House Calendar No. 70

117TH CONGRESS, *2d Session* | HOUSE OF REPRESENTATIVES | REPORT 117–284

RESOLUTION RECOMMENDING THAT THE HOUSE OF REPRESENTATIVES FIND PETER K. NAVARRO AND DANIEL SCAVINO, JR., IN CONTEMPT OF CONGRESS FOR REFUSAL TO COMPLY WITH SUBPOENAS DULY ISSUED BY THE SELECT COMMITTEE TO INVESTIGATE THE JANUARY 6TH ATTACK ON THE UNITED STATES CAPITOL

MARCH 29, 2022.—Referred to the House Calendar and ordered to be printed

Mr. THOMPSON of Mississippi, from the Select Committee to Investigate the January 6th Attack on the United States Capitol, submitted the following

R E P O R T

The Select Committee to Investigate the January 6th Attack on the United States Capitol, having considered this Report, reports favorably thereon and recommends that the Report be approved.

The form of the Resolution that the Select Committee to Investigate the January 6th Attack on the United States Capitol would recommend to the House of Representatives for citing Peter K. Navarro and Daniel Scavino, Jr., for contempt of Congress pursuant to this Report is as follows:

Resolved, That Peter K. Navarro and Daniel Scavino, Jr., shall be found to be in contempt of Congress for failure to comply with congressional subpoenas.

Resolved, That pursuant to 2 U.S.C. §§ 192 and 194, the Speaker of the House of Representatives shall certify the report of the Select Committee to Investigate the January 6th Attack on the United States Capitol, detailing the refusal of Peter K. Navarro to produce documents or appear for a deposition before the Select Committee to Investigate the January 6th Attack on the United States Capitol as directed by subpoena, to the United States Attorney for the District of Columbia, to the end that Mr. Navarro be proceeded against in the manner and form provided by law.

Resolved, That pursuant to 2 U.S.C. §§ 192 and 194, the Speaker of the House of Representatives shall certify the report of the Select Committee to Investigate the January 6th Attack on the United States Capitol, detailing the refusal of Daniel Scavino, Jr., to produce documents or appear for a deposition before the Select Committee to Investigate the January 6th Attack on the United

States Capitol as directed by subpoena, to the United States Attorney for the District of Columbia, to the end that Mr. Scavino be proceeded against in the manner and form provided by law.

Resolved, That the Speaker of the House shall otherwise take all appropriate action to enforce the subpoenas.

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Purpose and Summary

On January 6, 2021, a violent mob attempted to impede Congress's constitutional and statutory mandate to count the electoral votes in the 2020 Presidential election and launched an assault on the United States Capitol Complex that resulted in multiple deaths, physical harm to more than 140 members of law enforcement, and terror and trauma among staff, institutional employees, and press. In response, the House adopted House Resolution 503 on June 30, 2021, establishing the Select Committee to Investigate the January 6th Attack on the United States Capitol (hereinafter referred to as the "Select Committee").

The Select Committee is investigating the facts, circumstances, and causes of the January 6th attack and issues relating to the interference with the peaceful transfer of power, in order to identify and evaluate problems and to recommend to the House and its relevant committees corrective laws, policies, procedures, rules, or regulations. This inquiry includes examination of the factors that influenced, instigated, or contributed to the attack and how various individuals and entities coordinated their activities leading up to the attack.

PETER K. NAVARRO

According to published reports, Peter K. Navarro, a White House trade advisor, worked with Stephen K. Bannon and others to develop and implement a plan to delay Congress's certification, and ultimately change the outcome, of the November 2020 Presidential election. In November 2021, Mr. Navarro published *In Trump Time*, a book in which he described this plan as the "Green Bay Sweep" and stated that it was designed as the "last, best chance to snatch a stolen election from the Democrats' jaws of deceit."[1] In a later interview about his book, Mr. Navarro added that former-President Trump was "on board with the strategy," as were more

[1] Peter Navarro, *In Trump Time: My Journal of America's Plague Year*, (All Seasons Press, 2021), at pp. 251–52.

than 100 Members of Congress.[2] Previously, Mr. Navarro had publicly released on his website a three-part report, dubbed "The Navarro Report," repeating many claims of purported fraud in the election that have been discredited in public reporting, by State officials, and by courts.[3]

On February 9, 2022, Chairman BENNIE G. THOMPSON signed a subpoena for documents and testimony and transmitted it along with a cover letter and schedule to Mr. Navarro.[4] The subpoena required that Mr. Navarro produce responsive documents not later than February 23, 2022, and that Mr. Navarro appear for a deposition on March 2, 2022.

When Select Committee staff emailed Mr. Navarro on February 9, 2022, asking whether he would accept service and had an attorney, Mr. Navarro replied only: "yes. no counsel. Executive privilege[.]"[5] Select Committee staff then emailed the subpoena to Mr. Navarro. Within hours of receiving the subpoena, Mr. Navarro released a public statement that clearly indicated he had no intention of complying with the Select Committee's subpoena while also acknowledging that he had already publicly released information that is relevant to the Select Committee's investigation in his book:

> President Trump has invoked Executive Privilege; and it is not my privilege to waive. [The Select Committee] should negotiate any waiver of the privilege with the president and his attorneys directly, not through me. I refer this tribunal to Chapter 21 of In Trump Time for what is in the public record about the Green Bay Sweep plan to insure [sic] election integrity[.][6]

Mr. Navarro also appeared on national television on February 10, 2022, discussing subjects that were the focus of the Select Committee's subpoena to him.[7]

On February 24, 2022, Select Committee staff contacted Mr. Navarro via email about his failure to produce documents by the February 23rd deadline in the subpoena. In the same email, staff reminded Mr. Navarro about the date for his deposition and notified him of its location within the U.S. Capitol campus. Staff also requested that Mr. Navarro contact the Select Committee for further details about the deposition or, alternatively, to notify the Select Committee if he did not plan to appear for deposition testimony.[8]

On February 27, 2022, Mr. Navarro contacted Select Committee staff and said that "President Trump has invoked [e]xecutive [p]rivilege in this matter; and it is neither my privilege to waive or Joseph Biden's privilege to waive."[9] Mr. Navarro did not provide any evidence that former-President Trump had ever invoked executive privilege with respect to any documents in Mr. Navarro's personal possession or any testimony that Mr. Navarro could provide.

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[2] Jose Pagliery, "Trump Adviser Peter Navarro Lays Out How He and Bannon Planned to Overturn Biden's Electoral Win," The Daily Beast, (December 27, 2021), available at https://www.thedailybeast.com/trump-advisor-peter-navarro-lays-out-how-he-and-steve-bannon-planned-to-overturn-bidens-electoral-win.

[3] Peter Navarro, "The Navarro Report," (2020, updated 2021), available at https://peternavarro.com/the-navarro-report/.

[4] *See* Appendix I, Ex. 1.

[5] *See* Appendix I, Ex. 2.

[6] Scott MacFarlane (@MacFarlaneNews), Twitter, Feb. 9, 2022 5:38 p.m. ET, available at https://twitter.com/MacFarlaneNews/status/1491542034662019078.

[7] "Transcript: The Beat with Ari Melber, 2/10/22," MSNBC, (Feb. 10, 2022), available at https://www.msnbc.com/transcripts/the-beat-with-ari-melber/transcript-beat-ari-melber-2-10-22-n1289032.

[8] *See* Appendix I, Ex. 3.

[9] *See* Appendix I, Ex. 4.

Select Committee staff responded the same day and explained that there are areas of inquiry that do not implicate "any executive privilege concerns at all."[10] Select Committee staff further informed Mr. Navarro that he could make executive privilege objections during his deposition and that he must do so on a "question-by-question basis" to "enable the Select Committee to better understand [his] objections and, if necessary, take any additional steps to address them."[11] Select Committee staff then asked Mr. Navarro again whether he intended to appear for his deposition on March 2, 2022, as required by the subpoena.

Later the same day, Mr. Navarro responded to the Select Committee's email correspondence. Instead of saying whether he intended to appear for his deposition, Mr. Navarro asked: "Will this event be open to the public and press?"[12] Select Committee staff responded that it would not be open to the press, that it would be a "staff-led deposition, which members of the Select Committee may also join and in which they may participate."[13] Select Committee staff asked about Mr. Navarro's document production and offered to find a new date for the deposition "within a reasonable time" if Mr. Navarro had a scheduling conflict on March 2d.[14] Mr. Navarro did not respond to that offer but, the next day, sent the Select Committee an email saying that he had "been clear in my communications on this matter" and that "it is incumbent on the Committee to directly negotiate with President Trump and his attorneys regarding any and all things related to this matter."[15]

On February 28, 2022, the White House Counsel's Office issued a letter to Mr. Navarro regarding the Select Committee's subpoena. That letter stated: "[I]n light of the unique and extraordinary nature of the matters under investigation, President Biden has determined that an assertion of executive privilege is not in the national interest, and therefore is not justified, with respect to particular subjects within the purview of the Select Committee."[16] The letter further noted that "President Biden accordingly has decided not to assert executive privilege" with respect to the testimony of Mr. Navarro "regarding those subjects," or with respect to "any documents [he] may possess that bear on them." Further, the letter stated: "For the same reasons underlying his decision on executive privilege, President Biden has determined that he will not assert immunity to preclude [Mr. Navarro] from testifying before the Select Committee."[17]

On March 1, 2022, Select Committee staff sent another email to Mr. Navarro about his appearance for testimony as required by the subpoena. Once again, Select Committee staff reminded Mr. Navarro that "there are topics that the Select Committee believes it can discuss with [him] without raising any executive privilege concerns at all, including, but not limited to, questions related to [his] public three-part report about purported fraud in the November 2020 election and the plan [he] described in [his] book called

[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *See* Appendix I, Ex. 5.
[16] *See* Appendix I, Ex. 6.
[17] *Id.*

the 'Green Bay Sweep.'"[18] Select Committee staff told Mr. Navarro, again, that if there were any "specific questions that raise[d] executive privilege concerns, [he could] assert [his] objections on the record and on a question-by-question basis."[19] Select Committee staff also provided Mr. Navarro with information regarding the time and location of his deposition.

Mr. Navarro did not respond to the March 1st email from Select Committee staff. He has failed to produce documents or appear for his scheduled deposition by the deadlines in the February 9, 2022, subpoena.[20]

Rather than appear for his deposition or respond directly to the Select Committee, Mr. Navarro issued a public statement regarding his deposition.[21] Mr. Navarro predicted that his interactions with the Select Committee would be judged by the "Supreme Court, where this case is headed[.]"[22] Mr. Navarro, however, never filed any case seeking relief from his responsibilities to comply with the Select Committee's subpoena.

In *United States v. Bryan* (1950), the Supreme Court emphasized that the subpoena power is a "public duty, which every person within the jurisdiction of the Government is bound to perform when properly summoned."[23] The Court recently reinforced this clear obligation by stating that "[w]hen Congress seeks information needed for intelligent legislative action, it unquestionably remains the duty of *all* citizens to cooperate."[24]

The contempt of Congress statute, 2 U.S.C. § 192, makes clear that a witness summoned before Congress must appear or be "deemed guilty of a misdemeanor" punishable by a fine of up to $100,000 and imprisonment for up to 1 year.[25] Mr. Navarro's refusal to comply with the Select Committee's subpoena in any way represents willful default under the law and warrants referral to the United States Attorney for the District of Columbia for prosecution for contempt of Congress as prescribed by law.

DANIEL SCAVINO, JR.

According to many published reports, Daniel Scavino, Jr., a longtime employee of former-President Trump, was responsible for social media and communications strategy for the former President, including with respect to the Trump Campaign's post-election efforts to challenge the 2020 election results. Mr. Scavino worked with Mr. Trump as part of the then-President's campaign to reverse the election results. This campaign included, among other things, spreading false information via social media regarding al-

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[18] *See* Appendix I, Ex. 7.
[19] *Id.*
[20] *See* Appendix I, Ex. 8.
[21] Ryan Nobles, Paula Reid, and Annie Grayer, "Trump adviser Peter Navarro skips scheduled deposition with January 6 committee," CNN, (March 2, 2022), available at https://www.cnn.com/2022/03/02/politics/peter-navarro-january-6/index.html.
[22] *Id.*
[23] *United States v. Bryan*, 339 U.S. 323, 331 (1950).
[24] *Trump v. Mazars USA LLP*, 140 S.Ct. 2019, 2036 (2020) (emphasis in original; internal quotation marks removed). *See also Watkins v. United States*, 354 U.S. 178, 187–88 (1957) (stating of citizens that "It is their unremitting obligation to respond to subpoenas, to respect the dignity of the Congress and its committees, and to testify fully with respect to matters within the province of proper investigation.").
[25] The prison term for this offense makes it a Class A misdemeanor. 18 U.S.C. § 3559(a)(6). By that classification, the penalty for contempt of Congress specified in 2 U.S.C. § 192 increased from $1,000 to $100,000. 18 U.S.C. § 3571(b)(5).

leged election fraud and recruiting a crowd to Washington for the events of January 6th. Mr. Scavino reportedly attended several meetings with then-President Trump in which challenges to the election were discussed. Mr. Scavino also tracked social media on behalf of former-President Trump, and he did so at a time when sites reportedly frequented by Mr. Scavino suggested the possibility of violence on January 6th. The Select Committee therefore has reason to believe that Mr. Scavino may have had advance warning about the potential for violence on January 6th.

Mr. Scavino did not only work as a White House official. He separately promoted activities designed to advance Mr. Trump's success as a Presidential candidate. He continued to do so after the 2020 election, promoting activities designed to reverse the outcome of a lost election.

Mr. Scavino's public statements and reported conduct make clear the relevance of his testimony and documents for the Select Committee's investigation.

On October 6, 2021,[26] Chairman THOMPSON signed a subpoena for documents and testimony and transmitted it along with a cover letter and schedule to Mr. Scavino.[27] On October 8, 2021, U.S. Marshals served this subpoena at Mar-a-Lago, Mr. Scavino's reported place of employment, to Ms. Susan Wiles, who represented herself as chief of staff to former-President Trump and as authorized to accept service on Mr. Scavino's behalf.[28] The subpoena required that Mr. Scavino produce responsive documents not later than October 21, 2021, and that Mr. Scavino appear for a deposition on October 28, 2021. Subsequent communications between counsel for Mr. Scavino and Chairman THOMPSON, however, did not result in Mr. Scavino's agreement to appear for testimony or produce documents.

Attempting to reach an accommodation with Mr. Scavino, Chairman THOMPSON granted multiple extensions for the deposition and production of documents:

- Per Mr. Scavino's request for an extension, the Chairman deferred the document production deadline to October 28, 2021, and the deposition to November 4, 2021.[29]
- Per Mr. Scavino's request for an extension, the Chairman again deferred the document production deadline to November 4, 2021, and the deposition to November 12, 2021.[30]
- Per Mr. Scavino's request for an extension, the Chairman deferred the document production deadline to November 5, 2021.[31]
- Per Mr. Scavino's request for an extension, the Chairman deferred the document production deadline to November 15, 2021, and the deposition to November 19, 2021.[32]

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[26] As explained below, the Chairman issued three subpoenas to Mr. Scavino. The first was dated September 23, 2021, but could not be served because Mr. Scavino could not be located. The second was dated October 6, 2021, and was served on October 8, 2021. After Mr. Scavino challenged service of the second subpoena, the Chairman issued a third on November 23, 2021, and electronically served it on Mr. Scavino's attorney.

[27] *See* Appendix II, Ex. 1.

[28] *Id.*

[29] *See* Appendix II, Ex. 2.

[30] *Id.*

[31] *Id.*

[32] *Id.*

- The Chairman extended the document production deadline to November 29, 2021, and the deposition to December 1, 2021.[33]
- Following the U.S. Supreme Court's denial of a stay in *Trump v. Thompson*, the Chairman offered Mr. Scavino an additional opportunity to indicate his intent to cooperate with the investigation and comply with the subpoena by February 8, 2022.[34]

Despite all these extensions, to date, Mr. Scavino has not produced a single document, nor has he appeared for testimony.

On March 15, 2022, the White House Counsel's Office issued a letter to Mr. Scavino's attorney regarding the Select Committee's subpoena. That letter stated, "President Biden has determined that an assertion of executive privilege is not in the national interest, and therefore is not justified, with respect to particular subjects within the purview of the Select Committee."[35] Further, "President Biden accordingly has decided not to assert executive privilege as to Mr. Scavino's testimony regarding those subjects, or any documents he may possess that bear on them. For the same reasons underlying his decision on executive privilege, President Biden has determined that he will not assert immunity to preclude [Mr. Scavino] from testifying before the Select Committee."[36]

In *United States v. Bryan* (1950), the Supreme Court emphasized that the subpoena power is a "public duty, which every person within the jurisdiction of the Government is bound to perform when properly summoned."[37] The Court recently reinforced this clear obligation by stating that "[w]hen Congress seeks information needed for intelligent legislative action, it unquestionably remains the duty of *all* citizens to cooperate."[38]

The contempt of Congress statute, 2 U.S.C. § 192, makes clear that a witness summoned before Congress must appear or be "deemed guilty of a misdemeanor" punishable by a fine of up to $100,000 and imprisonment for up to 1 year.[39] Mr. Scavino's refusal to comply with the Select Committee's subpoena in any way represents willful default under the law and warrants referral to the United States Attorney for the District of Columbia for prosecution for contempt of Congress as prescribed by law.

Background on the Select Committee's Investigation

House Resolution 503 provides that the enumerated purposes of the Select Committee include investigating and reporting upon the "facts, circumstances, and causes relating to the January 6, 2021, domestic terrorist attack upon the United States Capitol Complex . . . and relating to the interference with the peaceful transfer of power."[40] As part of this charge, the Select Committee is examining

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[33] *See* Appendix II, Ex. 3.
[34] *See* Appendix II, Ex. 4. *See also Trump v. Thompson*, 2021 U.S. App. LEXIS 36315, at *46 (D.C. Cir. Dec. 9, 2021), *cert. denied*, 2022 U.S. LEXIS 796 (U.S., Feb. 22, 2022).
[35] *See* Appendix II, Ex. 5.
[36] *Id.*
[37] *United States v. Bryan*, 339 U.S. 323, 331 (1950).
[38] *See supra*, at note 24.
[39] *See supra*, at note 25.
[40] H. Res. 503, 117th Cong., § 3(1) (2021)

the "influencing factors that fomented such an attack on American representative democracy."[41]

The Supreme Court has long held that Congress has a constitutional duty to conduct oversight. "The power of the Congress to conduct investigations is inherent in the legislative process,"[42] and the capacity to enforce said investigatory power "is an essential and appropriate auxiliary to the legislative function."[43] "Absent such a power, a legislative body could not 'wisely or effectively' evaluate those conditions 'which the legislation is intended to affect or change.' "[44]

The oversight powers of House and Senate committees are also codified in legislation. For example, the Legislative Reorganization Act of 1946 directed committees to "exercise continuous watchfulness" over the executive branch's implementation of programs within its jurisdictions,[45] and the Legislative Reorganization Act of 1970 authorized committees to "review and study, on a continuing basis, the application, administration, and execution" of laws.[46]

The Select Committee was properly constituted under section 2(a) of House Resolution 503, 117th Congress. As required by that resolution, Members of the Select Committee were selected by the Speaker, after "consultation with the minority leader."[47] A bipartisan selection of Members was appointed pursuant to House Resolution 503 on July 1, 2021, and July 26, 2021.[48]

Pursuant to House rule XI and House Resolution 503, the Select Committee is authorized "to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of books, records, correspondence, memoranda, papers, and documents as it considers necessary."[49] Further, section 5(c)(4) of House Resolution 503 provides that the Chairman of the Select Committee may "authorize and issue subpoenas pursuant to clause 2(m) of rule XI in the investigation and study" conducted pursuant to the enumerated purposes and functions of the Select Committee. The Select Committee's authorizing resolution further states that the Chairman "may order the taking of depositions, including pursuant to subpoena, by a Member or counsel of the Select Committee, in the same manner as a standing committee pursuant to section 3(b)(1) of House Resolution 8, One Hundred Seventeenth Congress."[50]

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[41] *Id.*

[42] *Watkins v. United States*, 354 U.S. 178, 187 (1957). *See also Trump v. Mazars USA, LLP*, 140 S.Ct. 2019, 2031 (2020).

[43] *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927).

[44] *Ashland Oil, Inc. v. FTC*, 409 F.Supp. 297, 305 (D.D.C. 1976), *aff'd*, 548 F.2d 977 (D.C. Cir. 1976) (quoting *McGrain*, 273 U.S. at 175).

[45] Pub. L. 79–601, 79th Cong. § 136, (1946).

[46] Pub. L. 91–510, 91st Cong. § 118, (1970).

[47] Speaker Pelosi detailed such consultation and her selection decisions in a July 21, 2021, press release, available at https://www.speaker.gov/newsroom/72121-2.

[48] 167 Cong. Rec. 115 (July 1, 2021), at p. H3597 and 167 Cong. Rec. 130 (July 26, 2021), at p. H3885. The January 4, 2021, order of the House provides that the Speaker is authorized to accept resignations and to make appointments authorized by law or by the House. *See* 167 Cong. Rec. 2 (Jan. 4, 2021), at p. H37.

[49] House rule XI, cl. 2(m)(1)(B), 117th Cong., (2021); H. Res. 503, 117th Cong. § 5(c)(4), (2021).

[50] H. Res. 503, 117th Cong. § 5(c)(6), (2021).

PETER K. NAVARRO

A. The Select Committee seeks information from Mr. Navarro central to its investigative purposes.

The Select Committee seeks information from Mr. Navarro central to its investigative responsibilities delegated to it by the House of Representatives. This includes the obligation to investigate and report on the facts, circumstances, and causes of the attack on January 6, 2021, and on the facts, circumstances, and causes "relating to the interference with the peaceful transfer of power."[51]

The events of January 6, 2021, involved both a physical assault on the Capitol building and law enforcement personnel protecting it and an attack on the constitutional process central to the peaceful transfer of power following a Presidential election. The counting of electoral college votes by Congress is a component of that transfer of power that occurs every January 6th following a Presidential election. This event is part of a complex process, mediated through the free and fair elections held in jurisdictions throughout the country, and through the statutory and constitutional processes set up to confirm and validate the results. In the case of the 2020 Presidential election, the January 6th electoral college vote count occurred following a series of efforts in the preceding weeks by Mr. Trump and his supporters to challenge the legitimacy of, disrupt, delay, and overturn the election results.

According to eyewitness accounts as well as the statements of participants in the attack on January 6, 2021, a purpose of the assault was to stop the process of validating what then-President Trump, his supporters, and his allies had falsely characterized as a "stolen" or "fraudulent" election. The claims regarding the 2020 election results were advanced and amplified in the weeks leading up to the January 6th assault, even after courts across the country had resoundingly rejected lawsuits claiming election fraud and misconduct, and after all States had certified the election results. As part of this effort, Mr. Trump and his associates spread false information about, and cast doubts on, the elections in Arizona, Pennsylvania, Michigan, and Georgia, among other States, and pressed Federal, State, and local officials to use their authorities to challenge the election results.

To fulfill its investigative responsibilities, the Select Committee needs to understand the events and communications in which Mr. Navarro reportedly participated or that he observed. He has publicly acknowledged playing a role in devising a post-election strategy to change the outcome of the election and promoting claims of election fraud intended to further that strategy. These actions were outside his official governmental duties at the time.

As Assistant to the President and Director of Trade and Manufacturing Policy, Mr. Navarro's role in government was to assist the President in formulating and implementing trade policy. Former-President Trump created Mr. Navarro's position by Presidential Executive Order No. 13797 in 2017.[52] The mission of the office that Mr. Navarro led was to "defend and serve American workers and domestic manufacturers while advising the President

[51] H. Res. 503, 117th Cong. § 3(1) (2021).
[52] Exec. Order No. 13797, 82 Fed. Reg. 20821 (April 29, 2017).

on policies to increase economic growth, decrease the trade deficit, and strengthen the United States manufacturing and defense industrial bases."[53] Additionally, the office's responsibilities included: "(a) advis[ing] the President on innovative strategies and promot[ing] trade policies consistent with the President's stated goals; (b) serv[ing] as a liaison between the White House and the Department of Commerce and undertak[ing] trade-related special projects as requested by the President; and (c) help[ing to] improve the performance of the executive branch's domestic procurement and hiring policies, including through the implementation of the policies described in Executive Order 13788 of April 18, 2017 (Buy American and Hire American)."[54] In March 2020, President Trump also signed Executive Order No. 13911, which named Mr. Navarro as the National Defense Production Act Policy Coordinator, which gave the Office of Trade and Manufacturing Policy authority to address potential shortfalls in pandemic-related resources such as ventilators and personal protective equipment.[55]

The Select Committee does not seek documents or testimony from Mr. Navarro related to his official duties as a Federal official. None of the official responsibilities of Mr. Navarro's positions included advising President Trump about the 2020 Presidential election or the roles and responsibilities of Congress and the Vice President during the January 6, 2021, joint session of Congress. Nor did those official duties involve researching or promoting claims of election fraud. Nevertheless, after the 2020 Presidential election, Mr. Navarro became involved in efforts to convince the public that widespread fraud had affected the election. Federal law did not allow Mr. Navarro to use his official office to attempt to affect the outcome of an election.[56] When Mr. Navarro engaged in these activities, and other activities described below, he was acting outside the scope of his official duties.

In December 2020, Mr. Navarro released a three-part report on purported fraud in the election on his personal website. The chapters of the report, titled "Volume One: The Immaculate Deception," "Volume Two: The Art of the Steal," and "Volume Three: Yes, President Trump Won" (collectively, "The Navarro Report"), discuss, among other things, disproven claims of alleged voter fraud and cite to sources such as Stephen Bannon's "War Room: Pandemic" podcasts and unsupported allegations from cases around the country that courts dismissed.[57] In a press call on December 17, 2020, to announce his report, Mr. Navarro acknowledged that he wrote the report "as a private citizen" and, in doing so, wanted to

[53] *Id.*, at § 2.
[54] *Id.*, at § 3.
[55] Exec. Order No. 13911, 85 Fed. Reg. 18403 (Mar. 27, 2020), at §§ 1, 6.
[56] Federal law requires a separation of duties for Federal officials who decide to engage in campaign activities. The Hatch Act generally prohibits officials, such as Mr. Navarro, from using their official authority or influence to affect the outcome of an election. See 5 U.S.C. § 7323(a); 5 C.F.R. § 734.101 (defining "political activity"); 5 C.F.R. § 734.302 (prohibiting use of official title while engaged in political activity). This would have prevented Mr. Navarro from acting as both a White House official and as a campaign official on certain matters or communications. *See also* "Investigation of Political Activities by Senior Trump Administration Officials During the 2020 Presidential election," Report of the Office of Special Counsel, (Nov. 9, 2021), at pp. 17, 22–23.
[57] Peter Navarro, "The Navarro Report," (2020, updated 2021), available at https://peternavarro.com/the-navarro-report/.

address what he called "outright fraud" in the 2020 Presidential election.[58]

The Select Committee's investigation has revealed that "The Navarro Report" was shared, in whole or in part, by individuals who made public claims about purported fraud in the election, including Professor John Eastman and then-White House Chief of Staff Mark Meadows.[59] Notably, then-President Trump included a link to volume one of "The Navarro Report" in the same tweet in which he first announced that he would speak at a rally in Washington on January 6, 2021.[60] Mr. Navarro has claimed that Mr. Trump "himself had distributed Volume One of the report to every member of the House and Senate" before January 6, 2021.[61] Specific allegations contained in "The Navarro Report" were also used as justification in attempts to convince State legislators to de-certify their State's popular vote and appoint Trump-Pence electoral college electors.[62] And, the report was cited in litigation that, if successful, would have resulted in a declaration that the Vice President alone could decide which electoral college votes to count during the January 6, 2021, joint session of Congress.[63]

Mr. Navarro also reportedly worked with members of the Trump Campaign's legal team to directly encourage State legislators to overturn the results of the 2020 election. On January 2, 2021, Mr. Navarro joined a call with Phill Kline, Rudy Giuliani, Professor John Eastman, John Lott, Jr., then-President Trump, and hundreds of State legislators. During the call, Mr. Navarro discussed his report on voter fraud and told the State legislators: "Your job, I believe, is to take action, action, action. . . The situation is dire."[64] In that same call, Mr. Trump told the State legislators that they were the best chance to change the certified results of the Presidential election in certain States because "[y]ou are the real power . . .[y]ou're more important than the courts. You're more important than anything because the courts keep referring to you, and you're the ones that are going to make the decision."[65]

In the days leading up to January 6, 2021, according to evidence obtained by the Select Committee, Mr. Navarro also encouraged Mark Meadows (and possibly others) to call Roger Stone to discuss January 6th.[66] When Roger Stone appeared to testify before the Select Committee and was asked questions about the events of Janu-

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[58] "Peter Navarro 'The Immaculate Deception' Report News Conference Transcript," (Dec. 17, 2020), available at https://www.rev.com/blog/transcripts/peter-navarro-the-immaculate-deception-report-news-conference-transcript.

[59] Documents on file with the Select Committee.

[60] Donald Trump (@realDonaldTrump), Twitter, Dec. 19, 2020 1:42 a.m. ET, available at http://web.archive.org/web/20201225035520mp__/https://twitter.com/realDonaldTrump/status/1340185773220515840 (archived).

[61] Tom Dickinson, "Peter Navarro: Trump Distributed Bogus Election Fraud Research to 'Every' congressional Republican," *Rolling Stone*, (Jan. 3, 2022) available at https://www.rollingstone.com/politics/politics-news/peter-navarro-interview-jan-6-electoral-college-1277938/.

[62] Documents on file with the Select Committee.

[63] Documents on file with the Select Committee. *See also Gohmert, et al. v. Pence*, 510 F. Supp. 3d 435 (E.D. Tex. 2021).

[64] Paul Bedard, "Exclusive: Trump urges state legislators to reject electoral votes, 'You are the real power,'" *Washington Examiner*, (Jan. 3, 2021), available at https://www.washingtonexaminer.com/washington-secrets/exclusive-trump-urges-state-legislators-to-reject-electoral-votes-you-are-the-real-power.

[65] *Id.*

[66] Documents on file with the Select Committee.

ary 6th, he repeatedly invoked his Fifth Amendment right against self-incrimination.

Mr. Navarro wrote about "The Navarro Report" and his efforts to change the outcome of the 2020 election in his recently published book, *In Trump Time*.[67] In his book, Mr. Navarro described actions he took to affect the outcome of the election, including encouraging President Trump in early-November 2020 not to announce that he would seek election in 2024 because doing so would acknowledge that he had actually lost the 2020 Presidential election.[68] Mr. Navarro also wrote that he called Attorney General William P. Barr to ask that the Department of Justice intervene and support President Trump's legal efforts to challenge the results of the 2020 election, which Attorney General Barr refused to do.[69] Mr. Navarro also wrote in his book that he kept a journal of post-election activities like those described above.[70]

Mr. Navarro also claimed credit for concocting a plan with Stephen Bannon to overturn the election results in various States dubbed the "Green Bay Sweep."[71] In his book, Mr. Navarro described the "Green Bay Sweep" as "our last, best chance to snatch a stolen election," and "keep President Trump in the White House for a second term."[72] The plan was to encourage Vice President Michael R. Pence, as President of the Senate, to delay certification of the electoral college votes during the January 6th joint session of Congress and send the election back to the State legislatures.[73] Mr. Navarro's theory is similar to the theory that Professor John Eastman advocated before January 6th, and that President Trump explicitly encouraged during his speech on the Ellipse on January 6th.[74] On January 6th, the day to implement the "Green Bay Sweep," Mr. Navarro had multiple calls with Mr. Bannon, including during and after the attack on the U.S. Capitol.[75] Mr. Navarro has stated that he believed his strategy "started flawlessly" but was thwarted when "two things went awry: [Vice President] Pence's betrayal, and, of course, the violence that erupted on Capitol Hill, which provided [Vice President] Pence, [and Congressional leaders] an excuse to abort the Green Bay sweep."[76]

This information demonstrates Mr. Navarro's clear relevance to the Select Committee's investigation and provides the foundation for its subpoena for Mr. Navarro's testimony and document production. Congress, through the Select Committee, is entitled to discover facts concerning what led to the attack on the U.S. Capitol on January 6th, as well as White House officials' actions and communications during and after the attack.

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[67] Navarro, *In Trump Time* (2021).
[68] *Id.*, at p. 225.
[69] *Id.*, at pp. 241–42.
[70] *See, e.g., id.*
[71] *Id.*
[72] *Id.*, at pp. 251–52.
[73] *Id.*, at p. 252.
[74] Documents on file with the Select Committee.
[75] Documents on file with the Select Committee.
[76] Tom Dickinson, "Peter Navarro: Trump Distributed Bogus Election Fraud Research to 'Every' Congressional Republican," *Rolling Stone*, (Jan. 3, 2022) available at https://www.rollingstone.com/politics/politics-news/peter-navarro-interview-jan-6-electoral-college-1277938/.

B. Mr. Navarro has refused to comply with the Select Committee's subpoena for testimony and documents.

On February 9, 2022, Chairman THOMPSON signed and issued a subpoena, cover letter, and schedule to Mr. Navarro ordering the production of both documents and testimony relevant to the Select Committee's investigation into "important activities that led to and informed the events at the Capitol on January 6, 2021."[77] Chairman THOMPSON's letter identified public reports describing Mr. Navarro's activities and past statements, documenting some of the public information that gave the Select Committee reason to believe Mr. Navarro possesses information about matters within the scope of the Select Committee's inquiry.

The accompanying letter set forth a schedule specifying categories of related documents sought by the Select Committee on topics including, but not limited to:

- communications, documents, and information that are evidence of the claims of purported fraud in the three-volume "Navarro Report";
- documents and communications related to plans, efforts, or discussions regarding challenging, decertifying, delaying the certification of, overturning, or contesting the results of the 2020 election; and
- communications with Stephen Bannon, Members of Congress, State and local officials, other White House employees, or representatives of the Trump reelection campaign about election fraud and delaying or preventing the certification of 2020 Presidential election.

The subpoena required Mr. Navarro to produce the requested documents to the Select Committee on February 23, 2022, at 10 a.m. and required Mr. Navarro's presence for the taking of testimony on March 2, 2022, at 10 a.m.[78]

As described above, Mr. Navarro had a brief exchange with Select Committee staff after accepting service of the subpoena and also made public comments indicating that he would not appear or provide documents as required by the subpoena. Indeed, Mr. Navarro failed to produce any documents by the February 23, 2022, deadline, and did not appear for his deposition on March 2, 2022.[79] In his public and non-public communications with the Select Committee, Mr. Navarro vaguely referred to "[e]xecutive [p]rivilege," with no further explanation, as his only reason for failing to comply with the Select Committee's subpoena.

C. Mr. Navarro's purported basis for non-compliance is wholly without merit.

Congress has the power to compel witnesses to testify and produce documents.[80] An individual—whether a member of the public or an executive branch official—has a legal (and patriotic)

[77] *See* Appendix I, Ex. 1.
[78] *Id.*
[79] *See* Appendix I, Ex. 8.
[80] *McGrain*, 273 U.S. at 174 ("We are of opinion that the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function."); *Barenblatt v. United States*, 360 U.S. 109, 111 (1959) ("The scope of the power of inquiry, in short, is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.").

obligation to comply with a duly issued and valid congressional subpoena, unless a valid and overriding privilege or other legal justification permits non-compliance.[81] In *United States v. Bryan*, the Supreme Court stated:

> A subpoena has never been treated as an invitation to a game of hare and hounds, in which the witness must testify only if cornered at the end of the chase. If that were the case, then, indeed, the great power of testimonial compulsion, so necessary to the effective functioning of courts and legislatures, would be a nullity. We have often iterated the importance of this public duty, which every person within the jurisdiction of the Government is bound to perform when properly summoned.[82]

As more fully described below, the Select Committee sought testimony from Mr. Navarro on topics and interactions as to which there can be no conceivable privilege claim. Mr. Navarro has refused to testify in response to the subpoena ostensibly based on a blanket assertion of executive privilege purportedly asserted by former-President Trump. The Supreme Court has recognized an implied constitutional privilege protecting Presidential communications.[83] Under certain circumstances, executive privilege may be invoked to bar congressional inquiry into communications covered by the privilege. However, the Court has held that the privilege is qualified, not absolute, and that it is limited to communications made "in performance of [a President's] responsibilities of his office and made in the process of shaping policies and making decisions."[84] The U.S. Court of Appeals for the D.C. Circuit has already assessed generalized privilege assertions by Mr. Trump in relation to information sought by the Select Committee and purportedly protected by executive privilege. That court concluded that "the profound interests in disclosure advanced by President Biden and the January 6th Committee far exceed [Donald Trump's] generalized concerns for Executive Branch confidentiality."[85] Executive privilege has not been properly invoked with respect to Mr. Navarro, is not applicable to the testimony and documents sought by the Select Committee, and does not justify Mr. Navarro's refusal to appear in any event.

1. President Biden decided not to invoke executive privilege to prevent testimony by Mr. Navarro, and Mr. Trump has not invoked executive privilege with respect to Mr. Navarro.

In his February 9, 2022, email to the Select Committee *before* receiving the subpoena and reviewing the documents sought by the Select Committee, Mr. Navarro cryptically claimed, "[e]xecutive [p]rivilege," but offered no reason why executive privilege would shield from disclosure to the Select Committee *all* of Mr. Navarro's testimony or the documents in Mr. Navarro's personal custody and

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[81] *Watkins*, 354 U.S. at 187–88 ("It is unquestionably the duty of all citizens to cooperate with the Congress in its efforts to obtain the facts needed for intelligent legislative action."); *see also Committee on the Judiciary v. Miers*, 558 F. Supp.2d 53, 99 (D.D.C. 2008) ("The Supreme Court has made it abundantly clear that compliance with a congressional subpoena is a legal requirement.") (citing *United States v. Bryan*, 339 U.S. 323, 331 (1950)).

[82] *United States v. Bryan*, 339 U.S. 323, 331 (1950).

[83] *United States v. Nixon*, 418 U.S. 683, 703–16 (1974)

[84] *Nixon v. Administrator of General Services (GSA)*, 433 U.S. 425, 449 (1977) (internal quotes and citations omitted).

[85] *Trump v. Thompson*, 2021 U.S. App. LEXIS 36315, at *46 (D.C. Cir. Dec. 9, 2021), *cert. denied*, 2022 U.S. LEXIS 796 (U.S., Feb. 22, 2022).

control.[86] Moreover, Mr. Navarro has put forward no evidence to support a valid assertion of executive privilege.

President Biden provided his considered determination that invoking executive privilege, and asserting immunity, to prevent Mr. Navarro's testimony and document production would not be "in the national interest, and therefore is not justified, with respect to particular subjects within the purview of the Select Committee."[87] Mr. Navarro has also offered no evidence that former-President Trump has asserted executive privilege, and the Select Committee has had no communications with the former President regarding Mr. Navarro. Without an assertion of executive privilege by Mr. Trump to the Select Committee, and with the considered determination of the current President not to assert any immunity or executive privilege, Mr. Navarro cannot establish the foundational element of a claim of executive privilege: an invocation of the privilege by the executive.

In *United States v. Reynolds*, 345 U.S. 1, 7–8 (1953), the Supreme Court held that executive privilege:

> [B]elongs to the Government and must be asserted by it; it can neither be claimed nor waived by a private party. It is not to be lightly invoked. There must a formal claim of privilege, lodged by the head of the department which has control over the matter, after actual personal consideration by that officer.[88]

Here, President Biden has decided not to assert executive privilege. But even if this formal determination by the President as the head of the executive branch was not enough to stop the valid assertion of executive privilege (and it was with respect to Mr. Navarro), Mr. Navarro's assertion cannot be valid because the Select Committee has not been provided with any invocation of executive privilege—whether formal or informal—by the former President.[89] In any event, Mr. Navarro's second-hand, categorical assertion of privilege, without any description of the specific documents or specific testimony over which privilege is claimed, is insufficient to activate a claim of executive privilege.

2. Even if Mr. Trump had actually invoked executive privilege, the privilege would not bar the Select Committee from lawfully obtaining the documents and testimony it seeks from Mr. Navarro.

The law is clear that executive privilege does not extend to discussions relating to non-governmental business or among private citizens.[90] In *In re Sealed Case (Espy)*, 121 F.3d 729, 752 (D.C. Cir. 1997), the court explained that the Presidential communications privilege covers "communications authored or solicited and received by those members of an immediate White House adviser's staff who have broad and significant responsibility for investigating and formulating the advice to be given the President on the particular matter to which the communications relate." The court stressed

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[86] *See* Appendix I, Ex. 2.

[87] *See* Appendix I, Ex. 6.

[88] *See also United States v. Burr*, 25 F. Cas. 187, 192 (CCD Va. 1807) (ruling that President Jefferson had to personally identify the passages he deemed confidential and could not leave this determination to the U.S. Attorney).

[89] Indeed, as noted above, President Biden has determined that no assertion of executive privilege is warranted by Mr. Navarro with respect to the areas of inquiry by the Select Committee. *See* Appendix I, Ex. 6.

[90] *See Nixon v. GSA*, 433 U.S. at 449.

that the privilege only applies to communications intended to advise the President "on official government matters."[91]

The Select Committee does not seek information from Mr. Navarro on trade policy or other official decision-making within his sphere of official responsibility. Rather, as noted above, the Select Committee seeks information from Mr. Navarro on a range of subjects unrelated to his or the President's official duties or related to his communications with people outside government about matters outside the scope of Mr. Navarro's official duties. These include the following topics:

- Mr. Navarro's interactions with private citizens, Members of Congress, or others outside the White House related to the 2020 election or efforts to overturn its results, including matters related to the "Green Bay Sweep" strategy for changing the election results that Mr. Navarro developed with Stephen Bannon, who was not a White House employee during the relevant period;
- the reports, and purported factual support for the reports, that Mr. Navarro himself acknowledged he prepared in his capacity "as a private citizen";
- the connections, involvement, and planning for January 6th events by Mr. Navarro, Roger Stone, and other individuals who have refused to provide testimony to the Select Committee; and
- subjects covered by the book that he wrote and publicly released, such as private calls he made to Attorney General Barr to "plead [the] case" for the Department of Justice to take action related to purported election fraud,[92] his calls and meetings with Rudy Giuliani and others associated with the Trump reelection campaign,[93] and his experience in Washington, DC, and around The National Mall on January 6, 2021.[94]

There is no conceivable claim of executive privilege over documents and testimony related to those topics.

Moreover, any claim of executive privilege and the need to maintain confidentiality is severely undermined, if not entirely vitiated, by Mr. Navarro's extensive public disclosure of his communications with the former President, including on issues directly implicated by the Select Committee's subpoena. Mr. Navarro's recently published book described his efforts to overturn the 2020 election and several meetings with then-President Trump about those efforts. The day after he was served with the Select Committee subpoena, Mr. Navarro appeared on national television to discuss the subpoena and his efforts to overturn the 2020 election. Mr. Navarro's public disclosures relating to the very subjects of interest to the Select Committee foreclose a claim of executive privilege with respect to those disclosures.[95]

Even with respect to Select Committee inquiries that involve Mr. Navarro's direct communications with Mr. Trump, executive privi-

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[91] *In re Sealed Case (Espy)*, 121 F.3d 729, 752 (D.C. Cir. 1997).
[92] Navarro, *In Trump Time*, at pp. 241–42.
[93] *See, e.g., id.*, at p. 222.
[94] *See, e.g., id.*, at p. 266–72.
[95] *See, e.g., Espy*, 121 F.3d at 741–42 (discussing waiver and concluding that "the White House has waived its claims of [executive] privilege in regard to the specific documents that it voluntarily revealed to third parties outside the White House").

lege does not bar Select Committee access to that information. Only communications that relate to official Government business can be covered by the Presidential communications privilege.[96] Based on his role as Director of Trade and Manufacturing Policy, Mr. Navarro may have had "broad and significant responsibility for investigating and formulating . . . advice to be given the President" on manufacturing or trade matters, in which case communications with the President related to those "particular matters" might be within executive privilege.[97] However, communications on matters unrelated to official Government business—and outside the scope of Mr. Navarro's official duties—would not be privileged.[98] Indeed, the Select Committee did not intend to seek *any* information related to Mr. Navarro's role as Director of Trade and Manufacturing Policy, and instead was concerned exclusively with obtaining information about events in which Mr. Navarro participated or witnessed in his private, unofficial capacity.

Moreover, even with respect to any subjects of concern that arguably involve official Presidential communications about official Government business, the Select Committee's need for this information to investigate the facts and circumstances surrounding the January 6th assault on the U.S. Capitol and the Nation's democratic institutions far outweighs any generalized executive branch interest in maintaining confidentiality at this point. The U.S. Court of Appeals has recognized this in circumstances when Mr. Trump has formally asserted executive privilege (unlike with Mr. Navarro),[99] and the incumbent President has concluded that "an assertion of executive privilege is not in the national interest, and therefore is not justified, with respect to particular subjects within the purview of the Select Committee . . . [including] efforts to alter election results or obstruct the transfer of power."[100]

3. Mr. Navarro is not immune from testifying or producing documents in response to the subpoena.

Finally, even if executive privilege may apply to some aspect of Mr. Navarro's testimony, he, like other witnesses, was required to produce a privilege log with respect to any withheld documents noting any applicable privileges with specificity, and to appear before the Select Committee for his deposition to answer any questions concerning non-privileged information and assert any applicable privileges on a question-by-question basis. He did none of those things. Although he has not actually claimed that he is immune from testifying or producing documents to Congress, such a claim would not prevent Mr. Navarro's cooperation with the Select Committee on the subjects described in this Report.

As explained, President Biden has determined that it is not in the national interest to assert immunity that Mr. Navarro could claim would prevent testimony before the Select Committee. And neither former-President Trump nor Mr. Navarro have asserted

[96] *See Espy*, 121 F.3d at 752 ("the privilege only applies to communications . . . in the course of performing their function of advising the President on official government matters"); *cf. In re Lindsey*, 148 F.3d 1100, 1106 (D.C. Cir. 1998) (Deputy White House Counsel's "advice [to the President] on political, strategic, or policy issues, valuable as it may have been, would not be shielded from disclosure by the attorney-client privilege").

[97] *Espy*, 121 F.3d at 752.

[98] *See supra*, at note 56.

[99] *Trump v. Thompson*, 2021 U.S. App. 36315 (D.C. Cir. Dec. 9, 2021).

[100] *See* Appendix I, Ex. 6.

any claim of testimonial immunity to prevent Mr. Navarro from testifying in a deposition with the Select Committee. President Biden, on the other hand, affirmatively decided *not* to assert such immunity. In any event, all courts that have reviewed purported immunity have been clear: even senior White House aides who advise the President on official Government business are not immune from compelled congressional process.[101]

The general theory that a current or former White House senior advisor may be immune from testifying before Congress is based entirely on internal memoranda from the Department of Justice's Office of Legal Counsel ("OLC") that courts, in relevant parts, have uniformly rejected.[102] But even those internal memoranda do not claim such immunity from testimony for circumstances like those now facing Mr. Navarro. Those internal memoranda do not address a situation in which the incumbent President has decided to not assert immunity. And by their own terms, the OLC opinions apply only to testimony "about [a senior official's] official duties," not testimony about unofficial actions or private conduct.[103] Indeed, in OLC opinions dating back to, at least, the 1970s, OLC has qualified its own position by advocating for the testimonial immunity of certain White House advisors before Congress "*unless [Congress's] inquiry is related to their private conduct*."[104] As described in this Report, the Select Committee seeks testimony from Mr. Navarro about, among other things, the "Green Bay Sweep" plan he developed to overturn the election and his creation and publication of "The Navarro Report," conduct that was not part of his official duties and that he admittedly engaged in "as a private citizen." Mr. Navarro is not immune from testifying before the Select Committee.

Moreover, there is not, nor has there ever been, any purported immunity for senior White House advisors from producing non-privileged *documents* to Congress when required by subpoena to do so. Mr. Navarro did not produce any documents, and there is no theory of immunity that justifies his wholesale non-compliance with the Select Committee's demand.

For the reasons stated above, Mr. Navarro's own conduct and the determination by the current executive would override any claim of privilege or immunity (even assuming Mr. Trump had invoked executive privilege with respect to Mr. Navarro). Furthermore, Mr. Navarro has refused to appear and assert executive privilege on a question-by-question basis, making it impossible for the Select Committee to consider any good-faith executive privilege asser-

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[101] *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).

[102] *Id.*

[103] *See, e.g.*, Memorandum Opinion for the Counsel to the President, Office of Legal Counsel, *Testimonial Immunity Before Congress of the Former Counsel to the President*, 43 O.L.C. at 1 (May 20, 2019) (Slip Opinion); Letter Opinion for the Counsel to the President, *Testimonial Immunity Before Congress of the Assistant to the President and Senior Counselor to the President*, 43 O.L.C. 1 at 1 (July 12, 2019) (Slip Opinion).

[104] *See, e.g.*, Memorandum for the Honorable John W. Dean III, Counsel to the President, from Ralph E. Erickson, Assistant Attorney General, Office of Legal Counsel, *Re: Appearance of Presidential Assistant Peter M. Flanigan Before a Congressional Committee* at 1 (Mar. 15, 1972) (emphasis added).

tions. And, as discussed above, claims of testimonial immunity and executive privilege are wholly inapplicable to the range of subjects about which the Select Committee seeks Mr. Navarro's testimony and that Mr. Navarro has seemingly acknowledged involve non-privileged matters.

D. Mr. Navarro's failure to appear or produce documents in response to the subpoena warrants holding Mr. Navarro in contempt.

An individual who fails or refuses to comply with a House subpoena may be cited for contempt of Congress.[105] Pursuant to 2 U.S.C. § 192, the willful refusal to comply with a congressional subpoena is punishable by a fine of up to $100,000 and imprisonment for up to 1 year. A committee may vote to seek a contempt citation against a recalcitrant witness. This action is then reported to the House. If a contempt resolution is adopted by the House, the matter is referred to a U.S. Attorney, who has a duty to refer the matter to a grand jury for an indictment.[106]

In a series of email correspondence, Select Committee staff advised Mr. Navarro that his blanket and general claim of "[e]xecutive [p]rivilege" did not absolve him of his obligation to produce documents and testify in a deposition. Select Committee staff made clear that it wished to obtain information from Mr. Navarro about topics that would not raise "any executive privilege concerns at all" and that Mr. Navarro could assert any "objections on the record and on a question-by-question basis."[107] Mr. Navarro's failure to appear for deposition or produce responsive documents constitutes a willful failure to comply with the subpoena.

DANIEL SCAVINO, JR.

A. The Select Committee seeks information from Mr. Scavino central to its investigative purposes.

Mr. Scavino's testimony and document production are critical to the Select Committee's investigation. Mr. Scavino is uniquely positioned to illuminate the extent of knowledge and involvement of the former President, Members of Congress, and other individuals and organizations in the planning and instigation of the attack on the Capitol on January 6th, including whether and how these various parties were collaborating. Information in Mr. Scavino's possession is essential to putting other witnesses' testimony and productions into appropriate context and to ensuring the Select Committee can fully and expeditiously complete its work.

Mr. Scavino served the former President in various roles related to social media accounts and strategy, from the 2016 Presidential campaign through his service across the tenure of the Trump administration, including as Deputy Chief of Staff for Communications during the time most critical to the Select Committee's investigation. Mr. Scavino's activities on Mr. Trump's behalf went beyond the official duties of a member of the White House staff. Mr. Scavino actively promoted Mr. Trump's political campaign through

[105] *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491 (1975).
[106] *See* 2 U.S.C. § 194.
[107] *See* Appendix I, Ex. 4.

social media. Scavino was also reportedly present for meetings in November 2020 where then-President Trump consulted with outside advisors about ways to challenge the results of the 2020 election.[108]

Further, the Select Committee has reason to believe that Mr. Scavino was with then-President Trump on January 5th and January 6th and was party to conversations regarding plans to challenge, disrupt, or impede the official congressional proceedings.[109] Mr. Scavino spoke with Mr. Trump multiple times by phone on January 6th,[110] and was present with Mr. Trump during the period when Americans inside the Capitol building and across the country were urgently calling on Mr. Trump for help to halt the violence at the Capitol, but Mr. Trump failed to immediately take actions to stop it.[111]

The Select Committee also has reason to believe that Mr. Scavino may have had advance warning of the possibility of violence on January 6th. Public reporting notes that Mr. Scavino had a history of monitoring websites where, in the weeks leading up to January 6th, users discussed potential acts of violence.[112] Whether and when the President and other senior officials knew of impending violence is highly relevant to the Select Committee's investigation and consideration of legislative recommendations.

And again, aside from official duties—in which close aides to the President should assist him in fulfilling his oath—Mr. Scavino also engaged in activities promoting the Trump Campaign.[113] Evidence acquired by the Select Committee confirms the widely known fact that Mr. Scavino worked closely with former-President Trump on his social media messaging and likely had access to the credentials necessary to post on the President's accounts.[114] Indeed, Mr. Scavino frequently composed specific social media posts and discussed specific language with the former President.[115] During the time leading up to the January 6th attack, public messages issued from President Trump's social media account that the Select Committee believes had the effect of providing false information and en-

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[108] Carol Leonnig and Phillip Rucker, *I Alone Can Fix It*, (New York: Penguin, 2021), at p. 377.

[109] Bob Woodward and Robert Costa, *Peril*, (New York: Simon & Schuster, 2021), at p. 231; Michael C. Bender, *"Frankly, We Did Win This Election": The Inside Story of How Trump Lost*, (New York: Twelve Books, 2021), at p. 373.

[110] Documents on file with the Select Committee.

[111] See Leonnig and Rucker, *I Alone Can Fix It*, at p. 465.

[112] Justin Hendrix, "TheDonald.win and President Trump's Foreknowledge of the Attack on the Capitol," Just Security, (Jan. 12, 2022), available at https://www.justsecurity.org/79813/thedonald-win-and-president-trumps-foreknowledge-of-the-attack-on-the-capitol/ (discussing Mr. Scavino's social media practices for the President and noting that "[t]he sharing of specific techniques, tactics, and procedures for the assault on the Capitol started on The Donald in earnest on December 19, 2020 . . .").

[113] *See supra*, at note 56. Mr. Scavino was subject to the same restrictions on campaign activities as Mr. Navarro.

[114] Andrew Restuccia, Daniel Lippman, and Eliana Johnson, "'Get Scavino in here': Trump's Twitter guru is the ultimate insider," *Politico*, (May 16, 2019), available at https://www.politico.com/story/2019/05/16/trump-scavino-1327921; Justin Hendrix, "TheDonald.win and President Trump's Foreknowledge of the Attack on the Capitol," Just Security (Jan. 12, 2022), available at https://www.justsecurity.org/79813/thedonald-win-and-president-trumps-foreknowledge-of-the-attack-on-the-capitol/; Woodward and Costa, *Peril*, at p. 231; Documents on file with the Select Committee.

[115] Andrew Restuccia, Daniel Lippman, and Eliana Johnson, "'Get Scavino in here': Trump's Twitter guru is the ultimate insider," *Politico*, (May 16, 2019), available at https://www.politico.com/story/2019/05/16/trump-scavino-1327921; Woodward and Costa, *Peril*, at p. 231; Documents on file with the Select Committee.

flaming passions about a core tenet of our constitutional democracy. Specifically:

- On December 19, 2020, 1:42 a.m. ET, from Donald J. Trump:

> Peter Navarro releases 36-page report alleging election fraud 'more than sufficient' to swing victory to Trump https://washex.am/3nwaBCe. A great report by Peter. Statistically impossible to have lost the 2020 Election. Big protest in D.C. on January 6th. Be there, will be wild![116]

- On December 19, 2020, 9:41 a.m. ET, from Donald J. Trump:

> [Joe Biden] didn't win the Election. He lost all 6 Swing States, by a lot. They then dumped hundreds of thousands of votes in each one, and got caught. Now Republican politicians have to fight so that their great victory is not stolen. Don't be weak fools! https://t.co/d9Bgu8XPIj[117]

- On December 19, 2020, 2:59 p.m. ET, from Donald J. Trump:

> The lie of the year is that Joe Biden won! Christina Bobb @OANN.[118]

- On December 20, 2020, 12:26 a.m. ET, from Donald J. Trump:

> GREATEST ELECTION FRAUD IN THE HISTORY OF OUR COUNTRY!!![119]

- On December 22, 2020, 10:29 a.m. ET, from Donald J. Trump:

> THE DEMOCRATS DUMPED HUNDREDS OF THOUSANDS OF BALLOTS IN THE SWING STATES LATE IN THE EVENING. IT WAS A RIGGED ELECTION!!![120]

- On December 26, 2020, 9:00 a.m. ET, from Donald J. Trump:

> A young military man working in Afghanistan told me that elections in Afghanistan are far more secure and much better run than the USA's 2020 Election. Ours, with its millions and millions of corrupt Mail-In Ballots, was the election of a third world country. Fake President![121]

- On December 26, 2020, 8:14 a.m. ET, from Donald J. Trump:

> The "Justice" Department and the FBI have done nothing about the 2020 Presidential Election Voter Fraud, the biggest SCAM in our nation's his-

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[116] Donald Trump (@realDonaldTrump), Twitter, Dec. 19, 2020 1:42 a.m. ET, available at http://web.archive.org/web/20201225035520mp__/https://twitter.com/realDonaldTrump/status/1340185773220515840 (archived).

[117] Donald Trump (@realDonaldTrump), Twitter, Dec. 19, 2020 9:41 a.m. ET, available at http://web.archive.org/web/20201225035301mp__/https://twitter.com/realDonaldTrump/status/1340306154031857665 (archived).

[118] Donald Trump (@realDonaldTrump), Twitter, Dec. 19, 2020 2:59 p.m. ET, available at http://web.archive.org/web/20201225035142mp__/https://twitter.com/realDonaldTrump/status/1340386251866828802 (archived).

[119] Donald Trump (@realDonaldTrump), Twitter, Dec. 20, 2020 12:26 a.m. ET, available at http://web.archive.org/web/20201225035219mp__/https://twitter.com/realDonaldTrump/status/1340529063799246848 (archived).

[120] Donald Trump (@realDonaldTrump), Twitter, Dec. 22, 2020 10:29 a.m. ET, available at http://web.archive.org/web/20201227202442mp__/https://twitter.com/realDonaldTrump/status/1341405487057821698 (archived).

[121] Donald Trump (@realDonaldTrump), Twitter, Dec. 26, 2020 9:00 a.m. ET, available at http://web.archive.org/web/20210101075201mp__/https://twitter.com/realDonaldTrump/status/1342832582606598144 (archived).

tory, despite overwhelming evidence. They should be ashamed. History will remember. Never give up. See everyone in D.C. on January 6th.[122]

- On December 28, 2020, 4:00 p.m. ET, from Donald J. Trump:

"Breaking News: In Pennsylvania there were 205,000 more votes than there were voters. This alone flips the state to President Trump."[123]

- On December 30, 2020, 2:38 p.m. ET, from Donald J. Trump:

The United States had more votes than it had people voting, by a lot. This travesty cannot be allowed to stand. It was a Rigged Election, one not even fit for third world countries![124]

- On January 4, 2021, 10:07 a.m. ET, from Donald J. Trump:

How can you certify an election when the numbers being certified are verifiably WRONG. You will see the real numbers tonight during my speech, but especially on JANUARY 6th. @SenTomCotton Republicans have pluses & minuses, but one thing is sure, THEY NEVER FORGET![125]

- On January 6, 2021, 1:00 a.m. ET, from Donald J. Trump:

If Vice President @Mike__Pence comes through for us, we will win the Presidency. Many States want to decertify the mistake they made in certifying incorrect & even fraudulent numbers in a process NOT approved by their State Legislatures (which it must be). Mike can send it back![126]

- On January 6, 2021, 8:17 a.m. ET, from Donald J. Trump:

States want to correct their votes, which they now know were based on irregularities and fraud, plus corrupt process never received legislative approval. All Mike Pence has to do is send them back to the States, AND WE WIN. Do it Mike, this is a time for extreme courage![127]

- On January 6, 2021, 2:24 p.m. ET, from Donald J. Trump:

Mike Pence didn't have the courage to do what should have been done to protect our Country and our Constitution, giving States a chance to certify a corrected set of facts, not the fraudulent or inaccurate ones which they were asked to previously certify. USA demands the truth![128]

The Select Committee seeks to question Mr. Scavino, in his capacity as social media manager, about these and other similar communications.

Public reporting also notes that Mr. Scavino and his social media team had a history of monitoring websites including "TheDonald.win," an online forum frequented by individuals who openly advocated and planned violence in the weeks leading up to

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[122] Donald Trump (@realDonaldTrump), Twitter, Dec. 26, 2020 8:14 a.m. ET, available at http://web.archive.org/web/20201230193535mp__/https://twitter.com/realDonaldTrump/status/1342821189077622792 (archived).

[123] Donald Trump (@realDonaldTrump), Twitter, Dec. 28, 2020 4:00 p.m. ET, available at http://web.archive.org/web/20201230195203mp__/https://twitter.com/realDonaldTrump/status/1343663159085834248 (archived).

[124] Donald Trump (@realDonaldTrump), Twitter, Dec. 30, 2020 2:38 p.m. ET, available at http://web.archive.org/web/20201230212259mp__/https://twitter.com/realdonaldtrump/status/1344367336715857921 (archived).

[125] Donald Trump (@realDonaldTrump), Twitter, Jan. 4, 2021 10:07 a.m. ET, available at http://web.archive.org/web/20210106204726mp__/https://twitter.com/realDonaldTrump/status/1346110956078817280 (archived).

[126] Donald Trump (@realDonaldTrump), Twitter, Jan. 6, 2021 1:00 a.m. ET, available at http://web.archive.org/web/20210106204711mp__/https://twitter.com/realDonaldTrump/status/1346698217304584192 (archived).

[127] Donald Trump (@realDonaldTrump), Twitter, Jan. 6, 2021 8:17 a.m. ET, available at http://web.archive.org/web/20210106204708mp__/https://twitter.com/realDonaldTrump/status/1346808075626426371 (archived).

[128] Donald Trump (@realDonaldTrump), Twitter, Jan. 6, 2021 2:24 p.m. ET, available at http://web.archive.org/web/20210106204701mp__/http://www.twitter.com/realDonaldTrump/status/1346900434540240897 (archived).

January 6th.[129] In the summer of 2016, former-President Trump himself engaged in a written question-and-answer session on a precursor to TheDonald.win called "/r/The__Donald," which was a subreddit (a forum on the website Reddit.com) at the time.[130] The online Reddit community, which had upward of 790,000 users, was banned by Reddit in mid-2020,[131] after which it migrated to another online forum located at TheDonald.win.[132]

Mr. Scavino reportedly amplified content from this community, while his social media team also interacted with the site's users. During the 2016 Presidential campaign, "a team in the war room at Trump Tower was monitoring social media trends, including [/r/The__Donald] subreddit . . . and privately communicating with the most active users to seed new trends."[133] Trump "campaign staffers monitored Twitter and [/r/The__Donald] subreddit, and pushed any promising trends up to social media director Dan Scavino, who might give them a boost with a tweet."[134] In 2017, former-President Trump tweeted a video of himself attacking CNN.[135] The video had appeared on /r/The__Donald 4 days earlier.[136] In 2019, *Politico* reported that Mr. Scavino "regularly monitors Reddit, with a particular focus on the pro-Trump /r/The__Donald channel."[137]

On December 19, 2020, the same day Mr. Trump tweeted "Big protest in D.C. on January 6th . . . Be there, will be wild!," users on posts on TheDonald.win, began sharing "specific techniques, tactics, and procedures for the assault on the Capitol."[138] The "ensuing weeks of communications on the site included information on how to use a flagpole as a weapon, how to smuggle firearms into DC, measurements for a guillotine, and maps of the tunnel systems under the Capitol building."[139] On January 5, 2021, a user on TheDonald.win encouraged Mr. Trump's supporters to "be prepared

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[129] Justin Hendrix, "TheDonald.win and President Trump's Foreknowledge of the Attack on the Capitol," Just Security, (Jan. 12, 2022), available at https://www.justsecurity.org/79813/thedonald-win-and-president-trumps-foreknowledge-of-the-attack-on-the-capitol/; Ryan Goodman and Justin Hendrix, "The Absence of 'The Donald'," Just Security, (Dec. 6, 2021), available at https://www.justsecurity.org/79446/the-absence-of-the-donald/ (noting that a post discussing President Trump's December 19, 2020 "Wild Protest" tweet as a call to come to Washington, DC, for January 6th was "pinned" to the top of the website).

[130] Amrita Khalid, "Donald Trump participated in a Reddit AMA, but not much of anything was revealed," daily dot, (July 27, 2016, updated May 26, 2021), available at https://www.dailydot.com/debug/donald-trump-reddit-ama-fail/.

[131] Mike Isaac, "Reddit, Acting Against Hate Speech, Bans 'The__Donald' Subreddit," *New York Times*, (June 29, 2020, updated Jan. 27, 2021), available at https://www.nytimes.com/2020/06/29/technology/reddit-hate-speech.html.

[132] Craig Timberg and Drew Harwell, "TheDonald's owner speaks out on why he finally pulled plug on hate-filled site," *Washington Post*, (Feb. 5, 2021), available at https://www.washingtonpost.com/technology/2021/02/05/why-thedonald-moderator-left/.

[133] Ben Schreckinger, "World War Meme," *Politico Magazine*, (March/April 2017), available at https://www.politico.com/magazine/story/2017/03/memes-4chan-trump-supporters-trolls-internet-214856/.

[134] *Id.*

[135] Daniella Silva, "President Trump Tweets Wrestling Video of Himself Attacking 'CNN'," NBC News, (July 2, 2017), available at https://www.nbcnews.com/politics/donald-trump/president-trump-tweets-wwe-video-himself-attacking-cnn-n779031.

[136] *Id.*

[137] Andrew Restuccia, Daniel Lippman, and Eliana Johnson, "'Get Scavino in here': Trump's Twitter guru is the ultimate insider," *Politico*, (May 16, 2019), available at https://www.politico.com/story/2019/05/16/trump-scavino-1327921.

[138] Justin Hendrix, "TheDonald.win and President Trump's Foreknowledge of the Attack on the Capitol," Just Security, (Jan. 12, 2022), available at https://www.justsecurity.org/79813/thedonald-win-and-president-trumps-foreknowledge-of-the-attack-on-the-capitol/.

[139] *Id.*

to secure the capitol building," claiming that "there will be plenty of ex military to guide you."[140]

Multiple other posts on TheDonald.win made it clear that the U.S. Capitol was a target, with one poster writing that people should bring "handcuffs and zip ties to DC" so they could enact "citizen's arrests" of those officials who certified the election's results.[141] Another post on TheDonald.win was headlined "most important map for January 6th. Form a TRUE LINE around the Capitol and the tunnels."[142] That "post included a detailed schematic of Capitol Hill with the tunnels surrounding the complex highlighted."[143] One thread posted on TheDonald.win, and pertaining to Mr. Trump's December 19, 2020, tweet, reportedly received more than "5,900 replies and over 24,000 upvotes."[144] The "general consensus among the users" on these threads "was that Trump had essentially tweeted permission to disregard the law in support of him."[145] For example, one user wrote, "[Trump] can't exactly openly tell you to revolt. This is the closest he'll ever get."[146]

Just weeks before the January 6, 2021, attack on the U.S. Capitol, former-President Trump shared content on Twitter that apparently originated on TheDonald.win. On December 19, 2020, former-President Trump tweeted a video titled, "FIGHT FOR TRUMP!- SAVE AMERICA- SAVE THE WORLD."[147] The video had reportedly appeared on TheDonald.win 2 days earlier.[148]

Mr. Scavino also promoted the candidacy of Donald Trump and other political candidates on his own social media account. For example, he produced these public messages on Twitter:

- On October 16, 2020, 8:26 p.m. ET, from Dan Scavino Jr.[American flag][Eagle]:

  [Alert]HAPPENING NOW!! 10/16/20-Macon, GA! MAGA[American flag][Eagle] [Globe with meridians]Vote.DonaldJTrump.com" [Four pictures of a presidential campaign rally][149]

- On November 6, 2020, 12:04 a.m. ET, from Dan Scavino Jr.[American flag][Eagle]:

  [Tweeting a Fox News segment, "Charges of Mail-In Ballot Fraud are Rampant"][150]

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[140] SITE Intelligence Group, "How a Trump Tweet Sparked Plots, Strategizing to 'Storm and Occupy' Capitol with 'Handcuffs and Zip Ties'," (Jan. 9, 2021), available at https://ent.siteintelgroup.com/Far-Right-/-Far-Left-Threat/how-a-trump-tweet-sparked-plots-strategizing-to-storm-and-occupy-capitol-with-handcuffs-and-zip-ties.html.

[141] *Id.*

[142] Alex Thomas, "Team Trump was in bed with online insurrectionists before he was even elected," daily dot, (Jan. 15, 2021, updated Feb. 15, 2021), available at https://www.dailydot.com/debug/dan-scavino-reddit-donald-trump-disinformation/.

[143] *Id.*

[144] SITE Intelligence Group, "How a Trump Tweet Sparked Plots, Strategizing to 'Storm and Occupy' Capitol with 'Handcuffs and Zip Ties'," (Jan. 9, 2021), available at https://ent.siteintelgroup.com/Far-Right-/-Far-Left-Threat/how-a-trump-tweet-sparked-plots-strategizing-to-storm-and-occupy-capitol-with-handcuffs-and-zip-ties.html.

[145] *Id.*

[146] *Id.*

[147] Donald Trump (@realDonaldTrump), Twitter, Dec. 19, 2020 10:24 a.m. ET, available at https://web.archive.org/web/20201219182441/https://twitter.com/realdonaldtrump/status/1340362336390004737 (archived).

[148] Justin Hendrix, "TheDonald.win and President Trump's Foreknowledge of the Attack on the Capitol," Just Security (Jan. 12, 2022), available at https://www.justsecurity.org/79813/thedonald-win-and-president-trumps-foreknowledge-of-the-attack-on-the-capitol/.

[149] Dan Scavino Jr.[American flag][Eagle] (@DanScavino), Twitter, Oct. 16, 2020, 8:26 p.m. ET, available at https://twitter.com/DanScavino/status/1317260632308224000.

[150] Dan Scavino Jr.[American flag][Eagle] (@DanScavino), "[Video; https://twitter.com/i/status/1324578313420111872]" Twitter, Nov. 6, 2020, 12:04 a.m. ET, available at https://twitter.com/DanScavino/status/1324578313420111872.

• On December 6, 2020, 12:34 a.m. ET, from Dan Scavino Jr.[American flag][Eagle]:

> "I am thrilled to be back in Georgia, w/1,000's of proud, hardworking American Patriots! We are gathered together to ensure that @sendavidperdue & @KLoeffler WIN the most important Congressional runoff in American History. At stake in this election is control of the Senate!" -DJT [Video; https://twitter.com/i/status/1335457640072310784][151]

• On January 2, 2021, 9:04 p.m. ET, from Dan Scavino Jr.[American flag][Eagle]:

> [Tweeting out a video encouraging people to "Be a Part of History" and "Join the March" on January 6th.][152]

The Select Committee has a legitimate interest in seeking information from Mr. Scavino about his activities that were outside the scope of his responsibilities as a Federal Government official. It is beyond reasonable dispute that the "stolen election" narrative played a major role in motivating the violent attack on the Capitol. Violent rioters' social media posts, contemporaneous statements on video, and filings in Federal court provide overwhelming evidence of this. To take just a few examples—though there are many others—statements from individuals charged with crimes associated with the January 6th attack include:

• "I'm going to be there to show support for our president and to do my part to stop the steal and stand behind Trump when he decides to cross the rubicon."[153]

• "Trump is literally calling people to DC in a show of force. Militias will be there and if there's enough people they may fucking storm the buildings and take out the trash right there."[154]

• "Trump said It's gonna be wild!!!!!!! It's gonna be wild !!!!!!! He wants us to make it WILD that's what he's saying. He called us all to the Capitol and wants us to make it wild!!! Sir Yes Sir!!! Gentlemen we are heading to DC pack your shit!!"[155]

Mr. Scavino's promotion of the January 6th events, his reported participation in multiple conversations about challenging the election, and his reported presence with then-President Trump as the attack unfolded and in its aftermath make his testimony essential to fully understanding the events of January 6th, including Presidential activities and responses that day. His two distinct roles—as White House official in the days leading up to and during the attack, and as a campaign social media promoter of the Trump "stolen election" narrative—provide independent reasons to seek his testimony and documents.

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[151] Dan Scavino Jr.[American flag][Eagle] (@DanScavino), Twitter, Dec. 6, 2020, 12:34 a.m. ET, available at https://twitter.com/DanScavino/status/1335457640072310784.

[152] Dan Scavino Jr.[American flag][Eagle] (@DanScavino), "[Video; https://twitter.com/i/status/1345551501440245762], Twitter, Jan. 2, 2021, 9:04 p.m. ET, available at https://twitter.com/danscavino/status/1345551501440245762.

[153] Criminal Complaint, *United States of America v. Ronald L. Sandlin*, (D.D.C.) (No. 21–cr–00088) (Jan. 20, 2020), available at https://www.justice.gov/opa/page/file/1362396/download.

[154] Indictment, *United States of America v. Marshall Neefe and Charles Bradford Smith*, (D.D.C.) (No. 21–cr–567) (Sept. 8, 2021), ECF 1, at p. 6, available at https://www.justice.gov/usao-dc/case-multi-defendant/file/1432686/download.

[155] First Superseding Indictment, *United States of America v. Caldwell et al.*, (D.D.C.) (No. 21–cr–28) (Feb. 19, 2021) ECF 27, at p. 9, available at https://www.justice.gov/usao-dc/case-multi-defendant/file/1369071/download.

B. Mr. Scavino has refused to comply with the Select Committee's subpoena for testimony and documents.

On September 23, 2021, Chairman THOMPSON signed and issued a subpoena, cover letter, and schedule to Mr. Scavino ordering the production of both documents and testimony relevant to the Select Committee's investigation into "important activities that led to and informed the events at the Capitol on January 6, 2021."[156] Chairman THOMPSON's letter identified public reports describing Mr. Scavino's activities and past statements, and documented some of the public information that gave the Select Committee reason to believe Mr. Scavino possesses information about matters within the scope of the Select Committee's inquiry.

The specific documents the Chairman ordered produced are found in the schedule in Appendix II, Ex. 6. The schedule identified documents including but not limited to those reflecting Mr. Scavino's role in planning and promoting the January 6, 2021, rally and march in support of Mr. Trump; Mr. Trump's participation in the rally and march; Mr. Scavino's communications with Members of Congress or their staff about plans for January 6th; and communications with others known to be involved with the former President's 2020 election campaign and subsequent efforts to undermine or cast doubt on the results of that election.

The subpoena required Mr. Scavino to produce the requested documents to the Select Committee on October 7, 2021, at 10 a.m. ET and required Mr. Scavino's presence for the taking of testimony on October 15, 2021, at 10 a.m.[157]

The Select Committee was unable to locate Mr. Scavino for service and therefore issued a new subpoena on October 6, 2021.[158] On October 8, 2021, U.S. Marshals served this new subpoena at Mar-a-Lago, Mr. Scavino's reported place of employment, to Ms. Susan Wiles, who represented herself as chief of staff to former-President Trump and as authorized to accept service on Mr. Scavino's behalf.[159] The subpoena required that Mr. Scavino produce responsive documents not later than October 21, 2021, and that Mr. Scavino appear for a deposition on October 28, 2021.[160]

On October 20, 2021, Stanley E. Woodward, Jr., of Brand Woodward Law notified the Select Committee that his firm had been retained to represent Mr. Scavino.[161] Per a telephone conversation later that day, Mr. Woodward notified the Select Committee that he was still in the process of ascertaining whether Mr. Scavino had responsive documents and requested an extension of the deadlines in the October 6, 2021, subpoena. The Select Committee granted an extension of 1 week, delaying the production deadline to October 28th and the deposition to November 4th.[162]

On October 27, 2021, Mr. Woodward emailed to request an additional extension, and the Select Committee granted that request, postponing the production deadline to November 4th and the deposition to November 12th.[163]

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[156] *See* Appendix II, Ex. 6.
[157] *Id.*
[158] *See* Appendix II, Ex. 1.
[159] *Id.*
[160] *Id.*
[161] *See* Appendix II, Ex. 2.
[162] *Id.*
[163] *Id.*

On November 2, 2021, Mr. Woodward emailed to express difficulty in meeting the document production deadline. The following day, the Select Committee agreed to an additional production postponement to November 5th.[164]

On November 5, 2021, rather than produce any responsive documents in his client's possession, Mr. Woodward communicated by letter that his client would not be producing any documents. Instead, he asserted vague claims of executive privilege that were purportedly relayed by the former President, but which have never been presented by the former President to the Select Committee.[165] Mr. Woodward's letter cited an attached October 6, 2021, letter from former-President Trump's counsel Justin Clark to Mr. Scavino that instructed him to "invoke any immunities and privileges you may have from compelled testimony," "not produce any documents concerning your official duties," and "not provide any testimony concerning your official duties."[166]

On November 9, 2021, the Select Committee Chairman responded to Mr. Woodward requesting that Mr. Scavino provide a "privilege log that specifically identifies each document and each privilege that he believes applies," and explained to Mr. Scavino that "categorical claims of executive privilege are improper, and any claim of executive privilege must be asserted narrowly and specifically." The Chairman also reminded Mr. Woodward that the subpoena demanded "all communications including those conducted on Mr. Scavino's personal social media or other accounts and with outside parties whose inclusion in a communication with Mr. Scavino would mean that no executive privilege claim can be applicable."[167]

The November 9th letter also detailed, at Mr. Woodward's request, the various specific topics the Select Committee wished to discuss with Mr. Scavino at his deposition scheduled for November 12, 2021, and requested that Mr. Woodward identify topics that he agreed did not implicate any privileges and identify with specificity any privileges that did apply to each specific topic.

On November 10, 2021, following correspondence with Mr. Woodward, the Select Committee agreed to an additional extension to November 15, 2021, for document production and November 19, 2021, for the deposition, to allow Mr. Woodward additional time to discuss the November 9th letter with his client.[168]

On November 15th, Mr. Woodward sent a letter refusing to provide the requested privilege log and asserted that a such log would undermine the former President's assertions of privilege. Instead, Mr. Woodward identified categories of documents he believed to be privileged, including communications between Mr. Scavino and Members of Congress, and between Mr. Scavino and "non-Government third-parties."[169]

On November 18, 2021, Mr. Woodward sent another letter wherein he, for the first time, and following weeks of discussions about the items listed in the October 6th subpoena, challenged the service of that subpoena as deficient. He also challenged the Select

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[164] *Id.*
[165] *See* Appendix II, Ex. 7.
[166] *Id.*
[167] *See* Appendix II, Ex. 8.
[168] *See* Appendix II, Ex. 2.
[169] *See* Appendix II, Ex. 9.

Committee's legislative purpose and demanded that the Select Committee provide a detailed explanation of the pertinence of every line of inquiry it intended to pursue at the scheduled deposition.[170]

On November 23, 2021, the Select Committee issued yet another subpoena to Mr. Scavino, whose counsel agreed to accept service.[171] The November 23rd subpoena granted a final extension of the document production deadline to November 29, 2021, and the deposition to December 1, 2021. The same day, the Select Committee transmitted a letter explaining the relevance of Mr. Scavino's testimony to the Select Committee's authorizing resolution and responding to the numerous specious objections in the November 18th letter.[172]

On November 26, 2021, Mr. Woodward again wrote to the Select Committee and declined to comply with the subpoena for documents and testimony unless the Select Committee provided a detailed explanation of the pertinence of each of its expected questions and lines of inquiry for Mr. Scavino.[173] He also reasserted Mr. Scavino's refusal to testify in light of *Trump v. Thompson*,[174] the since-resolved litigation regarding Mr. Trump's ability to assert executive privilege over documents the incumbent President has already approved for release.

Mr. Scavino failed to produce any documents by the November 29, 2021, deadline, and did not appear for his deposition on December 1, 2021.[175]

On December 9, 2021, the Select Committee sent a letter to Mr. Woodward documenting Mr. Scavino's failure to comply with the subpoena and informing him that the Select Committee would proceed to enforcement.[176]

On December 13, 2021, Mr. Woodward responded in a letter disputing that Mr. Scavino had failed to cooperate with the investigation and reiterating many of his previous objections.[177]

On February 4, 2022, in light of the Supreme Court's denial of a stay and injunction sought by former-President Trump in *Trump v. Thompson*[178] to prevent the National Archives from providing documents to the Select Committee on the basis of executive privilege, the Select Committee again contacted Mr. Scavino and gave him an additional opportunity to comply.[179]

On February 8, 2022, Mr. Woodward responded, asserting that Mr. Scavino still intended to withhold information at Mr. Trump's direction until the ultimate resolution of Mr. Trump's claims.[180]

C. Mr. Scavino's purported basis for non-compliance is wholly without merit.

Congress has the power to compel witnesses to testify and produce documents.[181] An individual—whether a member of the

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[170] *See* Appendix II, Ex. 10.
[171] *See* Appendix II, Ex. 11.
[172] *See* Appendix II, Ex. 3.
[173] *See* Appendix II, Ex. 12.
[174] (D.C. Cir., No. 21–5254) (appeal from D.D.C. No. 21–cv–02769)
[175] *See* Appendix II, Ex. 13.
[176] *See* Appendix II, Ex. 14.
[177] *See* Appendix II, Ex. 15.
[178] 595 U.S.__ (2022) (No. 21A272) (Jan. 19, 2022).
[179] *See* Appendix II, Ex. 4.
[180] *See* Appendix II, Ex. 16.
[181] *See supra*, at note 80.

public or an executive branch official—has a legal (and patriotic) obligation to comply with a duly issued and valid congressional subpoena, unless a valid and overriding privilege or other legal justification permits non-compliance.[182] In *United States v. Bryan*, the Supreme Court stated:

> A subpoena has never been treated as an invitation to a game of hare and hounds, in which the witness must testify only if cornered at the end of the chase. If that were the case, then, indeed, the great power of testimonial compulsion, so necessary to the effective functioning of courts and legislatures, would be a nullity. We have often iterated the importance of this public duty, which every person within the jurisdiction of the Government is bound to perform when properly summoned.[183]

It is important to note that the Select Committee sought testimony from Mr. Scavino on topics and interactions as to which there can be no conceivable privilege claim. Examples of those are provided below. The Select Committee is entitled to Mr. Scavino's testimony on each of them, regardless of his claims of privilege over other categories of information and communications. In *United States v. Nixon*, 418 U.S. 683, 703–16 (1974), the Supreme Court recognized an implied constitutional privilege protecting Presidential communications. The Court held though that the privilege is qualified, not absolute, and that it is limited to communications made "in performance of [a President's] responsibilities of his office and made in the process of shaping policies and making decisions."[184]

Executive privilege is a recognized privilege that, under certain circumstances, may be invoked to bar congressional inquiry into communications covered by the privilege. Mr. Scavino has refused to testify in response to the subpoena ostensibly based on broad assertions of executive privilege purportedly asserted by former-President Trump. Even if any such privilege may have been applicable to some aspect of Mr. Scavino's testimony, he was required to produce a privilege log noting any applicable privileges with specificity and to appear before the Select Committee for his deposition, answer any questions concerning non-privileged information, and assert any such privilege on a question-by-question basis.

1. President Biden decided not to invoke executive privilege to prevent testimony by Mr. Scavino, and Mr. Trump has not invoked executive privilege with respect to Mr. Scavino.

As described above, President Biden considered whether to invoke executive privilege and whether to assert immunity with regard to the subpoena for Mr. Scavino.[185] He declined to do so with respect to particular subjects within the purview of the Select Committee, and the White House informed Mr. Scavino's counsel of that decision in a letter on March 15, 2022.[186] President Biden made this determination based on his assessment of the "unique and extraordinary nature of the matters under investigation."[187]

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[182] *See supra*, at note 81.
[183] *United States v. Bryan*, 339 U.S. 323, 331 (1950).
[184] *Nixon v. Administrator of General Services (GSA)*, 433 U.S. 425, 449 (1977) (internal quotes and citations omitted).
[185] *See* Appendix II, Ex. 5.
[186] *Id.*
[187] *Id.*

Former-President Trump has had no communication with the Select Committee. In a November 5th letter to the Select Committee, Mr. Scavino's attorney referred to correspondence from former-President Trump's attorney, Justin Clark, in which Mr. Clark asserted that the Select Committee subpoena seeks information that is "protected from disclosure by the executive and other privileges, including among others the presidential communications, deliberative process, and attorney-client privileges."[188] The Committee has received no such correspondence from or on behalf of former-President Trump. Without a formal assertion of executive privilege by Mr. Trump to the Select Committee, Mr. Scavino cannot establish the foundational element of a claim of executive privilege: an invocation of the privilege by the executive.

In *United States v. Reynolds*, 345 U.S. 1, 7–8 (1953), the Supreme Court held that executive privilege:

> [B]elongs to the Government and must be asserted by it; it can neither be claimed nor waived by a private party. It is not to be lightly invoked. There must a formal claim of privilege, lodged by the head of the department which has control over the matter, after actual personal consideration by that officer.[189]

Here, the Select Committee has not been provided with any formal invocation of executive privilege by the President or the former President or any other employee of the executive branch. Mr. Scavino's third-hand, categorical assertion of privilege, without any description of the specific documents or specific testimony over which privilege is claimed, is insufficient to activate a claim of executive privilege.

2. Even if Mr. Trump had actually invoked executive privilege, the privilege would not bar the Select Committee from lawfully obtaining the documents and testimony it seeks from Mr. Scavino.

Executive privilege does not extend to discussions relating to non-governmental business or among private citizens.[190] In *In re Sealed Case (Espy)*, the D.C. Circuit explained that the Presidential communications privilege "only applies to communications [with close Presidential advisers] in the course of performing their function of advising the President on official government matters."[191] The court stressed: "The Presidential communications privilege should never serve as a means of shielding information regarding governmental operations that do not call ultimately for direct decision-making by the President."[192] As noted by the Supreme Court, the privilege is "limited to communications 'in performance of [a President's] responsibilities,' 'of his office,' and made 'in the process of shaping policies and making decisions.'"[193] And the D.C. Circuit recently considered and rejected former-President Trump's executive privilege assertions over information sought by the Select Committee. That court concluded that "the profound interests in disclosure advanced by President Biden and the January 6th Com-

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[188] *See* Appendix II, Ex. 7.
[189] *See also supra*, at note 88.
[190] *Nixon v. GSA*, 433 U.S. at 449.
[191] *Espy*, 121 F.3d 729, 752 (D.C. Cir. 1997).
[192] *Id.*
[193] *Nixon v. GSA*, 433 U.S. at 449 (quoting *U.S. v. Nixon*, 418 U.S. 683 (1974) (internal citations omitted)).

mittee far exceed his generalized concerns for Executive Branch confidentiality."[194]

The Select Committee seeks information from Mr. Scavino on a wide range of subjects that it is inconceivable executive privilege would reach. For example, the Select Committee seeks information from Mr. Scavino about his interactions with private citizens, Members of Congress, or others outside the White House related to the 2020 election or efforts to overturn its results. And, among other things, the Select Committee also seeks information from Mr. Scavino about his use of personal communications accounts and devices.

Even with respect to Select Committee inquiries that involve Mr. Scavino's direct communications with Mr. Trump, it is well-established that executive privilege does not bar Select Committee access to that information. Only communications that relate to official Government business and Presidential decision-making on those official matters can be covered by the Presidential communications privilege.[195] Here, Mr. Scavino's conduct regarding several subjects of concern to the Select Committee is not related to official Government business. These include Mr. Scavino's participation in calls and meetings that clearly concerned Mr. Trump's campaign rather than his official Government business; participation in meetings with Mr. Trump and others about a strategy for reversing the outcome of the 2020 election; or efforts to promote the January 6th rally on the Ellipse.

Moreover, even with respect to any subjects of concern that arguably involve official Government business, executive privilege is a qualified privilege and the Select Committee's need for this information to investigate the facts and circumstances surrounding the January 6th assault on the U.S. Capitol and the Nation's democratic institutions far outweighs any executive branch interest in maintaining confidentiality.[196] As noted by the White House, "an assertion of executive privilege is not in the national interest, and therefore is not justified, with respect to particular subjects within the purview of the Select Committee."[197]

3. Mr. Scavino is not immune from testifying or producing documents in response to the subpoena.

Even if some aspect of Mr. Scavino's testimony was shielded by executive privilege, he was required to appear for his deposition and assert executive privilege on a question-by-question basis.[198] Mr. Scavino's refusal to do so made it impossible for the Select Committee to consider any good-faith executive privilege assertions.

Mr. Scavino has refused to appear for a deposition based on his purported reliance on alleged "absolute testimonial immunity." No

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[194] *Trump v. Thompson*, 2021 U.S. App. LEXIS 36315, at *46 (D.C. Cir. Dec. 9, 2021).

[195] *Nixon v. GSA*, 433 U.S. at 449; *cf. In re Lindsey*, 148 F.3d 1100, 1106 (D.C. Cir. 1998) (Deputy White House Counsel's "advice [to the President] on political, strategic, or policy issues, valuable as it may have been, would not be shielded from disclosure by the attorney-client privilege").

[196] *Trump v. Thompson*, 2021 U.S. App. LEXIS 36315, at *46 (D.C. Cir. Dec. 9, 2021).

[197] *See* Appendix II, Ex. 5.

[198] *Committee on the Judiciary v. Miers*, 558 F. Supp.2d 53, 106 (D.D.C. 2008) ("Ms. Miers may assert executive privilege in response to any specific questions posed by the Committee" and "she must appear before the Committee to provide testimony, and invoke executive privilege where appropriate").

court has recognized any such immunity, and Mr. Scavino has not provided any rationale for applying any form of immunity to his unofficial actions assisting Mr. Trump's campaign to overturn the election. President Biden—who now serves as the President—has declined to assert immunity in response to the subpoena to Mr. Scavino.

As noted above,[199] the general theory that a current or former White House senior advisor may be immune from testifying before Congress is based entirely on internal memoranda from OLC, and courts have uniformly rejected this theory.[200] But, as was also noted above,[201] those internal OLC memoranda do not address a situation in which the incumbent President has decided to not assert privilege, and by their own terms they apply only to testimony "about [a senior official's] official duties," not testimony about unofficial actions or private conduct.[202]

Many of the topics Chairman THOMPSON identified in his correspondence with Mr. Scavino's counsel are unrelated to Mr. Scavino's official duties and would neither fall under the reach of any "absolute immunity" theory nor any privilege whatsoever. For instance:

- Mr. Scavino was not conducting official and privileged business to the extent he attended discussions regarding efforts to urge State legislators to overturn the results of the November 2020 election and guarantee a second term for Mr. Trump.
- Mr. Scavino was not conducting official and privileged business to the extent he assisted Mr. Trump with campaign-related social media communications, including communications recruiting a violent crowd to Washington, spreading false information regarding the 2020 election, and any other communications provoking violence on January 6th.
- Mr. Scavino was not conducting official and privileged business to the extent he communicated with organizers of the January 6, 2021, rally, including Kylie Kremer and Katrina Pierson, regarding messaging, speakers, and even his own appearance and scheduled remarks at the event, which was not an official White House event but rather a campaign appearance.[203]
- Mr. Scavino was not engaged in official and privileged business to the extent he used his personal social media accounts and devices to coordinate with Trump campaign officials, including Jason Miller, throughout the fall and winter of 2020 regarding messaging, campaign events, purported election fraud, and attempts to overturn the 2020 election results.[204]
- Mr. Scavino was not engaged in official and privileged business to the extent he counseled Mr. Trump regarding whether, how, and when to challenge or concede the 2020 election.

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[199] *See supra*, at notes 101–103.
[200] *Id.*
[201] *Id.*
[202] *Id.*
[203] Documents on file with the Select Committee.
[204] Documents on file with the Select Committee.

The Select Committee specifically identified to Mr. Scavino these and other topics as subjects for his deposition testimony, and he had the legal obligation to appear before the Select Committee and address them on the record.

D. Mr. Scavino's failure to appear or produce documents in response to the subpoena warrants holding Mr. Scavino in contempt.

An individual who fails or refuses to comply with a House subpoena may be cited for contempt of Congress.[205] Pursuant to 2 U.S.C. § 192, the willful refusal to comply with a congressional subpoena is punishable by a fine of up to $100,000 and imprisonment for up to 1 year. A committee may vote to seek a contempt citation against a recalcitrant witness. This action is then reported to the House. If a contempt resolution is adopted by the House, the matter is referred to a U.S. Attorney, who has a duty to refer the matter to a grand jury for an indictment.[206]

In his November 9th and November 23rd letters to Mr. Scavino's counsel, the Chairman of the Select Committee advised Mr. Scavino that his claims of executive privilege were not well-founded and did not absolve him of his obligation to produce documents and testify in deposition.[207] The Chairman made clear that the Select Committee expected Mr. Scavino to produce documents and to appear for his deposition, which was ultimately scheduled for December 1st. And on February 4, 2022, the Chairman again invited Mr. Scavino to appear before the Select Committee in light of the resolution of *Trump v. Thompson*. The Chairman again warned Mr. Scavino that his continued non-compliance would put him in jeopardy of a vote to refer him to the House to consider a criminal contempt referral. Mr. Scavino's failure to appear for deposition or produce responsive documents in the face of this clear advisement and warning by the Chairman constitutes a willful failure to comply with the subpoena.

Select Committee Consideration

The Select Committee met on Monday, March 28, 2022, with a quorum being present, to consider this Report and ordered it and the Resolution contained herein to be favorably reported to the House, without amendment, by a recorded vote of 9 ayes to 0 noes.

Select Committee Vote

Clause 3(b) of rule XIII of the Rules of the U.S. House of Representatives requires the Select Committee to list the recorded votes during consideration of this Report:

1. A motion by Ms. CHENEY to report the Select Committee Report on a Resolution Recommending that the House of Representatives find Peter K. Navarro and Daniel Scavino, Jr., in Contempt of Congress for Refusal to Comply with Subpoenas Duly Issued by the Select Committee to Investigate the January 6th Attack on the United States Capitol favorably to the House was agreed to by a recorded vote of 9 ayes to 0 noes (Rollcall No. 4).

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[205] *Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 515 (1975).
[206] *See* 2 U.S.C. § 194.
[207] *See* Appendix II, Exs. 8, 11.

Select Committee Rollcall No. 4

Motion by Ms. Cheney to Favorably Report
Agreed to: 9 ayes to 0 noes

Members	Vote
Ms. Cheney, Vice Chair	Aye
Ms. Lofgren	Aye
Mr. Schiff	Aye
Mr. Aguilar	Aye
Mrs. Murphy (FL)	Aye
Mr. Raskin	Aye
Mrs. Luria	Aye
Mr. Kinzinger	Aye
Mr. Thompson (MS), Chairman	Aye

Select Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII, the Select Committee advises that the oversight findings and recommendations of the Select Committee are incorporated in the descriptive portions of this Report.

Congressional Budget Office Estimate

The Select Committee finds the requirements of clause 3(c)(2) of rule XIII and section 308(a) of the Congressional Budget Act of 1974, and the requirements of clause3(c)(3) of rule XIII and section 402 of the Congressional Budget Act of 1974, to be inapplicable to this Report. Accordingly, the Select Committee did not request or receive a cost estimate from the Congressional Budget Office and makes no findings as to the budgetary impacts of this Report or costs incurred to carry out the Report.

Statement of General Performance Goals and Objectives

Pursuant to clause 3(c)(4) of rule XIII, the objective of this Report is to enforce the Select Committee's authority to investigate the facts, circumstances, and causes of the January 6th attack and issues relating to the interference with the peaceful transfer of power, in order to identify and evaluate problems and to recommend corrective laws, policies, procedures, rules, or regulations; and to Cenforce the Select Committee's subpoena authority found in section 5(c)(4) of House Resolution 503.

Appendix I

Exhibit 1 — Subpoena to Peter K. Navarro (Feb. 9, 2022)

SUBPOENA

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To Peter K. Navarro

You are hereby commanded to be and appear before the

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

of the House of Representatives of the United States at the place, date, and time specified below.

☑ **to produce the things identified on the attached schedule** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: [redacted]

Date: February 23, 2022 Time: 10:00 AM

☑ **to testify at a deposition** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: United States Capitol Building, Washington, DC 20515, or by videoconference

Date: March 2, 2022 Time 10:00 AM

☐ **to testify at a hearing** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____

Date: _____ Time _____

To any authorized staff member or the United States Marshals Service

to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, D.C. this 9th day of February, 2022.

Bennie G. Thompson
Chairman or Authorized Member

Attest:

Clerk

PROOF OF SERVICE

Subpoena for
Peter K. Navarro
Address [redacted]
[redacted]
before the Select Committee to Investigate the January 6th Attack on the United States Capitol

U.S. House of Representatives
117th Congress

Served by (print name) _____

Title _____

Manner of service _____

Date _____

Signature of Server _____

Address _____

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 9, 2022

VIA ELECTRONIC MAIL

Peter Navarro
[redacted]

Dear Mr. Navarro:

Pursuant to the authorities set forth in House Resolution 503 and the rules of the House of Representatives, the Select Committee to Investigate the January 6th Attack on the United States Capitol ("Select Committee") hereby transmits a subpoena that compels you to produce the documents set forth in the accompanying schedule by February 23, 2022, and to appear for a deposition on March 2, 2022.

The Select Committee is investigating the facts, circumstances, and causes of the January 6th attack and issues relating to the peaceful transfer of power, in order to identify and evaluate lessons learned and to recommend to the House and its relevant committees corrective laws, policies, procedures, rules, or regulations. The inquiry includes examination of how various individuals and entities coordinated their activities leading up to the events of January 6, 2021.

Based on publicly available information and information produced to the Select Committee, we believe that you have documents and information that are relevant to the Select Committee's investigation. For example, you, then a White House trade advisor, reportedly worked with Steve Bannon and others to develop and implement a plan to delay Congress's certification of, and ultimately change the outcome of, the November 2020 presidential election.[1] In your book, you reportedly described this plan as the "Green Bay Sweep" and stated that it was designed as the "last, best chance to snatch a stolen election from the Democrats' jaws of deceit."[2] In an interview, you reportedly added that former President Trump was "on board with the strategy", as were "more than 100" members of Congress including Representative Paul Gosar and Senator Ted Cruz.[3] That, of course, was not the first time you publicly addressed purported fraud in the election. You also released on your website a three-part report, dubbed the "Navarro

[1] Tim Dickinson, ROLLING STONE, *Trump Adviser Worried He's Not Getting Enough Credit for Trying to Ruin American Democracy* (December 28, 2021) available at https://www.rollingstone.com/politics/politics-news/jan6-peter-navarro-ted-cruz-green-bay-sweep-1276742/.
[2] *Id.*
[3] Jose Pagliery, THE DAILY BEAST, *Trump Adviser Peter Navarro Lays Out How He and Bannon Planned to Overturn Biden's Electoral Win* (December 27, 2021) available at https://www.thedailybeast.com/trump-advisor-peter-navarro-lays-out-how-he-and-steve-bannon-planned-to-overturn-bidens-electoral-win.

Report", repeating many claims of purported fraud in the election that have been discredited in public reporting, by state officials, and courts.[4] And, because you have already discussed these and other relevant issues in your recently published book, in interviews with reporters, and, among other places, on a podcast,[5] we look forward to discussing them with you, too.

Accordingly, the Select Committee seeks documents and a deposition regarding these and other matters that are within the scope of the Select Committee's inquiry. A copy of the rules governing Select Committee depositions, and document production definitions and instructions are attached. Please contact staff for the Select Committee at [redacted] to arrange for the production of documents.

Sincerely,

Bennie G. Thompson
Chairman

[4] Peter Navarro, *The Navarro Report* available at https://peternavarro.com/the-navarro-report/; *see also* Joe Walsh, FORBES, *White House Advisor Peter Navarro Releases Dubious Voter Fraud Report* (December 17, 2020) available at https://www.forbes.com/sites/joewalsh/2020/12/17/white-house-advisor-peter-navarro-releases-dubious-voter-fraud-report/?sh=23b88c221205.

[5] Ewan Palmer, *Steve Bannon Was 'The Heron on Jan. 6,' Says Peter Navarro* (December 17, 2021) available at https://www.newsweek.com/peter-navarro-steve-bannon-hero-january-6-capitol-riots-1660421.

SCHEDULE

In accordance with the attached definitions and instructions, you, Peter Navarro, are hereby required to produce all documents and communications in your possession, custody, or control—including any such documents or communications stored or located on personal devices (e.g., personal computers, cellular phones, tablets, etc.), in personal accounts, and/or on personal applications (e.g., email accounts, contact lists, calendar entries, etc.)— referring or relating to the following items. If no date range is specified below, the applicable dates are for the time period September 1, 2020, to present.

1. All documents and communications referring or relating in any way to plans, efforts, or discussions regarding challenging, decertifying, delaying the certification of, overturning, or contesting the results of the 2020 Presidential election.

2. All communications, and documents related to communications, in which you were a participant or witness, relating in any way to the security of election systems in the United States.

3. All communications, documents, and information that are evidence of the claims of purported fraud in the three-volume report you wrote, *The Navarro Report*.

4. All documents and communications referring or relating to, Steve Bannon, Members of Congress, state and local officials, White House officials/employees, representatives of the Trump reelection campaign, and national and local party officials relating to election fraud or malfeasance, as well as delaying or preventing the certification of the November 2020 election. This includes all documents and communications related to the creation or implementation of what you have described publicly as the "Green Bay Sweep."

5. Final or draft press releases, letters, reports, or other documents that you, or someone on your behalf, released addressing election fraud or malfeasance, as well as delaying or preventing the certification of the election.

6. All documents and communications referring or relating in any way to electoral votes in the 2020 presidential election, including, but not limited to, drafts or final versions of documents purporting to be or related to Electoral College votes, meetings and preparations for meetings of purported electors for former President Trump and former Vice President Pence on or about December 14, 2020, and the actual or potential selection of an alternate slate of electors by any state legislature or executive.

7. All documents and communications referring or relating in any way to John Eastman, Rudolph Giuliani, Boris Epshteyn, Bernard Kerik, Jenna Ellis, or Mark Martin.

8. All documents and communications relating in any way to protests, marches, public assemblies, rallies, or speeches in Washington, D.C., on November 14, 2020, December 12, 2020, January 5, 2021, or January 6, 2021 (collectively, "Washington Rallies").

9. All documents and communications referring or relating to the financing or fundraising associated with the Washington Rallies and any individual or organization's travel to or accommodation in Washington, D.C., to attend or participate in the Washington Rallies.

10. All documents and communications related to the January 6, 2021, attack on the U.S. Capitol.

DOCUMENT PRODUCTION DEFINITIONS AND INSTRUCTIONS

1. In complying with this request, produce all responsive documents, regardless of classification level, that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.

2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Select Committee to Investigate the January 6th Attack on the United States Capitol ("Committee').

3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.

4. The Committee's preference is to receive documents in a protected electronic form (i.e., password protected CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions. With specific reference to classified material, you will coordinate with the Committee's Security Officer to arrange for the appropriate transfer of such information to the Committee. This includes, but is not necessarily limited to: a) identifying the classification level of the responsive document(s); and b) coordinating for the appropriate transfer of any classified responsive document(s).

5. Electronic document productions should be prepared according to the following standards:

   a. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

   b. All electronic documents produced to the Committee should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

      BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.

8. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.

9. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.

10. The pendency of or potential for litigation shall not be a basis to withhold any information.

11. In accordance with 5 U.S.C.§ 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.

12. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.

13. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production, as well as a date certain as to when full production will be satisfied.

14. In the event that a document is withheld on any basis, provide a log containing the following information concerning any such document: (a) the reason it is being withheld, including, if applicable, the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the withholding.

15. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control. Additionally, identify where the responsive document can now be found including name, location, and contact information of the entity or entities now in possession of the responsive document(s).

16. If a date or other descriptive detail set forth in this request referring to a document

is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

17. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.

18. All documents shall be Bates-stamped sequentially and produced sequentially.

19. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and
(2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of classification level, how recorded, or how stored/displayed (e.g. on a social media platform) and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, computer or mobile device screenshots/screen captures, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, through a social media or online platform, or otherwise.

3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.

4. The term "including" shall be construed broadly to mean "including, but not limited to."

5. The term "Company" means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.

6. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; (b) the individual's business or personal address and phone number; and (c) any and all known aliases.

7. The term "related to" or "referring or relating to," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.

8. The term "employee" means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, assignee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.

9. The term "individual" means all natural persons and all persons or entities acting on their behalf.

health, safety, and well-being of others present in the Chamber and surrounding areas. Members and staff will not be permitted to enter the Hall of the House without wearing a mask. Masks will be available at the entry points for any Member who forgets to bring one. The Chair views the failure to wear a mask as a serious breach of decorum. The Sergeant-at-Arms is directed to enforce this policy. Based upon the health and safety guidance from the attending physician and the Sergeant-at-Arms, the Chair would further advise that all Members should leave the Chamber promptly after casting their votes. Furthermore, Members should avoid congregating in the rooms leading to the Chamber, including the Speaker's lobby. The Chair will continue the practice of providing small groups of Members with a minimum of 5 minutes within which to cast their votes. Members are encouraged to vote with their previously assigned group. After voting, Members must clear the Chamber to allow the next group a safe and sufficient opportunity to vote. It is essential for the health and safety of Members, staff, and the U.S. Capitol Police to consistently practice social distancing and to ensure that a safe capacity be maintained in the Chamber at all times. To that end, the Chair appreciates the cooperation of Members and staff in preserving order and decorum in the Chamber and in displaying respect and safety for one another by wearing a mask and practicing social distancing. All announced policies, including those addressing decorum in debate and the conduct of votes by electronic device, shall be carried out in harmony with this policy during the pendency of a covered period.

117TH CONGRESS REGULATIONS FOR USE OF DEPOSITION AUTHORITY

COMMITTEE ON RULES,
HOUSE OF REPRESENTATIVES,
Washington, DC, January 4, 2021.

HON. NANCY PELOSI,
Speaker, House of Representatives,
Washington, DC.

MADAM SPEAKER: Pursuant to section 3(b) of House Resolution 8, 117th Congress, I hereby submit the following regulations regarding the conduct of depositions by committee and select committee counsel for printing in the Congressional Record.

Sincerely,

JAMES P. MCGOVERN,
Chairman, Committee on Rules.

REGULATIONS FOR THE USE OF DEPOSITION AUTHORITY

1. Notices for the taking of depositions shall specify the date, time, and place of examination. Depositions shall be taken under oath administered by a member or a person otherwise authorized to administer oaths. Depositions may continue from day to day.

2. Consultation with the ranking minority member shall include three days' notice before any deposition is taken. All members of the committee shall also receive three days written notice that a deposition will be taken, except in exigent circumstances. For purposes of these procedures, a day shall not include Saturdays, Sundays, or legal holidays except when the House is in session on such a day.

3. Witnesses may be accompanied at a deposition by personal, nongovernmental counsel to advise them of their rights. Only members, committee staff designated by the chair or ranking minority member, an official reporter, the witness, and the witness's counsel are permitted to attend. Observers or counsel for other persons, including counsel for government agencies, may not attend.

4. The chair of the committee noticing the deposition may designate that deposition as part of a joint investigation between committees, and in that case, provide notice to the members of the committees. If such a designation is made, the chair and ranking minority member of the additional committee(s) may designate committee staff to attend pursuant to regulation 3. Members and designated staff of the committees may attend and ask questions as set forth below.

5. A deposition shall be conducted by any member or committee counsel designated by the chair or ranking minority member of the Committee that noticed the deposition. When depositions are conducted by committee counsel, there shall be no more than two committee counsel permitted to question a witness per round. One of the committee counsel shall be designated by the chair and the other by the ranking minority member per round.

6. Deposition questions shall be propounded in rounds. The length of each round shall not exceed 60 minutes per side, and shall provide equal time to the majority and the minority. In each round, the member(s) or committee counsel designated by the chair shall ask questions first, and the member(s) or committee counsel designated by the ranking minority member shall ask questions second.

7. Objections must be stated concisely and in a non-argumentative and non-suggestive manner. A witness's counsel may not instruct a witness to refuse to answer a question, except to preserve a privilege. In the event of professional, ethical, or other misconduct by the witness's counsel during the deposition, the Committee may take any appropriate disciplinary action. The witness may refuse to answer a question only to preserve a privilege. When the witness has refused to answer a question to preserve a privilege, members or staff may (i) proceed with the deposition, or (ii) either at that time or at a subsequent time, seek a ruling from the Chair either by telephone or otherwise. If the Chair overrules any such objection and thereby orders a witness to answer any question to which an objection was lodged, the witness shall be ordered to answer. If a member of the committee chooses to appeal the ruling of the chair, such appeal must be made within three days, in writing, and shall be preserved for committee consideration. The Committee's ruling on appeal shall be filed with the clerk of the Committee and shall be provided to the members and witness no less than three days before the reconvened deposition. A deponent who refuses to answer a question after being directed to answer by the chair may be subject to sanction, except that no sanctions may be imposed if the ruling of the chair is reversed by the committee on appeal.

8. The Committee chair shall ensure that the testimony is either transcribed or electronically recorded or both. If a witness's testimony is transcribed, the witness or the witness's counsel shall be afforded an opportunity to review a copy. No later than five days after the witness has been notified of the opportunity to review the transcript, the witness may submit suggested changes to the chair. Committee staff may make any typographical and technical changes. Substantive changes, modifications, clarifications, or amendments to the deposition transcript submitted by the witness must be accompanied by a letter signed by the witness requesting the changes and a statement of the witness's reasons for each proposed change. Any substantive changes, modifications, clarifications, or amendments shall be included as an appendix to the transcript conditioned upon the witness signing the transcript.

9. The individual administering the oath, if other than a member, shall certify on the transcript that the witness was duly sworn. The transcriber shall certify that the transcript is a true record of the testimony, and the transcript shall be filed, together with any electronic recording, with the clerk of the committee in Washington, DC. Depositions shall be considered to have been taken in Washington, DC, as well as the location actually taken once filed there with the clerk of the committee for the committee's use. The chair and the ranking minority member shall be provided with a copy of the transcripts of the deposition at the same time.

10. The chair and ranking minority member shall consult regarding the release of deposition testimony, transcripts, or recordings, and portions thereof. If either objects in writing to a proposed release of a deposition testimony, transcripts, or recording, or a portion thereof, the matter shall be promptly referred to the committee for resolution.

11. A witness shall not be required to testify unless the witness has been provided with a copy of section 3(b) of H. Res. 8, 117th Congress, and these regulations.

REMOTE COMMITTEE PROCEEDINGS REGULATIONS PURSUANT TO HOUSE RESOLUTION 8, 117TH CONGRESS

COMMITTEE ON RULES,
HOUSE OF REPRESENTATIVES,
Washington, DC, January 4, 2021.

HON. NANCY PELOSI,
Speaker, House of Representatives,
Washington, DC.

MADAM SPEAKER: Pursuant to section 3(s) of House Resolution 8, 117th Congress, I hereby submit the following regulations regarding remote committee proceedings for printing in the CONGRESSIONAL RECORD.

Sincerely,

JAMES P. MCGOVERN,
Chairman,
Committee on Rules.

REMOTE COMMITTEE PROCEEDINGS REGULATIONS PURSUANT TO HOUSE RESOLUTION 8

A. PRESENCE AND VOTING

1. Members participating remotely in a committee proceeding must be visible on the software platform's video function to be considered in attendance and to participate unless connectivity issues or other technical problems render the member unable to fully participate on camera (except as provided in regulations A.2 and A.3).

2. The exception in regulation A.1 for connectivity issues or other technical problems does not apply if a point of order has been made that a quorum is not present. Members participating remotely must be visible on the software platform's video function in order to be counted for the purpose of establishing a quorum.

3. The exception in regulation A.1 for connectivity issues or other technical problems does not apply during a vote. Members participating remotely must be visible on the software platform's video function in order to vote.

4. Members participating remotely off-camera due to connectivity issues or other technical problems pursuant to regulation A.1 must inform committee majority and minority staff either directly or through staff.

5. The chair shall make a good faith effort to provide every member experiencing connectivity issues an opportunity to participate fully in the proceedings, subject to regulations A.2 and A.3.

H. Res. 8

In the House of Representatives, U. S.,

January 4, 2021.

Resolved,

SECTION 1. ADOPTION OF THE RULES OF THE ONE HUNDRED SIXTEENTH CONGRESS.

The Rules of the House of Representatives of the One Hundred Sixteenth Congress, including applicable provisions of law or concurrent resolution that constituted rules of the House at the end of the One Hundred Sixteenth Congress, are adopted as the Rules of the House of Representatives of the One Hundred Seventeenth Congress, with amendments to the standing rules as provided in section 2, and with other orders as provided in this resolution.

SEC. 2. CHANGES TO THE STANDING RULES.

(a) CONFORMING CHANGE.—In clause 2(i) of rule II—

(1) strike the designation of subparagraph (1); and

(2) strike subparagraph (2).

(b) OFFICE OF DIVERSITY AND INCLUSION AND OFFICE OF THE WHISTLEBLOWER OMBUDS.—

SEC. 3. SEPARATE ORDERS.

(a) MEMBER DAY HEARING REQUIREMENT.—During the first session of the One Hundred Seventeenth Congress, each standing committee (other than the Committee on Ethics) or each subcommittee thereof (other than a subcommittee on oversight) shall hold a hearing at which it receives testimony from Members, Delegates, and the Resident Commissioner on proposed legislation within its jurisdiction, except that the Committee on Rules may hold such hearing during the second session of the One Hundred Seventeenth Congress.

(b) DEPOSITION AUTHORITY.—

(1) During the One Hundred Seventeenth Congress, the chair of a standing committee (other than the Committee on Rules), and the chair of the Permanent Select Committee on Intelligence, upon consultation with the ranking minority member of such committee, may order the taking of depositions, including pursuant to subpoena, by a member or counsel of such committee.

(2) Depositions taken under the authority prescribed in this subsection shall be subject to regulations issued by the chair of the Committee on Rules and printed in the Congressional Record.

(c) WAR POWERS RESOLUTION.—During the One Hundred Seventeenth Congress, a motion to discharge a measure introduced pursuant to section 6 or section 7 of the War

Exhibit 2 — Email from Peter K. Navarro to Select Committee Staff (Feb. 9, 2022)

From: pknavarro <[redacted]>
Sent: Wednesday, February 9, 2022 2:19 PM
To: [redacted] <[redacted]>
Subject: Re: U.S. House Select Committee to Investigate the January 6th Attack on the U.S. Capitol

yes. no counsel.
Executive privilege

Sent with ProtonMail Secure Email.

------- Original Message -------
On Wednesday, February 9th, 2022 at 2:16 PM, [redacted] wrote:

Mr. Navarro –

I am a Senior Investigative Counsel for the U.S. House Select Committee to Investigate the January 6th Attack on the U.S. Capitol. The Select Committee is seeking your deposition testimony and documents relevant to issues it is examining. Please confirm whether you are willing to accept service of a subpoena over email. If you are represented by counsel, please let me know his or her name and contact information and we will reach out as soon as possible.

Thank you,

[redacted]

[redacted]

Senior Investigative Counsel

Select Committee to Investigate the January 6th Attack

on the United States Capitol

U.S. House of Representatives

Exhibit 3 — Email from Select Committee Staff to Peter K. Navarro (Feb. 24, 2022)

[redacted]

From: [redacted]
Sent: Thursday, February 24, 2022 4:07 PM
To: pknavarro
Subject: RE: U.S. House Select Committee to Investigate the January 6th Attack on the U.S. Capitol

Mr. Navarro –

I'm following up on the Select Committee's subpoena to you.

The subpoena required you to produce documents to the Select Committee by yesterday, February 23, 2022. We have not received any documents or an indication that you have no documents that are responsive to the subpoena's document schedule.

Also, the date for your deposition is Wednesday, March 2, 2022, at 10:00 AM, and we will convene in a room in the House office buildings. Please contact me at your earliest convenience to discuss the details. Alternatively, please let me know if you do not plan to appear on March 2.

Thank you,
[redacted]

[redacted]
Senior Investigative Counsel
Select Committee to Investigate the January 6th Attack
on the United States Capitol
U.S. House of Representatives

From: [redacted]
Sent: Wednesday, February 9, 2022 4:21 PM
To: pknavarro [redacted]
Subject: RE: U.S. House Select Committee to Investigate the January 6th Attack on the U.S. Capitol

Mr. Navarro –

As promised, attached is a subpoena from the Select Committee, issued today.

Please let me know if you have any questions or would like to discuss.

Thanks,
[redacted]

[redacted]
Senior Investigative Counsel
Select Committee to Investigate the January 6th Attack
on the United States Capitol
U.S. House of Representatives

Exhibit 4 — Email Exchange between Select Committee Staff and Peter K. Navarro (Feb. 27, 2022)

From: [redacted]
To: pknavarro
Subject: RE: Navarro
Date: Sunday, February 27, 2022 6:13:04 PM

Mr. Navarro –

No, it will not be public or open to the press. It will be a staff-led deposition, which members of the Select Committee may also join and in which they may participate.

If you have a scheduling conflict with that date, please let me know and we would be happy to work with to find a date to be scheduled within a reasonable time. Also, please let me know when you anticipate providing documents that are responsive to the subpoena schedule, or a log of specific documents that you are withholding and the basis for withholding, such as executive privilege.

Thank you,
[redacted]

From: pknavarro[redacted]
Sent: Sunday, February 27, 2022 4:43 PM
To: [redacted]
Subject: RE: Navarro

Will this event be open to the public and press?

Sent with ProtonMail Secure Email.

------- Original Message -------
On Sunday, February 27th, 2022 at 4:27 PM, [redacted] wrote:

> Mr. Navarro –
>
> Thank you for your email. There are topics, including those discussed in the Chairman's letter, that the Select Committee believes it can discuss with you without raising any executive privilege concerns at all. In any event, you must appear to assert any executive privilege objections on a question-by-question basis during the deposition. This will enable the Select Committee to better understand your objections and, if necessary, take any additional steps to address them.
>
> With that in mind, can you please let us know whether you intend to appear for deposition testimony on Wednesday, March 2, 2022, at 10:00 AM as scheduled by the subpoena? For convenience, I'm also attaching my email to you dated Thursday, February 24, 2022.
>
> Thank you again for your email.

[redacted]

[redacted]
Senior Investigative Counsel
Select Committee to Investigate the January 6th Attack
on the United States Capitol
U.S. House of Representatives

From: pknavarro[redacted]
Sent: Sunday, February 27, 2022 4:00 PM
To: [redacted]
Cc: pknavarro[redacted]
Subject: Navarro

March 1, 2022

[redacted]
Senior Investigative Counsel
Select Committee to Investigate the January 6 Attack
US House of Representatives

Dear [redacted]:

Please be advised that President Trump has invoked Executive Privilege in this matter; and it is neither my privilege to waive or Joseph Biden's privilege to waive. Accordingly, my hands are tied.

Your best course of action is to directly negotiate with President Trump and his attorneys regarding any and all things related to this matter.

In closing, I note that the United States government is in possession of all my official White House communications which your committee has requested. While I do not give my permission for your Select Committee to access this information as it involves privilege, I am at least advising you of this fact.

Thank you,

Peter Navarro

Exhibit 5 — Email from Peter K. Navarro to Select Committee Staff (Feb. 28, 2022)

From: pknavarro
To: [redacted]
Subject: RE: Navarro
Date: Monday, February 28, 2022 11:31:44 AM

Please be advised I have been clear in my communications on this matter. Below is my response. As I note, privilege is not mine to waive and it is incumbent on the Committee to directly negotiate with President Trump and his attorneys regarding any and all things related to this matter.

March 1, 2022

[redacted]
Select Committee to Investigate the January 6 Attack
US House of Representatives

Dear [redacted]

Please be advised that President Trump has invoked Executive Privilege in this matter; and it is neither my privilege to waive or Joseph Biden's privilege to waive. Accordingly, my hands are tied.

Your best course of action is to directly negotiate with President Trump and his attorneys regarding any and all things related to this matter.

In closing, I note that the United States government is in possession of all my official White House communications which your committee has requested. While I do not give my permission for your Select Committee to access this information as it involves privilege, I am at least advising you of this fact.

Thank you,

Peter Navarro

Exhibit 6 — Letter from White House Counsel to Peter K. Navarro (Feb. 28, 2022)

THE WHITE HOUSE
WASHINGTON

February 28, 2022

Peter K. Navarro
[redacted]

Dear Mr. Navarro:

I write regarding a subpoena issued to you by the Select Committee to Investigate the January 6th Attack on the United States Capitol (the "Select Committee").

As you are aware, in light of unique and extraordinary nature of the matters under investigation, President Biden has determined that an assertion of executive privilege is not in the national interest, and therefore is not justified, with respect to particular subjects within the purview of the Select Committee. These subjects include: events within the White House on or about January 6, 2021; attempts to use the Department of Justice to advance a false narrative that the 2020 election was tainted by widespread fraud; and other efforts to alter election results or obstruct the transfer of power. President Biden accordingly has decided not to assert executive privilege as your testimony regarding those subjects, or any documents you may possess that bear on them. For the same reasons underlying his decision on executive privilege, President Biden has determined that he will not assert immunity to preclude you from testifying before the Select Committee.

In light of President Biden's determination not to assert executive privilege with respect your testimony, we are not requesting that agency counsel be permitted to attend the deposition. Should you have any questions about the issues addressed in this letter, please contact me at [redacted].

Sincerely,

Jonathan C. Su
Deputy Counsel to the President

cc: [redacted]
Select Committee to Investigate the January 6th Attack on the United States Capitol

Exhibit 7 — Email from Select Committee Staff to Peter K. Navarro (Mar. 1, 2022)

From: [redacted]
To: pknavarro
Subject: RE: Navarro
Date: Tuesday, March 1, 2022 9:43:55 PM
Attachments: RE Navarro (15.9 KB).msg
RE U.S. House Select Committee to Investigate the January 6th Attack on... (13.9 KB).msg

Mr. Navarro –

Thank you for your email. As I mentioned to you in the attached emails, there are topics that the Select Committee believes it can discuss with you without raising any executive privilege concerns at all, including, but not limited to, questions related to your public three-part report about purported fraud in the November 2020 election and the plan you described in your book called the "Green Bay Sweep." If there are specific questions that raise executive privilege concerns, you can assert your objections on the record and on a question-by-question basis.

It is unclear from your correspondence whether you plan attend tomorrow's deposition, as required by the subpoena. We plan to proceed with the deposition at 10 AM in the [redacted]. Please feel free to contact me when you arrive so someone can escort you to the conference room.

Thank you,
[redacted]

From: pknavarro [redacted]
Sent: Monday, February 28, 2022 11:32 AM
To: [redacted]
Subject: RE: Navarro

Please be advised I have been clear in my communications on this matter. Below is my response. As I note, privilege is not mine to waive and it is incumbent on the Committee to directly negotiate with President Trump and his attorneys regarding any and all things related to this matter.

March 1, 2022

[redacted]
Senior Investigative Counsel
Select Committee to Investigate the January 6 Attack
US House of Representatives

Dear [redacted]:

Please be advised that President Trump has invoked Executive Privilege in this matter; and it is neither my privilege to waive or Joseph Biden's privilege to waive. Accordingly, my hands are tied.

Your best course of action is to directly negotiate with President Trump and his attorneys regarding any and all things related to this matter.

In closing, I note that the United States government is in possession of all my official White House communications which your committee has requested. While I do not give my permission for your Select Committee to access this information as it involves privilege, I am at least advising you of this fact.

Thank you,

Peter Navarro

Exhibit 8 — Deposition that Memorialized Peter K. Navarro's Failure to Appear before the Select Committee (Mar. 2, 2022)

SELECT COMMITTEE TO INVESTIGATE THE
JANUARY 6TH ATTACK ON THE U.S. CAPITOL,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

DEPOSITION OF: PETER K. NAVARRO (NO-SHOW)

Wednesday, March 2, 2022

Washington, D.C.

The deposition in the above matter was held in [redacted], commencing at 10:04 a.m.

Appearances:

For the SELECT COMMITTEE TO INVESTIGATE
THE JANUARY 6TH ATTACK ON THE U.S. CAPITOL:

[redacted]

[redacted]. We are on the record. Today is March 2nd, 2022. The time is 10:04. We're convened in the [redacted] for the deposition of Peter Navarro to be conducted by the House Select Committee to Investigate the January 6th Attack on the United States Capitol. My name is [redacted]. I am the designated select committee senior investigative counsel for this proceeding. I am accompanied by [redacted].

For the record, it's 10:04 a.m. Mr. Peter Navarro is not present. The person transcribing this proceeding is the House stenographer and notary public authorized to administer oaths.

I want to put on the record, briefly, the facts with respect to Mr. Navarro being given notice of this proceeding.

On February 9th, Chairman Bennie Thompson issued a subpoena to Mr. Navarro both to produce documents by February 23rd, 2022, and to testify at a deposition on March 2nd, 2022, at 10 a.m. The subpoena pertains to the select committee's investigation into the facts, circumstances, and causes of the January 6th attack and issues related to the peaceful transfer of power in order to identify and evaluate lessons learned, and to recommend to the House and its relevant committees corrective laws, policies, procedures, rules, or regulations.

On February 9th, 2022, [redacted], reached out to Mr. Navarro by email and asked whether he would be willing to accept the service -- accept service of a subpoena for deposition and documents by email. [redacted] email also asked Mr. Navarro if he was represented by counsel.

Mr. Navarro responded to [redacted] on the same day, stating that he would be willing to accept service of the subpoena by email and that he was not represented by

counsel in the matter. Mr. Navarro also wrote in the email, quote "executive privilege," close quote. He did not explain what he meant by that.

[redacted], following up on Mr. Navarro's email, served Mr. Navarro with the subpoena, which we will attach to the record as exhibit 1.

[Navarro Exhibit No. 1

Was marked for identification.]

[redacted]. And the subpoena called for, as I noted, production of documents by February 23rd, 2022, and testimony on March 2nd, 2022, at 10 a.m.

On February 24th, 2022, having not heard back from Mr. Navarro in response to the subpoena and having received no documents in response to subpoena, [redacted] reached out for Mr. Navarro, again, reminded him of the subpoena compliance date and indicated we had not received any documents. [redacted] also reminded Mr. Navarro that his deposition was set for March 2nd, 2022, at 10 a.m., and that we would be convening in one of the House Office Buildings.

Mr. Navarro wrote back on February 27th, 2022, and advised [redacted] that President Trump had invoked executive privilege in this matter, and it was neither his privilege to waive nor President Biden's privilege to waive. He stated, quote, "Accordingly, my hands are tied," close quote.

[redacted] responded the same day, Sunday, the 27th, to Mr. Navarro and stressed to him that there were topics that would be included in the deposition and were referenced in the chairman's letter that he, Mr. Navarro, could discuss without raising any potential claim of executive privilege.

[redacted] also reminded Mr. Navarro that he would have to assert executive privilege on a question-by-question basis during the deposition and that he was expected to comply with the deposition and appear on March 2nd, at 10 a.m., as noted in the

subpoena.

Mr. Navarro responded that same afternoon asking, will this event be open to the public and press?

[redacted] responded by email the same afternoon answering Mr. Navarro's questions.

On the next day, February 28th, Mr. Navarro emailed [redacted]: Please be advised, I have been cleared in my communications on this matter. Below is my response. As I note, privilege is not mine to waive. And it is incumbent on the committee to directly negotiate with President Trump and his attorneys regarding any and all things related to this matter.

And Mr. Navarro included some further comments, dated March 1st, in that February 28th letter, along the lines of what I just stated that was in the email.

On Tuesday, March 1st, [redacted] again emailed Mr. Navarro thanking him for his email, reminding him that there were topics that we would be talking about at the deposition that did not implicate any executive privilege concerns. And [redacted] provided examples to Mr. Navarro of some of those types of questions, again reminding him that he could assert objections on the record on a question-by-question basis.

[redacted] asked Mr. Navarro to clarify whether he intended to appear at the deposition scheduled for March 2nd, as required by the subpoena. He advised Mr. Navarro that the deposition would begin at 10 a.m. at the [redacted], provided the address, and asked Mr. Navarro to contact him when he arrives so that he could be escorted to the conference room. That email was sent on the night of March 1st -- last night. Now, March 2nd, after 10 a.m., Mr. Navarro has not appeared for his deposition.

With that, I will note for the record that the current time is 10:11. Mr. Navarro

still has not appeared or communicated to the select committee that he will appear today, as required by the subpoena. Accordingly, the record is now closed. And we can go off the record.

[Whereupon, at 10:13 a.m., the deposition was concluded.]

Appendix II

Exhibit 1 — Subpoena to Daniel Scavino, Jr. (Oct. 6, 2021)

SUBPOENA

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

Daniel J. Scavino, Jr.

To _____

You are hereby commanded to be and appear before the

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

of the House of Representatives of the United States at the place, date, and time specified below.

☑ **to produce the things identified on the attached schedule** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: [redacted]

Date: October 21, 2021 Time: 10:00 a.m.

☑ **to testify at a deposition** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: [redacted]

Date: October 28, 2021 Time: 10:00 a.m.

☐ **to testify at a hearing** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____

Date: _____ Time: _____

To any authorized staff member or the United States Marshals Service

_____ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, D.C. this 6th day of October, 2021.

Bennie G. Thompson

Chairman or Authorized Member

Attest:

Clerk

PROOF OF SERVICE

Subpoena for Daniel J. Scavino, Jr.

Address The Mar-a-Lago Club, [redacted]

[redacted]

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

U.S. House of Representatives
117th Congress

Served by (print name) [redacted]

Title [redacted] U.S. Marshal

Manner of service Personally served Susan Wiles, Chief of Staff to the 45th office (Post-Presidency Office)

Date 10/08/2021

Signature of Server [redacted]

Address [redacted]

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

October 6, 2021

Mr. Daniel J. Scavino, Jr.
[redacted]

Dear Mr. Scavino:

Pursuant to the authorities set forth in House Resolution 503 and the rules of the House of Representatives, the Select Committee to Investigate the January 6th Attack on the United States Capitol ("Select Committee") hereby transmits a subpoena that compels you to produce the documents set forth in the accompanying schedule by October 21, 2021, and to appear for a deposition on October 28, 2021.

The Select Committee is investigating the facts, circumstances, and causes of the January 6th attack and issues relating to the peaceful transfer of power, in order to identify and evaluate lessons learned and to recommend to the House and its relevant committees corrective laws, policies, procedures, rules, or regulations. The inquiry includes examination of how various individuals and entities coordinated their activities leading up to the events of January 6, 2021, and the messages, videos, and internet communications that were disseminated to the public concerning the election, the transition in administrations, and the constitutional and statutory processes that effect that transition.

The Select Committee has reason to believe that you have information relevant to understanding important activities that led to and informed the events at the Capitol on January 6, 2021, and relevant to former President Trump's activities and communications in the period leading up to and on January 6. For example, the Select Committee has reason to believe that you have knowledge regarding the communications strategy of the former President and his supporters leading up to the events on January 6. As the Deputy Chief of Staff for Communications, reporting indicates that you were with the former President on January 5, when he and others were considering how to convince Members of Congress not to certify the election for Joe Biden.[1] Your public Twitter account makes clear that you were tweeting messages from the White House on January 6, 2021.[2] And prior to January 6, 2021, you promoted, through your Twitter messaging, the January 6 March for Trump, which encouraged people to "be a part of history."[3] Your long service with the former President—spanning more than a decade and which included service as his digital strategy director, overseeing his social media presence, including on Twitter— suggest that you have knowledge concerning communications involving the 2020 presidential election and rallies and activities supporting and including the former President on January 6.

---

[1] BOB WOODWARD & ROBERT COSTA, PERIL at 231 (2021).

[2] *E.g.*, Dan Scavino[American flag][eagle] (@DanScavino), Twitter (Jan. 6, 2021, 11:12 AM, from The White House), https://twitter.com/DanScavino/status/1346584866964598785?s=20; Dan Scavino[American flag][eagle] (@DanScavino), Twitter (Jan. 6, 2021, 10:50 AM, from The White House), https://twitter.com/danscavino/status/1346846609905168385?lang=en.

[3] Dan Scavino[American flag][eagle] (@DanScavino), Twitter (Jan. 2, 2021, 9:04 PM), https://twitter.com/DanScavino/status/1345551501440245762?s=20.

It also appears that you were with or in the vicinity of former President Trump on January 6 and are a witness regarding his activities that day. You may also have materials relevant to his videotaping and tweeting messages on January 6. Accordingly, the Select Committee seeks both documents and your deposition testimony regarding these and other matters that are within the scope of the Select Committee's inquiry.

A copy of the rules governing Select Committee depositions, and a copy of document production definitions and instructions are attached. Please contact staff for the Select Committee at [redacted] to arrange for the production of documents.

Sincerely,

Bennie G. Thompson
Chairman

SCHEDULE

In accordance with the attached Definitions and Instructions, you, Mr. Daniel Scavino, Jr., are hereby required to produce all documents and communications in your possession, custody, or control control—including any such documents or communications stored or located on personal devices (e.g., personal computers, cellular phones, tablets, etc.), in personal or campaign accounts, and/or on personal or campaign applications (e.g., email accounts, contact lists, calendar entries, etc.)— referring or relating to the following items. If no date range is specified below, the applicable dates are for the time period April 1, 2020-present.

1. The January 6, 2021, rally on the mall and Capitol grounds in Washington, D.C., in support of President Donald J. Trump and opposition to certification of the results of the 2020 presidential election, including any permitting, planning, objectives, financing, and conduct, as well as any communications to or from any person or group involved in organizing or planning for the January 6, 2021, rally.
2. Then-President Trump's participation in the January 6, 2021, rally, including any communications with President Trump or any paid or unpaid attorney, advisor, assistant, or aide to President Trump relating to the nature, context, or content of President Trump's intended or actual remarks to those attending the January 6, 2021, rally.
3. Communications referring or relating to the nature, planning, conduct, message, purpose, objective, promotion of, or participation in the January 6, 2021, rally that were between or among any person who, during the Administration of former President Trump, worked in the White House complex, including any employee or detailee.
4. Your communications with President Donald J. Trump concerning delaying or preventing the certification of the election of Joe Biden as President or relating to the rallies of January 5 or January 6, 2021.
5. Plans to communicate, or actual communications, relating to alleged fraud or other election irregularities in connection with the 2020 presidential election.
6. Communications with any non-governmental entity, organization, or individual relating to the January 6, 2021, rally, including any statements or other materials you or members of your office provided to any such entity, organization, or individual in connection with the planning, objectives, organization, message of, sponsorship and participation in the January 6, 2021, rally.
7. All communications regarding President Trump's meetings and communications that day.
8. Communications with any individual or organization, within or outside the government, referring or related to the activities and events at the January 6, 2021, rally, including messaging or characterization of those activities and events following the January 6, 2021, rally.
9. Any communications with, including any materials or statements you provided directly or indirectly to, any Member of Congress or the staff of any Member of Congress referring or related to the planning, objectives, organization, message, sponsorship, or participation in the January 6, 2021, rally.

10. Anyone with whom you communicated by any means regarding any aspect of the planning, objectives, conduct, message of, promotion of, or participation in the January 6, 2021, rally.

11. From November 3, 2020, through January 6, 2021, any efforts, plans, or proposals to contest the 2020 Presidential election results or delay, influence, or impede the electoral count, including all tweets or posts on Parler urging attendance at the January 6 rally.

12. The role of the Vice President as the Presiding Officer in the certification of the votes of the electoral college.

13. All briefings or information from the United States Secret Service regarding participants at the January 6 rally on the Ellipse or the march to Capitol Hill, and all information relating to any plans or statements by President Trump that he would attend or participate in the events on Capitol Hill on January 6.

14. All communications with the Trump family on January 6, 2021.

15. All materials relating to former President Trump's videotaped messages on January 6 or regarding January 6, including all unused takes or recordings made that day.

Exhibit 2 — All Email Correspondence between Select Committee Staff and Counsel for Mr. Scavino

From: [redacted]
To: [redacted]
Cc: [redacted]
Subject: RE: Dan Scavino
Date: Tuesday, November 30, 2021 8:23:00 PM

Hi Stanley,

Thank you for the conversation this afternoon. Per that discussion, it is our understanding that Mr. Scavino does not intend to appear for tomorrow's scheduled deposition. For your information, we will be proceeding on the record tomorrow to record his absence.

We will be in touch soon regarding next steps.

Best,

[redacted]
Select Committee to Investigate the January 6th Attack on the Capitol of the United States

From: [redacted]
Sent: Tuesday, November 30, 2021 1:43 PM
To [redacted]
Cc: [redacted]
Subject: RE: Dan Scavino

Hi Stanley,

I do think it would be helpful to discuss. I called earlier but got your voicemail. Please give me a call at [redacted].

From: [redacted]
Sent: Tuesday, November 30, 2021 1:42 PM
To: [redacted]
Cc: [redacted]
Subject: RE: Dan Scavino

[redacted] – as the Select Committee has yet to address the concerns we have raised, I believe our position remains fairly stated in our correspondence. I'm happy to discuss if that would be helpful.

Thanks,

Stanley

From: [redacted]
Sent: Tuesday, November 30, 2021 11:15 AM

To: [redacted]
Cc: [redacted]
Subject: RE: Dan Scavino

Good morning, Stanley,

We are in receipt of your Friday correspondence, but I do not believe we received, as we requested by noon yesterday, confirmation of whether Mr. Scavino intends to appear tomorrow. Please respond to this email to confirm whether he will appear, or give me a call at [redacted].

From: [redacted]
Sent: Friday, November 26, 2021 4:40 PM
To: [redacted]
Cc: [redacted]
Subject: RE: Dan Scavino

Folks – please see the attached correspondence.

From: [redacted]
Sent: Tuesday, November 23, 2021 5:53 PM
To: [redacted]
Cc: [redacted]
Subject: RE: Dan Scavino

Thank you, Stanley. I appreciate the response. Attached, please find a letter reflecting, as I mentioned earlier, a final continuation of the document and deposition dates, as well as the subpoena for Mr. Scavino reflecting those dates.

Please let me know if you have any questions.

Have a happy Thanksgiving!

From: [redacted]
Sent: Tuesday, November 23, 2021 12:45 PM
To: [redacted]
Cc: [redacted]
Subject: RE: Dan Scavino

Hi [redacted] – I have confirmed with Mr. Scavino that we can accept service of the subpoena on his behalf.

Thank you,

Stanley

From: [redacted]
Sent: Tuesday, November 23, 2021 9:21 AM
To: [redacted]
Cc: [redacted]
Subject: RE: Dan Scavino

Hi Stan,

I can move some things around this morning if that's more convenient for you. Would 10 AM work?

From: [redacted]
Sent: Monday, November 22, 2021 10:56 PM
To: [redacted]
Cc: [redacted]
Subject: RE: Dan Scavino

Hi [redacted] – happy to touch base, but am not "at work" tomorrow. I have my 2yo all day and my older boys in the afternoon. I also have a virtual court status hearing at 3pm. I expect that will last at least an hour. So long as you all don't mind the background noise, I'm happy to talk around my hearing at your convenience.

From: [redacted]
Sent: Monday, November 22, 2021 10:49 PM
To: [redacted]
Cc: [redacted]
Subject: RE: Dan Scavino

Hi Stanley,

We'd like to check in tomorrow afternoon. Can you provide a few times when you are available?

Thank you.

From: [redacted]
Sent: Thursday, November 18, 2021 12:00 PM
To: [redacted]
Cc: [redacted]
Subject: RE: Dan Scavino

Folks, please see the attached correspondence.

Thanks,

Stanley

From: [redacted]
Sent: Tuesday, November 16, 2021 1:09 PM
To: [redacted]
Cc: [redacted]
Subject: RE: Dan Scavino

Thank you, Stanley. I am confirming receipt of your letter.

In advance of Friday's scheduled deposition, I am resending the House deposition rules and also attaching the resolution mentioned in those rules.

In light of Mr. Scavino's assertion of privilege over all the documents the Select Committee has requested, does Mr. Scavino intends to appear this Friday to provide substantive testimony – beyond assertions of privilege – about any of the subject matters the Select Committee has identified?

If Mr. Scavino intends to appear, please let us know who will be accompanying him for that deposition. We are taking the necessary logistical steps to prepare for his appearance and need a full list of attendees.

Thank you.

From: [redacted]
Sent: Monday, November 15, 2021 11:29 PM
To: [redacted]
Cc: [redacted]
Subject: RE: Dan Scavino

Folks – please see the attached correspondence on behalf of Mr. Scavino.

Thanks,

Stanley

From: [redacted]
Sent: Wednesday, November 10, 2021 10:10 AM
To: [redacted]
Cc: [redacted]
Subject: RE: Dan Scavino

Hi Stanley,

We are willing to grant one final extension for the deposition to next **Friday, November 19**. We will not be able to grant further continuances beyond that date. We request that we hear from you no later than **noon on Thursday, November 18**, on whether Mr. Scavino intends to testify about any of the identified matters, and if so, which ones.

We are also willing to grant a document production extension to **Monday, November 15**, to allow time for your conference with Mr. Scavino today and subsequent document production or the provision of a privilege log.

Thank you.

[redacted]
Select Committee to Investigate the January 6th Attack on the Capitol of the United States

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From: [redacted]
Sent: Tuesday, November 9, 2021 10:32 PM
To: [redacted]
Cc: [redacted]
Subject: RE: Dan Scavino

Hi [redacted] – thanks for sending this along. I think you will agree that this is a lot of ground to cover in just one day. Even if we were in a position to address what privileges or other objections warrant discussion – and we're cognizant of Judge Chutkan's 40 page opinion issued earlier this evening – I'm not sure I could prepare any witness for a deposition on the breadth of these subjects on such short notice. Next week, I have an in-person meeting with DOJ on Wednesday, but am prepared to travel to and from Palm Beach at least twice, on Tuesday and Thursday. I'm happy to keep the committee apprised of my progress in the interim and perhaps we might hone in on a subset of topics that can be prioritized. In the meantime, we would request a further extension of the deadline for Mr. Scavino to participate in a deposition.

I also acknowledge your request for a privilege log and will address this with Mr. Scavino promptly.

Please let me know if you would like to discuss.

Thanks,

Stanley

From: [redacted]
Sent: Tuesday, November 9, 2021 7:17 PM
To: [redacted]
Cc: [redacted]
Subject: RE: Dan Scavino

Good evening, Stanley,

As promised, please find attached a letter identifying topics the Select Committee would like to explore with Mr. Scavino in a deposition. Our understanding is that you are meeting with him tomorrow and will be able to follow up with us tomorrow evening about the status of document review and Friday's deposition date. We are happy to schedule a time now for us to speak tomorrow evening, if you are amenable to that.

Thank you.

From: [redacted]
Sent: Sunday, November 7, 2021 10:28 AM
To: [redacted]
Cc: [redacted]
Subject: RE: Dan Scavino

That sounds good folks, speak to you soon.

Attached is the letter referenced in our correspondence.

From: [redacted]
Sent: Saturday, November 6, 2021 8:09 PM
To: Stanley Woodward [redacted]
Cc: [redacted]
Subject: Re: Dan Scavino

Hi Stanley,

[redacted] and I will plan to call you at 11 am tomorrow.

Please send along the attachment when you are able.

Thank you.

> On Nov 6, 2021, at 10:29 AM, [redacted] wrote:
>
> Thanks, Stanley. I can do any time tomorrow morning, but would like to connect earlier if you have time later today.
>
> Sent from my iPhone
>
> > On Nov 6, 2021, at 9:36 AM, Stanley Woodward [redacted] wrote:
> >
> > Hi [redacted] - sorry for the delayed response. Yes, I'm happy to connect

this weekend. I just ran out the door for a day of kids' soccer would you have time tomorrow morning?

And I can't seem to pull up the attachment on my phone but will send it as soon as I get home.

Thanks,

Stanley

Brand | Woodward
[redacted]

On Nov 5, 2021, at 6:03 PM, [redacted] wrote:

Hi Stanley,

I gave you a call to follow up on a couple of items but got your voicemail. Can we schedule a time to talk this evening or tomorrow?

Thanks.

From: [redacted]
Sent: Friday, November 5, 2021 4:53 PM
To: [redacted]
Subject: RE: Dan Scavino

Hi Stanley,

The letter refers to an attachment that I don't think was appended to the last email. Can you pass that along?

Thank you.

[redacted]
Select Committee to Investigate the January 6th Attack on the Capitol of the United States

From: [redacted]
Sent: Friday, November 5, 2021 4:49 PM
To: [redacted]
Cc: [redacted]
Subject: RE: Dan Scavino

[redacted] – as discussed, please see the attached correspondence.

Thanks,

Stanley

From: [redacted]
Sent: Wednesday, November 3, 2021 2:00 PM
To: [redacted]
Cc: [redacted]
Subject: RE: Dan Scavino

Stanley,

Good talking with you this afternoon. As discussed, we will continue the deadline for your client to produce documents responsive to the subpoena by one day – now **Friday, 11/5**. I understand that you are imaging your client's machines, reviewing whether he has any responsive documents, and evaluating possible privilege claims. I further understand you are preparing a letter to the Select Committee about this process and can deliver that to us in the next day or so. We will review that letter and be prepared to further engage about documents and the upcoming deposition on Friday.

Talk to you soon,

[redacted]

Cc: [redacted]

From: [redacted]
Sent: Tuesday, November 2, 2021 8:47 PM
To: [redacted]

Cc: [redacted]
Subject: RE: Dan Scavino

Folks – I wanted to follow up and provide a brief update. I'm sorry for not reaching out sooner, but logistics continued to prove challenging. I'm in the middle of a trial in Fairfax, Virginia, but was able to fly down to Palm Beach today to meet with Mr. Scavino because the Court was closed (election day). I'm on my way back to DC now and could connect over teams today, but probably not until after 9. Tomorrow I'm back in trial, so again would probably not be able to do a teams meeting until after 7. I'm also happy to schedule a call tomorrow, but I unfortunately am not given much notice as to when we'll have a break and they're only 15 minutes long.

Alternatively, the trial concludes Thursday at 2:30pm and I could be available for a teams after 3:30pm or any time on Friday.

Thanks,

Stanley

From: [redacted]
Sent: Wednesday, October 27, 2021 5:11 PM
To: [redacted]
Cc: [redacted]
Subject: RE: Dan Scavino

Hi Stanley,

Thanks for your message. We are willing to provide another brief extension to accommodate the schedule you suggest below, though no further delay absent something unforeseen. I want to give you the time you need to search for documents and prepare your client for his deposition, though this has been pending for some time. Let's schedule a call for Tuesday after your meeting with him to confirm timing. Can you suggest some windows when you're available? [redacted] and I will send a Teams invite for a time that works for all.

To confirm, we will delay the document production deadline until Thursday, November 4 and schedule the deposition for

Friday, November 12 (Thursday 11/11 is Veteran's Day).

Thanks,

[redacted]

From: [redacted]
Sent: Wednesday, October 27, 2021 4:39 PM
To: [redacted]
Cc: [redacted]
Subject: RE: Dan Scavino

Hi folks – I wanted to touch base in advance of tomorrow's deadline to request another brief extension. As I think I mentioned, I'm preparing for a trial that starts Monday and Mr. Scavino and I have had trouble finding time to meet in person. At the moment, I'm scheduled to meet with him on Tuesday, November 2, 2021 (because the Court is closed for Election Day). At that time, I'll be making a forensic backup of his electronic devices and will perform an initial search for records responsive to his subpoena. Assuming that it appears there are no responsive records, I will confirm the same with you, subject to a more formal search by me after the forensic backups are completed. If this is amenable to you all, I would propose just another one week extension on both deadlines and we can plan to speak on Tuesday or at your convenience.

Thank you,

Stanley

From: [redacted]
Sent: Wednesday, October 20, 2021 3:35 PM
To: Stanley Woodward [redacted]
Cc: [redacted]
Subject: RE: Dan Scavino

Stanley,

Good talking with you today. This confirms our agreement to postpone the dates on Mr. Scavino's subpoena by one week. That moves the deadline for production of documents to 10/28 and the deposition date to 11/4.

I understand that you are in the process of ascertaining whether Mr. Scavino has any documents responsive to the subpoena, including imaging his phone and computer. Please let us know asap if there are such documents and whether they can be promptly produced. As discussed, we are willing to talk with you about the subject matters that we will seek to develop with Mr. Scavino during his deposition, so you can evaluate privilege issues. We do not believe any valid privilege claim exists, though are willing to talk with you about the scope of our inquiry in the interest of getting the deposition done.

Please let [redacted] and I know when you have more information. Thanks again for reaching out – looking forward to working with you on this moving forward.

[redacted]

Cc: [redacted]

From: Stanley Woodward
[redacted]
Sent: Wednesday, October 20, 2021 1:58 PM
To: [redacted]
Cc: [redacted]
Subject: Re: Dan Scavino

Hi [redacted] - 3 is great. You can call my cell, below.

Thanks,

Stanley

Brand | Woodward
[redacted]

On Oct 20, 2021, at 1:01 PM, [redacted] wrote:

Hi Stanley -

Thanks for your message. Can we talk at 3? It will be [redacted] and I. What is best number for you then?

Thanks,

[redacted]

Sent from my iPhone

> On Oct 20, 2021, at 12:30 PM, [redacted] wrote:
>
> [redacted] – we've been retained to represent Dan Scavino in responding to the Select Committee's subpoena to Dan for records and testimony. Is there a convenient time for us to have an introductory call?
>
> Thanks,
>
> Stanley
>
> Brand J Woodward
> [redacted]

Exhibit 3 — Letter from Chairman Thompson to Counsel for Mr. Scavino (Nov. 23, 2021)

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

November 23, 2021

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

Dear Messrs. Woodward and Brand,

The Select Committee to Investigate the January 6th Attack on the U.S. Capitol ("Select Committee") is in receipt of your November 15, 2021, letter regarding document production and your November 18, 2021, letter regarding the requested testimony of your client, Daniel J. Scavino, Jr. In both letters, you and Mr. Scavino have refused to provide any documents or any testimony in response to the Select Committee's October 6, 2021, subpoena. Mr. Scavino's steadfast refusal to cooperate – despite a professed willingness to the contrary – is untenable and grounded in specious and misguided legal arguments.

Select Committee Jurisdiction

Your letter of November 18, 2021, incorrectly asserts that the Select Committee is attempting to assert "broad or otherwise limitless jurisdiction to investigate."[1] The Select Committee's charter, House Resolution 503, 117th Congress, states that the Select Committee is to "investigate and report upon the facts, circumstances, and causes relating to the January 6, 2021, domestic terrorist attack upon the United States Capitol Complex … and relating to the interference with the peaceful transfer of power."[2] As I stated in my October 6, 2021, letter to Mr. Scavino transmitting the subpoena, the Select Committee's investigation and public reports have revealed evidence indicating that your client has knowledge concerning activities that led to and informed the events of January 6, 2021, and relevant to President Trump's activities and communications in the period leading up to and on January 6.[3] These subjects are squarely within the Select Committee's jurisdiction. Your client is apparently taking the position that he may refuse to comply with the Select Committee subpoena simply because he has a different view of what information should be important to Congress. There is no legal authority – and none is provided by your letter – supporting that position.

[1] Letter from S. Brand and S. Woodward to Chairman Thompson (Nov. 18, 2021) at p. 3.
[2] Section 3(1), H. Res. 8 (117th Cong.), as adopted on June 30, 2021.
[3] Letter from Chairman Thompson to D. Scavino (Oct. 6, 2021) at p. 1.

Seeking information for congressional investigations is "an essential and appropriate auxiliary to the legislative function."[4] The explicit legislative purpose of the Select Committee is found in its charter: to make "recommendations for … changes in law, policy, [or] procedures … that could be taken[ ] to prevent future acts of violence, domestic terrorism, and domestic violent extremism, including acts targeted at American democratic institutions" … and to "strengthen the security and resilience of" American democratic institutions.[5] The validity of the Select Committee's legislative purpose was recently affirmed in debate on the House floor.[6] And as the Federal District Court recently explained in *Trump v. Thompson*, which reaffirmed the Select Committee's legislative purpose, courts "must be highly deferential to the legislative branch."[7] Far from the issues you cite in your letter involving the House Committee on Un-American Activities investigating the private conduct of private individuals found in *Watkins v. United States* (354 U.S. 178 (1957)), your client was a government official conducting public business potentially relating to a riot on the U.S. Capitol that disrupted a constitutional process, which is indisputably a proper subject for possible legislation.

Deposition Rules

Your letter of November 18, 2021, challenges the Select Committee's ability to "validly conduct a deposition" "absent a duly appointed Ranking Member."[8] This claim reflects a flawed understanding of the Rules of the U.S. House of Representatives. The Select Committee was properly constituted under section 2(a) of House Resolution 503, 117th Congress. As required by that resolution, Members of the Select Committee were selected by the Speaker, after "consultation with the minority leader."[9] A bipartisan selection of Members was appointed pursuant to House Resolution 503 and the order of the House of January 4, 2021, on July 1, 2021, and July 26, 2021.[10] Neither House Resolution 503, the Regulations for the Use of Deposition Authority promulgated by the Chairman of the Committee on Rules pursuant to section 3(b) of House Resolution 8, nor the Rules of the House of Representatives require the Select Committee to include the minority leader's preferred Members on the Select Committee.

Deposition Testimony

You have repeatedly indicated a desire to engage and identify areas where Mr. Scavino is able to testify, but to date, you have not identified any such areas or made any proposals regarding which items your client considers beyond the scope of privilege. As recounted in our November

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[4] *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927); *see also Barenblatt v. United States*, 360 U.S. 109, 111 (1959) ("The scope of the power of inquiry, in short, is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.").

[5] Sections 4(a)(3) and 4(c), H. Res. 8 (117th Cong.), as adopted on June 30, 2021.

[6] *See* remarks of Rep. Jim Banks, "Madam Speaker, no one has said that the select committee doesn't have a legislative purpose," 167 Cong. Rec. 185 (Oct. 21, 2021) at p. H5760.

[7] *Trump v. Thompson*, No. 21-cv-2769 (D.D.C. Nov. 9, 2021), at p. 26.

[8] Letter from S. Brand and S. Woodward to Chairman Thompson (Nov. 18, 2021) at p. 5-6.

[9] Speaker Pelosi detailed such consultation and her selection decisions in a July 21, 2021, press release available at https://www.speaker.gov/newsroom/72121-2.

[10] 167 Cong. Rec. 115 (July 1, 2021) at H3597 and 167 Cong. Rec. 130 (July 26, 2021) at H3885. The January 4, 2021, order of the House provides that the Speaker is authorized to accept resignations and to make appointments authorized by law or by the House. *See* 167 Cong. Rec. 2 (Jan. 4, 2021) at p. H37.

9, 2021, letter, we do not believe Mr. Scavino's assertions of privilege are valid with respect to the items of interest to the Select Committee. Indeed, after identifying several topics in that letter, we stated the following:

> We believe that these topics either do not implicate any cognizable claim of executive privilege or raise issues for which the Select Committee's need for the information is sufficiently compelling that it overcomes any such claim. To that end, **please provide your input on the topics that the Select Committee has reiterated by way of this letter no later than Thursday, November 11**. If there are areas listed above that you agree implicate no executive or other privilege, please identify those areas. Conversely, please articulate which privilege you believe applies to each area and how it is implicated. Our hope is that this process will sharpen our differences on privilege issues and allow us to develop unobjectionable areas promptly.[11]

Despite that request and invitation to negotiate areas of inquiry on which the parties could agree, you and your client have provided no such detailed input. If you are indeed interested in "hon[ing] in on a subset of topics that can be prioritized,"[12] please identify the specific topics Mr. Scavino agrees are outside the scope of his asserted privileges, and if you believe a privilege applies, articulate which privilege and how it is implicated for each item no later than **Friday, November 26, 2021**.

To allow time to serve the subpoena on counsel and to permit these further negotiations, the Select Committee will provide a final continuation of the deposition to **Wednesday, December 1, 2021, at 10:00am**. The Select Committee expects Mr. Scavino's appearance at that time. Although you have stated a preference to proceed by written interrogatories, there is simply no substitute for live, in-person testimony and the Select Committee respectfully declines your suggestion to proceed otherwise. We continue to believe that the items identified in the October 6, 2021, subpoena and our November 9, 2021, correspondence do not implicate any privilege that should prevent his testimony. If you disagree about that for particular questions, you will have the opportunity to state privilege objections to specific questions on the record.

Document Request

In your November 15, 2021, correspondence, you reiterated your client's refusal to turn over any responsive document in his possession, asserting privilege, but also represented that your client has still not completed a search to identify all responsive documents. You further refused the Select Committee's request for a privilege log, asserting that "the production of a privilege log, as demanded by the Select Committee, would undermine the private, or otherwise confidential nature of advice given by or to the President and his advisors."[13]

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[11] Letter from Chairman Thompson to D. Scavino (Nov. 9, 2021) at p. 4.
[12] Letter from S. Brand and S. Woodward to Chairman Thompson (Nov. 18, 2021) at p. 1.
[13] Letter from S. Brand and S. Woodward to Chairman Thompson (Nov. 15, 2021) at p. 2.

As we noted in our prior correspondence, categorical claims of executive privilege are improper, and Mr. Scavino must identify an invocation of any claim of executive privilege by Mr. Trump narrowly and specifically. *See, e.g.*, *In re Sealed Case (Espy)*, 121 F.3d 729 (D.C. Cir. 1997); *Comm. on Oversight & Gov't Reform v. Holder*, No. 12-cv-1332, 2014 WL 12662665, at *2 (D.D.C. Aug. 20, 2014) (rejecting a "blanket" executive-privilege claim over subpoenaed documents). Your continued refusal to provide a privilege log, coupled with your extensive and blanket assertions of privilege, are fundamentally at odds with your stated desire to "foster further discussion and the continued collaboration" with the Select Committee. The Committee intends to fully explore the extent and nature of the withheld documents—as well as the scope and sufficiency of the document search—at Mr. Scavino's scheduled deposition. If Mr. Scavino is to cure his non-compliance with the requirement to produce documents, **he must produce them by 12:00pm on Monday, November 29, 2021**.

Finally, as we previously communicated, the incumbent President, not former President Trump, is responsible for guarding executive privilege. *Trump v. Thompson*, No. 21-cv-2769 (D.D.C. Nov. 9, 2021), at p. 13, 20; *see also Dellums v. Powell*, 561 F.2d 242, 247 (D.C. Cir. 1977); *Nixon v. GSA*, 433 U.S. 425, 449 (1977). The incumbent President has expressly declined to assert executive privilege on a number of subjects on which the Select Committee has sought testimony or documents, and the district court has ruled that former President Trump's "assertion of privilege is outweighed by President Biden's decision not to uphold the privilege." *Trump v. Thompson*, No. 21-cv-2769 (D.D.C. Nov. 9, 2021), at p. 21; *see also* Doc. 21 (brief for the NARA defendants), Doc. 21-1 (Declaration of B. John Laster). Therefore, while we have made attempts to accommodate Mr. Scavino's concerns about privilege, he is no position to assert privilege on behalf of the executive branch.

Service of Subpoena

Finally, in your most recent letter sent on the eve of the scheduled deposition, you raised for the first time with the Select Committee an objection to the manner in which Mr. Scavino was served. Pursuant to House rule XI and House Resolution 503, the Select Committee is authorized "to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of books, records, correspondence, memoranda, papers, and documents as it considers necessary."[14] Further, section 5(c)(4) of House Resolution 503 provides that the Chairman of the Select Committee may "authorize and issue subpoenas pursuant to clause 2(m) of rule XI in the investigation and study" conducted pursuant to the enumerated purposes and functions of the Select Committee.[15]

The October 6, 2021, subpoena to Mr. Scavino was duly issued pursuant to section 5(c)(4) of House Resolution 503 and clause 2(m) of rule XI of the Rules of the House of Representatives.[16] The subpoena was served to Susan Wiles at Mar-a-Lago, Mr. Scavino's current place of employment. Ms. Wiles represented herself as Chief of Staff to former President Trump, with

[14] House Rule XI, cl. 2(m)(1)(B), 117th Cong. (2021); H. Res. 503, 117th Cong § 5(c)(4) (2021).
[15] H. Res. 503, 117th Cong § 5(c)(6) (2021).
[16] Section 5(c)(4) of H. Res. 503 invokes clause 2(m)(3)(A)(i) of rule XI, which states in pertinent part: "The power to authorize and issue subpoenas under subparagraph (1)(B) may be delegated to the chair of the committee under such rules and under such limitations as the committee may prescribe."

whom Mr. Scavino is still employed. She further represented that she was authorized to accept the subpoena on Mr. Scavino's behalf. Additionally, we have had no indication that you or your client are not in receipt of the subpoena and schedule. To the contrary, you have quoted extensively from the schedule, which is clearly within your possession. Nonetheless, the Select Committee is prepared to serve the subpoena on you as his counsel of record. Per your email of November 23, 2021, confirming that Mr. Scavino authorized you to accept service of the subpoena on his behalf, the Select Committee will provide you with a new subpoena by email this week reflecting the dates set forth in this letter.

Please confirm receipt of this letter, and **no later than 12:00pm on Monday, November 29**, confirm Mr. Scavino's intent to appear for his deposition on December 1. The Select Committee will view Mr. Scavino's failure to appear for the deposition and respond to the subpoena as willful non-compliance. His continued failure to produce documents pursuant to the subpoena also constitutes willful non-compliance. Mr. Scavino has a short time in which to cure his non-compliance. The continued, willful non-compliance with the subpoena would force the Select Committee to consider invoking 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

Exhibit 4 — Letter from Chairman Thompson to Counsel for Mr. Scavino (Feb. 4, 2022)

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.

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[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.

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[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) .

Exhibit 5 — Letter from White House Counsel to Counsel for Mr. Scavino (Mar. 15, 2022)

March 15, 2022

Stanley Woodward
Brand Woodward Law
[redacted]

Dear Mr. Woodward:

I write regarding a subpoena sent to your client, Daniel Scavino, Jr., former Assistant to the President and Director of Social Media, from the Select Committee to Investigate the January 6th Attack on the United States Capitol (the "Select Committee").

As you are aware, in light of unique and extraordinary nature of the matters under investigation, President Biden has determined that an assertion of executive privilege is not in the national interest, and therefore is not justified, with respect to particular subjects within the purview of the Select Committee. These subjects include: events within the White House on or about January 6, 2021; attempts to use the Department of Justice to advance a false narrative that the 2020 election was tainted by widespread fraud; and other efforts to alter election results or obstruct the transfer of power. President Biden accordingly has decided not to assert executive privilege as to Mr. Scavino's testimony regarding those subjects, or any documents he may possess that bear on them. For the same reasons underlying his decision on executive privilege, President Biden has determined that he will not assert immunity to preclude your client from testifying before the Select Committee.

In light of President Biden's determination not to assert executive privilege with respect Mr. Scavino's testimony, we are not requesting that agency counsel be permitted to attend his deposition. Should you have any questions about the issues addressed in this letter, please contact me at [redacted].

Sincerely,

Jonathan C. Su
Deputy Counsel to the President

cc: [redacted]
Select Committee to Investigate the January 6th Attack on the United States Capitol

Exhibit 6 — Subpoena to Daniel Scavino, Jr. (Sept. 23, 2021)

SUBPOENA

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

Daniel Scavino, Jr.

To _____

You are hereby commanded to be and appear before the

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

of the House of Representatives of the United States at the place, date, and time specified below.

☑ **to produce the things identified on the attached schedule** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: [redacted]

Date: October 7, 2021 Time: 10:00 a.m.

☑ **to testify at a deposition** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: [redacted]

Date: October 15, 2021 Time: 10:00 a.m.

☐ **to testify at a hearing** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____

Date: _____ Time: _____

To any authorized staff member or the United States Marshals Service

_____ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, D.C. this 23rd day of September, 2021

Chairman or Authorized Member

Attest:

Clerk

PROOF OF SERVICE

Subpoena for Daniel Scavino, Jr.

Address [redacted]

[redacted]

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

U.S. House of Representatives
117th Congress

Served by (print name) _____

Title _____

Manner of service _____

Date _____

Signature of Server _____

Address _____

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

September 23, 2021

Mr. Daniel J. Scavino, Jr.
[redacted]

Dear Mr. Scavino:

Pursuant to the authorities set forth in House Resolution 503 and the rules of the House of Representatives, the Select Committee to Investigate the January 6th Attack on the United States Capitol ("Select Committee") hereby transmits a subpoena that compels you to produce the documents set forth in the accompanying schedule by October 7, 2021, and to appear for a deposition on October 15, 2021.

The Select Committee is investigating the facts, circumstances, and causes of the January 6th attack and issues relating to the peaceful transfer of power, in order to identify and evaluate lessons learned and to recommend to the House and its relevant committees corrective laws, policies, procedures, rules, or regulations. The inquiry includes examination of how various individuals and entities coordinated their activities leading up to the events of January 6, 2021, and the messages, videos, and internet communications that were disseminated to the public concerning the election, the transition in administrations, and the constitutional and statutory processes that effect that transition.

The Select Committee has reason to believe that you have information relevant to understanding important activities that led to and informed the events at the Capitol on January 6, 2021, and relevant to former President Trump's activities and communications in the period leading up to and on January 6. For example, the Select Committee has reason to believe that you have knowledge regarding the communications strategy of the former President and his supporters leading up to the events on January 6. As the Deputy Chief of Staff for Communications, reporting indicates that you were with the former President on January 5, when he and others were considering how to convince Members of Congress not to certify the election for Joe Biden.[1] Your public Twitter account makes clear that you were tweeting messages from the White House on January 6, 2021.[2] And prior to January 6, 2021, you promoted, through your Twitter messaging, the January 6 March for Trump, which encouraged people to "be a part of history."[3] Your long service with the former President—spanning more than a decade and which included service as his digital strategy director, overseeing his social media presence, including on Twitter— suggest that you have knowledge concerning communications involving the 2020 presidential election and rallies and activities supporting and including the former President on January 6.

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[1] BOB WOODWARD & ROBERT COSTA, PERIL at 231 (2021).

[2] *E.g.*, Dan Scavino[American flag][eagle] (@DanScavino), Twitter (Jan. 6, 2021, 11:12 AM, from The White House), https://twitter.com/DanScavino/status/1346584866964598785?s=20; Dan Scavino[American flag][eagle] (@DanScavino), Twitter (Jan. 6, 2021, 10:50 AM, from The White House), https://twitter.com/danscavino/status/1346846609905168385?lang=en.

[3] Dan Scavino[American flag][eagle] (@DanScavino), Twitter (Jan. 2, 2021, 9:04 PM), https://twitter.com/DanScavino/status/1345551501440245762?s=20.

It also appears that you were with or in the vicinity of former President Trump on January 6 and are a witness regarding his activities that day. You may also have materials relevant to his videotaping and tweeting messages on January 6. Accordingly, the Select Committee seeks both documents and your deposition testimony regarding these and other matters that are within the scope of the Select Committee's inquiry.

A copy of the rules governing Select Committee depositions, and a copy of document production definitions and instructions are attached. Please contact staff for the Select Committee at [redacted] to arrange for the production of documents.

Sincerely,

Bennie G. Thompson
Chairman

SCHEDULE

In accordance with the attached Definitions and Instructions, you, Mr. Daniel Scavino, Jr., are hereby required to produce all documents and communications in your possession, custody, or control control—including any such documents or communications stored or located on personal devices (e.g., personal computers, cellular phones, tablets, etc.), in personal or campaign accounts, and/or on personal or campaign applications (e.g., email accounts, contact lists, calendar entries, etc.)— referring or relating to the following items. If no date range is specified below, the applicable dates are for the time period April 1, 2020-present.

1. The January 6, 2021, rally on the mall and Capitol grounds in Washington, D.C., in support of President Donald J. Trump and opposition to certification of the results of the 2020 presidential election, including any permitting, planning, objectives, financing, and conduct, as well as any communications to or from any person or group involved in organizing or planning for the January 6, 2021, rally.

2. Then-President Trump's participation in the January 6, 2021, rally, including any communications with President Trump or any paid or unpaid attorney, advisor, assistant, or aide to President Trump relating to the nature, context, or content of President Trump's intended or actual remarks to those attending the January 6, 2021, rally.

3. Communications referring or relating to the nature, planning, conduct, message, purpose, objective, promotion of, or participation in the January 6, 2021, rally that were between or among any person who, during the Administration of former President Trump, worked in the White House complex, including any employee or detailee.

4. Your communications with President Donald J. Trump concerning delaying or preventing the certification of the election of Joe Biden as President or relating to the rallies of January 5 or January 6, 2021.

5. Plans to communicate, or actual communications, relating to alleged fraud or other election irregularities in connection with the 2020 presidential election.

6. Communications with any non-governmental entity, organization, or individual relating to the January 6, 2021, rally, including any statements or other materials you or members of your office provided to any such entity, organization, or individual in connection with the planning, objectives, organization, message of, sponsorship and participation in the January 6, 2021, rally.

7. All communications regarding President Trump's meetings and communications that day.

8. Communications with any individual or organization, within or outside the government, referring or related to the activities and events at the January 6, 2021, rally, including messaging or characterization of those activities and events following the January 6, 2021, rally.

9. Any communications with, including any materials or statements you provided directly or indirectly to, any Member of Congress or the staff of any Member of Congress referring or related to the planning, objectives, organization, message, sponsorship, or participation in the January 6, 2021, rally.

10. Anyone with whom you communicated by any means regarding any aspect of the planning, objectives, conduct, message of, promotion of, or participation in the January 6, 2021, rally.

11. From November 3, 2020, through January 6, 2021, any efforts, plans, or proposals to contest the 2020 Presidential election results or delay, influence, or impede the electoral count, including all tweets or posts on Parler urging attendance at the January 6 rally.

12. The role of the Vice President as the Presiding Officer in the certification of the votes of the electoral college.

13. All briefings or information from the United States Secret Service regarding participants at the January 6 rally on the Ellipse or the march to Capitol Hill, and all information relating to any plans or statements by President Trump that he would attend or participate in the events on Capitol Hill on January 6.

14. All communications with the Trump family on January 6, 2021.

15. All materials relating to former President Trump's videotaped messages on January 6 or regarding January 6, including all unused takes or recordings made that day.

DOCUMENT PRODUCTION DEFINITIONS AND INSTRUCTIONS

1. In complying with this request, produce all responsive documents, regardless of classification level, that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.

2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Select Committee to Investigate the January 6th Attack on the United States Capitol ("Committee').

3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.

4. The Committee's preference is to receive documents in a protected electronic form (i.e., password protected CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions. With specific reference to classified material, you will coordinate with the Committee's Security Officer to arrange for the appropriate transfer of such information to the Committee. This includes, but is not necessarily limited to: a) identifying the classification level of the responsive document(s); and b) coordinating for the appropriate transfer of any classified responsive document(s).

5. Electronic document productions should be prepared according to the following standards:

   a. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

   b. All electronic documents produced to the Committee should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

      BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.

8. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.

9. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.

10. The pendency of or potential for litigation shall not be a basis to withhold any information.

11. In accordance with 5 U.S.C.§ 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.

12. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.

13. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production, as well as a date certain as to when full production will be satisfied.

14. In the event that a document is withheld on any basis, provide a log containing the following information concerning any such document: (a) the reason it is being withheld, including, if applicable, the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the withholding.

15. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control. Additionally, identify where the responsive document can now be found including name, location, and contact information of the entity or entities now in possession of the responsive document(s).

16. If a date or other descriptive detail set forth in this request referring to a document

is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

17. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.

18. All documents shall be Bates-stamped sequentially and produced sequentially.

19. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and
(2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of classification level, how recorded, or how stored/displayed (e.g. on a social media platform) and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, computer or mobile device screenshots/screen captures, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, through a social media or online platform, or otherwise.

3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.

4. The term "including" shall be construed broadly to mean "including, but not limited to."

5. The term "Company" means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.

6. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; (b) the individual's business or personal address and phone number; and (c) any and all known aliases.

7. The term "related to" or "referring or relating to," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.

8. The term "employee" means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, assignee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.

9. The term "individual" means all natural persons and all persons or entities acting on their behalf.

health, safety, and well-being of others present in the Chamber and surrounding areas. Members and staff will not be permitted to enter the Hall of the House without wearing a mask. Masks will be available at the entry points for any Member who forgets to bring one. The Chair views the failure to wear a mask as a serious breach of decorum. The Sergeant-at-Arms is directed to enforce this policy. Based upon the health and safety guidance from the attending physician and the Sergeant-at-Arms, the Chair would further advise that all Members should leave the Chamber promptly after casting their votes. Furthermore, Members should avoid congregating in the rooms leading to the Chamber, including the Speaker's lobby. The Chair will continue the practice of providing small groups of Members with a minimum of 5 minutes within which to cast their votes. Members are encouraged to vote with their previously assigned group. After voting, Members must clear the Chamber to allow the next group a safe and sufficient opportunity to vote. It is essential for the health and safety of Members, staff, and the U.S. Capitol Police to consistently practice social distancing and to ensure that a safe capacity be maintained in the Chamber at all times. To that end, the Chair appreciates the cooperation of Members and staff in preserving order and decorum in the Chamber and in displaying respect and safety for one another by wearing a mask and practicing social distancing. All announced policies, including those addressing decorum in debate and the conduct of votes by electronic device, shall be carried out in harmony with this policy during the pendency of a covered period.

117TH CONGRESS REGULATIONS FOR USE OF DEPOSITION AUTHORITY

COMMITTEE ON RULES,
HOUSE OF REPRESENTATIVES,
Washington, DC, January 4, 2021.

Hon. NANCY PELOSI,
Speaker, House of Representatives,
Washington, DC.

MADAM SPEAKER: Pursuant to section 3(b) of House Resolution 8, 117th Congress, I hereby submit the following regulations regarding the conduct of depositions by committees and select committee counsel for printing in the Congressional Record.

Sincerely,

JAMES P. MCGOVERN,
Chairman, Committee on Rules.

REGULATIONS FOR THE USE OF DEPOSITION AUTHORITY

1. Notices for the taking of depositions shall specify the date, time, and place of examination. Depositions shall be taken under oath administered by a member or a person otherwise authorized to administer oaths. Depositions may continue from day to day.

2. Consultation with the ranking minority member shall include three days' notice before any deposition is taken. All members of the committee shall also receive three days written notice that a deposition will be taken, except in exigent circumstances. For purposes of these procedures, a day shall not include Saturdays, Sundays, or legal holidays except when the House is in session on such a day.

3. Witnesses may be accompanied at a deposition by personal, nongovernmental counsel to advise them of their rights. Only members, committee staff designated by the chair or ranking minority member, an official reporter, the witness, and the witness's counsel are permitted to attend. Observers or counsel for other persons, including counsel for government agencies, may not attend.

4. The chair of the committee noticing the deposition may designate that deposition as part of a joint investigation between committees, and in that case, provide notice to the members of the committees. If such a designation is made, the chair and ranking minority member of the additional committee(s) may designate committee staff to attend pursuant to regulation 3. Members and designated staff of the committees may attend and ask questions as set forth below.

5. A deposition shall be conducted by any member or committee counsel designated by the chair or ranking minority member of the Committee that noticed the deposition. When depositions are conducted by committee counsel, there shall be no more than two committee counsel permitted to question a witness per round. One of the committee counsel shall be designated by the chair and the other by the ranking minority member per round.

6. Deposition questions shall be propounded in rounds. The length of each round shall not exceed 60 minutes per side, and shall provide equal time to the majority and the minority. In each round, the member(s) or committee counsel designated by the chair shall ask questions first, and the member(s) or committee counsel designated by the ranking minority member shall ask questions second.

7. Objections must be stated concisely and in a non-argumentative and non-suggestive manner. A witness's counsel may not instruct a witness to refuse to answer a question, except to preserve a privilege. In the event of professional, ethical, or other misconduct by the witness's counsel during the deposition, the Committee may take any appropriate disciplinary action. The witness may refuse to answer a question only to preserve a privilege. When the witness has refused to answer a question to preserve a privilege, members or staff may (I) proceed with the deposition, or (II) either at that time or at a subsequent time, seek a ruling from the Chair either by telephone or otherwise. If the Chair overrules any such objection and thereby orders a witness to answer any question to which an objection was lodged, the witness shall be ordered to answer. If a member of the committee chooses to appeal the ruling of the chair, such appeal must be made within three days, in writing, and shall be preserved for committee consideration. The Committee's ruling on appeal shall be filed with the clerk of the Committee and shall be provided to the members and witness no less than three days before the reconvened deposition. A deponent who refuses to answer a question after being directed to answer by the chair may be subject to sanction, except that no sanctions may be imposed if the ruling of the chair is reversed by the committee on appeal.

8. The Committee chair shall ensure that the testimony is either transcribed or electronically recorded or both. If a witness's testimony is transcribed, the witness or the witness's counsel shall be afforded an opportunity to review a copy. No later than five days after the witness has been notified of the opportunity to review the transcript, the witness may submit suggested changes to the chair. Committee staff may make any typographical and technical changes. Substantive changes, modifications, clarifications, or amendments to the deposition transcript submitted by the witness must be accompanied by a letter signed by the witness requesting the changes and a statement of the witness's reasons for each proposed change. Any substantive changes, modifications, clarifications, or amendments shall be included as an appendix to the transcript conditioned upon the witness signing the transcript.

9. The individual administering the oath, if other than a member, shall certify on the transcript that the witness was duly sworn. The transcriber shall certify that the transcript is a true record of the testimony, and the transcript shall be filed, together with any electronic recording, with the clerk of the committee in Washington, DC. Depositions shall be considered to have been taken in Washington, DC, as well as the location actually taken once filed there with the clerk of the committee for the committee's use. The chair and the ranking minority member shall be provided with a copy of the transcripts of the deposition at the same time.

10. The chair and ranking minority member shall consult regarding the release of deposition testimony, transcripts, or recordings, and portions thereof. If either objects in writing to a proposed release of a deposition testimony, transcript, or recording, or a portion thereof, the matter shall be promptly referred to the committee for resolution.

11. A witness shall not be required to testify unless the witness has been provided with a copy of section 3(b) of H. Res. 8, 117th Congress, and these regulations.

REMOTE COMMITTEE PROCEEDINGS REGULATIONS PURSUANT TO HOUSE RESOLUTION 8, 117TH CONGRESS

COMMITTEE ON RULES,
HOUSE OF REPRESENTATIVES,
Washington, DC, January 4, 2021.

Hon. NANCY PELOSI,
Speaker, House of Representatives,
Washington, DC.

MADAM SPEAKER: Pursuant to section 3(s) of House Resolution 8, 117th Congress, I hereby submit the following regulations regarding remote committee proceedings for printing in the CONGRESSIONAL RECORD.

Sincerely,

JAMES P. MCGOVERN,
Chairman,
Committee on Rules.

REMOTE COMMITTEE PROCEEDINGS REGULATIONS PURSUANT TO HOUSE RESOLUTION 8

A. PRESENCE AND VOTING

1. Members participating remotely in a committee proceeding must be visible on the software platform's video function to be considered in attendance and to participate unless connectivity issues or other technical problems render the member unable to fully participate on camera (except as provided in regulations A.2 and A.3).

2. The exception in regulation A.1 for connectivity issues or other technical problems does not apply if a point of order has been made that a quorum is not present. Members participating remotely must be visible on the software platform's video function in order to be counted for the purpose of establishing a quorum.

3. The exception in regulation A.1 for connectivity issues or other technical problems does not apply during a vote. Members participating remotely must be visible on the software platform's video function in order to vote.

4. Members participating remotely off-camera due to connectivity issues or other technical problems pursuant to regulation A.1 must inform committee majority and minority staff either directly or through staff.

5. The chair shall make a good faith effort to provide every member experiencing connectivity issues an opportunity to participate fully in the proceedings, subject to regulations A.2 and A.3.

health, safety, and well-being of others present in the Chamber and surrounding areas. Members and staff will not be permitted to enter the Hall of the House without wearing a mask. Masks will be available at the entry points for any Member who forgets to bring one. The Chair views the failure to wear a mask as a serious breach of decorum. The Sergeant-at-Arms is directed to enforce this policy. Based upon the health and safety guidance from the attending physician and the Sergeant-at-Arms, the Chair would further advise that all Members should leave the Chamber promptly after casting their votes. Furthermore, Members should avoid congregating in the rooms leading to the Chamber, including the Speaker's lobby. The Chair will continue the practice of providing small groups of Members with a minimum of 5 minutes within which to cast their votes. Members are encouraged to vote with their previously assigned group. After voting, Members must clear the Chamber to allow the next group a safe and sufficient opportunity to vote. It is essential for the health and safety of Members, staff, and the U.S. Capitol Police to consistently practice social distancing and to ensure that a safe capacity be maintained in the Chamber at all times. To that end, the Chair appreciates the cooperation of Members and staff in preserving order and decorum in the Chamber and in displaying respect and safety for one another by wearing a mask and practicing social distancing. All announced policies, including those addressing decorum in debate and the conduct of votes by electronic device, shall be carried out in harmony with this policy during the pendency of a covered period.

117TH CONGRESS REGULATIONS FOR USE OF DEPOSITION AUTHORITY

COMMITTEE ON RULES,
HOUSE OF REPRESENTATIVES,
Washington, DC, January 4, 2021.

Hon. NANCY PELOSI,
Speaker, House of Representatives,
Washington, DC.

MADAM SPEAKER: Pursuant to section 3(b) of House Resolution 8, 117th Congress, I hereby submit the following regulations regarding the conduct of depositions by committees and select committee counsel for printing in the Congressional Record.

Sincerely,

JAMES P. MCGOVERN,
Chairman, Committee on Rules.

REGULATIONS FOR THE USE OF DEPOSITION AUTHORITY

1. Notices for the taking of depositions shall specify the date, time, and place of examination. Depositions shall be taken under oath administered by a member or a person otherwise authorized to administer oaths. Depositions may continue from day to day.

2. Consultation with the ranking minority member shall include three days' notice before any deposition is taken. All members of the committee shall also receive three days written notice that a deposition will be taken, except in exigent circumstances. For purposes of these procedures, a day shall not include Saturdays, Sundays, or legal holidays except when the House is in session on such a day.

3. Witnesses may be accompanied at a deposition by personal, nongovernmental counsel to advise them of their rights. Only members, committee staff designated by the chair or ranking minority member, an official reporter, the witness, and the witness's counsel are permitted to attend. Observers or counsel for other persons, including counsel for government agencies, may not attend.

4. The chair of the committee noticing the deposition may designate that deposition as part of a joint investigation between committees, and in that case, provide notice to the members of the committees. If such a designation is made, the chair and ranking minority member of the additional committee(s) may designate committee staff to attend pursuant to regulation 3. Members and designated staff of the committees may attend and ask questions as set forth below.

5. A deposition shall be conducted by any member or committee counsel designated by the chair or ranking minority member of the Committee that noticed the deposition. When depositions are conducted by committee counsel, there shall be no more than two committee counsel permitted to question a witness per round. One of the committee counsel shall be designated by the chair and the other by the ranking minority member per round.

6. Deposition questions shall be propounded in rounds. The length of each round shall not exceed 60 minutes per side, and shall provide equal time to the majority and the minority. In each round, the member(s) or committee counsel designated by the chair shall ask questions first, and the member(s) or committee counsel designated by the ranking minority member shall ask questions second.

7. Objections must be stated concisely and in a non-argumentative and non-suggestive manner. A witness's counsel may not instruct a witness to refuse to answer a question, except to preserve a privilege. In the event of professional, ethical, or other misconduct by the witness's counsel during the deposition, the Committee may take any appropriate disciplinary action. The witness may refuse to answer a question only to preserve a privilege. When the witness has refused to answer a question to preserve a privilege, members or staff may (I) proceed with the deposition, or (II) either at that time or at a subsequent time, seek a ruling from the Chair either by telephone or otherwise. If the Chair overrules any such objection and thereby orders a witness to answer any question to which an objection was lodged, the witness shall be ordered to answer. If a member of the committee chooses to appeal the ruling of the chair, such appeal must be made within three days, in writing, and shall be preserved for committee consideration. The Committee's ruling on appeal shall be filed with the clerk of the Committee and shall be provided to the members and witness no less than three days before the reconvened deposition. A deponent who refuses to answer a question after being directed to answer by the chair may be subject to sanction, except that no sanctions may be imposed if the ruling of the chair is reversed by the committee on appeal.

8. The Committee chair shall ensure that the testimony is either transcribed or electronically recorded or both. If a witness's testimony is transcribed, the witness or the witness's counsel shall be afforded an opportunity to review a copy. No later than five days after the witness has been notified of the opportunity to review the transcript, the witness may submit suggested changes to the chair. Committee staff may make any typographical and technical changes. Substantive changes, modifications, clarifications, or amendments to the deposition transcript submitted by the witness must be accompanied by a letter signed by the witness requesting the changes and a statement of the witness's reasons for each proposed change. Any substantive changes, modifications, clarifications, or amendments shall be included as an appendix to the transcript conditioned upon the witness signing the transcript.

9. The individual administering the oath, if other than a member, shall certify on the transcript that the witness was duly sworn. The transcriber shall certify that the transcript is a true record of the testimony, and the transcript shall be filed, together with any electronic recording, with the clerk of the committee in Washington, DC. Depositions shall be considered to have been taken in Washington, DC, as well as the location actually taken once filed there with the clerk of the committee for the committee's use. The chair and the ranking minority member shall be provided with a copy of the transcripts of the deposition at the same time.

10. The chair and ranking minority member shall consult regarding the release of deposition testimony, transcripts, or recordings, and portions thereof. If either objects in writing to a proposed release of a deposition testimony, transcript, or recording, or a portion thereof, the matter shall be promptly referred to the committee for resolution.

11. A witness shall not be required to testify unless the witness has been provided with a copy of section 3(b) of H. Res. 8, 117th Congress, and these regulations.

REMOTE COMMITTEE PROCEEDINGS REGULATIONS PURSUANT TO HOUSE RESOLUTION 8, 117TH CONGRESS

COMMITTEE ON RULES,
HOUSE OF REPRESENTATIVES,
Washington, DC, January 4, 2021.

Hon. NANCY PELOSI,
Speaker, House of Representatives,
Washington, DC.

MADAM SPEAKER: Pursuant to section 3(s) of House Resolution 8, 117th Congress, I hereby submit the following regulations regarding remote committee proceedings for printing in the CONGRESSIONAL RECORD.

Sincerely,

JAMES P. MCGOVERN,
Chairman,
Committee on Rules.

REMOTE COMMITTEE PROCEEDINGS REGULATIONS PURSUANT TO HOUSE RESOLUTION 8

A. PRESENCE AND VOTING

1. Members participating remotely in a committee proceeding must be visible on the software platform's video function to be considered in attendance and to participate unless connectivity issues or other technical problems render the member unable to fully participate on camera (except as provided in regulations A.2 and A.3).

2. The exception in regulation A.1 for connectivity issues or other technical problems does not apply if a point of order has been made that a quorum is not present. Members participating remotely must be visible on the software platform's video function in order to be counted for the purpose of establishing a quorum.

3. The exception in regulation A.1 for connectivity issues or other technical problems does not apply during a vote. Members participating remotely must be visible on the software platform's video function in order to vote.

4. Members participating remotely off-camera due to connectivity issues or other technical problems pursuant to regulation A.1 must inform committee majority and minority staff either directly or through staff.

5. The chair shall make a good faith effort to provide every member experiencing connectivity issues an opportunity to participate fully in the proceedings, subject to regulations A.2 and A.3.

Exhibit 7 — Letter from Counsel for Mr. Scavino to Chairman Thompson (Nov. 5, 2021)

BRAND | WOODWARD
Attorneys at Law

Stan M. Brand
[redacted]

Stanley E. Woodward Jr.
[redacted]

November 5, 2021

VIA ELECTRONIC MAIL

The Honorable Bennie G. Thompson
Chairman
Select Committee to Investigate the January 6th Attack on the United States Capitol
U.S. House of Representatives
Washington, District of Columbia 20515

Re: Daniel J. Scavino, Jr.

Dear Chairman Thompson:

We write on behalf of our client, Daniel J. Scavino, Jr. in response to your October 6, 2021, subpoena for records to Mr. Scavino as well as pursuant to our October 20, 2021, October 27, 2021, November 3, 2021, email correspondence with your Staff.

Specifically, you advise: "The Select Committee has reason to believe that [Mr. Scavino] [has] information relevant to understanding important activities that led to and informed the events at the Capitol on January 6, 2021, and relevant to former President Trump's activities and communications in the period leading up to and on January 6." As you are aware, in the period leading up to and on January 6, Mr. Scavino served as senior advisor and Deputy Chief of Staff for Communications to President Trump. As such, the Committee's subpoena requests records related to the communications between and among President Trump and his close advisors – information protected by the executive privilege so as to "safeguard[] the public interest in candid, confidential deliberations within the Executive Branch," and "information subject to the greatest protection consistent with the fair administration of justice." *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2024 (2020) (quoting *United States v. Nixon*, 418 U.S. 683, 715 (1974)) (internal quotations omitted).

To that end, we are aware that on August 25, 2021, the Committee also issued a subpoena to the National Archives and Records Administration seeking records from the Executive Office of the President. On October 8, 2021, President Trump, pursuant to the Presidential Records Act, 44 U.S.C. §§ 2201-2209, and Executive Order No. 13489, advised the Archivist of his formal assertion of executive privilege with respect to the limited number of documents then identified by the Archivist as responsive to the Committee's

subpoena, as well as a protective assertion of executive privilege over any additional materials that may be identified as responsive by the Archivist or otherwise requested by the Committee. Then, on October 18, 2021, President Trump filed suit in the United States Federal District Court for the District of Columbia seeking, *inter alia*, a declaratory judgment recognizing the valid assertion of the executive privilege as well as an injunction enjoining the Archivist from providing such privileged records pursuant to its subpoena. Complaint, *Trump v. Thompson*, No. 1:21-cv-02769 (D.D.C. Oct. 18, 2021) (ECF No. 01). President Trump's legal challenge remains pending as of the date of this correspondence.

The Committee's subpoena for President Trump's records thus presents legitimate separation of powers concerns and exactly the type of interbranch conflict that the Supreme Court acknowledged requiring "careful analysis that takes adequate account of the separation of powers principles at stake, including both the significant legislative interests of Congress and the 'unique position' of the President." *Mazars*, 140 S. Ct. at 2035.

Moreover, our understanding is that any records responsive to the Committee's subpoena to Mr. Scavino are records that would have been generated or otherwise received in his official capacity as a senior advisor to and as Deputy Chief of Staff for Communications to President Trump. These records, accordingly, were provided to the National Archives and Records Administration upon Mr. Scavino's separation from the White House. The Committee's subpoena to Mr. Scavino therefore seeks the same records for which President Trump has asserted executive privilege and places Mr. Scavino in the center of this interbranch conflict. That Mr. Scavino, now a *private citizen*, is *also* in the possession, custody, or control of any duplicate records, does not otherwise resolve the interbranch conflict created by the assertion of executive privilege by a former President. *See Mazars*, 140 S.Ct. at 2035 ("[S]eparation of powers concerns are no less palpable . . . simply because the subpoenas were issued to third parties.").

Mr. Scavino's production of records responsive to the Committee's subpoena would therefore interfere with President Trump's assertion of executive privilege and would serve to inadvertently moot the legal claims validly asserted by President Trump. *See, e.g.*, Saikrishna Prakash, Trump is Right: Former Presidents Can Assert Executive Privilege, *The Washington Post* (Oct. 29, 2021) ("Had Biden quickly released the documents after receiving the request, the privilege claim would have been moot and a suit would have been pointless."). Indeed, this is consistent with the President's own directive to Mr. Scavino that he "not produce any documents concerning [his] official duties in response to the Subpoena" and to invoke all applicable privileges and immunities protecting such records from production pursuant to your subpoena. A copy of this correspondence is attached for your reference. Mr. Scavino can therefore not be compelled to produce such records until a determination of the applicability of President Trump's assertion of Executive Privilege is fully and finally litigated. *See United States v. Bryan*, 339 U.S. 323, 330 (1950) ("Ordinarily, one charged with contempt of court for failure to comply with a court order makes a complete defense by proving that he is unable to comply."). *See also United States ex rel.*

Touhy v. Ragen, 340 U.S. 462 466-467 (1951) (holding that a subordinate acting in pursuance of valid regulation prohibiting disclosure was justified in refusing to comply with a subpoena).

As we have discussed with your Staff, our review of Mr. Scavino's records is ongoing. We have agreed to continue to advise your Staff of the progress of our review and acknowledge the possibility that there may be records within Mr. Scavino's possession, custody, or control that were not generated or otherwise received in Mr. Scavino's professional capacity as senior advisor to or Deputy Chief of Staff for Communications to President Trump. To the extent such records exist, or to the extent of a final adjudication on the merits of President Trump's assertion of the executive privilege issues, we expressly reserve Mr. Scavino's right to assert any other applicable privilege or other objection to the Committee's subpoena. We note, for example, that the House Counsel has made broad assertions of pertinence as to the specific records at issue. While we are not at this time in a position to fully assess those assertions given that the scope of potentially responsive records remains undefined, we are mindful that Congress's access to information is subject to several limitations and any subpoena it issues is valid only if it is "related to, and in furtherance of, a legitimate task of the Congress." *Watkins v. United States*, 354 U.S. 178, 215 (1957) ("It is obvious that a person compelled to make this choice is entitled to have knowledge of the subject to which the interrogation is deemed pertinent. That knowledge must be available with the same degree of explicitness and clarity that the Due Process Clause requires in the expression of any element of a criminal offense.").

Should you have any questions, please do not hesitate to contact us.

Sincerely,

Stan M. Brand

Stanley E. Woodward Jr.

ELECTIONS, LLC

Attorneys at Law
Justin R. Clark
[redacted]

October 6, 2021

Mr. Dan Scavino
[redacted]

Dear Mr. Scavino:

I write in reference to a subpoena, dated September 23, 2021, by the Select Committee to Investigate the January 6th Attack on the United States Capitol (the "Select Committee"), that was issued to you (the "Subpoena"). The Subpoena requests that you produce documents by October 7, 2021, and appear for a deposition on October 15, 2021. While it is obvious that the Select Committee's obsession with President Trump is merely a partisan attempt to distract from the disastrous Biden administration (*e.g.*, the embarrassing withdrawal from Afghanistan, the overwhelming flood of illegal immigrants crossing our southern border, and growing inflation), President Trump vigorously objects to the overbreadth and scope of these requests and believes they are a threat to the institution of the Presidency and the independence of the Executive Branch.

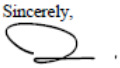
Through the Subpoena, the Select Committee seeks records and testimony purportedly related to the events of January 6th, 2021, including but not limited to information which is unquestionably protected from disclosure by the executive and other privileges, including among others the presidential communications, deliberative process, and attorney-client privileges. President Trump is prepared to defend these fundamental privileges in court. Furthermore, President Trump believes that you are immune from compelled congressional testimony on matters related to your official responsibilities. *See Testimonial Immunity Before Congress of the Former Counsel to the President*, 43 Op. O.L.C. (May 20, 2019), *available at* https://www.justice.gov/olc/opinions-main.

Therefore, to the fullest extent permitted by law, President Trump instructs you to: (a) where appropriate, invoke any immunities and privileges you may have from compelled testimony in response to the Subpoena; (b) not produce any documents concerning your official duties in response to the Subpoena; and (c) not provide any testimony concerning your official duties in response to the Subpoena.

[redacted]

Thank you for your attention to this matter. Please do not hesitate to contact me, or have your counsel contact me, if you have any questions or would like to discuss.

Sincerely,



Justin Clark
Counsel to President Trump

Exhibit 8 — Letter from Chairman Thompson to Counsel for Mr. Scavino (Nov. 9, 2021)

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

November 9, 2021

Mr. Stanley E. Woodward, Jr.
[redacted]

Dear Mr. Woodward:

The Select Committee to Investigate the January 6th Attack ("Select Committee") is in receipt of your November 5, 2021, letter regarding the subpoena for documents and testimony served on your client, Daniel J. Scavino, Jr. (the "subpoena"). The letter represents that while you are still reviewing Mr. Scavino's records, you believe that "any records responsive to the Committee's subpoena to Mr. Scavino are records that would have been generated or otherwise received in his official capacity" and archived by the National Archives and Records Administration. You then assert that Mr. Scavino is therefore unable to provide the documents because President Donald J. Trump is contesting the release of documents and has instructed Mr. Scavino to "not produce any documents concerning [his] official duties in response to the Subpoena."

You have since communicated to Select Committee staff on November 7, 2021, that you are not currently aware of any responsive documents that fall outside the scope of President Trump's assertion of executive privilege, but that your review is ongoing. You further represented that Mr. Scavino is still considering whether he can provide deposition testimony regarding any topics outside of a claim of executive privilege.

Mr. Scavino was originally served his subpoena on October 8, 2021, and was required to provide documents by October 21 and appear for testimony on October 28. At your request, the Select Committee has twice extended the deadlines for production and testimony, ultimately demanding documents by November 5 and testimony on November 12.

First, regarding documents, you suggest that Mr. Scavino has some responsive documents that you are declining to produce pursuant to instruction from President Trump. If Mr. Scavino has responsive documents that he believes are covered by an applicable privilege, please provide a privilege log that specifically identifies each document and each privilege that he believes applies, so that the Select Committee can evaluate whether any additional actions are appropriate. Categorical claims of executive privilege are improper, and any claim of executive privilege must be asserted narrowly and specifically. *See, e.g.*, *In re Sealed Case (Espy)*, 121 F.3d 729 (D.C. Cir. 1997); *Comm. on Oversight & Gov't Reform v. Holder*, No. 12-cv-1332, 2014 WL 12662665, at *2 (D.D.C. Aug. 20, 2014) (rejecting a "blanket" executive-privilege claim over subpoenaed documents). We also note that the Select Committee has subpoenaed all communications including those conducted on Mr. Scavino's personal social media or other accounts and with outside parties

whose inclusion in a communication with Mr. Scavino would mean that no executive privilege claim can be applicable to such communications.

Second, with respect to Mr. Scavino's deposition, the Select Committee appreciates your apparent willingness to work with us to identify areas of inquiry that are clearly outside any claim of executive privilege. To that end, we will provide further information about the topics we intend to develop with Mr. Scavino during the deposition. You indicated that you intend to meet with your client on November 10, 2021, to discuss whether Mr. Scavino will testify as to any of the below topics. Though the Select Committee reserves the right to question Mr. Scavino about other topics, at present, the Select Committee plans to question Mr. Scavino about his knowledge, actions, and communications, including communications involving Mr. Trump and others, with respect to the following:

(1) Campaign-related activities, including efforts to count, not count, or audit votes, as well as discussions about election-related matters with state and local officials.

(2) Meetings or other communications involving people who did not work for the United States government regarding efforts to overturn the results of the 2020 election. This includes, but is not limited to, an Oval Office meeting on December 18, at which Mr. Trump, Michael Flynn, Patrick Byrne, and others reportedly discussed campaign-related steps that Mr. Trump purportedly could take to change the outcome of the November 2020 election and remain in office for a second term, such as seizing voting machines, litigating, and appointing a special counsel. It also includes communications with organizers of the January 6 rally like Amy Kremer of Women for America First.

(3) Advance knowledge of, and any preparations for, the possibility of violence during rallies and/or protests in Washington, D.C. related to the 2020 election results.

(4) Meetings or communications regarding campaign-related planning and activities at the Willard Hotel, planning and preparation for Mr. Trump's speech at the Ellipse, Mr. Trump and other White House officials' actions and communications during and after the attack on the U.S. Capitol, including contact with members of Congress, law enforcement, the Department of Defense, and other federal agencies to address or respond to the attack.

(5) Mr. Scavino's roles and responsibilities in the White House, and, if applicable, the 2020 Trump campaign.

(6) Messaging to or from the White House, Trump reelection campaign, party officials, and others about purported fraud, irregularities, or malfeasance in the November 2020 election. This includes, but is not limited to, Mr. Trump's and others frequent use of the "Stop the Steal" slogan, even after lawsuits, investigations, public reporting, discussions with agency heads, and internally created documents revealed that there had not been widespread election fraud.

(7) Messaging to or from Mr. Scavino's personal social media, email, or phone regarding any of the topics discussed herein in this list of 18 items.

(8) White House officials' understanding of purported election-related fraud, irregularities, or malfeasance in the November 2020 election.

(9) Efforts to pressure federal agencies, including the Department of Justice, to take actions to challenge the results of the presidential election, advance allegations of voter fraud, interfere with Congress's count of the Electoral College vote, or otherwise overturn President Biden's certified victory. This includes, but is not limited to, Mr. Trump and others' efforts to use the Department of Justice to investigate alleged election-related conduct, file lawsuits, propose that state legislatures take election-related actions, or replace senior leadership. It also includes similar efforts at other agencies such as the Department of Homeland Security, the Department of Defense, and, among others, the Cybersecurity and Infrastructure Security Agency.

(10) Efforts to pressure state and local officials and entities, including state attorneys general, state legislators, and state legislatures, to take actions to challenge the results of the presidential election, advance unsubstantiated allegations of voter fraud, interfere with Congress's count of the Electoral College vote, de-certify state election results, appoint alternate slates of electors, or otherwise overturn President Biden's certified victory. This includes, but is not limited to, an Oval Office meeting that reportedly occurred with legislators from Michigan, as well as a January 2, 2021, call with, among others, state officials, members of Congress, and Mr. Trump.

(11) Theories and strategies regarding Congress and the Vice President's (as President of the Senate) roles and responsibilities when counting the Electoral College vote. This includes, but is not limited to, the theories and/or understandings of John Eastman, Mark Martin, former Vice President Pence, and others.

(12) Efforts to pressure former Vice President Pence, members of his staff, and members of Congress to delay or prevent certification of the Electoral College vote. This includes, but is not limited to, meetings between, or including, the former Vice President, Mr. Trump, John Eastman, members of Congress, and others.

(13) Communications and meetings with members of Congress about the November 2020 election, purported election fraud, actual or proposed election-related litigation, and election-related rallies and/or protests. This includes, but is not limited to, a December 21, 2021, meeting involving Mr. Trump, members of his legal team, and members of the House and Senate, during which attendees discussed objecting to the November 2020 election's certified Electoral College votes as part of an apparent fight "against mounting evidence of voter fraud."

(14) Efforts by federal officials, including White House staff, Mr. Trump, the Trump reelection campaign, and members of Congress to plan or organize rallies and/or protests in Washington, D.C. related to the 2020 election results, including, but not limited to, the January 6 rally on the Ellipse. This includes, but is not limited to, Mr.

Scavino's planned appearance as a speaker at the rally and his communications with outside parties regarding that appearance.

(15) The possibility of invoking martial law, the Insurrection Act, or the 25th Amendment based on election-related issues or the events in the days leading up to, and including, January 6.

(16) Mr. Scavino's activities in generating social media content and monitoring social media for President Trump, including, but not limited to, his monitoring of social media sites like Reddit, Twitter, Facebook, Gab, and theDonald.win. This includes, but is not limited to, Mr. Scavino's knowledge of far-right memes, coded language, and whether or how some domestic violent extremist groups such as the Proud Boys interpreted messages from President Trump and other officials.

(17) The preservation or destruction of any information relating to the facts, circumstances, and causes relating to the attack of January 6th, including any such information that may have been stored, generated, or destroyed on personal electronic devices.

(18) Documents and information, including the location of such documents and information, that are responsive to the Select Committee's subpoena. This includes, but is not limited to, information stored on electronic devices that Mr. Scavino uses and has used.

As our investigation continues, we may develop additional information about the above-described areas or identify additional subjects about which we will seek information from your client.

We believe that these topics either do not implicate any cognizable claim of executive privilege or raise issues for which the Select Committee's need for the information is sufficiently compelling that it overcomes any such claim. To that end, **please provide your input on the topics that the Select Committee has reiterated by way of this letter no later than Thursday, November 11**. If there are areas listed above that you agree implicate no executive or other privilege, please identify those areas. Conversely, please articulate which privilege you believe applies to each area and how it is implicated. Our hope is that this process will sharpen our differences on privilege issues and allow us to develop unobjectionable areas promptly.

Mr. Scavino's deposition, scheduled for November 12, can proceed with a clearer understanding of our respective positions on these topics, and we can move one step closer towards the resolution of outstanding issues.

Finally, it is worth emphasizing an additional point specifically addressed in the pending litigation involving the National Archives. The incumbent President is responsible for guarding executive privilege, not former officials. *See Dellums v. Powell*, 561 F.2d 242, 247 (D.C. Cir. 1977); *see also Nixon v. GSA*, 433 U.S. 425, 449 (1977) (even the one residual privilege that a former president might assert, the communications privilege, exists "for the benefit of the Republic," rather than for the former "President as an individual"). With respect to the Select Committee's work, the incumbent President has expressly declined to assert executive privilege on a number of subjects on which the Select Committee has sought testimony or documents. *See*

Trump v. Thompson, Case No. 1:21-cv-2769 (TSC), Doc. 21 (brief for the NARA defendants); *see also* Doc. 21-1 (Declaration of B. John Laster).

The accommodations process regarding potential claims of executive privilege is a process engaged in between the Executive Branch and the Legislative Branch. *See Trump v. Mazars USA LLP*, 140 S. Ct. 2019, 2030-31 (2020). Mr. Scavino represents neither. Nevertheless, we have in good faith considered your concerns and have proposed a course of action that reflects both that consideration and the Select Committee's urgent need for information.

Our hope is that this description of topics allows us to narrow the list of potentially disputed issues and move forward with Mr. Scavino's deposition.

Sincerely,

Bennie G. Thompson
Chairman

Exhibit 9 — Letter from Counsel for Mr. Scavino to Chairman Thompson (Nov. 15, 2021)

BRAND | WOODWARD
Attorneys at Law

Stan M. Brand
[redacted]

Stanley E. Woodward Jr.
[redacted]

November 15, 2021

VIA ELECTRONIC MAIL

The Honorable Bennie G. Thompson
Chairman
Select Committee to Investigate the January 6th Attack on the United States Capitol
U.S. House of Representatives
Washington, District of Columbia 20515

Re: Daniel J. Scavino, Jr.

Dear Chairman Thompson:

We are in receipt of your November 9, 2021, correspondence as well as the email correspondence from your Staff of the same day advising that the Select Committee will extend the deadline within which Mr. Scavino is to provide documents responsive to its October 6, 2021, subpoena until today, November 15, 2021.

Specifically, your November 9, 2021, correspondence advised that: "If Mr. Scavino has responsive documents that he believes are covered by an applicable privilege, please provide a privilege log that specifically identifies each document and each privilege that he believes applies so that the Select Committee can evaluate whether any additional actions are appropriate." You further advised that the Select Committee "subpoenaed all communications including those conducted on Mr. Scavino's personal social media or other accounts and with outside parties whose inclusion in a communication with Mr. Scavino would mean that no executive privilege claim can be applicable to such communications."

As we advised in our correspondence of November 5, 2021, the Select Committee's subpoena necessarily seeks communications between and among President Trump and his close advisors – information protected by the executive privilege. *See Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2024 (2020) ([E]xecutive privilege safeguards the public interest in candid, confidential deliberations within the Executive Branch. . . .") This privilege exists to ensure "the President's access to honest and informed advice and his ability to explore possible policy options *privately* are critical elements in presidential decisionmaking." *In re Sealed Case (Espy)*, 121 F.3d 729, 751 (D.C. Cir. 1997) (emphasis added). Indeed, the communication need not be directed at or by the President, and by extension need not be known to the President, so long as authored or solicited by "presidential advisors in the

course of preparing advice for the President." *Id.* at 752. For this reason, we submit that the production of a privilege log, as demanded by the Select Committee, would undermine the private, or otherwise confidential nature of advice given by or to the President and his advisors and we are aware of no authority to the contrary. *See Comm. on the Judiciary v. Miers*, 558 F. Supp. 2d 53, 107 ("[I]n the absence of an applicable statute or controlling case law, the Court does not have a ready ground by which to *force* the Executive to make such a production strictly in response to a congressional subpoena.").

So as to foster further discussion and the continued collaboration with you and your Staff, and to provide "some way to evaluate assertions going forward," *id.*, Mr. Scavino identifies the following categories of records over which an assertion of executive privilege is being made:

- Communications between Mr. Scavino and "those members of an immediate White House adviser's staff who have broad and significant responsibility for investigating and formulating the advice to be given the President on the particular matter to which the communications relate," *see In re Sealed Case (Espy)*, 121 F.3d at 752;

- Communications between Mr. Scavino and non-Government third-parties related to Mr. Scavino's service as a close advisor to President Trump "in the course of preparing advice for the President," *id.* at 751-752; *see also id.* at 752 ("Given the need to provide sufficient elbow room for advisers to obtain information *from all knowledgeable sources*, the privilege must apply both to communications which these advisors *solicited and received from others* as well as those they authored themselves." (emphasis added)); and

- Communications between Mr. Scavino and Members of Congress related to Mr. Scavino's service as a close advisor to President Trump "in the course of preparing advice for the President," *id.* at 751-752.

As articulated in our correspondence of November 5, 2021, because President Trump has identified sensitive information that he deems subject to executive privilege, "his doing so gives rise to a legal duty on the part of the aide to invoke the privilege on the President's behalf . . ." *Comm. on the Judiciary v. McGahn*, 415 F. Supp. 3d 148, 213 n.34 (D.D.C. 2019).

To that end, we also note that Mr. Scavino served as a close advisor to the President – Deputy Chief of Staff for Communications – regardless of whether the communications in question were sent or received on a personal device or through a personal social media or other account. As we advised in our November 5, 2021, correspondence, while we believe any official communications that were received (or sent) from a personal device or social media account would have separately been provided to the National Archives for

preservation, we will promptly advise the Select Committee should we become aware of any communications not in the possession of the Archivist. As of the date of this correspondence, however, we remain unaware of any records identified by the Archivist as responsive to the Select Committee's subpoena that are sent by or to Mr. Scavino. And we are not otherwise aware of any communications that Mr. Scavino sent or received in his personal capacity that are responsive to the Select Committee's request.

Once again, we expressly reserve Mr. Scavino's right to assert any other applicable privilege or other objection to the Select Committee's subpoena. We note, for example, that the House Counsel has made broad assertions of pertinence as to the specific records at issue. While we are not at this time in a position to fully assess those assertions given that the scope of potentially responsive records remains undefined, we are mindful that Congress's access to information is subject to several limitations and any subpoena it issues is valid only if it is "related to, and in furtherance of, a legitimate task of the Congress." Watkins v. United States, 354 U.S. 178, 215 (1957) ("It is obvious that a person compelled to make this choice is entitled to have knowledge of the subject to which the interrogation is deemed pertinent. That knowledge must be available with the same degree of explicitness and clarity that the Due Process Clause requires in the expression of any element of a criminal offense.").

Please do not hesitate to contact us with any questions or concerns.

Sincerely,

Stan M. Brand

Stanley E. Woodward Jr.

Exhibit 10 — Letter from Counsel for Mr. Scavino to Chairman Thompson (Nov. 18, 2021)

BRAND | WOODWARD
Attorneys at Law

Stan M. Brand
[redacted]

Stanley E. Woodward Jr.
[redacted]

November 18, 2021

VIA ELECTRONIC MAIL

The Honorable Bennie G. Thompson
Chairman
Select Committee to Investigate the January 6th Attack on the United States Capitol
U.S. House of Representatives
Washington, District of Columbia 20515

Re: Daniel J. Scavino, Jr.

Dear Chairman Thompson:

On behalf of our client, Daniel J. Scavino, Jr., we write regarding your October 6, 2021, subpoena for Mr. Scavino to testify at a deposition; your November 9, 2021, correspondence identifying additional "matters of inquiry" for Mr. Scavino's deposition, as well as the email correspondence from your Staff of November 9, 2021, advising that the Select Committee will extend the time for which Mr. Scavino is to appear at a deposition to November 19, 2021. Further, your staff asked that we advise the Select Committee by today, November 18, 2021, *at noon*, whether Mr. Scavino intends to appear for a deposition on November 19.

For the reasons set forth in this correspondence, we submit that Mr. Scavino cannot meaningfully appear for a deposition on Friday, November 19, 2021. As we have previously advised your Staff, the breadth of the "matters of inquiry" identified in your October 6 subpoena as well as your November 9 correspondence make it difficult for us to sufficiently prepare Mr. Scavino to present competent testimony or to ensure that he has adequate representation at such a deposition. Of note, although we invited your Staff to engage with us so as to "hone in on a subset of topics that can be prioritized," we received no response to this invitation.

Instead, the "matters of inquiry" identified within you November 9 correspondence greatly increased the effort necessary to ensure Mr. Scavino's preparedness. Although your October 6 subpoena identified fifteen (15) "items" that are "touching matters of inquiry committed" to the Select Committee, your November 9 correspondence identified an additional eighteen (18) "topics" the Select Committee advised that it "intend[ed] to develop with Mr. Scavino during [his] deposition."

Of note, the "topics" identified by your November 9 correspondence *expand* upon the breadth of the matters of inquiry identified in your October 6 subpoena. Your October 6 subpoena advises that: "The Select Committee has reason to believe that [Mr. Scavino] ha[s] information relevant to understanding important activities that led to and informed the events at the Capitol on

January 6, 2021, and relevant to former President Trump's activities and communications in the period leading up to and on January 6." The "topics" identified in your subpoena then generally reference the events of January 6.

Your November 9 correspondence, however, advises that the Select Committee intends to "develop" with Mr. Scavino "[t]he possibility of invoking . . . the 25th Amendment based on election-related issues or the events in the days leading up to, and including January 6." This one "topic" alone exceeds the breadth of the "matters of inquiry" identified in your October 6 subpoena and requires careful consideration of a plethora if issues implicated by the proposed exploration of this subject. What's more, your November 9 correspondence goes on to advise that you intend to "develop" with Mr. Scavino his "activities in generating social media content and monitoring social media for President Trump" as well as Mr. Scavino's knowledge of "far-right memes, coded language, and whether or how some domestic violent extremist groups such as the Proud Boys interpreted messages from President Trump and other officials." Here again, the scope of the Select Committee's "matters of inquiry" is unbounded and we cannot efficiently address with Mr. Scavino or the Select Committee an appropriate path toward resolving the inter-branch conflict implicated by this "topic." Similarly, your November 9 correspondence identifies as a "matter of inquiry" "[t]heories or strategies regarding Congress and the Vice President's (as President of the Senate) roles and responsibilities when counting the Electoral College vote," a subject not previously identified within your October 6 subpoena.

In summary, your October 9 subpoena makes no reference to the 25th Amendment, Mr. Scavino's social media "activities" as well as knowledge of "far-right memes [or] coded language," or "theories or strategies" regarding the role of the Vice President in the Electoral College vote, to name just a few examples. Rather, these are "topics" that grossly expand upon the breadth of the "matters of inquiry" identified in your subpoena and exacerbate the difficulty of preparing Mr. Scavino for a deposition on such short notice. Finally, as if this task were not already sufficiently challenging, your November 9 correspondence advises that "the Select Committee reserves the right to question Mr. Scavino about other topics" as well.

We acknowledge the important subject matter of the Select Committee's work and have expressed to your Staff a presumed mutual desire to ensure that witnesses appearing before the Select Committee are adequately prepared to provide competent testimony. The importance of that task is heightened by the inter-branch conflict presented by the Select Committee's solicitation of information subject to Executive Branch privilege – a privilege recognized by our first president when he refused to provide information to the House, explaining that "the boundaries fixed by the Constitution between the different departments should be preserved." Pres. George Washington, Message to the House Regarding Documents Relative to the Jay Treaty (Mar. 30, 1796). This centuries-old privilege serves the purpose, as recently delineated by the Supreme Court, to "safeguard[] the public interest in candid, confidential deliberations within the Executive Branch," and covers "information subject to the greatest protection consistent with the fair administration of justice." *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2024 (2020) (quoting *United States v. Nixon*, 418 U.S. 683, 715 (1974)) (internal quotations omitted). *See also In re Sealed Case (Espy)*, 121 F.3d 729, 751 (D.C. Cir. 1997) (holding that "the President's access to honest and informed advice and his ability to explore possible policy options privately are critical elements in presidential

decisionmaking" and recognizing an executive privilege applicable to "communications made by presidential advisers in the course of preparing advice of the President").

Moreover, because President Trump has directed Mr. Scavino to "invoke any immunities and privileges [Mr. Scavino] may have from compelled testimony . . . to the fullest extent permitted by law," Mr. Scavino has a "a legal duty on the part of the aide to invoke the privilege on the President's behalf . . . ." *Comm. on the Judiciary v. McGahn*, 415 F. Supp. 3d 148, 213 n.34 (D.D.C. 2019). We submit that it would be irresponsible for Mr. Scavino to prematurely resolve President Trump's privilege claim by voluntarily waiving privilege and providing testimony implicating the heart of the legal questions at issue. Rather, such inter-branch disputes are to exclusively be resolved by the courts. *See United States v. Nixon*, 418 U.S. 683, 696 (1974) ("We therefore reaffirm that it is the province and duty of [the Supreme Court] 'to say what the law is' with respect to the claim of [executive privilege].'" (*quoting Marbury v. Madison*, 5 U.S. 1 (Cranch) 137, 177 (1803)). We thus continue to monitor the litigation initiated by President Trump and now before the D.C. Circuit *see Trump v. Thompson*, No. 21-5254 (D.C. Cir.), and welcome the opportunity to further discuss the application of the executive privilege to Mr. Scavino's testimony upon receipt of a final order on the merits of this claim. We also acknowledge that the House may, and has, sought judicial resolution of a contested claim of executive privilege, *see Committee on the Judiciary of the House of Reps. v. McGahn*, 965 F.3d 755, 762 (D.C. Cir. 2020) (*en banc*), and that so doing here would not be inappropriate given the potential for current litigation to address only the application of privilege to records.

In addition to the significant issue of the application of executive privilege to Mr. Scavino's potential testimony, we also wish to express concerns about the pertinency of the Committee's stated "matters of inquiry." While we reiterate our acknowledgement of the important subject matter of the Select Committee's work, we also respect the provenance of the U.S. Congress and its role in our co-equal branches of government. We specifically raise this issue prior to resolving the valid application of executive privilege to any potential testimony so as to provide the Select Committee with an opportunity to address our concerns.

Specifically, our review of House Resolution 503 provides no indication that the Select Committee was bestowed with broad or otherwise limitless jurisdiction to investigate. We submit that it does not, because it can not. Our federal courts have plainly held that the jurisdiction of Congressional committees is necessarily limited. *See, e.g., United States v. Kamin*, 136 F. Supp. 791 802 n.4 (D. Mass 1956) (rejecting an interpretation of legislative committee jurisdiction that "would be enormous"). Congress's broad "power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function." *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927). Accordingly, Congress and its duly authorized committees may issue a subpoena where the information sought "is related to, and in furtherance of, a legitimate task of Congress," *Watkins v. United States*, 354 U.S. 178, 187 (1957), and the subpoena serves a "valid legislative purpose." *Quinn v. United States*, 349 U.S. 155, 161 (1955).

The "valid legislative purpose" requirement stems directly from the Constitution. *Kilbourn*, 103 U.S. at 168, 182-89 (1880). "The powers of Congress . . . are dependent solely on the Constitution," and "no express power in that instrument" allows Congress to investigate individuals or to issue boundless records requests. *Id.* The Constitution instead permits Congress to enact certain kinds of legislation, *see, e.g.*, U.S. Const. art. I, § 8, and Congress's power to investigate "is

justified as an adjunct to the legislative process, it is subject to several limitations." *Mazars*, 140 S. Ct. at 2031. These limitations include that Congress may not issue a subpoena for the purposes of "law enforcement" because "those powers are assigned under our Constitution to the Executive and the Judiciary," *Quinn*, 349 U.S. at 161, or to "try" someone "of any crime or wrongdoing, *McGrain*, 273 U.S. at 179; nor does Congress have any "general power to inquire into private affairs and compel disclosure," *McGrain*, 273 U.S. at 173-74, or the "power to expose for the sake of exposure," *Watkins*, 354 U.S. at 200. Also importantly, Congressional investigations "conducted solely for the personal aggrandizement of the investigators or to 'punish' those investigated are indefensible." *Watkins*, 354 U.S. at 187, *Mazars*, 140 S. Ct. at 2032.

We are especially troubled by the representation of the legislative purpose of the Select Committee as made by Mr. Douglas Letter on behalf of the U.S. House of Representatives. *See* H'ng T., *Trump v. Thompson*, No. 21-cv-002769 (Nov. 4, 2021). With respect to the Select Committee's legislative purpose, Mr. Letter stated:

> [W]e need to figure out what was the atmosphere that brought . . . about [the events of January 6, including] the many attempts that were made before the election to try to build the nature of mistrust about the election itself, which goes to undermine our democracy, so that if President Trump did lose he would be able to say that his is unfair and to generate lots of anger and rage that led to January 6.

H'ng T. at 40. Contrary to Mr. Letter's assertion, courts have made clear that educating the public is not a valid congressional function. Specifically, the Supreme Court has held that when Congress claims that it is "the duty of Members to tell the public about their activities . . . the transmittal of such information by individual Members in order to inform the public and other Members is not part of the legislative or the deliberations that make up the legislative process." *Hutchinson v. Proxmire*, 443 U.S. 111, 113 (1979). Similarly, congressional investigators have no authority to "collect minutiae on remote topics, on the hypothesis that the past may reflect upon the present." *Watkins*, 354 U.S. at 187.

Mr. Letter goes on to hypothesize as to legislative ends that could be achieved by the Select Committee:

> For example, should we amend the Election Counting Act. Should there be restrictions possibly on ways that federal officials can try to influence state officials to change election results. Should we increase the resources of various committees and bodies who are gathering information. Should we increase resources, for, you know, something that I think has been done many, many decades, rebuilding the confidence of the American people in the election process and our democracy.

H'ng T. at 43. The wide range of *potential* legislative ends cited by Mr. Letter, however, undermine the Select Committee's purported narrowly tailored stated purpose. This one issue is sufficient to defeat any claim of legitimate pertinence. Where, as here, the Select Committee has threatened referrals of criminal contempt, *see* Thompson & Cheney Statement on Bannon Indictment (Nov. 12, 2021) ("Steve Bannon's indictment should send a clear message to anyone who thinks they can ignore the Select Committee or try to stonewall our investigation: no one is above the law. We will not hesitate to use the tools at our disposal to get the information we need."), the Supreme Court

has admonished that the legislative committees are Constitutionally obligated to demonstrate the pertinence of the questions posed to its witnesses with the "explicitness and clarity that the Due Process clause [of the Constitution] requires." *Watkins*, 354 U.S. at 209. As the Court held: "The more vague the committee's charter, the greater becomes the possibility that the committee's specific actions are not in conformity with the will of the parent House of Congress." *Id.* at 201.

Mr. Scavino is thus faced with the precise issue confronted by the Supreme Court in *Watkins*: "It is impossible . . . to ascertain whether any legislative purpose justifies the disclosure sought and, if so, the importance of that information to the Congress in furtherance of its legislative function." *Id.* at 206. In light of the public commentary by Mr. Letter and the Select Committee Members, the legislative purpose of the Select Committee is anything but explicit. Therefore, to facilitate Mr. Scavino's preparation for the provision of competent testimony, we respectfully request the Select Committee furnish an explanation as to how any desired "matter of inquiry" falls within the jurisdiction vested by Congress. Absent further explanation, we submit that the Select Committee has sacrificed its ability to enforce its subpoena. As the Supreme Court observed in *Watkins*: "The reason no court can make this critical judgment [concerning jurisdiction] is that the House of Representatives has never made it." *Id.*

* * *

Finally, we would be remiss were we not to address the Select Committee's public threat to hold in contempt those that do not meet its exacting demands. *See* Katie Benner and Luke Broadwater, Bannon Indicted on Contempt Charges Over House's Capitol Riot Inquiry, *The New York Times* (Nov. 12, 2021) (quoting Rep. Jamie Raskin: "It's great to have a Department of Justice that's back in business . . . I hope other friends of Donald Trump get the message . . . ."). Although Mr. Scavino desires to continue to foster a productive dialogue with your Staff in an effort to identify valid "matters of inquiry" that would produce competent testimony, we feel compelled to highlight significant procedural deficiencies in the Select Committee's threats to refer Mr. Scavino for contempt for asserting legitimate legal challenges to your October 6 subpoena.

First, to our knowledge, Mr. Scavino has not been properly served with the subpoena at issue. Contrary to House Rules, Mr. Scavino was neither handed a copy of the subpoena nor did he waive service of the subpoena. Rather, the subpoena was delivered to a member of President Trump's staff. Indeed, although we are aware of media claims that Mr. Scavino was somehow "evading" service, *see* Ryan Nobles, Zachary Cohen, and Annie Grayer, House Committee Investigating January 6 Can't Find Trump Aide to Serve Subpoena (Oct. 6, 2021), prior to the delivery of the subpoena to Mar-a-Lago on or about October 8, 2021, we are aware of no prior attempts to serve Mr. Scavino with the subpoena (and it bears noting that all visitors to Mar-a-Lago are identified to the U.S. Secret Service).

Second, we do not believe the Select Committee as constituted can validly conduct a deposition. House regulations for the use of deposition authority provide that any committee deposition is to be conducted "in rounds" with "equal time [provided] to the majority and the minority." These regulations further provide that, "[a] deposition shall be conducted by any member or committee counsel designated by the chair or ranking minority member of the Committee that noticed the deposition." 2 Cong. Rec. H41 (daily ed. Jan. 4, 2021) (117th Cong. Reg. for use of Deposition Authority). While we have no desire to enter the political theatre that has

engulfed the important subject matter of the Select Committee's work, we nevertheless must acknowledge the unprecedented refusal of the Speaker of the House to sit the Minority Leader's recommendation for Ranking Member of the Select Committee. We submit that the House regulations do not contemplated this unprecedented decision and absent a duly appointed Ranking Member to the Select Committee it is literally impossible for Mr. Scavino to be questioned by a "member or committee counsel designated by the . . . ranking minority member."

Because of these procedural deficiencies, the Select Committee has sacrificed its ability to enforce its subpoena. As the Supreme Court has held: "[T]he competence of the tribunal must be proved as an independent element of the crime. If the competence is not shown, the crime of perjury is not established regardless of whether the witness relied on the absence of a quorum." *United States v. Reinecke*, 524 F.2d 435, (D.C. Cir. 1975) (citing *Christoffel v. United States*, 338 U.S. 84, 90 (1949). *See Christoffel*, 338 U.S. at 90 ("A tribunal that is not competent is no tribunal, and it is unthinkable that such a body can be the instrument of criminal conviction."). The principal that a Congressional committee must adhere to applicable Rules in pursuit of the enforcement of its subpoenas has similarly resulted in convictions for contempt of congress being overturned. *See Yellin v. United States*, 734 U.S. 109, (reversing conviction for contempt of congress where the Congressional committee failed to adhere to its own rules: "The Committee prepared the groundwork for prosecution in Yellin's case meticulously. It is not too exacting to require that the Committee be equally meticulous in obeying its own rules.").

We further submit that the Select Committee is not without recourse. The House took the relatively unprecedent step of bestowing upon the Select Committee the authority of the Chair "to compel by subpoena the furnishing of information by interrogatory." H. Res. 503 § 5(c)(5). As we have stated repeatedly, we acknowledge the important subject matter of the Select Committee's work and welcome the opportunity to identify "some way to evaluate assertions going forward." *Comm. On the Judiciary v. Miers*, 558 F. Supp. 2d 53, 107 (D.D.C. 2008). Given the complex and unprecedented nature of privilege and pertinency issues the Select Committee's inquiry implicates, the submission of written questions may enable Mr. Scavino, with the assistance of counsel, to parse this critically important vestige of the doctrine of Separation of Powers.

Please do not hesitate to contact us should you wish to discuss.

Sincerely,

Stan M. Brand

Stanley E. Woodward Jr.

Exhibit 11 — Subpoena to Daniel Scavino, Jr. (Nov. 23, 2021)

SUBPOENA

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To Mr. Daniel Scavino, Jr.

You are hereby commanded to be and appear before the

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

of the House of Representatives of the United States at the place, date, and time specified below.

☑ **to produce the things identified on the attached schedule** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: [redacted]

Date: November 29, 2021 Time: 12:00 p.m.

☑ **to testify at a deposition** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: [redacted]

Date: December 1, 2021 Time: 10:00 a.m.

☐ **to testify at a hearing** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____

Date: _____ Time _____

To any authorized staff member or the United States Marshals Service

to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, D.C. this 23 day of November, 2021.

Bennie G. Thompson

Chairman or Authorized Member

Attest: Kevin McCarthy

Clerk

PROOF OF SERVICE

Subpoena for
Mr. Daniel Scavino, Jr.
Address via email to: [redacted]

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

U.S. House of Representatives
117th Congress

Served by (print name) [redacted]
Title [redacted]
Manner of service via email to Mr. Scavino's counsel at [redacted]
Date
Signature of Server
Address Select Committe to Investigate January 6th, [redacted]
Washington, DC 20515

One Hundred Seventeenth Congress

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

November 23, 2021

Mr. Daniel J. Scavino, Jr.
c/o Mr. Stanley E. Woodward
Via e-mail to [redacted]

Dear Mr. Scavino:

Pursuant to the authorities set forth in House Resolution 503 and the rules of the House of Representatives, the Select Committee to Investigate the January 6th Attack on the United States Capitol ("Select Committee") hereby transmits a subpoena that compels you to produce the documents set forth in the accompanying schedule by November 29, 2021, and to appear for a deposition on December 1, 2021.

The Select Committee is investigating the facts, circumstances, and causes of the January 6th attack and issues relating to the peaceful transfer of power, in order to identify and evaluate lessons learned and to recommend to the House and its relevant committees corrective laws, policies, procedures, rules, or regulations. The inquiry includes examination of how various individuals and entities coordinated their activities leading up to the events of January 6, 2021, and the messages, videos, and internet communications that were disseminated to the public concerning the election, the transition in administrations, and the constitutional and statutory processes that effect that transition.

The Select Committee has reason to believe that you have information relevant to understanding important activities that led to and informed the events at the Capitol on January 6, 2021, and relevant to former President Trump's activities and communications in the period leading up to and on January 6. For example, the Select Committee has reason to believe that you have knowledge regarding the communications strategy of the former President and his supporters leading up to the events on January 6. As the Deputy Chief of Staff for Communications, reporting indicates that you were with the former President on January 5, when he and others were considering how to convince Members of Congress not to certify the election for Joe Biden.[1] Your public Twitter account makes clear that you were tweeting messages from the White House on January 6, 2021.[2] And prior to January 6, 2021, you promoted, through your Twitter messaging, the January 6 March for Trump, which encouraged people to "be a part of history."[3] Your long service with the former President—spanning more than a decade and which included service as his digital strategy director, overseeing his social media presence, including on Twitter—

[1] Bob Woodward & Robert Costa, Peril at 231 (2021).
[2] *E.g.*, Dan Scavino (@DanScavino), Twitter (Jan. 6, 2021, 11:12 AM, from The White House), https://twitter.com/DanScavino/status/1346584866964598785?s=20; Dan Scavino[American flag][eagle] (@DanScavino), Twitter (Jan. 6, 2021, 10:50 AM, from The White House), https://twitter.com/danscavino/status/1346846609905168385?lang=en
[3] Dan Scavino (@DanScavino), Twitter (Jan. 2, 2021, 9:04 PM), https://twitter.com/DanScavino/status/1345551501440245762?s=20

suggest that you have knowledge concerning communications involving the 2020 presidential election and rallies and activities supporting and including the former President on January 6. It also appears that you were with or in the vicinity of former President Trump on January 6 and are a witness regarding his activities that day. You may also have materials relevant to his videotaping and tweeting messages on January 6. Accordingly, the Select Committee seeks both documents and your deposition testimony regarding these and other matters that are within the scope of the Select Committee's inquiry.

A copy of the rules governing Select Committee depositions, and a copy of document production definitions and instructions are attached. Please contact staff for the Select Committee at [redacted] to arrange for the production of documents.

Sincerely,

Bennie G. Thompson
Chairman

SCHEDULE

In accordance with the attached definitions and instructions, you, Mr. Daniel Scavino, Jr., are hereby required to produce all documents and communications in your possession, custody, or control control—including any such documents or communications stored or located on personal devices (e.g., personal computers, cellular phones, tablets, etc.), in personal or campaign accounts, and/or on personal or campaign applications (e.g., email accounts, contact lists, calendar entries, etc.)— referring or relating to the following items. If no date range is specified below, the applicable dates are for the time period April 1, 2020-present.

1. The January 6, 2021, rally on the mall and Capitol grounds in Washington, D.C., in support of President Donald J. Trump and opposition to certification of the results of the 2020 presidential election, including any permitting, planning, objectives, financing, and conduct, as well as any communications to or from any person or group involved in organizing or planning for the January 6, 2021, rally.

2. Then-President Trump's participation in the January 6, 2021, rally, including any communications with President Trump or any paid or unpaid attorney, advisor, assistant, or aide to President Trump relating to the nature, context, or content of President Trump's intended or actual remarks to those attending the January 6, 2021, rally.

3. Communications referring or relating to the nature, planning, conduct, message, purpose, objective, promotion of, or participation in the January 6, 2021, rally that were between or among any person who, during the administration of former President Trump, worked in the White House complex, including any employee or detailee.

4. Your communications with President Donald J. Trump concerning delaying or preventing the certification of the election of Joe Biden as President or relating to the rallies of January 5 or January 6, 2021.

5. Plans to communicate, or actual communications, relating to alleged fraud or other election irregularities in connection with the 2020 presidential election.

6. Communications with any non-governmental entity, organization, or individual relating to the January 6, 2021, rally, including any statements or other materials you or members of your office provided to any such entity, organization, or individual in connection with the planning, objectives, organization, message of, sponsorship and participation in the January 6, 2021, rally.

7. All communications regarding President Trump's meetings and communications that day.

8. Communications with any individual or organization, within or outside the government, referring or related to the activities and events at the January 6, 2021, rally, including messaging or characterization of those activities and events following the January 6, 2021, rally.

9. Any communications with, including any materials or statements you provided directly or indirectly to, any Member of Congress or the staff of any Member of Congress referring or related to the planning, objectives, organization, message, sponsorship, or participation in the January 6, 2021, rally.

10. Anyone with whom you communicated by any means regarding any aspect of the planning, objectives, conduct, message of, promotion of, or participation in the January 6, 2021, rally.

11. From November 3, 2020, through January 6, 2021, any efforts, plans, or proposals to contest the 2020 Presidential election results or delay, influence, or impede the electoral count, including all tweets or posts on Parler urging attendance at the January 6 rally.

12. The role of the Vice President as the Presiding Officer in the certification of the votes of the electoral college.

13. All briefings or information from the United States Secret Service regarding participants at the January 6 rally on the Ellipse or the march to Capitol Hill, and all information relating to any plans or statements by President Trump that he would attend or participate in the events on Capitol Hill on January 6.

14. All communications with the Trump family on January 6, 2021.

15. All materials relating to former President Trump's videotaped messages on January 6 or regarding January 6, including all unused takes or recordings made that day.

DOCUMENT PRODUCTION DEFINITIONS AND INSTRUCTIONS

1. In complying with this request, produce all responsive documents, regardless of classification level, that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.

2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Select Committee to Investigate the January 6th Attack on the United States Capitol ("Committee').

3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.

4. The Committee's preference is to receive documents in a protected electronic form (i.e., password protected CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions. With specific reference to classified material, you will coordinate with the Committee's Security Officer to arrange for the appropriate transfer of such information to the Committee. This includes, but is not necessarily limited to: a) identifying the classification level of the responsive document(s); and b) coordinating for the appropriate transfer of any classified responsive document(s).

5. Electronic document productions should be prepared according to the following standards:

   a. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

   b. All electronic documents produced to the Committee should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

      BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.

8. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.

9. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.

10. The pendency of or potential for litigation shall not be a basis to withhold any information.

11. In accordance with 5 U.S.C.§ 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.

12. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.

13. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production, as well as a date certain as to when full production will be satisfied.

14. In the event that a document is withheld on any basis, provide a log containing the following information concerning any such document: (a) the reason it is being withheld, including, if applicable, the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the withholding.

15. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control. Additionally, identify where the responsive document can now be found including name, location, and contact information of the entity or entities now in possession of the responsive document(s).

16. If a date or other descriptive detail set forth in this request referring to a document

is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

17. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.

18. All documents shall be Bates-stamped sequentially and produced sequentially.

19. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and
(2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of classification level, how recorded, or how stored/displayed (e.g. on a social media platform) and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, computer or mobile device screenshots/screen captures, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, through a social media or online platform, or otherwise.

3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.

4. The term "including" shall be construed broadly to mean "including, but not limited to."

5. The term "Company" means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.

6. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; (b) the individual's business or personal address and phone number; and (c) any and all known aliases.

7. The term "related to" or "referring or relating to," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.

8. The term "employee" means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, assignee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.

9. The term "individual" means all natural persons and all persons or entities acting on their behalf.

health, safety, and well-being of others present in the Chamber and surrounding areas. Members and staff will not be permitted to enter the Hall of the House without wearing a mask. Masks will be available at the entry points for any Member who forgets to bring one. The Chair views the failure to wear a mask as a serious breach of decorum. The Sergeant-at-Arms is directed to enforce this policy. Based upon the health and safety guidance from the attending physician and the Sergeant-at-Arms, the Chair would further advise that all Members should leave the Chamber promptly after casting their votes. Furthermore, Members should avoid congregating in the rooms leading to the Chamber, including the Speaker's lobby. The Chair will continue the practice of providing small groups of Members with a minimum of 5 minutes within which to cast their votes. Members are encouraged to vote with their previously assigned group. After voting, Members must clear the Chamber to allow the next group a safe and sufficient opportunity to vote. It is essential for the health and safety of Members, staff, and the U.S. Capitol Police to consistently practice social distancing and to ensure that a safe capacity be maintained in the Chamber at all times. To that end, the Chair appreciates the cooperation of Members and staff in preserving order and decorum in the Chamber and in displaying respect and safety for one another by wearing a mask and practicing social distancing. All announced policies, including those addressing decorum in debate and the conduct of votes by electronic device, shall be carried out in harmony with this policy during the pendency of a covered period.

117TH CONGRESS REGULATIONS FOR USE OF DEPOSITION AUTHORITY

COMMITTEE ON RULES,
HOUSE OF REPRESENTATIVES,
Washington, DC, January 4, 2021.

Hon. NANCY PELOSI,
Speaker, House of Representatives,
Washington, DC.

MADAM SPEAKER: Pursuant to section 3(b) of House Resolution 8, 117th Congress, I hereby submit the following regulations regarding the conduct of depositions by committee and select committee counsel for printing in the Congressional Record.

Sincerely,

JAMES P. MCGOVERN,
Chairman, Committee on Rules.

REGULATIONS FOR THE USE OF DEPOSITION AUTHORITY

1. Notices for the taking of depositions shall specify the date, time, and place of examination. Depositions shall be taken under oath administered by a member or a person otherwise authorized to administer oaths. Depositions may continue from day to day.

2. Consultation with the ranking minority member shall include three days' notice before any deposition is taken. All members of the committee shall also receive three days written notice that a deposition will be taken, except in exigent circumstances. For purposes of these procedures, a day shall not include Saturdays, Sundays, or legal holidays except when the House is in session on such a day.

3. Witnesses may be accompanied at a deposition by personal, nongovernmental counsel to advise them of their rights. Only members, committee staff designated by the chair or ranking minority member, an official reporter, the witness, and the witness's counsel are permitted to attend. Observers or counsel for other persons, including counsel for government agencies, may not attend.

4. The chair of the committee noticing the deposition may designate that deposition as part of a joint investigation between committees, and in that case, provide notice to the members of the committees. If such a designation is made, the chair and ranking minority member of the additional committee(s) may designate committee staff to attend pursuant to regulation 3. Members and designated staff of the committees may attend and ask questions as set forth below.

5. A deposition shall be conducted by any member or committee counsel designated by the chair or ranking minority member of the Committee that noticed the deposition. When depositions are conducted by committee counsel, there shall be no more than two committee counsel permitted to question a witness per round. One of the committee counsel shall be designated by the chair and the other by the ranking minority member per round.

6. Deposition questions shall be propounded in rounds. The length of each round shall not exceed 60 minutes per side, and shall provide equal time to the majority and the minority. In each round, the member(s) or committee counsel designated by the chair shall ask questions first, and the member(s) or committee counsel designated by the ranking minority member shall ask questions second.

7. Objections must be stated concisely and in a non-argumentative and non-suggestive manner. A witness's counsel may not instruct a witness to refuse to answer a question, except to preserve a privilege. In the event of professional, ethical, or other misconduct by the witness's counsel during the deposition, the Committee may take any appropriate disciplinary action. The witness may refuse to answer a question only to preserve a privilege. When the witness has refused to answer a question to preserve a privilege, members or staff may (I) proceed with the deposition, or (II) either at that time or at a subsequent time, seek a ruling from the Chair either by telephone or otherwise. If the Chair overrules any such objection and thereby orders a witness to answer any question to which an objection was lodged, the witness shall be ordered to answer. If a member of the committee chooses to appeal the ruling of the chair, such appeal must be made within three days, in writing, and shall be preserved for committee consideration. The Committee's ruling on appeal shall be filed with the clerk of the Committee and shall be provided to the members and witness no less than three days before the reconvened deposition. A deponent who refuses to answer a question after being directed to answer by the chair may be subject to sanction, except that no sanctions may be imposed if the ruling of the chair is reversed by the committee on appeal.

8. The Committee chair shall ensure that the testimony is either transcribed or electronically recorded or both. If a witness's testimony is transcribed, the witness or the witness's counsel shall be afforded an opportunity to review a copy. No later than five days after the witness has been notified of the opportunity to review the transcript, the witness may submit suggested changes to the chair. Committee staff may make any typographical and technical changes. Substantive changes, modifications, clarifications, or amendments to the deposition transcript submitted by the witness must be accompanied by a letter signed by the witness requesting the changes and a statement of the witness's reasons for each proposed change. Any substantive changes, modifications, clarifications, or amendments shall be included as an appendix to the transcript conditioned upon the witness signing the transcript.

9. The individual administering the oath, if other than a member, shall certify on the transcript that the witness was duly sworn. The transcriber shall certify that the transcript is a true record of the testimony, and the transcript shall be filed, together with any electronic recording, with the clerk of the committee in Washington, DC. Depositions shall be considered to have been taken in Washington, DC, as well as the location actually taken once filed there with the clerk of the committee for the committee's use. The chair and the ranking minority member shall be provided with a copy of the transcripts of the deposition at the same time.

10. The chair and ranking minority member shall consult regarding the release of deposition testimony, transcripts, or recordings, and portions thereof. If either objects in writing to a proposed release of a deposition testimony, transcript, or recording, or a portion thereof, the matter shall be promptly referred to the committee for resolution.

11. A witness shall not be required to testify unless the witness has been provided with a copy of section 3(b) of H. Res. 8, 117th Congress, and these regulations.

REMOTE COMMITTEE PROCEEDINGS REGULATIONS PURSUANT TO HOUSE RESOLUTION 8, 117TH CONGRESS

COMMITTEE ON RULES,
HOUSE OF REPRESENTATIVES,
Washington, DC, January 4, 2021.

Hon. NANCY PELOSI,
Speaker, House of Representatives,
Washington, DC.

MADAM SPEAKER: Pursuant to section 3(s) of House Resolution 8, 117th Congress, I hereby submit the following regulations regarding remote committee proceedings for printing in the CONGRESSIONAL RECORD.

Sincerely,

JAMES P. MCGOVERN,
Chairman,
Committee on Rules.

REMOTE COMMITTEE PROCEEDINGS REGULATIONS PURSUANT TO HOUSE RESOLUTION 8

A. PRESENCE AND VOTING

1. Members participating remotely in a committee proceeding must be visible on the software platform's video function to be considered in attendance and to participate unless connectivity issues or other technical problems render the member unable to fully participate on camera (except as provided in regulations A.2 and A.3).

2. The exception in regulation A.1 for connectivity issues or other technical problems does not apply if a point of order has been made that a quorum is not present. Members participating remotely must be visible on the software platform's video function in order to be counted for the purpose of establishing a quorum.

3. The exception in regulation A.1 for connectivity issues or other technical problems does not apply during a vote. Members participating remotely must be visible on the software platform's video function in order to vote.

4. Members participating remotely off-camera due to connectivity issues or other technical problems pursuant to regulation A.1 must inform committee majority and minority staff either directly or through staff.

5. The chair shall make a good faith effort to provide every member experiencing connectivity issues an opportunity to participate fully in the proceedings, subject to regulations A.2 and A.3.

H. Res. 8

In the House of Representatives, U. S.,

January 4, 2021.

Resolved,

SECTION 1. ADOPTION OF THE RULES OF THE ONE HUNDRED SIXTEENTH CONGRESS.

The Rules of the House of Representatives of the One Hundred Sixteenth Congress, including applicable provisions of law or concurrent resolution that constituted rules of the House at the end of the One Hundred Sixteenth Congress, are adopted as the Rules of the House of Representatives of the One Hundred Seventeenth Congress, with amendments to the standing rules as provided in section 2, and with other orders as provided in this resolution.

SEC. 2. CHANGES TO THE STANDING RULES.

(a) CONFORMING CHANGE.—In clause 2(i) of rule II—

(1) strike the designation of subparagraph (1); and

(2) strike subparagraph (2).

(b) OFFICE OF DIVERSITY AND INCLUSION AND OFFICE OF THE WHISTLEBLOWER OMBUDS.—

SEC. 3. SEPARATE ORDERS.

(a) MEMBER DAY HEARING REQUIREMENT.—During the first session of the One Hundred Seventeenth Congress, each standing committee (other than the Committee on Ethics) or each subcommittee thereof (other than a subcommittee on oversight) shall hold a hearing at which it receives testimony from Members, Delegates, and the Resident Commissioner on proposed legislation within its jurisdiction, except that the Committee on Rules may hold such hearing during the second session of the One Hundred Seventeenth Congress.

(b) DEPOSITION AUTHORITY.—

(1) During the One Hundred Seventeenth Congress, the chair of a standing committee (other than the Committee on Rules), and the chair of the Permanent Select Committee on Intelligence, upon consultation with the ranking minority member of such committee, may order the taking of depositions, including pursuant to subpoena, by a member or counsel of such committee.

(2) Depositions taken under the authority prescribed in this subsection shall be subject to regulations issued by the chair of the Committee on Rules and printed in the Congressional Record.

(c) WAR POWERS RESOLUTION.—During the One Hundred Seventeenth Congress, a motion to discharge a measure introduced pursuant to section 6 or section 7 of the War

Exhibit 12 — Letter from Counsel for Mr. Scavino to Chairman Thompson (Nov. 26, 2021)

BRAND | WOODWARD
Attorneys at Law

Stan M. Brand
[redacted]

Stanley E. Woodward Jr.
[redacted]

November 26, 2021

VIA ELECTRONIC MAIL

The Honorable Bennie G. Thompson
Chairman
Select Committee to Investigate the January 6th Attack on the United States Capitol
U.S. House of Representatives
Washington, District of Columbia 20515

Re: Daniel J. Scavino, Jr.

Dear Chairman Thompson:

On behalf of our client, Daniel J. Scavino, Jr., we write in response to your November 23, 2021 correspondence. We regret that in your apparent haste to acknowledge the Select Committee's failure to properly serve Mr. Scavino with your October 6, 2021, subpoena, that you appear to have inadvertently transposed dates in your correspondence. For example, although you request that we "confirm receipt" of your correspondence "no later than 12:00pm Monday, November 29," you ask that we "identify the specific topics Mr. Scavino agrees are outside the scope of his asserted privileges . . . no later than Friday, November 26, 2021." It is unclear why it would be necessary for us to provide you with any information today, Friday, when we are not asked to confirm receipt of your correspondence until Monday.[1]

While no doubt an inadvertent oversight, this discrepancy does cast doubt on the Select Committee's careful consideration of the numerous legal and procedural issues raised by our prior correspondence. Where, as here, the threat of criminal contempt is invoked, the Supreme Court has made clear that Mr. Scavino is entitled to the "the specific provisions of the Constitution relating to the prosecution of offenses and those implied restrictions under which courts function." *Watkins v. United States*, 354 U.S. 178, 216 (1957) (Frankfurter, J., concurring).

With respect to Mr. Scavino's deposition, you demand that we "identify the specific topics Mr. Scavino agrees are outside the scope of his asserted privileges, and if you believe a privilege applies, articulate which privilege and how it is implicated for each item no later than Friday, November 26, 2021." As articulated in our correspondence of November 18, 2021, the Select Committee has now identified thirty-three (33) "matters of inquiry" for which it purportedly seeks

[1] Today, the Friday after Thanksgiving, is recognized as a paid holiday for over 43 percent (43%) of employees who receive any paid holidays. *See* U.S. Bureau of Labor Statistics, Employee Benefits Survey, Holiday Profile – Day After Thanksgiving, https://www.bls.gov/ncs/ebs/day-after-thanksgiving-2018.htm (last visited Nov. 26, 2021).

testimony from Mr. Scavino. Indeed, your correspondence of November 23, 2021, acknowledges that despite our request to "hone in on a subset of topics that can be prioritized," no effort to do so has been made on your part. Rather, you submit that Mr. Scavino bears the responsibility of "identify[ing] the specific topics Mr. Scavino agrees are outside the scope of his asserted privileges." Tellingly, you cite no authority – law, regulation, rule, historical precedent, or otherwise – for the proposition that the subject of a deposition subpoena bears the obligation of identifying topics of information about which that deponent may be questioned. You do not, we submit, because you cannot. Never in the history of our Nation's legal system has the compelled subject of testimonial inquiry been required to volunteer the testimony believed to be of relevance to that witnesses' inquisitor. 0In fact, the precepts of Due Process require otherwise: As the Supreme Court held in *Watkins*: "It is obvious that a person compelled to [testify] is entitled to have knowledge of the subject to which the interrogation is deemed pertinent [and] [t]hat knowledge must be available with the same degree of explicitness and clarity that the Due Process Clause requires in the expression of any element of a criminal offense." 354 U.S. at 208-09. Your approach – to have Mr. Scavino volunteer the topics of testimony for his own deposition – would vitiate the clear due process protections delineated by the *Watkins* Court.

To that end, you seem to divorce the requirement that the Select Committee identify the "pertinency of [each] question[] propounded to the witness," *id.* at 208, from a determination of what privilege may apply. Without the requisite showing of pertinency, however, Mr. Scavino cannot be in a position to determine whether an applicable privilege requires invocation. In our correspondence of November 18, 2021, for example, we highlighted several "matters of inquiry" for which a claim of pertinency seemed untenable. Rather than address our concerns, you mischaracterize our position. Mr. Scavino does not, "tak[e] the position that he may refuse to comply with the Select Committee subpoena simply because he has a different view of what information should be important to Congress." To the contrary, he asserts his right to request that the Select Committee clearly articulate the pertinence of the "matters of inquiry" it seeks to "develop" with him. *See Watkins*, 354 U.S. at 208. Only once this prerequisite has been established can Mr. Scavino – whom as you concede "was a government official conducting public business" at all times relevant to your "matters of inquiry" – assess whether to make an assertion of executive privilege over any information he may possess. *See Comm. on the Judiciary v. McGahn*, 415 F. Supp. 3d 148, 213 n.34 (D.D.C. 2019) (acknowledging the "legal duty on the part of the aide to invoke the privilege on the President's behalf").

The assertion in your correspondence of November 23, 2021, that Mr. Scavino "is in no position to assert privilege on behalf of the executive branch" is similarly without merit. We are, of course, aware of President Trump's litigation with the National Archives concerning a former President's assertion of privilege in the face of an incumbent President's waiver of the same. *See Trump v. Thompson*, No. 21-5254 (D.C. Cir.). Indeed, the fact that this litigation remains pending should be proof enough that the issue remains unsettled. We reiterate that it would be irresponsible for Mr. Scavino to prematurely resolve President Trump's privilege claim by voluntarily waiving privilege and providing testimony or producing documents implicating the heart of the legal questions at issue. Rather, such inter-branch disputes are to exclusively be resolved by the courts and we patiently await the outcome of that judicial process. *See United States v. Nixon*, 418 U.S. 683, 696 (1974) ("We therefore reaffirm that it is the province and duty of

[the Supreme Court] 'to say what the law is' with respect to the claim of [executive privilege].'" (*quoting Marbury v. Madison*, 5 U.S. 1 (Cranch) 137, 177 (1803)).

In short, we vehemently disagree with your characterization of Mr. Scavino's compliance with your subpoena. To describe our efforts as "continued, willful non-compliance" or "Mr. Scavino's steadfast refusal to cooperate" strain credulity. In your correspondence of November 23, 2021, you write: "Mr. Scavino is apparently taking the position that he may refuse to comply with the Select Committee subpoena simply because he has a different view of what information should be important to Congress." We encourage your careful consideration of what representations were *actually* made in our prior correspondence. Why has the Select Committee not addressed our request for an articulation of the pertinence of each of its delineated "matters of inquiry." You also write: "Mr. Scavino's continued refusal to provide a privilege log, coupled with your extensive and blanket assertions of privilege, are fundamentally at odds with your stated desire to 'foster further discussion and the continued collaboration' with the Select Committee." Again, we encourage your careful consideration of our prior correspondence. No "blanket assertions of privilege" have been lodged. Rather, we have specifically articulated categories of privilege we believe applicable to the communications potentially relevant to the Select Committee's "matters of inquiry." Absent from your correspondence is any acknowledgement of that assertion or any attempt to negotiate with Mr. Scavino concerning his testimony. The Select Committee's posturing is perhaps best evidenced by your position that, "there is simply no substitute for live, in-person testimony" in rejecting our request that the Select Committee propound written interrogatories so that together we might carefully parse important questions of both pertinence and privilege. Would not the receipt of *any* information be a compelling substitute for the immediate desire of live, in-person testimony?

We provide this response, per your demand, within 72 hours (including the Thanksgiving Holiday) of receipt of your correspondence of November 23, 2021. We do so and explicitly reiterate our acknowledgement of the important subject matter of the Select Committee's work. We would be remiss, however, were we not to observe the Select Committee's apparent failure to address the important procedural defects we identified in the Select Committee's process (other than correcting the Select Committee's failure to properly serve Mr. Scavino).

First, your demand that we expeditiously respond to the Select Committee's correspondence over the Thanksgiving Holiday does nothing to further our stated desire of ensuring that Mr. Scavino, and his counsel, be thoroughly prepared to address the "matters of inquiry" the Select Committee intends to "develop" with him. This challenge remains exacerbated by the Select Committee advising that it "reserves the right to question Mr. Scavino about other topics" in addition to those "matters of inquiry" delineated in its subpoena and subsequent correspondence. In that you acknowledge that Mr. Scavino is entitled to the representation of counsel in his deposition, you must further acknowledge that for this representation to be meaningful, both he and his counsel must be adequately prepared. *See Yellin v. United States*, 374 U.S. 109, 123-24 (1963) (reversing conviction for contempt of congress where the Congressional committee failed to adhere to its own rules: "The Committee prepared the groundwork for prosecution in Yellin's case meticulously. It is not too exacting to require that the Committee be equally meticulous in obeying its own rules.").

Second, you mischaracterize our concern over the Select Committee's stated approach to the taking of Mr. Scavino's deposition. Our position is not that any applicable law, resolution, rule or other authority requires "the minority leader's preferred Members" to be appointed to the Select Committee. Rather, our inquiry focused on whether House Rules contemplate the procedure for conducting a deposition *when the minority leader's recommended Members are not appointed to the Select Committee.* Here, no Member recommended by the minority leader has been appointed to the Select Committee. In turn, no Ranking Member has been designated by the minority leader (or as far as we are aware, by anyone). Therefore, because the Select Committee lacks a Ranking Member, no "committee counsel" can be "designated" by the Ranking Member for the purpose of the Select Committee's taking a deposition, as required by the Regulations for the Use of Deposition Authority promulgated by the Chairman on Rules pursuant to section 3(b) of House Resolution 8. As the Supreme Court has held: "the competence of the tribunal must be proved as an independent element of the crime [and] [i]f the competence is not shown, the crime of perjury is not established regardless of whether the witness relied on the absence of a quorum." *United States v. Reinecke*, 524 F.2d 435, (D.C. Cir. 1975) (citing *Chrisoffel v. United States*, 338 U.S. 84, 90 (1949)), and the "chain of authority from the House to the questioning body is an essential element of the offense." *Gojack v. United States*, 384 U.S. 702, 716 (1966).

Because of these procedural deficiencies, the Select Committee has sacrificed its ability to enforce its subpoena – the principal that a Congressional committee must adhere to applicable Rules in pursuit of the enforcement of its subpoenas has similarly resulted in convictions for contempt of congress being overturned. *See Yellin*, 374 U.S. at 123-24.

Please do not hesitate to contact us should you wish to discuss.

Sincerely,

Stan M. Brand

Stanley E. Woodward Jr.

Exhibit 13 — Deposition that Memorialized Daniel Scavino, Jr.'s Failure to Appear before the Select Committee (Dec. 1, 2021)

SELECT COMMITTEE TO INVESTIGATE THE
JANUARY 6TH ATTACK ON THE U.S. CAPITOL,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

DEPOSITION OF: DANIEL J. SCAVINO, JR. (NO-SHOW)

Wednesday, December 1, 2021

Washington, D.C.

The deposition in the above matter was held in [redacted], commencing at 9:59 a.m.

Appearances:

For the SELECT COMMITTEE TO INVESTIGATE

THE JANUARY 6TH ATTACK ON THE U.S. CAPITOL:

[redacted]

[redacted]. We are on the record.

Today is Wednesday, December 1st, 2021. The time is 10 a.m. We are convened in the [redacted], for the deposition of Daniel J. Scavino, Jr., to be conducted by the House Select Committee to Investigate the January 6th Attack on the United States Capitol.

The person transcribing this proceeding is the House stenographer and notary public authorized to administer oaths.

My name is [redacted]. I am a [redacted] to the select committee and the select committee's designated staff counsel for this proceeding. I'm accompanied by [redacted], [redacted], and [redacted], [redacted].

For the record, it is now 10:01, and Mr. Scavino is not present.

On October 6th, 2021, Chairman Bennie Thompson issued a subpoena to Mr. Scavino both to produce documents by October 21st, 2021, and to testify at a deposition on October 28th, 2021, at 10 a.m.

The subpoena is in connection with the select committee's investigation into the facts, circumstances, and causes of the January 6th attack and issues related to the peaceful transition of power in order to identify and evaluate lessons learned and to recommend to the House and its relevant committees corrective laws, policies, procedures, rules, or regulations.

This inquiry includes examination of how various individuals, to include Mr. Scavino, and entities coordinated their activities leading up to the events of January 6th, 2021, and the messages, videos, and internet communications that were disseminated to the public concerning the election, the transition of administrations, and

the constitutional and statutory processes that affect that transition.

After Mr. Scavino retained counsel, Mr. Stanley Woodward and Mr. Stan Brand, the select committee agreed several times to postpone the subpoena deadline to enable his counsel to overcome varied logistical challenges.

Ultimately, the select committee set new deadlines to produce documents and appear for testimony. Mr. Scavino was required to produce documents by November 29th, 2021, and appear for testimony on December 1st, 2021.

By letters dated between November 5th and November 26th, the select committee engaged with counsel for Mr. Scavino. In the letters, the select committee addressed Mr. Scavino's claims of, among other things, extensive and blanket assertions of privilege.

In the letter dated November 9th, the select committee also instructed Mr. Scavino to assert privilege claims in a privilege log based on the topics provided by the select committee no later than November 11th, 2021.

On November 18th, 2021, Mr. Scavino, through counsel, informed the select committee that he would not appear at the deposition then scheduled for November 19th. Specifically, counsel said that, quote, "Mr. Scavino cannot meaningfully appear for a deposition on Friday, November 19th, 2021," end quote.

Counsel also, for the first time, objected to the method of the select committee's service of Mr. Scavino's October 6th, 2021, subpoena despite having all relevant documentation, including the subpoena itself, in counsel's possession.

On November 23rd, 2021, Mr. Woodward, counsel for Mr. Scavino, agreed to accept service of a subpoena on Mr. Scavino's behalf, and the new subpoena was issued to Mr. Woodward that same day.

In a letter also dated November 23rd, 2021, the select committee addressed

Mr. Scavino's other concerns and allowed a final continuance of the deposition date.

The select committee also reiterated the importance of a privilege log based on the topics provided by the select committee in the letter dated November 9th, 2021, and set a November 26th, 2021, deadline for this log.

The select committee further informed Mr. Scavino that, quote, "The select committee will view Mr. Scavino's failure to appear for the deposition and respond to the subpoena as willful noncompliance. His continued failure to produce documents pursuant to the subpoena also constitutes willful noncompliance.

"Mr. Scavino has a short time in which to cure his noncompliance. The continued willful noncompliance with a subpoena would force the select committee to consider invoking the contempt of Congress procedures in 2 USC, Sections 192 and 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 a subpoena brought against Mr. Scavino in his personal capacity," end quote.

Although the select committee continued to engage with counsel, Mr. Scavino, through counsel, informed the select committee that he would not appear today.

Specifically, Mr. Woodward informed counsel for the select committee on November 30th that, quote, "I believe our position remains fairly stated in our correspondence," end quote.

Mr. Woodward clarified to counsel for the select committee over the phone on November 30th, 2021, that this meant that Mr. Scavino would not be appearing on the record today, either to answer questions or to assert specific claims of privilege. Counsel for the select committee then confirmed this understanding over email correspondence.

To date, Mr. Scavino has not produced any documents or a privilege log, and

Mr. Scavino has not appeared today to answer questions or assert privilege objections.

I will mark as exhibit 1 and enter into the record the October 6th select committee subpoena to Mr. Scavino included with materials that accompanied the subpoena, namely, a letter from the chairman, a document schedule with accompanying production instructions, and a copy of the deposition rules.

[Scavino Exhibit No. 1

Was marked for identification.]

[redacted]. I will mark as exhibit 2 and enter into the record the receipt of service for the October 6th subpoena, which was personally served to Susan Wiles, chief of staff to the former President Trump, recorded on the proof of service as chief of staff for the 45th Office, on October 8th, 2021.

[Scavino Exhibit No. 2

Was marked for identification.]

[redacted]. Ms. Wiles reportedly represented to the U.S. marshal who served her that she was authorized to accept service on Mr. Scavino's behalf.

I will mark as exhibit 3 and enter into the record the November 23rd select committee subpoena to Mr. Scavino included with materials that accompanied the subpoena, namely, a letter from the chairman, a document schedule with accompanying production instructions, and a copy of deposition rules.

[Scavino Exhibit No. 3

Was marked for identification.]

[redacted] I personally served the subpoena to Mr. Scavino's counsel, Stanley Woodward, over email pursuant to agreement with counsel.

I will mark as exhibit 4 and enter into the record a series of letters and emails exchanged between the select committee and counsel for Mr. Scavino.

[Scavino Exhibit No. 4

Was marked for identification.]

[redacted]. Specifically, they are an email exchange between Mr. Woodward, myself, and [redacted], who is [redacted] for the select committee, dated from October 20th until November 30th, 2021. This exchange includes emails of service of the November 23rd, 2021, subpoena for Mr. Scavino reflecting extended deadlines.

It also includes a letter from Mr. Woodward and Mr. Brand to the select committee on November 5th, 2021. Attached to that letter is a letter from Mr. Justin Clark, counsel to the former President, Donald J. Trump, to Mr. Scavino on October 6th, 2021.

There is also a letter from the select committee to Mr. Woodward and Mr. Brand dated November 9th, 2021; a letter from Mr. Woodward and Mr. Brand to the select committee dated on November 15th, 2021; a letter from Mr. Woodward and Mr. Brand to the select committee dated November 18th, 2021; a letter from the select committee to Mr. Woodward and Mr. Brand dated November 23rd, 2021; and finally, a letter from Mr. Brand and Mr. Woodward to the select committee dated November 26th, 2021.

I will note for the record that the time is now 10:08 a.m., and Mr. Scavino still has not appeared or communicated to the select committee that he will appear today as required by the subpoena.

Accordingly, as we await Mr. Scavino's compliance with the October 6th and November 23rd subpoenas, this section of the deposition stands in recess, subject to the call of the chair, at 10:09 a.m.

We are off the record.

[Whereupon, at 10:09 a.m., the deposition was recessed, subject to the call of the

chair.]

Exhibit 14 — Letter from Chairman Thompson to Counsel for Mr. Scavino (Dec. 9, 2021)

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

December 9, 2021

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

Dear Messrs. Woodward and Brand,

The Select Committee to Investigate the January 6th Attack on the U.S. Capitol ("Select Committee") is in receipt of your November 26, 2021, letter and subsequent communications regarding the requested testimony and documents from your client, Daniel J. Scavino, Jr.

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.[1] The Select Committee has extended those deadlines five times. In our correspondence dated November 23, 2021, the Select Committee noted that a fifth and final continuance would be granted to November 29, 2021, for documents, and to December 1, 2021, for deposition testimony.

During a phone call on November 30, 2021, Mr. Woodward, counsel for Mr. Scavino confirmed that his client would not appear for testimony the following day and demanded the Select Committee identify in detail each inquiry that would be posed to Mr. Scavino during the deposition. Mr. Woodward asserted that his client could not properly prepare, nor could he advise his client regarding privilege, without more detail, including regarding the pertinence of the Select Committee's inquiries.

My letter dated letter dated November 9, 2021, identified with sufficient detail the items we intend to discuss with Mr. Scavino. The Select Committee is not obligated to provide a question-by-question preview to Mr. Scavino in advance of the deposition.

Additionally, counsel has demanded that the Select Committee explain the pertinence of its investigation of Mr. Scavino's knowledge and activities as outlined in the subpoena and the November 9, 2021, letter. As stated in the subpoena, pursuant to House Resolution 503, the Select Committee is investigating the facts, circumstances, and causes of the January 6th attack and issues relating to the peaceful transfer of power, in order to identify and evaluate lessons learned and to

[1] Though counsel, for the first time on November 18, challenged service of the October 6, 2021, subpoena, counsel has produced a letter from President Trump's attorney dated October 6, 2021, requesting that Mr. Scavino assert privilege. Additionally, counsel has represented Mr. Scavino since at least October 20, and at no time indicated that he did not have access to the original subpoena or knowledge of the subjects therein. Thus, as of the date of this letter, Mr. Scavino has had at least seven weeks to produce responsive documents and identify topics that he believes to be beyond the scope of privilege. To date, he has done neither.

recommend to the House and its relevant committees corrective laws, policies, procedures, rules, or regulations. The inquiry includes examination of how various individuals and entities coordinated their activities leading up to the events of January 6, 2021, and the messages, videos, and internet communications that were disseminated to the public concerning the election, the transition in administrations, and the constitutional and statutory processes that effect that transition.

The Select Committee has reason to believe that Mr. Scavino has information relevant to understanding important activities that led to and informed the events at the Capitol on January 6, 2021, and relevant to former President Trump's activities and communications in the period leading up to and on January 6. For example, the Select Committee has reason to believe that he has knowledge regarding the communications strategy of the former President and his supporters leading up to the events on January 6. Mr. Scavino served the former President in various roles advising on or running social media, from the 2016 presidential campaign through his service in the Trump White House across the tenure of the Trump Administration. As the Deputy Chief of Staff for Communications, reporting indicates that he was with the former President on January 5, when he and others were considering how to convince Members of Congress not to certify the election for Joe Biden.[2] Mr. Scavino's public Twitter account makes clear that he was tweeting messages from the White House on January 6, 2021, including after President Trump was suspended from several social media platforms.[3] Mr. Scavino was reportedly with or in the vicinity of former President Trump on January 6 and is a witness regarding his activities that day. He may also have materials relevant to his videotaping and tweeting messages on January 6.

Prior to January 6, 2021, Mr. Scavino promoted, through his Twitter messaging, the January 6 March for Trump, which encouraged people to "be a part of history,"[4] and also used his personal, unofficial social media accounts to post messages about President Trump, including content that many of the President's followers interpreted as covert messaging about "stop the steal" and January 6.

Mr. Scavino was also reportedly present for meetings in November 2020 where President Trump consulted with outside advisors about ways to challenge and/or overturn the results of the 2020 election, including when and whether Mr. Trump should concede.[5]

The items identified in the Select Committee's subpoena and the November 9, 2021, letter regarding deposition topics are tailored to illuminate Mr. Scavino's understanding and knowledge of events leading up to, on, and in the aftermath of January 6. As such, they are unquestionably pertinent to the Select Committee's jurisdiction as outlined in House Resolution 503.

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[2] Bob Woodward & Robert Costa, Peril at 231 (2021).
[3] *E.g.*, Dan Scavino (@DanScavino), Twitter (Jan. 6, 2021, 11:12 AM, from The White House), https://twitter.com/DanScavino/status/1346584866964598785?s=20; Dan Scavino[American flag][eagle] (@DanScavino), Twitter (Jan. 6, 2021, 10:50 AM, from The White House), https://twitter.com/danscavino/status/1346846609905168385?lang=en.
[4] Dan Scavino (@DanScavino), Twitter (Jan. 2, 2021, 9:04 PM), https://twitter.com/DanScavino/status/1345551501440245762?s=20.
[5] Carol Leonnig & Phillip Rucker, I Alone Can Fix It (2021).

Though counsel for Mr. Scavino has indicated a desire to cooperate with the Select Committee's investigation, Mr. Scavino has repeatedly rebuffed every request that he identify particularized assertions of privilege, as required by law, areas of inquiry for which he does not intend to assert a privilege, areas of inquiry for which he has no responsive information, and/or areas of inquiry for which he does not object as to pertinence.[6] If Mr. Scavino believes he can respond to any of the Select Committee's inquiries without an assertion of privilege, he had an opportunity to do so on the record at the scheduled December 1, 2021, deposition, during which he also could have made the particularized assertions of privilege in response to specific questions as required.

However, Mr. Scavino did not appear for his deposition on December 1, nor has he produced a single document to date. The Select Committee conducted the deposition proceeding on that date and recorded Mr. Scavino's absence and failure to comply with the subpoena. As Mr. Scavino has yet to meaningfully cooperate with any of the pending requests, the Select Committee is considering 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. If Mr. Scavino wishes to avoid this enforcement, he should move expeditiously to cure his non-compliance.

Sincerely,

Bennie G. Thompson
Chairman

[6] Contrary to counsel's assertion, the Select Committee has not asked Mr. Scavino to identify items of relevance to its investigation; rather, the Select Committee has asked Mr. Scavino to identify which areas of inquiry already described by the Select Committee do not trigger any assertions of privilege or objections to pertinence. To date, Mr. Scavino has refused to inform the Select Committee whether there are any items of agreement between the parties.

Exhibit 15 — Letter from Counsel for Mr. Scavino to Chairman Thompson (Dec. 13, 2021)

BRAND | WOODWARD
Attorneys at Law

Stan M. Brand
[redacted]

Stanley E. Woodward Jr.
[redacted]

December 13, 2021

VIA ELECTRONIC MAIL

The Honorable Bennie G. Thompson
Chairman
Select Committee to Investigate the January 6th Attack on the United States Capitol
U.S. House of Representatives
Washington, District of Columbia 20515

Re: Daniel J. Scavino, Jr.

Dear Chairman Thompson:

We are in receipt of your correspondence of December 9, 2021. For the second time in as many weeks, you have demanded an immediate response from us with little regard for either our, or our client's, time and availability. Specifically, your staff provided us with your correspondence Thursday, at 7:15pm est, and advised that they wished to speak with us today, as early as at 9:30am the following day. Similarly, your last correspondence provided us with a mere 72 hours to respond, including the Thanksgiving Holiday. Yet, as you acknowledge in your correspondence, *more than two weeks* have passed without the courtesy of a reply. Unfortunately, public records will show that the undersigned was in court Friday and not otherwise available for a teleconference with your staff.

To that end, we respectfully disagree with the way in which you have characterized our non-written conversations with your staff. We again encourage your careful consideration of our prior correspondence, which clearly articulates our client's specific concerns with the Select Committee's subpoenas. Out of an abundance of caution, that correspondence, dated November 5, 2021, November 15, 2021, November 18, 2021, and November 23, 2021, is attached for your reference.

Although we hope it obvious, the tone of your latest correspondence compels us to unambiguously affirm the high esteem with which we hold United States House of Representatives, a body for which Mr. Brand served as Chief Counsel, and its important function within our co-equal branches of government. It is our profound respect for the institution that obliges us to ensure that the work of the House, and by extension its committees, carefully accords with the limits imposed by the doctrine of Separation of Powers. On behalf of our client, Dan Scavino, we ask of the Select Committee of nothing more than that to which he is entitled under the law.

We wish not to reiterate the concerns we have specifically articulated in our prior correspondence and again encourage your careful consideration of the same. We would

respectfully disagree, however, with your characterization of Mr. Scavino's exercise of these important rights as his having "repeatedly rebuffed every request that he identify particularized assertions of privilege, as required by law, areas of inquiry for which he does not intend to assert privilege, areas of inquiry for which he has no responsive information, and/or areas of inquiry for which he does not object to pertinence." We address these mischaracterizations in turn.

You write that Mr. Scavino has "repeatedly rebuffed" the Select Committee's request "to identify particularized assertions of privilege" as "required by law." To the contrary, in our correspondence of November 15, 2021, Mr. Scavino articulated with great detail several categories of communications over which we submit an assertion of executive privilege would be warranted. Moreover, we advised that because President Trump has directed Mr. Scavino to assert any applicable privilege as to those records, which "gives rise to a legal duty on the part of [Mr. Scavino] to invoke the privilege on the President's behalf." *Comm. On the Judiciary v. McGahn*, 415 F. Supp. 3d 148, 213 n.34 (D.D.C. 2019). The Select Committee has provided no response to this proffer by Mr. Scavino, instead simply mischaracterizing Mr. Scavino's response as an improper blanket assertion of privilege. Moreover, Mr. Scavino cannot even begin to address how the executive privilege will implicate his testimony given that the Select Committee has failed to provide Mr. Scavino with the information necessary to do so.

To that end, you write that Mr. Scavino has "repeatedly rebuffed" the Select Committee's request that he identify "areas of inquiry for which he does not intend to assert privilege." Again, this mischaracterizes Mr. Scavino's position. Rather, in our correspondence of November 18, 2021, we requested that the Select Committee "furnish an explanation as to how any desired 'matter of inquiry' falls within the jurisdiction vested by Congress." Rather than respond to Mr. Scavino's request, your correspondence of November 23, 2021, failed to address the issue of pertinence at all. Now, your correspondence of December 9, 2021, broadly asserts: "The items identified by the Select Committee's subpoena and the November 9, 2021 letter . . . *are unquestionably pertinent* to the Select Committee's jurisdiction." Respectfully, Mr. Chairman, such *ipse dixit* – mere "blanket assertions" of jurisdiction – is what has stymied our efforts to foster further discussion and continued collaboration with the Select Committee. And while your correspondence of December 9, 2021, does portend to address our concern over the pertinence of the "matters of inquiry" identified by the Select Committee, merely reciting the language within your initial October 9, 2021 correspondence to Mr. Scavino does little to elucidate the matter. To be clear, our ask is not that the Select Committee "provide a question-by-question preview to Mr. Scavino in advance of [his] deposition." However, the Select Committee has failed to address in any way the specific "matters of inquiry" we identified in our correspondence of November 18, 2021, that appear to be beyond the scope of the Select Committee's jurisdiction, including your admonishment that "the Select Committee reserves the right to question Mr. Scavino about other topics."

You also write that Mr. Scavino has "repeatedly rebuffed" the Select Committee's request that he identify "areas of inquiry for which he has no responsive information, and/or areas of inquiry for which he does not object to pertinence." This is simply not true – the Select Committee has yet to ask Mr. Scavino to identify any "matter of inquiry" for which he has no responsive information – and this mischaracterization again casts doubt on the Select Committee's careful consideration of the numerous legal and procedural issues raised by our prior correspondence. For it is this mischaracterization that highlights what has been a consistent theme in the Select

Committee's demands – the obligation of *Mr. Scavino* to facilitate the Select Committee's taking of his deposition. Contrary to the Select Committee's assertion, however, Mr. Scavino has a Constitutional right to the information he has requested: "It is obvious that a person compelled to [testify] is entitled to have knowledge of the subject to which the interrogation is deemed pertinent [and] [t]hat knowledge must be available with the same degree of explicitness and clarity that the Due Process Clause requires in the expression of any element of a criminal offense." *Watkins*, 354 U.S. 178, 208-09 (1957). The Select Committee's demand in effect amounts to forcing Mr. Scavino to waive his Constitutional rights, which the Select Committee cannot do. *See Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). *See also United States v. North*, 920 F.2d 940, 946 (D.C. Cir. 1990) (*en banc*) ("The political needs of the majority, or Congress, or the President, never, never, never should trump an individual's explicit constitutional protections.").

Sincerely,

Stan M. Brand

Stanley E. Woodward Jr.

Exhibit 16 — Letter from Counsel for Mr. Scavino to Chairman Thompson (Feb. 8, 2022)

BRAND | WOODWARD
Attorneys at Law

Stan M. Brand
[redacted]

Stanley E. Woodward Jr.
[redacted]

February 8, 2022

VIA ELECTRONIC MAIL

The Honorable Bennie G. Thompson
Chairman
Select Committee to Investigate the January 6th Attack on the United States Capitol
U.S. House of Representatives
Washington, District of Columbia 20515

Re: Daniel J. Scavino, Jr.

Dear Chairman Thompson:

We are in receipt of your correspondence of February 4, 2022. The irony of your threat to hold Mr. Scavino in contempt for failing to respond to this correspondence within just two business days, despite having waited fifty-three (53) days to respond to our correspondence of December 13, 2021, *without actually providing the information requested therein*, is not lost on our client and exemplifies the "prosecution tactics" with which the Select Committee has been accused of adopting.[1] Put bluntly, your latest correspondence exemplifies the Select Committee's pattern and practice of intimidation and disregard for the rule of law, its application to the important function of the House of Representatives, and the important doctrine of Separation of Powers. Nevertheless, in a continued effort to foster collaboration with the Select Committee we provide the following response to your inquiry.

Mr. Scavino's Subpoena for Documents

Your February 4, 2022, correspondence mischaracterizes our position with respect to Mr. Scavino's production of documents in response to the Select Committee's November, 23, 2021, subpoena. As we advised in our November 5, 2021, correspondence, Mr. Scavino served as a close advisor to the President – Deputy Chief of Staff for Communications – regardless of whether the communications in question were sent or received on a personal device or through a personal social media or other account.[2] As we also advised in our November 5, 2021, correspondence, we

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[1] Michael S. Schmidt and Luke Broadwater, In Scrutinizing Trump and his Allies, Jan. 6 Panel Adopts Prosecution Tactics, *The New York Times* (Feb. 5, 2022), *available at* https://www.nytimes.com/2022/02/05/us/politics/january-6-committee.html?referringSource=articleShare.

[2] We are unaware of any recorded communications between Mr. Scavino, campaign officials, and other third parties that are not properly considered official communications, but invite the Select Committee

believe any official communications that were received (or sent) from a personal device or social media account would have separately been provided to the National Archives and/or otherwise preserved. We have acknowledged the remote possibility that Mr. Scavino may be in possession of an errant record of a communication sent or received from a personal device or account that has not otherwise been provided to the Archives. Thus, as we have repeatedly advised, including in our correspondence of November 15, 2021, we will promptly inform the Select Committee if we become aware of a record responsive to a lawful subpoena of the Select Committee not otherwise in the possession of the National Archives.[3]

The Supreme Court's decision not to consider President Trump's petition for a stay of the D.C. Circuit's mandate (and thus the D.C. District's Court's denial of a motion for a preliminary injunction restraining order) does not resolve the issue of President Trump's directive, as detailed in our correspondence of November 5, 2021, that Mr. Scavino "not produce any documents concerning [his] official duties in response to [the Select Committee's] subpoena" and to invoke all applicable privileges and immunities protecting such records from production pursuant to your subpoena.[4] As the Circuit Court articulated in its opinion, "[t]his preliminary injunction appeal *involves only a subset of those requested documents* over which former President Trump has claimed executive privilege, but for which President Biden has expressly determined that asserting a claim of executive privilege to withhold the documents from the January 6th Committee is not warranted." *Trump v. Thompson*, No. 21-5254, 2021 U.S. App. LEXIS 36315, at *4 (D.C. Cir. Dec. 9, 2021) (emphasis added). Further, the Circuit Court expressly limited its holding, "to those documents in the Archivist's *first three tranches* over which President Biden has determined that a claim of executive privilege is not justified." *Id.* at *7 (emphasis added). It remains to be known whether Presidents Trump and Biden will agree on the assertion of any applicable privilege with respect to communications sent to or from Mr. Scavino that are identified by the Archivist as

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to provide additional detail concerning your vague and ambiguous assertion that any such "repeated contacts" would have generated records lawfully responsive to the Select Committee's subpoena.

[3] Mr. Scavino takes seriously his duty to preserve "presidential records" and is aware of his obligation to takes 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," and thanks the Select Committee for its attention to the same.

[4] For at least the second time, your correspondence of February 4, 2022, suggests that because, "Mr. Trump has never had any correspondence with the Select Committee asserting executive privilege over Mr. Scavino's documents or testimony," Mr. Scavino's assertion of all applicable privilege and immunities is improper. However, we are aware of no authority requiring President Trump to communicate his assertion of privilege directly with the Select Committee and would note that you cite none.

responsive to the Select Committee's subpoena in the future,[5] and we note the Select Committee's agreement to withdraw its request for certain records at President Biden's prompting.[6]

Mr. Scavino's Subpoena for Deposition Testimony[7]

Your February 4, 2022, correspondence again baldly misrepresents that, "the Select Committee has more than adequately addressed [Mr. Scavino's] questions about the jurisdiction of the Select Committee and subjects [the Select Committee] intends to address at [Mr. Scavino's] deposition." Rather, the Select Committee has merely articulated "blanket assertions" of jurisdiction – mere *ipse dixit* – including, for example, by asserting in your correspondence of December 9, 2021, that, "[t]he items identified by the Select Committee's subpoena and November 9, 2021, letter . . . *are unquestionably pertinent to* the Select Committee's jurisdiction." (emphasis added). Specifically, in our correspondence of November 18, 2021, we requested that the Select Committee "furnish an explanation as to how any desired 'matter of inquiry' falls within the jurisdiction vested by Congress." Despite subsequent correspondence on November 23, 2021, December 9, 2021, and now February 4, 2022, the Select Committee has yet to articulate the specific nexus as between its proffered matters of inquiry, including your admonishment that "the Select Committee reserves the right to question Mr. Scavino about other topics," and the specific legislative purpose it seeks to advance. *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, at *2024 (2019) ("'Most importantly, a congressional subpoena is valid only if it is 'related to, and in furtherance of, a legitimate task of the Congress.'" (quoting *Watkins*, 354 U.S. at 187)).

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[5] We also note that the Parties to this litigation, yourself included, recently advised the District Court that, [t]he parties have again conferred with respect to Defendants' forthcoming responses to the Complaint and the future of the litigation [and] agreed that the best course was to further defer the Defendants' response for thirty days so that Plaintiff can determine his next steps." Mot. Ext., *Trump v. Thompson*, No. 21-cv-02769-TSC (D.D.C. Feb. 4, 2022) (ECF No. 52). This representation confirms that the litigation remains pending and will remain pending for another thirty (30) days.

[6] *See* Correspondence from Jonathan C. Su, Deputy Counsel to the President, to [redacted] to the Select Committee to Investigate the January 6th Attack on the U.S. Capitol (Dec. 16, 2021), *available at* https://www.archives.gov/files/foia/su-letter-to-amerling.12.16.2021-attached-to-12.17.2021-remus-letter-to-ferriero.pdf (confirming the Select Committee's agreement to withdraw or defer its requests for all or part of 511 documents deemed sensitive or unrelated to the Select Committee's investigation).

[7] We feel compelled to note, for the benefit of history, that the Select Committee's arbitrary deposition date of December 1, 2021, was functionally ceremonial. Prior to that date, the Select Committee had yet to (and still has yet to) respond to Mr. Scavino's request for information contained within his November 18, 2021, correspondence. Then, in response to Mr. Scavino's November 26, 2021, correspondence, your staff wrote to confirm whether Mr. Scavino would attend a deposition arbitrarily set for December 1, 2021. In response, counsel advised that, "as the Select Committee has yet to address the concerns we raised, I believe our position remains fairly stated in our correspondence." Your staff responded by advising that, "[f]or your information, we will be proceeding on the record tomorrow to record [Mr. Scavino's] absence." Had your staff meaningfully engaged counsel in an effort to resolve our concerns with the proposed deposition, your staff would have learned that counsel was scheduled to appear that morning, and did appear, before U.S. District Court Judge Paula Xinis. *See* H'rg T., *United States v. Schulman*, No. 20-cr-00434-PX (Dec. 1, 2021) (ECF No. 97).

Your February 4, 2022, correspondence again suggests that Mr. Scavino has "declined to" "narrow the topics in dispute by requesting that [Mr. Scavino] identify the areas of inquiry for which [Mr. Scavino] ha[s] no responsive information or documents." Notwithstanding your representation to the contrary, the Select Committee has yet to ask Mr. Scavino to identify any "matter of inquiry" for which he has no responsive information – and this mischaracterization again casts doubt on the Select Committee's careful consideration of the numerous legal and procedural issues raised by our prior correspondence.[8] For it is this mischaracterization that highlights what has been a consistent theme in the Select Committee's demands – the obligation of *Mr. Scavino* to facilitate the Select Committee's taking of his deposition. Contrary to the Select Committee's assertion, however, Mr. Scavino has a Constitutional right to the information he has requested and he does not now, nor has he ever, asserted absolute immunity from subpoenaed testimony before the Select Committee. Rather, we ask only that the Select Committee afford Mr. Scavino the rights guaranteed to him – and every citizen irrespective of their service as senior Presidential advisors – under the law: "It is obvious that a person compelled to [testify] is entitled to have knowledge of the subject to which the interrogation is deemed pertinent [and] [t]hat knowledge must be available with the same degree of explicitness and clarity that the Due Process Clause requires in the expression of any element of a criminal offense." *Watkins v. United States*, 354 U.S. 178, 208-09 (1957). Only once this information has been furnished can the application of an applicable privilege or immunity, including the executive privilege, be properly assessed.

To that end, we note that the Supreme Court's decision not to consider President Trump's petition for a stay of the D.C. Circuit's mandate has no bearing on President Trump's directive that Mr. Scavino invoke all applicable privileges and immunities, including with respect to any testimony subpoenaed by the Select Committee. Specifically, that action *only* involves the challenge of *a subpoena for documents* issued by the Select Committee, and not a subpoena for testimony. *See* Complaint, *Trump v. Thompson*, No. 21-cv-02769 (Oct. 18, 2021) (ECF No. 1). The D.C. Circuit defined the breadth of the suit as a challenge to, "a request to the Archivist of the United States under the Presidential Records Act, seeking the expeditious disclosure of *presidential records* pertaining to the events of January 6th . . .," *Trump v. Thompson*, No. 21-5254, 2021 U.S. App. LEXIS 35315, at *3-4 (Dec. 9, 2021). Put simply, the Presidential Records Act, 44 U.S.C. § 2205(2)(C), does not apply to assertions of executive privilege as to deposition testimony.

* * *

Finally, we respectfully request that our good faith negotiations in furtherance of an amicable resolution of our challenges to the Select Committee's subpoenas continue to be memorialized in writing. As you are no doubt aware, the Department of Justice has taken the position that the representation of an individual before the Select Committee potentially renders them a witness in any future contempt action. *See* Mot. Compel, *United States v. Bannon*, No. 21-cr-00670, at Ex. 2 (Feb. 4, 2022) (ECF No. 26-2) (Correspondence from Amanda R. Vaughn, Assistant United States Attorney, United State's Attorney's Office for the District of Columbia, to David I.

[8] We note that your correspondence of February 4, 2022, incorrectly asserts that we cite the pending litigation brought by President Trump against the Committee and the National Archives in our correspondence of November 15, 2021. That correspondence identified, as the Select Committee requested, categories of records over which an assertion of executive privilege was being made. To date, Mr. Scavino *has received no response* to this correspondence.

Schoen, Esq. (Jan. 7, 2022)) ("As you are aware, ... Mr. Costello represented Mr. Bannon before the January 6th Committee . . . in relation to the subpoena it issued to Mr. Bannon and is, therefore, a witness to the conduct charged in the Indictment."). Therefore, we again encourage your careful consideration of our prior correspondence, which clearly articulates our client's specific concerns with the Select Committee's subpoenas, including our correspondence dated November 5, 2021, November 15, 2021, November 18, 2021, November 23, 2021, and December 13, 2021.

We look forward to the courtesy of your response.

Sincerely,

Stan M. Brand

Stanley E. Woodward Jr.