

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

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

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

## R E P O R T

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

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

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

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

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

ney for the District of Columbia, to the end that Mr. Scavino be proceeded against in the manner and form provided by law.

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

#### CONTENTS

	Page
Purpose and Summary .....	2
Peter K. Navarro .....	2
Daniel Scavino, Jr. ....	5
Background on the Select Committee's Investigation .....	7
Peter K. Navarro .....	9
Daniel Scavino, Jr. ....	19
Select Committee Consideration .....	33
Select Committee Vote .....	33
Select Committee Oversight Findings .....	33
C.B.O. Estimate .....	34
Statement of General Performance Goals and Objectives .....	34
Appendix I .....	
Appendix II .....	

### Purpose and Summary

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

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

#### PETER K. NAVARRO

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

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

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

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

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

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

Mr. Navarro also appeared on national television on February 10, 2022, discussing subjects that were the focus of the Select Committee’s subpoena to him.<sup>7</sup>

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

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

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

<sup>3</sup>Peter Navarro, “The Navarro Report,” (2020, updated 2021), available at <https://peternavarro.com/the-navarro-report/>.

<sup>4</sup>See Appendix I, Ex. 1.

<sup>5</sup>See Appendix I, Ex. 2.

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

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

<sup>8</sup>See Appendix I, Ex. 3.

<sup>9</sup>See Appendix I, Ex. 4.

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

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

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

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

---

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> See Appendix I, Ex. 5.

<sup>16</sup> See Appendix I, Ex. 6.

<sup>17</sup> *Id.*

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

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

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

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

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

#### DANIEL SCAVINO, JR.

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

<sup>18</sup> See Appendix I, Ex. 7.

<sup>19</sup> *Id.*

<sup>20</sup> See Appendix I, Ex. 8.

<sup>21</sup> Ryan Nobles, Paula Reid, and Annie Grayer, “Trump adviser Peter Navarro skips scheduled deposition with January 6 committee,” CNN, (March 2, 2022), available at <https://www.cnn.com/2022/03/02/politics/peter-navarro-january-6/index.html>.

<sup>22</sup> *Id.*

<sup>23</sup> *United States v. Bryan*, 339 U.S. 323, 331 (1950).

<sup>24</sup> *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.”).

<sup>25</sup> The prison term for this offense makes it a Class A misdemeanor. 18 U.S.C. § 3559(a)(6). By that classification, the penalty for contempt of Congress specified in 2 U.S.C. § 192 increased from \$1,000 to \$100,000. 18 U.S.C. § 3571(b)(5).

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

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

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

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

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

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

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

<sup>27</sup> See Appendix II, Ex. 1.

<sup>28</sup> *Id.*

<sup>29</sup> See Appendix II, Ex. 2.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

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

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

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

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

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

### **Background on the Select Committee’s Investigation**

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

<sup>33</sup> See Appendix II, Ex. 3.

<sup>34</sup> See Appendix II, Ex. 4. See also *Trump v. Thompson*, 2021 U.S. App. LEXIS 36315, at \*46 (D.C. Cir. Dec. 9, 2021), *cert. denied*, 2022 U.S. LEXIS 796 (U.S., Feb. 22, 2022).

<sup>35</sup> See Appendix II, Ex. 5.

<sup>36</sup> *Id.*

<sup>37</sup> *United States v. Bryan*, 339 U.S. 323, 331 (1950).

<sup>38</sup> See *supra*, at note 24.

<sup>39</sup> See *supra*, at note 25.

<sup>40</sup> H. Res. 503, 117th Cong., § 3(1) (2021)

the “influencing factors that fomented such an attack on American representative democracy.”<sup>41</sup>

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

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

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.”<sup>47</sup> A bipartisan selection of Members was appointed pursuant to House Resolution 503 on July 1, 2021, and July 26, 2021.<sup>48</sup>

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.”<sup>49</sup> 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.”<sup>50</sup>

<sup>41</sup> *Id.*

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

<sup>43</sup> *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927).

<sup>44</sup> *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).

<sup>45</sup> Pub. L. 79–601, 79th Cong. § 136, (1946).

<sup>46</sup> Pub. L. 91–510, 91st Cong. § 118, (1970).

<sup>47</sup> 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>.

<sup>48</sup> 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.

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

<sup>50</sup> H. Res. 503, 117th Cong. § 5(c)(6), (2021).



## PETER K. NAVARRO

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

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

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

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

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

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

<sup>51</sup>H. Res. 503, 117th Cong. § 3(1) (2021).

<sup>52</sup>Exec. Order No. 13797, 82 Fed. Reg. 20821 (April 29, 2017).

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

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

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

<sup>53</sup> *Id.*, at § 2.

<sup>54</sup> *Id.*, at § 3.

<sup>55</sup> Exec. Order No. 13911, 85 Fed. Reg. 18403 (Mar. 27, 2020), at §§ 1, 6.

<sup>56</sup> Federal law requires a separation of duties for Federal officials who decide to engage in campaign activities. The Hatch Act generally prohibits officials, such as Mr. Navarro, from using their official authority or influence to affect the outcome of an election. See 5 U.S.C. § 7323(a); 5 C.F.R. § 734.101 (defining “political activity”); 5 C.F.R. § 734.302 (prohibiting use of official title while engaged in political activity). This would have prevented Mr. Navarro from acting as both a White House official and as a campaign official on certain matters or communications. See also “Investigation of Political Activities by Senior Trump Administration Officials During the 2020 Presidential Election,” Report of the Office of Special Counsel, (Nov. 9, 2021), at pp. 17, 22–23.

<sup>57</sup> Peter Navarro, “The Navarro Report,” (2020, updated 2021), available at <https://peternavarro.com/the-navarro-report/>.

address what he called “outright fraud” in the 2020 Presidential election.<sup>58</sup>

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

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

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

<sup>58</sup> “Peter Navarro ‘The Immaculate Deception’ Report News Conference Transcript,” (Dec. 17, 2020), available at <https://www.rev.com/blog/transcripts/peter-navarro-the-immaculate-deception-report-news-conference-transcript>.

<sup>59</sup> Documents on file with the Select Committee.

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

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

<sup>62</sup> Documents on file with the Select Committee.

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

<sup>64</sup> 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>.

<sup>65</sup> *Id.*

<sup>66</sup> Documents on file with the Select Committee.

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

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

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

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

<sup>67</sup> Navarro, *In Trump Time* (2021).

<sup>68</sup> *Id.*, at p. 225.

<sup>69</sup> *Id.*, at pp. 241–42.

<sup>70</sup> *See, e.g., id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*, at pp. 251–52.

<sup>73</sup> *Id.*, at p. 252.

<sup>74</sup> Documents on file with the Select Committee.

<sup>75</sup> Documents on file with the Select Committee.

<sup>76</sup> Tom Dickinson, “Peter Navarro: Trump Distributed Bogus Election Fraud Research to ‘Every’ Congressional Republican,” *Rolling Stone*, (Jan. 3, 2022) available at <https://www.rollingstone.com/politics/politics-news/peter-navarro-interview-jan-6-electoral-college-1277938/>.

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

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

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

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

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

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

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

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

<sup>77</sup> See Appendix I, Ex. 1.

<sup>78</sup> *Id.*

<sup>79</sup> See Appendix I, Ex. 8.

<sup>80</sup> *McGrain*, 273 U.S. at 174 (“We are of opinion that the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function.”); *Barenblatt v. United States*, 360 U.S. 109, 111 (1959) (“The scope of the power of inquiry, in short, is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.”).

obligation to comply with a duly issued and valid congressional subpoena, unless a valid and overriding privilege or other legal justification permits non-compliance.<sup>81</sup> 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.<sup>82</sup>

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

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

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

<sup>81</sup> *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)).

<sup>82</sup> *United States v. Bryan*, 339 U.S. 323, 331 (1950).

<sup>83</sup> *United States v. Nixon*, 418 U.S. 683, 703–16 (1974)

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

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

control.<sup>86</sup> Moreover, Mr. Navarro has put forward no evidence to support a valid assertion of executive privilege.

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

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

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

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

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

The law is clear that executive privilege does not extend to discussions relating to non-governmental business or among private citizens.<sup>90</sup> 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

<sup>86</sup> See Appendix I, Ex. 2.

<sup>87</sup> See Appendix I, Ex. 6.

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

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

<sup>90</sup> See *Nixon v. GSA*, 433 U.S. at 449.

that the privilege only applies to communications intended to advise the President “on official government matters.”<sup>91</sup>

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

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

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

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

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

<sup>91</sup>*In re Sealed Case (Espy)*, 121 F.3d 729, 752 (D.C. Cir. 1997).

<sup>92</sup>Navarro, *In Trump Time*, at pp. 241–42.

<sup>93</sup>*See, e.g., id.*, at p. 222.

<sup>94</sup>*See, e.g., id.*, at p. 266–72.

<sup>95</sup>*See, e.g., Espy*, 121 F.3d at 741–42 (discussing waiver and concluding that “the White House has waived its claims of [executive] privilege in regard to the specific documents that it voluntarily revealed to third parties outside the White House”).



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

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

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

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

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

<sup>96</sup> 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”).

<sup>97</sup> *Espy*, 121 F.3d at 752.

<sup>98</sup> See *supra*, at note 56.

<sup>99</sup> *Trump v. Thompson*, 2021 U.S. App. 36315 (D.C. Cir. Dec. 9, 2021).

<sup>100</sup> See Appendix I, Ex. 6.

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

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

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

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

<sup>101</sup>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).

<sup>102</sup>*Id.*

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

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

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

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

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

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

DANIEL SCAVINO, JR.

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

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

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

<sup>105</sup> *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491 (1975).

<sup>106</sup> See 2 U.S.C. § 194.

<sup>107</sup> See Appendix I, Ex. 4.

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

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

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

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

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

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

<sup>110</sup> Documents on file with the Select Committee.

<sup>111</sup> See Leonnig and Rucker, *I Alone Can Fix It*, at p. 465.

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

<sup>113</sup> See *supra*, at note 56. Mr. Scavino was subject to the same restrictions on campaign activities as Mr. Navarro.

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

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

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

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

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

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

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

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

The lie of the year is that Joe Biden won! Christina Bobb @OANN.<sup>118</sup>

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

GREATEST ELECTION FRAUD IN THE HISTORY OF OUR COUNTRY!!!<sup>119</sup>

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

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

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

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

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

The "Justice" Department and the FBI have done nothing about the 2020 Presidential Election Voter Fraud, the biggest SCAM in our nation's history, despite overwhelming evidence. They should be ashamed. History will remember. Never give up. See everyone in D.C. on January 6th.<sup>122</sup>

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

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

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

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

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

<sup>121</sup> Donald Trump (@realDonaldTrump), Twitter, Dec. 26, 2020 9:00 a.m. ET, available at [http://web.archive.org/web/202010101075201mp\\_/https://twitter.com/realDonaldTrump/status/1342832582606598144](http://web.archive.org/web/202010101075201mp_/https://twitter.com/realDonaldTrump/status/1342832582606598144) (archived).

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

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

“Breaking News: In Pennsylvania there were 205,000 more votes than there were voters. This alone flips the state to President Trump.”<sup>123</sup>

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

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

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

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

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

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

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

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

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

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

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

Public reporting also notes that Mr. Scavino and his social media team had a history of monitoring websites including “TheDonald.win,” an online forum frequented by individuals who openly advocated and planned violence in the weeks leading up to January 6th.<sup>129</sup> In the summer of 2016, former-President Trump

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

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

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

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

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

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

<sup>129</sup> Justin Hendrix, “TheDonald.win and President Trump’s Foreknowledge of the Attack on the Capitol,” Just Security, (Jan. 12, 2022), available at <https://www.justsecurity.org/79813/thedonald-win-and-president-trumps-foreknowledge-of-the-attack-on-the-capitol/>; Ryan Goodman and Justin Hendrix, “The Absence of ‘The Donald,’” Just Security, (Dec. 6, 2021), available at

himself engaged in a written question-and-answer session on a precursor to TheDonald.win called “/r/The\_Donald,” which was a subreddit (a forum on the website Reddit.com) at the time.<sup>130</sup> The online Reddit community, which had upward of 790,000 users, was banned by Reddit in mid-2020,<sup>131</sup> after which it migrated to another online forum located at TheDonald.win.<sup>132</sup>

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

On December 19, 2020, the same day Mr. Trump tweeted “Big protest in D.C. on January 6th . . . Be there, will be wild!,” users on posts on TheDonald.win, began sharing “specific techniques, tactics, and procedures for the assault on the Capitol.”<sup>138</sup> The “ensuing weeks of communications on the site included information on how to use a flagpole as a weapon, how to smuggle firearms into DC, measurements for a guillotine, and maps of the tunnel systems under the Capitol building.”<sup>139</sup> On January 5, 2021, a user on TheDonald.win encouraged Mr. Trump’s supporters to “be prepared to secure the capitol building,” claiming that “there will be plenty of ex military to guide you.”<sup>140</sup>

<https://www.justsecurity.org/79446/the-absence-of-the-donald/> (noting that a post discussing President Trump’s December 19, 2020 “Wild Protest” tweet as a call to come to Washington, DC, for January 6th was “pinned” to the top of the website).

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

<sup>131</sup> Mike Isaac, “Reddit, Acting Against Hate Speech, Bans ‘The\_Donald’ Subreddit,” *New York Times*, (June 29, 2020, updated Jan. 27, 2021), available at <https://www.nytimes.com/2020/06/29/technology/reddit-hate-speech.html>.

<sup>132</sup> Craig Timberg and Drew Harwell, “TheDonald’s owner speaks out on why he finally pulled plug on hate-filled site,” *Washington Post*, (Feb. 5, 2021), available at <https://www.washingtonpost.com/technology/2021/02/05/why-the-donald-moderator-left/>.

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

<sup>134</sup> *Id.*

<sup>135</sup> Daniella Silva, “President Trump Tweets Wrestling Video of Himself Attacking ‘CNN,’” *NBC News*, (July 2, 2017), available at <https://www.nbcnews.com/politics/donald-trump/president-trump-tweets-wwe-video-himself-attacking-cnn-n779031>.

<sup>136</sup> *Id.*

<sup>137</sup> Andrew Restuccia, Daniel Lippman, and Eliana Johnson, “‘Get Scavino in here’: Trump’s Twitter guru is the ultimate insider,” *Politico*, (May 16, 2019), available at <https://www.politico.com/story/2019/05/16/trump-scavino-1327921>.

<sup>138</sup> Justin Hendrix, “TheDonald.win and President Trump’s Foreknowledge of the Attack on the Capitol,” *Just Security*, (Jan. 12, 2022), available at <https://www.justsecurity.org/79813/the-donald-win-and-president-trumps-foreknowledge-of-the-attack-on-the-capitol/>.

<sup>139</sup> *Id.*

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

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

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

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

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

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

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

[Tweeting a Fox News segment, “Charges of Mail-In Ballot Fraud are Rampant”]<sup>150</sup>

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

“I am thrilled to be back in Georgia, w/1,000’s of proud, hardworking American Patriots! We are gathered together to ensure that @sendavidperdue & @KLoeffler WIN the most important Congressional runoff in American His-

<sup>141</sup> *Id.*

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

<sup>143</sup> *Id.*

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

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

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

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

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

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



tory. At stake in this election is control of the Senate!” -DJT [Video; <https://twitter.com/i/status/1335457640072310784>]<sup>151</sup>

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

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

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

- “I’m going to be there to show support for our president and to do my part to stop the steal and stand behind Trump when he decides to cross the rubicon.”<sup>153</sup>
- “Trump is literally calling people to DC in a show of force. Militias will be there and if there’s enough people they may fucking storm the buildings and take out the trash right there.”<sup>154</sup>
- “Trump said It’s gonna be wild!!!!!! It’s gonna be wild!!!!!! He wants us to make it WILD that’s what he’s saying. He called us all to the Capitol and wants us to make it wild!!! Sir Yes Sir!!! Gentlemen we are heading to DC pack your shit!!”<sup>155</sup>

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

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

On September 23, 2021, Chairman THOMPSON signed and issued a subpoena, cover letter, and schedule to Mr. Scavino ordering the production of both documents and testimony relevant to the Select Committee’s investigation into “important activities that led to and

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

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

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

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

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

informed the events at the Capitol on January 6, 2021.”<sup>156</sup> Chairman THOMPSON’s letter identified public reports describing Mr. Scavino’s activities and past statements, and documented some of the public information that gave the Select Committee reason to believe Mr. Scavino possesses information about matters within the scope of the Select Committee’s inquiry.

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

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

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

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

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

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

On November 5, 2021, rather than produce any responsive documents in his client’s possession, Mr. Woodward communicated by

<sup>156</sup> See Appendix II, Ex. 6.

<sup>157</sup> *Id.*

<sup>158</sup> See Appendix II, Ex. 1.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> See Appendix II, Ex. 2.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

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

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

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

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

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

On November 18, 2021, Mr. Woodward sent another letter wherein he, for the first time, and following weeks of discussions about the items listed in the October 6th subpoena, challenged the service of that subpoena as deficient. He also challenged the Select Committee's legislative purpose and demanded that the Select Committee provide a detailed explanation of the pertinence of every line of inquiry it intended to pursue at the scheduled deposition.<sup>170</sup>

<sup>165</sup> See Appendix II, Ex. 7.

<sup>166</sup> *Id.*

<sup>167</sup> See Appendix II, Ex. 8.

<sup>168</sup> See Appendix II, Ex. 2.

<sup>169</sup> See Appendix II, Ex. 9.

<sup>170</sup> See Appendix II, Ex. 10.

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

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

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

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

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

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

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

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

Congress has the power to compel witnesses to testify and produce documents.<sup>181</sup> 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 jus-

<sup>171</sup> See Appendix II, Ex. 11.

<sup>172</sup> See Appendix II, Ex. 3.

<sup>173</sup> See Appendix II, Ex. 12.

<sup>174</sup> (D.C. Cir., No. 21–5254) (appeal from D.D.C. No. 21–cv–02769)

<sup>175</sup> See Appendix II, Ex. 13.

<sup>176</sup> See Appendix II, Ex. 14.

<sup>177</sup> See Appendix II, Ex. 15.

<sup>178</sup> 595 U.S. (2022) (No. 21A272) (Jan. 19, 2022).

<sup>179</sup> See Appendix II, Ex. 4.

<sup>180</sup> See Appendix II, Ex. 16.

<sup>181</sup> See *supra*, at note 80.

tification permits non-compliance.<sup>182</sup> 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.<sup>183</sup>

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

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

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

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

Former-President Trump has had no communication with the Select Committee. In a November 5th letter to the Select Committee, Mr. Scavino's attorney referred to correspondence from former-President Trump's attorney, Justin Clark, in which Mr. Clark as-

<sup>182</sup> See *supra*, at note 81.

<sup>183</sup> See *supra*, at note 82.

<sup>184</sup> *Nixon v. Administrator of General Services (GSA)*, 433 U.S. 425, 449 (1977) (internal quotes and citations omitted).

<sup>185</sup> See Appendix II, Ex. 5.

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

served that the Select Committee subpoena seeks information that is “protected from disclosure by the executive and other privileges, including among others the presidential communications, deliberative process, and attorney-client privileges.”<sup>188</sup> The Committee has received no such correspondence from or on behalf of former-President Trump. Without a formal assertion of executive privilege by Mr. Trump to the Select Committee, Mr. Scavino cannot establish the foundational element of a claim of executive privilege: an invocation of the privilege by the executive.

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

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

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

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

Executive privilege does not extend to discussions relating to non-governmental business or among private citizens.<sup>190</sup> In *In re Sealed Case (Espy)*, the D.C. Circuit explained that the Presidential communications privilege “only applies to communications [with close Presidential advisers] in the course of performing their function of advising the President on official government matters.”<sup>191</sup> The court stressed: “The Presidential communications privilege should never serve as a means of shielding information regarding governmental operations that do not call ultimately for direct decision-making by the President.”<sup>192</sup> As noted by the Supreme Court, the privilege is “limited to communications ‘in performance of [a President’s] responsibilities,’ ‘of his office,’ and made ‘in the process of shaping policies and making decisions.’”<sup>193</sup> And the D.C. Circuit recently considered and rejected former-President Trump’s executive privilege assertions over information sought by the Select Committee. That court concluded that “the profound interests in disclosure advanced by President Biden and the January 6th Committee far exceed his generalized concerns for Executive Branch confidentiality.”<sup>194</sup>

<sup>188</sup> See Appendix II, Ex. 7.

<sup>189</sup> See also *supra*, at note 88.

<sup>190</sup> *Nixon v. GSA*, 433 U.S. at 449.

<sup>191</sup> *Espy*, 121 F.3d 729, 752 (D.C. Cir. 1997).

<sup>192</sup> *Id.*

<sup>193</sup> *Nixon v. GSA*, 433 U.S. at 449 (quoting *U.S. v. Nixon*, 418 U.S. 683 (1974) (internal citations omitted)).

<sup>194</sup> *Trump v. Thompson*, 2021 U.S. App. LEXIS 36315, at \*46 (D.C. Cir. Dec. 9, 2021).

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

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

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

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

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

Mr. Scavino has refused to appear for a deposition based on his purported reliance on alleged "absolute testimonial immunity." No court has recognized any such immunity, and Mr. Scavino has not provided any rationale for applying any form of immunity to his unofficial actions assisting Mr. Trump's campaign to overturn the

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

<sup>196</sup> *Trump v. Thompson*, 2021 U.S. App. LEXIS 36315, at \*46 (D.C. Cir. Dec. 9, 2021).

<sup>197</sup> See Appendix II, Ex. 5.

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

election. President Biden—who now serves as the President—has declined to assert immunity in response to the subpoena to Mr. Scavino.

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

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

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

The Select Committee specifically identified to Mr. Scavino these and other topics as subjects for his deposition testimony, and he

<sup>199</sup> See *supra*, at notes 101–103.

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

<sup>203</sup> Documents on file with the Select Committee.

<sup>204</sup> Documents on file with the Select Committee.



had the legal obligation to appear before the Select Committee and address them on the record.

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

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

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

### **Select Committee Consideration**

The Select Committee met on Monday, March 28, 2022.

\* \* \* \* \*

### **Select Committee Vote**

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

\* \* \* \* \*

### **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.

<sup>205</sup> *Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 515 (1975).

<sup>206</sup> See 2 U.S.C. § 194.

<sup>207</sup> See Appendix II, Exs. 8, 11.

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