation.

What Are Presidential Records?

"Presidential records" are broadly defined as "documentary materials . . . created or received by the President, the President's immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise or assist the President,[1] in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President." Presidential records include material in both paper and electronic form.

[1] The PRA applies to the following Executive Office of the President ("EOP") entities: White House Office, Office of the Vice President, Council of Economic Advisors, Executive Residence, Office of Administration, Office of Policy Development (DPC and NEC), National Security Council, President's Commission on White House Fellows, and President's Intelligence Advisory Board.

Some materials that are considered presidential records include:

- Memos, letters, notes, emails, faxes, reports, and other written communications sent to or received from others, including materials sent to or received from persons outside government;

- Drafts, marked-up edits, or comments that are circulated or shown to others;

- Notes or minutes of meetings that are circulated or shown to others;

- Meeting minutes, memos to file, notes, drafts, and similar documents that are created or saved for the purpose of accurately documenting the activities or deliberations of the Administration, even if such materials are not circulated or shown to others;

- PowerPoint presentations, audio recordings, photos, and video footage;

- Emails, chats, and other electronic communications that are created or received in the course of conducting activities related to the performance of the President's duties, but that are sent from or received on non-official accounts; and

- Transition materials, but only if they are used in the course of official government business.

Purely personal records that do not relate to or have an effect upon the carrying out of the President's official duties do not need to be preserved. Similarly, political records need not be preserved unless they relate to or have a direct effect upon the President's official duties. Finally, certain materials that lack historic value are not covered by the PRA – for example, notes, drafts, and similar documents that are not circulated or that are not created or saved for the purpose of documenting the activities or deliberations of the Administration.

What Steps Should Be Taken to Preserve Presidential Records?

Paper Records. You should preserve hard-copy presidential records in organized files. To the extent practicable, you should categorize materials as presidential records when they are created or received. You should file presidential records separately from other material. Paper records are typically collected at the end of your White House service, but may be collected at an earlier point by contacting the White House Office of Records Management ("WHORM"). Any records collected by WHORM remain available to the staff member who provided them.

Electronic Records. You must preserve electronic communications that are presidential records. **You are required to conduct all work-related communications on your official EOP email account**, except in emergency circumstances when you cannot access the EOP system and must accomplish time sensitive work. Emails and attachments sent to and from your EOP account are automatically archived.

*If you ever send or receive email that qualifies as a presidential record using any other account, you **must** preserve that email by copying it to your official EOP email account or by forwarding it to your official email account within twenty (20) days*. After preserving the email, you must delete it from the non-EOP account. ***Any employee who intentionally fails to take these actions may be subject to administrative or even criminal penalties.***

The same rules apply to other forms of electronic communication, including text messages. ***You should not use instant messaging systems, social networks, or other internet-based means of electronic communication to conduct official business without the approval of the Office of the White House Counsel***. If you ever generate or receive presidential records on such platforms, you must preserve them by sending them to your EOP email account via a screenshot or other means. After preserving the communications, you must delete them from the non-EOP platform.

Electronic documents that qualify as presidential records and only exist in electronic format must be saved on your network drive or regularly synchronized to it. You must archive files that you are no longer using; you must not delete them. Your network drive will be captured upon your departure from the EOP, which will secure any presidential records you have saved.

At all times, please keep in mind that presidential records are the property of the United States. You may not dispose of presidential records. When you leave EOP employment, you may not take any presidential records with you. You also may not take copies of any presidential records without prior authorization from the Counsel's office. The willful destruction or concealment of federal records is a federal crime punishable by fines and imprisonment.

Any questions about compliance with the Presidential Records Act may be directed to Stefan Passantino (b) (6), Scott Gast (b) (6), or Jim Schultz (b) (6).