

## Agreement Concerning Accommodation

### Committee on the Judiciary, U.S. House of Representatives v. McGahn No. 19-5331 (D.C. Cir.)

This document describes the terms of an accommodation between the Committee on the Judiciary and the Executive Branch as represented by the Department of Justice. The accommodation is intended to end the litigation in *Committee on the Judiciary, U.S. House of Representatives v. McGahn*, which is now pending before the en banc D.C. Circuit (“McGahn Litigation”).

#### Format of Interview

- The Committee will conduct a transcribed interview of Mr. McGahn rather than calling Mr. McGahn to testify at a public hearing.
- The following counsel may attend the interview: counsel for the Committee majority, counsel for the Committee minority, private counsel for Mr. McGahn, and counsel from the Department of Justice.
- Members of the public, the press, and Members of Congress who are not on the Judiciary Committee will not be permitted to attend the interview.
- The interview will be conducted as soon as possible, consistent with needed preparation time and the availability of Mr. McGahn and counsel.
- A transcript of the interview will be created and promptly provided to all involved parties. The parties will have a reasonable amount of time, not to exceed seven calendar days, to review the transcript for accuracy before it is released.
- The Committee Chair will ask all Members and Committee staff to maintain the confidentiality of the interview until the transcript is released publicly.

#### Scope of Interview

- The interview of Mr. McGahn will be limited to the following topics:
  1. Information attributed to Mr. McGahn in the publicly available portions of the Mueller Report and events that the publicly available portions of the Mueller Report indicate involved Mr. McGahn. (Communications between Mr. McGahn and other Executive Branch officials that are not disclosed in the publicly available portions of the Mueller Report are outside of the scope of the interview.)
  2. Whether the Mueller Report accurately reflected Mr. McGahn’s statements to the Special Counsel’s Office, and whether those statements were truthful.

- Mr. McGahn will be free to decline to answer questions outside of the agreed-upon scope of questioning and counsel from the Department of Justice may instruct Mr. McGahn not to answer such questions.
- No assertions of executive privilege will be made with respect to information provided by Mr. McGahn to the Special Counsel and attributed to Mr. McGahn in the publicly available portions of the Mueller Report. But counsel from the Department of Justice otherwise retain the right to assert executive privilege. The Committee retains its rights to challenge any assertion of privilege.

### Litigation

- Upon entry into this agreement, the Committee and the Department of Justice will jointly move to postpone the oral argument currently scheduled for May 19, 2021 before the D.C. Circuit en banc in the McGahn Litigation (No. 19-5331), on the ground that the Committee and the Department of Justice have reached an agreement in principle to settle the McGahn Litigation.
- Upon completion of the transcribed interview of Mr. McGahn, the parties will file a motion in the D.C. Circuit. In the motion, the parties will jointly ask the D.C. Circuit to dismiss the appeal in the McGahn Litigation (No. 19-5331) under Fed. R. App. P. 42(b) on the ground that the parties have reached a settlement. The parties will specify that each party will pay its own costs as well as any fees that may be due. In the motion, the Committee will simultaneously ask the D.C. Circuit to vacate the three-judge panel opinion that it agreed to rehear en banc. *See Committee on Judiciary of U.S. House of Representatives v. McGahn*, 973 F.3d 121 (D.C. Cir. 2020). The Committee will represent in the motion that the Executive Branch believes that the panel opinion was correct but, in the interest of accommodation between the branches, agrees that the Court should vacate the panel opinion.
- If the D.C. Circuit dismisses the appeal, the Committee will promptly move in the U.S. District Court for D.C. to dismiss its complaint in the McGahn Litigation (No. 1:19-cv-02379).
- The Committee and the Executive Branch agree that to the extent it becomes necessary in this and any future proceedings, the parties will support this accommodation as an appropriate resolution of the dispute between the branches, without prejudice to either party's ability to advocate for their positions on any legal issues that may be raised.

For the Committee on the Judiciary,  
U.S. House of Representatives:



---

DOUGLAS N. LETTER

General Counsel

U.S. House of Representatives

5140 O'Neil House Office Building

Washington, D.C. 20515

Dated: 5/12/2021

For the U.S. Department of Justice:



---

BRIAN M. BOYNTON  
Acting Assistant Attorney General  
U.S. Department of Justice, Civil Division  
950 Pennsylvania Avenue N.W.  
Washington, DC 20530

Dated: 5-12-2021