[Letter from Jerrold Nadler, Chairman, Committee on the Judiciary, United States House of Representatives, to Donald F. McGahn II, Former Counsel to the President, and Pat A. Cipollone, Counsel to the President (May 31, 2019), reprinted in Exhibit Z to Complaint, H. Comm. on the Judiciary v. McGahn, No. 1:19-cv-2379 (D.D.C. Aug. 7, 2019).]

**U.S. House of Representatives**

**Committee on the Judiciary**

**Washington, DC 20515-6216**

**One Hundred Sixteenth Congress**

May 31, 2019

Donald F. McGahn II, Esq.

c/o William A. Burck, Esq.

Quinn Emanuel Urquhart & Sullivan 1300 I St. NW

Suite 9000

Washington, D.C. 20005

Mr. Pat Cipollone

Counsel to the President

The White House

1600 Pennsylvania Ave, N.W.

Washington, D.C. 20002

Dear Mr. McGahn and Mr. Cipollone:

I write to follow up on the Committee's prior correspondence to Donald F. McGahn II and/or his counsel dated May 7, 2019, May 17, 2019, and May 20, 2019 (all ofwhich are attached), regarding the Judiciary Committee's April 22, 2019 subpoena to Mr. McGahn.

First, with respect to the production of documents, counsel for Mr. McGahn informed us on May 7, 2019 that he would not produce documents in his possession responsive to the Committee's subpoena. The stated reason for the failure to produce responsive documents was that the White House directed that such materials be withheld "'because they implicate significant Executive Branch confidentiality interests and executive privilege.'" As explained in the Committee's May 7 letter to Mr. McGahn's counsel, the Committee does not consider a direction by the White House to be a proper or legitimate assertion ofany legal privilege. Moreover, the Committee disputes that any valid claim ofprivilege exists as to documents provided by the White House to Mr. McGahn and/or his counsel. Finally, as the May 7 letter made clear, regardless ofthe White House's direction, the Committee's subpoena to Mr. McGahn obligates him to produce a log as to any documents in his possession, custody, or control that are being withheid on the grounds ofprivilege.

We have not yet received such a log, which was due on May 7. To facilitate the resolution ofthis dispute regarding the log, the Committee is prepared to accept a modified log **[\*2]** that sets forth only the author, recipient(s), and the genera} subject matter ofthe record being withheld, as well as the basis for the assertion of the privilege. That is the minimum amount of information that has been accepted by the federal courts.[[1]](#footnote-1) We request that Mr. McGahn produce a modified log not later than June 7, 2019, as well as any documents responsive to the subpoena for which no claim ofprivilege is being asserted.

Turning to Mr. McGahn's testimony, for all the reasons explained in the Committee's May 7, May 17, and May 20 letters, it was unlawful for Mr. McGahn to fail to appear altogether before the Committee on May 21. He, like any other witness, "must appear before the Committee to provide testimony, and invoke executive privilege where appropriate."[[2]](#footnote-2) In addition, the Committee intends to inquire about certain events that postdate Mr. McGahn's time at the White House, such as the President's public statements regarding Mr. McGahn and the White House's communications with and requests of Mr. McGahn or his counsel. The Committee views these subjects as not subject to any possible claim of privilege. Nevertheless, the Committee remains willing to discuss any reasonable accommodation(s) that would facilitate Mr. McGahn's appearance before the Committee, including limiting the testimony to the specific events detailed in the Special Counsel's report, identifying with greater specificity the precise areas of intended inquiry, and agreeing to the presence of White House counsel during any testimony, so that Mr. McGahn may consult regarding the assertion of executive privilege. Please let us know whether you are willing to engage in such accommodation discussions by no later than June 7.

Sincerely,

/s/Jerrold Nadler

Jerrold Nadler

Chairman

House Committee on the Judiciary

cc: The Hon. Doug Collins

Ranking Member, House Committee on the Judiciary

1. *Comm. on Oversight & Gov't Reform v. Holder*, No.. CV 12-1332 (ABJ), 2014 WL 12662665, at \*2 (D.D.C. Aug. 20, 2014), *modified*, No. CV 12-1332 (ABJ), 2014 WL 12662666 (D.D.C. Sept. 9, 2014) (citing *Comm. on the Judiciary v. Miers*, 558 F. Supp. 2d 53, 107 (D.D.C. 2008)). [↑](#footnote-ref-1)
2. *Comm. on the Judiciary v. Miers*, 558 F. Supp. 2d 53, 107 (D.D.C. 2008). *See also U.S. v. Bryan*, 339 U.S. 323, 331 (1950) ("persons summoned as witnesses by competent authority have certain minimum duties and obligations which are necessary concessions to the public interest in the orderly operation of legislative and judicial machinery"). [↑](#footnote-ref-2)