House Calendar No. 56

117TH CONGRESS *1st Session* | HOUSE OF REPRESENTATIVES | REPORT 117–216

RESOLUTION RECOMMENDING THAT THE HOUSE OF REPRESENTATIVES FIND MARK RANDALL MEADOWS IN CONTEMPT OF CONGRESS FOR REFUSAL TO COMPLY WITH A SUBPOENA DULY ISSUED BY THE SELECT COMMITTEE TO INVESTIGATE THE JANUARY 6TH ATTACK ON THE UNITED STATES CAPITOL

DECEMBER 13, 2021.—Referred to the House Calendar and ordered to be printed

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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 Mark Randall Meadows for contempt of Congress pursuant to this Report is as follows:

Resolved, That Mark Randall Meadows shall be found to be in contempt of Congress for failure to comply with a congressional subpoena.

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 Mark Randall Meadows to 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. Meadows 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 subpoena.

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PURPOSE AND SUMMARY

On January 6, 2021, a violent mob breached the security perimeter of the United States Capitol, assaulted and injured scores of police officers, engaged in hand-to-hand violence with those officers over an extended period, terrorized Members of Congress and staff, and invaded and occupied the Capitol building, all in an effort to halt the lawful counting of electoral votes and reverse the results of the 2020 election. In the words of many of those who participated in the violence, the attack was a direct response to statements by then-President Donald J. Trump—beginning on election night 2020 and continuing through January 6, 2021—that the 2020 election had been stolen by corrupted voting machines, widespread fraud, and otherwise.

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 peaceful transfer of power, in order to identify how the events of January 6th were planned, what actions and statements motivated and contributed to the attack on the Capitol, how the violent riot that day was coordinated with a political and public relations strategy to reverse the election outcome, and why Capitol security was insufficient to address what occurred. The Select Committee will evaluate all facets of these issues, create a public record of what occurred, and recommend to the House, and its relevant committees, corrective laws, policies, procedures, rules, or regulations.

According to documents and testimony obtained by the Select Committee, Mark Randall Meadows is uniquely situated to provide critical information about the events of January 6, 2021, as well as efforts taken by public officials and private individuals to spread the message of widespread fraud in the November 2020 election and to delay or prevent the peaceful transfer of power. Mr. Meadows served as chief of staff to President Trump during the final year of the Trump administration. As detailed in public reporting, Mr. Meadows was with or in the vicinity of then-President Trump on January 6 as Mr. Trump learned about the attack on the U.S. Capitol and decided whether to issue a statement that could help to stop the rioters.[1]

Mr. Meadows has refused to provide the Select Committee with information and testimony that has no conceivable, associated

[1] Jonathan Karl, *Betrayal: The Final Act of the Trump Show*, (New York: Dutton, 2021), pp. 297–299.

privilege claims. To complete its investigation, the Select Committee needs access to testimony on this non-privileged information. The Select Committee offers here just several examples: Mr. Meadows has refused to provide testimony on the documents he himself produced to the Select Committee without any claim of privilege; Mr. Meadows has refused to provide testimony about his reported communications with organizers of various protest events before January 6, 2021;[2] Mr. Meadows personally travelled to Georgia to inspect a county audit related to the presidential election, but the Select Committee has not been able to obtain testimony from Mr. Meadows about these events;[3] and Mr. Meadows has also denied the Select Committee the opportunity to question him about a call with Georgia State officials in which Mr. Trump insisted that he had won Georgia and told the Georgia secretary of state that he wanted to "find" enough votes to ensure his victory.[4] Yet another topic on which Mr. Meadows has frustrated the Select Committee's investigative efforts relates to the Select Committee's attempt to locate and discover highly relevant documents. Based on Mr. Meadows's production of documents and recently reported information, it appears that Mr. Meadows may not have complied with legal requirements to retain or archive documents under the Presidential Records Act.[5] He has denied the Select Committee the opportunity to question him about these circumstances so that the Select Committee can fully understand the location of highly relevant materials to its investigation and which materials may now be lost to the historical record.

To be clear, Mr. Meadows's failure to comply, and this contempt recommendation, are not based on good-faith disagreements over privilege assertions. Rather, Mr. Meadows has failed to comply and warrants contempt findings because he has wholly refused to appear to provide any testimony and refused to answer questions regarding even clearly non-privileged information—information that he himself has identified as non-privileged through his own document production.

Mr. Meadows's relevant documents and testimony are necessary to the Select Committee's investigation for many additional reasons. Mr. Meadows also reportedly participated in meetings and communicated with senior Department of Justice (DOJ) officials about unsupported election-fraud claims and litigation aimed at disrupting or overturning the election results.[6] Mr. Meadows reportedly participated in a contentious meeting at the White House

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[2] Documents on file with the Select Committee; Joshua Kaplan and Joaquin Sapien, "New Details Suggest Senior Trump Aides Knew Jan. 6 Rally Could Get Chaotic," ProPublica, (June 25, 2021), available at https://www.propublica.org/article/new-details-suggest-senior-trump-aides-knew-jan-6-rally-could-get-chaotic.

[3] Joe Walsh, "Trump Chief of Staff Observes Georgia County's Ballot Audit Amid Ongoing Baseless Fraud Claims," *Forbes*, (Dec. 22, 2020), available at https://www.forbes.com/sites/joewalsh/2020/12/22/trump-chief-of-staff-observes-georgia-countys-ballot-audit-amid-ongoing-baseless-fraud-claims/?sh=379f2627b411.

[4] "Here's the full transcript and audio of the call between Trump and Raffensperger," *Washington Post*, (Jan. 2, 2021), available at https://www.washingtonpost.com/politics/trump-raffensperger-call-transcript-georgia-vote/2021/01/03/2768e0cc-4ddd-11eb-83e3-322644d82356—story.html.

[5] Nicholas Wu, Kyle Cheney, and Josh Gerstein, "National Archives: Meadows may not have stored all Trump-era records 'properly'," *Politico*, (Dec. 9, 2021), available at https://www.politico.com/news/2021/12/09/national-archives-meadows-trump-524043.

[6] U.S. Senate, Committee on the Judiciary, "Subverting Justice: How the Former President and His Allies Pressured DOJ to Overturn the 2020 Election," (Oct. 7, 2021) ("Senate Report"), at pp. 4, 5, 14, 29–39; Documents on file with the Select Committee.

with private individuals and others linked to Mr. Trump's re-election campaign during which Mr. Trump and others discussed seizing voting machines and invoking certain laws including the National Emergencies Act for election-related purposes because of purported fraud in the election.[7] Mr. Meadows reportedly joined a January 2 call with Mr. Trump and State and Federal officials to discuss overturning certain States' electoral college results on January 6,[8] and later sent the former Vice President's staff a memo drafted by a Trump campaign lawyer urging the Vice President to delay or decline the counting of votes from certain States.[9] Mr. Meadows was also reportedly in contact with at least one of the individuals who planned and organized a January 6 rally, one of whom may have expressed safety concerns to Mr. Meadows about the event.[10] In short, Mr. Meadows appears to have participated in, and been a witness to, critically important communications and events that took place before and on January 6, and the Congress is entitled to hear his first-hand testimony regarding his actions and knowledge. The Select Committee expects such testimony to be directly relevant to its report and recommendations for legislative and other action.

On September 23, 2021, the Select Committee issued a subpoena to Mr. Meadows for documents and testimony, and transmitted it along with a cover letter and schedule to Mr. Meadows's then-counsel, who accepted service on Mr. Meadows's behalf on that same day. The subpoena required that Mr. Meadows produce responsive documents by October 7, 2021, and that Mr. Meadows appear for a deposition on October 15, 2021. After Mr. Meadows retained separate counsel, the Select Committee agreed to postpone the subpoena deadlines to enable his counsel to understand the requests associated with the subpoena and work with Mr. Meadows. Ultimately, by letter dated October 25, 2021, the Select Committee accommodated Mr. Meadows's interest in moving back the date of his appearance and document production and instructed Mr. Meadows to produce documents by November 5, 2021, and appear for a deposition on November 12, 2021.

Mr. Meadows's resistance came after the Select Committee agreed to that postponement, after the Select Committee identified specific subject matters for inquiry that did not implicate any privilege, and after inviting Mr. Meadows to explain with specificity his position as to whether any of those areas would trigger any claims of executive privilege. Mr. Meadows provided no such explanation. Instead, he declined to produce a single document. He refused to carry out the commonly accepted practice of producing a privilege log in response to the Select Committee's subpoena. And he failed to appear at the scheduled deposition, as ordered by the lawful subpoena.

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[7] Jonathan Swan and Zachary Basu, "Bonus episode: Inside the craziest meeting of the Trump presidency," Axios, (Feb. 2, 2021), available at https://www.axios.com/trump-oval-office-meeting-sidney-powell-a8e1e466-2e42-42d0-9cf1-26eb267f8723.html.

[8] Caitlin McFall, "Trump, House Republicans held call to discuss Electoral College rejection: Brooks," Fox News, (Jan. 2, 2021), available at https://www.foxnews.com/politics/gop-splits-electoral-college-certification; Documents on file with the Select Committee.

[9] Karl, *Betrayal*, pp. 259–260.

[10] Documents on file with the Select Committee; Joshua Kaplan and Joaquin Sapien, "New Details Suggest Senior Trump Aides Knew Jan. 6 Rally Could Get Chaotic," ProPublica, (June 25, 2021), available at https://www.propublica.org/article/new-details-suggest-senior-trump-aides-knew-jan-6-rally-could-get-chaotic.

A week after Mr. Meadows failed to appear for his deposition and 2 weeks after his deadline to produce documents, Mr. Meadows reengaged with the Select Committee by letter. The Select Committee gave Mr. Meadows an opportunity to cure his previous non-compliance with the Select Committee's subpoena by asking that he produce documents and appear at a deposition that, ultimately, was scheduled for December 8, 2021. Through counsel, Mr. Meadows agreed. Mr. Meadows produced a large number of responsive documents that were not subject to any claim of privilege, while withholding many others. But the day before his deposition, Mr. Meadows changed course once more and told the Select Committee that he would not be attending his deposition after all, even to answer questions about the documents that he agrees are relevant and non-privileged that he had just produced. He did this even though that very same day his book was released in which he recounts specific conversations that he had with former-President Trump, including conversations about whether the former President planned to join a march to the United States Capitol on January 6 after encouraging rally-goers to do so.[11] On December 8, 2021, Mr. Meadows failed to appear for his deposition.

Although Mr. Meadows's counsel has referenced claims of testimonial immunity and executive privilege purportedly relayed by Mr. Trump's counsel, no such claims have been presented by Mr. Trump to the Select Committee. Moreover, the current White House has informed Mr. Meadows that the incumbent President is *not* asserting claims of testimonial immunity or executive privilege to prevent Mr. Meadows from complying with the Select Committee's subpoena.[12]

The Select Committee is confident that there is no conceivable immunity or executive privilege claim that could bar *all* of the Select Committee's requests or justify Mr. Meadows's blanket refusal to appear for the required deposition. Indeed, the Chairman's written responses on October 25, 2021, November 5, 2021, and November 11, 2021, addressed the legal arguments raised by Mr. Meadows's counsel and made clear that the Select Committee expected—as the law demands—that Mr. Meadows produce documents and appear before the Select Committee at his deposition to raise any privilege or other concerns regarding specific questions on the record of that proceeding.

The contempt of Congress statute, 2 U.S.C. § 192, provides 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.[13] Further, the Supreme Court in *United States v. Bryan* (1950) 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."[14] The Supreme Court recently reinforced this clear obligation by stating that "[w]hen Congress seeks information needed for

[11] Mark Meadows, *The Chief's Chief*, (All Seasons Press, 2021), p. 259.

[12] *See* Appendix, Ex. 3 (Letter from White House Counsel to Counsel for Mr. Meadows, Nov. 11, 2021).

[13] 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).

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

intelligent legislative action, it unquestionably remains the duty of *all* citizens to cooperate."[15]

Mr. Meadows did not produce documents as required by the subpoena's October 7, 2021, deadline or the extended deadline of November 5, 2021. Similarly, Mr. Meadows did not appear for a deposition scheduled for October 15, 2021, or the extended deadline of November 12, 2021, as ordered by the subpoena and in contravention of the clear instructions by the Select Committee Chairman's letters dated October 25, 2021, November 5, 2021, November 9, 2021, and November 11, 2021, to appear at the deposition and raise any privilege concerns in response to specific questions on the record. Furthermore, Mr. Meadows chose not to appear before the Select Committee on December 8, 2021, to cure his previous noncompliance and after specifically agreeing to do so. Mr. Meadows's refusal to comply with the Select Committee's subpoena constitutes willful default under the law and warrants contempt of Congress and referral to the United States Attorney for the District of Columbia for prosecution as prescribed by law. The denial of the information sought by the subpoena impairs Congress's central powers under the United States Constitution.

BACKGROUND ON THE SELECT COMMITTEE'S INVESTIGATION

House Resolution 503 sets out the specific purposes of the Select Committee, including:

- 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";
- To investigate and report upon the facts, circumstances, and causes "relating to the interference with the peaceful transfer of power"; and
- To investigate and report upon the facts, circumstances, and causes relating to "the influencing factors that fomented such an attack on American representative democracy while engaged in a constitutional process."

The Supreme Court has long recognized Congress's oversight role. "The power of the Congress to conduct investigations is inherent in the legislative process."[16] Indeed, Congress's ability to enforce its investigatory power "is an essential and appropriate auxiliary to the legislative function."[17] "Absent such a power, a legislative body could not 'wisely or effectively' evaluate those conditions 'which the legislation is intended to affect or change.' "[18]

The oversight powers of House and Senate committees are also codified in law. 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,[19] and the Legislative Reorganization Act of 1970 au-

[15] *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.").

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

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

[18] *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).

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

thorized committees to "review and study, on a continuing basis, the application, administration, and execution" of laws.[20]

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."[21] A bipartisan selection of Members was appointed pursuant to House Resolution 503 on July 1, 2021, and July 26, 2021.[22]

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."[23] That same House rule expressly allows House committees to compel information from the President and his aides.[24] 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."[25] The subpoena to Mr. Meadows 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.[26]

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

The Select Committee seeks information from Mr. Meadows central to its investigative responsibilities delegated to it from 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."[27]

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

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

[21] 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.

[22] 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.

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

[24] *See* clause 2(m)(3)(D) of rule XI ("Subpoenas for documents or testimony may be issued to . . . the President, and the Vice President, whether current or former, in a personal or official capacity, as well as the White House, the Office of the President, the Executive Office of the President, and any individual currently or formerly employed in the White House, Office of the President, or Executive Office of the President.").

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

[26] 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."

[27] H. Res. 503, 117th Cong. § 3(1) (2021).

of electoral college votes by Congress is a component of that transfer of power that occurs every January 6 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 6 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 6 assault, even after courts across the country had resoundingly rejected Trump campaign 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. Meadows reportedly participated or that he observed.

Mr. Meadows was one of a relatively small group of people who witnessed the events of January 6 in the White House and with then-President Trump. Mr. Meadows was with or in the vicinity of then-President Trump on January 6 as he learned about the attack on the U.S. Capitol and decided whether to issue a statement that could stop the rioters.[28] In fact, as the violence at the Capitol unfolded, Mr. Meadows received many messages encouraging him to have Mr. Trump issue a statement that could end the violence, and one former White House employee reportedly contacted Mr. Meadows several times and told him, "[y]ou guys have to say something. Even if the president's not willing to put out a statement, you should go to the [cameras] and say, 'We condemn this. Please stand down.' If you don't, people are going to die."[29]

Moreover, Mr. Meadows reportedly spoke with Kashyap Patel, who was then the chief of staff to former Acting Secretary of Defense Christopher Miller, "nonstop" throughout the day of January 6.[30] And, among other things, Mr. Meadows apparently knows if and when Mr. Trump was engaged in discussions regarding the National Guard's response to the Capitol riot, a point that is contested but about which Mr. Meadows provided documents to the

[28] Karl, *Betrayal*, pp. 297–299.

[29] Documents on file with the Select Committee (Meadows production); Carol Leonnig and Philip Rucker, *I Alone Can Fix It*, (New York: Penguin, 2021), p. 476.

[30] Adam Ciralsky, "'The President Threw Us Under the Bus': Embedding with Pentagon Leadership in Trump's Chaotic Last Week," *Vanity Fair*, (Jan. 22, 2021), available at https://www.vanityfair.com/news/2021/01/embedding-with-pentagon-leadership-in-trumps-chaotic-last-week.

Select Committee and spoke publicly on national television after President Trump left office.[31]

Beyond those matters, the Select Committee seeks information from Mr. Meadows about issues including the following:

- Mr. Meadows exchanged text messages with, and provided guidance to, an organizer of the January 6th rally on the Ellipse after the organizer told him that "[t]hings have gotten crazy and I desperately need some direction. Please."[32]
- Mr. Meadows sent an email to an individual about the events on January 6 and said that the National Guard would be present to "protect pro Trump people" and that many more would be available on standby.[33]
- Mr. Meadows received text messages and emails regarding apparent efforts to encourage Republican legislators in certain States to send alternate slates of electors to Congress, a plan which one Member of Congress acknowledged was "highly controversial" and to which Mr. Meadows responded, "I love it." Mr. Meadows responded to a similar message by saying "[w]e are" and another such message by saying "Yes. Have a team on it."[34]
- Mr. Meadows forwarded claims of election fraud to the acting leadership of DOJ for further investigation, some of which he may have received using a private email account and at least one of which he had received directly from people associated with Mr. Trump's re-election campaign.[35]
- He also reportedly introduced Mr. Trump to then-DOJ official Jeffrey Clark.[36] Mr. Clark went on to recommend to Mr. Trump that he be installed as Acting Attorney General and that DOJ should send a letter to State officials urging them to take certain actions that could affect the outcome of the November 2020 election by, among other things, appointing alternate slates of electors to cast electoral votes for Mr. Trump rather than now-President Biden.[37]
- Mr. Meadows participated in meetings and calls during which the participants reportedly discussed the need to "fight" back against "mounting evidence" of purported voter fraud after courts had considered and overwhelmingly rejected Trump campaign claims of voter fraud and other election irregularities. He participated in one such meeting in the Oval Office with Mr. Trump and Members of Congress, which he publicly tweeted about from his personal Twitter account shortly after.[38] He participated in another such call just days before

[31] Documents on file with the Select Committee (Meadows production); Transcript, "The Ingraham Angle," Fox News, (Feb. 11, 2021), available at https://www.foxnews.com/transcript/biden-warns-china-could-eat-our-lunch-after-phone-call-with-xi; Transcript, "Hannity," Fox News, (Feb. 12, 2021), available at https://www.foxnews.com/transcript/new-yorker-who-lost-mother-in-law-in-nursing-home-blasts-disgrace-cuomo; Testimony of Hon. Christopher C. Miller, U.S. House of Representatives Committee on Oversight and Reform, (May 12, 2021), available at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Miller%20Testimony.pdf.

[32] Documents on file with the Select Committee (Meadows production).

[33] Documents on file with the Select Committee (Meadows production).

[34] Documents on file with the Select Committee (Meadows production).

[35] Documents on file with the Select Committee.

[36] Michael Bender, *Frankly, We Did Win This Election: The Inside Story of How Trump Lost*, (New York: Grand Central Publishing, 2021), p. 369.

[37] Documents on file with the Select Committee.

[38] Marissa Schultz, "Trump meets with members of Congress plotting Electoral College objections on Jan. 6," Fox News, (Dec. 21, 2021), available at https://www.foxnews.com/politics/mem-

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the January 6 attack with Mr. Trump, Members of Congress, attorneys for the Trump re-election campaign, and "some 300" State and local officials to discuss the goal of overturning certain States' electoral college results on January 6, 2021.[39]

- Mr. Meadows traveled to Georgia to observe an audit of the votes days after then-President Trump complained that the audit had been moving too slowly and claimed that the signature-match system was rife with fraud.[40] That trip precipitated Mr. Trump's calls to Georgia's deputy secretary of state and, later, secretary of state.[41] In the call with Georgia's secretary of state, which Mr. Meadows and an attorney working with the campaign also joined, Mr. Trump pressed his unsupported claims of widespread election fraud, including claims related to deceased people voting, forged signatures, out-of-State voters, shredded ballots, triple-counted ballots, Dominion voting machines, and suitcase ballots, before telling the secretary of state that he wanted to find enough votes to ensure his victory.[42] At one point during the call, Mr. Meadows asked "in the spirit of cooperation and compromise, is there something that we can at least have a discussion to look at some of these allegations to find a path forward that's less litigious?"[43] At that point, Mr. Trump had filed two lawsuits in his personal capacity and on behalf of the campaign in Georgia, but the United States had not filed—and never did file—any. Mr. Meadows used a personal account in his attempts to reach the secretary of state before.[44]
- Mr. Meadows was chief of staff during the post-election period when other White House staff, including the press secretary, advanced claims of election fraud. In one press conference, the press secretary claimed that there were "very real claims" of fraud that the Trump re-election campaign was pursuing and said that mail-in voting was one that "we have identified as being particularly prone to fraud."[45]

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bers-of-congress-trump-electoral-college-objections-on-jan-6; Tweet, @MarkMeadows, (Dec. 21, 2020 at 6:03 p.m.) ("Several members of Congress just finished a meeting in the Oval Office with President @realDonaldTrump, preparing to fight back against mounting evidence of voter fraud. Stay tuned.").

[39] Caitlin McFall, "Trump, House Republicans held call to discuss Electoral College rejection: Brooks," Fox News, (Jan. 2, 2021), available at https://www.foxnews.com/politics/gop-splits-electoral-college-certification; Tweet, @RepMoBrooks, (Jan. 2, 2021 at 7:17 p.m.) ("Our fight for honest & accurate elections gains momentum! @Jim Jordan & I co-lead conference call w 50+ Congressmen who join & fight for America's Republic! . . . President Trump & CoS Mark Meadows speaking. Morale is HIGH! FIGHT!"); 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.

[40] Linda So, "Trump's chief of staff could face scrutiny in Georgia criminal probe," Reuters, (March 19, 2021), available at https://www.reuters.com/article/us-usa-trump-georgia-meadows-insight-idUSKBN2BB0XX.

[41] *Id.*

[42] "AP FACT CHECK: Trump's made-up claims of fake Georgia votes," Associated Press, (Jan. 3, 2021), https://apnews.com/article/ap-fact-check-donald-trump-georgia-elections-atlanta-c23d10e5299e14daee6109885f7dafa9; "Here's the full transcript and audio of the call between Trump and Raffensperger," *Washington Post*, (Jan. 2, 2021), https://www.washingtonpost.com/politics/trump-raffensperger-call-transcript-georgia-vote/2021/01/03/2768e0cc-4ddd-11eb-83e3-322644d82356—story.html.

[43] "Here's the full transcript and audio of the call between Trump and Raffensperger," *Washington Post*, (Jan. 2, 2021), https://www.washingtonpost.com/politics/trump-raffensperger-call-transcript-georgia-vote/2021/01/03/2768e0cc-4ddd-11eb-83e3-322644d82356—story.html.

[44] Documents on file with the Select Committee.

[45] Transcript of November 20, 2020, White House Press Conference, available at https://www.rev.com/blog/transcripts/press-secretary-kayleigh-mcenany-white-house-press-conference-transcript-november-20.

• Mr. Meadows participated in a meeting that reportedly occurred on December 18, 2020, with Mr. Trump, the White House counsel, an attorney associated with the campaign, White House staff, and private citizens, on proposals relating to challenging the 2020 election results.[46] During the meeting, the participants reportedly discussed purported foreign interference in the election, seizing voting machines, invoking certain Federal laws like the National Emergencies Act, and appointing one of the attendees as a special counsel with a Top Secret security clearance to investigate fraud in the election.[47] White House officials, including Mr. Meadows, may have resisted some of the proposals,[48] but, at one point, Mr. Trump reportedly said: "You [White House] guys are offering me nothing. These guys are at least offering me a chance. They're saying they have the evidence. Why not try this?"[49]

• Mr. Meadows reportedly sent an email—subject line: "Constitutional Analysis of the Vice President's Authority for January 6, 2021, Vote Count"—to a member of then-Vice President Pence's senior staff containing a memo written by an attorney affiliated with Mr. Trump's re-election campaign. The memo argued that the Vice President could declare electoral votes in six States in dispute when they came up for a vote during the Joint Session of Congress on January 6, 2021, which would require those States' legislatures to send a response to Congress by 7 p.m. EST on January 15 or, if they did not, then congressional delegations would vote for Mr. Trump's re-election.[50]

• Mr. Meadows was in contact with at least some of the private individuals who planned and organized a January 6 rally, one of whom reportedly may have expressed safety concerns to Mr. Meadows about January 6 events.[51] Mr. Meadows used his personal cell phone to discuss the rally in the days leading up to January 6.[52]

• Mr. Meadows described in his book, *The Chief's Chief*, specific conversations that he had with Mr. Trump while he was the President about, among other things, fraud in the election and the January 6th attack on the United States Capitol. In one passage about the election, Mr. Meadows quotes Mr. Trump.[53] In another passage about January 6, Mr. Meadows describes a conversation he had with Mr. Trump after Mr.

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[46] Jonathan Swan and Zachary Basu, "Bonus episode: Inside the craziest meeting of the Trump presidency," Axios, (Feb. 2, 2021), available at https://www.axios.com/trump-oval-office-meeting-sidney-powell-a8e1e466-2e42-42d0-9cf1-26eb267f8723.html.

[47] *Id.*

[48] Maggie Haberman and Zolan Kanno-Youngs, "Trump Weighed Naming Election Conspiracy Theorist as Special Counsel," *New York Times*, (Dec. 19, 2020), available at https://www.nytimes.com/2020/12/19/us/politics/trump-sidney-powell-voter-fraud.html.

[49] Jonathan Swan and Zachary Basu, "Bonus episode: Inside the craziest meeting of the Trump presidency," Axios, (Feb. 2, 2021), available at https://www.axios.com/trump-oval-office-meeting-sidney-powell-a8e1e466-2e42-42d0-9cf1-26eb267f8723.html.

[50] Karl, *Betrayal*, pp. 259–60.

[51] Documents on file with the Select Committee; Joshua Kaplan and Joaquin Sapien, "New Details Suggest Senior Trump Aides Knew Jan. 6 Rally Could Get Chaotic," ProPublica, (June 25, 2021), available at https://www.propublica.org/article/new-details-suggest-senior-trump-aides-knew-jan-6-rally-could-get-chaotic.

[52] Documents on file with the Select Committee.

[53] Meadows, *The Chief's Chief*, p. 261.

Trump spoke to rally goers and, presumably, just after the attack on the Capitol had started.[54]

It is apparent that Mr. Meadows's testimony and document production are of critical importance to the Select Committee's investigation. Congress, through the Select Committee, is entitled to discover facts concerning what led to the attack on the U.S. Capitol on January 6, as well as White House officials' actions and communications during and after the attack. Mr. Meadows is uniquely situated to provide key information, having straddled an official role in the White House and unofficial role related to Mr. Trump's reelection campaign since at least election day in 2020 through January 6.

B. Mr. Meadows has refused to comply with the Select Committee's subpoena.

On September 23, 2021, the Select Committee sent a subpoena to Mr. Meadows ordering the production of both documents and testimony relevant to the Select Committee's investigation.[55] The accompanying letter set forth a schedule specifying categories of related documents sought by the Select Committee on topics including, but not limited to, documents and communications regarding the 2020 election results sent or transmitted between White House officials and officials of State or local governments; communications regarding challenging, decertifying, overturning, or contesting the results of the 2020 presidential election; communications with Members of Congress on January 6 relating to or referring to the attack on the Capitol; documents and communications related to security of the Capitol or other Federal facilities on January 5, 2021, and January 6, 2021; and documents and communications regarding any plan for the former President to march or walk to the Capitol.[56]

The subpoena required Mr. Meadows to produce the requested documents to the Select Committee on October 7, 2021, and to provide testimony on October 15, 2021. As authorized by Mr. Meadows, attorney Scott Gast accepted service of this subpoena on behalf of Mr. Meadows on September 23, 2021. On October 7, 2021, George J. Terwilliger, III, sent a letter to the Select Committee advising that he had been retained to serve as counsel to Mr. Meadows for purposes of the Select Committee's inquiry.[57]

On October 12, 2021, Mr. Terwilliger and staff for the Select Committee had a telephone call to discuss the Select Committee's subpoena to Mr. Meadows. During that call, staff for the Select Committee previewed certain topics of inquiry they intended to develop during Mr. Meadows's deposition and for which claims of executive privilege should not apply.[58] Chairman THOMPSON included that list of topics in a later letter to Mr. Terwilliger dated October 25, 2021.

On October 13, 2021, Mr. Terwilliger emailed staff for the Select Committee and referenced "the potential for conflicting directions from former-President Trump and President Biden as to preserva-

[54] Meadows, *The Chief's Chief*, p. 259.
[55] *See* Appendix, Ex. 1 (Subpoena to Mark Meadows).
[56] *Id.*
[57] *See* Appendix, Ex. 2 (Various Correspondence).
[58] *Id.*

tion of privileges concerning senior presidential advisors and communication by the same in that role."[59] Mr. Terwilliger stated that he was scheduled to discuss "privilege issues" with the White House [c]ounsel's office on October 14 but indicated that it was "not clear . . . that, in whole or in part, relevant privileges would not attach to Mr. Meadows[']s testimony" as to topics that staff for the Select Committee outlined during the October 12 telephone call.[60] Accordingly, he informed the Select Committee that he "could not advise" Mr. Meadows to "commit to testifying" on the subpoena designated date of October 15.[61] Mr. Terwilliger also emailed to staff for the Select Committee an October 6, 2021, letter from former-President Trump's counsel, Justin Clark, to Mr. Meadows's then-counsel, Mr. Gast, expressing former-President Trump's apparent belief that "Mr. Meadows is immune from compelled congressional testimony on matters related to his official responsibilities."[62] The letter also purports to "instruct[]" Mr. Meadows "(a) where appropriate, invoke any immunities and privilege he may have from compelled testimony in response to the [s]ubpoena; (b) not produce any documents concerning his official duties in response to the [s]ubpoena; and (c) not provide any testimony concerning his official duties in response to the [s]ubpoena."[63]

On October 25, 2021, Chairman THOMPSON responded to Mr. Terwilliger's October 7, 2021, letter and October 13, 2021, email. He stated that even assuming that, as a former President, Mr. Trump is permitted to formally invoke executive privilege, Mr. Trump had not communicated an invocation of privilege, either formally or informally, to the Select Committee with respect to Mr. Meadows's production of documents or appearance to provide testimony.[64] The October 25 response from Chairman THOMPSON further stated that—even assuming a privilege applied to Mr. Meadows's documents and testimony and former-President Trump had formally invoked a privilege (which was not the case)—Mr. Meadows does not enjoy anything like the type of blanket testimonial immunity former-President Trump and Mr. Terwilliger suggested would insulate Mr. Meadows from an obligation to comply with the Select Committee's subpoena.[65] The letter also noted that, regardless, the information the Select Committee seeks from Mr. Meadows involves a range of subjects that cannot be considered part of Mr. Meadows's "official responsibilities," including but not limited to "communications and meetings involving people who did not work for the United States government"; "Mr. Meadows'[] campaign-related activities"; and "communications and meetings about topics for which the Department of Justice and the White House have expressly declined to assert executive privilege."[66]

The Chairman's October 25 letter extended the subpoena's document production deadline to November 5, 2021, and extended Meadows's appearance for deposition testimony to November 12,

[59] *Id.*
[60] *Id.*
[61] *Id.*
[62] *Id.*
[63] *Id.*
[64] *Id.*
[65] *Id.*
[66] *Id.*

2021.[67] It also made clear that the Select Committee would view failure to respond to the subpoena as willful non-compliance, which would force the Select Committee to consider invoking the contempt of Congress procedures pursuant to 2 U.S.C. §§ 192 and 194, as well as the possibility of civil enforcement proceedings.[68]

On November 3, 2021, Mr. Terwilliger transmitted a letter to the Select Committee, responding to Chairman THOMPSON's October 25, 2021, letter with respect to the production of documents. In it, Mr. Terwilliger stated that he was "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," and that he "therefore ha[d] no documents to produce to the Select Committee."[69]

That same day, Mr. Terwilliger transmitted to the Select Committee a second letter. In it, Mr. Terwilliger suggested that Mr. Meadows maintains a "good faith" belief that he cannot comply with the subpoena and testify before Congress and, instead, proposed unspecified accommodations.[70] Notably, Mr. Terwilliger acknowledged that courts had universally rejected Mr. Meadows's position on absolute testimonial immunity, but claimed that the executive branch had never "retreated from that position" and that the Supreme Court had never weighed in.[71]

On November 5, 2021, Chairman THOMPSON responded to Mr. Terwilliger's November 3 letters. Chairman THOMPSON noted that although Mr. Terwilliger stated that Mr. Meadows had no documents to produce to the Select Committee, Mr. Terwilliger had previously indicated that he had gathered documents from Mr. Meadows and was reviewing those documents for responsiveness.[72] The November 5 letter also reiterated Mr. Meadows's obligation to provide a privilege log detailing each document and each privilege that he believes applied for any responsive documents so the Select Committee could evaluate whether any additional actions are appropriate, reminded Mr. Terwilliger that categorical claims of executive privilege are improper and that Mr. Meadows must assert any such claim made by former-President Trump narrowly and specifically.[73] Chairman THOMPSON further noted that the Select Committee had received information suggesting that Mr. Meadows used his personal cell phone for communications relevant to the Select Committee's inquiry, some of which potentially would fall under Presidential Records Act requirements.[74] Accordingly, Chairman THOMPSON requested that Mr. Terwilliger identify for the Select Committee the current location of Mr. Meadows's cell phone and whether Mr. Meadows provided his texts and other relevant cell phone records to the National Archives.[75]

In an effort to reach an accommodation with respect to Mr. Meadows's deposition, the November 5, 2021, letter provided further information regarding the topics the Select Committee intended to develop with Mr. Meadows during the deposition, some

[67] *Id.*
[68] *Id.*
[69] *Id.*
[70] *Id.*
[71] *Id.*
[72] *Id.*
[73] *Id.*
[74] *Id.*
[75] *Id.*

of which the Chairman had previously identified in his October 25, 2021, letter. These topics included but were not limited to "[m]essaging to or from the White House, Trump reelection campaign, party officials, and others about purported fraud, irregularities, or malfeasance in the November 2020 election"; "[e]fforts 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"; "[e]fforts to pressure former Vice President Pence, members of his staff, and Members of Congress to delay or prevent certification of the Electoral College vote"; "[c]ampaign related activities" including Mr. Meadows's "travel to Georgia" and contacts with "officials and employees in the Georgia secretary of state's Office"; "[m]eetings or other communications involving people who did not work for the United States government" including "Michael Flynn, Patrick Byrne," and "organizers of the January 6 rally like Amy Kremer"; and "[a]dvance knowledge of, and any preparations for, the possibility of violence during election-related rallies and/or protests in Washington, D.C."[76] The letter made clear that the Select Committee did not expect to seek information from Mr. Meadows unrelated to the 2020 election and what led to and occurred on January 6, and indicated a willingness to discuss and negotiate any additional areas or subjects about which the Select Committee would seek information from Mr. Meadows as the Select Committee continued its investigation.[77] Chairman THOMPSON invited input from Mr. Meadows on the delineated topics by November 8.[78]. As in previous correspondence, Chairman THOMPSON stated that the Select Committee would view failure to respond to the subpoena as willful non-compliance, which would force the Select Committee to consider invoking the contempt of Congress procedures pursuant to 2 U.S.C. §§ 192 and 194, in addition to the possibility of civil enforcement proceedings.[79]

On November 8, 2021, Mr. Terwilliger responded, stating that he was "reiterate[ing]" Mr. Meadows's position that he "cannot be compelled to provide congressional testimony" as a former White House chief of staff.[80] As a purported "accommodation," Mr. Terwilliger proposed "that the Select Committee propound written interrogatories to Mr. Meadows on any topics about which the Select Committee may wish to inquire."[81] Mr. Terwilliger also indicated that Mr. Meadows had provided him with access to electronic images from his personal accounts and devices, the review of which was "ongoing."[82] Regarding the list of topics outlined in the November 5 letter, Mr. Terwilliger asserted, without specifically and narrowly addressing on a topic-by-topic basis, that the topics "plainly implicate executive privilege even under a narrow interpretation of

[76] *Id.*
[77] *Id.*
[78] *Id.*
[79] *Id.*
[80] *Id.*
[81] *Id.*
[82] *Id.*

it," and expressed the belief that Mr. Meadows could not testify about the topics without implicating executive privilege.[83]

In a November 9, 2021, letter to Mr. Terwilliger, Chairman THOMPSON stated that Mr. Terwilliger's November 8 letter failed to respond with any specificity about the topics of inquiry by the Select Committee, leading the Select Committee to assume that Mr. Terwilliger believed that all of the topics potentially implicated executive privilege.[84] Chairman THOMPSON further stated that without further input on those topics, which the Select Committee had requested in its November 5 letter, the Select Committee must insist that Mr. Meadows appear for a deposition on November 12, as required by the subpoena, and that written interrogatories were not an acceptable substitute for live, in-person testimony.[85] The November 9 letter further stated that the Select Committee had identified evidence regarding Mr. Meadows's use of personal cellular phone and email accounts, and, because of that, it would be a subject of inquiry during the November 12 deposition.[86] The letter listed eight specific questions concerning the information that the Select Committee would seek to develop regarding this issue, none of which implicated any executive or other privilege.[87]

Meanwhile, on November 9, 2021, the Federal District Court for the District of Columbia issued a ruling rejecting Donald Trump's attempt to prohibit disclosure of White House documents to the Select Committee by asserting the executive privilege.[88] The Federal court held "that the public interest lies in permitting—not enjoining—the combined will of the legislative and executive branches to study the events that led to and occurred on January 6, and to consider legislation to prevent such events from ever occurring again."[89] The United States Court of Appeals for the District of Columbia Circuit affirmed the district court's ruling on December 9, 2021.

On November 10, 2021, Mr. Terwilliger acknowledged receipt of Chairman THOMPSON's November 9, 2021, letter, but did not address the eight specific questions Chairman THOMPSON included in his letter, instead stating that "Mr. Meadows cannot agree to appear at 10 AM Friday" and again claiming that Mr. Meadows believed that "senior aides to the president cannot be compelled to provide congressional testimony."[90]

On November 11, 2021, the White House Counsel's Office issued a letter to Mr. Terwilliger regarding the Select Committee's subpoena to Mr. Meadows. That letter stated: "in recognition of these unique and extraordinary circumstances, where Congress is investigating an effort to obstruct the lawful transfer of power under our Constitution, President Biden has already determined that an assertion of executive privilege is not in the public interest, and is therefore not justified, with respect to particular subjects within the purview of the Select Committee."[91] The letter further noted

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[83] *Id.*
[84] *Id.*
[85] *Id.*
[86] *Id.*
[87] *Id.*
[88] *Trump v. Thompson*, Case No. 1:21-cv-02769-TSC, Doc. 35 (D.D.C. Nov. 9, 2021) (citations and quotation marks omitted).
[89] *Id.*, at p. 39.
[90] *See* Appendix, Ex. 2.
[91] *Id.*

that, consistent with this determination, President Biden "will not assert executive privilege with respect to [Mr. Meadows's] deposition testimony on these subjects, or any documents your client may possess that may bear on them," and "will not assert immunity to preclude [Mr. Meadows] from testifying before the Select Committee."[92]

Later on November 11, 2021, Chairman THOMPSON sent another letter to Mr. Terwilliger. This letter summarized the correspondence between Mr. Terwilliger and the Select Committee, and again noted that Mr. Meadows's reliance on opinions regarding absolute immunity from the Department of Justice Office of Legal Counsel ("OLC") was misguided given that their reasoning has been rejected by all Federal courts to have considered the issue of absolute immunity.[93] The Chairman's letter emphasized that, in any event, the White House Counsel's Office letter from earlier that day "eviscerates any plausible claim of testimonial immunity or executive privilege, and compels compliance with the Select Committee's subpoena."[94]

On November 12, 2021, at 10 a.m., Mr. Meadows failed to appear at the designated location to provide testimony relevant to the Select Committee's inquiry in response to questions posed, as was required by the subpoena. He also failed to produce any responsive documents or a privilege log identifying the specific basis for withholding any documents believed to be protected by privilege.

On November 19, 2021, a full week after Mr. Meadows failed to appear for a deposition and two weeks after the deadline to produce documents, Mr. Terwilliger sent a letter to Chairman THOMPSON purportedly seeking an accommodation and suggesting, again, that the Select Committee send interrogatories to Mr. Meadows as a first step in a longer accommodation process that "could," depending on certain negotiations and parameters, result in a limited "deposition" "outside of compulsion by subpoena."[95] Mr. Terwilliger made clear that Mr. Meadows would only answer interrogatories on a narrow range of topics, and even on those topics would not provide any information regarding communications with the former President, former senior White House aides, and other individuals with whom Mr. Meadows spoke on behalf of the President unless the former President explicitly authorized him to do so.[96]

Chairman THOMPSON responded to Mr. Terwilliger on November 22, 2021. In his response, the Chairman rejected Mr. Terwilliger's proposal to proceed by interrogatories instead of lawfully-compelled testimony and production of documents.[97] In rejecting Mr. Terwilliger's proposal for a second time, the Chairman noted that "[w]hen Mr. Meadows first proposed interrogatories, he asked that the Select Committee 'propound' them, but did not say that he would actually provide any substantive information in response."[98]

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[92] *Id.*
[93] *Id.*
[94] *Id.*
[95] *See* Appendix, Ex. 5 (Letter from Counsel to Mark Meadows to Chairman THOMPSON, Nov. 19, 2021), at p. 2.
[96] *Id.*, at pp. 1–2.
[97] *See* Appendix, Ex. 6 (Letter from Chairman THOMPSON to Counsel to Mark Meadows, Nov. 22, 2021).
[98] *Id.*, at p. 1.

The Chairman further noted, "[n]ow, after his failure to comply with the Select Committee's subpoena, [Mr. Meadows] has added conditions: (1) the interrogatories can only ask questions about two days in January 2021 and Mr. Meadows's communications with the Department of Justice; and (2) Mr. Meadows will only respond to questions about his communications 'with or on behalf of the [former] President, *or* with other senior White House aides' *provided that* he first obtains the former President's approval."[99] Chairman THOMPSON then walked through the Select Committee's lengthy correspondence with Mr. Terwilliger, and explained that "[t]his history has led the Select Committee to suspect that you are simply engaged in an effort to delay, and that Mr. Meadows has no genuine intent to offer any testimony on any relevant topic."[100] Nevertheless, the Chairman extended Mr. Meadows an opportunity to show that he was operating in good faith by instructing Mr. Meadows to provide documents responsive to the original subpoena by November 26, 2021, and to appear for a deposition that the Chairman would convene on November 29, 2021 (later moved to December 8, 2021).[101] In doing so, Chairman THOMPSON reiterated that Mr. Meadows may object to specific questions that he believes raise privilege concerns so that he and the Select Committee could engage in further discussions about his privilege arguments.[102] In closing, Chairman THOMPSON indicated that the Select Committee would "defer consideration of enforcement steps regarding Mr. Meadows's non-compliance with the Select Committee's subpoena pending the November 26 production of documents and November 29 deposition."[103]

Mr. Terwilliger responded to Chairman THOMPSON's letter by two separate letters dated November 26, 2021. In his first letter, Mr. Meadows, through counsel, specifically agreed to appear for a "deposition to answer questions on what you believe to be non-privileged matters" subject to certain proposed conditions.[104] In his separate letter, Mr. Michael Francisco, another attorney representing Mr. Meadows, explained that Mr. Meadows was making an "initial" document production of 1,139 documents responsive to the Select Committee's subpoena that were found in Mr. Meadows's personal Gmail account and that counsel was reviewing information from Mr. Meadows's personal cell phone, which Mr. Meadows "did not retain . . . after January 2021."[105] Mr. Francisco also provided a privilege log with that document production showing that Mr. Meadows was withholding hundreds more documents found in his personal Gmail account due to claims of executive, marital, and other protective privileges.

On November 28, 2021, Chairman THOMPSON responded to counsel's letters and indicated that he was willing to accommodate Mr. Meadows's request for a deposition during the week of December 6 *provided that* he complete his production of documents no later

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[99] *Id.*
[100] *Id.*, at p. 2.
[101] *Id.*, at pp. 2–3.
[102] *Id.*, at p. 3.
[103] *Id.*
[104] *See* Appendix, Ex. 7 (Letter from Counsel to Mark Meadows to Chairman THOMPSON, Nov. 26, 2021), at p. 2.
[105] *See* Appendix, Ex. 8 (Letter from Counsel to Mark Meadows to Chairman THOMPSON, Nov. 26, 2021), at p. 2.

than Friday, December 3, 2021.[106] Chairman THOMPSON also explained that the Select Committee would ask questions of Mr. Meadows relevant to the investigation and consistent with Chairman THOMPSON's previous letters about executive privilege. Chairman THOMPSON again explained his hope that Mr. Meadows would answer the questions posed, but also said that Mr. Meadows should assert any privileges that he believed applied on a question-by-question basis on the record to inform continued discussions.[107] As an accommodation, Chairman THOMPSON also agreed to provide in advance of the depositions the documents that the Select Committee intended to use in its questioning.[108] Mr. Terwilliger agreed to the deposition format as explained in the November 28 letter during a call with Select Committee staff.

As requested by Chairman THOMPSON, on December 3, 2021, Mr. Francisco produced approximately 2,300 text messages obtained from data backed up from Mr. Meadows's personal cell phone.[109] In doing so, Mr. Francisco also produced a privilege log with the document production showing that Mr. Meadows was withholding over 1,000 more text messages from his personal cell phone due to claims of executive, marital, and other protective privileges.

Then, on December 7, 2021, Mr. Terwilliger send a letter explaining that Mr. Meadows would not attend a deposition on December 8, as he had previously agreed to do.[110] During a call with Select Committee staff that same day, Mr. Terwilliger indicated that Mr. Meadows would not appear at all, even to discuss the documents that he had already provided to the Select Committee and that were not covered by any claim of protective privilege.

To date, and despite the opportunity that the Select Committee gave to Mr. Meadows to cure his previous non-compliance with the Select Committee's subpoena, Mr. Meadows has never appeared for a compelled or voluntary deposition to answer any of the Select Committee's questions, even questions about the documents that Mr. Meadows has produced to the Select Committee.

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

As explained above, as part of its legislative function, Congress has the power to compel witnesses to testify and produce documents.[111] An individual—whether a member of the 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

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[106] *See* Appendix, Ex. 9 (Letter from Chairman THOMPSON to Counsel to Mark Meadows, Nov. 28, 2021), at p. 1.

[107] *Id.*, at p. 2.

[108] *Id.*

[109] *See* Appendix, Ex. 10 (Letter from Counsel to Mark Meadows to Chairman THOMPSON, Dec. 3, 2021).

[110] *See* Appendix, Ex. 11 (Letter from Counsel to Mark Meadows to Chairman THOMPSON, Dec. 7, 2021)

[111] *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.").

non-compliance.[112] 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.[113]

It is important to note that the Select Committee sought testimony from Mr. Meadows on information for which there can be no conceivable privilege claim. Examples of that information are provided in this report, and the non-privileged nature of some key information has been recognized by Mr. Meadows's own production documents. The Select Committee has been entitled to Mr. Meadows's testimony on that information, regardless of his claims of privilege over other categories of information.

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."[114] Executive privilege is a recognized privilege that, under certain circumstances, may be invoked to bar congressional inquiry into communications covered by the privilege.

Mr. Meadows has refused to testify in response to the subpoena ostensibly based on broad and undifferentiated assertions of various privileges, including claims of executive privilege purportedly asserted by former-President Trump. As the Select Committee has repeatedly pointed out to Mr. Meadows, his claims of testimonial immunity and executive privilege do not justify Mr. Meadows's conduct with respect to the Select Committee's subpoena. His legal position is particularly untenable in light of the incumbent President's decision to not assert testimonial immunity or executive privilege with respect to subjects on which the Select Committee seeks information from Mr. Meadows. And it is untenable in light of Mr. Meadows's public descriptions of events in the book that he is trying to sell and during his numerous television appearances.[115]

Even if privileges were applicable to some aspects of Mr. Meadows's testimony, he was required 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. After promising to appear, Mr. Meadows has now reversed course and resumed his contemptuous behavior. Mr. Meadows's conduct in response to the Select Commit-

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[112] *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)).

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

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

[115] *See, e.g.,* Meadows, *The Chief's Chief*; "Hannity," Fox News, (Dec. 7, 2021), available at https://video.foxnews.com/v/6285715473001#sp=show-clips; "The Ingraham Angle," Fox News, (Dec. 9, 2021), available at https://www.foxnews.com/media/mark-meadows-potential-contempt-charges-january-6-committee.

tee's subpoena constitutes a violation of the contempt of Congress statutory provisions.

1. The incumbent President has declined to assert claims of executive privilege and testimonial immunity.

President Biden has declined to assert claims of executive privilege or testimonial immunity regarding subjects about which the Select Committee seeks documents and testimony from Mr. Meadows. That fact matters because, even if a former President attempts to prevent disclosure of certain information through assertions of executive privilege, the former President's privilege is subordinate to executive privilege determinations made by the incumbent President. "[I]t is the new President [not his predecessor] who has the information and attendant duty of executing the laws in the light of current facts and circumstances," and "the primary, if not the exclusive" duty of deciding when the need of maintaining confidentiality in communications "outweighs whatever public interest or need may reside in disclosure." *Dellums v. Powell*, 561 F.2d 242, 247 (D.C. Cir. 1977).

Indeed, in briefings in *Trump v. Thompson*, litigation involving a lawsuit against the Select Committee and the National Archives and Records Administration, DOJ has explained, even more specifically, why President Biden's decision controls whether information relevant to the Select Committee's investigation should be disclosed. DOJ said, among other things, that "[a] former President has no responsibility for the current execution of the law" and "[a]bsent unusual circumstances, allowing a *former* President to override decisions by the incumbent President regarding disclosure of Executive Branch information would be an extraordinary intrusion" into executive branch authority.[116]

In other words, "[a]llowing a *former* President to block disclosure of Executive Branch information that the incumbent President has determined is in the national interest to share with Congress would be even more clearly contrary to well-established principles governing the exercise of sovereign authority."[117] This is consistent with the District Court's decision in the same litigation, in which it rejected Mr. Trump's position and explained that Mr. Trump "is no longer situated to protect executive branch interests with the information and attendant duty of executing the laws in the light of current facts and circumstances" and because "he no longer remains subject to political checks against potential abuse of that power."[118]

In his November 3 letter, Mr. Terwilliger stated that "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."[119] Of course, Mr. Meadows appears to have already done that by recounting in his book and on national television specific conversations and deliberations he

[116] Brief for Executive Branch Defendants, *Trump v. Thompson*, Case No. 21-5254, Doc. No. 1923461, at p. 28 (D.C. Cir. Nov. 22, 2021) (emphasis added).
[117] *Id.*, at p. 29 (emphasis in original).
[118] *Trump v. Thompson*, Case No. 1:21-cv-02769-TSC, Doc. No. 35, at p. 19 (D.D.C. Nov. 9, 2021) (citations and quotation marks omitted).
[119] *See* Appendix, Ex. 2.

had with Mr. Trump about events related to the January 6th attack on the United States Capitol. But, even if he had not done all of that, he still need not worry about making such decisions "unilaterally" because the incumbent President has already declined to assert executive privilege or testimonial immunity regarding subjects about which the Select Committee seeks information. Mr. Meadows has known since he received the White House's letter on November 11, 2021, that President Biden determined that "an assertion of privilege is not justified with respect to testimony and documents" and that President Biden "will not assert executive privilege with respect to [Mr. Meadows'] deposition testimony on these subjects, or any documents [Mr. Meadows] may possess that bear on them relevant to the Select Committee's investigation."[120] President Biden came to this conclusion "in recognition of these unique and extraordinary circumstances, where Congress is investigating an effort to obstruct the lawful transfer of power under our Constitution."[121] Despite all of this, Mr. Meadows failed to appear for his deposition on November 12. When given the opportunity to cure his earlier contempt and appear for a deposition well after the subpoena's deadlines, he, once again, failed to do so.

2. Mr. Trump has not formally invoked executive privilege.

Former President Trump has had no communication with the Select Committee. In an October 11 email to the Select Committee, Mr. Meadows's attorney attached an October 6, 2021, letter from Mr. Trump's attorney, Justin Clark, in which Mr. Clark claimed that the Select Committee subpoena seeks information that is "unquestionably protected from disclosure by the executive and other privileges, including among others the presidential communications, deliberative process, and attorney-client privileges." Mr. Clark stated that former-President Trump "is prepared to defend these fundamental privileges in court." Mr. Clark also relayed that, "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."[122] But without a formal assertion by Mr. Trump to the Select Committee, Mr. Meadows 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 be 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.

Here, the Select Committee has not been provided by Mr. Trump with any formal invocation of executive privilege. There is no legal authority—and neither Mr. Meadows nor former-President Trump

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[120] *See* Appendix, Ex. 3, at p. 2. White House Deputy Counsel has also made clear that the White House's position has remained unchanged as of December 8, 2021.
[121] *Id.*, at p. 1.
[122] *See* Appendix, Ex. 2.

nor his counsel have cited any—holding that a vague statement by someone who is not a government official that a former President has an intention to assert a privilege absolves a subpoena recipient of his duty to comply. Such indirect, non-specific assertion of privilege, without any description of the documents or testimony over which privilege is claimed, is insufficient to activate a claim of executive privilege.

3. Mr. Meadows is not entitled to absolute immunity.

Mr. Meadows has refused to appear for a deposition based on his purported reliance on alleged absolute testimonial immunity. However, even if Mr. Trump had invoked executive privilege, and even if executive privilege reached certain testimony sought by the Select Committee, Mr. Meadows would not be immune from compelled testimony before the Select Committee, especially given the fact that he is no longer a high-level White House official.

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.[123] Instead, Mr. Meadows acknowledges that this theory of immunity is based entirely on internal memoranda from OLC that courts, in relevant parts, have uniformly rejected.[124] Nevertheless, Mr. Meadows refused to appear at his deposition.

Moreover, by their own terms, the OLC opinions on which Mr. Meadows relies are limited, applying only to testimony "about [a senior official's] official duties," not testimony about unofficial duties.[125] Many of the topics that Chairman THOMPSON identified in his correspondence are unrelated to Mr. Meadows's official duties and would neither fall under the reach of the "absolute immunity" theory nor any privilege whatsoever. For instance:

- Mr. Meadows was not conducting official and privileged business when he participated in a January 2021 call with campaign lawyers and State officials in which the participants urged State legislators to overturn the results of the November 2020 election and guarantee a second term for Mr. Trump;
- Mr. Meadows was not conducting official and privileged business when he participated in another call with campaign lawyers and the Georgia secretary of state in which Mr. Trump urged the Georgia secretary of state to "find" enough votes to ensure his campaign's victory in Georgia; and
- Mr. Meadows was not engaged in official and privileged business when he used his personal accounts and/or devices to contact the Georgia secretary of state or speak with private or-

[123] *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).

[124] *Id.*; *see also* Appendix, Ex. 2 ("I recognize, as your letter points out, that to date, the lower courts have not shared [OLC's] view.").

[125] 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. 1 at 1 (May 20, 2019); *see also* Memorandum Opinion for the Counsel to the President, Office of Legal Counsel, *Immunity of the Former Counsel to the President from Compelled Congressional Testimony*, 31 O.L.C. 191 at 193 (July 10, 2007) ("we conclude that Ms. Miers is immune from compelled congressional testimony about matters . . . that arose during her tenure as Counsel to the President *and that relate to her official duties in that capacity*" (emphasis added)).

ganizers of a rally on the Ellipse that occurred just before the attack on the U.S. Capitol.

The Select Committee specifically identified to Mr. Meadows 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.

Mr. Meadows's production of documents to the Select Committee highlights that he has information relevant to the Select Committee's inquiry that he himself acknowledges is not subject to any privilege. His refusal to provide testimony on such subjects further evidences willful non-compliance with the Select Committee's deposition subpoena. Mr. Meadows produced to the Select Committee certain communications with campaign staff, Members of Congress, and acquaintances that do not involve official business, while withholding others that presumably do involve official business because of "executive privilege." In doing so, Mr. Meadows has clearly acknowledged that he has relevant information that is not related to his official conduct. And because the relevant information that he has is not related to his official conduct, Mr. Meadows cannot avoid a deposition in which he would be asked questions about those documents by invoking an OLC opinion that is limited to testimony about "official duties."

4. Even if Mr. Trump had properly invoked executive privilege and Mr. Meadows had properly asserted it, the privilege would not bar the Select Committee from obtaining evidence from Mr. Meadows.

The law is clear that executive privilege does not extend to discussions relating to non-governmental business or among private citizens.[126] 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 that the privilege only applies to communications intended to advise the President "on official government matters."[127]

As noted above, the Select Committee seeks information from Mr. Meadows on a wide range of subjects that executive privilege cannot conceivably reach. For example, the Select Committee seeks information from Mr. Meadows 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. Mr. Meadows has repeatedly refused to answer any questions about these matters. He has even refused to answer questions about the documents that he himself produced to the Select Committee without any assertions of privilege.

Even with respect to Select Committee inquiries that involve Mr. Meadows's direct communications with Mr. Trump, executive privilege does not bar Select Committee access to that information. Only communications that relate to official government business can be

[126] *See Nixon v. GSA*, 433 U.S. at 449.
[127] *Id.*

covered by the presidential communications privilege.[128] Here, Mr. Meadows's conduct regarding several subjects of concern to the Select Committee is not related to official government business, such as: Meadows's participation in calls and meetings that clearly concerned Mr. Trump's campaign rather that his official duties; or, Mr. Meadows's participation in meetings with Mr. Trump and private individuals about seizing voting machines or taking other steps related to the election that could reportedly, in Mr. Trump's words, "offer[] me a chance"; or, Mr. Meadows's contacts with organizers of the January 6th rally on the Ellipse.

Moreover, even with respect to any subjects of concern that arguably involve official government business, the Select Committee's need for this information to investigate the facts and circumstances surrounding the horrific January 6 assault on the U.S. Capitol and the Nation's democratic institutions far outweighs any possible executive branch interest at this point in maintaining confidentiality. As noted by the executive, "the constitutional protections of executive privilege should not be used to shield information reflecting an effort to subvert the Constitution itself, and indeed [the President] believes that such an assertion in this circumstance would be at odds with the principles that underlie the privilege."[129]

Finally, when explaining his claim of privilege to the Select Committee, Mr. Meadows has suggested that he has no choice but to avoid testifying because, as White House chief of staff, he had "assumed responsibility to protect Executive Privilege during and after his tenure," and that he had "assumed that responsibility not for his own benefit but for the benefit of all those who will serve after him, including future presidents."[130] He included in a separate letter a passage about the importance of executive branch confidentiality to "ensure that the President can obtain . . . sound and candid advice."[131] Those words are belied by Mr. Meadows's conduct.

To be sure, the Supreme Court has made clear that executive privilege is rooted in the need for confidentiality to ensure that presidential decision-making is informed by honest advice and full knowledge: "[h]uman experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decision-making process."[132] In *Nixon v. GSA*, the Supreme Court again considered issues related to executive privilege and balanced the important interests served by the Presidential Records Act against the intrusion into presidential confidentiality caused by compliance with the Act.[133] Thus, a valid claim of executive privilege presumes that the information sought to discovered

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[128] *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").

[129] *See* Appendix, Ex. 2.

[130] *See* Appendix, Ex. 11, at p. 2.

[131] *See* Appendix, Ex. 2.

[132] *U.S. v. Nixon*, 418 U.S. 683, 705–06 (1974).

[133] *Nixon v. GSA*, 433 U.S. at 455 ("But given the safeguards built into the Act to prevent disclosure of such materials and the minimal nature of the intrusion into the confidentiality of the Presidency, we believe that the claims of Presidential privilege clearly must yield to the important congressional purposes of preserving the materials and maintaining access to them for lawful governmental and historical purposes.").

is confidential and that the need to maintain that confidentiality outweighs the interests promoted by disclosure.

Here, however, executive privilege and the need to maintain confidentiality is severely undermined, if not entirely vitiated, by Mr. Meadows's own extensive public disclosure of his communications with the former President, including on issues directly implicated by the Select Committee's subpoena. Mr. Meadows has appeared on national television discussing the January 6th attack on the U.S. Capitol and related conversations with former-President Trump.[134] And he has written about what former-President Trump told him on January 6th in his newly released book.[135] Mr. Meadows's conduct relating to the very subjects of interest to the Select Committee foreclose a claim of executive privilege with respect to those disclosures.[136] Moreover, Mr. Meadows's statements to the Select Committee about his professed need to protect presidential confidentiality rings hollow in the face of his cavalier and repeated disclosure of presidential communications in circumstances where doing so appears to suit his personal or political interests. Mr. Meadows has shown his willingness to talk about issues related to the Select Committee's investigation across a variety of media platforms—anywhere, it seems, except to the Select Committee.

For the reasons stated above, Mr. Meadows's own conduct and the determination by the current executive overrides any claim by Mr. Trump (even assuming Mr. Trump had invoked executive privilege with respect to Mr. Meadows). Furthermore, Mr. Meadows has refused Chairman THOMPSON's numerous invitations to assert executive privilege on a question-by-question basis, making it impossible for the Select Committee to consider any good-faith executive privilege assertions. And, as discussed above, such concerns are wholly inapplicable to the broad range of subjects about which the Select Committee seeks Mr. Meadows's testimony that Mr. Meadows has acknowledged involve non-privileged matters.

D. Precedent supports the Select Committee's position to proceed with holding Mr. Meadows in contempt.

An individual who fails or refuses to comply with a House subpoena may be cited for contempt of Congress.[137] 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.[138] In *Quinn v. United States*, the Supreme Court said that "Section 192, like the ordinary federal criminal statute, requires a criminal intent—in this instance, a deliberate, inten-

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[134] *See, e.g.*, Transcript, "The Ingraham Angle," Fox News, (Feb. 11, 2021), available at https://www.foxnews.com/transcript/biden-warns-china-could-eat-our-lunch-after-phone-call-with-xi; Transcript, "Hannity," Fox News, (Feb. 12, 2021), available at https://www.foxnews.com/transcript/new-yorker-who-lost-mother-in-law-in-nursing-home-blasts-disgrace-cuomo; Transcript, "Hannity," Fox News, (Dec. 7, 2021), available at https://video.foxnews.com/v/6285715473001#sp=show-clips; Transcript, "The Ingraham Angle," Fox News, (Dec. 9, 2021), available at https://www.foxnews.com/media/mark-meadows-potential-contempt-charges-january-6-committee.

[135] Meadows, *The Chief's Chief*, at p. 259.

[136] *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").

[137] *Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 505, 515 (1975).

[138] *See supra*. 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).

tional refusal to answer."[139] And proving criminal intent in this context is no more than showing a "deliberate" "refusal to answer pertinent questions"; it does not require a showing of "moral turpitude."[140] A committee may vote to seek a contempt citation against a recalcitrant witness. This action is then reported to the House. If a resolution to that end 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.[141]

Mr. Meadows has previously recognized the importance of congressional access to information from executive branch officials to advance congressional investigations. As a Representative in Congress, he served as ranking member of the House Committee on Oversight and Reform. In that position, he expected that even senior executive branch officials such as the Deputy Attorney General comply with Congress's subpoenas.[142] Indeed, such an expectation is consistent with precedent spanning Republican and Democratic administrations under which top White House aides have provided testimony to Congress.[143] Further, his recent assertion to the Select Committee that he "cannot be compelled to provide congressional testimony" as a former White House chief of staff runs directly counter to precedent under which top White House aides have provided testimony to Congress under subpoena. For example, former White House Chief of Staff John Podesta and former White House Counsel Beth Nolan testified in 2001 under subpoena regarding President Clinton's pardons before the House Committee on Government Reform.[144]

Mr. Meadows did not need to be informed of his responsibility to comply with the Select Committee's subpoena, but Chairman THOMPSON informed him anyway. In his November 11, 2021, letter to Mr. Meadows's counsel, Chairman THOMPSON advised Mr. Meadows that his claims of executive privilege were not well-founded and did not absolve him of his obligation to produce documents and appear for deposition testimony. The Chairman made clear that the Select Committee expected Mr. Meadows to appear for his sched-

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[139] *Quinn v. United States*, 349 U.S. 155, 165 (1955).

[140] *Sinclair v. United States*, 279 U.S. 263, 299 (1929); *see also In re Chapman*, 166 U.S. 661, 672 (1897) ("deliberately refusing to answer questions pertinent [to a matter properly under consideration by Congress] shall be a misdemeanor against the United States"); *Licavoli v. United States*, 294 F.2d 207, 209 (D.C. Cir. 1961) (" '[W]illfully' means merely a deliberate intention; an evil motive is not a necessary part of the intent thus required.")

[141] *See* 2 U.S.C. § 192.

[142] Mary Papenfuss, "Watch Mark Meadows Slam Official Who 'Stonewalled' Subpoenas from GOP Congress," Yahoo News, (Nov. 14, 2021), available at https://news.yahoo.com/watch-mark-meadows-slam-official-001107830.html (containing video clip of then-Rep. Mark Meadows criticizing the Deputy Attorney General for ignoring a subpoena); Tweet, @MarkMeadows (July 25, 2018 at 7:01 p.m.) ("I just filed a resolution with @Jim_Jordan and several colleagues to impeach Rod Rosenstein. The DOJ has continued to hide information from Congress and repeatedly obstructed oversight--even defying multiple Congressional subpoenas."); "Non-Profit Organizations and Politics," Hearing of the Subcommittee on Government Operations, U.S. House Committee on Oversight and Government Reform, (December 13, 2018), (at which then-Chairman Meadows chided the Department of Justice for declining to make available as a witness the prosecutor appointed to investigate alleged wrongdoing by the Clinton Foundation), available at https://www.c-span.org/video/?455872-1/profit-organizations-politics.

[143] *See, e.g.*, "White House Office of Political Affairs: Is Supporting Candidates and Campaign Fund-Raising an Appropriate Use of a Government Office?" Hearing of the Committee on Oversight and Government Reform, U.S. House of Representatives, (July 16, 2014), (at which Chairman Darrell Issa noted the House Oversight Committee in 2007 had obtained testimony of 18 Bush administration political appointees included White House political directors; and at which Rep. Meadows was present); *see also* "Presidential Advisers' Testimony before Congressional Committees: An Overview," Congressional Research Service, (RL31351, Apr. 10, 2007).

[144] "Clinton Aides Testify They Opposed Rich Pardon," *New York Times*, (Mar. 1, 2001), available at https://www.nytimes.com/2001/03/01/national/clinton-aides-testify-they-opposed-rich-pardon.html.

uled deposition on November 12th and produce the requested documents at that time. The Chairman warned Mr. Meadows 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. Meadows did not produce documents and did not show up for his deposition. And, when given the opportunity to cure his earlier contempt, Mr. Meadows produced documents but still chose to withhold testimony. Mr. Meadows's failure to appear for deposition testimony in the face of this clear advisement and warning by the Chairman, and after being given a second chance to cooperate with the Select Committee, constitutes a willful failure to comply with the subpoena.

SELECT COMMITTEE CONSIDERATION

The Select Committee met on Monday, December 13, 2021, 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 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 for a Resolution Recommending that the House of Representatives find Mark Randall Meadows in Contempt of Congress for Refusal to Comply with a Subpoena 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. 3).

Select Committee Rollcall No. 3

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 clause 3(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 peaceful transfer of power, in order to identify and evaluate problems and to recommend corrective laws, policies, procedures, rules, or regulations; and to enforce the Select Committee's subpoena authority found in section 5(c)(4) of House Resolution 503.

APPENDIX

The official transcript that memorialized Mr. Meadows's failure to appear at his November 12, 2021, deposition as ordered by subpoena, along with exhibits included in that record, is as follows:

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

DEPOSITION OF: MARK MEADOWS (NO-SHOW)

FRIDAY, NOVEMBER 12, 2021

WASHINGTON, DC

The deposition in the above matter was held in * * * * commencing at 10:00 a.m.

APPEARANCES:

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

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* * * *. Good morning. We are on the record.

Today is November 12th, 2021, the time is 10 a.m., and we are convened in * * * * for the deposition of Mark Meadows to be conducted by the House Select Committee to Investigate the January 6th Attack on the United States Capitol.

My name is * * * *. I am the designated select committee staff counsel for this proceeding. I'm accompanied by * * * *, deputy staff director and chief counsel to the select committee; * * * *, select committee staff counsel; * * * *, select committee staff counsel; * * * *, select committee parliamentarian.

And joining us virtually is * * * * and * * * *, who are select committee staff, as well as chief clerk to the select committee, * * * *.

For the record, it is now 10:01 a.m., and Mr. Meadows is not present. The person transcribing this proceeding is the House stenographer and notary public authorized to administer oaths.

On September 23rd, 2021, Chairman Bennie THOMPSON issued a subpoena to Mr. Meadows, both to produce documents by October 7th, 2021, and to testify at a deposition on October 15th of 2021 at 10 a.m.

The subpoena is in connection with the select committees investigation into 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.

After Mr. Meadows retained counsel, who is George Terwilliger, III, the select committee agreed to postpone the subpoena deadlines to enable his counsel to understand the requests associated with the subpoena and work with Mr. Meadows.

Ultimately, by letter dated October 25th, 2021, the select committee set new deadlines to produce documents and appear for testimony. Mr. Meadows was required to produce documents by November 5th, 2021, and appear for testimony on November 12th, 2021.

By letters dated between October 25th and November 11th, the select committee engaged with counsel for Mr. Meadows. In the letters, the select committee addressed Mr. Meadows' claims of, among other things, absolute testimonial immunity and executive privilege.

In the letters, the select committee also instructed Mr. Meadows to assert his privilege claims in a privilege log for responsive documents and on a question by question basis at the deposition.

On November 10th, 2021, Mr. Meadows, through counsel, informed the select committee that he would not appear at today's deposition citing testimonial immu-

nity and privileges. Specifically, counsel said that, quote, "Mr. Meadows cannot agree to appear at 10 a.m. Friday," end quote.

Following that letter, the White House Counsel's Office sent counsel for Mr. Meadows a letter dated November 11th, indicating that the White House would not assert claims of testimonial immunity or executive privilege to prevent Mr. Meadows' testimony before the select committee.

Specifically, the letter states that President Biden, quote, "will not assert executive privilege with respect to your client's deposition testimony on these subjects, or any documents your client 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," end quote.

The select committee then sent counsel for Mr. Meadows a final letter in light of the White House Counsel's Office's stated position. To date, the select committee has not received a response.

In the letters, the select committee informed Mr. Meadows, quote, "the Select Committee will view Mr. Meadows' 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., sections 192 and section 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," end quote.

Mr. Meadows has not provided any documents or a privilege log, and Mr. Meadows has not appeared today to answer questions or assert privilege objections.

I will mark as exhibit 1 and enter into the record the select committee's subpoena to Mr. Meadows, included with which are the 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.

Exhibit 1 — Subpoena to Mark Meadows

SUBPOENA

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

Mark Meadows

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: 2:00 p.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 Mark Meadows
c/o Scott Gast, attorney for Mr. Meadows

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) [redacted]

Title [redacted]

Manner of service Email to Attorney for Mr. Meadows,
Scott Gast of Compass Legal Services [redacted]

Date 9/23/2021

Signature of Server [redacted]

Address Longworth HOB, Washington, DC 20515 [redacted]
Select Committee to Investigate the January 6 Attack

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

The Honorable Mark R. Meadows
c/o Mr. Scott Gast
Compass Legal Services
[redacted]

Dear Mr. Meadows:

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.

The investigation has revealed credible evidence of your involvement in events within the scope of the Select Committee's inquiry. You were the President's Chief of Staff and have critical information regarding many elements of our inquiry. It appears that you were with or in the vicinity of President Trump on January 6, had communications with the President and others on January 6 regarding events at the Capitol, and are a witness regarding activities of that day. Moreover, it has been reported that you were engaged in multiple elements of the planning and preparation of efforts to contest the presidential election and delay the counting of electoral votes. In addition, according to documents provided by the Department of Justice, while you were the President's Chief of Staff, you directly communicated with the highest officials at the Department of Justice requesting investigations into election fraud matters in several states.[1] We understand that in the weeks after the November 2020 election, you contacted several state officials to encourage investigation of allegations of election fraud, even after such allegations had been dismissed by state and federal courts, and after the Electoral College had met and voted on December 14, 2020.[2] Moreover, at least one press report indicates you were in communication with organizers of the January 6 rally, including Amy Kremer of Women for America First.[3]

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[1] Documents on file with the Committee.

[2] Linda So, *Trump's Chief of Staff Could Face Scrutiny in Georgia Criminal Probe* (Reuters, March 19, 2021); Documents on file with the Committee.

[3] Joshua Kaplan & Joaquin Sapien, *New Details Suggest Senior Trump Aides Knew Jan. 6 Rally Could Get Chaotic*, PROPUBLICA (June 25, 2021), https://www.propublica.org/article/new-details-suggest-senior-trump-aides-knew-jan-6-rally-could-get-chaotic.

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 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. Mark Meadows, 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 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. Communications referring or relating in any way to plans, efforts, or discussions regarding challenging, decertifying, overturning, or contesting the results of the 2020 Presidential election.

2. All documents and communications concerning the role of the Vice President as the Presiding Officer in the certification of the votes of the electoral college.

3. From November 3, 2020, through January 20, 2021, all documents and communications referring or relating to the 2020 election results sent or transmitted between White House officials and officials of state or local governments.

4. From November 3, 2020, through January 6, 2021, all documents and communications referring or relating to actual or potential court decisions, deliberations, or processes involving challenges to the 2020 Presidential election.

5. All recordings, transcripts, notes (including electronic and hand-written notes), summaries, memoranda of conversation, readouts, or other documents memorializing communications between you and President Trump and/or Members of Congress on January 6, 2021, relating or referring in any way to the attack on the Capitol.

6. All documents that refer or relate to efforts, plans, or attempts by President Trump to activate the National Guard on January 6, 2021.

7. From November 3, 2020, through January 19, 2021, all documents and communications concerning the resignation of any White House personnel or any politically appointed personnel of any Federal department or agency (including the resignation of any member of the President's Cabinet) and mentioning or referring (explicitly or implicitly) to the 2020 Presidential election or the events of January 6, 2021.

8. All documents and communications relating to planned protests, marches, public assemblies, rallies, or speeches in Washington, DC, on November 14, 2020, December 12, 2020, or January 5, 2021, or January 6, 2021.

9. All documents and communications related to security of the Capitol or other Federal facilities on January 5, 2021, and January 6, 2021.

10. From December 1, 2020, through January 20, 2021, any documents and communications involving White House personnel and any Member of Congress, referring or relating to (a) civil unrest, violence, and/or attacks at the Capitol; (b) challenging, overturning, or questioning the validity of the 2020 election results; (c) the counting of the electoral college vote on January 6, 2021; or (d) appealing or challenging the decisions of courts related to the 2020 Presidential election.

11. All documents and communications related to social media information monitored, gathered, reviewed, shared, or analyzed by White House personnel on January 6, 2021.

12. All documents and communications related to any plan for the President to march or walk to the Capitol on January 6, 2021. This request includes any such documents or communications related to a decision not to march or walk to the Capitol on January 6, 2021.

13. From November 3, 2020, to January 20, 2021, all documents and communications reporting, summarizing, or detailing the voting returns and election results of the 2020 Presidential election.

14. All documents and communications related to Donald Trump's response or reaction to the election results of the 2020 Presidential election, including but not limited to any planned public remarks.

15. All documents and communications regarding a November 9, 2020, memorandum from Attorney General William Barr concerning investigation of voter fraud allegations.

16. From November 3, 2020, through January 20, 2021, all documents provided to you or Donald Trump reviewing, assessing, or reporting on the security of election systems in the United States.

17. From November 3, 2020, through January 20, 2021, all documents and communications provided to Donald Trump regarding purported election irregularities, election-related fraud, or other election-related malfeasance.

18. From April 1, 2020, through January 20, 2021, all documents and communications provided to you or Donald Trump referring to a stolen election, stealing the election, or a "rigged" election.

19. From November 3, 2020, through January 20, 2021, all documents and communications related to the Twenty-Fifth Amendment to the U.S. Constitution.

20. Any documents and communications relating to instructions to stop or delay preparation for the transition of administrations.

21. All communications between White House personnel and General Services Administration (GSA) Administrator Emily Murphy or other GSA officials relating to "ascertainment" under the Presidential Transition Act. This includes but is not limited to communications discussing the recognition of Joseph Biden as the winner of the 2020 Presidential election.

22. All documents and communications concerning the potential invocation of the Insurrection Act.

23. From November 3, 2020, through January 20, 2021, all documents and communications related to martial law.

24. All documents and communications concerning the use of Federal law enforcement or military personnel during voting or vote counting in the 2020 Presidential election.

25. Any documents and communications relating to foreign influence in the United States 2020 Presidential election through social media narratives and disinformation.

26. All documents and communications related to the January 3, 2021, letter from ten former Defense Secretaries warning of use of the military in election disputes.

27. All documents and communications to or from the United States Secret Service concerning individuals in attendance at the January 6 rally in body armor, ballistic helmets, radio equipment, and "military grade" backpacks.

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.

* * * *. I will mark as exhibit 2 and enter into the record a series of letters and emails exchanged between the select committee and counsel for Mr. Meadows. The records include email service of the subpoena by * * * *, which Mr. Scott Gast accepted on Mr. Meadows' behalf on September 23rd, 2021.

The records in exhibit 2 also include the letters and emails between counsel for the select committee and Mr. George Terwilliger, which I described moments ago. And, specifically, they are a letter from George Terwilliger to the select committee on October 7th; an email from George Terwilliger to the select committee on October 13th; letters provided by George Terwilliger to the select committee, one of which is a letter from him to the White House Counsel's Office dated October 11th, 2021, and the other is a letter to George Terwilliger dated October 6th from Mr. Justin Clark, as counsel to former President Trump; a letter from the select committee to George Terwilliger on October 25th; two letters from George Terwilliger to the select committee on November 3rd; a letter from the select committee to George Terwilliger on November 5th; a letter from George Terwilliger to the select committee on November 8th; a letter from the select committee to George Terwilliger on November 9th; a letter from George Terwilliger to the select committee on November 10th; and a letter from the select committee to George Terwilliger on November 11th.

Exhibit 2 — Various Correspondence

[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

McGuireWoods LLP
[redacted]
McGUIREWOODS
[redacted]

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
[redacted]

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.

Sincerely yours,

George J. Terwilliger III

cc: [redacted]

[redacted]

From: Terwilliger, George J. III [redacted]
Sent: Wednesday, October 13, 2021 10:17 AM
To: [redacted]
Cc:
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
[redacted]

[redacted]

McGuireWoods LLP

McGUIREWOODS

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 the 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.

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.

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[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. 8l, 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/.

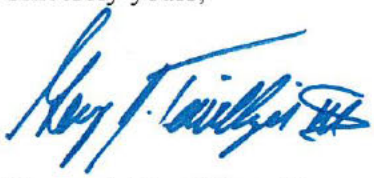
We recognize that Congress has placed immense political pressure on the White House to waive executive privilege in connection with the Select Committee's investigation, and that the Administration has already chosen to do so in some circumstances. It is precisely when the political pressure is at its 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.

* * *

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

ELECTIONS, LLC

Attorneys at Law
Justin R. Clark
[redacted]

October 6, 2021

Mr. Scott Gast
Compass Legal Services
[redacted]

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.

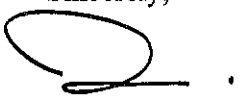
Through the Subpoena, the Select Committee seeks records and testimony purportedly related to the events of January 6th, 2021, including but not limited to information which is unquestionably protected from disclosure by the executive and other privileges, including among others the presidential communications, 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.

[redacted]

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,



Justin Clark
Counsel to President Trump

BENNIE G. THOMPSON, MISSISSIPPI
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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
[redacted]

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 categorial 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,

Bennie G. Thompson
Chairman

McGuireWoods LLP
[redacted]
George J. Terwilliger III
[redacted]

McGUIREWOODS

[redacted]

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
[redacted]

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.

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: [redacted]

McGuireWoods LLP
[redacted]
George J. Terwilliger III
[redacted]

McGUIREWOODS

[redacted]

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
[redacted]

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.

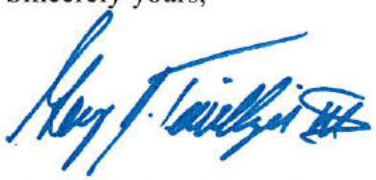
In addition, the Select Committee's apparent unwillingness to pursue accommodation would compel Mr. Meadows to maintain his position, consistent with multiple opinions from a bipartisan group of Attorneys General, that senior White House aides cannot be compelled to testify before Congress in relation 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: [redacted]

BENNIE G. THOMPSON, MISSISSIPPI
CHAIRMAN

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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 5, 2021

Mr. George Terwilliger III
McGuire Woods LLP
[redacted]

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.

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,

Bennie G. Thompson
Chairman

McGuireWoods LLP
[redacted]
George J. Terwilliger III [redacted]
McGUIREWOODS
[redacted]

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
[redacted]

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.

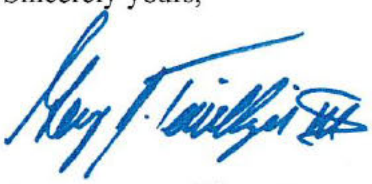
The Executive Branch has prudently and consistently maintained in Administrations under both parties that Congress does not have the authority to compel testimony from the President's most senior advisors without the need to parse underlying questions of executive privilege. As the Supreme Court has 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.

* * * * *

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.

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: [redacted]

BENNIE G. THOMPSON, MISSISSIPPI
CHAIRMAN

ZOE LOFGREN, CALIFORNIA
ADAM B. SCHIFF, CALIFORNIA
PETE AGUILAR, CALIFORNIA
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U.S. House of Representatives
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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
[redacted]

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

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,

Bennie G. Thompson
Chairman

McGuireWoods LLP
[redacted]
George J. Terwilliger III [redacted]
McGUIREWOODS
[redacted]

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
[redacted]

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: [redacted]

BENNIE G. THOMPSON, MISSISSIPPI
CHAIRMAN

ZOE LOFGREN, CALIFORNIA
ADAM B. SCHIFF, CALIFORNIA
PETE AGUILAR, CALIFORNIA
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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
[redacted]

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)).

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,

Bennie G. Thompson
Chairman

* * * *. I will mark as exhibit 3 and enter into the record a letter dated November 11th, 2021, from the White House Counsel's Office to Mr. George Terwilliger as counsel for Mr. Meadows.

Exhibit 3 — Letter from White House Counsel to Counsel for Mr. Meadows, Nov. 11, 2021

THE WHITE HOUSE
WASHINGTON

November 11, 2021

George J. Terwilliger III
McGuireWoods LLP
[redacted]

Dear Mr. Terwilliger:

I write in response to your letter of October 11, 2021, regarding a subpoena issued by the House Select Committee to Investigate the January 6th Attack on the United States Capitol (the "Select Committee") to your client, Mark R. Meadows.

In an October 8, 2021 letter to the Archivist of the United States regarding the Select Committee's request for documents relevant to its investigation, the Counsel to the President wrote:

> [T]he insurrection that took place on January 6, and the extraordinary events surrounding it, must be subject to a full accounting to ensure nothing similar ever happens again. Congress has a compelling need in service of its legislative functions to understand the circumstances that led to . . . the most serious attack on the operations of the Federal Government since the Civil War.[1]

President Biden recognizes the importance of candid advice in the discharge of the President's constitutional responsibilities and believes that, in appropriate cases, executive privilege should be asserted to protect former senior White House staff from having to testify about conversations concerning the President's exercise of the duties of his office. But in recognition of these unique and extraordinary circumstances, where Congress is investigating an effort to obstruct the lawful transfer of power under our Constitution, President Biden has already determined that an assertion of executive privilege is not in the public interest, and is therefore 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. The 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.

---

[1] See Letter to David S. Ferriero, Archivist of the United States, from Dana A. Remus, Counsel to the President (Oct. 8, 2021).

Consistent with President Biden's determination that an assertion of privilege is not justified with respect to testimony and documents relating to these particular subjects, he has determined that he will not assert executive privilege with respect to your client's deposition testimony on these subjects, or any documents your client may possess that bear on them. For the same reasons underlying his decisions on executive privilege, President Biden has determined that he will not assert immunity to preclude your client from testifying before the Select Committee.

Please contact me if you have any questions about the matters described herein.

Sincerely,

Jonathan C. Su
Deputy Counsel to the President

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

* * * *. I will mark as exhibit 4 and enter into the record an email dated November 9th, 2021, and corresponding attachments from * * * *, chief investigative counsel to the select committee, to George Terwilliger, with subject line, "Deposition Rules." The attachments consist of, one, a document called "Document Production Definitions and Instructions"; two, "Deposition Rules," which is a copy of the House Congressional Record page H41 from January 4th, 2021; third, which is a copy of section 3(b) of House Resolution 8 dated January 4th, 2021.

Exhibit 4 — Select Committee Staff Email to Counsel for Mr. Meadows, Nov. 9, 2021

[redacted]

From: [redacted]
Sent: Tuesday, November 9, 2021 7:39 PM
To: Terwilliger, George J. III
Cc: [redacted]
Subject: Deposition Rules
Attachments: Document Production Instructions.pdf; deposition rules.pdf; HRes8Sec3b.pdf

George,

As promised, I'm sending along the rules that govern procedure for depositions taken by committees of the House of Representatives. I've also attached the document production instructions, to guide any production you may provide.

As always, please let me know if you have any questions.

Thanks,

[redacted]

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

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

* * * *. And, with that, I will note for the record that it is 10:07 a.m., and Mr. Meadows 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 as of 10:07 a.m.

[Whereupon, at 10:07 a.m., the deposition was concluded.]

The official transcript for Mr. Meadows's voluntary deposition on December 8, 2021, is as follows:

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

DEPOSITION OF: MARK MEADOWS (NO-SHOW)

WEDNESDAY, DECEMBER 8, 2021

WASHINGTON, DC

The deposition in the above matter was held in * * * * commencing at 10:00 a.m.

PRESENT: Representatives SCHIFF and LOFGREN.

APPEARANCES:

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

* * * *, * * * *
* * * *, * * * *
* * * *, * * * *
* * * *, * * * *

---

* * * *. All right. It's 10 a.m. So we'll go ahead and get started going on the record.

This is a deposition of Mark Meadows, conducted by the House Select Committee to Investigate the January 6th Attack on the United States Capitol, pursuant to House Resolution 503.

My name is * * * *. That's * * * *, and I'm the chief investigative counsel to the select committee. With me today are * * * *, who is a senior investigative counsel, and Ms. ZOE LOFGREN, who is a member of the select committee, is also participating remotely.

Based on an agreement with counsel to Mr. Meadows, this deposition was to begin at 10 a.m. It is now 10 a.m., and Mr. Meadows has not appeared.

Mr. Meadows received a subpoena, dated September 23rd, 2021, requiring him to produce documents to the select committee and appear for a deposition. Staff engaged in several discussions with Mr. Meadows' counsel regarding the scope of his production and the subject matters to be developed at his deposition.

Staff provided Mr. Meadows' counsel with specific areas in which it is interested and asked Mr. Meadows to identify those that would trigger a privilege assertion. Rather than engage with the select committee, Mr. Meadows asserted that, as a former White House chief of staff, he cannot be compelled to provide information to Congress. He communicated his blanket assertion of immunity, in addition to claims of executive privilege, in writing to Chairman THOMPSON.

On November 12th, 2021, the select committee convened the scheduled deposition of Mr. Meadows after the current White House indicated, in writing, that President Biden would not assert any immunity or privilege that would prevent Mr. Meadows from appearing and answering the committee's questions.

Mr. Meadows did not appear for that deposition on November 12th, as indicated in his prior correspondence.

He also failed to produce any documents responsive to the select committee's subpoena or a privilege log asserting claims of privilege for specific documents.

After Mr. Meadows failed to appear for his deposition or produce documents, select committee staff engaged in further discussions with Mr. Meadows' counsel regarding the status of his noncooperation.

Mr. Meadows ultimately agreed to produce some documents and to appear for a deposition today, December 8th, 2021, at 10 a.m., an offer which the chairman extended to him as a good faith effort to enable Mr. Meadows to cure his failure to comply with the September 23rd subpoena and provide information relevant to the select committee's investigation.

Mr. Meadows has now produced documents. Counsel made clear that Mr. Meadows intended to withhold some responsive information due to a claim of executive privilege. He agreed to produce documents he believes are not covered by that or any other privilege and to produce a privilege log identifying responsive documents withheld due to such privilege assertions.

He also agreed to appear for a deposition, at which he would be asked questions on subject matters relevant to the select committee's inquiry, as identified in our prior correspondence, and either answer the questions or articulate a claimed privilege.

We agreed with Mr. Meadows' counsel that this production and deposition would clarify Mr. Meadows' position on the application of various privileges and create a record for further discussion and consideration of possible enforcement by the select committee.

Consistent with that agreement, Mr. Meadows did produce documents and privilege logs. More specifically, he produced approximately 6,600 pages of records taken from personal email accounts he used to conduct official business, as well as a privilege log describing other emails over which he claims privilege protection. He also produced approximately 2,000 text messages, which Mr. Meadows sent or received using a personal device which he used for official business, in addition to a privilege log, in which he describes privilege claims over other withheld text messages.

Mr. Meadows was scheduled to appear today, December 8th, 2021, for a deposition. However, he has not appeared and is not present today. We received correspondence from Mr. Meadows' attorney yesterday indicating that, despite his prior agreement to appear today, his position has changed and he would not appear.

We are disappointed in Mr. Meadows' failure to appear as planned, as it deprives the select committee of an opportunity to develop relevant information in Mr. Meadows' possession and to, more specifically, understand the contours of his executive privilege claim.

Again, the purpose of today's proceeding was to ask Mr. Meadows questions that we believe would be outside of any cognizable claim of executive, attorney client, Fifth Amendment, or other potentially applicable privilege.

Our hope is that he would answer those questions, which would materially advance the select committee's investigation, given Mr. Meadows' service as White House chief of staff. We expected that he would assert privileges in response to various questions, articulating the specific privilege he believes is implicated and how it applies to the question asked. We planned to evaluate Mr. Meadows' privilege assertions after today's proceeding, engage in further discussions with Mr. Meadows' counsel, and consider whether enforcement steps were appropriate and necessary.

Mr. Meadows' failure to appear for today's deposition deprives us of the opportunity to engage in that process. Instead, we are left with Mr. Meadows' complete refusal to appear for his deposition or cure his willful noncompliance with the select committee's subpoena.

Had Mr. Meadows appeared for his deposition today, we would have asked him a series of questions about subjects that we believe are well outside of any claim of executive privilege. More specifically, we would have asked Mr. Meadows questions about his use of personal email and cellular phones.

Mr. Meadows' document production includes documents taken from two Gmail accounts. We would've asked him how and for what purpose he used those Gmail accounts and when he used one of them as opposed to his official White House email account. We would've similarly asked him about his use of a personal cellular telephone.

We would have sought to develop information about when Mr. Meadows used his personal cell phone for calls and text messages and when he used his official White House cell phone for those purposes.

Mr. Meadows' production of documents shows that he used the Gmail accounts and his personal cellular phone for official business related to his service as White House chief of staff. Given that fact, we would ask Mr. Meadows about his efforts to preserve those documents and provide them to the National Archives, as required by the Presidential Records Act. Finally, we would have asked Mr. Meadows about his use of a signal account, which is reflected in the text messages he produced.

In addition, we would have asked Mr. Meadows about particular emails that he produced to the select committee. We do not believe these emails implicate any valid claim of executive or other privilege, given that Mr. Meadows has produced the emails to the select committee.

Specifically, we would've asked Mr. Meadows about emails about the Electoral Count Act and the prospect of State legislators sending alternate slates of electors to Congress, including a November 7th, 2020, email with attachments. We would've asked him about emails reflecting the Trump campaign's effort to challenge election results, including a December 23rd email from Mr. Meadows indicating that, quote, "Rudy was put in charge. That was the President's decision," end quote, that reflects a direct communication between Mr. Meadows and the President.

We would've asked him about emails from Mr. Meadows to leadership at the Department of Justice on December 29th and 30th, 2020, and January 1st, 2021, en-

couraging investigations of suspected voter fraud, including claims that had been previously rebutted by State and Federal investigators and rejected by Federal courts.

We would have asked Mr. Meadows about emails regarding the deployment of the National Guard on January 6th, including a January 5th email from Mr. Meadows in which he indicates that the Guard would be present at the Capitol to, quote, "protect pro Trump people," end quote.

In addition, we would have asked Mr. Meadows about specific text messages he sent or received that he has produced to the select committee. Given Mr. Meadows' production of these text messages to the select committee, they do not, in our view, implicate any valid claim of executive or other privilege.

We would've specifically asked Mr. Meadows about text messages regarding efforts to encourage Republican legislators in certain States to send alternate slates of electors to Congress, including a message sent by Mr. Meadows on December 8th, 2020, in which Mr. Meadows said, quote, "We are," end quote, and another text from Mr. Meadows to someone else in which he said that, quote, "We have a team on it," end quote.

We would have asked Mr. Meadows about text messages sent to and from Members of Congress, including text messages received from a Member of Congress in November of 2020 regarding efforts to contact State legislators because, as Mr. Meadows indicates in his text messages, quote, "POTUS wants to chat with them," end quote, which reflects a direct communication with the President, as well as texts in December of 2020 regarding the prospect of the President's appointment of Jeffrey Clark as Acting Attorney General.

We would've asked Mr. Meadows about text messages sent to and from another Member of Congress in November of 2020, in which the member indicates that, quote, the President asked him to call Governor Ducey, end quote, and in which Mr. Meadows asks for contact information for the attorney general of Arizona to discuss allegations of election fraud.

We would've asked Mr. Meadows about text messages sent to and received from Members of the House of Representatives and the Senate about objections to the certification of electors in certain States on January 6th. We would have asked him about text messages sent to and received from a Senator regarding the Vice President's power to reject electors, including a text in which Mr. Meadows recounts a direct communication with President Trump who, according to Mr. Meadows in his text messages, quote, "thinks the legislators have the power, but the VP has power too," end quote.

We would have asked Mr. Meadows about text messages sent to and received from a media personality on December 12th, 2021, regarding the negative impact of President Trump's election challenges on the Senate runoff elections in Georgia, President Trump's prospects for election in 2024, and Mr. Meadows possible employment by a news channel.

We would've asked Mr. Meadows about text messages sent to and received from an organizer of the January 6th events on the Ellipse about planning the event, including details about who would speak at the event and where certain individuals would be located.

We'd ask Mr. Meadows about text messages regarding President Trump's January 2nd, 2021, phone call with Georgia Secretary of State Brad Raffensperger, including texts to and from participants in the call as it took place, as well as text messages to and received from Members of Congress after the call took place regarding strategy for dealing with criticism of the call.

We would've asked Mr. Meadows about text messages exchanged with various individuals, including Members of Congress, on January 6th, both before, during, and after the attack on the United States Capitol, including text messages encouraging Mr. Meadows to facilitate a statement by President Trump discouraging violence at the Capitol on January 6th, including a text exchange with a media personality who had encouraged the presidential statement asking people to, quote, "peacefully leave the Capitol," end quote, as well as a text sent to one of—by one of the President's family members indicating that Mr. Meadows is, quote, "pushing hard," end quote, for a statement from President Trump to, quote, "condemn this shit," end quote, happening at the Capitol.

Text messages: We would ask Mr. Meadows questions about text messages reflecting Mr. Meadows' skepticism about public statements regarding allegations of election fraud put forth by Sidney Powell and his skepticism about the veracity of claims of tampering with Dominion voting machines.

In addition, we would've asked Mr. Meadows questions about specific representations in a book he has authored, *The Chief's Chief,* in which he recounts various facts relevant to the select committee's investigation and directly describes commu-

nications with the President, including on page 259, quote, "A few sentences later, President Trump ad libbed a line that no one had seen before, saying, 'Now it is up to Congress to confront this egregious assault on our democracy. After this, we're going to walk down—and I'll be there with you—we're going to walk down to the Capitol and we're going to cheer on our brave Senators and Congressmen and women. We're probably not going to be cheering so much for some of them because you'll never take back our country with weakness. You have to show strength. You have to be strong.' When he got off stage, President Trump let me know that he had been speaking metaphorically about the walk to the Capitol. He knew as well as anyone that we wouldn't organize a trip like that on such short notice," end quote.

We would've asked Mr. Meadows about another passage in his book that appears on page 261. Quote, "In the aftermath of the attack, President Trump was mortified. He knew the media would take this terrible incident and twist it around. He also knew his days on Twitter were probably numbered," end quote.

We would've asked Mr. Meadows about another passage on page 261 in his book. Quote, "'Mark,' Trump would say to me, 'Look, if I lost, I'd have no problem admitting it. I would sit back and retire and probably have a much easier life, but I didn't lose. People need me to get back to work. We're not done yet,'" end quote.

We would've asked Mr. Meadows about another passage in his book on page 264 that reflects, quote, "On January 20th, with less than 5 hours left in his historic Presidency, at a time when most outgoing Presidents would be quietly making notes for their memoirs and taking stock of their time in the White House, President Trump was being forced to defend his legacy yet again. 'How do we look in Congress?' President Trump asked. 'I've heard that there are some Republicans who might be turning against us. That would be a very unwise thing for them to do,'" end quote.

We would've asked him about another passage on page 265 of his book. Quote, "But I assured President Trump, once again, that all would be well with the impeachment trial, and we discussed what my role in the proceedings would be after we left the White House," end quote.

We would've asked him about the passage on page 266 in his book where he recounts, quote, "On the phone on January 20th, President Trump spoke as if he wasn't planning to go anywhere. He mentioned the long list of pardons we hadn't been able to complete largely due to the slowness on the part of various attorneys in the Federal Government. He wondered again about the precise details of the impeachment trial, including how much money the new lawyers would charge and how we could best defend him against the Democrats' attacks," end quote.

These passages reflect direct communications between Mr. Meadows and President Trump directly impacting his claims of executive privilege.

Finally, we would ask Mr. Meadows questions about statements in his book about his interactions with the Department of Justice. Specifically, he addresses such interactions with the Department of Justice on pages 257 and 258 of his book, in which he says, quote, "It didn't surprise me that our many referrals to the Department of Justice were not seriously investigated. I never believed they would, given the track record of that Department in President Trump's first term," end quote.

Again, statements in Mr. Meadows' book directly reflect subject matters that the select committee seeks to develop, and his public statements directly impact his claims of executive privilege.

But, as of the current time, which is now 10:17, Mr. Meadows still has not appeared to cure his earlier noncompliance with the select committee's September 23rd, 2021, subpoena. So we will not be able to ask any of those questions about the documents and messages that he apparently agrees are relevant to the select committee and not protected by any protective privilege.

I'd also note for the record that Congressman ADAM SCHIFF, a member of the select committee, has joined and, again, that member of the committee, Representative LOFGREN, has joined.

Before we close the record, Mr. SCHIFF or Ms. LOFGREN, do either of you have any comments to make for the record?

Mr. SCHIFF. I do not. Thank you.

* * * *. Ms. LOFGREN, anything?

Ms. LOFGREN. I'm good.

* * * *. Okay. Thank you.

Accordingly, the record of this deposition of Mark Meadows, now at 10:18 a.m., is closed.

[Whereupon, at 10:18 a.m., the deposition was concluded.]

Additional correspondence between the Select Committee and counsel for Mr. Meadows is as follows (continuing the exhibit numbering from above):

5. Letter from Counsel to Mark Meadows to Chairman THOMPSON, Nov. 19, 2021.
6. Letter from Chairman THOMPSON to Counsel to Mark Meadows, Nov. 22, 2021.
7. Letter from Counsel to Mark Meadows to Chairman THOMPSON, Nov. 26, 2021.
8. Letter from Counsel to Mark Meadows to Chairman THOMPSON, Nov. 26, 2021.
9. Letter from Chairman THOMPSON to Counsel to Mark Meadows, Nov. 28, 2021.
10. Letter from Counsel to Mark Meadows to Chairman THOMPSON, Dec. 3, 2021.
11. Letter from Counsel to Mark Meadows to Chairman THOMPSON, Dec. 7, 2021.
12. Letter from Chairman THOMPSON to Counsel to Mark Meadows, Dec. 7, 2021.

Exhibit 5 — Letter from Counsel to Mark Meadows to Chairman Thompson, Nov. 19, 2021

McGuireWoods LLP
[redacted]
George J. Terwilliger III
[redacted]
McGUIREWOODS
[redacted]

November 19, 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
[redacted]

Re: Subpoenas Served on Honorable Mark R. Meadows

Dear Chair Thompson and Vice Chair Cheney:

I write further to our discussions about the Select Committee's subpoena to former White House Chief of Staff Mark R. Meadows and to propose again, in greater detail, that we explore an accommodation that would allow the Select Committee to obtain useful information to further its legislative purpose while allowing both the Committee and Mr. Meadows to maintain their respective positions on relevant legal issues. We recognize that the Select Committee believes that it is entitled to enforce the full scope of its subpoena. The Select Committee likewise is in a position to recognize that Mr. Meadows disagrees with that position. If pressed, we would expect that disagreement to require judicial resolution, which could take a substantial amount of time and resources.

Therefore, consistent with the long tradition and practice in disputes between Congress and Executive Branch officials (both current and former), we propose below an accommodation that would allow the Select Committee to obtain information outside the compulsion of the subpoena and without requiring either side to give up its legal position.

We propose that, as an initial step, Mr. Meadows provide written responses to written interrogatories from the Select Committee on a defined set of topics, with the specific subject matter for questions to be discussed between the Select Committee's counsel and counsel for Mr. Meadows. In a letter dated November 11, 2021, which was copied to the Select Committee, the Office of White House Counsel informed me that President Biden is not asserting privilege over

certain categories of information within the scope of the Select Committee's inquiry. Within those categories, we would propose an initial focus on the following topics:

Events on or about January 6, 2021. Mr. Meadows can provide written responses to the Select Committee about his conduct, activities, and communications on January 5–6, 2021, with the caveat that he is not able to disclose communications with or on behalf of the President, or with other senior White House aides, absent the former President's agreement. (As discussed further below, we are willing to seek that agreement in connection with specific questions or sets of questions concerning a particular topic). To the extent the Select Committee already has records of Mr. Meadows's activities from Presidential records or other sources, he is willing to provide context or other relevant background, consistent with the limitations described above.

Communications with the Department of Justice. Mr. Meadows can provide written responses to the Select Committee about his communications with the Department of Justice concerning the events of January 6 and concerning other post-election issues, consistent with the limitations described above.

Other Post-Election Communications. We also understand that the Select Committee is interested in other post-election efforts and discussions regarding the results of the election and allegations of election fraud, including any discussions between White House officials and state officials in Georgia and elsewhere. It has been publicly announced that the district attorney in Fulton, Georgia, has impaneled or soon will impanel a special grand jury to investigate such communications. We therefore would propose deferring discussion of questions on this topic until Mr. Meadows's status, if any, in that matter can be established.

As indicated above, Mr. Meadows has a reasonable basis in fact and law to take the position that private communications that he had with or on behalf of the President, or with other senior White House aides, are subject to claims of Executive Privilege, as those communications lie at the core of Executive Privilege. Even though President Biden has purported to waive Executive Privilege in this regard, President Trump has instructed Mr. Meadows to maintain the privilege. It is not for Mr. Meadows as a witness to be forced to choose between these conflicting instructions. Nevertheless, as part of an effort to accommodate the Select Committee outside the compulsion of the subpoena, we are willing to seek the former President's agreement for Mr. Meadows to provide selective information through the means outlined above to the extent it would inform the Select Committee in furthering a valid legislative purpose. Our goal in doing so would be to avoid a dispute over Executive Privilege that might require lengthy and costly judicial resolution for all parties involved. To the extent the former President agrees, Mr. Meadows will also include that information in written responses to the Select Committee.

We submit this proposal as an initial step. Our expectation would be that, after working through this written process and after further consultation with counsel for the Select Committee, Mr. Meadows could agree outside of compulsion by subpoena to appear voluntarily for a deposition within the parameters established through the initial process.

* * * * *

Thank you again for your willingness to discuss these important issues with us. We hope you will agree that the process outlined above can serve the interests of both parties and potentially avoid the prospect of time-consuming and resource-intensive litigation, all without prejudice to the prerogatives of the Select Committee or of Mr. Meadows as a former White House Chief of Staff. We will continue to stay in communication with counsel for the Select Committee, and if the Select Committee finds this proposal agreeable as an initial step, we will work quickly with them to identify the Select Committee's initial interrogatories and to begin preparing Mr. Meadows's responses.

Sincerely yours,

George J. Terwilliger III

cc: [redacted]

Exhibit 6 — Letter from Chairman Thompson to Counsel to Mark Meadows, Nov. 22, 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 22, 2021

Mr. George Terwilliger III
McGuire Woods LLP
[redacted]

Dear Mr. Terwilliger,

The Select Committee to Investigate the January 6th Attack on the United States Capitol ("Select Committee") has received and considered the letter you sent on November 19, 2021, a full week after your client, Mr. Mark Meadows, failed to appear for a deposition and two weeks after a deadline to produce documents.

Despite these failures, you again seek an accommodation via written interrogatories. Let me be clear, once more, on this issue: the Select Committee will not proceed with Mr. Meadows by submitting written interrogatories to him because we disagree that obtaining information from your client in writing is an appropriate accommodation. When Mr. Meadows first proposed interrogatories, he asked that the Select Committee "propound" them, but did not say that he would actually provide any substantive information in response.[1] Now, after his failure to comply with the Select Committee's subpoena, he has added conditions: (1) the interrogatories can only ask questions about two days in January 2021 and Mr. Meadows's communications with the Department of Justice; and (2) Mr. Meadows will only respond to questions about his communications "with or on behalf of the [former] president, *or* with other senior White House aides" *provided that* he first obtains the former President's approval. These conditions stop short of an agreement to provide interrogatory responses, even if the Select Committee were inclined to consider them.

The Select Committee has attempted, on many occasions, to resolve the issues you have raised about Mr. Meadows's compliance with the Select Committee's subpoena. At your request, the Select Committee agreed to move the original subpoena compliance dates. When you asked for an overview of topics that the Select Committee planned to raise with your client, we accommodated your request. When you requested further accommodations, we provided additional details about the questions that the Select Committee intended to pose to Mr. Meadows in the form of a list of 16 specific topics. When you then raised, for the first time, your

[1] Letter to Chairman Thompson from George Terwilliger dated November 8, 2021 (in connection with his proposal to receive interrogatories, Mr. Meadows vaguely added that he would "provide what information he can and/or articulate clear assertions of privilege where applicable to specific questions").

suggestion of written interrogatories, the Select Committee provided a list of eight questions about Mr. Meadows's use of communications accounts and devices. To date, Mr. Meadows has never provided a meaningful response to the Select Committee's attempts at accommodation, has never provided any documents or any privilege log, and has not even responded to written questions that he himself invited.

This history has led the Select Committee to suspect that you are simply engaged in an effort to delay, and that Mr. Meadows has no genuine intent to offer any testimony on any relevant topic. As you know, Mr. Meadows has extensive information unequivocally relevant to this investigation, including specific knowledge regarding former President Trump's failure for over three hours to demand that his supporters leave the Capitol during the violent confrontation on January 6th and his broader efforts to undercut the results of the fall 2020 election. Given that you have now for the first time identified Mr. Meadows's potential willingness to "appear voluntarily for a deposition," we will now supply you with that opportunity so that you can demonstrate that you and your client are operating in good faith. To that end, the Select Committee will agree to convene a deposition for your client on November 29, 2021, at 10:00 a.m. At that deposition, the Select Committee will begin by asking questions addressing obviously non-privileged topics that we have raised in earlier letters.[2] As indicated previously, we intend to ask Mr. Meadows about his communications with individuals outside of the executive branch, including Members of Congress, state officials, and third parties. We also intend to ask Mr. Meadows questions related to his use of private email accounts, cell phones, and other communications devices on January 6th and other relevant dates, as well as the required preservation of communications and other information on such accounts and devices.[3] Those questions unequivocally call for non-privileged responses and are directly pertinent to the Select Committee's statutory right to obtain appropriate records from the National Archives under the Presidential Records Act. In short, there are multiple non-privileged subject matters within the scope of the Select Committee's investigation, as your most recent letter acknowledges. Again, we can conceive of no appropriate basis for your client's continued failure to appear and, at a minimum, answer these types of questions.

Your November 19 letter does not suggest any accommodation with respect to the production of documents, which to date your client has not produced. As I have stated previously, the Select Committee expects Mr. Meadows to produce documents in his possession that are responsive to the schedule set forth in the subpoena, and to assert in a privilege log any claims of executive privilege that he believes cover such documents, and on a document-by-document basis. To date, he has produced neither a single document nor a privilege log and, as a result, he remains in contempt of Congress for his failure to produce documents. Again, I have specifically asked Mr. Meadows to confirm his use and preservation of information contained within the specific cellular telephones and a personal email account mentioned above – issues that could not conceivably be covered by a privilege. He has failed to provide any information contained in those devices or accounts, or answer even those basic questions. Nonetheless, I will

[2] Letters to George Terwilliger from Chairman Thompson dated October 25, November 5, November 9, and November 11, 2021.
[3] Letters to George Terwilliger from Chairman Thompson dated November 9 and November 11, 2021.

provide him one final opportunity to produce documents responsive to the September 23 subpoena and/or a privilege log. That information must be provided no later than Friday, November 26, 2021.

The accommodations process regarding potential claims of executive privilege typically involves discussions between the executive branch and the legislative branch. Mr. Meadows represents neither. The current administration has not asserted claims of absolute immunity or executive privilege. To the contrary, the White House Counsel's Office has specifically indicated in its letter dated November 11 that "an assertion in this circumstance would be at odds with the principles that underlie the privilege."[4]

Nevertheless, I have in good faith considered your concerns and have proposed a course of action that reflects both that consideration and the Select Committee's need for information 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.

If Mr. Meadows seeks further engagement with the Select Committee in a good-faith effort to begin complying with the Select Committee's subpoena, he must produce documents and/or a privilege log by noon on Friday, November 26, 2021, and appear for his deposition at 10:00am on Monday, November 29, 2021. If at that time, you believe that the Committee's questions address topics for which you intend to continue to press a privilege claim, I trust that you will object and we can continue discussing your privilege arguments. The Select Committee will defer consideration of enforcement steps regarding Mr. Meadows's non-compliance with the Select Committee's subpoena pending the November 26 production of documents and November 29 deposition.

Sincerely,

Bennie G. Thompson
Chairman

[4] Letter to George Terwilliger from the White House dated November 11, 2021.

Exhibit 7 — Letter from Counsel to Mark Meadows to Chairman Thompson, Nov. 26, 2021

McGuireWoods LLP
[redacted]
George J. Terwilliger III
[redacted]

McGUIREWOODS

[redacted]

November 26, 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
[redacted]

Re: Subpoenas Served on Honorable Mark R. Meadows

Dear Chair Thompson and Vice Chair Cheney:

We have reviewed and considered your letter of November 23, 2021. We appreciate the efforts the Select Committee has made to discuss with us in correspondence the pertinent legal issues raised by the Select Committee's subpoena and to articulate the Select Committee's legal position on those issues, which you no doubt believe in good faith to be correct. Nonetheless, your letter is mistaken is several material respects which I will address just briefly.

Contrary to your suggestion that we are operating in bad faith, we have asserted the position that Mr. Meadows, as a former senior White House Official, is immune to being compelled to appear before Congress, period. That is the same position taken by the Department of Justice under Administrations of both political parties on numerous occasions and in fact asserted forcefully by then Attorney General Janet Reno. We have also taken the position that much of the matters about which the Committee would inquire of Mr. Meadows are subject to Executive Privilege, which is both generally and specifically recognized by the courts as a valid basis for a witness to refuse to answer such questions.

You state in your letter: "The accommodation process regarding potential claims of executive privilege typically involves discussions between the executive branch and the legislative branch. Mr. Meadows represents neither." We agree. Mr. Meadows has served in Congress, and at the times relevant to the Select Committee's inquiry, he served in the Executive Branch. But today, he is a private citizen. That is precisely why he, as a witness answering questions which would require him to provide information subject to claims of Executive Privilege arising from his

former service as Chief of Staff to President Trump, is not the person responsible for deciding whether to waive that privilege. In addition, I would respectfully remind you that Congress is also not the arbiter of Executive Privilege. Thus, while you have indicated in your letter that you believe there are many non-privileged subjects of inquiry that Mr. Meadows could discuss in a deposition, we may not agree with your assessment of the applicability of privilege to any given topic or specific question. When disputes about Executive Privilege arise, they are traditionally resolved by the Executive Branch itself, through a negotiated accommodation between Congress and the Executive, or through the Courts if necessary. Mr. Meadows, as a former senior White House aide, has no legal authority of which we are aware to unilaterally waive the privilege, nor is there any legal authority that obligates him to accept whatever position the Select Committee may take as to the scope or applicability of such privilege.

We also understand that the Select Committee believes that President Biden is the sole arbiter of Executive Privilege, to the exclusion of former President Trump, over questions arising from President Trump's tenure. But as you know, that is a legal question that the Supreme Court has so far left open and the subject of a pending appeal in the U.S. Court of Appeals for the D.C. Circuit. So long as that issue remains unresolved, Mr. Meadows is not in a position to disregard instructions from former President Trump to maintain privilege.

Given these disagreements and unresolved legal issues, Mr. Meadows has not been able to appear for testimony in response to the Select Committee's subpoena. But we have nevertheless been and remain willing to find mutually agreeable means to share relevant information with the Select Committee outside the context of the testimonial subpoena.

Contrary to your letter's characterization of our offer to compromise, however, our suggestion of having a voluntary interview or deposition was only *to follow* a successful effort to engage in answers to interrogatories from the Select Committee. I should note that the use of written interrogatories is specifically provided for in the Select Committee's authorizing resolution. *See* H. Res. 503, § 5(c)(5) ("The chair of the Select Committee is authorized to compel by subpoena the furnishing of information by interrogatory."). Without any substantive response whatsoever, you have rejected this offer out of hand.

Nonetheless, your letter invites Mr. Meadows to appear voluntarily for a deposition to answer questions on what you believe to be non-privileged matters. We will agree to so appear, subject to the Select Committee's agreement to the following understandings and conditions:

1. *Mr. Meadows's appearance is voluntary, that is, not subject to the compulsion of the subpoena of September 23, 2021.*

2. *The Select Committee or its staff will in good faith limit the matters of inquiry and specific questions to that which it believes to be outside the scope of Executive Privilege.*

3. *Mr. Meadows, through counsel, retains full right to decline to answer questions that he believes in good faith, with the advice of counsel, would require him to answer with information subject to a claim of Executive Privilege.*

4. *The Select Committee will provide to Mr. Meadows's counsel, at least 3 business days in advance of the session, any and all documents it intends to show or question him about in the session.*

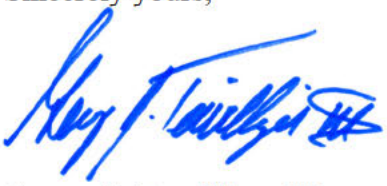
5. *The duration of the deposition, exclusive of any agreed upon breaks or time off the record, will not exceed 4 hours.*

6. *The Select Committee will timely provide Mr. Meadows with the written record of the deposition.*

Your letter asks for any such appearance to occur on November 29, 2021. For separate reasons as to each of us, neither Mr. Meadows nor I could appear on that date.[1] In addition, that date, as you know, follows a traditionally long holiday weekend, and we have not received any of the documents that the Select Committee would like Mr. Meadows to be prepared to discuss. A deposition of Monday, November 29, would therefore not permit us adequate time to prepare for the session. We are prepared, however, to work with your staff to identify a date soon thereafter for Mr. Meadows to appear as outlined above.

As to the production of documents pursuant to the subpoena to Mr. Meadows, which you also raised in your letter, we are addressing that today in a separate communication to the Select Committee.

Sincerely yours,



George J. Terwilliger III

cc: [redacted]

[1] I would be happy to explain to staff orally the reasons we could not attend on that date.

Exhibit 8 — Letter from Counsel to Mark Meadows to Chairman Thompson, Nov. 26, 2021

McGuireWoods LLP
[redacted]
Michael Francisco
[redacted]
McGUIREWOODS
[redacted]

November 26, 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
[redacted]

Re: *Subpoenas Served on Honorable Mark R. Meadows – Request for Production of Documents*

Dear Chair Thompson and Vice Chair Cheney:

On behalf of our client, the Honorable Mark R. Meadows, I write in response to the subpoena from the Select Committee on Finance dated September 23, 2021, and to your letter of November 23, 2021. As described below, Mr. Meadows is today making an initial production of documents in response to the subpoena and will continue working with the Select Committee to complete his response in a timely fashion. This initial production includes 1,139 documents and 6,836 pages.

As previously discussed, we believe that the vast majority of the documents responsive to the Select Committee's subpoena are Presidential records now in the custody and control of the Archivist. We have nevertheless undertaken a review of Mr. Meadows's personal devices and accounts to ascertain whether there are any responsive documents that remain in his custody and control. Previously we committed to producing any responsive, non-privileged documents that we identify. The documents included in today's production were collected from Mr. Meadows's personal Gmail account.

This production is based on our careful review of all incoming and outgoing messages in Mr. Meadows personal Gmail account between the dates of November 3, 2020 to January 21, 2021. In response to the Committee's focus on this time frame in its subpoena, the review was done for all emails in this entire date range instead of through application of more limited search terms, for instance.

These documents are being produced in response to the Select Committee's subpoena. This letter and its attachments, any copies thereof, and any past or future correspondence regarding this matter, are not intended to waive any of Mr. Meadows's privileges or rights. They should not be construed as a waiver of any privilege or right. To the extent that we have identified responsive documents that are nevertheless privileged, we are providing a privilege log in connection with the production that identifies the documents withheld and the nature of the privileges asserted.

The materials included in today's production are produced in electronic format and Bates numbered: MM000001 through MM010784. The production file is password protected. We will provide instructions on accessing the production by separate email, and you should not hesitate to contact us should any issues arise.

This production and our related correspondence may include sensitive personal information. We respectfully request that these materials, including this letter and our other correspondence with the Select Committee and its staff, be treated as confidential under the House Rules; that they be afforded the fullest protection available by law and policy; and that they be treated as confidential and exempt from disclosure beyond the Select Committee. The production of any privileged or otherwise protected information which is not responsive to the subpoena is unintentional, and we request the prompt return of any such information if identified or upon our request. We further request that confidential treatment be accorded to any notes, memoranda, or other records created by or at the direction of the Select Committee or employees that reflect, refer, or relate to this letter or to any portion of the enclosed productions.

Please promptly inform me, at the address and phone number listed above, of any request seeking access to the documents or any of the above-mentioned records, including this letter, to enable us to substantiate the grounds for confidential treatment, unless the Select Committee intends to deny such request for access. At the conclusion of the Select Committee's review of the enclosed documents, we request that all copies be returned to me at the address above.

In addition, we will review text messages and other potentially responsive information from Mr. Meadows' personal cell phone. As of the date of this initial production, we have encountered technical challenges that have prevented us from reviewing these materials for potentially responsive documents. We have previously explained to staff that Mr. Meadows did not retain his cell phone after January 2021. However, some information may have been retained in the form of a backup data set from the phone. After our initial efforts to access that backup were unsuccessful, we have retained a new outside vendor to assist us in our efforts to access and review the material. We expect to have a more detailed update on the status of this data next week. We continue to use substantial diligence to seek to obtain any potentially responsive material.

If you have any questions regarding the enclosed materials or any issues relating to this matter, please do not hesitate to contact me.

Sincerely yours,

Michael Francisco*

cc: [redacted]

* Not admitted in DC; admitted in CO. Application for admission to the DC bar filed; working under the direct supervision of an enrolled, active member of the DC bar

Exhibit 9 — Letter from Chairman Thompson to Counsel to Mark Meadows, Nov. 28, 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 28, 2021

Mr. George Terwilliger III
McGuire Woods LLP
[redacted]

Dear Mr. Terwilliger,

The Select Committee to Investigate the January 6th Attack on the United States Capitol ("Select Committee") has received and considered the letters you sent on November 26, 2021. One letter addressed Mr. Meadows' potential deposition testimony, and the other addressed an initial production of documents and a privilege log. Separately, staff for the Select Committee received a link from your law firm to download Mr. Meadows's initial document production that same day.

The Select Committee is working to download and process the documents Mr. Meadows produced and will review them as soon as practicable. As your letter indicates, that production includes 1,139 documents and 6,836 pages that are responsive to the Select Committee's subpoena, as well as a privilege log describing hundreds more responsive documents that Mr. Meadows has withheld. I understand that this is an initial production, and that you are working to provide additional responsive documents including text messages taken from a personal cell phone that Mr. Meadows used during the relevant timeframe. Mr. Meadows' production and privilege log comes well after the original and revised dates by which he was required to produce documents: October 7 and November 5, respectively. Given this delay and for the reasons stated below, I request that you complete the remaining production expeditiously, and no later than Friday, December 3, 2021.

In addition, the Select Committee is encouraged to hear that Mr. Meadows is interested in appearing for deposition testimony without further delay. I understand the extenuating circumstances for your request that we schedule the deposition for the week of December 6. I am willing to accommodate your request, *provided that* you complete production of documents from Mr. Meadows no later than Friday, December 3, 2021. More specifically, the Select Committee will convene a deposition on Wednesday, December 8, 2021, at 10:00 a.m. The deposition will be conducted pursuant to H. Res. 503, section 3(b) of H. Res. 8, and the Rules of the House of Representatives. Specifically, Mr. Meadows will be placed under oath to answer questions posed by staff and Members of the Select Committee. He will answer the questions asked or specifically articulate a privilege or other objection to such questions. As Chairman of the Select

Committee, I will consider and may rule upon those objections, as provided by the Rules of the House of Representatives. For your reference, I have enclosed the House Deposition Authority Regulations.

During the deposition, counsel and Members of the Select Committee will ask questions of your client that are relevant to the Select Committee's investigation. To be clear, the Select Committee's view of applicable executive privilege will be consistent with the prior letters that we have sent to you as well as the November 11, 2021, White House letter addressed to Mr. Meadows. Our hope is that Mr. Meadows will answer all questions put forth during the deposition. If, however, the Select Committee's questions address topics which you believe are protected by privilege, you will state such privilege objection on the record. After the deposition concludes, we will have a specific record on which to base continued discussion of your privilege claims.

The Select Committee hopes to limit the number of times Mr. Meadows must appear for testimony, but also recognizes that it might be necessary to continue the deposition to address issues that are not covered in this deposition, such as areas where you assert some executive-privilege-based objection that is later resolved. At this deposition, Select Committee staff will raise, in good faith, all relevant topics with Mr. Meadows in order to both obtain information that is relevant and necessary to its inquiry and narrow the scope of questions to which Mr. Meadows objects. If Mr. Meadows is forthcoming and cooperative, this process may take more than four hours, and the Select Committee cannot agree to such a time limit.

The Select Committee will endeavor to provide you, as counsel for Mr. Meadows, access to the nonpublic documents that it intends to show or question him about during the deposition that the Select Committee has received from sources other than your document production, *provided that* both you and Mr. Meadows agree to keep the documents confidential and not produce them, or otherwise disclose their contents, to any third parties. As noted above, it is imperative that we receive a complete production of documents from Mr. Meadows by December 3. This production must include, but not be limited to, production of text messages and other information contained in Mr. Meadows' personal cellular device(s). The Select Committee is also willing to provide access to the written record of the deposition upon the completion of the deposition pursuant to House rules.

I trust that Mr. Meadows' stated position indicates a willingness to cooperate with the Select Committee. If so, he must complete his document production by Friday, December 3, 2021, and appear for a deposition at 10:00 a.m. on Wednesday, December 8, 2021. As was true in the letter that I sent dated November 22, 2021, the Select Committee will defer consideration of enforcement steps regarding Mr. Meadows' non-compliance with the Select Committee's September 23, 2021, subpoena pending the December 8, 2021, deposition.

Please find the previously mentioned enclosures to this letter below. I look forward to your speedy reply.

Sincerely,

Bennie G. Thompson
Chairman

Enclosures.

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

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.

Exhibit 10 — Letter from Counsel to Mark Meadows to Chairman Thompson, Dec. 3, 2021

McGuireWoods LLP
[redacted]
Michael Francisco
[redacted]
McGUIREWOODS
[redacted]

December 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 Capitol
U.S. House of Representatives
[redacted]

Re: *Subpoenas Served on Honorable Mark R. Meadows – Request for Production of Documents*

Dear Chair Thompson and Vice Chair Cheney:

On behalf of our client, the Honorable Mark R. Meadows, I write in response to the subpoena from the Select Committee to Investigate the January 6th Attack on the United States Capitol dated September 23, 2021, and to your letter of November 23, 2021. As described below, Mr. Meadows is today making a continuing production of documents in response to the subpoena. This production includes 2,319 documents and 2,514 pages. For text messages withheld as privileged, there are 38 text message threads with attorney-client privilege and 23 text message threads with executive privilege.

Previously we committed to producing any responsive, non-privileged documents that we identify. The documents included in today's production were collected primarily from backup data from Mr. Meadows's personal devices. As we have previously explained, Mr. Meadows no longer has his personal cell phone available to him; this production is based on all remaining available data from that device.

This production is based on our careful review of all incoming and outgoing text messages in Mr. Meadows's custody or control between the dates of November 3, 2020 to January 21, 2021 as well as any available attachments or other identifiable documents from Mr. Meadows's personal computer. In response to the Select Committee's focus on this time frame in its subpoena, the review was done for all text messages in this entire date range instead of through application of more limited search terms, for instance.

These documents are being produced in response to the Select Committee's subpoena. This letter and its attachments, any copies thereof, and any past or future correspondence regarding this matter, are not intended to waive any of Mr. Meadows's privileges or rights. They should not be construed as a waiver of any privilege or right. To the extent that we have identified responsive documents that are nevertheless privileged, we are providing a privilege log in connection with the production that identifies the documents withheld and the nature of the privileges asserted.

The materials included in today's production are produced in electronic format and Bates numbered: MM010785 through MM015356. The production file is password protected. We will provide instructions on accessing the production by separate email, and you should not hesitate to contact us should any issues arise.

Today Mr. Meadows is also producing some non-privileged, responsive emails and attachments that were recovered from his personal computer. Most communications recovered from this device were associated with his personal email account. Thus, we have previously reviewed for responsiveness and privilege and produced appropriate communications to the Select Committee. Any responsive, nonprivileged documents not previously reviewed are being produced today. This production includes 20 documents in 42 pages.

As with the initial production, this production and our related correspondence may include sensitive personal information. We respectfully request that these materials, including this letter and our other correspondence with the Select Committee and its staff, be treated as confidential under the House Rules; that they be afforded the fullest protection available by law and policy; and that they be treated as confidential and exempt from disclosure beyond the Select Committee. The production of any privileged or otherwise protected information which is not responsive to the subpoena is unintentional, and we request the prompt return of any such information if identified or upon our request. We further request that confidential treatment be accorded to any notes, memoranda, or other records created by or at the direction of the Select Committee or employees that reflect, refer, or relate to this letter or to any portion of the enclosed productions.

Please promptly inform me, at the address and phone number listed above, of any request seeking access to the documents or any of the above-mentioned records, including this letter, to enable us to substantiate the grounds for confidential treatment, unless the Select Committee intends to deny such request for access. At the conclusion of the Select Committee's review of the enclosed documents, we request that all copies be returned to me at the address above.

If you have any questions regarding the enclosed materials or any issues relating to this matter, please do not hesitate to contact me.

Sincerely yours,

Michael Francisco*

cc: [redacted]

* Not admitted in DC; admitted in CO. Application for admission to the DC bar filed; working under the direct supervision of an enrolled, active member of the DC bar

Exhibit 11 — Letter from Counsel to Mark Meadows to Chairman Thompson, Dec. 7, 2021

McGuireWoods LLP
[redacted]
George J. Terwilliger III
McGUIREWOODS
[redacted]

December 7, 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
[redacted]

Re: Subpoenas Served on Honorable Mark R. Meadows

Dear Chair Thompson and Vice Chair Cheney:

Over the last several weeks, Mr. Meadows has consistently sought in good faith to pursue an accommodation with the Select Committee and up until yesterday we believed that could be obtained. We acted on the belief that the Select Committee would receive, also in good faith, relevant, responsive but non-privileged facts. We have consistently communicated to the Select Committee that Mr. Meadows is precluded from making a unilateral decision to waive Executive Privilege claims asserted by the former president.

We agreed to provide thousands of pages of responsive documents and Mr. Meadows was willing to appear voluntarily, not under compulsion of the Select Committee's subpoena to him, for a deposition to answer questions about non-privileged matters. Now actions by the Select Committee have made such an appearance untenable. In short, we now have every indication from the information supplied to us last Friday - upon which Mr. Meadows could expect to be questioned - that the Select Committee has no intention of respecting boundaries concerning Executive Privilege. In addition, we learned over the weekend that the Select Committee had, without even the basic courtesy of notice to us, issued wide ranging subpoenas for information from a third party communications provider without regard to either the broad breadth of the information sought, which would include intensely personal communications of no moment to any legitimate matters of interest to the Select Committee, nor to the potentially privileged status of the information demanded. Moreover, Mr. Chairman, your recent comments in regard to another

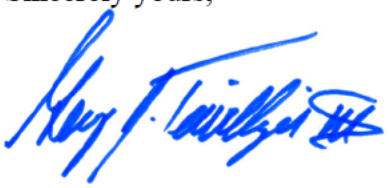
witness that his assertion of 5th Amendment rights before the Select Committee is tantamount to an admission of guilt calls into question for us what we had hoped would be the Select Committee's commitment to fundamental fairness in dealing with witnesses.

As a result of careful and deliberate consideration of these factors, we now must decline the opportunity to appear voluntarily for a deposition. It is well-established that Congress's subpoena authority is limited to the pursuit of a legitimate legislative purpose. Congress has no authority to conduct law enforcement investigations or free-standing "fact finding" missions. Even where there is a legislative purpose, requests that implicate the Separation of Powers by targeting current or former Executive officials must be narrowly tailored. Yet again, with the breadth of its subpoenas and its pugnacious approach, the Select Committee has made clear that it does not intend to respect these important constitutional limits.

* * * * *

Mr. Meadows proudly served as Chief of Staff to President Trump and in that role assumed responsibility to protect Executive Privilege during and after his tenure. He assumed that responsibility not for his own benefit but for the benefit of all those who will serve after him, including future presidents. His appreciation for our constitutional system and for the Separation of Powers dictates that he cannot voluntarily appear under these circumstances. Nonetheless, as we have before, we reiterate our willingness to consider an interrogatory process of Select Committee written questions and answers from Mr. Meadows so that there might be both an orderly process and a clear record of questions and related assertions of privilege where appropriate.

Sincerely yours,



George J. Terwilliger III

cc: [redacted]

Exhibit 12 — Letter from Chairman Thompson to Counsel to Mark Meadows, Dec. 7, 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 7, 2021

Mr. George Terwilliger III
McGuire Woods LLP
[redacted]

Dear Mr. Terwilliger:

The Select Committee to Investigate the January 6th Attack on the United States Capitol ("Select Committee") is in receipt of your letter dated December 7, 2021, regarding your client, Mr. Mark Meadows. Your letter confirms that, despite our prior efforts to facilitate a deposition for Mr. Meadows, he does not intend to cooperate with the Select Committee.

As you no doubt recall, on November 22, 2021, I sent you a letter which explained to you that Mr. Meadows had wholly failed to comply with the subpoena that the Select Committee issued to him on September 23, 2021, and offered him, in good faith, a course of action that would cure his previous non-compliance. That course required Mr. Meadows to produce documents and appear for a deposition.

Mr. Meadows has produced documents. On November 26, 2021, Mr. Meadows provided to the Select Committee certain documents that you obtained from Mr. Meadows's personal email account and determined were responsive to the Select Committee's subpoena. In doing so, you also provided a privilege log indicating that you withheld several hundred additional documents from Mr. Meadows's personal email account based on claims of executive, attorney-client, or other privilege. Despite your very broad claims of privilege, Mr. Meadows has also produced documents that you apparently agree are relevant and *not* protected by any privilege at all. Those documents include: a November 7, 2020, email discussing the appointment of alternate slates of electors as part of a "direct and collateral attack" after the election; a January 5, 2021, email regarding a 38-page PowerPoint briefing titled "Election Fraud, Foreign Interference & Options for 6 JAN" that was to be provided "on the hill"; and, among others, a January 5, 2021, email about having the National Guard on standby.

Then, on December 3, 2021, you provided to the Select Committee certain relevant messages that you obtained from saved and backed up phone data from Mr. Meadows's personal cell phone. According to representations made to us, Mr. Meadows reportedly turned in this personal device to his cell phone provider in the weeks following January 6, 2021. You also produced a privilege log indicating that you withheld over 1,000 text messages from Mr. Meadows's personal cell phone based on similarly broad claims of executive, attorney-client, and other privileges. The text messages you did produce include a November 6, 2020, text exchange

with a Member of Congress apparently about appointing alternate electors in certain states as part of a plan that the Member acknowledged would be "highly controversial" and to which Mr. Meadows apparently said, "I love it"; an early January 2021 text message exchange between Mr. Meadows and an organizer of the January 6th rally on the Ellipse; and text messages about the need for the former President to issue a public statement that could have stopped the January 6th attack on the Capitol.

All of those documents raise issues about which the Select Committee would like to question Mr. Meadows and about which you appear to agree are not subject to a claim of privilege. Yet, despite your recent agreement to have Mr. Meadows to come in and answer questions in a deposition, Mr. Meadows now, once again, refuses to do so. In your December 7, 2021, letter, you specifically indicated that Mr. Meadows's refusal to appear is motivated by, among other things, the documents that Select Committee staff provided to you in advance, pursuant to your request for an accommodation. You go on to suggest that those documents somehow indicate that the "Select Committee has no intention of respecting boundaries concerning Executive Privilege." That assertion runs counter to the stated purpose of the December 8, 2021, deposition, which was to give Mr. Meadows a chance to answer the Select Committee's questions or assert and articulate a specific privilege he believes protects that information from disclosure.

Indeed, the Select Committee has tried repeatedly to identify with specificity the areas of inquiry that Mr. Meadows believes are protected by a claim of executive privilege, but neither you nor Mr. Meadows has meaningfully provided that information. As a result, and as I have said numerous times, the Select Committee planned to ask Mr. Meadows questions during a deposition that are relevant to the investigation, while giving Mr. Meadows the opportunity to answer those questions or assert a claim of privilege on a question-by-question basis. That is not a lack of respect for the boundaries of executive privilege but rather an appreciation for the proper process for asserting any protective privilege.

It is also worth noting that your identification of executive privilege issues with documents that came from Mr. Meadows' personal email account and personal cell phone raises the question of whether these materials have been transferred to the National Archives in compliance with the Presidential Records Act.

In your December 7, 2021, letter, you also cite "wide ranging subpoenas for information from a third party communications provider" that the Select Committee has issued "without regard to either the breadth of the information sought . . . nor to the potentially privileged status of the information demanded." I assume that this representation refers to the Select Committee's compulsion of call data records regarding particular cellular telephone numbers. Contrary to your assertion, that information does not implicate privilege, but rather concerns the date, time, and dialing information about calls and messages sent or received by the specific phone numbers indicated on the subpoena. Moreover, production of that information does not impact Mr. Meadows's production of documents and text messages, which are the areas we seek to develop during his deposition tomorrow.

Finally, you reference news accounts regarding another witness's "assertion of 5th Amendment rights before the Select Committee" and claim that my comments suggest that a

witness's assertion of 5th Amendment rights is "tantamount to an admission of guilt." That is not an accurate characterization of my position on the 5th Amendment, nor is that interpretation of my comments consistent with our discussions about the purpose of tomorrow's deposition – *i.e.*, a proceeding in which your client can assert privilege claims with sufficient particularity for further consideration. The Select Committee is trying to ascertain facts that place the January 6th attack on the Capitol in context, not conduct a law enforcement inquiry. If you appear, the Select Committee would consider and evaluate your assertion of any privilege. Your failure to do so prevents that evaluation, which brings us once again to a consideration of enforcement options. This occurs at the same time Mr. Meadows has published a book in which he discusses the January 6th attack. That he would sell his telling of the facts of that day while denying a congressional committee the opportunity to ask him about the attack on our Capitol marks an historic and aggressive defiance of Congress.

In summary, on November 12, 2021, Mr. Meadows failed to appear for the deposition required by the Select Committee's subpoena. On November 22, 2021, the Select Committee gave Mr. Meadows an opportunity to cure his non-compliance by appearing for a deposition, which was ultimately scheduled for December 8, 2021. Now, the day before the deposition, Mr. Meadows has rejected the opportunity to cure his non-compliance and made it clear that he does not intend to participate in a deposition. There is no legitimate legal basis for Mr. Meadows to refuse to cooperate with the Select Committee and answer questions about the documents he produced, the personal devices and accounts he used, the events he wrote about in his newly released book,[1] and, among other things, his other public statements. The Select Committee is left with no choice but to advance contempt proceedings and recommend that the body in which Mr. Meadows once served refer him for criminal prosecution.

Sincerely,

Bennie G. Thompson
Chairman

[1] *See* Mark Meadows, THE CHIEF'S CHIEF (2021) (released December 7, 2021).