

[REDACTED]

From: [REDACTED]
Sent: Wednesday, September 29, 2021 11:00 AM
To: [REDACTED]
Subject: FW: Subpoena to Mr. Meadows

From: Scott Gast <[REDACTED]>
Sent: Thursday, September 23, 2021 8:38 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Re: Subpoena to Mr. Meadows

[REDACTED]

I am confirming receipt of the subpoena to Mr. Meadows.

For privacy reasons, we would ask that the address used on the proof of service document be changed to the address for Compass Legal Services or otherwise redacted. I would appreciate it if you would confirm whether that is possible.

Thank you,
Scott Gast

Scott Gast
Compass Legal Services, Inc.
[REDACTED]

On Thu, Sep 23, 2021 at 6:32 PM [REDACTED] wrote:

Dear Mr. Gast,

We appreciate your confirmation today that you represent Mark Meadows and that you will accept service of a subpoena to Mr. Meadows on his behalf. I am following up to serve a subpoena to Mr. Meadows to produce documents and to provide testimony to the House Select Committee to Investigate the January 6th Attack on the United States Capitol. Attached is a copy of the subpoena, a letter from Select Committee Chairman Bennie Thompson, a document schedule with accompanying production instructions, and a copy of the deposition rules.

Please confirm that you have accepted this subpoena on Mr. Meadows's behalf.

Sincerely,

[REDACTED]

[REDACTED]

Chief Counsel and Deputy Staff Director

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

U.S. House of Representatives

October 7, 2021

Honorable Bennie G. Thompson, Chairman
Honorable Liz Cheney, Vice Chair
Select Committee to Investigate the January 6th Attack on the United States Capitol
U.S. House of Representatives

Re: Subpoenas Served on Honorable Mark R. Meadows

Dear Chair Thompson and Vice Chair Cheney:

Please be advised that I have been retained to serve as counsel to Mr. Meadows in connection with the January 6th Select Committee's investigation and specifically, Committee subpoenas served on Mr. Meadows.

Inasmuch as I was retained yesterday in this matter, please understand that my opportunity to, on behalf of my client, begin our cooperation with your investigation has been extremely limited. Nonetheless, I can inform the Committee of the following in response to the subpoena for production of documents with a return date of October 7, 2021. We believe that any documents responsive to that subpoena would not be in Mr. Meadows personal care, custody or control, but rather would be in the possession of the Archivist of the United States pursuant to the Presidential Records Act of 1978, 44 U.S.C. §§ 2201-2207. Despite that belief, we are undertaking due diligence to ascertain whether Mr. Meadows is in personal possession of any responsive documents and will report further to the Committee in that regard as soon as we have any pertinent and/or definitive information.

As to the subpoena for testimony with a return date of October 15, 2021, I anticipate being in touch forthwith with the Committee's investigative staff in that regard.

Select Committee to Investigate the January 6th Attack on the United States Capitol
October 7, 2021
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Sincerely yours,



George J. Terwilliger III

cc:



[REDACTED]

From: Terwilliger, George J. III [REDACTED]
Sent: Wednesday, October 13, 2021 10:17 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Subpoenas Served on Honorable Mark R. Meadows

[REDACTED]

Thank you for speaking yesterday about the Select Committee's subpoena to Mr. Meadows. Consistent with your request, I wanted to get back to you promptly about the October 15th return date for testimony.

As you know we are facing the potential for conflicting directions from former President Trump and President Biden as to preservation of privileges concerning senior presidential advisors and communication by same in that role. We are now scheduled to discuss privilege issues with the White Counsel's office on Thursday, most likely in the afternoon.

In addition, after considering the topics you outlined yesterday, it is not clear to us that, in whole or part, relevant privileges would not attach to Mr. Meadows testimony as to those subject matters. We are, however, going to consider further those subject matters and may be able to proffer information concerning knowledge or lack of knowledge as to aspects of some of those subjects that you may want to consider in deciding if further pursuing testimony from Mr. Meadows as to such matters would be productive, privilege considerations notwithstanding.

Thus, I am not currently in a position to either confirm that Mr. Meadows can testify or to state at this point that he cannot do so. What is clear, though, is that as a practical matter, I could not advise him under these circumstances to commit to testifying on October 15.

Also, at this point we have asked the White House Counsel for access to documents that may be relevant to Mr. Meadows potential testimony that have been released to the Committee by the Archivist per instructions of the White House Counsel. Since Mr. Meadows has not been consulted about any such production of potentially privileged documents arising from his tenure as the former President's Chief of Staff, we are unaware if any have actually been produced. I would respectfully extend our request for access to any such documents to the Committee as well. As you know so well, the testimony of any witness would be far more productive if afforded, as per standard practice, access to documents relevant to the witness's testimony.

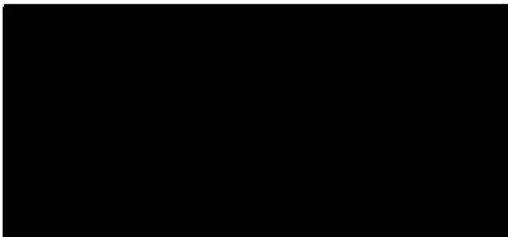
We are, of course, during our utmost to properly respect the Select Committee's subpoena and working diligently to address the various issues it raises.

We will continue to give this matter prompt and close attention and appreciate your willingness to work with us.

Regards,

George Terwilliger
Counsel for Mr. Meadows

George J. Terwilliger III
Partner



This e-mail from McGuireWoods may contain confidential or privileged information. If you are not the intended recipient, please advise by return e-mail and delete immediately without reading or forwarding to others.

October 11, 2021

Honorable Dana A. Remus
Counsel to the President
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Re: Congressional Subpoena to Former White House Chief of Staff Mark R. Meadows

Dear Ms. Remus:

I write on behalf of my client, Mark R. Meadows, regarding a subpoena he recently received from the Select Committee to Investigate the January 6th Attack on the United States Capitol of the U.S. House of Representatives. While now a private citizen, Mr. Meadows served as White House Chief of Staff under President Donald J. Trump during the period that is the focus of the Select Committee's investigation. I write now because, as detailed below, Presidents' and Presidential Administrations of both parties have long maintained the position that Congress cannot compel senior advisors to the President to testify or to produce records of their communications with and on behalf of the President. The Select Committee's subpoena to Mr. Meadows threatens these important principles which safeguard the separation of powers enshrined in the U.S. Constitution.

The Select Committee's subpoena, which Mr. Meadows received on September 23, 2021, seeks both records and testimony regarding Mr. Meadows's tenure as White House Chief of Staff, including his communications with the President of the United States and other senior Executive Branch officials. A copy of the subpoena is attached. Mr. Meadows also received a letter, through counsel, on October 6, 2021, from an attorney for President Trump regarding the subpoena. A copy of the letter is attached as well.

Mr. Meadows has profound respect both for the Congress and for the Presidency as integral parts of the Federal Government established under the U.S. Constitution. He served four terms in the U.S. House of Representatives, representing North Carolina's 11th District, before serving as White House Chief of Staff. He is committed both to fulfilling his legal obligations and to protecting the balance of power that underpins our American system of government.

Honorable Dana A. Remus
October 11, 2021
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I am therefore writing to you in hopes of clarifying information we have seen in public reports regarding President Biden's position on the Select Committee's subpoenas (which include subpoenas to other individuals from both inside and outside the Executive Branch) and to request the opportunity to discuss these important matters with you.

Executive Branch Precedent

As you know, Presidential Administrations of both parties have consistently maintained that privileged communications within the Executive Branch are immune from congressional subpoena. See, e.g., *Assertion of Executive Privilege Over Deliberative Materials Regarding Inclusion of Citizenship Question on 2020 Census Questionnaire*, O.L.C. slip. op. (June 11, 2019) (Atty. Gen. William P. Barr); *Assertion of Executive Privilege Over Documents Generated in Response to Congressional Investigation into Operation Fast and Furious*, 36 Op. O.L.C. 1 (2012) (Atty. Gen. Eric H. Holder, Jr.); *Assertion of Executive Privilege Concerning Special Counsel's Interviews of the Vice President and Senior White House Staff*, 32 Op. O.L.C. 7 (2008) (Atty. Gen. Michael B. Mukasey); *Assertion of Executive Privilege Regarding White House Counsel's Office Documents*, 20 Op. O.L.C. 2 (1996) (Atty. Gen. Janet Reno). Among other things, this position guards against "the chilling effect that compliance with [a congressional] subpoena would have on future White House deliberations." 32 Op. O.L.C. at 13.

Considering this longstanding, bi-partisan tradition and its importance to the effective functioning of the Executive Branch, we were surprised to hear reports that you had directed the production of privileged White House documents without consulting the officials from whom they originated. Of course, mistaken media reports would not be unprecedented. We also understand that not all recipients of the Select Committee's subpoenas may be similarly situated to Mr. Meadows. We therefore respectfully ask for you to clarify whether you have directed the Archivist to produce privileged materials arising from Mr. Meadows' tenure as Chief of Staff to Congress, and if so, to clarify the scope of that directive. We also ask that, at an appropriate time and subject to appropriate conditions, you make any such production available to Mr. Meadows and to us as his counsel for the limited purpose of responding to the Select Committee's subpoena.

Document Production

In response to the subpoena, we informed the Select Committee on October 7, 2021, of our belief that all the potentially responsive records from Mr. Meadows' tenure as Chief of Staff would be in the custody and control of the Archivist of the United States, consistent with the Presidential Records Act of 1978, 44 U.S.C. §§ 2201–07. We also expressed our intention to take appropriate steps to confirm that belief. On October 8, 2021, multiple media outlets reported that you had already instructed the Archivist of the United States to produce responsive materials to the Select

Committee without any withholding or redaction based on executive privilege.¹ Mr. Meadows recognizes that, as a public servant, he created records belonging to the United States and not to him personally. He asserts no personal stake in the disposition of these records. But as former White House Chief of Staff, he also wants to ensure that the institution of the Presidency is protected and that the long-standing traditions which protect its operations are not traded away for political expediency.

Testimony

Aside from its request for documents, the Select Committee has also sought to compel testimony from Mr. Meadows. We believe that, consistent with Executive Branch practice, Mr. Meadows is immune from being compelled to testify before Congress regarding his service as White House Chief of Staff.

Long-standing Executive Branch tradition recognizes that senior White House officials enjoy an absolute immunity from compelled testimony before Congress. See Memorandum for All Heads of Offices, Divisions, Bureaus and Boards of the Department of Justice, from John M. Harmon, Acting Assistant Attorney General, Office of Legal Counsel, *Re: Executive Privilege* at 5 (May 23, 1977); Memorandum for John D. Ehrlichman, Assistant to the President for Domestic Affairs, from William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, *Re: Power of Congressional Committee to Compel Appearance or Testimony of "White House Staff"* (Feb. 5, 1971). This immunity continues to apply even after senior officials leave the White House. See, e.g., *Testimonial Immunity Before Congress of the Former Counsel to the President*, O.L.C. slip op., at *2 (May 20, 2019) ("*Testimonial Immunity Before Congress*"); *Immunity of the Former Counsel to the President from Compelled Congressional Testimony*, 31 Op. O.L.C. 191, 192 (2007). Testimonial immunity is also "distinct from, and broader than, executive privilege" in that it "extends beyond answers to particular questions, precluding Congress from compelling even the appearance of a senior presidential adviser—as a function of the independence and autonomy of the President himself." *Testimonial Immunity Before Congress*, O.L.C. slip op. at *4.

Notwithstanding the public reports about the Select Committee's document requests, we have no reason to believe that President Biden has purported to waive testimonial immunity for Mr. Meadows in connection with the Select Committee's subpoena. In the attached letter, former President Trump expressed his view that "Mr. Meadows is immune from compelled testimony on matters related to his official responsibilities." Ex. B (citing *Testimonial Immunity Before Congress*, O.L.C. slip op.). There are good reasons to preserve that immunity for the White House Chief of Staff, even if a decision has already been made to produce some otherwise privileged documents.

¹ See, e.g., Nicholas Wu et al., *Biden White House waives executive privilege for initial set of Trump-era documents sought by Jan. 6 panel*, POLITICO (Oct. 8, 2021), available at <https://www.politico.com/news/2021/10/08/bannon-jan-6-subpoena-515681>.

The testimonial privilege vindicates the constitutional separation of powers. The President, as the head of a co-equal branch of government, stands on equal constitutional footing with the Congress. For Congress to compel an immediate Presidential advisor—who serves as “an extension of the President”—“to appear and testify would ‘promote a perception that the President is subordinate to Congress, contrary to the Constitution’s separation of governmental powers into equal and coordinate branches.’” *Testimonial Immunity Before Congress*, O.L.C. slip op. at *4 (quoting *Immunity of the Assistant to the President and Director of the Office of Political Strategy and Outreach from Congressional Subpoena*, 38 Op. O.L.C. 5, 8 (2014) (“*Immunity of the Assistant to the President*”).

The testimonial privilege also protects the prerogative of current and future White House officials to provide the President with the frank and candid advice required to discharge faithfully the duties of the office. The Office of Legal Counsel emphasized this point in 2014 to explain why David Simas, Assistant to President Obama, was not required to testify in response to a subpoena from the House Committee on Oversight and Government Reform:

[A] congressional power to subpoena the President’s closest advisers to testify about matters that occur during the course of discharging their official duties would threaten Executive Branch confidentiality, which is necessary (among other things) to ensure that the President can obtain the type of sound and candid advice that is essential to the effective discharge of his constitutional duties.

Immunity of the Assistant to the President, 38 Op. O.L.C. at 8. That office noted the Supreme Court’s recognition in *United States v. Nixon*, 418 U.S. 683 (1974), of “the necessity for protection of the public interest in candid, objective, and even blunt or harsh opinions in presidential decisionmaking.” *Immunity of the Assistant to the President*, 38 Op. O.L.C. at 8 (quoting *Nixon*, 418 U.S. at 708).

Past Presidents have thus asserted privilege and testimonial immunity to protect senior officials from prior Administrations from opposite parties. *See, e.g.*, Ellen Nakashima, *Bush Invokes Executive Privilege on Hill*, THE WASHINGTON POST (Dec. 14, 2001) (discussing assertion of privilege by President George W. Bush over materials from the Administration of President William J. Clinton), available at <https://www.washingtonpost.com/archive/politics/2001/12/14/bush-invokes-executive-privilege-on-hill/b05753f1-baf9-494b-ab52-33eb8ef7bd98/>.

We recognize that Congress has placed immense political pressure on the White House to waive executive privilege in connection with the Select Committee’s investigation, and that the Administration has already chosen to do so in some circumstances. It is precisely when the political pressure is at its strongest that the longstanding safeguards of the separation of powers become most important.

We respectfully request an opportunity to discuss these matters with you before any decision is made that would purport to require Mr. Meadows to act contrary to Executive Branch precedent.

Honorable Dana A. Remus
October 11, 2021
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* * *

We appreciate your consideration of these important matters. We hope that you can clarify the record on the Select Committee's request for documents and afford us the opportunity to speak with you about the testimonial immunity that shields Mr. Meadows from the Select Committee's subpoena. We are happy to make ourselves available to meet with you at your convenience. In the meantime, please do not hesitate to reach out with any questions.

Sincerely yours,




George J. Terwilliger III

Counsel to Mr. Meadows

Enclosures

cc:


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

ELECTIONS, LLC

Attorneys at Law
Justin R. Clark

October 6, 2021

Mr. Scott Gast
Compass Legal Services

Dear Mr. Gast:

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 your client Mark R. Meadows (the "Subpoena"). The Subpoena requests that Mr. Meadows 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 Mr. Meadows is immune from compelled congressional testimony on matters related to his 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 Mr. Meadows to: (a) where appropriate, invoke any immunities and privileges he may have from compelled testimony in response to the Subpoena; (b) not produce any documents concerning his official duties in response to the Subpoena; and (c) not provide any testimony concerning his official duties in response to the Subpoena.

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

Sincerely,

A handwritten signature in black ink, appearing to be "Justin Clark", with a large loop at the beginning and a horizontal stroke at the end.

Justin Clark
Counsel to President Trump

BENNIE G. THOMPSON, MISSISSIPPI
CHAIRMAN

ZOE LOFGREN, CALIFORNIA
ADAM B. SCHIFF, CALIFORNIA
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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

October 25, 2021

Mr. George Terwilliger III
McGuire Woods LLP

Dear Mr. Terwilliger,

The Select Committee to Investigate the January 6th Attack (“Select Committee”) is in receipt of your October 7, 2021, letter and your October 13, 2021, email and attached documents (the “correspondence”) regarding the September 23, 2021, subpoena for documents and testimony served on your client Mark R. Meadows (the “subpoena”). The Select Committee is also in receipt of your October 11, 2021, letter addressed to Counsel to the President Dana A. Remus (the “letter to the White House”). You have also had calls with Select Committee staff about the subpoena, the most recent of which occurred on October 20, 2021. Based on the correspondence, the letter to the White House, and calls, I understand that Mr. Meadows believes that, as a former advisor to President Donald Trump, he may be immune from testifying before the Select Committee. In addition, I understand that Mr. Meadows believes that, even if he is not immune from testifying, his testimony may nonetheless be covered by a claim of executive privilege.

Mr. Scott Gast accepted service of the subpoena on Mr. Meadows’s behalf on September 23, 2021. The subpoena demanded that Mr. Meadows produce documents by October 7 and appear for testimony by October 15. The requested documents and testimony relate directly to the inquiry being conducted by the Select Committee, serve a legitimate legislative purpose, and are within the scope of the authority expressly delegated to the Select Committee pursuant to House Resolution 503. In the letter accompanying the subpoena, the Select Committee set forth the basis for its determination that the documents and records sought by the subpoena and Mr. Meadows’s deposition testimony are of critical importance to the issues being investigated by the Select Committee.

Your correspondence to the Select Committee, calls, and letter to the White House have suggested Mr. Meadows’s belief in the potential existence of testimonial and subject-matter privileges. No such blanket testimonial immunity exists, and the Select Committee does not believe that executive privileges bar the Select Committee from legally obtaining any aspects of Mr. Meadows’s deposition testimony.

First, the Select Committee has not received any assertion, formal or otherwise, of any privilege from ex-President Trump with respect to Mr. Meadows's production of documents or appearance to provide testimony.¹ Even assuming that, as a former President, Mr. Trump is permitted to formally invoke executive privilege, he has not done so. The Select Committee is not aware of any legal authority, and your letter cites none, holding that a vague statement by somebody who is not a government official that an ex-President has an intention to assert a privilege absolves a subpoena recipient of his duty to comply.

Second, your correspondence, communications with Select Committee staff, and letter to the White House indicate that Mr. Trump "believes that Mr. Meadows is immune from compelled congressional testimony on matters related to his official responsibilities." Even setting aside the fact that the Select Committee is interested in questioning Mr. Meadows, in part, about actions that cannot be considered part of his "official responsibilities," Mr. Meadows is not permitted by law to assert the type of blanket testimonial immunity that Mr. Trump and your letter to the White House suggest. To the contrary, every court that has considered the absolute immunity Mr. Trump alludes to has rejected it. *See, e.g., Harlow v. Fitzgerald*, 457 U.S. 800 (1982); *Comm. on the Judiciary v. Miers*, 558 F. Supp. 2d 53, 106 (D.D.C. 2008) (rejecting former White House counsel's assertion of absolute immunity from compelled congressional process). Those cases make clear that even the most senior presidential advisors may not resist a congressional subpoena "based solely on their proximity to the President." *Miers* at 101 (citing *Harlow*, 457 U.S. at 810).² And, although your letter to the White House cites several Department of Justice Office of Legal Counsel ("OLC") opinions in which OLC insists that such immunity exists even after *Miers*, yet another judge has forcefully rejected that position *after* OLC's last memorandum opinion addressing absolute immunity. *See Comm. on Judiciary v. McGahn*, 415 F. Supp. 3d 148 (D.D.C. 2019) ("To make the point as plain as possible, it is clear to this Court ... that, with respect to senior-level presidential aides, absolute immunity from compelled congressional process simply does not exist.").

Third, your correspondence, communications with Select Committee staff, and letter to the White House indicate that Mr. Meadows also believes that his potential testimony would be protected as privileged communications within the executive branch. That is not the case. Executive privilege is a qualified privilege—not an absolute one—that may be invoked to prevent disclosure of communications with the President related to his official responsibilities, as well as deliberations about official responsibilities within the executive branch. With respect to Mr. Meadows, I understand that Select Committee staff has already discussed with you a non-exhaustive list of deposition topics that fall outside of any executive-privilege claim, including:

¹ By civil complaint filed on October 19, 2021, in the United States District Court for the District of Columbia, Mr. Trump has formally alleged that executive privileges should prevent the National Archives from producing Mr. Trump's White House documents to the Select Committee. That lawsuit does not formally assert any privilege with respect to Mr. Meadows and does not seek any relief related to the subpoena served on Mr. Meadows.

² It is also worth noting that the court in *Miers* rejected the former White House Counsel's claim of absolute immunity from congressional testimony even though the sitting President had formally invoked executive privilege. *Id.* at 62.

communications and meetings involving people who did not work for the United States government; communications and meetings with members of Congress; Mr. Meadows's campaign-related activities; communications and meetings about topics for which the Department of Justice and the White House have expressly declined to assert executive privilege; and, topics about which Mr. Meadows has already spoken publicly. Mr. Meadows must comply with the subpoena to answer questions about those and other issues, and his apparent reliance on a categorical claim of executive privilege runs afoul of long-standing caselaw requiring that any claim of executive privilege 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. 2014) (rejecting a "blanket" executive-privilege claim over subpoenaed documents).

The Select Committee appreciates your ongoing willingness to discuss Mr. Meadows's appearance, and the Select Committee agreed to postpone the subpoena deadlines to give you and Mr. Meadows an opportunity to consult with the White House counsel's office to facilitate our discussion of this and other scoping issues. It now appears that Mr. Meadows may still believe that his appearance cannot be compelled and that his testimony is privileged. Given the impasse, the Select Committee must proceed and insist, pursuant to the subpoena, that Mr. Meadows produce all responsive documents by November 5, 2021, and appear for testimony on November 12, 2021. The Select Committee expects Mr. Meadows's production of documents and appearance for testimony on these dates. If there are specific questions at that deposition that you believe raise privilege issues, Mr. Meadows should state them at that time for the deposition record for the Select Committee's consideration and possible judicial review.

Please be advised that the Select Committee will view Mr. Meadows's failure to respond to the subpoena as willful non-compliance. Such 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. Meadows in his personal capacity.

Sincerely,

A handwritten signature in blue ink that reads "Bennie G. Thompson". The signature is written in a cursive, flowing style.

Bennie G. Thompson
Chairman

November 3, 2021

VIA EMAIL

Honorable Bennie G. Thompson, Chairman
Honorable Liz Cheney, Vice Chair
Select Committee to Investigate the January 6th Attack on the United States Capital
U.S. House of Representatives

Re: Subpoenas Served on Honorable Mark R. Meadows

Dear Chair Thompson and Vice Chair Cheney:

I write on behalf of Mr. Meadows in response to the request for production of documents in the Select Committee's subpoena. In your letter of October 25, 2021, you indicated that you were extending the return date for the production of documents to Friday, November 5, 2021.

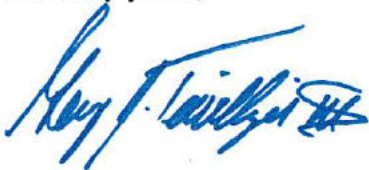
As I previously indicated in my letter of October 7, 2021, we believe that documents responsive to that subpoena are not in Mr. Meadows's personal custody or control, but rather are in the possession of the Archivist of the United States pursuant to the Presidential Records Act of 1978, 44 U.S.C. §§ 2201-2207. We understand that the Select Committee has separately requested those records from the Archivist and that production of those letters is a current subject of litigation in the U.S. District Court for the District of Columbia. *See Trump v. Thompson*, No. 1:21-cv-2769-TSC (D.D.C.). Mr. Meadows is not a party to that litigation, though we understand that at least some of the documents at issue are from his former records. To the extent that responsive documents reside with the Archivist, they are outside Mr. Meadows's custody and control, and he is therefore unable to produce them in response to the Select Committee's subpoena. We expect that the Select Committee will obtain any portions of Mr. Meadows's former records to which it may be entitled through its request to the Archivist, subject to any applicable rulings from the courts.

Select Committee to Investigate the January 6th Attack on the United States Capital
November 3, 2021
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As I further indicated in my October 7 letter, and as I have explained our process to the Select Committee's counsel again this week, we are diligently taking steps to confirm that Mr. Meadows does not retain custody and control over documents that are responsive to the Select Committee's request, including through review of personal e-mail accounts and electronic devices. To date, we have not identified any such documents and therefore have no documents to produce. If we do discover any responsive, non-privileged documents, however, we will be prepared to produce them.

To summarize, we are not aware at this time of any documents that are responsive to the Select Committee's subpoena and maintained in Mr. Meadows's custody or control. We therefore have no documents to produce to the Select Committee this Friday, November 5. We are, however, diligently taking steps to confirm that no such documents exist. And we agree that we would produce any responsive, non-privileged documents we might find. I would be happy to discuss these matters further with you or with the Select Committee's investigative staff.

Sincerely yours,



George J. Terwilliger III

cc:



November 3, 2021

VIA EMAIL

Honorable Bennie G. Thompson, Chairman
Honorable Liz Cheney, Vice Chair
Select Committee to Investigate the January 6th Attack on the United States Capital
U.S. House of Representatives

Re: Subpoenas Served on Honorable Mark R. Meadows

Dear Chair Thompson and Vice Chair Cheney:

Thank you for your letter of October 25, 2021, and thanks to you and to the Select Committee for your willingness to engage with us on the important issues raised by the Select Committee's subpoena to former White House Chief of Staff Mark Meadows. As your letter recognizes, these issues have been the frequent subject of litigation and of conflicting views between Congress and the Executive.

One of the important themes coming out of that litigation, and out of over 200 years of conflict between the branches, is that efforts to reach mutual accommodations to resolve differences have been the norm. *See, e.g., Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2029–31 (2020). Considering that history of engagement to find accommodation—which the courts obviously favor—the Select Committee's position, as expressed in your letter, is rather surprising, and indeed disappointing. The Select Committee apparently rejects each and every consideration raised in our correspondence with the Select Committee and with the White House Counsel that bears on whether and to what extent Mr. Meadows would be in a position to supply information to the Select Committee pursuant to its subpoena.

The purpose of this letter is to explore whether the Select Committee is willing to pursue some accommodation with Mr. Meadows that respects the position in which he finds himself and allows

the Committee to obtain information without abridging what Mr. Meadows believes in good faith to be his legal obligations arising from his tenure as White House Chief of Staff.

For context, former President Trump has directed Mr. Meadows, both in writing and orally, to maintain such privileges and immunities as apply to the demands of the Select Committee's subpoena. As you note in your letter, the former President has also filed a lawsuit challenging on various grounds the Select Committee's subpoena to the Archivist of the United States. While that lawsuit does not directly implicate the Select Committee's subpoena for Mr. Meadows's testimony, there is no reasonable doubt that the issues of privilege and valid legislative purpose raised in that lawsuit also bear on Mr. Meadows. Moreover, to date, and notwithstanding a specific inquiry through counsel to the Biden White House, Mr. Meadows has received no direction from the current President that contradicts or otherwise conflicts with the direction he has received from former President Trump.

Under these circumstances, it would be untenable for Mr. Meadows to decide unilaterally that he will waive privileges that not only protected his own work as a senior White House official but also protect current and future White House officials, who rely on executive privilege in giving their best, most candid advice to the President.

Thus, if we were forced to litigate whether Mr. Meadows must comply with the Select Committee's subpoena, we would of necessity assert executive privilege, among other challenges to the subpoena. That is especially necessary since, as mentioned above, your letter gives no indication of any willingness on the part of Select Committee to accommodate executive privilege or any of the other relevant considerations that inform Mr. Meadows's legal position.

In addition, the Select Committee's apparent unwillingness to pursue accommodation would compel Mr. Meadows to maintain his position, consistent with multiple opinions from a bipartisan group of Attorneys General, that senior White House aides cannot be compelled to testify before Congress in relation to their duties. I recognize, as your letter points out, that to date, the lower courts have not shared that view. But to our best knowledge, the Executive Branch has never retreated from that position, and of course, the Supreme Court has never had the opportunity to address it. What remains inescapable, in any event, is that compelling senior White House officials to testify before Congress has a chilling effect on the ability of senior aides, current and future, to communicate with and on behalf of the President they serve. For that reason, Mr. Meadows would resist being so compelled unless and until a court orders him to do otherwise, including after full appellate review.

Mr. Meadows is not resisting the Select Committee's subpoena to pick a fight or to hide unflattering information. To the contrary, it would be in his personal interest for members of the Select Committee and the public at large to understand the basic facts as to what occurred. For example, we anticipate that, if we were to be able to reach some accommodation with the Committee without vitiating privilege considerations, the Select Committee would learn that neither Mr. Meadows, nor to this knowledge anyone on the White House staff, had advanced knowledge of violent acts or a plan to infiltrate the Capitol Building, and that there was no delay

when the Administration was called to help restore order. Mr. Meadows is acting in good faith to protect the privileges and institutional prerogatives of the Executive Branch which attach to his tenure at the White House, as one would expect from any responsible former Chief of Staff.

It is not unusual for Congress and executive officials to have competing views about Congress's authority and executive officials' privileges and immunities. As noted above, such disputes have been a common feature of this sort of episode for more than two centuries. But equally common has been a willingness of both sides to discuss and negotiate in good faith to determine whether an accommodation can be reached. In that spirit, Mr. Meadows is willing to explore with the Select Committee whether, outside the confines of the subpoena, an accommodation could be reached by which he might be able to answer, under agreed upon and appropriate circumstances, a limited set of questions that would further a valid legislative purpose within the scope of the Select Committee's inquiry.

Sincerely yours,



George J. Terwilliger III

cc:



BENNIE G. THOMPSON, MISSISSIPPI
CHAIRMAN

ZOE LOFGREN, CALIFORNIA
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U.S. House of Representatives
Washington, DC 20515

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One Hundred Seventeenth Congress

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

November 5, 2021

Mr. George Terwilliger III
McGuire Woods LLP

Dear Mr. Terwilliger,

The Select Committee to Investigate the January 6th Attack (“Select Committee”) is in receipt of your letters dated November 3, 2021, regarding the subpoena for documents and testimony served on your client, Mark R. Meadows (the “subpoena”). In your letter regarding deposition testimony, you suggest that Mr. Meadows maintains a “good faith” belief that he cannot appear before the Select Committee to answer any questions and, instead, proposes unspecified accommodations. In your letter regarding the production of documents, you said that there are “no documents to produce to the Select Committee” because you “are not aware at this time of any documents that are responsive to the Select Committee’s subpoena and maintained in Mr. Meadows’s custody or control.”

Per the Select Committee’s October 25, 2021 letter, the responsive date for Mr. Meadows to produce documents has been extended until November 5 and his deposition is scheduled for November 12. For the reasons that follow, the Select Committee cannot agree to further postponements.

First, regarding documents, you suggest that Mr. Meadows does not have any documents to produce, despite indicating, via telephone, earlier this week that you have gathered documents and continue to review them for responsiveness. If Mr. Meadows has responsive documents but believes that they 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. As explained in the Select Committee’s October 25, 2021 letter, categorical claims of executive privilege are improper and Mr. Meadows must assert any claim of executive privilege 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 received information suggesting that Mr. Meadows regularly communicated by text and verbally on his private cell phone when conducting government and campaign business. We expect that a number of those communications are

likely records covered and protected by the Presidential Records Act. We ask that you identify for us the current location of Mr. Meadows's cell phone and whether Mr. Meadows supplied his texts and other relevant cell phone records to the Archives.

Second, with respect to Mr. Meadows's deposition, the Select Committee appreciates your apparent willingness to seek an accommodation and have Mr. Meadows appear to testify before the Select Committee. To that end, we will provide further information about the topics we intend to develop with Mr. Meadows during the deposition. We have already identified some of those topics and articulated why they do not implicate executive privilege. *See* our October 25, 2021 letter.

After reviewing that letter and those topics, you indicated in a November 2 telephone conference with staff that Mr. Meadows may assert executive privilege with respect to even those areas and disagreed the Select Committee's position that those areas would be outside of any recognized privilege.

Despite this significant disagreement over the scope of executive privilege, we write today in a continued effort to reach an accommodation with Mr. Meadows. More specifically, we identify below the areas that we will seek to develop during Mr. Meadows' deposition. At present, the Select Committee plans to question Mr. Meadows about his knowledge, actions, and communications, including communications involving Mr. Trump and others, with respect to the following:

- (1) 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.
- (2) White House officials' understanding of purported election-related fraud, irregularities, or malfeasance in the November 2020 election.
- (3) 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's 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.

- (4) 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 with legislators from Michigan, as well as a January 2, 2021 call with, among others, state officials, members of Congress, Mr. Trump, and Mr. Meadows.
- (5) 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.
- (6) 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, aides, John Eastman, members of Congress, and others.
- (7) 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. This includes, but is not limited to, Mr. Meadows' travel to Georgia to observe vote counting, as well as his or Mr. Trump's communications with officials and employees in the Georgia Secretary of State's Office. This also includes similar activities related to state and local officials in Michigan, Wisconsin, Nevada, Arizona, and Pennsylvania.
- (8) Meetings or other communications involving people who did not work for the United States government. This includes, but is not limited to, an Oval Office meeting on December 18, at which Mr. Trump, Michael Flynn, Patrick Byrne, and others 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.
- (9) 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."

- (10) 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 election, including, but not limited to, the January 6 rally on the Ellipse.
- (11) Advance knowledge of, and any preparations for, the possibility of violence during election-related rallies and/or protests in Washington, D.C.
- (12) Events in the days leading up to, and including, January 6. This includes, but is not limited to, 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 during and after the attack on the U.S. Capitol, and contact with members of Congress, law enforcement, the Department of Defense, and other federal agencies to address or respond to the attack.
- (13) 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.
- (14) 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.
- (15) 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. Meadows uses and has used.
- (16) Topics about which Mr. Meadows has already spoken publicly. This includes, but is not limited to, Mr. Meadows's February 11, 2021, appearance on the Ingraham Angle show to discuss the January 6 attack on the U.S. Capitol, Mr. Trump's reactions to the attack, and the National Guard.

Again, this list is non-exclusive and may be supplemented as our investigation continues, but we do not expect to seek information from Mr. Meadows unrelated to the 2020 election and what led to and occurred on January 6. We also continue to interview additional witnesses who have personal knowledge of these issues and Mr. Meadows's involvement. 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 will discuss those issues with you on an ongoing basis provided we are continuing to negotiate about these issues and Mr. Meadows's potential privilege assertions.

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 Monday, November 8.** 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. Meadows's deposition scheduled for November 12 can proceed on at least the agreed-upon topics, and we can move one step closer towards the resolution of outstanding issues.

Finally, it is worth emphasizing an additional point that is also addressed in the pending litigation involving the National Archives. For purposes of executive privilege, Mr. Meadows apparently sees no significant difference between himself and Mr. Trump as *former* executive branch officials, and President Biden and his chief of staff as *current* executive branch officials. That distinction, however, is meaningful because it is the incumbent President that is responsible for guarding executive privilege, not former officials. *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 actually 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. Meadows 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.

Mr. George Terwilliger III

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Our hope is that this description of topics allows us to narrow the list of potentially disputed issues and move forward with Mr. Meadows' deposition. You have asked for negotiation, and we have responded in good faith. As was true before, however, the Select Committee will view Mr. Meadows's failure to respond to the subpoena as willful non-compliance. Such 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. Meadows in his personal capacity.

Sincerely,

A handwritten signature in blue ink that reads "Bennie G. Thompson". The signature is written in a cursive style with a large, stylized initial "B".

Bennie G. Thompson
Chairman

November 8, 2021

VIA EMAIL

Honorable Bennie G. Thompson, Chairman
Honorable Liz Cheney, Vice Chair
Select Committee to Investigate the January 6th Attack on the United States Capitol
U.S. House of Representatives

Re: Subpoenas Served on Honorable Mark R. Meadows

Dear Chair Thompson and Vice Chair Cheney:

I write in response to Chairman Thompson's letter of Friday, November 5, 2021. Thank you for your willingness to discuss the important issues raised by the Select Committee's subpoena. You asked that I respond by today, Monday, November 8, 2021, and so I am writing to so respond and to further seek some reasonable accommodation of the Select Committee's demands.

Please allow me to reiterate a fundamental point: Mr. Meadows position regarding testimony to the Select Committee is driven by his intent to maintain privileges that obviously attach to most subject matters arising from his tenure as White House Chief of Staff. Put simply, whether or not we agree that he lacks standing to assert privilege, it is obvious that he has no authority to unilaterally waive privilege. Moreover, as a responsible former Chief of Staff, he is abiding by the uniform, bi-partisan position of the Department of Justice that senior-most White House Staff cannot be compelled to provide congressional testimony. Unless the Department changes its position, and a court of competent authority directs him, after full appellate review, to do otherwise, that is the position we must maintain.

Despite that position, we have, now on several occasions, sought to find, outside the context of compulsion, accommodation with the Select Committee that would allow it to obtain some information from Mr. Meadows legitimately within the purview of a proper legislative purpose.

We have gone so far as to proffer some information about a core aspect of apparent interest to the Select Committee. Unfortunately, our efforts have been met, including in your letter of November 5, with ever-broadening topical demands from the Select Committee (as detailed below), rather than an attempt to narrow our differences by focusing on a more particularized band of inquiry.

Nonetheless, we would propose yet again a means to accommodation outside the scope of subpoena that does not require Congress or Mr. Meadows to waive any legal rights. To that end, we would propose that the Select Committee propound written interrogatories to Mr. Meadows on any topics about which the Select Committee might wish to inquire. If the Select Committee is willing to do so, we are willing to respond to them as quickly as is feasible. That would allow Mr. Meadows to provide what information he can and/or to articulate clear assertions of privilege where applicable to specific questions. We believe doing so, at least initially, would present an orderly approach of far greater promise than would attempting to do so in a live setting.

With respect to the Select Committee's request for documents, please allow me to clarify as I believe your letter may misapprehend what we have related to your staff. While serving as White House Chief of Staff, Mr. Meadows conducted business on a computer and cell phone provided by the Federal Government. We believe that those devices contain the documents that are responsive to the Select Committee's subpoena. But those devices, and the documents on them, are no longer in Mr. Meadows's custody and control. He returned those devices to the Federal Government on January 20, 2021, and we believe them to be in the custody and control of the Archivist. We understand that the Select Committee is already in the process of seeking those and other documents from the National Archives, but Mr. Meadows does not have any formal role in that process.

Separately, to ensure that nothing has been missed, Mr. Meadows has provided us with access to electronic images from his personal accounts and devices. We do not expect those personal accounts and devices to contain much, if any, responsive material, but it is that review which is ongoing. My letter of November 3, 2021 was to indicate that we would agree to produce any responsive materials if we should identify any, without waiving attorney-client or any other applicable privilege. If we identify responsive materials that we conclude must be withheld based on an assertion of privilege, we will most certainly provide a privilege log as you request.

While we appreciate the Select Committee's expressed openness to an accommodation, we are concerned, as referenced above, that your latest letter expands, rather than narrows the scope of topics that any proposed accommodation might address. On October 12, I received from counsel for the Select Committee a list of topics that I was told reflected the Select Committee's view of what lay outside the scope of executive privilege. We had a different view about the applicability of executive privilege to those categories, but we appreciated the effort to reach common ground.

In your latest letter of November 5, however, there is listed an expanded set of categories that plainly implicate executive privilege even under a narrow interpretation of it. For instance, you ask Mr. Meadows to testify about "White House officials' understanding of purported election-related fraud, irregularities, or malfeasance in the November 2020 election." As you

know, the Executive Branch is responsible for enforcing federal election laws, and it is natural for federal officials to discuss and deliberate on those issues. We do not see how Mr. Meadows could testify about that topic without implicating executive privilege. You also ask Mr. Meadows to testify about President Trump's "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." As you know, the President is Chief Executive and oversees the Department of Justice, as well as other federal agencies. We do not see how Mr. Meadows could testify about that topic without implicating executive privilege. If we are misunderstanding the Select Committee's position, and there is some narrower subset of these categories that the Select Committee genuinely believes to be outside executive privilege, we would welcome the clarification.

In addition to your expanded list of topics, you also maintain that "this list is non-exclusive and may be supplemented." You also state that the Select Committee "continue[s] to interview additional witnesses who have personal knowledge of these issues and Mr. Meadows's involvement." In addition to raising concerns about the Select Committee moving away from a reasonable accommodation, these statements also raise questions about why the Select Committee feels the need to subpoena the former White House Chief of Staff at all and, in particular, why the Select Committee is insisting on a November 12 date for such testimony. The courts have made clear that an important factor in assessing whether Congress can compel production of information about the President and his senior advisors is whether Congress has alternative means of getting the same information. See *Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 482 (1977); *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2025 (2020). If the Select Committee is already gathering documents and testimony about Mr. Meadows and his conduct during the relevant period, as your letter suggests, it is not clear why the Select Committee needs to gather that information again from him—in a posture that would threaten long-term effects for executive privilege.

The Executive Branch has prudently and consistently maintained in Administrations under both parties that Congress does not have the authority to compel testimony from the President's most senior advisors without the need to parse underlying questions of executive privilege. As the Supreme Court has noted, it can be very difficult to parse out the official and non-official duties of the President, who must serve as a one-man branch of government. See *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2024 (2020). It is all the more difficult to conduct that parsing during live testimony. Therefore, we believe that the alternate approach we respectfully suggest would provide the best path forward. We hope the Committee will give careful consideration to our suggestion for the use of voluntary interrogatory questions and answers.

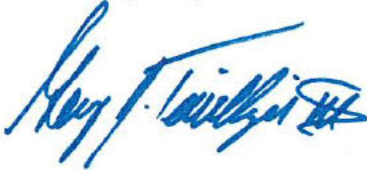
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Again, I want to thank you and the Select Committee for your willingness to engage on these important topics. We recognize that the Select Committee and Mr. Meadows have very different views about the scope of Congress' authority and the protections afforded to Mr. Meadows.

Select Committee to Investigate the January 6th Attack on the United States Capitol
November 8, 2021
Page 4

You also note in your letter that, if we do not reach an accommodation, you intend to pursue a contempt citation against Mr. Meadows. We do not believe that would be warranted under the circumstances, but we understand that the Select Committee will do what it sees most fit. We respectfully request, however, that, if the Select Committee does decide to pursue a contempt citation against Mr. Meadows, in fairness to him that our mutual correspondence would be entered into the official record at that time.

Sincerely yours,



George J. Terwilliger III

cc:



BENNIE G. THOMPSON, MISSISSIPPI
CHAIRMAN

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One Hundred Seventeenth Congress

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

November 9, 2021

Mr. George Terwilliger III
McGuire Woods LLP

Dear Mr. Terwilliger:

The Select Committee to Investigate the January 6th Attack (“Select Committee”) is in receipt of your letter dated November 8, 2021.

As explained in the Select Committee’s letter dated November 5, 2021, we have been, and remain, interested in reaching an accommodation with Mr. Meadows that allows the Select Committee to fulfill its purpose of understanding the complete picture of what led to and occurred on January 6th, making recommendations for changes to the law that will protect our democracy, and help ensure that nothing like January 6th ever happens again. To that end, we have endeavored to identify discrete areas of inquiry that we seek to develop with Mr. Meadows.

As you are aware, the Select Committee has identified sixteen subject matters for inquiry and asked that you explain your position as to whether any of those areas would trigger any claims of executive privilege. In your November 8 letter, you did not respond with any specificity about those areas, which we assume means that you believe all potentially implicate executive privilege. Without further input on those areas, it appears that the accommodation process has reached its natural conclusion.

As a result, the Select Committee must insist that Mr. Meadows appear for a deposition on November 12, 2021, as required by the subpoena. The deposition will begin at 10:00 a.m. in [REDACTED]. 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. At Friday’s deposition, we will inquire about the areas identified in the November 5 letter. We continue to believe they do not implicate any privilege, though we understand that Mr. Meadows may assert executive privilege as to certain questions. Our intention is to develop the areas that are outside of any privilege claim, and to give you and Mr. Meadows the opportunity to state privilege objections to specific questions on the record.

As we discussed by telephone today, our investigation has identified evidence regarding your client’s use of personal cellular telephones and email accounts. Mr. Meadows’s use of such personal devices and accounts will be a subject of inquiry at Friday’s deposition. More specifically,

we will seek to develop the following information, none of which implicates any executive or other privilege:

- (1) Between the dates November 3, 2020, and January 20, 2021, did Mr. Meadows use any electronic application with encryption technology to communicate any government-related messages? If so, which applications did Mr. Meadows use? Does Mr. Meadows still have access to these messages? Were these messages searched in response to the Select Committee's subpoena?
- (2) Between the dates November 3, 2020, and January 20, 2021, did Mr. Meadows use any personal communications devices, including but not limited to cell phones assigned the numbers [REDACTED] and [REDACTED]?
- (3) If Mr. Meadows had such personal communications devices, did he use them for any government-related communications?
- (4) If Mr. Meadows had such personal communications devices, does he still have those devices and any text messages stored therein?
- (5) If so, have those devices been searched for records responsive to the Select Committee's subpoena to Mr. Meadows?
- (6) If Mr. Meadows no longer has such personal communications devices or no longer has the text messages from the date range mentioned above, what did he do with those devices and messages? Did he turn them over to the National Archives? If he no longer has possession of them, does he have knowledge regarding their disposition?
- (7) During the date ranges mentioned above, did Mr. Meadows utilize a non-government email account, such as a Gmail account? If so, did Mr. Meadows use that account for any government-related communications? Does Mr. Meadows still have access to the account? Has any such account been searched for records responsive to the Select Committee's subpoena to Mr. Meadows?
- (8) If Mr. Meadows had a non-government email account during the dates mentioned above, but no longer has access to that account or no longer has emails from the date range mentioned above, what happened to that account or those emails? Did he provide all government-related emails to the National Archives?

As we discussed, it would be helpful to have information about these issues before Friday's deposition.

Please confirm receipt of this letter and Mr. Meadows' intent to appear for his deposition on Friday. Our staff is available to talk with you about logistical information such as building access. The Select Committee will view Mr. Meadows's failure to appear for the deposition and respond to the subpoena as willful non-compliance. Such 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

Mr. George Terwilliger III
Page 3

Department of Justice for criminal charges—as well as the possibility of having a civil action to enforce the subpoena brought against Mr. Meadows in his personal capacity. Upon completion of Friday's deposition, we will have a record on which to base decisions about possible enforcement action.

Sincerely,

A handwritten signature in blue ink that reads "Bennie G. Thompson". The signature is written in a cursive, flowing style.

Bennie G. Thompson
Chairman

November 10, 2021

VIA EMAIL

Honorable Bennie G. Thompson, Chairman
Honorable Liz Cheney, Vice Chair
Select Committee to Investigate the January 6th Attack on the United States Capitol
U.S. House of Representatives

Re: Subpoenas Served on Honorable Mark R. Meadows

Dear Chair Thompson and Vice Chair Cheney:

I write to acknowledge receipt of your letter of yesterday, November 9, 2021, in which you reject yet again a proposal for accommodation and ignore our suggestion to seek an accommodation outside the compulsion of a committee subpoena. Rather, the Select Committee insists that Mr. Meadows appear pursuant to a subpoena for a deposition this Friday, November 12, 2021, pertaining—without limitation in light of the privilege concerns we have raised—to sixteen wide-ranging subject matters as to which he would be questioned. You have made this demand notwithstanding the numerous outstanding issues that we have been discussing. Not least among these, we have asserted that Mr. Meadows feels duty bound to respect the bi-partisan positions of multiple presidential administrations, as expressed by the Department of Justice, that senior aides to the president cannot be compelled to provide congressional testimony. Mr. Meadows cannot agree to appear at 10 AM Friday.

The Select Committee has already threatened to enforce its subpoena against Mr. Meadows if he does not appear for live testimony, but I urge you to reconsider that position. It would be an extraordinary step for the Select Committee to seek to force Mr. Meadows to testify under these circumstances: The Select Committee's subpoena directly seeks information about Mr. Meadows's tenure as White House Chief of Staff, including information that he knows only from discussions with then-President Trump in the course of official duties. President Trump has instructed him to maintain and assert privilege and testimonial immunity to the full extent of the law, and Mr. Meadows has not received any contrary instruction from the current Administration. There is active litigation in the federal courts over related privilege issues that

could bear on Mr. Meadows's testimony. And as expressed in your letter of last Friday, November 5, 2021, the Select Committee still has not determined the full scope of information that it intends to seek from Mr. Meadows under its broad subpoena.

We also regret that we have not been able to reach an accommodation with the Select Committee outside the contours of the subpoena, as Congress has often been able to do with senior Executive officials over the past two centuries. Curiously, your letter insists that the accommodation process has stalled because the Select Committee does not have written views from Mr. Meadows on which subjects of the Select Committee's inquiry would be subject to legal privileges, including executive privilege. And yet that is precisely what we proposed to provide in response to written interrogatories from the Select Committee. We have never suggested that, by agreeing to propound interrogatories as a next step in the accommodation process, the Select Committee would forfeit the ability to seek live testimony. Nor would Mr. Meadows forfeit his ability to object to this request. That is the nature of an accommodation. It is therefore unfortunate that the Select Committee has rushed to compel live testimony now.

Mr. Meadows has proudly served in the House of Representatives. He fully appreciates Congress's role in our constitutional system. But in these circumstances, that appreciation for our constitutional system and the separation of powers dictates that he cannot appear on Friday to testify about his tenure as White House Chief of Staff. Mr. Meadows does not resist the Select Committee's subpoena out of self-interest. He instead feels duty-bound as former White House Chief of Staff to protect the prerogatives of that office and of Executive Branch in which he served. Mr. Meadows cannot, in good conscience, undermine the office and all who will hold it through a unilateral waiver of privilege and testimonial immunity.

* * * * *

I hope you will accept my sincere thanks for the opportunity to have engaged in this dialogue with you and the Select Committee concerning Mr. Meadows's compelled appearance before it. I regret that this frank exchange of views has not apparently led to an agreed upon resolution. As stated above, we do hope that the Select Committee will reconsider its apparent decision to enforce its subpoena against Mr. Meadows. But if not, we reiterate our request for the Select Committee to enter our mutual correspondence, including this letter, into the official record of any associated proceedings.

Sincerely yours,



George J. Terwilliger III

cc:



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U.S. House of Representatives
Washington, DC 20515

january6th.house.gov
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One Hundred Seventeenth Congress

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

November 11, 2021

Mr. George Terwilliger III
McGuire Woods LLP

Dear Mr. Terwilliger:

The Select Committee to Investigate the January 6th Attack (“Select Committee”) is in receipt of your letter dated November 10, 2021, in which you state that Mr. Meadows feels “duty bound” to disregard the Select Committee’s subpoena requiring him to produce documents and appear for testimony. Mr. Meadows’s conclusion about his duty, however, relies on a misunderstanding of his legal obligations under the subpoena. The law requires that Mr. Meadows comply with the subpoena absent an applicable immunity or valid assertion of a Constitutionally based privilege. The attached letter from the White House Counsel’s Office, dated today, eviscerates any plausible claim of testimonial immunity or executive privilege, and compels compliance with the Select Committee’s subpoena.

In your letters and telephone conversations with the Select Committee since October 7, 2021, you have indicated that Mr. Meadows “is immune from compelled congressional testimony on matters related to his official responsibilities.” That position is based on Department of Justice Office of Legal Counsel (“OLC”) opinions in which OLC has advised past presidents to claim that senior advisors cannot be required to provide testimony to Congress about official actions. These opinions, however, do not justify Mr. Meadows’s refusal to provide the Select Committee information about one of the most significant events in our Nation’s history. As we previously conveyed, every federal court that has considered the issue of absolute immunity has rejected it, *even after* OLC last opined on the matter. *See, e.g., Comm. on the Judiciary v. Miers*, 558 F. Supp. 2d 53, 106 (D.D.C. 2008) (rejecting former White House counsel’s assertion of absolute immunity from compelled congressional process); *Comm. on Judiciary v. McGahn*, 415 F. Supp. 3d 148 (D.D.C. 2019) (“To make the point as plain as possible, it is clear to this Court ... that, with respect to senior-level presidential aides, absolute immunity from compelled congressional process simply does not exist.”).

Your letters also broadly suggest that Mr. Meadows’s testimony is covered by claims of executive privilege. At the same time, you have failed to respond with specificity about any of the areas of inquiry the Select Committee has identified that do not implicate any privilege at all. For example, my most recent letter to you listed eight questions on which the Select Committee seeks Mr. Meadows’s testimony related to his use of personal cellular devices and email accounts. Your

letter in response did not address those issues and, instead, made general and unspecified blanket assertions of immunity and executive privilege. But, as you know and, as explained in my letter dated October 25, categorical claims of executive privilege run afoul of caselaw requiring that any claim of executive privilege be asserted narrowly and specifically. *See, e.g., In re Sealed Case (Espy)*, 121 F.3d 729, 752 (D.C. Cir. 1997) (“the presidential communications privilege should be construed as narrowly...”); *Comm. on Oversight & Gov’t Reform v. Holder*, 2014 WL 12662665, at *2 (rejecting a “blanket” executive-privilege claim over subpoenaed documents). We find it hard to consider your offer to answer questions in writing as genuine when you failed to respond to the questions we explicitly asked. Please respond to those questions no later than tomorrow.

In addition, Mr. Meadows has not produced even a single document in response to the Select Committee’s subpoena. Although you previously indicated that your firm was searching records that Mr. Meadows provided to you, more than enough time has passed for you to complete your review. Please immediately inform the Select Committee whether Mr. Meadows has any records responsive to the subpoena. Your search for responsive records should include (but not be limited to) any text messages, emails, or application-based messages associated with the cellular phone numbers and private email address the Select Committee has identified. If Mr. Meadows has records that you believe are protected by some form of privilege, you must provide the Select Committee a log describing each such record and the basis for the privilege asserted.

Further, the Select Committee understands that today, November 11, 2021, you received the attached letter from the White House Counsel’s Office addressing your previously stated concern that “Mr. Meadows has not received any contrary instruction from the current Administration.” The White House Counsel’s letter clearly explains the current President’s position: “[t]he President believes that the constitutional protections of executive privilege should not be used to shield information reflecting an effort to subvert the Constitution itself, and indeed believes that such an assertion in this circumstance would be at odds with the principles that underlie the privilege.” For that reason, and others, your client has now been advised that (i) “an assertion of privilege is not justified with respect to testimony and documents” relevant to the Select Committee’s investigation, and (ii) the President will not be asserting any claims of executive privilege or testimonial immunity regarding subjects about which the Select Committee seeks documents and testimony from Mr. Meadows.¹

Simply put, there is no valid legal basis for Mr. Meadows’s continued resistance to the Select Committee’s subpoena. As such, the Select Committee expects Mr. Meadows to produce

¹ Your letter states that Mr. Meadows cannot “in good conscience” give testimony out of an “appreciation for our constitutional system and the separation of powers” because doing so would “undermine the office and all who hold it.” You also acknowledge, however, that Congress has successfully obtained information from “senior Executive officials over the past two centuries,” as you must, because there is a long history of senior aides providing testimony to Congress without upending our constitutional system. *See, e.g., Trump v. Thompson*, No. 21-cv-2769 at 19-20 (D.D.C. Nov. 9, 2021) (describing congressional testimony of White House staff during the Nixon and Reagan administrations, as well as President George W. Bush’s interview with the 9/11 Commission); *see also Presidential Advisers’ Testimony Before Congressional Committees: An Overview*, CRS REPORT FOR CONGRESS (April 10, 2007) (providing numerous examples of presidential aides testifying before Congress including, Lloyd Cutler (Counsel to the President), Samuel Berger (Assistant to the President), Harold Ickes (Assistant to the President and Deputy Chief of Staff)).

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all responsive documents and appear for deposition testimony tomorrow, November 12, 2021, at 10:00 a.m. If there are specific questions during that deposition that you believe raise legitimate privilege issues, Mr. Meadows should state them at that time on the record for the Select Committee's consideration and possible judicial review.

The Select Committee will view Mr. Meadows's failure to appear at the deposition, and to produce responsive documents or a privilege log indicating the specific basis for withholding any documents you believe are protected by privilege, as willful non-compliance. Such 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 of Representatives 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. Meadows in his personal capacity.

Sincerely,

A handwritten signature in blue ink that reads "Bennie G. Thompson". The signature is written in a cursive style with a large initial "B" and a long horizontal stroke at the end.

Bennie G. Thompson
Chairman