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May 20, 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

Dear Chairman Nadler,

I am in receipt today of two documents provided by the White House Counsel's Office: first, a letter from the Honorable Pat A. Cipollone, the current Counsel to the President of the United States, informing me that the President has directed that my client, Donald F. McGahn, not appear at the Committee's hearing scheduled for tomorrow, Tuesday, May 21, 2019, at 10:00am EDT; and second, a memorandum from the Honorable Steven A. Engel, Assistant Attorney General for the Office of Legal Counsel at the Department of Justice, to Mr. Cipollone advising him that Mr. McGahn, as a former senior advisor to the President, is immune from compelled congressional testimony.

As you know, OLC performs the vital role of providing legal advice to the President and executive branch agencies. Consistent with that advice as reflected in Mr. Engel's memorandum, the President has unambiguously directed my client not to comply with the Committee's subpoena for testimony. As with the subpoena for documents, Mr. McGahn again finds himself facing contradictory instructions from two co-equal branches of government. The direction from the President finds further support in Mr. Engel's detailed and persuasive memorandum. Under these circumstances, and also conscious of the duties he, as an attorney, owes to his former client, Mr. McGahn must decline to appear at the hearing tomorrow.

Mr. McGahn understands from your prior correspondence that the Committee would vote to hold him in contempt should he not appear tomorrow and the House of Representatives may follow suit. While we disagree with the Committee's position and hope it will instead seek an accommodation with the White House, Mr. McGahn also must honor his ethical and legal

obligations as a former senior lawyer and senior advisor to the President. In short, it is our view that the Committee's dispute is not with Mr. McGahn but with the White House.

Mr. McGahn remains obligated to maintain the status quo and respect the President's instruction. In the event an accommodation is agreed between the Committee and the White House, Mr. McGahn will of course comply with that accommodation.

Sincerely,

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

William A. Burck

cc: Honorable Doug Collins, Ranking Member

Enclosures