

Congress of the United States
House of Representatives

SELECT SUBCOMMITTEE ON THE CORONAVIRUS CRISIS

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

Phone (202) 225-4400

<https://coronavirus.house.gov>

December 11, 2021

Mr. Peter K. Navarro
Washington, DC

Dear Mr. Navarro:

I am in receipt of your December 7, 2021 letter stating that you do not intend to comply with the subpoena issued to you by the Select Subcommittee on the Coronavirus Crisis on November 18, 2021. This subpoena was issued after you failed to cooperate voluntarily with the Select Subcommittee's ongoing investigations into the federal government's coronavirus response, in which you were deeply involved.¹ Your letter states that you are "unable to respond to the Subpoena based on former President Trump's invocation of executive privilege with respect to the very topic covered by the Subpoena," which you describe as "a direct order" not to comply with the subpoena.² As explained below, your letter presents no valid basis for refusing to comply with the subpoena. Your refusal to comply is particularly indefensible given that you disclosed many details about your work in the White House, including details of conversations with the former President about the pandemic response, in your recent book and related press tour.³ The Select Subcommittee therefore expects you to promptly produce all responsive records and information in your possession and appear for a deposition on December 15, as the subpoena requires.

Your blanket refusal to comply with the subpoena in its entirety is improper. Courts have clearly held that White House advisers, such as yourself, cannot avoid compelled congressional

¹ Subpoena from Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis, to Peter K. Navarro (Nov. 18, 2021) (online at <https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Subpoena%20to%20Navarro.pdf>).

² Letter from Peter Navarro to Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis (Dec. 7, 2021) (online at <https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Letter%20to%20Clyburn%20Committee%2012%207%2021.pdf>).

³ See, e.g., Peter Navarro, *In Trump Time: A Journal of America's Plague Year* (2021); *Virtual Discussion with Peter Navarro*, The Claremont Institute (Nov. 1, 2021); *Peter Navarro Says Fauci Deserves "an Orange Jumpsuit,"* Fox Across America (Nov. 4, 2021) (online at <https://omny.fm/shows/fox-across-america-podcast/fox-across-america-11-4-2021>); *Former Assistant to President Trump, Peter Navarro, Talks About His New Book "In Trump Time: A Journal of America's Plague Year,"* Chicago's Morning Answer (Nov. 11, 2021) (<https://morninganswerchicago.com/2021/11/11/peter-navarro-talks-about-his-new-book-in-trump-time-a-journal-of-americas-plague-year>).

process.⁴ The records and information that you possess are critical to the Select Subcommittee's investigations. As I explained in my September 14, 2021 letter requesting your voluntary cooperation with the Select Subcommittee's investigation:

[Y]ou played a central role in key aspects of the prior Administration's pandemic response, including efforts to obtain PPE and other medical supplies necessary to stop the spread of the coronavirus and protect American lives. The Select Subcommittee's investigations previously uncovered evidence that you privately warned then-President Trump on March 1, 2020, that the country was facing "a very serious public health emergency," and that the Administration's progress on critical elements of the nation's response—from strengthening supply chains to increasing testing and treatment options—"is NOT fast enough." Rather than heed this warning and implement a coordinated national strategy to alleviate critical supply shortages, the Administration pursued a haphazard and ineffective approach to procurement in which senior White House officials—including you—steered contracts to particular companies without adequate diligence or competition.⁵

Your refusal to comply with the Select Subcommittee's subpoena appears to be predicated on a press release from former President Donald Trump, which stated in its entirety:

The Communist Democrats are engaging in yet another Witch Hunt, this time going after my Administration's unprecedented and incredible coronavirus response, despite the fact that, sadly, more Americans have died this year from Covid than in all of 2020. It is a Witch Hunt that's been going on for years. Why don't they investigate Crooked Hillary, when so much has now been proven about her and her campaign's lies and dealings with Russia to smear me and spy on my campaign? I'm telling Peter Navarro to protect executive privilege and not let these unhinged Democrats discredit our great accomplishments. The Witch Hunts must end!⁶

This press release does not provide a valid basis to refuse to comply with the Select Subcommittee's subpoena. As the former president, Mr. Trump does not have ultimate authority to assert executive privilege over the records and information you possess.⁷ While the former

⁴ See *Harlow v. Fitzgerald*, 457 U.S. 800 (1982); *Comm. on the Judiciary v. McGahn*, 415 F. Supp. 3d 148, 166, 202 – 14 (D.D.C. 2019); *Comm. on the Judiciary v. Miers*, 558 F. Supp. 2d 53, 105 – 06 (D.D.C. 2008).

⁵ Letter from Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis, to Peter K. Navarro (Sept. 14, 2021) (online at <https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2021-09-14.Clyburn%20to%20Peter%20Navarro%20re%20Production%20Request.pdf>).

⁶ Liz Harrington (@realLizUSA), Twitter (Nov. 20, 2021) (online at <https://twitter.com/realLizUSA/status/1462157208699953156>).

⁷ See, e.g., *Public Citizen v. Burke*, 843 F.2d 1473, 1479 (D.C. Cir. 1988) (“[T]he incumbent President is not constitutionally obliged to honor [a] former President[s] invocation of executive privilege. . . .”); *Trump v. Thompson*, No. 1:21-cv-02769, slip op. at 37 – 38 (D.C. Cir. Dec. 9, 2021) (“[A]s the incumbent, President Biden is the principal holder and keeper of executive privilege, and he speaks authoritatively for the interests of the

president’s statement raises a number of grievances about his political opponents, it does not specify whether his instruction pertains to the Select Subcommittee’s subpoena or another matter, nor does it identify any particular scope or subject matter. Please also note that the applicable Committee on Oversight and Reform rule provides: “The only assertions of executive privilege that the Chair of the Committee will consider are those made in writing by an executive branch official authorized to assert the privilege.”⁸ The Select Subcommittee has not received notice of any such assertion from the former president or his counsel in connection with the subpoena.

Your letter states that you are “rely[ing] on President Trump’s assertion of executive privilege with respect to [your] communications with him on this matter.”⁹ As an initial matter, your communications with former President Trump are not necessarily protected from compelled disclosure. It is well recognized that executive privilege does not cloak all communications with the former president or his senior advisers in privilege, but rather the communications must implicate the types of “quintessential and non-delegable presidential power” that has been found to be protected under the law. Furthermore, executive privilege, including the presidential communications privilege, is a qualified privilege that can be overcome by Congress’s showing of need for the information and the inability to obtain the information elsewhere.¹⁰ In any event, the Select Subcommittee’s subpoena compels you to produce all records and information related to your involvement in the federal government’s response to the coronavirus—not just those that may implicate your “communications with” former President Trump.¹¹

It is abundantly clear that you possess information responsive to the subpoena that is not covered by any colorable claims of executive privilege. Information obtained by the Select Subcommittee indicates that you were deeply involved in efforts to obtain supplies from private companies in response to the pandemic in the spring of 2020. For example, you exchanged emails with an executive from AirBoss Defense Group related to a \$96 million contract for powered respirators that the company received from the Department of Homeland Security in April 2020. In another instance, you sent an email to the CEO of Phlow Corporation—which soon thereafter received a federal contract for up to \$812 million—instructing your team to get the first-time government contractor “greenlit as soon as humanly possible” and to “move this

Executive Branch. . . . [I]t is only President Biden who can make a fully informed and circumspect assessment of all the competing needs and interests of the Executive Branch.”).

⁸ Committee on Oversight and Reform rule 16(c)(3). The Select Subcommittee on the Coronavirus Crisis applies the rules of the Committee on Oversight and Reform. See H. Res. 935, sec. 4(a), 116th Cong. (2020); H. Res. 8, sec. 4(f).

⁹ Letter from Peter Navarro to Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis (Dec. 7, 2021) (online at <https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Letter%20to%20Clyburn%20Committee%2012%207%2021.pdf>).

¹⁰ See, e.g., *In re Sealed Case (Espy)*, 121 F.3d 729 (D.C. Cir. 1997).

¹¹ Subpoena from Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis, to Peter K. Navarro (Nov. 18, 2021) (online at <https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Subpoena%20to%20Navarro.pdf>).

puppy in Trump time.”¹² A report by a Special Committee of the Eastman Kodak Company’s (Kodak) Board of Directors indicates that you also participated in telephone conversations with Kodak’s leadership about the company partnering with the federal government in responding to the coronavirus crisis—after which Kodak was promised a \$765 million federal loan.¹³ These and other third-party communications that may remain in your possession cannot reasonably be cloaked under the veil of privilege.

Your refusal to comply with the subpoena is insupportable in light of your prior public disclosures of your conversations with senior Administration officials and your work on the federal government’s pandemic response. Your recent book provides abundant detail about your time working in the White House, including details of meetings in the Oval Office and conversations with the former President himself. For example, the book discusses:

- Multiple conversations with the former President, such as a January 26, 2020 discussion in which you quoted President Trump as asking you to get the White House Coronavirus Task Force to support a proposed travel ban from China. You wrote: “Said the Boss, ‘I’m taking down all flights coming into the US from China. It’ll rattle the markets and Biden and the Left will hit me hard. But this virus looks like it might be bad, and we need to do it. So get that Task Force behind me. Be tough. You’re my tough guy.’”¹⁴
- Numerous meetings with senior Trump Administration officials, including a January 27, 2020 meeting in the Situation Room where then-acting White House Chief of Staff Mick Mulvaney and other officials deliberated over whether to enact the proposed travel ban, and an April 4, 2020 meeting with then-Vice President Pence, Jared Kushner, and other officials about the use of hydroxychloroquine.¹⁵

¹² Letter from Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis, to David S. Ferriero, Archivist of the United States, National Archives and Records Administration (Mar. 30, 2021) (online at <https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2021-03-30.Select%20Sub%20to%20Ferriero%20re%20NARA%20Supply%20Chain%20.pdf>).

¹³ Report to the Special Committee of the Board of Directors of Eastman Kodak Company Regarding the Events Surrounding the U.S. International Development Finance Corporation Letter of Interest Announcement, Akin Gump Strauss Hauer & Feld LLP, at 12 (Sept. 15, 2020) (online at www.kodak.com/content/products-brochures/Company/Report-to-the-Special-Committee-09.15.2020.pdf).

¹⁴ Peter Navarro, *In Trump Time: A Journal of America’s Plague Year*, at 31 (2021).

¹⁵ See, e.g., *id.* at 33 – 37, 96 – 98.

Considering your disclosure of these conversations and other topics in your book, interviews, and other public fora,¹⁶ the Select Subcommittee believes that any privilege that may have attached to these subjects has been waived.¹⁷

As explained in my September 14, 2021 letter to you, records previously obtained by the Select Subcommittee indicate that you used a private, encrypted email communications system called ProtonMail to conduct official business while working at the White House.¹⁸ These records suggest that other White House officials may have similarly conducted official business using ProtonMail or other private communications platforms. Item two of the Select Subcommittee's subpoena schedule directs you to produce documents sufficient to identify individuals who used a non-governmental or personal account for official business related to the coronavirus, while item three seeks documents sufficient to identify any steps that you took to timely comply with the Presidential Records Act.¹⁹ Your letter suggests that you have not taken any steps to identify documents responsive to these requests that remain in your possession—reflecting the absence of any meaningful review on your part to determine whether any privilege may apply to the documents you are refusing to provide to the Select Subcommittee.

For these reasons, the Select Subcommittee expects that you will immediately comply with the subpoena and produce all responsive records and information identified in the subpoena schedule without delay. To the extent certain aspects of your records or communications raise claims of executive privilege, you must describe the contents of those records or communications in a privilege log that identifies each such document on the particularized basis required by the Select Subcommittee's schedule instructions and applicable rules.²⁰ The Select Subcommittee also expects that you will appear at the time and place designated in the subpoena for a deposition and respond fully to questions from the Select Subcommittee. If there are particular questions posed during the deposition that you believe raise issues of privilege, you or your

¹⁶ See, e.g., *Virtual Discussion with Peter Navarro*, The Claremont Institute (Nov. 1, 2021); *Peter Navarro Says Fauci Deserves "an Orange Jumpsuit,"* Fox Across America (Nov. 4, 2021) (online at <https://omny.fm/shows/fox-across-america-podcast/fox-across-america-11-4-2021>); *Former Assistant to President Trump, Peter Navarro, Talks About His New Book "In Trump Time: A Journal of America's Plague Year,"* Chicago's Morning Answer (Nov. 11, 2021) (<https://morninganswerchicago.com/2021/11/11/peter-navarro-talks-about-his-new-book-in-trump-time-a-journal-of-americas-plague-year>).

¹⁷ See generally *Trump v. Thompson*, No. 1:21-cv-02769, slip op. at 24 (D.C. Cir. Dec. 9, 2021) ("Despite its unquestioned significance, executive privilege also can be waived."); *In re Sealed Case (Espy)*, 121 F.3d 729, 741 (D.C. Cir. 1997) (recognizing that executive privilege may be subject to waiver); see, e.g., *N.Y. Times Co. v. U.S. Dep't of Justice*, 756 F.3d 100, 114 – 16 (2d Cir. 2014).

¹⁸ Letter from Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis, to Peter K. Navarro (Sept. 14, 2021) (online at <https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2021-09-14.Clyburn%20to%20Peter%20Navarro%20re%20Production%20Request.pdf>).

¹⁹ See Subpoena from Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis, to Peter K. Navarro (Nov. 18, 2021) (online at <https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Subpoena%20to%20Navarro.pdf>).

²⁰ See *id.*; Committee on Oversight and Reform rule 16.

Mr. Peter K. Navarro

Page 6

counsel should state the specific privilege assertion on the record for the Select Subcommittee's consideration.²¹

Please be advised that if you do not appear for the deposition as scheduled and produce all responsive documents in your possession by December 15, 2021, the Select Subcommittee will interpret your actions as willful noncompliance with the subpoena.

Sincerely,

A handwritten signature in black ink, reading "James E. Clyburn". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

James E. Clyburn
Chairman

cc: The Honorable Steve Scalise, Ranking Member

²¹ See Committee on Oversight and Reform rule 16(c)(1).