

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,
2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

DONALD F. MCGAHN II,
51 Louisiana Avenue, N.W.
Washington, D.C. 20001,

Defendant.

Case No. 1:19-cv-2379

Exhibit JJ

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May 7, 2019

VIA E-MAIL

The Honorable Jerrold Nadler
Chairman
United States House of Representatives
Committee on the Judiciary
Washington, DC 20515-6216
HJUD.Correspondence@mail.house.gov

Re: April 22, 2019 Subpoena

Dear Chairman Nadler,

As you know, I previously accepted service of the subpoena for documents issued by the United States House of Representatives Committee on the Judiciary (hereinafter, the "Committee"), with return time and date of 10:00 am EDT, today May 7, 2019, on behalf of my client Donald F. McGahn, former Counsel to the President of the United States. Upon receipt of the subpoena, I forwarded it to the White House Counsel's Office as it seeks, as relevant to Mr. McGahn, production of White House documents and other materials relating to Executive Branch equities (collectively, "White House documents"). Subsequently, representatives from the White House Counsel's Office and the Department of Justice reviewed the documents in question.

This morning, I received the enclosed letter from current Counsel to the President, Pat A. Cipollone. In it, Mr. Cipollone explains that Acting Chief of Staff, Mick Mulvaney, who I understand is the custodian of documents for the White House, has directed that Mr. McGahn not produce the White House documents "because they implicate significant Executive Branch confidentiality interests and executive privilege." Mr. Cipollone's letter goes on to note that "the Department of Justice is aware of and concurs with this legal position."

As you will appreciate, Mr. McGahn, as a former Assistant to the President and the most senior attorney for the President in his official capacity, continues to owe certain duties and obligations to the President which he is not free to disregard. Here, the Committee seeks to compel Mr. McGahn to produce White House documents the Executive Branch has directed that he not

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produce. Where co-equal branches of government are making contradictory demands on Mr. McGahn concerning the same set of documents, the appropriate response for Mr. McGahn is to maintain the status quo unless and until the Committee and the Executive Branch can reach an accommodation. Please note Mr. Cipollone writes that his office will respond to the Committee about the White House documents.

Finally, I apologize that my response is later than requested in the subpoena. I did not receive Mr. Cipollone's letter until after 10:00 am EDT today. Although I was informed by phone earlier this morning that the White House would be taking this position, I believed it was important that the Committee receive Mr. Cipollone's letter contemporaneously with mine for Mr. McGahn.

I am, of course, available to you or Committee staff if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'W. A. Burck', with a long horizontal stroke extending to the right.

William A. Burck

cc: Honorable Doug Collins, Ranking Member

Enclosure

THE WHITE HOUSE

WASHINGTON

May 7, 2019

Mr. William A. Burck
Quinn Emanuel Urquhart & Sullivan, LLP
1300 I Street NW, Suite 900
Washington, D.C. 20005

Dear Mr. Burck:


I write per your request in reference to a subpoena issued to your client, Donald F. McGahn II, by the Committee on the Judiciary of the United States House of Representatives (the "Committee") on April 22, 2019. That subpoena requests the production of documents by 10:00 a.m. on Tuesday, May 7.

The subpoena seeks certain White House records provided to Mr. McGahn while he was Counsel to the President that are related to Special Counsel Robert S. Mueller, III's investigation. As you know, the White House provided these records to Mr. McGahn in connection with its cooperation with the Special Counsel's investigation and with the clear understanding that the records remain subject to the control of the White House for all purposes. The White House records remain legally protected from disclosure under longstanding constitutional principles, because they implicate significant Executive Branch confidentiality interests and executive privilege.

For these reasons, the Acting Chief of Staff to the President, Mick Mulvaney, directs Mr. McGahn not to produce these White House records in response to the Committee's April 22 subpoena. The Department of Justice is aware of and concurs with this legal position. My Office will respond to the Committee concerning its interest in the records.

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

Sincerely,

A handwritten signature in black ink, reading "Pat A. Cipollone". The signature is fluid and cursive, with a large initial "P" and "C".

Pat A. Cipollone
Counsel to the President