

**Reading Packet for Guest Speaker Prof. Ryan Goodman
September 2019**

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A. Primary Source Material

Read the items in red; skim the rest.

1. Intelligence Community Whistleblower Protection Act

Note: Focus only on the yellow highlighted text

2. Whistleblower Complaint (Aug. 12, 2019)

3. Transcript of July 25 Phone Call

4. Inspector General Report to Director of National Intelligence (Aug. 26)

5. Chairs of House Intelligence, Foreign Affairs, and Oversight Letter to Sec. Pompeo (Sept. 9)

6. Inspector General Letter to Schiff and Nunes (Sept 9)

7. Chairman Schiff Letter to Director of National Intelligence (Sept 10)

8. General Counsel of the Director of National Intelligence Letter to Chairman Schiff (Sept 13)

9. Chairman Schiff Letter to Director of National Intelligence (Sept 13)

9. Inspector General Letter to Chairman Schiff (Sept 17)

10. General Counsel of the Director of National Letter to Chairman Shiff (Sept 17)

11. Office of Legal Counsel Opinion (Sept. 3)

Note: Skim the opinion but **pay special attention to footnote 3, 4 and 7**

B. Secondary Materials

Read all of the following, except where noted for the first reading.

1. Gienger, V. & Goodman, R. (2019, Sept. 26). *Timeline: Trump, Giuliani, Biden, and Ukrainegate* (updated). Just Security.

Note: **Read only** the following entries: June 8, 2017-present
No need to read the earlier part of the chronology: Nov. 2013-Sept. 2016

2. Seamus Ryan, P. (2019, Sept. 27). *The Iceberg's tip: Ukraine phone call and the months-long conspiracy to violate federal campaign finance laws*. Just Security.
3. Goodman, R. (2019, Sept. 25). *Ukraine cloud over Attorney General William Barr is thick. He should step aside*. USA Today.
4. Cordero, C. & Geltzer, J. (2019, May 20). *Trump's preference for acting officials puts national security at risk*. Just Security.
5. Mariotti, R. (2019, Sept. 21). *Trump Didn't Bribe Ukraine. It's Actually Worse Than That*. Politico Magazine.
6. Rangappa, A. (2019, Sept. 20). *The U.S. has no rules for when the president is a national security threat*. Washington Post.

50 U.S. Code § 3033. Inspector General of the Intelligence Community

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(a) OFFICE OF INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY

There is within the Office of the Director of National Intelligence an Office of the Inspector General of the [Intelligence Community](#).

(b) PURPOSE The purpose of the Office of the Inspector General of the [Intelligence Community](#) is—

(1)

to create an objective and effective office, appropriately accountable to Congress, to initiate and conduct independent investigations, inspections, audits, and reviews on programs and activities within the responsibility and authority of the Director of National [Intelligence](#);

(2) to provide leadership and coordination and recommend policies for activities designed—

(A)

to promote economy, efficiency, and effectiveness in the administration and implementation of such programs and activities; and

(B)

to prevent and detect fraud and abuse in such programs and activities;

(3) to provide a means for keeping the Director of National [Intelligence](#) fully and currently informed about—

(A)

problems and deficiencies relating to the administration of programs and activities within the responsibility and authority of the Director of National [Intelligence](#); and

(B)

the necessity for, and the progress of, corrective actions; and

(4) in the manner prescribed by this section, to ensure that the [congressional intelligence committees](#) are kept similarly informed of—

(A)

significant problems and deficiencies relating to programs and activities within the responsibility and authority of the Director of National [Intelligence](#); and

(B)

the necessity for, and the progress of, corrective actions.

(c) INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY

(1)

There is an Inspector General of the [Intelligence Community](#), who shall be the head of the Office of the Inspector General of the [Intelligence Community](#), who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The nomination of an individual for appointment as Inspector General shall be made—

(A)

without regard to political affiliation;

(B)

on the basis of integrity, compliance with security standards of the [intelligence community](#), and prior experience in the field of [intelligence](#) or national security; and

(C)

on the basis of demonstrated ability in accounting, financial analysis, law, management analysis, public administration, or investigations.

(3)

The Inspector General shall report directly to and be under the general supervision of the Director of National [Intelligence](#).

(4)

The Inspector General may be removed from office only by the President. The President shall communicate in writing to the [congressional intelligence committees](#) the reasons for the removal not later than 30 days prior to the effective date of such removal. Nothing in this paragraph shall be construed to prohibit a personnel action otherwise [authorized](#) by law, other than transfer or removal.

(d) ASSISTANT INSPECTORS GENERAL Subject to the policies of the Director of National [Intelligence](#), the Inspector General of the [Intelligence Community](#) shall—

(1)

appoint an Assistant Inspector General for Audit who shall have the responsibility for supervising the performance of auditing activities relating to programs and activities within the responsibility and authority of the Director;

(2)

appoint an Assistant Inspector General for Investigations who shall have the responsibility for supervising the performance of investigative activities relating to such programs and activities; and

(3)

appoint other Assistant Inspectors General that, in the judgment of the Inspector General, are necessary to carry out the duties of the Inspector General.

(e) DUTIES AND RESPONSIBILITIES It shall be the duty and responsibility of the Inspector General of the [Intelligence Community](#)—

(1)

to provide policy direction for, and to plan, conduct, supervise, and coordinate independently, the investigations, inspections, audits, and reviews relating to programs and activities within the responsibility and authority of the Director of National [Intelligence](#);

(2)

to keep the Director of National [Intelligence](#) fully and currently informed concerning violations of law and [regulations](#), fraud, and other serious problems, abuses, and deficiencies relating to the programs and activities within the responsibility and authority of the Director, to recommend corrective action concerning such problems, and to report on the progress made in implementing such corrective action;

(3)

to take due regard for the protection of [intelligence](#) sources and methods in the preparation of all reports issued by the Inspector General, and, to the extent consistent with the purpose and objective of such reports, take such measures as may be appropriate to minimize the disclosure of [intelligence](#) sources and methods described in such reports; and

(4)

in the execution of the duties and responsibilities under this section, to comply with generally accepted government auditing.

(f) LIMITATIONS ON ACTIVITIES

(1)

The Director of National [Intelligence](#) may prohibit the Inspector General of the [Intelligence Community](#) from initiating, carrying out, or completing any investigation, inspection, audit, or review if the Director determines that such prohibition is necessary to protect vital national security interests of the [United States](#).

(2)

Not later than seven days after the date on which the Director exercises the authority under paragraph (1), the Director shall submit to the [congressional intelligence committees](#) an appropriately classified statement of the reasons for the exercise of such authority.

(3)

The Director shall advise the Inspector General at the time a statement under paragraph (2) is submitted, and, to the extent consistent with the protection of [intelligence](#) sources and methods, provide the Inspector General with a copy of such statement.

(4)

The Inspector General may submit to the [congressional intelligence committees](#) any comments on the statement of which the Inspector General has notice under paragraph (3) that the Inspector General considers appropriate.

(g) AUTHORITIES

(1)

The Inspector General of the [Intelligence Community](#) shall have direct and prompt access to the Director of National [Intelligence](#) when necessary for any purpose pertaining to the performance of the duties of the Inspector General.

(2)

(A)

The Inspector General shall, subject to the limitations in subsection (f), make such investigations and reports relating to the administration of the programs and activities within the authorities and responsibilities of the Director as are, in the judgment of the Inspector General, necessary or desirable.

(B)

The Inspector General shall have access to any [employee](#), or any [employee](#) of a contractor, of any element of the [intelligence community](#) needed for the performance of the duties of the Inspector General.

(C)

The Inspector General shall have direct access to all records, reports, audits, reviews, documents, papers, recommendations, or other materials that relate to the programs and activities with respect to which the Inspector General has responsibilities under this section.

(D)

The level of classification or compartmentation of information shall not, in and of itself, provide a sufficient rationale for denying the Inspector General access to any materials under subparagraph (C).

(E)

The Director, or on the recommendation of the Director, another appropriate official of the [intelligence community](#), shall take appropriate administrative actions against an [employee](#), or an [employee](#) of a contractor, of an element of the [intelligence community](#) that fails to cooperate with the Inspector

General. Such administrative action may include loss of employment or the termination of an existing contractual relationship.

(3) The Inspector General is [authorized](#) to receive and investigate, pursuant to subsection (h), complaints or information from any [person](#) concerning the existence of an activity within the authorities and responsibilities of the Director of National [Intelligence](#) constituting a violation of laws, rules, or [regulations](#), or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety. Once such complaint or information has been received from an [employee](#) of the [intelligence community](#)—

(A)

the Inspector General shall not [disclose](#) the identity of the [employee](#) without the consent of the [employee](#), unless the Inspector General determines that such disclosure is unavoidable during the course of the investigation or the disclosure is made to an official of the Department of Justice responsible for determining whether a prosecution should be undertaken, and this provision shall qualify as a withholding statute pursuant to subsection (b)(3) of [section 552 of title 5](#) (commonly known as the “[Freedom of Information Act](#)”); and

(B)

no action constituting a reprisal, or threat of reprisal, for making such complaint or disclosing such information to the Inspector General may be taken by any [employee](#) in a position to take such actions, unless the complaint was made or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

(4)

The Inspector General shall have the authority to administer to or take from any [person](#) an oath, affirmation, or affidavit, whenever necessary in the performance of the duties of the Inspector General, which oath, affirmation, or affidavit when administered or taken by or before an [employee](#) of the Office of the Inspector General of the [Intelligence Community](#) designated by the Inspector General shall have the same force and effect as if administered or taken by, or before, an [officer](#) having a seal.

(5)

(A)

Except as provided in subparagraph (B), the Inspector General is [authorized](#) to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data in any medium (including electronically stored information, as well as any tangible thing) and documentary evidence necessary in the performance of the duties and responsibilities of the Inspector General.

(B)

In the case of departments, agencies, and other elements of the [United States](#) Government, the Inspector General shall obtain information,

documents, reports, answers, records, accounts, papers, and other data and evidence for the purpose specified in subparagraph (A) using procedures other than by subpoenas.

(C)

The Inspector General may not issue a subpoena for, or on behalf of, any component of the Office of the Director of National Intelligence or any element of the [intelligence community](#), including the Office of the Director of National Intelligence.

(D)

In the case of contumacy or refusal to obey a subpoena issued under this paragraph, the subpoena shall be enforceable by order of any appropriate district court of the [United States](#).

(6)

The Inspector General may obtain services as [authorized](#) by [section 3109 of title 5](#) at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for grade GS-15 of the General Schedule under [section 5332 of title 5](#).

(7)

The Inspector General may, to the extent and in such amounts as may be provided in appropriations, enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private [persons](#), and to make such payments as may be necessary to carry out the provisions of this section.

(h) COORDINATION AMONG INSPECTORS GENERAL

(1)

(A)

In the event of a matter within the jurisdiction of the Inspector General of the [Intelligence Community](#) that may be subject to an investigation, inspection, audit, or review by both the Inspector General of the [Intelligence Community](#) and an inspector general with oversight responsibility for an element of the [intelligence community](#), the Inspector General of the [Intelligence Community](#) and such other inspector general shall expeditiously resolve the question of which inspector general shall conduct such investigation, inspection, audit, or review to avoid unnecessary duplication of the activities of the inspectors general.

(B)

In attempting to resolve a question under subparagraph (A), the inspectors general concerned may request the assistance of the [Intelligence Community](#) Inspectors General Forum established under paragraph (2). In the event of a dispute between an inspector general within a department or agency of the [United States](#) Government and the Inspector General of the [Intelligence Community](#) that has not been resolved with the assistance of such Forum, the inspectors general shall submit the question to the

Director of National [Intelligence](#) and the head of the affected department or agency for resolution.

(2)

(A)

There is established the [Intelligence Community](#) Inspectors General Forum, which shall consist of all statutory or administrative inspectors general with oversight responsibility for an element of the [intelligence community](#).

(B)

The Inspector General of the [Intelligence Community](#) shall serve as the Chair of the Forum established under subparagraph (A). The Forum shall have no administrative authority over any inspector general, but shall serve as a mechanism for informing its members of the work of individual members of the Forum that may be of common interest and discussing questions about jurisdiction or access to [employees, employees](#) of contract personnel, records, audits, reviews, documents, recommendations, or other materials that may involve or be of assistance to more than one of its members.

(3)

The inspector general conducting an investigation, inspection, audit, or review covered by paragraph (1) shall submit the results of such investigation, inspection, audit, or review to any other inspector general, including the Inspector General of the [Intelligence Community](#), with jurisdiction to conduct such investigation, inspection, audit, or review who did not conduct such investigation, inspection, audit, or review.

(i) COUNSEL TO THE INSPECTOR GENERAL

(1) The Inspector General of the [Intelligence Community](#) shall—

(A)

appoint a Counsel to the Inspector General who shall report to the Inspector General; or

(B)

obtain the services of a counsel appointed by and directly reporting to another inspector general or the Council of the Inspectors General on Integrity and Efficiency on a reimbursable basis.

(2)

The counsel appointed or obtained under paragraph (1) shall perform such functions as the Inspector General may prescribe.

(j) STAFF AND OTHER SUPPORT

(1)

The Director of National [Intelligence](#) shall provide the Inspector General of the [Intelligence Community](#) with appropriate and adequate office space at central and field office locations, together with such equipment, office supplies, maintenance services, and communications facilities and services as may be necessary for the operation of such offices.

(2)

(A)

Subject to applicable law and the policies of the Director of National [Intelligence](#), the Inspector General shall select, appoint, and employ such [officers](#) and [employees](#) as may be necessary to carry out the functions, powers, and duties of the Inspector General. The Inspector General shall ensure that any [officer](#) or [employee](#) so selected, appointed, or employed has security clearances appropriate for the assigned duties of such [officer](#) or [employee](#).

(B)

In making selections under subparagraph (A), the Inspector General shall ensure that such [officers](#) and [employees](#) have the requisite training and experience to enable the Inspector General to carry out the duties of the Inspector General effectively.

(C)

In meeting the requirements of this paragraph, the Inspector General shall create within the Office of the Inspector General of the [Intelligence Community](#) a career cadre of sufficient size to provide appropriate continuity and objectivity needed for the effective performance of the duties of the Inspector General.

(3) Consistent with budgetary and personnel resources allocated by the Director of National [Intelligence](#), the Inspector General has final approval of—

(A)

the selection of internal and external candidates for employment with the Office of the Inspector General; and

(B)

all other personnel decisions concerning personnel permanently assigned to the Office of the Inspector General, including selection and appointment to the Senior [Intelligence](#) Service, but excluding all security-based determinations that are not within the authority of a head of a component of the Office of the Director of National Intelligence.

(4)

(A)

Subject to the concurrence of the Director of National [Intelligence](#), the Inspector General may request such information or assistance as may be necessary for carrying out the duties and responsibilities of the Inspector General from any Federal, [State](#) (as defined in [section 3164 of this title](#)), or local governmental agency or unit thereof.

(B)

Upon request of the Inspector General for information or assistance from a department, agency, or element of the Federal Government under subparagraph (A), the head of the department, agency, or element

concerned shall, insofar as is practicable and not in contravention of any existing statutory restriction or [regulation](#) of the department, agency, or element, furnish to the Inspector General, such information or assistance.

(C)

The Inspector General of the [Intelligence Community](#) may, upon reasonable notice to the head of any element of the [intelligence community](#) and in coordination with that element's inspector general pursuant to subsection (h), conduct, as [authorized](#) by this section, an investigation, inspection, audit, or review of such element and may enter into any place occupied by such element for purposes of the performance of the duties of the Inspector General.

(k) REPORTS

(1)

(A)

The Inspector General of the [Intelligence Community](#) shall, not later than October 31 and April 30 of each year, prepare and submit to the Director of National [Intelligence](#) a classified, and, as appropriate, unclassified semiannual report summarizing the activities of the Office of the Inspector General of the [Intelligence Community](#) during the immediately preceding 6-month period ending September 30 and March 31, respectively. The Inspector General of the [Intelligence Community](#) shall provide any portion of the report involving a component of a department of the [United States](#) Government to the head of that department simultaneously with submission of the report to the Director of National [Intelligence](#).

(B) Each report under this paragraph shall include, at a minimum, the following:

(i)

A list of the title or subject of each investigation, inspection, audit, or review conducted during the period covered by such report.

(ii)

A description of significant problems, abuses, and deficiencies relating to the administration of programs and activities of the [intelligence community](#) within the responsibility and authority of the Director of National [Intelligence](#), and in the relationships between elements of the [intelligence community](#), identified by the Inspector General during the period covered by such report.

(iii)

A description of the recommendations for corrective action made by the Inspector General during the period covered by such report with respect to significant problems, abuses, or deficiencies identified in clause (ii).

(iv)

A statement of whether or not corrective action has been completed on each significant recommendation described in previous semiannual reports, and,

in a case where corrective action has been completed, a description of such corrective action.

(v)

A certification of whether or not the Inspector General has had full and direct access to all information relevant to the performance of the functions of the Inspector General.

(vi)

A description of the exercise of the subpoena authority under subsection (g)(5) by the Inspector General during the period covered by such report.

(vii)

Such recommendations as the Inspector General considers appropriate for legislation to promote economy, efficiency, and effectiveness in the administration and implementation of programs and activities within the responsibility and authority of the Director of National [Intelligence](#), and to detect and eliminate fraud and abuse in such programs and activities.

(C)

Not later than 30 days after the date of receipt of a report under subparagraph (A), the Director shall transmit the report to the [congressional intelligence committees](#) together with any comments the Director considers appropriate. The Director shall transmit to the committees of the Senate and of the House of Representatives with jurisdiction over a department of the [United States](#) Government any portion of the report involving a component of such department simultaneously with submission of the report to the [congressional intelligence committees](#).

(2)

(A)

The Inspector General shall report immediately to the Director whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to programs and activities within the responsibility and authority of the Director of National [Intelligence](#).

(B)

The Director shall transmit to the [congressional intelligence committees](#) each report under subparagraph (A) within 7 calendar days of receipt of such report, together with such comments as the Director considers appropriate. The Director shall transmit to the committees of the Senate and of the House of Representatives with jurisdiction over a department of the [United States](#) Government any portion of each report under subparagraph (A) that involves a problem, abuse, or deficiency related to a component of such department simultaneously with transmission of the report to the [congressional intelligence committees](#).

(3)

(A) In the event that—

(i)

the Inspector General is unable to resolve any differences with the Director affecting the execution of the duties or responsibilities of the Inspector General;

(ii) an investigation, inspection, audit, or review carried out by the Inspector General focuses on any current or former [intelligence community](#) official who—

(I)

holds or held a position in an element of the [intelligence community](#) that is subject to appointment by the President, whether or not by and with the advice and consent of the Senate, including such a position held on an acting basis;

(II)

holds or held a position in an element of the [intelligence community](#), including a position held on an acting basis, that is appointed by the Director of National [Intelligence](#); or

(III)

holds or held a position as head of an element of the [intelligence community](#) or a position covered by subsection (b) or (c) of [section 3041 of this title](#);

(iii)

a matter requires a report by the Inspector General to the Department of Justice on possible criminal conduct by a current or former official described in clause (ii);

(iv)

the Inspector General receives notice from the Department of Justice declining or approving prosecution of possible criminal conduct of any current or former official described in clause (ii); or

(v)

the Inspector General, after exhausting all possible alternatives, is unable to obtain significant documentary information in the course of an investigation, inspection, audit, or review,

the Inspector General shall immediately notify, and submit a report to, the [congressional intelligence committees](#) on such matter.

(B)

The Inspector General shall submit to the committees of the Senate and of the House of Representatives with jurisdiction over a department of the [United States](#) Government any portion of each report under subparagraph (A) that involves an investigation, inspection, audit, or review carried out by the Inspector General focused on any current or former official of a component of such department simultaneously with submission of the report to the [congressional intelligence committees](#).

(4)

The Director shall submit to the [congressional intelligence committees](#) any report or findings and recommendations of an investigation, inspection, audit, or review conducted by the office which has been requested by the Chairman or Vice Chairman or ranking minority member of either committee.

(5)

(A)

An [employee](#) of an element of the [intelligence community](#), an [employee](#) assigned or detailed to an element of the [intelligence community](#), or an [employee](#) of a contractor to the [intelligence community](#) who intends to report to Congress a complaint or information with respect to an urgent concern may report such complaint or information to the Inspector General.

(B)

Not later than the end of the 14-calendar-day period beginning on the date of receipt from an [employee](#) of a complaint or information under subparagraph (A), the Inspector General shall determine whether the complaint or information appears credible. Upon making such a determination, the Inspector General shall transmit to the Director a notice of that determination, together with the complaint or information.

(C)

Upon receipt of a transmittal from the Inspector General under subparagraph (B), the Director shall, within 7 calendar days of such receipt, forward such transmittal to the [congressional intelligence committees](#), together with any comments the Director considers appropriate.

(D)

(i)

If the Inspector General does not find credible under subparagraph (B) a complaint or information submitted under subparagraph (A), or does not transmit the complaint or information to the Director in accurate form under subparagraph (B), the [employee](#) (subject to clause (ii)) may submit the complaint or information to Congress by contacting either or both of the [congressional intelligence committees](#) directly.

(ii) An [employee](#) may contact the [congressional intelligence committees](#) directly as described in clause (i) only if the [employee](#)—

(I)

before making such a contact, furnishes to the Director, through the Inspector General, a statement of the [employee's](#) complaint or information and notice of the [employee's](#) intent to contact the [congressional intelligence committees](#) directly; and

(II)

obtains and follows from the Director, through the Inspector General, direction on how to contact the [congressional intelligence committees](#) in accordance with appropriate security practices.

(iii)

A member or [employee](#) of one of the [congressional intelligence committees](#) who receives a complaint or information under this subparagraph does so in that member or [employee's](#) official capacity as a member or [employee](#) of such committee.

(E)

The Inspector General shall notify an [employee](#) who reports a complaint or information to the Inspector General under this paragraph of each action taken under this paragraph with respect to the complaint or information. Such notice shall be provided not later than 3 days after any such action is taken.

(F)

An action taken by the Director or the Inspector General under this paragraph shall not be subject to judicial review.

(G) In this paragraph, the term "urgent concern" means any of the following:

(i)

A serious or flagrant problem, abuse, violation of law or Executive order, or deficiency relating to the funding, administration, or operation of an [intelligence](#) activity within the responsibility and authority of the Director of National [Intelligence](#) involving [classified information](#), but does not include differences of opinions concerning public policy matters.

(ii)

A false statement to Congress, or a willful withholding from Congress, on an issue of material fact relating to the funding, administration, or operation of an [intelligence](#) activity.

(iii)

An action, including a personnel action described in [section 2302\(a\)\(2\)\(A\) of title 5](#), constituting reprisal or threat of reprisal prohibited under subsection (g)(3)(B) of this section in response to an [employee's](#) reporting an urgent concern in accordance with this paragraph.

(H)

Nothing in this section shall be construed to limit the protections afforded to an [employee](#) under [section 3517\(d\) of this title](#) or section 8H of the [Inspector General Act of 1978 \(5 U.S.C. App.\)](#).

(I)

An individual who has submitted a complaint or information to the Inspector General under this section may notify any member of either of the [congressional intelligence committees](#), or a staff member of either of

such committees, of the fact that such individual has made a submission to the Inspector General, and of the date on which such submission was made.

(6)

In accordance with [section 535 of title 28](#), the Inspector General shall expeditiously report to the Attorney General any information, allegation, or complaint received by the Inspector General relating to violations of Federal criminal law that involves [\[1\]](#) a program or operation of an element of the [intelligence community](#), or in the relationships between the elements of the [intelligence community](#), consistent with such guidelines as may be issued by the Attorney General pursuant to subsection (b)(2) of such section. A copy of each such report shall be furnished to the Director.

(I) CONSTRUCTION OF DUTIES REGARDING ELEMENTS OF INTELLIGENCE COMMUNITY

Except as resolved pursuant to subsection (h), the performance by the Inspector General of the [Intelligence Community](#) of any duty, responsibility, or function regarding an element of the [intelligence community](#) shall not be construed to modify or affect the duties and responsibilities of any other inspector general having duties and responsibilities relating to such element.

(m) SEPARATE BUDGET ACCOUNT

The Director of National [Intelligence](#) shall, in accordance with procedures issued by the Director in consultation with the [congressional intelligence committees](#), include in the National Intelligence Program budget a separate account for the Office of the Inspector General of the [Intelligence Community](#).

(n) BUDGET

(1) For each fiscal year, the Inspector General of the [Intelligence Community](#) shall transmit a budget estimate and request to the Director of National [Intelligence](#) that specifies for such fiscal year—

(A)

the aggregate amount requested for the operations of the Inspector General;

(B)

the amount requested for all training requirements of the Inspector General, including a certification from the Inspector General that the amount requested is sufficient to fund all training requirements for the Office of the Inspector General; and

(C)

the amount requested to support the Council of the Inspectors General on Integrity and Efficiency, including a justification for such amount.

(2) In transmitting a proposed budget to the President for a fiscal year, the Director of National [Intelligence](#) shall include for such fiscal year—

(A)

the aggregate amount requested for the Inspector General of the [Intelligence Community](#);

(B)

the amount requested for Inspector General training;

(C)

the amount requested to support the Council of the Inspectors General on Integrity and Efficiency; and

(D)

the comments of the Inspector General, if any, with respect to such proposed budget.

(3) The Director of National [Intelligence](#) shall submit to the [congressional intelligence committees](#), the Committee on Appropriations of the Senate, and the Committee on Appropriations of the House of Representatives for each fiscal year—

(A)

a separate statement of the budget estimate transmitted pursuant to paragraph (1);

(B)

the amount requested by the Director for the Inspector General pursuant to paragraph (2)(A);

(C)

the amount requested by the Director for the training of personnel of the Office of the Inspector General pursuant to paragraph (2)(B);

(D)

the amount requested by the Director for support for the Council of the Inspectors General on Integrity and Efficiency pursuant to paragraph (2)(C); and

(E)

the comments of the Inspector General under paragraph (2)(D), if any, on the amounts requested pursuant to paragraph (2), including whether such amounts would substantially inhibit the Inspector General from performing the duties of the Office of the Inspector General.

(o) INFORMATION ON WEBSITE

(1)

The Director of National [Intelligence](#) shall establish and maintain on the homepage of the publicly accessible website of the Office of the Director of National Intelligence information relating to the Office of the Inspector General of the [Intelligence Community](#) including methods to contact the Inspector General.

(2)

The information referred to in paragraph (1) shall be obvious and facilitate accessibility to the information related to the Office of the Inspector General of the [Intelligence Community](#).

UNCLASSIFIED

August 12, 2019

The Honorable Richard Burr
Chairman
Select Committee on Intelligence
United States Senate

The Honorable Adam Schiff
Chairman
Permanent Select Committee on Intelligence
United States House of Representatives

Dear Chairman Burr and Chairman Schiff:

I am reporting an "urgent concern" in accordance with the procedures outlined in 50 U.S.C. §3033(k)(5)(A). This letter is UNCLASSIFIED when separated from the attachment.

In the course of my official duties, I have received information from multiple U.S. Government officials that the President of the United States is using the power of his office to solicit interference from a foreign country in the 2020 U.S. election. This interference includes, among other things, pressuring a foreign country to investigate one of the President's main domestic political rivals. The President's personal lawyer, Mr. Rudolph Giuliani, is a central figure in this effort. **Attorney General Barr appears to be involved as well.**

- Over the past four months, **more than half a dozen U.S. officials** have informed me of various facts related to this effort. The information provided herein was relayed to me **in the course of official interagency business**. It is routine for U.S. officials with responsibility for a particular regional or functional portfolio to share such information with one another in order to inform policymaking and analysis.
- I was not a direct witness to most of the events described. However, I found my colleagues' accounts of these events to be credible because, **in almost all cases, multiple officials recounted fact patterns that were consistent with one another**. In addition, a variety of information consistent with these private accounts has been reported publicly.

I am deeply concerned that the actions described below constitute "a serious or flagrant problem, abuse, or violation of law or Executive Order" that "does not include differences of opinions concerning public policy matters," consistent with the definition of an "urgent concern" in 50 U.S.C. §3033(k)(5)(G). I am therefore fulfilling my duty to report this information, through proper legal channels, to the relevant authorities.

- I am also concerned that these actions pose risks to U.S. national security and undermine the U.S. Government's efforts to deter and counter foreign interference in U.S. elections.

UNCLASSIFIED

To the best of my knowledge, the entirety of this statement is unclassified when separated from the classified enclosure. I have endeavored to apply the classification standards outlined in Executive Order (EO) 13526 and to separate out information that I know or have reason to believe is classified for national security purposes.¹

- If a classification marking is applied retroactively, I believe it is incumbent upon the classifying authority to explain why such a marking was applied, and to which specific information it pertains.

I. The 25 July Presidential phone call

Early in the morning of 25 July, the President spoke by telephone with Ukrainian President Volodymyr Zelenskyy. I do not know which side initiated the call. This was the first publicly acknowledged call between the two leaders since a brief congratulatory call after Mr. Zelenskyy won the presidency on 21 April.

Multiple White House officials with direct knowledge of the call informed me that, after an initial exchange of pleasantries, the President used the remainder of the call to advance his personal interests. Namely, he sought to pressure the Ukrainian leader to take actions to help the President's 2020 reelection bid. According to the White House officials who had direct knowledge of the call, the President pressured Mr. Zelenskyy to, inter alia:

- initiate or continue an investigation² into the activities of former Vice President Joseph Biden and his son, Hunter Biden;
- assist in purportedly uncovering that allegations of Russian interference in the 2016 U.S. presidential election originated in Ukraine, with a specific request that the Ukrainian leader locate and turn over servers used by the Democratic National Committee (DNC) and examined by the U.S. cyber security firm Crowdstrike,³ which initially reported that Russian hackers had penetrated the DNC's networks in 2016; and
- meet or speak with two people the President named explicitly as his personal envoys on these matters, Mr. Giuliani and Attorney General Barr, to whom the President referred multiple times in tandem.

¹ Apart from the information in the Enclosure, it is my belief that none of the information contained herein meets the definition of "classified information" outlined in EO 13526, Part 1, Section 1.1. There is ample open-source information about the efforts I describe below, including statements by the President and Mr. Giuliani. In addition, based on my personal observations, there is discretion with respect to the classification of private comments by or instructions from the President, including his communications with foreign leaders; information that is not related to U.S. foreign policy or national security—such as the information contained in this document, when separated from the Enclosure—is generally treated as unclassified. I also believe that applying a classification marking to this information would violate EO 13526, Part 1, Section 1.7, which states: "In no case shall information be classified, continue to be maintained as classified, or fail to be declassified in order to: (1) conceal violations of law, inefficiency, or administrative error; [or] (2) prevent embarrassment to a person, organization, or agency."

² It is unclear whether such a Ukrainian investigation exists. See Footnote #7 for additional information.

³ I do not know why the President associates these servers with Ukraine. (See, for example, his comments to *Fox News* on 20 July: "And Ukraine. Take a look at Ukraine. How come the FBI didn't take this server? Podesta told them to get out. He said, get out. So, how come the FBI didn't take the server from the DNC?")

The President also praised Ukraine's Prosecutor General, Mr. Yuriy Lutsenko, and suggested that Mr. Zelenskyy might want to keep him in his position. (Note: Starting in March 2019, Mr. Lutsenko made a series of public allegations—many of which he later walked back—about the Biden family's activities in Ukraine, Ukrainian officials' purported involvement in the 2016 U.S. election, and the activities of the U.S. Embassy in Kyiv. See Part IV for additional context.)

The White House officials who told me this information were deeply disturbed by what had transpired in the phone call. They told me that there was already a "discussion ongoing" with White House lawyers about how to treat the call because of the likelihood, in the officials' retelling, that they had witnessed the President abuse his office for personal gain.

The Ukrainian side was the first to publicly acknowledge the phone call. On the evening of 25 July, a readout was posted on the website of the Ukrainian President that contained the following line (translation from original Russian-language readout):

- "Donald Trump expressed his conviction that the new Ukrainian government will be able to quickly improve Ukraine's image and complete the investigation of corruption cases that have held back cooperation between Ukraine and the United States."

Aside from the above-mentioned "cases" purportedly dealing with the Biden family and the 2016 U.S. election, I was told by White House officials that no other "cases" were discussed.

Based on my understanding, there were approximately a dozen White House officials who listened to the call—a mixture of policy officials and duty officers in the White House Situation Room, as is customary. The officials I spoke with told me that participation in the call had not been restricted in advance because everyone expected it would be a "routine" call with a foreign leader. I do not know whether anyone was physically present with the President during the call.

- In addition to White House personnel, I was told that a State Department official, Mr. T. Ulrich Brechbuhl, also listened in on the call.
- I was not the only non-White House official to receive a readout of the call. Based on my understanding, multiple State Department and Intelligence Community officials were also briefed on the contents of the call as outlined above.

II. Efforts to restrict access to records related to the call

In the days following the phone call, I learned from multiple U.S. officials that senior White House officials had intervened to "lock down" all records of the phone call, especially the official word-for-word transcript of the call that was produced—as is customary—by the White House Situation Room. This set of actions underscored to me that White House officials understood the gravity of what had transpired in the call.

- White House officials told me that they were "directed" by White House lawyers to remove the electronic transcript from the computer system in which such transcripts are typically stored for coordination, finalization, and distribution to Cabinet-level officials.

- Instead, the transcript was loaded into a separate electronic system that is otherwise used to store and handle classified information of an especially sensitive nature. One White House official described this act as an **abuse of this electronic system** because the call did not contain anything remotely sensitive from a national security perspective.

I do not know whether similar measures were taken to restrict access to other records of the call, such as contemporaneous handwritten notes taken by those who listened in.

III. Ongoing concerns

On 26 July, a day after the call, U.S. Special Representative for Ukraine Negotiations Kurt Volker visited Kyiv and met with President Zelenskyy and a variety of Ukrainian political figures. Ambassador Volker was accompanied in his meetings by U.S. Ambassador to the European Union Gordon Sondland. Based on **multiple readouts** of these meetings recounted to me by **various U.S. officials**, Ambassadors Volker and Sondland reportedly provided advice to the Ukrainian leadership about **how to “navigate” the demands that the President had made of Mr. Zelenskyy.**

I also learned from multiple U.S. officials that, on or about 2 August, Mr. Giuliani reportedly traveled to Madrid to meet with one of President Zelenskyy’s advisers, Andriy Yermak. The **U.S. officials characterized this meeting**, which was not reported publicly at the time, as a **“direct follow-up”** to the President’s call with Mr. Zelenskyy **about the “cases” they had discussed.**

- Separately, multiple U.S. officials told me that Mr. **Giuliani had reportedly privately reached out** to a variety of other Zelenskyy advisers, including Chief of Staff Andriy Bohdan and Acting Chairman of the Security Service of Ukraine Ivan Bakanov.⁴
- I do not know whether those officials met or spoke with Mr. Giuliani, but I was told separately by multiple U.S. officials that Mr. **Yermak and Mr. Bakanov intended to travel to Washington in mid-August.**

On 9 August, the President told reporters: **“I think [President Zelenskyy] is going to make a deal with President Putin, and he will be invited to the White House.** And we look forward to seeing him. He’s already been invited to the White House, and he wants to come. And I think he will. He’s a very reasonable guy. He wants to see peace in Ukraine, and I think he will be coming very soon, actually.”

IV. Circumstances leading up to the 25 July Presidential phone call

Beginning in late March 2019, a series of articles appeared in an online publication called **The Hill**. In these articles, several Ukrainian officials—most notably, Prosecutor General Yuriy Lutsenko—made a series of allegations against other Ukrainian officials and current and former U.S. officials. Mr. Lutsenko and his colleagues alleged, inter alia:

⁴ In a report published by the Organized Crime and Corruption Reporting Project (OCCRP) on 22 July, **two associates of Mr. Giuliani reportedly traveled to Kyiv in May 2019** and met with Mr. Bakanov and another close Zelenskyy adviser, Mr. Serhiy Shefir.

- that they possessed evidence that Ukrainian officials—namely, Head of the National Anticorruption Bureau of Ukraine Artem Sytnyk and Member of Parliament Serhiy Leshchenko—had “interfered” in the 2016 U.S. presidential election, allegedly in collaboration with the DNC and the U.S. Embassy in Kyiv;⁵
- that the U.S. Embassy in Kyiv—specifically, U.S. Ambassador Marie Yovanovitch, who had criticized Mr. Lutsenko’s organization for its poor record on fighting corruption—had allegedly obstructed Ukrainian law enforcement agencies’ pursuit of corruption cases, including by providing a “do not prosecute” list, and had blocked Ukrainian prosecutors from traveling to the United States expressly to prevent them from delivering their “evidence” about the 2016 U.S. election;⁶ and
- that former Vice President Biden had pressured former Ukrainian President Petro Poroshenko in 2016 to fire then Ukrainian Prosecutor General Viktor Shokin in order to quash a purported criminal probe into Burisma Holdings, a Ukrainian energy company on whose board the former Vice President’s son, Hunter, sat.⁷

In several public comments,⁸ Mr. Lutsenko also stated that he wished to communicate directly with Attorney General Barr on these matters.⁹

The allegations by Mr. Lutsenko came on the eve of the first round of Ukraine’s presidential election on 31 March. By that time, Mr. Lutsenko’s political patron, President Poroshenko, was trailing Mr. Zelenskyy in the polls and appeared likely to be defeated. Mr. Zelenskyy had made known his desire to replace Mr. Lutsenko as Prosecutor General. On 21 April, Mr. Poroshenko lost the runoff to Mr. Zelenskyy by a landslide. See Enclosure for additional information.

⁵ Mr. Sytnyk and Mr. Leshchenko are two of Mr. Lutsenko’s main domestic rivals. Mr. Lutsenko has no legal training and has been widely criticized in Ukraine for politicizing criminal probes and using his tenure as Prosecutor General to protect corrupt Ukrainian officials. He has publicly feuded with Mr. Sytnyk, who heads Ukraine’s only competent anticorruption body, and with Mr. Leshchenko, a former investigative journalist who has repeatedly criticized Mr. Lutsenko’s record. In December 2018, a Ukrainian court upheld a complaint by a Member of Parliament, Mr. Boryslav Rozenblat, who alleged that Mr. Sytnyk and Mr. Leshchenko had “interfered” in the 2016 U.S. election by publicizing a document detailing corrupt payments made by former Ukrainian President Viktor Yanukovich before his ouster in 2014. Mr. Rozenblat had originally filed the motion in late 2017 after attempting to flee Ukraine amid an investigation into his taking of a large bribe. On 16 July 2019, Mr. Leshchenko publicly stated that a Ukrainian court had overturned the lower court’s decision.

⁶ Mr. Lutsenko later told Ukrainian news outlet *The Babel* on 17 April that Ambassador Yovanovitch had never provided such a list, and that he was, in fact, the one who requested such a list.

⁷ Mr. Lutsenko later told *Bloomberg* on 16 May that former Vice President Biden and his son were not subject to any current Ukrainian investigations, and that he had no evidence against them. Other senior Ukrainian officials also contested his original allegations; one former senior Ukrainian prosecutor told *Bloomberg* on 7 May that Mr. Shokin in fact was not investigating Burisma at the time of his removal in 2016.

⁸ See, for example, Mr. Lutsenko’s comments to *The Hill* on 1 and 7 April and his interview with *The Babel* on 17 April, in which he stated that he had spoken with Mr. Giuliani about arranging contact with Attorney General Barr.

⁹ In May, Attorney General Barr announced that he was initiating a probe into the “origins” of the Russia investigation. According to the above-referenced OCCRP report (22 July), two associates of Mr. Giuliani claimed to be working with Ukrainian officials to uncover information that would become part of this inquiry. In an interview with *Fox News* on 8 August, Mr. Giuliani claimed that Mr. John Durham, whom Attorney General Barr designated to lead this probe, was “spending a lot of time in Europe” because he was “investigating Ukraine.” I do not know the extent to which, if at all, Mr. Giuliani is directly coordinating his efforts on Ukraine with Attorney General Barr or Mr. Durham.

- It was also publicly reported that Mr. Giuliani had met on at least two occasions with Mr. Lutsenko: once in New York in late January and again in Warsaw in mid-February. In addition, it was publicly reported that Mr. Giuliani had spoken in late 2018 to former Prosecutor General Shokin, in a Skype call arranged by two associates of Mr. Giuliani.¹⁰
- On 25 April in an interview with *Fox News*, the President called Mr. Lutsenko's claims "big" and "incredible" and stated that the Attorney General "would want to see this."

On or about 29 April, I learned from U.S. officials with direct knowledge of the situation that Ambassador Yovanovitch had been suddenly recalled to Washington by senior State Department officials for "consultations" and would most likely be removed from her position.

- Around the same time, I also learned from a U.S. official that "associates" of Mr. Giuliani were trying to make contact with the incoming Zelenskyy team.¹¹
- On 6 May, the State Department announced that Ambassador Yovanovitch would be ending her assignment in Kyiv "as planned."
- However, several U.S. officials told me that, in fact, her tour was curtailed because of pressure stemming from Mr. Lutsenko's allegations. Mr. Giuliani subsequently stated in an interview with a Ukrainian journalist published on 14 May that Ambassador Yovanovitch was "removed...because she was part of the efforts against the President."

On 9 May, *The New York Times* reported that Mr. Giuliani planned to travel to Ukraine to press the Ukrainian government to pursue investigations that would help the President in his 2020 reelection bid.

- In his multitude of public statements leading up to and in the wake of the publication of this article, Mr. Giuliani confirmed that he was focused on encouraging Ukrainian authorities to pursue investigations into alleged Ukrainian interference in the 2016 U.S. election and alleged wrongdoing by the Biden family.¹²
- On the afternoon of 10 May, the President stated in an interview with *Politico* that he planned to speak with Mr. Giuliani about the trip.
- A few hours later, Mr. Giuliani publicly canceled his trip, claiming that Mr. Zelenskyy was "surrounded by enemies of the [U.S.] President...and of the United States."

On 11 May, Mr. Lutsenko met for two hours with President-elect Zelenskyy, according to a public account given several days later by Mr. Lutsenko. Mr. Lutsenko publicly stated that he had told Mr. Zelenskyy that he wished to remain as Prosecutor General.

¹⁰ See, for example, the above-referenced articles in *Bloomberg* (16 May) and OCCRP (22 July).

¹¹ I do not know whether these associates of Mr. Giuliani were the same individuals named in the 22 July report by OCCRP, referenced above.

¹² See, for example, Mr. Giuliani's appearance on *Fox News* on 6 April and his tweets on 23 April and 10 May. In his interview with *The New York Times*, Mr. Giuliani stated that the President "basically knows what I'm doing, sure, as his lawyer." Mr. Giuliani also stated: "We're not meddling in an election, we're meddling in an investigation, which we have a right to do... There's nothing illegal about it... Somebody could say it's improper. And this isn't foreign policy - I'm asking them to do an investigation that they're doing already and that other people are telling them to stop. And I'm going to give them reasons why they shouldn't stop it because that information will be very, very helpful to my client, and may turn out to be helpful to my government."

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Starting in mid-May, I heard from multiple U.S. officials that they were deeply concerned by what they viewed as Mr. Giuliani's circumvention of national security decisionmaking processes to engage with Ukrainian officials and relay messages back and forth between Kyiv and the President. These officials also told me:

- that State Department officials, including Ambassadors Volker and Sondland, had spoken with Mr. Giuliani in an attempt to "contain the damage" to U.S. national security; and
- that Ambassadors Volker and Sondland during this time period met with members of the new Ukrainian administration and, in addition to discussing policy matters, sought to help Ukrainian leaders understand and respond to the differing messages they were receiving from official U.S. channels on the one hand, and from Mr. Giuliani on the other.

During this same timeframe, multiple U.S. officials told me that the Ukrainian leadership was led to believe that a meeting or phone call between the President and President Zelenskyy would depend on whether Zelenskyy showed willingness to "play ball" on the issues that had been publicly aired by Mr. Lutsenko and Mr. Giuliani. (Note: This was the general understanding of the state of affairs as conveyed to me by U.S. officials from late May into early July. I do not know who delivered this message to the Ukrainian leadership, or when.) See Enclosure for additional information.

Shortly after President Zelenskyy's inauguration, it was publicly reported that Mr. Giuliani met with two other Ukrainian officials: Ukraine's Special Anticorruption Prosecutor, Mr. Nazar Kholodnytskyy, and a former Ukrainian diplomat named Andriy Telizhenko. Both Mr. Kholodnytskyy and Mr. Telizhenko are allies of Mr. Lutsenko and made similar allegations in the above-mentioned series of articles in *The Hill*.

On 13 June, the President told ABC's George Stephanopoulos that he would accept damaging information on his political rivals from a foreign government.

On 21 June, Mr. Giuliani tweeted: "New Pres of Ukraine still silent on investigation of Ukrainian interference in 2016 and alleged Biden bribery of Poroshenko. Time for leadership and investigate both if you want to purge how Ukraine was abused by Hillary and Clinton people."

In mid-July, I learned of a sudden change of policy with respect to U.S. assistance for Ukraine. See Enclosure for additional information.

ENCLOSURE: Classified appendix

August 12, 2019

(U) CLASSIFIED APPENDIX

(U) Supplementary classified information is provided as follows:

(U) **Additional information related to Section II**

(TS/ [REDACTED]) According to multiple White House officials I spoke with, the transcript of the President's call with President Zelenskyy was placed into a computer system managed directly by the National Security Council (NSC) Directorate for Intelligence Programs. This is a standalone computer system reserved for codeword-level intelligence information, such as covert action. According to information I received from White House officials, some officials voiced concerns internally that this would be an abuse of the system and was not consistent with the responsibilities of the Directorate for Intelligence Programs. According to White House officials I spoke with, this was "not the first time" under this Administration that a Presidential transcript was placed into this codeword-level system solely for the purpose of protecting politically sensitive—rather than national security sensitive—information.

(U) **Additional information related to Section IV**

Information Relating To Classified Intelligence Community Reporting & Analysis



(S/ [REDACTED]) I would like to expand upon two issues mentioned in Section IV that might have a connection with the overall effort to pressure the Ukrainian leadership. As I do not know definitively whether the below-mentioned decisions are connected to the broader efforts I describe, I have chosen to include them in the classified annex. If they indeed represent genuine policy deliberations and decisions formulated to advance U.S. foreign policy and national security, one might be able to make a reasonable case that the facts are classified.

- (S/ [REDACTED]) I learned from U.S. officials that, on or around 14 May, the President instructed Vice President Pence to cancel his planned travel to Ukraine to attend President

Information Relating To Classified Intelligence Community Reporting & Analysis



Zelenskyy's inauguration on 20 May; Secretary of Energy Rick Perry led the delegation instead. According to these officials, it was also "made clear" to them that the President did not want to meet with Mr. Zelenskyy until he saw how Zelenskyy "chose to act" in office. I do not know how this guidance was communicated, or by whom. I also do not know whether this action was connected with the broader understanding, described in the unclassified letter, that a meeting or phone call between the President and President Zelenskyy would depend on whether Zelenskyy showed willingness to "play ball" on the issues that had been publicly aired by Mr. Lutsenko and Mr. Giuliani.

- (S/[REDACTED]) On 18 July, an Office of Management and Budget (OMB) official informed Departments and Agencies that the President "earlier that month" had issued instructions to suspend all U.S. security assistance to Ukraine. Neither OMB nor the NSC staff knew why this instruction had been issued. During interagency meetings on 23 July and 26 July, OMB officials again stated explicitly that the instruction to suspend this assistance had come directly from the President, but they still were unaware of a policy rationale. As of early August, I heard from U.S. officials that some Ukrainian officials were aware that U.S. aid might be in jeopardy, but I do not know how or when they learned of it.

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[PkgNumberShort]

Declassified by order of the President

September 24, 2019

~~EYES ONLY~~
~~DO NOT COPY~~

MEMORANDUM OF TELEPHONE CONVERSATION

SUBJECT: ~~(C)~~ Telephone Conversation with President
Zelenskyy of Ukraine

PARTICIPANTS: President Zelenskyy of Ukraine

Notetakers: The White House Situation Room

DATE, TIME July 25, 2019, 9:03 - 9:33 a.m. EDT

AND PLACE: Residence

~~(S//NF)~~ The President: Congratulations on a great victory. We all watched from the United States and you did a terrific job. The way you came from behind, somebody who wasn't given much of a chance, and you ended up winning easily. It's a fantastic achievement. Congratulations.

~~(S//NF)~~ President Zelenskyy: You are absolutely right Mr. President. We did win big and we worked hard for this. We worked a lot but I would like to confess to you that I had an opportunity to learn from you. We used quite a few of your skills and knowledge and were able to use it as an example for our elections and yes it is true that these were unique elections. We were in a unique situation that we were able to

CAUTION: A Memorandum of a Telephone Conversation (TELCON) is not a verbatim transcript of a discussion. The text in this document records the notes and recollections of Situation Room Duty Officers and NSC policy staff assigned to listen and memorialize the conversation in written form as the conversation takes place. A number of factors can affect the accuracy of the record, including poor telecommunications connections and variations in accent and/or interpretation. The word "inaudible" is used to indicate portions of a conversation that the notetaker was unable to hear.

Classified By: 2354726
Derived From: NSC SCG
Declassify On: 20441231

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achieve a unique success. I'm able to tell you the following; the first time, you called me to congratulate me when I won my presidential election, and the second time you are now calling me when my party won the parliamentary election. I think I should run more often so you can call me more often and we can talk over the phone more often.

~~(S/NF)~~ The President: [laughter] That's a very good idea. I think your country is very happy about that.

~~(S/NF)~~ President Zelenskyy: Well yes, to tell you the truth, we are trying to work hard because we wanted to drain the swamp here in our country. We brought in many many new people. Not the old politicians, not the typical politicians, because we want to have a new format and a new type of government. You are a great teacher for us and in that.

~~(S/NF)~~ The President: Well it's very nice of you to say that. I will say that we do a lot for Ukraine. We spend a lot of effort and a lot of time. Much more than the European countries are doing and they should be helping you more than they are. Germany does almost nothing for you. All they do is talk and I think it's something that you should really ask them about. When I was speaking to Angela Merkel she talks Ukraine, but she doesn't do anything. A lot of the European countries are the same way so I think it's something you want to look at but the United States has been very very good to Ukraine. I wouldn't say that it's reciprocal necessarily because things are happening that are not good but the United States has been very very good to Ukraine.

~~(S/NF)~~ President Zelenskyy: Yes you are absolutely right. Not only 100%, but actually 1000% and I can tell you the following; I did talk to Angela Merkel and I did meet with her. I also met and talked with Macron and I told them that they are not doing quite as much as they need to be doing on the issues with the sanctions. They are not enforcing the sanctions. They are not working as much as they should work for Ukraine. It turns out that even though logically, the European Union should be our biggest partner but technically the United States is a much bigger partner than the European Union and I'm very grateful to you for that because the United States is doing quite a lot for Ukraine. Much more than the European Union especially when we are talking about sanctions against the Russian Federation. I would also like to thank you for your great support in the area of defense. We are ready to continue to cooperate for the next steps specifically we are almost ready to buy more Javelins from the United States for defense purposes.

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~~(S//NF)~~ The President: I would like you to do us a favor though because our country has been through a lot and Ukraine knows a lot about it. I would like you to find out what happened with this whole situation with Ukraine, they say CrowdStrike... I guess you have one of your wealthy people... The server, they say Ukraine has it. There are a lot of things that went on, the whole situation. I think you're surrounding yourself with some of the same people. I would like to have the Attorney General call you or your people and I would like you to get to the bottom of it. As you saw yesterday, that whole nonsense ended with a very poor performance by a man named Robert Mueller, an incompetent performance, but they say a lot of it started with Ukraine. Whatever you can do, it's very important that you do it if that's possible.

~~(S//NF)~~ President Zelenskyy: Yes it is very important for me and everything that you just mentioned earlier. For me as a President, it is very important and we are open for any future cooperation. We are ready to open a new page on cooperation in relations between the United States and Ukraine. For that purpose, I just recalled our ambassador from United States and he will be replaced by a very competent and very experienced ambassador who will work hard on making sure that our two nations are getting closer. I would also like and hope to see him having your trust and your confidence and have personal relations with you so we can cooperate even more so. I will personally tell you that one of my assistants spoke with Mr. Giuliani just recently and we are hoping very much that Mr. Giuliani will be able to travel to Ukraine and we will meet once he comes to Ukraine. I just wanted to assure you once again that you have nobody but friends around us. I will make sure that I surround myself with the best and most experienced people. I also wanted to tell you that we are friends. We are great friends and you Mr. President have friends in our country so we can continue our strategic partnership. I also plan to surround myself with great people and in addition to that investigation, I guarantee as the President of Ukraine that all the investigations will be done openly and candidly. That I can assure you.

~~(S//NF)~~ The President: Good because I heard you had a prosecutor who was very good and he was shut down and that's really unfair. A lot of people are talking about that, the way they shut your very good prosecutor down and you had some very bad people involved. Mr. Giuliani is a highly respected man. He was the mayor of New York City, a great mayor, and I would like him to

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call you. I will ask him to call you along with the Attorney General. Rudy very much knows what's happening and he is a very capable guy. If you could speak to him that would be great. The former ambassador from the United States, the woman, was bad news and the people she was dealing with in the Ukraine were bad news so I just want to let you know that. The other thing, There's a lot of talk about Biden's son, that Biden stopped the prosecution and a lot of people want to find out about that so whatever you can do with the Attorney General would be great. Biden went around bragging that he stopped the prosecution so if you can look into it... It sounds horrible to me.

~~(S/NF)~~ President Zelenskyy: I wanted to tell you about the prosecutor. First of all I understand and I'm knowledgeable about the situation. Since we have won the absolute majority in our Parliament, the next prosecutor general will be 100% my person, my candidate, who will be approved by the parliament and will start as a new prosecutor in September. He or she will look into the situation, specifically to the company that you mentioned in this issue. The issue of the investigation of the case is actually the issue of making sure to restore the honesty so we will take care of that and will work on the investigation of the case. On top of that, I would kindly ask you if you have any additional information that you can provide to us, it would be very helpful for the investigation to make sure that we administer justice in our country with regard to the Ambassador to the United States from Ukraine as far as I recall her name was Ivanovich. It was great that you were the first one who told me that she was a bad ambassador because I agree with you 100%. Her attitude towards me was far from the best as she admired the previous President and she was on his side. She would not accept me as a new President well enough.

~~(S/NF)~~ The President: Well, she's going to go through some things. I will have Mr. Giuliani give you a call and I am also going to have Attorney General Barr call and we will get to the bottom of it. I'm sure you will figure it out. I heard the prosecutor was treated very badly and he was a very fair prosecutor so good luck with everything. Your economy is going to get better and better I predict. You have a lot of assets. It's a great country. I have many Ukrainian friends, their incredible people.

~~(S/NF)~~ President Zelenskyy: I would like to tell you that I also have quite a few Ukrainian friends that live in the United States. Actually last time I traveled to the United States, I stayed in New York near Central Park and I stayed at the Trump

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Tower. I will talk to them and I hope to see them again in the future. I also wanted to thank you for your invitation to visit the United States, specifically Washington DC. On the other hand, I also want to ensure you that **we will be very serious about the case and will work on the investigation.** As to the economy, there is much potential for our two countries and one of the issues that is very important for Ukraine is energy independence. I believe we can be very successful and cooperating on energy independence with United States. We are already working on cooperation. We are buying American oil but I am very hopeful for a future meeting. We will have more time and more opportunities to discuss these opportunities and get to know each other better. I would like to thank you very much for your support

~~(S/NF)~~ **The President:** Good. Well, thank you very much and I appreciate that. **I will tell Rudy and Attorney General Barr to call.** Thank you. Whenever you would like to come to the **White House**, feel free to call. Give us a date and we'll work that out. I look forward to seeing you.

~~(S/NF)~~ **President Zelenskyy:** Thank you very much. I would be very happy to come and would be happy to meet with you personally and get to know you better. I am looking forward to our meeting and I also would like to invite you to visit Ukraine and come to the city of Kyiv which is a beautiful city. We have a beautiful country which would welcome you. On the other hand, I believe that on September 1 we will be in Poland and we can meet in Poland hopefully. After that, it might be a very good idea for you to travel to Ukraine. We can either take my plane and go to Ukraine or we can take your plane, which is probably much better than mine.

~~(S/NF)~~ **The President:** Okay, we can work that out. I look forward to seeing you in Washington and maybe in Poland because I think we are going to be there at that time.

~~(S/NF)~~ **President Zelenskyy:** Thank you very much Mr. President.

~~(S/NF)~~ **The President:** Congratulations on a fantastic job you've done. The whole world was watching. I'm not sure it was so much of an upset but congratulations.

~~(S/NF)~~ **President Zelenskyy:** Thank you Mr. President bye-bye.

-- End of Conversation --

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~~TOP SECRET~~/ [REDACTED]



OFFICE OF THE INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY
WASHINGTON, D.C. 20511

This Letter is ~~TOP SECRET~~/ [REDACTED] when detached from the Enclosures

August 26, 2019

VIA HAND DELIVERY

The Honorable Joseph Maguire
Director of National Intelligence (Acting)
Office of the Director of National Intelligence
Washington, D.C. 20511

Dear Acting Director Maguire:

(U) On Monday, August 12, 2019, the Office of the Inspector General of the Intelligence Community (ICIG) received information from an individual (hereinafter, the "Complainant") concerning an alleged "urgent concern," pursuant to 50 U.S.C. § 3033(k)(5)(A). The law requires that, "[n]ot later than the end of the 14-calendar-day period beginning on the date of receipt from an employee of a complaint or information under subparagraph A, the Inspector General shall determine whether the complaint or information appears credible."¹ For the reasons discussed below, among others, I have determined that the Complainant has reported an "urgent concern" that "appears credible."

(U) As you know, the ICIG is authorized to, among other things, "receive and investigate . . . complaints or information from any person concerning the existence of an activity within the authorities and responsibilities of the Director of National Intelligence constituting a violation of laws, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety."² In connection with that authority, "[a]n employee of an element of the intelligence community, an employee assigned or detailed to an element of the intelligence community, or an employee of a contractor to the intelligence community who intends to report to Congress a complaint or information with respect to an urgent concern may report such complaint or information" to the ICIG.³

Classified By: [REDACTED]
Derived From: [REDACTED]
Declassify On: [REDACTED]

¹ (U) *Id.* at § 3033(k)(5)(B).

² (U) *Id.* at § 3033(g)(3).

³ (U) *Id.* at § 3033(k)(5)(A).

~~TOP SECRET~~/ [REDACTED]

(U) The term "urgent concern" is defined, in relevant part, as:

(U) A serious or flagrant problem, abuse, violation of law or Executive order, or deficiency relating to the funding, administration, or operation of an intelligence activity within the responsibility and authority of the Director of National Intelligence involving classified information, but does not include differences of opinions concerning public policy matters.⁴

(U//~~FOUO~~) The Complainant's identity is known to me. As allowed by law, however, the Complainant has requested that the ICIG not disclose the Complainant's identity at this time.⁵ For your information, the Complainant has retained an attorney, identified the attorney to the ICIG, and requested that the attorney be the Complainant's point of contact in subsequent communications with the congressional intelligence committees on this matter.

(U//~~FOUO~~) As part of the Complainant's report to the ICIG of information with respect to the urgent concern, the Complainant included a letter addressed to The Honorable Richard Burr, Chairman, U.S. Senate Select Committee on Intelligence, and The Honorable Adam Schiff, Chairman, U.S. House of Representatives Permanent Select Committee on Intelligence (hereinafter, the "Complainant's Letter"). The Complainant's Letter referenced a separate, Classified Appendix containing information pertaining to the urgent concern (hereinafter, the "Classified Appendix"), which the Complainant also provided to the ICIG and which the Complainant intends to provide to Chairmen Burr and Schiff. The ICIG attaches hereto the Complainant's Letter, addressed to Chairmen Burr and Schiff, and the Classified Appendix. The ICIG has informed the Complainant that the transmittal of information by the Director of National Intelligence related to the Complainant's report to the congressional intelligence committees, as required by 50 U.S.C. § 3033(k)(5)(C), may not be limited to Chairmen Burr and Schiff.

(U) The Complainant's Letter and Classified Appendix delineate the Complainant's information pertaining to the urgent concern. According to the Complainant's Letter, "the actions described [in the Complainant's Letter and Classified Appendix] constitute 'a serious or flagrant problem, abuse, or violation of law or Executive Order,'" consistent with the definition of an "urgent concern" in 50 U.S.C. § 3033(k)(5)(G).

(U//~~FOUO~~) Upon receiving the information reported by the Complainant, the ICIG conducted a preliminary review to determine whether the report constituted "an urgent concern" under 50 U.S.C. § 3033(k)(5). As part of the preliminary review, the ICIG confirmed that the Complainant is "[a]n employee of an element of the intelligence community, an employee

⁴ (U) *Id.* at § 3033(k)(5)(G)(i).

⁵ (U) *Id.* at § 3033(g)(3)(A).

assigned or detailed to an element of the intelligence community, or an employee of a contractor to the intelligence community.”⁶ The ICIG also confirmed that the Complainant intends to report to Congress the Complainant’s information relating to the urgent concern.⁷

(TS/ [REDACTED] As stated above, to constitute an “urgent concern” under 50 U.S.C. § 3033(k)(5)(G)(i), the information reported by the Complainant must constitute “[a] serious or flagrant problem, abuse, violation of law or Executive order, or deficiency relating to the funding, administration, or operation of an intelligence activity within the responsibility and authority of the Director of National Intelligence involving classified information.”⁸ Here, the Complainant’s Letter alleged, among other things, that the President of the United States, in a telephone call with Ukrainian President Volodymyr Zelenskyy on July 25, 2019, “sought to pressure the Ukrainian leader to take actions to help the President’s 2020 reelection bid.” U.S. laws and regulations prohibit a foreign national, directly or indirectly, from making a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election.⁹ Similarly, U.S. laws and regulations prohibit a person from soliciting, accepting, or receiving such a contribution or donation from a foreign national, directly or indirectly, in connection with a Federal, State, or local election.¹⁰ Further, in the ICIG’s judgment, alleged conduct by a senior U.S. public official to seek foreign assistance to interfere in or influence a Federal election would constitute a “serious or flagrant problem [or] abuse” under 50 U.S.C. § 3033(k)(5)(G)(i), which would also potentially expose such a U.S. public official (or others acting in concert with the U.S. public official) to serious national security and counterintelligence risks with respect to foreign intelligence services aware of such alleged conduct.

(U) In addition, the Director of National Intelligence has responsibility and authority pursuant to federal law and Executive Orders to administer and operate programs and activities related to potential foreign interference in a United States election.¹¹ Among other

⁶ (U) *Id.* at § 3033(k)(5)(A).

⁷ (U) *Id.*

⁸ (U) The Complainant’s Classified Appendix appears to contain classified information involving an alleged “serious or flagrant problem, abuse, violation of law or Executive order, or deficiency relating to the funding, administration, or operation of an intelligence activity within the responsibility and authority of the Director of National Intelligence,” as required by 50 U.S.C. § 3033(k)(5)(G)(i).

⁹ (U) *See, e.g.*, 52 U.S.C. § 30121(a)(1)(A); 11 C.F.R. § 110.20(b).

¹⁰ (U) *See, e.g.*, 52 U.S.C. § 30121(a)(2); 11 C.F.R. § 110.20(g).

¹¹ (U) *See, e.g.*, National Security Act of 1947, as amended; Exec. Order No. 12333, as amended, *United States Intelligence Activities*; Exec. Order No. 13848, *Imposing Certain Sanctions in the Event of Foreign Influence in a United States Election* (Sept. 12, 2018).

responsibilities and authorities, subject to the authority, direction, and control of the President, the Director of National Intelligence "shall serve as the head of the Intelligence Community, act as the principal adviser to the President, to the [National Security Council], and to the Homeland Security Council for intelligence matters related to national security, and shall oversee and direct the implementation of the National Intelligence Program and execution of the National Intelligence Program budget."¹² Further, the United States Intelligence Community, "under the leadership of the Director [of National Intelligence]," shall "collect information concerning, and conduct activities to protect against, . . . intelligence activities directed against the United States."¹³

(U) More recently, in issuing Executive Order 13848, *Imposing Certain Sanctions in the Event of Foreign Influence in a United States Election* (Sept. 12, 2018), President Trump stated the following regarding foreign influence in United States elections:

I, DONALD J. TRUMP, President of the United States of America, find that the ability of persons located, in whole or in part, outside the United States to interfere in or undermine public confidence in United States elections, including through the unauthorized accessing of election and campaign infrastructure or the covert distribution of propaganda and disinformation, constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States.¹⁴

¹² (TS/ [REDACTED]) Exec. Order No. 12333 at § 1.3. In the Complainant's Classified Appendix, the Complainant reported that officials from the Office of Management and Budget, in the days before and on the day after the President's call on July 25, 2019, allegedly informed the "interagency" that the President had issued instructions to suspend all security assistance to Ukraine. The Complainant further alleges in the Classified Appendix that there might be a connection between the allegations concerning the substance of the President's telephone call with the Ukrainian President on July 25, 2019, and the alleged action to suspend (or continue the suspension of) all security assistance to Ukraine. If the allegedly improper motives were substantiated as part of a future investigation, the alleged suspension (or continued suspension) of all security assistance to Ukraine might implicate the Director of National Intelligence's responsibility and authority with regard to implementing the National Intelligence Program and/or executing the National Intelligence Program budget.

¹³ (U) Exec. Order No. 12333 at § 1.4.

¹⁴ (U) Among other directives, the Executive Order requires the Director of National Intelligence, in consultation with the heads of any other appropriate executive departments and agencies, not later than 45 days after the conclusion of a United States election, to "conduct an assessment of any information indicating that a foreign government, or any person acting as an agent of or on behalf of a foreign government, has acted with the intent or purpose of interfering in that election," and the "assessment shall identify, to the maximum extent ascertainable, the nature of any foreign interference and any methods employed to execute it, the persons involved, and the foreign government or governments that authorized, directed, sponsored, or supported it." Exec. Order No. 13848 at § 1.(a).

(U) Most recently, on July 19, 2019, as part of the Director of National Intelligence's responsibility and authority to administer and operate programs and activities related to potential foreign interference in a United States election, the Director of National Intelligence announced the establishment of the Intelligence Community Election Threats Executive. In the words of then-Director of National Intelligence Daniel R. Coats, who announced the establishment of the new position within the Office of the Director of National Intelligence (ODNI), "Election security is an enduring challenge and a top priority for the IC."¹⁵ A few days later, in an internal announcement for the ODNI, then-Director Coats stated, "I can think of no higher priority mission than working to counter adversary efforts to undermine the very core of our democratic process."¹⁶

(U) As a result, I have determined that the Complainant's information would constitute an urgent concern, as defined in 50 U.S.C. § 3033(k)(5)(G)(i), provided that I also determine that the information "appears credible," as required by 50 U.S.C. § 3033(k)(5)(B).

(TS/[REDACTED]) Based on the information reported by the Complainant to the ICIG and the ICIG's preliminary review, I have determined that there are reasonable grounds to believe that the complaint relating to the urgent concern "appears credible." The ICIG's preliminary review indicated that the Complainant has official and authorized access to the information and sources referenced in the Complainant's Letter and Classified Appendix, and that the Complainant has subject matter expertise related to much of the material information provided in the Complainant's Letter and Classified Appendix. The Complainant's Letter acknowledges that the Complainant was not a direct witness to the President's telephone call with the Ukrainian President on July 25, 2019. Other information obtained during the ICIG's preliminary review, however, supports the Complainant's allegation that, among other things, during the call the President "sought to pressure the Ukrainian leader to take actions to help the President's 2020 reelection bid." Further, although the ICIG's preliminary review identified some indicia of an arguable political bias on the part of the Complainant in favor of a rival political candidate, such evidence did not change my determination that the complaint relating to the urgent concern "appears credible," particularly given the other information the ICIG obtained during its preliminary review.

(TS/[REDACTED]) As part of its preliminary review, the ICIG did not request access to records of the President's July 25, 2019, call with the Ukrainian President. Based on the sensitivity of the alleged urgent concern, I directed ICIG personnel to conduct a preliminary review of the Complainant's information. Based on the information obtained from the ICIG's preliminary review, I decided that access to records of the telephone call was not necessary to make my

¹⁵ (U) ODNI News Release, *Director of National Intelligence Daniel R. Coats Establishes Intelligence Community Election Threats Executive* (July 19, 2019).

¹⁶ (U) Memorandum from Daniel R. Coats, Director of National Intelligence, entitled, *Designation of Intelligence Community Election Threats Executive and Assistant Deputy Director for Mission Integration* (July 23, 2019).

determination that the complaint relating to the urgent concern "appears credible." In addition, given the time consumed by the preliminary review, together with lengthy negotiations that I anticipated over access to and use of records of the telephone call, particularly for purposes of communicating a disclosure to the congressional intelligence committees, I concluded that it would be highly unlikely for the ICIG to obtain those records within the limited remaining time allowed by the statute. I also understood from the ICIG's preliminary review that the National Security Council had already implemented special handling procedures to preserve all records of the telephone call.

(TS/[REDACTED]) Nevertheless, the ICIG understands that the records of the call will be relevant to any further investigation of this matter. For your information, the ICIG has sent concurrently with this transmittal a notice of a document access request and a document hold notice to the White House Counsel to request access to and the preservation of any and all records related to the President's telephone call with the Ukrainian President on July 25, 2019, and alleged related efforts to solicit, obtain, or receive assistance from foreign nationals in Ukraine, directly or indirectly, in connection with a Federal election. The document access request and document hold notice were issued pursuant to the ICIG's authority to conduct independent investigations and reviews on programs and activities within the responsibility and authority of the Director of National Intelligence, which includes the authority for the ICIG to have "direct access to all records, reports, audits, reviews, documents, papers, recommendations, or other materials that relate to the programs and activities with respect to which the Inspector General has responsibilities under this section."¹⁷

(U) Having determined that the complaint relating to the urgent concern appears credible, I am transmitting to you this notice of my determination, along with the Complainant's Letter and Classified Appendix. Upon receipt of this transmittal, the Director of National Intelligence "shall, within 7 calendar days of such receipt, forward such transmittal to the congressional intelligence committees, together with any comments the Director considers appropriate."¹⁸

¹⁷ (U) 50 U.S.C. § 3033(g)(2)(C). The ICIG's statutory right of access to those records is consistent with the statutory right of access to such records provided to the Director of National Intelligence. See 50 U.S.C. § 3024(b) ("Unless otherwise directed by the President, the Director of National Intelligence shall have access to all national intelligence and intelligence related to the national security which is collected by any Federal department, agency, or other entity, except as otherwise provided by law or, as appropriate, under guidelines agreed upon by the Attorney General and the Director of National Intelligence.").

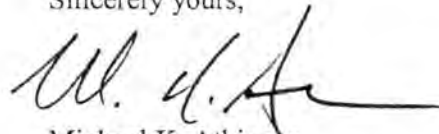
¹⁸ (U) See 50 U.S.C. § 3033(k)(5)(C). The ICIG notes that if the ICIG had determined the complaint was not an "urgent concern" or did not "appear[] credible," the statute would require the Director of National Intelligence to transmit the same information to the same congressional intelligence committees in the same time period, and provides the Complainant with the right "to submit the complaint or information to Congress by contacting either or both of the congressional intelligence committees directly," *id.* at § 3033(k)(5)(D)(i), subject to direction from the Director of National Intelligence, through the ICIG, "on how to contact the congressional intelligence committees in accordance with appropriate security practices," *id.* at § 3033(k)(5)(D)(ii).

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Because the ICIG has the statutory responsibility to "notify an employee who reports a complaint or information" to the ICIG concerning an urgent concern "of each action taken" with respect to the complaint or information "not later than 3 days after any such action is taken,"¹⁹ I respectfully request that you provide the ICIG with notice of your transmittal to the congressional intelligence committees not later than 3 days after the transmittal is made to them. In addition, as required by the statute, the ICIG is required to notify the Complainant not later than 3 days after today's date of my determination that the complaint relating to the urgent concern appears credible and that the ICIG transmitted on today's date notice of that determination to the Director of National Intelligence, along with the Complainant's Letter and Classified Appendix.

(U) If you have any questions or require additional information concerning this matter, please do not hesitate to contact me.

Sincerely yours,



Michael K. Atkinson
Inspector General
of the Intelligence Community

(U) Enclosures (Complainant's Letter and Classified Appendix) (Documents are
~~TS~~ [REDACTED])

This Letter is ~~TOP SECRET~~ [REDACTED] when detached from the Enclosures

¹⁹ (U) 50 U.S.C. § 3033(k)(5)(E).

~~TOP SECRET~~ [REDACTED]

Congress of the United States
Washington, DC 20515

September 9, 2019

The Honorable Mike Pompeo
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, DC 20520

Dear Mr. Secretary:

The Committees on Foreign Affairs, Intelligence, and Oversight and Reform jointly request documents related to reported efforts by President Trump and his associates to improperly pressure the Ukrainian government to assist the President's bid for reelection.

A growing public record indicates that, for nearly two years,¹ the President and his personal attorney, Rudy Giuliani,² appear to have acted outside legitimate law enforcement and diplomatic channels to coerce the Ukrainian government into pursuing two politically-motivated investigations under the guise of anti-corruption activity. The first is a prosecution of Ukrainians who provided key evidence against Mr. Trump's convicted campaign manager Paul Manafort. That investigation aims to undercut the Mueller Report's overwhelming evidence that Russia interfered in the 2016 election to support Trump's campaign. The other case targets the son of former Vice President Joseph R. Biden, who is challenging Mr. Trump for the presidency in 2020.

As the 2020 election draws closer, President Trump and his personal attorney appear to have increased pressure on the Ukrainian government and its justice system in service of President Trump's reelection campaign, and the White House and the State Department may be abetting this scheme.³

¹ See tweet @realDonaldTrump, July 25, 2017 ("Ukrainian efforts to sabotage Trump campaign – 'quietly working to boost Clinton.' So where is the investigation A.G. @seanhannity") (online at: <https://twitter.com/realDonaldTrump/status/889788202172780544?s=20>). This tweet was also referenced by Special Counsel Robert Mueller in his investigation of President's Trump's possible obstruction of justice. See Mueller Report, Vol. II, at p 96, FN 660.

² See Victor Pinchuk Foundation, June 8, 2017, *107th Mayor of New York Rudy Giuliani Gave Public Lecture at the Invitation of the Victor Pinchuk Foundation*, noting the first publicly-reported meeting between Mr. Giuliani and Prosecutor General of Ukraine Petro Poroshenko (online at <https://pinchukfund.org/en/news/20207/>).

³ Kenneth P. Vogel and Andrew E. Kramer, *Giuliani Renews Push for Ukraine to Investigate Trump's Political Opponents*, N.Y. Times, August 21, 2019 (online at: <https://www.nytimes.com/2019/08/21/us/politics/giuliani-ukraine.html>).

According to the Ukrainian government, in a July 25, 2019 call with Ukraine's President Volodymyr Zelenskyy, President Trump apparently focused on these investigations, telling President Zelenskyy that he is "convinced the new Ukrainian government will be able to quickly improve [the] image of Ukraine, [and] complete [the] investigation of corruption cases, which inhibited the interaction between Ukraine and the USA."⁴ The next day, Ambassador Kurt Volker, U.S. Special Representative for Ukraine, was dispatched to meet with President Zelenskyy.⁵ Days later, the President's personal attorney met Andriy Yermak, an aide to President Zelenskyy, in Spain, where the President's personal attorney, who has no official administration or diplomatic position, reportedly suggested a "possible heads of state meeting" between Presidents Trump and Zelenskyy⁶ and tweeted an accusation about former Vice President Biden's son.⁷ The State Department subsequently acknowledged that Ambassador Volker used his office to facilitate the meeting between the two.⁸ Although the State Department has insisted that President Trump's attorney is "a private citizen" who "does not speak on behalf of the U.S. Government," Mr. Yermak publicly stated that "it was not clear to him whether Mr. Giuliani was representing Mr. Trump in their talks."⁹

President Trump has also threatened to withhold¹⁰ more than \$250 million in security assistance that Congress has appropriated, the Pentagon supports,¹¹ and Ukraine desperately needs. Ukraine's sovereignty and territorial integrity are under assault from Russia and its proxies in illegally-occupied Ukrainian territory. If the President is trying to pressure Ukraine into choosing between defending itself from Russian aggression without U.S. assistance or

⁴ See Official Website of the President of Ukraine, *Volodymyr Zelenskyy had a phone conversation with President of the United States*, July 25, 2019 (online at: <https://www.president.gov.ua/en/news/volodimir-zelenskij-proviv-telefonnu-rozmovu-z-prezidentom-s-56617>).

⁵ See tweet by U.S. Embassy Kyiv, July 26, 2019, showing Ambassador Volker meeting with President Zelenskyy (online at: <https://twitter.com/USEmbassyKyiv/status/1154712337368190976?s=20>).

⁶ See Kenneth P. Vogel and Andrew E. Kramer, *supra* n. 3.

⁷ See tweet by Rudy Giuliani, August 3, 2019 from Santa Cruz del Retamar, Espana (online at: <https://twitter.com/RudyGiuliani/status/1157778959653842945?s=20>) ("The Politico coverup article doesn't mention the bribery of Ukraine Pres. by then VP Biden to get the case against his son dismissed. Nor does it explain the Chinese pay-off of \$1.5billion to Biden's useless fund. Joe took his son on AFII to get the investment. It stinks!!").

⁸ See State Department Spokesperson Statement, August 22, 2019 (online at: <https://twitter.com/kenvogel/status/1164666081501470727/photo/1>).

⁹ See Kenneth P. Vogel and Andrew E. Kramer, *supra* n. 3.

¹⁰ Caitlin Emma and Connor O'Brien, *Trump Holds Up Ukraine Military Aid Meant to Confront Russia*, Politico, August 29, 2019 (online at: <https://www.politico.com/story/2019/08/28/trump-ukraine-military-aid-russia-1689531>).

¹¹ Bryan Bender, *Pentagon Wants Ukraine Military Aid to Continue*, Politico, August 29, 2019 (online at: <https://www.politico.com/story/2019/08/29/pentagon-wants-ukraine-military-aid-to-continue-1477957>).

leveraging its judicial system to serve the ends of the Trump campaign, this would represent a staggering abuse of power, a boon to Moscow, and a betrayal of the public trust. That the State Department has apparently acted as a broker between President Trump's personal attorney and Ukrainian officials raises serious concerns that the Department is complicit in a corrupt scheme that undercuts U.S. foreign policy and national security interests in favor of the President's personal agenda.

Congress has a constitutionally-mandated obligation to conduct oversight, protect the sanctity of our elections, and ensure that the nation's diplomatic resources and foreign assistance are being deployed for the benefit of the United States, not the personal interests of the President. In order to fulfill this obligation and determine what legislative reform may be required, we request that the White House preserve all documents, communications, and other data ("records"), regardless of format, that may be required for the Committees' oversight and investigative duties relating to this subject. The term "records" is broad and includes both paper and electronic records.¹² Specifically, the State Department should:

1. identify and notify all current and former employees and contractors, subcontractors, consultants, and Special Government Employees who may have access to such records that they are to be preserved;
2. identify, record, and preserve any records which have been deleted or marked for deletion but are still recoverable; and
3. if it is the routine practice of any employee or contractor to destroy or otherwise alter such records, either halt such practices or arrange for the preservation of complete and accurate duplicates or copies of such records, suitable for production, if requested.

In addition, we request that the Department produce to the Committees the following,¹³ no later than **Monday, September 16**:

¹² This includes emails, electronic messages (including, but not limited to, both government and commercial/personal email accounts, text messages, or messaging services such as WhatsApp, Signal, Viber, Facebook, Twitter, and/or Telegram), regardless of whether such records were created, modified, sent, or received on an official or personal address or device, as well as log files and metadata. For purposes of this request, "preserve" means taking reasonable steps to prevent the partial or full destruction, alteration, testing, deletion, shredding, incineration, wiping, relocation, migration, theft, or mutilation of records, including but not limited to emails and handwritten notes, as well as negligent or intentional handling which would foreseeably make such records incomplete or inaccessible.

¹³ Any alternate spellings or transliterations of any names reference herein would also render a document responsive to these requests.

The Honorable Mike Pompeo

September 9, 2019

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1. Any and all correspondence sent to or received by the State Department from January 20, 2017 to the present related to or referring in any way to the potential or suggested investigations/legal cases referred to in this letter. This includes, but is not limited to, correspondence regarding or referring to Paul Manafort, Serhiy Leshchenko, the "Black Ledger," Hunter Biden, Burisma Holdings, former Ukrainian Prosecutor General Yuriy Lutsenko, or Presidential Aide Andriy Yermak in the context of these potential or suggested investigations/legal cases.
2. Any copies in the State Department's, custody, or control of the transcript of President Trump's July 25, 2019 call with Ukrainian President Zelenskyy (the "July 25 Call").
3. Any and all records generated or received by the State Department in connection with, or that refer or relate in any way to the July 25 Call.
4. A full list of any Department officials who participated in, assisted in preparation for, or received a readout of the July 25 Call.
5. Any and all records generated or received by Department officials with or referring to President Trump's personal attorney, Rudy Giuliani.
6. Any and all records generated or received by any State Department staff in connection with, or that refer or relate in any way to the actual or potential suspension of security assistance to Ukraine.

Relevant custodians for responsive records include, but are not limited to:

1. the Office of the Secretary, including the Policy Planning Staff, the Counselor;
2. the Office of the Deputy Secretary;
3. the Office of the Undersecretary for Political Affairs;
4. Ambassador Kurt Volker and the office of the Special Representative for Ukraine;
5. The Bureau of European Affairs; and
6. U.S. Embassy Kyiv.

The Committees are prepared to work with the Department to facilitate the production of these documents.

The Honorable Mike Pompeo
September 9, 2019
Page Five

Sincerely,



ELIOT L. ENGEL
Chairman
House Foreign Affairs Committee



ADAM SCHIFF
Chairman
House Permanent Select Committee
On Intelligence



ELIJAH E. CUMMINGS
Chairman
House Committee on Oversight and Reform

UNCLASSIFIED//FOUO



INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY
WASHINGTON, D.C. 20511

September 9, 2019

VIA ELECTRONIC TRANSMISSION

The Honorable Adam Schiff
Chairman
Permanent Select Committee on Intelligence
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Devin Nunes
Ranking Member
Permanent Select Committee on Intelligence
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Schiff and Ranking Member Nunes:

(U//FOUO) On August 12, 2019, the Office of the Inspector General of the Intelligence Community (ICIG) received a disclosure from an individual (hereinafter "the Complainant") regarding an alleged "urgent concern," pursuant to 50 U.S.C. § 3033(k)(5)(A).¹ The term "urgent concern" is defined, in relevant part, as:

(U) A serious or flagrant problem, abuse, violation of the law or Executive order, or deficiency relating to the funding, administration, or operation of an intelligence activity within the responsibility and authority of the Director of National Intelligence involving classified information, but does not include differences of opinions concerning public policy matters.²

¹ (U) 50 U.S.C. § 3033(k)(5)(A) provides that an "employee of an element of the intelligence community, an employee assigned or detailed to an element of the intelligence community, or an employee of a contractor to the intelligence community who intends to report to Congress a complaint or information with respect to an urgent concern may report such complaint or information" to the ICIG.

² (U) 50 U.S.C. § 3033(k)(5)(G)(i).

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(U//FOUO) After receiving the Complainant's disclosure, the ICIG was required within 14 calendar days to determine whether the information alleged by the Complainant with respect to an urgent concern appeared credible.³ During that 14-day time period, the ICIG conducted a preliminary review of the disclosure. As a result of that preliminary review, I determined that the Complainant's disclosure met the definition of an urgent concern, *i.e.*, a "serious or flagrant problem, abuse, violation of the law or Executive order, or deficiency relating to the funding, administration, or operation of an intelligence activity within the responsibility and authority of the Director of National Intelligence involving classified information."⁴ I also determined that there were reasonable grounds to believe that information relating to the urgent concern appeared credible.⁵

(U//FOUO) On August 26, 2019, I forwarded the Complainant's disclosure and accompanying materials, along with my determination that the Complainant's information appeared credible, to the Acting Director of National Intelligence (Acting DNI). Pursuant to the urgent concern statute, upon receipt of the ICIG's transmittal, the Acting DNI within seven calendar days is required to forward such transmittal to the congressional intelligence committees along with any comments he considers appropriate.⁶

(U//FOUO) It is my understanding that the Acting DNI has determined that he is not required to transmit my determination of a credible urgent concern or any of the Complainant's information to the congressional intelligence committees because the allegations do not meet the definition of an "urgent concern" under the statute, and has not made the transmission as of today's date. Although I believe and appreciate that the Acting DNI is acting in good faith, the Acting DNI's treatment of the Complainant's alleged "urgent concern" does not appear to be consistent with past practice. As you know, the ICIG has on occasion in the past determined that, for a variety of reasons, disclosures submitted to the ICIG under the urgent concern statute did not constitute an urgent concern. In those cases, even though the ICIG determined that those disclosures did not meet the definition of an urgent concern, the DNI nevertheless provided direction to the ICIG to transmit the ICIG's determination and the complainants' information to the congressional intelligence committees. In each of those cases, the ICIG followed the DNI's direction and transmitted the ICIG's determination along with the complainants' information to the congressional intelligence committees. That past practice permitted complainants in the Intelligence Community to contact the congressional intelligence committees directly, in an authorized and protected manner, as intended by the urgent concern statute.

(U//FOUO) I am continuing my efforts to obtain direction from the Acting DNI regarding how the Complainant may bring the Complainant's concerns to the congressional intelligence

³ (U) *Id.* at § 3033(k)(5)(B).

⁴ (U) *Id.* at § 3033(k)(5)(G)(i).

⁵ (U) *Id.* at § 3033(k)(5)(B).

⁶ (U) *Id.* at § 3033(k)(5)(C).

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committees in an authorized and protected manner, and "in accordance with appropriate security practices."⁷ I intend to reach back out to you in the near future to discuss my attempts to resolve outstanding issues relating to this matter.

(U) Please contact me if you have any questions.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "M. K. Atkinson", with a stylized flourish extending to the right.

Michael K. Atkinson
Inspector General
of the Intelligence Community

cc: The Honorable Joseph Maguire
Director of National Intelligence (Acting)

⁷ (U) *Id.* at § 3033(k)(5)(D)(ii).

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**Permanent Select Committee
on Intelligence
U.S. House of Representatives**

September 10, 2019

The Honorable Joseph Maguire
Acting Director of National Intelligence
Office of the Director of National Intelligence
Washington, D.C. 20511

Dear Acting Director Maguire:

The House Permanent Select Committee on Intelligence (“Committee”) has learned that, contrary to your express obligations under the law, you are withholding from the Committee an authorized and protected whistleblower disclosure involving “a serious or flagrant problem, abuse, violation of law or Executive order, or deficiency relating to the funding, administration, or operation of an intelligence activity within the responsibility and authority of the Director of National Intelligence involving classified information.”¹

On August 26, 2019, consistent with the procedures in the Intelligence Community Whistleblower Protection Act (“ICWPA”), the Inspector General of the Intelligence Community (“ICIG”) transmitted to you a whistleblower disclosure intended for Congress, which an individual within the Intelligence Community lawfully submitted to the ICIG on August 12, 2019. Based on a preliminary review conducted within the 14-day period provided by the statute, the ICIG determined that the disclosure meets the statutory definition of an “urgent concern” and that there are reasonable grounds to believe the information relating to the urgent concern is credible.

The ICWPA requires you to forward all whistleblower transmittals from the ICIG to the congressional intelligence committees within a statutorily-mandated 7-day period.² You should

¹ 50 U.S.C. §3033(k)(5)(G).

² 50 U.S.C. §3033(k)(5)(A) requires that “upon receipt of a transmittal from the Inspector general...the Director *shall*, within 7 calendar days of such receipt, forward such transmittal to the congressional intelligence committees, together with any comments the Director considers appropriate” (emphasis added). The statute does not provide the Director of National Intelligence with discretion to withhold a whistleblower disclosure.

have therefore transmitted the disclosure to the Committee, together with any comments you consider appropriate, no later than September 2, 2019.

In an unprecedented departure from past practice, you have not transmitted the disclosure to the Committee, nor have you notified the Committee of the fact of the disclosure or your decision not to transmit it to the Committee. Instead, in a manner neither permitted nor contemplated under the statute, you have taken the extraordinary step of overruling the independent determination of the ICIG and preventing the disclosure from reaching the Committee.

We do not know whether this decision to withhold the disclosure was made only by you, or whether it involved interference by other parties, including the White House. The Committee's recent experience has heightened concern of improper White House efforts to influence your office and the Intelligence Community. The failure to transmit to the Committee an urgent and credible whistleblower complaint, as required by law, raises the prospect that an urgent matter of a serious nature is being purposefully concealed from the Committee.

Consistent with your obligations under the statute, the whistleblower's complaint and the ICIG's determination must be transmitted to the Committee—their intended recipient—without delay and in their entirety. You also must furnish immediately to the whistleblower, through the ICIG, any necessary direction on appropriate security procedures for the whistleblower to contact the Committee directly.³ Finally, the Committee expects to receive your express assurance that all of the whistleblower protections included in the ICWPA will be afforded to the complainant in this case.

Absent immediate compliance with the above, the Committee will resort to compulsory process to compel production of the entire whistleblower complaint in complete and unaltered form, the ICIG's determination, as well as all records pertaining to you and your office's involvement in this matter, including any and all correspondence with other Executive Branch actors, to include the White House. The Committee will also require your appearance before the Committee to testify publicly about this matter.

The statutorily-protected right of Intelligence Community employees to make disclosures to Congress is sacrosanct and must remain insulated from politicization. The Committee will take all steps necessary to ensure this right is upheld.

³ Even if the ICIG had not determined that the disclosure constituted an urgent concern, the statute provides for an Intelligence Community whistleblower to contact the congressional intelligence committees directly after the whistleblower provides notice to the ICIG of his or her intent to contact the congressional intelligence committees directly, and obtains and follows direction from you, as the Acting Director of National Intelligence, on how to contact the congressional intelligence committees in accordance with appropriate security practices. 50 U.S.C. §3033(k)(5)(D)(ii). There is no basis for you to withhold guidance from a whistleblower to permit them to make a disclosure directly to the Committee.

I look forward to receiving the complaint in full immediately, together with any comments you consider appropriate.

Sincerely,

A handwritten signature in blue ink, appearing to read "Adam B. Schiff". The signature is fluid and cursive, with the first name "Adam" and last name "Schiff" being clearly legible, and "B." as a middle initial.

Adam B. Schiff
Chairman

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
OFFICE OF GENERAL COUNSEL
WASHINGTON, DC 20511

September 13, 2019

The Honorable Richard Burr
Chairman
Select Committee on Intelligence
United States Senate
Washington, DC 20510

The Honorable Adam Schiff
Chairman
Permanent Select Committee on Intelligence
United States House of Representatives
Washington DC 20515

The Honorable Mark Warner
Vice Chairman
Select Committee on Intelligence
United States Senate
Washington, DC 20510

The Honorable Devin Nunes
Ranking Member
Permanent Select Committee on Intelligence
United States House of Representatives
Washington DC 20515

Dear Chairman Burr, Chairman Schiff, Vice Chairman Warner, and Ranking Member Nunes,

(U//~~FOUO~~) On September 10, 2019, Chairman Schiff sent a letter to the Acting Director of National Intelligence (“DNI”), requesting information relating to a complaint that the Inspector General of the Intelligence Community (“ICIG”) had received from an individual within the Intelligence Community. In that letter, Chairman Schiff expressed the view that the DNI’s handling of the complaint was not consistent with 50 U.S.C. § 3033(k)(5). The ICIG sent a separate letter to both committees concerning the underlying complaint on September 9, 2019. I write to provide the intelligence committees with additional information concerning the complaint and to explain how the DNI fully complied with applicable law. As explained below, because the disclosure in this case did not concern allegations of conduct by a member of the Intelligence Community or involve an intelligence activity under the DNI’s supervision, we determined, after consulting with the Department of Justice (“DOJ”), that no statute requires disclosure of the complaint to the intelligence committees.

(U//~~FOUO~~) The DNI believes strongly in the role of the ICIG and in the statutory provisions that encourage Federal employees and government contractors to report truthful allegations of wrongdoing, in accordance with the specific legal process. The DNI also takes seriously his obligation to protect lawful whistleblowers from retaliation. For the Intelligence Community, this process is codified in the Intelligence Community Whistleblower Protection Act (“ICWPA”) and in the parallel provisions in Title 50 of the U.S. Code. Under ICWPA, Congress enacted a framework to report matters of “urgent concern” within the Intelligence Community to Congress that protects both Congress’ legitimate oversight responsibilities as well as the constitutional authority of the President to determine how, when, and under what circumstances classified or privileged information may be reported to Congress. *See generally Whistleblower Protections for Classified Disclosures*, 22 Op. O.L.C. 92 (1998).

(U//~~FOUO~~) In this instance, the ICIG transmitted to the DNI a complaint, that he viewed as an urgent concern, and we reviewed that report immediately upon receipt. Because there were serious questions about whether the complaint met the statutory definition of an “urgent concern” under 50 U.S.C. § 3033(k)(5), we consulted with DOJ concerning the appropriate way to handle the complaint. We also included the ICIG in those consultations to make sure that he had the opportunity to provide his views.

(U//~~FOUO~~) Based on those consultations, we determined that the allegations did not fall within the statutory definition of an “urgent concern” and that the statute did not require the complaint to be transmitted to the intelligence committees. The statutory definition of “urgent concern” requires the reporting of a serious allegation involving classified information relating to “the funding, administration, or operation of an intelligence activity within the responsibility and authority of the Director of National Intelligence.” 50 U.S.C. § 3033(k)(5)(G)(i). This complaint, however, concerned conduct by someone outside the Intelligence Community and did not relate to any “intelligence activity within the responsibility and authority of the DNI.” The complaint therefore did not fall within the statutory framework governing reporting matters of “urgent concern” to Congress.

(U//~~FOUO~~) In his September 10, 2019 letter, Chairman Schiff states that the statute “requires” the DNI “to forward *all* whistleblower transmittals from the ICIG to the congressional intelligence committees within a statutorily-mandated 7-day period.” *Sept. 10 Letter at 1*. Respectfully, however, those are not the words of the statute. Instead, the statutory procedures apply only when “[a]n employee of an element of the intelligence community . . . intends to report to Congress a complaint or information with respect to an urgent concern,” which is itself a defined term. 50 U.S.C. § 3033(k)(5)(A), (k)(5)(G). The provision contemplates, as relevant here, that the employee first “report[s] such complaint or information to” the ICIG. *Id.* § 3033(k)(5)(A). The ICIG then determines whether to transmit it to the DNI. *Id.* § 3033(k)(5)(B). If the ICIG transmits a complaint to the DNI “under subparagraph (B),” then the DNI “shall, within 7 calendar days of such receipt, forward such transmittal to the [congressional] intelligence committees, together with any comments the [DNI] considers appropriate.” *Id.* § 3033(k)(5)(C). However, when a complaint does not state an urgent concern, the statute does not require the DNI to transmit it to the intelligence committees, because the complaint is not one “under subparagraph (B).” Here, we determined, in consultation with DOJ, that the complaint **did not state an urgent concern**.

(U//~~FOUO~~) We also respectfully disagree with the Chairman’s suggestion that “the statute provides for an Intelligence Community whistleblower to contact the congressional intelligence committees” **directly** in these circumstances. *Sept. 10 Letter at 2 n.3*. That provision of the statute cannot apply where, as here, the complaint falls outside the statutory definition of an urgent concern.

(U//~~FOUO~~) We believe that it is important to apply the statute as it was written, because reading it to give a complainant a **unilateral right to forward a complaint to the congressional intelligence committees would raise serious constitutional questions**. As the Obama Administration explained in its comments on the legislation enacting section 3033(k), “if this bill were read to give Intelligence Community employees **unilateral discretion** to disclose classified information to Congress, it would be unconstitutional.” Letter for the Hon. Dianne Feinstein,

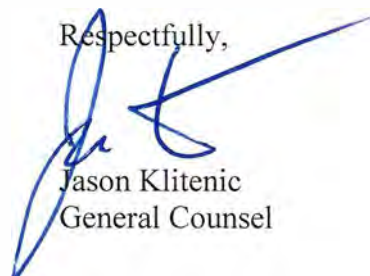
Chairman, and the Hon. Christopher S. Bond, Vice-Chairman, Senate Select Committee on Intelligence, from Ronald Weich, Assistant Attorney General, Office of Legislative Affairs at 2 (Mar. 15, 2010). Assistant Attorney General Weich also advised Congress that, if it were enacted, the Executive Branch would “interpret” the statute “in a manner consistent with” the statement President Clinton issued upon signing the ICWPA into law. *Id.*

(U//~~FOUO~~) In that statement, President Clinton noted that “[t]he Constitution vests the President with authority to control disclosure of information when necessary for the discharge of his constitutional responsibilities.” *Statement on Signing the Intelligence Authorization Act for Fiscal Year 1999*, 2 Pub. Papers of William J. Clinton 1825 (1998). Accordingly, the Executive Branch would construe the statute not to “constrain” its “constitutional authority to review and, if appropriate, control disclosure of certain **classified information**.” *Id.* We therefore do not understand the statute to require the DNI **automatically** to forward every complaint to Congress, even where the complaint falls outside the plain terms of the underlying statutory procedures. We also do not understand the statute to foreclose the DNI from reviewing information in such complaints and withholding confidential Executive Branch information.

(U//~~FOUO~~) Notwithstanding the plain language of the statute, the ICIG requested that the DNI transmit the complaint to the intelligence committees or provide guidance on how he might do so. The ICIG observed that, in the past, the DNI has transmitted complaints to the intelligence committees even when the ICIG determined that they did not meet the definition of an “urgent concern.” The information within the present complaint, however, is different in kind from that involved in any past cases of which we are aware. The present complaint does not allege misconduct within the Intelligence Community or concern an intelligence activity subject to the authority of the DNI. Furthermore, because the complaint involves confidential and potentially privileged communications by persons outside the Intelligence Community, the DNI lacks unilateral authority to transmit such materials to the intelligence committees. Therefore, **the DNI determined** not to transmit this confidential information to the intelligence committees.

(U//~~FOUO~~) Notwithstanding this conclusion, ODNI remains committed to working to accommodate the Committees as best as we can. Indeed, after consulting with the ODNI, the ICIG informed the committees of the complaint. Should the Committees have further questions about this matter, we will seek to answer them and to work with the appropriate officials to accommodate any legitimate legislative interests that the Committees have in this matter, while also protecting Executive Branch confidentiality interests. *See Whistleblower Protections for Classified Disclosures*, 22 Op. O.L.C. at 102.

Respectfully,



Jason Klitenic
General Counsel



**Permanent Select Committee
on Intelligence
U.S. House of Representatives**

September 13, 2019

The Honorable Joseph Maguire
Acting Director of National Intelligence
Office of the Director of National Intelligence
Washington, D.C. 20511

Dear Acting Director Maguire:

No later than September 2, 2019, the House Permanent Select Committee on Intelligence (“Committee”) should have received from you, as required by law, an urgent whistleblower disclosure involving “a serious or flagrant problem, abuse, violation of law or Executive order, or deficiency relating to the funding, administration, or operation of an intelligence activity within the responsibility and authority of the Director of National Intelligence involving classified information.”¹ More than ten days later, the Committee has not received the disclosure, in violation of the law.

Consistent with his obligations under the Intelligence Community’s whistleblower statute,² the Intelligence Community Inspector General’s (“IC IG”) determined that an August 12, 2019 whistleblower disclosure intended for the congressional intelligence committees from an individual within the Intelligence Community satisfied the statutory definition of an “urgent concern.” Based on a preliminary review conducted within the 14-day period provided by law, the IC IG also determined that there are reasonable grounds to believe that the information relating to the urgent concern is credible.³

On August 26, the IC IG forwarded the disclosure and accompanying materials, along with his credibility determination, to you. Pursuant to the statute, this triggered a 7-day period within which you, in your capacity as Acting Director of National Intelligence (“DNI”), “shall...forward such transmittal to the congressional intelligence committees, together with any

¹ 50 U.S.C. §3033(k)(5)(G).

² 50 U.S.C. §3033(k)(5).

³ Letter from IC IG Michael Atkinson to Chairman Adam B. Schiff and Ranking Member Devin Nunes, September 9, 2019.

comments the Director considers appropriate.”⁴ The Committee should have therefore received this urgent whistleblower disclosure from you no later than September 2, 2019.

Yet, in violation of the statute’s explicit command, and in a stark break with the unbroken practice of previous Directors of National Intelligence, you have refused to transmit to the Committee the whistleblower disclosure, along with the IC IG’s determination that the information in the disclosure represents a credible urgent concern—even after the Committee’s formal request on September 10, 2019. So far as the Committee is aware, this marks the first time a Director of National Intelligence has ever sought to overrule the IC IG and conceal from Congress a whistleblower complaint—in this case, one the IC IG has already determined to be a credible urgent concern.⁵ You have also refused, in further contravention of the statute, to provide the whistleblower with required direction, through the IC IG, on how to contact the Committee directly in a secure manner.

As Acting Director of National Intelligence, you have neither the legal authority nor the discretion to overrule a determination by the IC IG. Moreover, you do not possess the authority to withhold from the Committee a whistleblower disclosure from within the Intelligence Community that is intended for Congress.⁶

Your office has attempted to justify doing so based on a radical distortion of the statute that completely subverts the letter and spirit of the law, as well as arrogates to the Director of National Intelligence authority and discretion he does not possess. Under the statute, the Director serves as a conduit to transmit the complaint to the congressional intelligence committee with any comments the Director considers appropriate and consistent with proper security practices.

Even though the disclosure was made by an individual within the Intelligence Community through lawful channels, you have improperly withheld that disclosure on the basis that, in your view, the complaint concerns conduct by someone outside of the Intelligence Community and because the complaint involves confidential and potentially privileged communications. In a further departure from the statute, your office consulted the Department of Justice about the complaint, even though the statute does not provide you discretion to review, appeal, reverse, or countermand in any way the IC IG’s independent determination, let alone to involve another entity within the Executive Branch in the handling of a whistleblower complaint. Your office, moreover, has refused to affirm or deny that officials or lawyers at the White House have been involved in your decision to withhold the complaint from the Committee. You have also refused to rule out to me that the urgent concern, and underlying conduct, relates to an area of active investigation by the Committee.

⁴ 50 U.S.C. §3033(k)(5)(C). Emphasis added.

⁵ Even if the ICIG had determined that the complaint did *not* amount to an urgent concern, you are required by law to provide direction to the complainant, through the IC IG, as to how to contact the Committee directly in a secure manner. 50 U.S.C. §3033(D).

⁶ 50 U.S.C. §3033(k)(5)(A) requires that “upon receipt of a transmittal from the Inspector general...the Director *shall*, within 7 calendar days of such receipt, forward such transmittal to the congressional intelligence committees, together with any comments the Director considers appropriate” (emphasis added).

The Committee can only conclude, based on this remarkable confluence of factors, that the serious misconduct at issue involves the President of the United States and/or other senior White House or Administration officials. This raises grave concerns that your office, together with the Department of Justice and possibly the White House, are engaged in an unlawful effort to protect the President and conceal from the Committee information related to his possible “serious or flagrant” misconduct, abuse of power, or violation of law.⁷

Accordingly, due to the urgency of the matter and the unlawful decision by your office to withhold from the Committee an Intelligence Community individual’s credible “urgent concern” whistleblower disclosure, the Committee hereby issues the attached subpoena compelling you to transmit immediately to the Committee the disclosure, in complete and unaltered form, as well as to produce other related materials.

Absent compliance by **Tuesday, September 17**, the Committee will require you to appear for a public hearing on **Thursday, September 19** to account for the decision to withhold the whistleblower complaint from the Committee—its intended recipient—in violation of the statute. The Committee—and the American people—must know why, in violation of law, a whistleblower complaint is being concealed, whether the underlying conduct involves the President or those around him, and **whether the White House is involved in trying to cover up this authorized disclosure.**

As explained in more detail in Schedule A of the subpoena, the Committee requires that you produce to the Committee the following information:

- (1) The complete and unaltered whistleblower disclosure, including any annexes, addenda, or accompanying materials, regardless of classification;
- (2) The IC IG’s credibility determination regarding the disclosure, along with any additional accompanying materials submitted by the IC IG to you; and
- (3) Any and all communications, records, memoranda, and documents related to the decision to withhold the disclosure to the Committee, including but not limited to any materials that relate to or involve officials at the White House or the Department of Justice.


Finally, as we discussed at length on September 12, the Committee expects the whistleblower to be fully protected from any action constituting **reprisal**, or threat of reprisal. This includes any adverse personnel action for making the disclosure to the IC IG and, if he or she so elects, for contacting the Committee directly, as permitted under the statute. I appreciated your **personal assurance** that the whistleblower must be protected. Ensuring such protection remains in effect is a priority for the Committee. To that effect, the Committee requires an assurance in writing from your office that no reprisal of any kind, or threat of reprisal, shall be directed at the whistleblower from any official within the Intelligence Community or elsewhere in the federal government, including at the White House, regardless of any contrary interpretation of the statute from any other entity in the Executive Branch.

⁷ 50 U.S.C. §3033(k)(5)(G).

The Committee also deeply appreciates IC IG Michael Atkinson's upstanding and principled handling of this matter, and fully expects that he and all members of his staff will also be protected from any reprisal or threat of reprisal for bringing this matter to the attention of the Committee, as Mr. Atkinson is required to do.

As I underscored in my September 10 letter, the right of Intelligence Community employees and contractors to make protected disclosures to Congress is sacrosanct and enshrined in law. The Committee is under a solemn obligation to ensure that the men and women of the Intelligence Community are protected when they see and report problems, abuses, or unlawful activity. The integrity of the Intelligence Community and the trust and confidence of those who serve our country selflessly is at stake.

Sincerely,

A handwritten signature in blue ink, appearing to read "Adam B. Schiff", is written over a light blue circular stamp.

Adam B. Schiff
Chairman

Enclosures

Committee Subpoena and Schedule A

Letter from Chairman Schiff to Acting Director of National Intelligence Maguire,
September 10, 2019

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INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY
WASHINGTON, D.C. 20511

September 17, 2019

VIA ELECTRONIC TRANSMISSION

The Honorable Adam Schiff
Chairman
Permanent Select Committee on Intelligence
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Devin Nunes
Ranking Member
Permanent Select Committee on Intelligence
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Schiff and Ranking Member Nunes:

(U//FOUO) In a previous letter to you dated September 9, 2019, I informed you that I was continuing my efforts to obtain direction from the Acting Director of National Intelligence (Acting DNI) concerning a disclosure from an individual (hereinafter, "the Complainant") regarding an alleged "urgent concern," pursuant to 50 U.S.C. § 3033(k)(5)(A).¹ The statute that established and authorized the Office of the Inspector General of the Intelligence Community (ICIG) provides that if the ICIG is unable "to resolve . . . differences with the Director [of National Intelligence] affecting the execution of the duties or responsibilities of the Inspector General," the ICIG should immediately notify, and submit a report to, the congressional intelligence committees on such matters.² Although I had hoped that the Acting DNI would provide direction, through me, on how the Complainant can contact the congressional intelligence committees directly "in accordance with appropriate security practices,"³ I have now determined that the Acting DNI and I are at an

¹ (U) 50 U.S.C. § 3033(k)(5)(A) provides that an "employee of an element of the intelligence community, an employee assigned or detailed to an element of the intelligence community, or an employee of a contractor to the intelligence community who intends to report to Congress a complaint or information with respect to an urgent concern may report such complaint or information to the Inspector General."

² (U) *Id.* at § 3033(k)(3)(A)(i).

³ (U) *Id.* at § 3033(k)(5)(D)(i) and (ii).

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impasse over this issue, which necessitates this notification and report on our unresolved differences.

(U//FOUO) On September 13, 2019, I received a copy of a letter, dated the same day, sent from Jason Klitenic, General Counsel, Office of the Director of National Intelligence, to the Chair and Vice Chair of the Senate Select Committee on Intelligence, and to you, as the Chair of the House Permanent Select Committee on Intelligence (HPSCI), and as the Ranking Member of the HPSCI. In that letter, Mr. Klitenic informed the congressional intelligence committees that the Acting DNI had determined, after consulting with the Department of Justice (DOJ), "that no statute requires disclosure of the complaint to the intelligence committees" because "the disclosure in this case did not concern allegations of conduct by a member of the Intelligence Community or involve an intelligence activity under the DNI's supervision." I understand that I am bound by the determination reached as a result of the Acting DNI's consultations with DOJ, and the ICIG will continue to abide by that determination.

(U//FOUO) I, nevertheless, respectfully disagree with that determination, particularly DOJ's conclusion, and the Acting DNI's apparent agreement with the conclusion, that the disclosure in this case does not concern an intelligence activity within the DNI's authority, and that the disclosure therefore need not be transmitted to the congressional intelligence committees. In a letter sent on today's date to DOJ, a copy of which I provided to the Acting DNI, I outlined my reasons for disagreeing with DOJ's analysis of the facts presented in the instant case and the conclusions reached regarding the same. I set forth the reasons for my concluding that the subject matter involved in the Complainant's disclosure not only falls within the DNI's jurisdiction, but relates to one of the most significant and important of the DNI's responsibilities to the American people. Because of the disagreement that exists between myself, DOJ, and the Acting DNI, I have requested authorization from the Acting DNI to disclose, at the very least, the general subject matter of the Complainant's allegations to the congressional intelligence committees. To date, however, I have not been authorized to disclose even that basic information to you, in addition to the important information provided by the Complainant that is also being kept from the congressional intelligence committees.

(U//FOUO) In addition, it appears to me that the Acting DNI has no present intention of providing direction to the Complainant, through me, on how the Complainant can contact the congressional intelligence committees directly "in accordance with appropriate security practices."⁴ Although I appreciate that the Acting DNI has provided his personal assurance that the Complainant will be protected if the Complainant's identity becomes known and the Complainant is reprisal against, or threatened with reprisal, for making the disclosure, such personal assurance is not the legally enforceable statutory protection previously available to whistleblowers in the Complainant's situation.

(U//FOUO) As it now stands, my unresolved differences with the Acting DNI are affecting the execution of two of my most important duties and responsibilities as the Inspector General of

⁴ (U) *Id.* at § 3033(k)(5)(D)(i) and (ii).

the Intelligence Community. First, the differences are affecting what I view as my significant responsibilities toward the Complainant, an employee, detailee, or contractor in the Intelligence Community, **who wants to disclose to Congress** in an authorized and protected manner information that involves classified information that the Complainant believes in good faith is “with respect to an urgent concern.”⁵

(U//FOUO) **Second**, the unresolved differences are affecting the execution of the ICIG’s statutory responsibility to ensure that the congressional intelligence committees are kept currently and fully informed of “significant problems and deficiencies relating to programs and activities within the responsibility and authority of the Director of National Intelligence.”⁶ The DNI’s decision not to transmit my determination or any of the Complainant’s information to the congressional intelligence committees, for reasons other than awaiting a classification review or asserting appropriate privileges, may reflect a gap in the law that constitutes a significant problem and deficiency concerning the DNI’s responsibility and authority – or perceived responsibility and authority – relating to intelligence programs or activities.

(U//FOUO) Further, the resulting inability for an employee, detailee, or contractor in the Intelligence Community to receive direction from the Acting DNI, through the Inspector General, on how to contact the congressional intelligence committees directly in accordance with appropriate security practices concerning what appear to be good faith and credible allegations “with respect to an urgent concern,”⁷ even if it is later determined by others that the alleged conduct falls outside the definition of “urgent concern,” may itself constitute a significant problem and deficiency concerning the DNI’s responsibility and authority relating to intelligence programs or activities. In addition, the Complainant’s current predicament, where an individual used the urgent concern process in good faith, but in the future might not be statutorily protected from reprisal or the threat of reprisal for making the disclosure, may also constitute a significant problem and deficiency concerning the DNI’s responsibility and authority relating to intelligence programs or activities.⁸

(U) I remain committed to ensuring that individuals in the Intelligence Community who disclose allegations of wrongdoing in good faith and in an authorized manner to the ICIG receive consistent, effective, and enforceable protections from actions constituting a reprisal, or threat of reprisal, for making such a disclosure. I will also continue my efforts to ensure individuals in the

⁵ (U) *Id.* at § 3033(k)(5)(A).

⁶ (U) *Id.* at § 3033(b)(4).

⁷ (U) *Id.* at § 3033(k)(5)(A).

⁸ (U//FOUO) DOJ’s legal opinion may have significant implications for whistleblower rights and protections for all Executive Branch departments and agencies, as well as the government contracting industry. The ICIG has asked DOJ to clarify, among other things, whether the Complainant and those individuals similarly situated to the Complainant, now or in the future, are protected from actions constituting a reprisal, or threat of reprisal, in response to reporting an alleged urgent concern, or other allegations of waste, fraud, or abuse, that may later be determined to fall outside the jurisdiction of the individual’s department or agency.

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Intelligence Community have a consistent, authorized, and effective means to report such allegations to the congressional intelligence committees. Please do not hesitate to contact me if you have any questions regarding this important matter.

Sincerely yours,

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

Michael K. Atkinson
Inspector General
of the Intelligence Community

cc: The Honorable Joseph Maguire
Director of National Intelligence (Acting)

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OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
OFFICE OF GENERAL COUNSEL
WASHINGTON, DC 20511

September 17, 2019

The Honorable Adam Schiff
Chairman
Permanent Select Committee on Intelligence
United States House of Representatives
Washington, DC 20515

Dear Chairman Schiff,

I write in response to your September 13, 2019, letter and the subpoena from the House Permanent Select Committee on Intelligence ("HPSCI"), which was issued to the Acting Director of National Intelligence ("DNI") last Friday evening. As you know, before you sent that letter, I had written to you, as well as to the other leaders of the Intelligence Committees, to explain how the DNI had handled a recent complaint received from the Inspector General of the Intelligence Community ("ICIG"). That letter explained how the DNI's handling of the complaint complied with all applicable legal provisions.

The DNI has given nearly four decades of service to protecting the national security of our country. He is committed wholeheartedly to the mission of the Office of the Director of National Intelligence ("ODNI"), and he has deep respect for the relationship between ODNI and the Intelligence Committees. He looks forward to working constructively with you on this matter, as well as on the many pressing national security matters that our country faces, both this week, and on an ongoing basis.

The Intelligence Community and the Intelligence Committees have a long history of working cooperatively to support congressional oversight interests. We are disappointed, however, that rather than following our established practice of working together, HPSCI immediately served a subpoena for documents and demanded the Acting Director's immediate testimony. That subpoena demanded production of sensitive and potentially privileged materials within fewer than two business days after service.

At the outset then, we believe that it is important to correct the record:

- ODNI has complied fully with all applicable law. We reiterate the full explanation provided in our September 13 letter, which I attach here.

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- The DNI believes strongly in the role of the ICIG and in the statutory provisions that encourage Federal employees and government contractors to report in good faith allegations of wrongdoing, in accordance with specific legal process. The DNI also takes seriously his obligation to protect whistleblowers from retaliation and pledges to continue to do so. The complainant here raised a matter with the ICIG. The ICIG has protected the complainant's identity from others within ODNI, and we will not permit the complainant to be subject to any retaliation or adverse consequence based upon his or her communicating the complaint to the ICIG.
- That said, the complaint forwarded to the ICIG does not meet the definition of "urgent concern" under 50 U.S.C. § 3033(k)(5). That definition concerns serious allegations relating to "the funding, administration or operation of **an intelligence activity within the responsibility and authority**" of the DNI. This complaint, however, concerned conduct by someone outside the Intelligence Community and did not relate to any "intelligence activity" under the DNI's supervision. Because the complaint was determined not to be an "urgent concern," the law did not require that the DNI forward the complaint to the Intelligence Committees.
- ODNI fully consulted with the ICIG during this process, and the DNI took no steps to prevent the ICIG from informing the Intelligence Committees of the existence of the complaint and the DNI's legal conclusion on this matter.

Notwithstanding that conclusion, as we explained last week, ODNI remains committed to working with the Committee to reach an acceptable accommodation, consistent with the established confidentiality interests of the Executive Branch. The complaint here involves confidential and potentially privileged matters relating to the interests of other stakeholders within the Executive Branch. Any decision by the DNI concerning potential accommodations of the Committee's requests will necessarily require appropriate consultations. While we are seeking to expedite consideration of the Committee's request, it will simply not be possible for the DNI to complete those consultations by this afternoon, which is less than two business days after we received the subpoena.

We also believe that it would be premature, at this juncture, for the Committee to expect for the DNI to appear on Thursday at a congressional hearing. Given the pressing responsibilities to which the DNI is devoted this week, he is not available on such short notice. We also believe that a hearing would not be a productive exercise while the ODNI remains engaged in deliberations over the appropriate response. We hope to quickly complete consultations to determine whether and to what extent we may be able to accommodate the Committee's request.

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We appreciate HPSCI's interest and support in this matter, and expect to provide a further response to the subpoena as soon as possible.

Respectfully,



Jason Klitenic
General Counsel

cc: Devin Nunes, Ranking Member

Attachment

UNCLASSIFIED



~~TOP SECRET~~ [REDACTED]

U.S. Department of Justice

Office of Legal Counsel

Office of the Assistant Attorney General

Washington, D.C. 20530

September 3, 2019

**MEMORANDUM FOR JASON KLITENIC
GENERAL COUNSEL, OFFICE OF
THE DIRECTOR OF NATIONAL INTELLIGENCE**

*Re: "Urgent Concern" Determination
by the Inspector General of the Intelligence Community*

(TS/[REDACTED]) On August 26, 2019, the Inspector General of the Intelligence Community ("ICIG") forwarded to the Acting Director of National Intelligence ("DNI") a complaint from an employee within the intelligence community. The complainant alleged that unnamed "White House officials" had expressed concern that during a July 25, 2019 phone call, President Trump had sought to pressure the Ukrainian president to pursue investigations that might have the effect of assisting the President's re-election bid. According to the ICIG, such a request could be viewed as soliciting a foreign campaign contribution in violation of the campaign-finance laws. See Letter for Joseph Maguire, Acting Director of National Intelligence, from Michael K. Atkinson, Inspector General of the Intelligence Community at 3 (Aug. 26, 2019) ("ICIG Letter"). In the ICIG's view, the complaint addresses an "urgent concern" for purposes of triggering statutory procedures that require expedited reporting of agency misconduct to the congressional intelligence committees. Under the applicable statute, if the ICIG transmits such a complaint to the DNI, the DNI has seven days to forward it to the intelligence committees. See 50 U.S.C. § 3033(k)(5)(C).

(TS/[REDACTED]) The complaint does not arise in connection with the operation of any U.S. government intelligence activity, and the alleged misconduct does not involve any member of the intelligence community. Rather, the complaint arises out of a confidential diplomatic communication between the President and a foreign leader that the intelligence-community complainant received secondhand. The question is whether such a complaint falls within the statutory definition of "urgent concern" that the law requires the DNI to forward to the intelligence committees. We conclude that it does not. The alleged misconduct is not an "urgent concern" within the meaning of the statute because it does not concern "the funding, administration, or operation of an intelligence activity" under the authority of the DNI. *Id.* § 3033(k)(5)(G)(i). That phrase includes matters relating to intelligence activities subject to the DNI's supervision, but it does not include allegations of wrongdoing arising outside of any intelligence activity or outside the intelligence community itself.

Classified By: [REDACTED]
Derived From: [REDACTED]
Declassify On: [REDACTED]

~~TOP SECRET~~ [REDACTED]

(U) Our conclusion that the “urgent concern” requirement is inapplicable does not mean that the DNI or the ICIG must leave such allegations unaddressed. To the contrary, the ICIG statute, 50 U.S.C. § 3033(k)(6), makes clear that the ICIG remains subject to 28 U.S.C. § 535, which broadly requires reporting to the Attorney General of “[a]ny information, allegation, matter, or complaint witnessed, discovered, or received in a department or agency . . . relating to violations of Federal criminal law involving Government officers and employees.” 28 U.S.C. § 535(b). Accordingly, should the DNI or the ICIG receive a credible complaint of alleged criminal conduct that does not involve an “urgent concern,” the appropriate action is to refer the matter to the Department of Justice, rather than to report to the intelligence committees under section 3033(k)(5). Consistent with 28 U.S.C. § 535, the ICIG’s letter and the attached complaint have been referred to the Criminal Division of the Department of Justice for appropriate review.

I.

(TS/[REDACTED]) An “employee of an element of the intelligence community” (or an intelligence-community contractor) “who intends to report to Congress a complaint or information with respect to an urgent concern may report such complaint or information to the” ICIG. 50 U.S.C. § 3033(k)(5)(A).¹ On August 12, 2019, the Office of the ICIG received a complaint purporting to invoke this provision. The complainant alleged that he or she had heard reports from “White House officials” that in the course of a routine diplomatic communication between President Trump and Ukrainian President Volodymyr Zelenskyy, President Trump had “sought to pressure the Ukrainian leader to take actions to help the President’s 2020 reelection bid.” ICIG Letter at 3 (quoting the complainant’s letter). Specifically, the complainant allegedly heard that the President had requested that the Ukrainian government investigate the activities of one of the President’s potential political rivals, former Vice President Joseph Biden, and his son, Hunter Biden. The complainant also allegedly heard that the President had requested Ukrainian assistance in investigating whether Russian interference in the 2016 U.S. presidential election originated in Ukraine, and that Ukrainian investigators meet with the President’s personal lawyer, Rudolph Giuliani, as well as Attorney General William Barr regarding these matters. The complainant described this communication as arising during a scheduled call with the foreign leader that, consistent with usual practice, was monitored by approximately a dozen officials in the White House Situation Room. Having heard about the President’s reported statements, the complainant expressed an intent to report this information to the intelligence committees.

(TS/[REDACTED]) When the ICIG receives a complaint about an “urgent concern,” the statute provides that the ICIG then has 14 days to “determine whether the complaint or information appears credible.” 50 U.S.C. § 3033(k)(5)(B). The ICIG determined that the complaint here involved an “urgent concern” under section 3033(k)(5) and that it appeared credible. *See* ICIG

¹ (U) Section 8H of the Inspector General Act of 1978 (“IG Act”), 5 U.S.C. App, parallels the urgent-concern provision of the ICIG statute, 50 U.S.C. § 3033(k)(5), and appears to provide another pathway to report an urgent concern to the ICIG or an appropriate inspector general. Because the complainant and the ICIG in this instance invoked only section 3033(k)(5), we address that provision in our opinion, but as discussed below, the DNI’s reporting obligation would be the same under either provision. *See infra* Part II.A & n.6.

Letter at 5. As relevant here, the statutory definition of an “urgent concern” includes “[a] serious or flagrant problem, abuse, [or] violation of law . . . relating to the funding, administration, or operation of an intelligence activity within the responsibility and authority of the Director of National Intelligence involving classified information.” 50 U.S.C. § 3033(k)(5)(G)(i). According to the ICIG, the President’s actions could involve a “serious or flagrant problem,” “abuse,” or violation of law, and the ICIG observed that federal law prohibits any person from soliciting or accepting a campaign contribution or donation from a foreign national. ICIG Letter at 3; *see, e.g.*, 52 U.S.C. § 30121(a).² The ICIG further noted that “alleged conduct by a senior U.S. public official to seek foreign assistance to interfere in or influence a Federal election” could “potentially expose [the official] to serious national security and counterintelligence risks.” ICIG Letter at 3. Although the ICIG’s preliminary review found “some indicia of an arguable political bias on the part of the Complainant in favor of a rival political candidate,” the ICIG concluded that the complaint’s allegations nonetheless appeared credible. *Id.* at 5.

(U) The ICIG concluded that the matter concerns an intelligence activity within the DNI’s responsibility and authority. He reasoned that the DNI is “the head of the Intelligence Community,” “act[s] as the principal adviser . . . for intelligence matters related to national security,” and oversees the National Intelligence Program and its budget. *Id.* at 4 (internal quotation marks omitted). In addition, the intelligence community, under the DNI’s direction, “protect[s] against intelligence activities directed against the United States,” including foreign efforts to interfere in our elections. *Id.* (internal quotation marks and ellipsis omitted).³ The ICIG also found it relevant that the President has directed the DNI to issue a report, within 45 days of a federal election, assessing any information indicating that a foreign government interfered in that election. *Id.* at 4 n.14; *see* Exec. Order No. 13848, § 1(a) (Sep. 12, 2018). For these reasons, the ICIG concluded that the complaint involves an intelligence activity within the responsibility and authority of the DNI. ICIG Letter at 5.⁴ He thus transmitted the complaint to the DNI on August 26, 2019.

² (TS [REDACTED]) The ICIG determined that the allegation “appears credible” without conducting any detailed legal analysis concerning whether the allegations, if true, would amount to an unlawful solicitation of a campaign contribution. *See* ICIG Letter at 5. We likewise do not express a view on the matter in this opinion.

³ (TS [REDACTED]) The ICIG also noted that the complainant alleged that “officials from the Office of Management and Budget” had informed the “interagency” that “the President had issued instructions to suspend all security assistance to Ukraine,” and that “there might be a connection” between the President’s call with the Ukrainian president and this action. ICIG Letter at 4 n.12. The ICIG suggested that if the allegedly improper motives could be substantiated, then this decision “might implicate the Director of National Intelligence’s responsibility and authority with regard to implementing the National Intelligence Program and/or executing the National Intelligence Program budget.” *Id.* However, the ICIG did not further explain what role the DNI had in connection with Ukraine security assistance, how an alleged direction from the President would implicate the DNI’s performance of his responsibilities, or whether an allegation of improper motive appeared credible.

⁴ (TS [REDACTED]) The complainant also alleged that unnamed officials within the Executive Office of the President had attempted to restrict access to records of the President’s call with the Ukrainian president by placing the transcript into a computer system managed by the National Security Council Directorate for Intelligence Programs that was reserved for codeword-level intelligence programs. The complainant stated that some officials at the White House had advised that this action may have been an abuse of the system, but the ICIG did not discuss this allegation in concluding that the complaint stated an urgent concern.

II.

(U) You have asked whether the DNI has a statutory obligation to forward the complaint to the intelligence committees. We conclude that he does not. To constitute an "urgent concern," the alleged misconduct must involve "the funding, administration, or operation of an intelligence activity within the responsibility and authority" of the DNI. 50 U.S.C. § 3033(k)(5)(G)(i). Similar to other aspects of the ICIG's responsibilities, the urgent-concern provision permits employees to bring to the intelligence committees' attention credible allegations of serious abuses arising from within the U.S. intelligence community.⁵ This provision, however, does not cover every alleged violation of federal law or other abuse that comes to the attention of a member of the intelligence community. Where, as here, the report concerns alleged misconduct by someone from outside the intelligence community, separate from any "intelligence activity" within the DNI's purview, the matter is not an "urgent concern" under the statute.

A.

(U) Congress has specified certain procedures by which an intelligence-community employee may submit a complaint to Congress. Those procedures, which involve the ICIG, require that the subject of the complaint present an "urgent concern." In relevant part, an "urgent concern" is:

A serious or flagrant problem, abuse, violation of law or Executive order, or deficiency relating to *the funding, administration, or operation of an intelligence activity* within the responsibility and authority of the Director of National Intelligence involving classified information, but does not include differences of opinions concerning public policy matters.

50 U.S.C. § 3033(k)(5)(G)(i) (emphasis added). The Inspector General Act contains a parallel provision that applies to complaints submitted to inspectors general within the intelligence community. See IG Act § 8H(i)(1)(A), 5 U.S.C. App. ("A serious or flagrant problem, abuse, violation of law or Executive order, or deficiency relating to *the funding, administration, or operations of an intelligence activity* involving classified information, but does not include differences of opinions concerning public policy matters." (emphasis added)).⁶

⁵ (U) We have recognized constitutional concerns with statutory requirements that subordinate executive branch officials disclose classified information to congressional committees. See, e.g., *Whistleblower Protections for Classified Disclosures*, 22 Op. O.L.C. 92, 100 (1998). In addition, the materials here concern diplomatic communications, and as Attorney General Janet Reno recognized, "[h]istory is replete with examples of the Executive's refusal to produce to Congress diplomatic communications and related documents because of the prejudicial impact such disclosure could have on the President's ability to conduct foreign relations." *Assertion of Executive Privilege for Documents Concerning Conduct of Foreign Affairs with Respect to Haiti*, 20 Op. O.L.C. 5, 6 (1996) (opinion of Attorney General Janet Reno). Addressing the statutory question in this opinion, however, does not require us to consider constitutional limits on congressional reporting requirements.

⁶ (U) The definition of "urgent concern" in the IG Act is not limited to intelligence activities that are specifically "within the responsibility of the" DNI because the complaint procedures in section 8H are written to apply to multiple inspectors general within the intelligence community. See IG Act § 8H(a)(1)(A)-(D), 5 U.S.C.

(U) That definition undergirds the urgent-concern framework that applies when “[a]n employee of an element of the intelligence community . . . intends to report to Congress a complaint or information with respect to an urgent concern.” 50 U.S.C. § 3033(k)(5)(A). The provision contemplates, as relevant here, that the employee first “report[s] such complaint or information to the [ICIG].” *Id.* The ICIG then has 14 days to evaluate the credibility of the complaint “under subparagraph A” and determine whether to transmit it to the DNI. *Id.* § 3033(k)(5)(B). If the ICIG transmits the complaint to the DNI “under subparagraph B,” then the DNI “shall, within 7 calendar days of such receipt, forward such transmittal to the congressional intelligence committees, together with any comments the [DNI] considers appropriate.” *Id.* § 3033(k)(5)(C).

(U) Each of those steps builds on the previous one, but they must all rest on a sound jurisdictional foundation. If the complaint does not involve an “urgent concern,” as defined in the statute, then the remaining procedures are inapplicable. When the ICIG receives a complaint that is not an “urgent concern,” then he has not received a report “under subparagraph (A)” and section 3033(k)(5)(B) does not trigger a reporting obligation. And when the DNI receives a transmittal that does not present an urgent concern, then the DNI is not required to forward it to the congressional committees, because the complaint is not one “under subparagraph (B).” *Id.* § 3033(k)(5)(C).

B.

(TS/[REDACTED]) The complainant describes a **hearsay report** that the President, who is not a member of the intelligence community, abused his authority or acted unlawfully in connection with **foreign diplomacy**. In the ICIG’s view, those allegations fall within the urgent-concern provision because the DNI has operational responsibility to prevent election interference.⁷ But even if so, it does not follow that the alleged misconduct by the President concerns “the funding, administration, or operation of an intelligence activity within the responsibility and authority” of

App. (including separate provisions for the Inspectors General for the Department of Defense, for the Intelligence Community, for the Central Intelligence Agency, and for the Department of Justice).

⁷ (U) The ICIG cites no statute or executive order charging the DNI with operational responsibility for preventing foreign election interference. The DNI serves as the head of the intelligence community, the **principal intelligence adviser to the President**, and the official responsible for supervising the National Intelligence Program, who sets general objectives, priorities, and policies for the intelligence community. 50 U.S.C. §§ 3023(b), 3024(f)(1)(A), (f)(3)(A). The DNI thus surely has responsibility to coordinate the activities of the intelligence community and the provision of intelligence to the President and other senior policymakers concerning foreign intelligence matters. But the complaint does not suggest misconduct by the DNI or any of his subordinates in connection with their duties. Moreover, **even if the DNI had general oversight responsibility for preventing foreign election interference, the DNI’s oversight responsibilities do not appear to extend to the President.** By statute, the DNI exercises his authority subject to the direction of the President, *see id.* §§ 3023(b), 3024(f)(1)(B)(i), (j), and the statute’s definition of “intelligence community” conspicuously omits the Executive Office of the President, *see id.* § 3003(4). The DNI’s charge to “ensure compliance with the Constitution and laws of the United States” applies to overseeing the “Central Intelligence Agency” and “other elements of the intelligence community.” *Id.* § 3024(f)(4). Nevertheless, we need not reach any definitive conclusion on these matters, because even if foreign election interference would generally fall within the DNI’s purview, the complaint does not concern an “intelligence activity within the responsibility and authority” of the DNI under section 3033(k)(5).

the DNI because the allegations do not arise in connection with any such intelligence activity at all. 50 U.S.C. § 3033(k)(5)(G)(i). The complaint therefore does not state an "urgent concern."

(U) We begin with the words of the statute. Section 3033(k)(5)(G) does not expressly define "intelligence activity," but the meaning of the phrase seems clear from context. The "intelligence activities" in question are ones over which the DNI has "responsibility and authority," which points to intelligence-gathering, counterintelligence, and intelligence operations undertaken by the intelligence community under the supervision of the DNI. *Id.* The National Security Act of 1947 commonly refers to "intelligence activities" as authorized activities undertaken by the intelligence community. Section 3024(c)(4), for instance, requires the DNI to "ensure the effective execution of the annual budget for intelligence and intelligence-related activities." *Id.* § 3024(c)(4). Section 3023(b)(3) authorizes the DNI to "oversee and direct the implementation of the National Intelligence Program," *id.* § 3023(b)(3), which itself is defined to include "all programs, projects, and activities of the intelligence community," *id.* § 3003(6) (emphasis added). Section 3094 conditions the use of appropriated funds "available to an intelligence agency . . . for an intelligence or intelligence-related activity," and defines an "intelligence agency" as "any department, agency, or other entity of the United States involved in intelligence or intelligence-related activities." *Id.* § 3094(a), (e)(1) (emphasis added). Sections 3091 and 3092 similarly contemplate the reporting to Congress of "intelligence activities" carried out by the U.S. government. *See id.* §§ 3091(a), 3092(a). In addition, in establishing the Office of the DNI, Congress was aware of the long-standing definition set forth in Executive Order 12333, which defines "intelligence activities" to "mean[] all activities that elements of the Intelligence Community are authorized to conduct pursuant to this order." Exec. Order No. 12333, § 3.5(g) (Dec. 4, 1981) (as amended). The "urgent concern" statute thus naturally addresses complaints arising out of the "funding, administration, or operation" of activities carried out by the intelligence community.

(U) This meaning of "intelligence activities" is also consistent with the ICIG's authorities under other portions of section 3033. Just as an "urgent concern" must arise in connection with "an intelligence activity within the responsibility and authority" of the DNI, the ICIG's jurisdiction and reporting obligations are keyed to those "programs and activities within the responsibility and authority of" the DNI. 50 U.S.C. § 3033(b)(1), (b)(3)(A), (b)(4)(A), (d)(1), (e)(1), (e)(2), (g)(2)(A), (k)(1)(B)(vii), (k)(2)(A). That language parallels the language that commonly defines the purview of inspectors general. *See IG Act* § 4(a)(1), 5 U.S.C. App. (generally authorizing inspectors general to conduct investigations "relating to the programs and operations" of the agency). Such language has been consistently construed to permit inspectors general to oversee an agency's implementation of its statutory mission, but not to extend to performing the agency's mission itself. *See Inspector General Authority to Conduct Regulatory Investigations*, 13 Op. O.L.C. 54, 58-67 (1989).

(U) Consistent with that view, the D.C. Circuit concluded that the Department of Transportation's inspector general exceeded his authority when he "involved himself in a routine agency investigation" as opposed to "an investigation relating to abuse and mismanagement in the administration of DOT or an audit of agency enforcement procedures or policies." *Truckers United for Safety v. Mead*, 251 F.3d 183, 189-90 (D.C. Cir. 2001). The Fifth Circuit reached a similar conclusion regarding an inspector general's authority to engage in regulatory compliance

investigations, expressly endorsing the approach taken by this Office's 1989 opinion. See *Burlington N. R.R. Co. v. Office of Inspector General*, 983 F.2d 631, 642-43 (5th Cir. 1993). Similarly here, the ICIG has the authority to review the DNI's exercise of his responsibility to coordinate and oversee the activities of the intelligence community—including, for instance, reviewing whether the DNI has appropriately discharged any authorities concerning preventing foreign election interference. But the ICIG does not himself have the authority to investigate election interference by foreign actors, because such an investigation would not involve an activity or program of the intelligence community under the DNI's supervision. We do not believe that the subjects of "urgent concern" reports to the ICIG are broader than other matters that fall within the investigative and reporting authority of the ICIG.

(U) In establishing the office of the ICIG, Congress created an accountable and independent investigator who, subject to the general supervision of the DNI, would review the activities of members of the intelligence community. The ICIG is charged with "conduct[ing] independent investigations, inspections, audits, and reviews on programs and activities within the responsibility and authority" of the DNI. 50 U.S.C. § 3033(b). The ICIG is also charged with overseeing and uncovering wrongdoing in the operations of programs under the DNI's supervision. But the ICIG's responsibility "to promote economy, efficiency, and effectiveness" in the administration of such programs, and "to prevent and detect fraud and abuse," *id.* § 3033(b)(2), must necessarily concern the programs themselves. Although the DNI and the intelligence community collect intelligence against foreign threats, the ICIG's responsibility is to watch the watchers in the performance of their duties, not to investigate and review matters relating to the foreign intelligence threats themselves.⁸

(TS) [REDACTED] Throughout section 3033, the assumption, sometimes explicit and sometimes tacit, is that the ICIG's authority extends to the investigation of U.S. government intelligence activities, not to those foreign threats that are themselves the concerns of the intelligence community. Thus, the ICIG has a statutory right of "access to any employee, or any employee of a contractor, of any element of the intelligence community." *Id.* § 3033(g)(2)(B). Similarly, the ICIG should inform the congressional intelligence committees when an investigation "focuses on any current or former *intelligence community official* who" holds certain high-ranking positions, *id.* § 3033(k)(3)(A)(ii) (emphasis added), or when a matter requires a report to the Department of Justice of "possible criminal conduct by [such] a current or former [intelligence-community] official," *id.* § 3033(k)(3)(A)(iii). The ICIG's reporting responsibilities, however, do not concern officials outside the intelligence community, let alone the President.

⁸ (U) To the extent relevant, the legislative history and statutory findings confirm that the provision relates only to problems within the intelligence community. In giving the ICIG jurisdiction to investigate "intelligence activities" within the DNI's purview, Congress explained that it "believe[d] that an IC/IG with full statutory authorities and independence can better ensure that the ODNI identifies problems and deficiencies *within* the Intelligence Community." H. Rep. No. 111-186, at 70-71 (2009) (emphasis added). Similarly, in establishing the "urgent concern" procedures in the IG Act, Congress made clear that the provision was designed to address "wrongdoing *within* the Intelligence Community." Intelligence Community Whistleblower Protection Act of 1998, Pub. L. No. 105-272, 112 Stat. 2413, § 701(b) (emphasis added).

(TS, [REDACTED]) In this case, the conduct that is the subject of the complaint does not relate to an "intelligence activity" under the DNI's supervision. The complainant alleges that the President made an inappropriate or potentially unlawful request on a routine diplomatic call with a foreign leader. But the President is not a member of the intelligence community, *see id.* § 3003(4), and his communication with the Ukrainian president involved no intelligence operation or other activity aimed at collecting or analyzing foreign intelligence. To the extent that the complaint warrants further review, that review falls outside section 3033(k)(5), which does not charge the ICIG (let alone every intelligence-community employee) with reporting on every serious allegation that may be found in a classified document. To the contrary, where the ICIG learns of a credible allegation of a potential criminal matter outside the intelligence community, the ICIG should refer the matter to the Department of Justice, consistent with 28 U.S.C. § 535.

(TS, [REDACTED]) We recognize that conduct by individuals outside of the intelligence community, or outside the government, can sometimes relate to "the funding, administration, or operation of an intelligence activity." 50 U.S.C. § 3033(k)(5)(G)(i). For instance, if an alleged violation of law involves a non-agency party who conspired with a member of the intelligence community or who perpetrated a fraud on an agency within the DNI's authority, that may well relate to "the funding, administration, or operation of an intelligence activity" because it would directly impact the operations or funding of the agency or its personnel. In 1990, then-Acting Deputy Attorney General William Barr acknowledged similar instances in which inspectors general could investigate "external parties." Letter for William M. Diefenderfer, Deputy Director, Office of Management and Budget, from William P. Barr, Acting Deputy Attorney General at 2-3 (July 17, 1990). None of those circumstances, however, is present here. The alleged conduct at issue concerns actions by the President arising out of confidential diplomatic communications with the Ukrainian president. Such matters simply do not relate to "the funding, administration, or operation of an intelligence activity within the responsibility and authority" of the DNI. 50 U.S.C. § 3033(k)(5)(G)(i).

III.

(U) For the reasons set forth above, we conclude that the complaint submitted to the ICIG does not involve an "urgent concern" as defined in 50 U.S.C. § 3033(k)(5)(G). As a result, the statute does not require that the DNI transmit the complaint to the intelligence committees. Consistent with 28 U.S.C. § 535, however, the ICIG's letter and the attached complaint have been referred to the Criminal Division of the Department of Justice for appropriate review.

(U) Please let us know if we may be of further assistance.



STEVEN A. ENGEL
Assistant Attorney General

Timeline: Trump, Giuliani, Biden, and Ukrainegate (updated)

by Viola Gienger and
Ryan Goodman

September 26, 2019

*(Editor's note: The following timeline, originally published on Sept. 24, 2019, has been updated as of Sept. 26-27, 2019, to add new items which are **indicated in red**.)*

A months-long campaign by President Donald Trump and his personal lawyer Rudy Giuliani to reportedly pressure the Ukraine government to investigate former Vice President Joe Biden, Trump's potential rival in the 2020 election, has gripped the nation's capital. The situation escalated following the Sept. 13 **revelation** of an intelligence community whistleblower complaint reportedly related to a "**series of events**" including a phone call between President Trump and Ukraine's President Volodymyr Zelenskyy.

As these events unfold, the aim of the chronology below is to provide a useful reference for the context and timeline on Ukraine, the roles of Joe Biden and his son Hunter there, and Trump and Giuliani's efforts to persuade Ukraine to pursue investigations against them. We attempt to present an accurate picture of events, favorable and unfavorable to the players involved. Our assessments and views of the available public information are reflected in two pieces: Viola Gienger's "**Trump and Giuliani's Quest for Fake Ukraine 'Dirt' on Biden: An Explainer**" and our forthcoming, "**The Swiftboating of Joe Biden.**"

This chronology will be updated as new information becomes available.

November 2013 – Political revolution in Ukraine

Tens of thousands of Ukrainians **begin protests** in central Kyiv's Independence Square (the "Maidan") against the government of then-President Viktor Yanukovich. The protesters' main concern is the government's decision to abandon a planned "association agreement" with the European Union and to instead accept assistance from Russia. The protests grew to encompass broader concerns, especially about rampant corruption in

Ukraine. The movement became known as the “Maidan Revolution” or the “Revolution of Dignity,” referring to the daily indignities Ukrainians suffered as a result of government corruption and ineptitude.

February 2014 – Pro-Russian government falls

Yanukovych’s security forces crack down on the demonstrators, killing more than 70 civilians and spurring a political backlash. The president, who had been in office since February 2010, flees to Russia.

March 2014 – Russian military invasion

Russian forces invade Crimea and stage an illegal and dubious referendum and declare their annexation of the peninsula. That month, the United Nations General Assembly [votes](#) to condemn Russian actions, including the referendum.

April 2014 – Russian and pro-Russian forces invade the regions of Donetsk and Luhansk in eastern Ukraine and take control, starting a war that continues today and has killed more than 13,000 people.

April 2014 – Hunter Biden joins Ukrainian firm Burisma

Joe Biden’s younger son, Hunter Biden, [joins](#) the board of Burisma Holdings, the [largest](#) private oil and gas extracting company in Ukraine, controlled by founder Mykola Zlochevskiy, who had served as a Cabinet minister under former pro-Russian Presidents Leonid Kuchma and Yanukovych. Both administrations had been suspected of corruption, and once they were ousted, successor administrations pledging reforms targeted previous officials, including Zlochevskiy, for investigation. Allegations against Zlochevskiy center on the funding schemes he used to form the company in 2002. But cases against him stall in each instance.

An American business partner of Hunter Biden, Devon Archer, also joins the board. The company issues a press release about the Biden appointment in May (see below). The appointment [draws criticism](#) for the [potential perception of a conflict of interest](#) with Vice President Biden’s role as the White House’s point man on Ukraine. [News reports](#) later in 2014 reveal that Hunter Biden had been discharged from the Navy in February for testing positive for cocaine (clearly just months before the Burisma board appointment).

April 16, 2014 – U.K. investigates Burisma owner Mykola Zlochevskiy

The U.K.'s Serious Fraud Office [blocks accounts](#) of Burisma's majority shareholder, Mykola Zlochevskiy. A British court conducts a hearing on Dec. 3-5, 2014, and unblocks the accounts in a Jan. 21, 2015 judgment, ([full text](#)), finding that none of the evidence "establishes reasonable grounds for a belief that his assets were unlawfully acquired as a result of misconduct in public office." (In September 2015, U.S. Ambassador to Ukraine Geoffrey Pyatt heavily criticizes the Office of Prosecutor General Viktor Shokin in a public speech for not cooperating sufficiently with and even undermining the British investigation. See below.)

May 12, 2014 – Burisma Holdings issues a [press release](#) saying Hunter Biden has joined its board, and that he will be "in charge of the Holdings' legal unit and will provide support for the company among international organizations." The release cites his then-current positions as counsel to New York-based law firm Boies, Schiller & Flexner LLP and co-founder and a managing partner of investment advisory firm Rosemont Seneca Partners, where he also served as board chairman.

May 25, 2014 – Chocolate and confectionary magnate/oligarch Petro Poroshenko wins the presidency in Ukraine in an election to succeed Yanukovych on a platform of turning Ukraine back to the West. Poroshenko previously had served as foreign minister and minister of trade and economic development.

June 4, 2019 – Jared Kushner, President Trump's son-in-law and senior adviser, is [seated next to Zelenskyy](#) at a [dinner](#) in Brussels hosted by U.S. Ambassador to the European Union Gordon Sondland, part of an early Embassy [celebration](#) of the U.S. Independence Day. Kushner had dropped off from Trump's visit to the U.K. to attend the occasion in Brussels.



June 7, 2014 – Petro Poroshenko takes office as president of Ukraine.

June 19, 2014 – The Ukrainian Parliament [approves](#) Poroshenko's appointment of former law enforcement officer and member of Parliament Vitaly Yarema as prosecutor general.

Aug. 5, 2014 – Ukraine investigation of Burisma

Ukrainian Prosecutor General Vitaly Yarema opens an investigation of Burisma owner Mykola Zlochevskiy on suspicion of “unlawful enrichment.” (The investigation is referenced in the January 2015 U.K. [court judgment](#), which concludes that the Ukrainian probe might have been started as a result of a misinterpretation of the British account freeze.) Zlochevskiy's American lawyer, John Buretta, a former U.S. deputy assistant attorney general, says in a 2017 [Q&A on the Burisma website](#) that a court in Kyiv ordered the case closed in September 2016 because no evidence of wrongdoing had been presented. While suspicions remain over how Zlochevskiy obtained his wealth and what happened to taxpayer money while he held public office, the British judge in the January 2015 U.K. judgment observed, “Allegations of corruption against political opponents appear to have been a feature of Ukrainian political life at this time.”

Oct. 14, 2014 – Ramping up Ukraine anti-corruption forces

Ukraine's Parliament passes a law establishing the [National Anti-Corruption Bureau \(NABU\)](#), a priority of anti-corruption campaigners who'd helped lead the revolution and of the U.S. government (led by Biden) and other international backers of Ukraine. The bureau, which is to include a special prosecutor for certain corruption cases, was created in part because of the recognized ineffectiveness and corruption of the Prosecutor General's Office and the country's judiciary. The country's anti-corruption plans also include a special High Anti-Corruption Court, which Poroshenko and Parliament slow-rolled until domestic and foreign advocates again exerted pressure [over the past year](#). In fact, [the U.S. and Europe required the Ukrainian government to fund NABU](#) in exchange for financial aid. NABU's early years are an uphill battle in the face of documented efforts by Parliament and the Prosecutor General's Office to undermine its work.

NABU later becomes a target of Giuliani's (see Aug. 14, 2016 item below).

Feb. 10, 2015 – Viktor Shokin [takes office](#) as Ukraine's prosecutor general, replacing Yarema.

Sept. 24, 2015 – U.S. Ambassador to Ukraine Geoffrey Pyatt [excoriates](#) Prosecutor General Shokin's office for stymying anti-corruption investigations, including those involving Burisma

Pyatt's speech was part of a regular drumbeat by U.S. and other Western leaders, including Vice President Biden, and a swath of Ukrainian civil society seeking to pressure President Poroshenko to force his officials, especially in the Prosecutor General's Office (PGO) to crack down *more*, not less, on corruption. "Corruption kills," Pyatt said in the address to the Odesa Financial Forum for business leaders. "It kills productivity and smothers inspiration. Ideas are lost in its shadow. Innovation and entrepreneurship lag under the weight of bribery, back room dealing, and bullying."

While giving Shokin a last chance to shape up (Pyatt says, "We want to work with Prosecutor General Shokin so the PGO is leading the fight against corruption."), the ambassador criticizes "officials at the PGO's office" for not providing documents that were needed for the British investigation of Burisma owner Zlochevskiy and effectively allowing Zlochevskiy to transfer \$23 million of what Pyatt says were Ukrainian taxpayer assets to Cyprus. In other words, Pyatt is critical of the prosecutor's office for *not* aiding in investigations of Burisma's owner, which was in line with Biden's criticism that the

office was blocking corruption investigations. **Pyatt specifically called for the investigation and removal of officials who were involved in the failure to help the British authorities investigate Zlochevskiy:**

“We have learned that there have been times that the PGO not only did not support investigations into corruption, but rather undermined prosecutors working on legitimate corruption cases.

For example, in the case of former Ecology Minister Mykola Zlochevsky [cq], the U.K. authorities had seized 23 million dollars in illicit assets that belonged to the Ukrainian people. Officials at the PGO’s office were asked by the U.K to send documents supporting the seizure.

Instead they sent letters to Zlochevsky’s attorneys attesting that there was no case against him. As a result, the money was freed by the U.K. court and shortly thereafter the money was moved to Cyprus.

The misconduct by the PGO officials who wrote those letters should be investigated, and those responsible for subverting the case by authorizing those letters should – at a minimum – be summarily terminated.”

[Full text](#) of Ambassador Pyatt’s speech.



Oct. 8, 2015 – U.S. Assistant Secretary of State Victoria Nuland continues the drumbeat on the need for stepped-up anti-corruption efforts in Ukraine, [telling](#) the Senate Foreign Relations Committee in [testimony](#) that “the Prosecutor General’s Office (PGO) has to be reinvented as an institution that serves the citizens of Ukraine, rather than ripping them off.” She continues, “That means it must investigate and successfully prosecute corruption and asset recovery cases, including locking up dirty personnel in the PGO itself.”

Fall 2015 – Biden, along with the EU, publicly calls for ouster of Prosecutor General Shokin for failure to work on anti-corruption efforts.

John E. Herbst, U.S. Ambassador to Ukraine under George W. Bush, later [testified](#) before Congress:

“By late fall of 2015, the EU and the United States joined the chorus of those seeking Mr. Shokin’s removal as the start of an overall reform of the Procurator General’s Office. U.S. Vice President Joe Biden **spoke publicly** about this before and during his December visit to Kyiv.”

Dec. 8, 2015 – Vice President Biden makes a [speech](#) to Ukraine’s Parliament urging the country to step up anti-corruption measures.

In a speech covered widely in [news media](#), Biden implores Ukrainian lawmakers to move more quickly to fight the country’s “historic battle against corruption” and “make real the Revolution of Dignity.” (Many of the lawmakers themselves were former businessmen and suspected of corruption and therefore that much less interested in fighting graft.) He says, “The only thing worse than having no hope at all is having hopes rise and see them dashed repeatedly on the shoals of corruption...Not enough has been done yet.” Specifically citing Shokin’s Office of the General Prosecutor for lagging on corruption investigations, he continues:

“It’s not enough to set up a new anti-corruption bureau and establish a special prosecutor fighting corruption. The Office of the General Prosecutor desperately needs reform. The judiciary should be overhauled. The energy sector needs to be competitive, ruled by market principles — not sweetheart deals. It’s not enough to push through laws to increase transparency with regard to official sources of income. Senior elected officials have to remove all conflicts between their business interest and their government responsibilities. Every other democracy in the world — that system pertains.

Oligarchs and non-oligarchs must play by the same rules. They have to pay their taxes, settle their disputes in court — not by bullying judges. That’s basic. That’s how nations succeed in the 21st century.

Corruption siphons away resources from the people. It blunts the economic growth, and it affronts the human dignity. We know that. You know that. The Ukrainian people know that. When Russia seeks to use corruption as a tool of coercion, reform isn’t just good governance, it’s self-preservation. It’s in the national security interest of the nation

The United States is with you in this fight...We’ve stepped up with official assistance to help backstop the Ukrainian economy. We’ve rallied the international community to commit a total of \$25 billion in bilateral and multilateral financing to support Ukraine. It includes \$2 billion in U.S. loan guarantees and the possibility of more.

Yesterday I announced almost \$190 million in new American assistance to help Ukraine fight corruption, strengthen the rule of law, implement critical reform, bolster civil society, advance energy security. That brings our total of direct aid to almost \$760 million in direct assistance, in addition to loan guarantees since this crisis broke out. And that is not the end of what we’re prepared to do if you keep moving.

But for Ukraine to continue to make progress and to keep the support of the international community you have to do more, as well. The big part of moving forward with your IMF program — it requires difficult reforms.”

[Full text](#) of Biden's speech.



Jan. 21, 2016 – Vice President Biden meets with Ukrainian President Poroshenko and discusses “the need to continue to move forward on Ukraine’s anti-corruption agenda,” according to a [readout](#) on the website of the U.S. Embassy in Kyiv.

Feb. 11, 2016 – Vice President Biden speaks with Poroshenko by phone. A U.S. Embassy [statement](#) said the two agreed “that it is essential for Ukraine to continue to take action to root out corruption and implement reforms.”

Biden later boasts about the pressure he exerted on Ukraine during that time to address corruption. In a Jan. 23, 2018, Q&A following a speech at the [Council on Foreign Relations](#) (CFR) in Washington, Biden touts his tough stance with Ukraine in 2016. He says he told Ukrainian leaders that the U.S. would withhold \$1 billion in loan guarantees unless they fired Prosecutor General Shokin. President Trump and Rudy Giuliani have cited that boast repeatedly as proof that Biden admitted pushing for Shokin’s firing, even though Biden was calling for the prosecutor to be fired because he *wasn’t* pursuing corruption cases vigorously enough. In the CFR appearance, Biden makes the comments in the context of expressing his concern that Ukraine still was not getting tough enough on corruption. “I looked at them and said: I’m leaving in six hours. If the prosecutor is not fired, you’re not getting the money. Well, son of a bitch.

(Laughter.) He got fired. And they put in place someone who was solid at the time.” Biden continued, “So they made some genuine substantial changes institutionally and with people. But ... there’s now some backsliding.”

“The United States and other Western nations had for months called for the ousting of Mr. Shokin, who was widely criticized for turning a blind eye to corrupt practice,” the *New York Times* [reported](#) at the time.

Steven Pifer is a career foreign service officer who was ambassador to Ukraine under President Bill Clinton and deputy assistant secretary of state for European and Eurasian Affairs under President George W. Bush. He told [PolitiFact](#) that “virtually everyone” he knew in the U.S. government “felt that Shokin was not doing his job and should be fired. As far as I can recall, they all concurred with the vice president telling Poroshenko that the U.S. government would not extend the \$1 billion loan guarantee to Ukraine until Shokin was removed from office.”

Note: Investigation of Burisma laid dormant at the time

Vitaliy Kasko, a former deputy prosecutor general who had worked under Shokin and resigned in frustration at his stymying of corruption investigations, told Bloomberg News (in a May 2019 interview) that the office’s probe into Burisma Holdings had been [long dormant](#) by the time Joe Biden issued his ultimatum in 2016. “There was no pressure from anyone from the U.S. to close cases against” Burisma owner Zlochevskiy, Bloomberg quoted Kasko as saying. “It was shelved by Ukrainian prosecutors in 2014 and through 2015,” Kasko said.

“Shokin was not investigating. He didn’t want to investigate Burisma,” Daria Kaleniuk a leading Ukrainian anti-corruption advocate, [told](#) the *Washington Post*. “And Shokin was fired not because he wanted to do that investigation, but quite to the contrary, because he failed that investigation.”

See also entries above: At time of British investigation in 2014-2015, Shokin’s Office sent letters to Zlochevsky’s attorneys attesting that there was no case against him.

Feb. 16, 2016 – Prosecutor General Viktor Shokin resigns, then returns to office before finally being ousted

Ukrainian news media report on Feb. 16 that Viktor Shokin [resigned](#) as Prosecutor General after months of intense criticism for failing to adequately pursue any major corruption cases. But wait ... despite President Poroshenko's public call that day that Shokin resign and the apparent submission of a resignation letter on Feb. 19, [media](#) cited a prosecutor in Shokin's office on March 16 saying the chief prosecutor was back after a "long leave." Finally, on March 29, the Parliament [voted](#) overwhelmingly to approve Poroshenko's recommendation to dismiss Shokin.

The European Union [issued](#) a statement hailing his departure. The respected English-language *Kyiv Post* [writes](#), "By the end of his term, he was likely one of the most unpopular figures in Ukraine, having earned a bad reputation for inaction and obstructing top cases." The paper also says it "wasn't able to find any public comments that Shokin made about [Burisma] during his 14 months in office."

Feb. 18 and 19, 2016 – Vice President Biden speaks by phone with Ukrainian President Poroshenko. The Feb. 19 [U.S. Embassy statement](#) says Biden again urged the Ukrainian leader to "to accelerate Ukraine's efforts to fight corruption, strengthen justice and the rule of law, and fulfill its IMF requirements."

April 14, 2016 – Vice President Biden speaks with Ukrainian President Poroshenko by phone, [emphasizing](#) "the urgency of putting in place a new Prosecutor General who would bolster the agency's anti-corruption efforts and strongly support the work of its reformers." Biden does the same in a [call the same day](#) with newly elected Prime Minister Volodymyr Groysman.

May 12, 2016 – A new General Prosecutor

Yuriy Lutsenko, who had headed Poroshenko's political bloc in Parliament, [takes office](#) as prosecutor general, after Parliament changed the law to allow someone without a law degree and legal experience to hold the position. According to the *New York Times*, "Lutsenko initially took a hard line against Burisma."

Aug. 14, 2016 – Evidence surfaces of payments to Paul Manafort

Paul Manafort by this time was Trump's campaign chairman, and the evidence appeared to show off-the-books payments by the discredited, pro-Russian former Ukrainian President Yanukovich when Manafort served as his political consultant. The payments

were recorded in a “black ledger” of Yanukovych’s political party that was turned over to Ukraine’s National Anti-Corruption Bureau (NABU). On Aug. 19, 2016, days after the [New York Times](#) reported the story, Serhiy Leshchenko, a member of Ukraine’s Parliament who had been swept into office with the 2014 revolution, holds a news conference to discuss the ledger and criticize the payments to Manafort.

Rudy Giuliani has cited the revelations as evidence that certain Ukrainians, supported by the Obama administration at the time, were colluding with Hillary Clinton’s campaign to reveal information tainting Manafort and, by association, Trump, in order to influence the election. Giuliani in May 2019 [accused](#) Leshchenko personally on [Fox News](#) of colluding with Democrats.

Sept. 2016 – Case against Burisma closed

In a 2017 [Q&A on the Burisma website](#), Zlochevskiy’s American lawyer, John Buretta, a former U.S. deputy assistant attorney general, says that a court in Kyiv ordered a case closed in September 2016 because no evidence of wrongdoing had been presented.

June 8, 2017 – Giuliani meets with Ukrainian leaders

Giuliani, who has had business of his own in Ukraine in the past, meets with President Petro Poroshenko and Prosecutor General Lutsenko, among other officials, during a [visit to Kyiv](#), hosted by the foundation of billionaire Ukrainian metals magnate [Victor Pinchuk](#), for a lecture on democracy and the rule of law. The meetings are [cited](#) in the joint U.S. House committee investigation launched later in September 2019 (see below) into Trump and Giuliani’s efforts to pressure Ukraine.

July 25, 2017 – President Trump issues a public call for an investigation of the 2016 Manafort revelations in Ukraine

Trump [tweets](#) a reference to what he calls “Ukrainian efforts to sabotage Trump campaign — ‘quietly working to boost Clinton.’ So where is the investigation A.G.,” he writes, referencing then-Attorney General Jeff Sessions and tagging [Fox News](#) host Sean Hannity. The tweet was [referenced](#) in Special Counsel Robert Mueller’s report on possible obstruction of justice by the U.S. president to block the investigation into Trump

campaign collusion with Russia's 2016 election interference. It also is cited in the September 2019 joint U.S. House committee letter (see below) on the investigation into Trump and Giuliani's pressure campaign against Ukraine.

Fast forward to late 2018

Late 2018 — Two Soviet-born Florida businessmen, Lev Parnas and Igor Fruman, arrange a Skype call between Giuliani and Shokin, according to an investigation by the nonprofit Organized Crime and Corruption Reporting Project (OCCRP) published in *BuzzFeed News*. The two businessmen also connect Giuliani with then-Prosecutor General Lutsenko. Giuliani invites Lutsenko to his office in New York, a meeting they arrange for January.

January 2019 — Giuliani and Lutsenko meet in New York over the space of two days. They discuss “the Ukrainian political situation and the fight against corruption,” *Bloomberg News* reports, paraphrasing Lutsenko. “Giuliani asked him about investigations into the owner of Burisma, Mykola Zlochevsky, as well as whether the U.S. Ambassador to Ukraine, Marie Yovanovitch, was ‘not loyal to President Trump,’” the article says.

Mid-February 2019 — Giuliani meets with Lutsenko again in Warsaw, according to the OCCRP/BuzzFeed report.

March 20, 2019 – *The Hill*'s conservative opinion writer **John Solomon** publishes an [interview](#) with Ukrainian Prosecutor General Lutsenko, who by this point has been widely criticized as ineffective and likely corrupt.

Note: Solomon and *Fox News*'s Sean Hannity are among a constellation of conservative media figures who regularly help spread Trump and Giuliani's Biden and Manafort theories as well as other [right-wing conspiracy theories](#), such as [Uranium One](#), which have been debunked and shown to exclude vital information. Solomon was moved to the [opinion section](#) at *The Hill*, and announced Sept. 18, 2019, that he was [leaving](#) the publication.

The full video wasn't available at this publication, but the text accompanying it says Lutsenko alleged that U.S. Ambassador to Ukraine Marie Yovanovitch, who took office in August 2016, gave him a "do not prosecute" list at their first meeting. The State Department says the claim was "an outright fabrication." The article says Lutsenko was examining Ukrainian civil society activists who he suspected were misusing U.S. aid funding they had received, but he says Yovanovitch told him the U.S. Embassy is confident the funding was secure.

Lutsenko also reportedly says he would investigate the head of NABU for the 2016 Manafort disclosure. Ukraine expert Melinda Haring of the Atlantic Council [says](#) Lutsenko is "woefully unqualified (he doesn't have a law degree), [has dragged his feet](#) on every serious anti-corruption case since being installed, and protected his friends, including Poroshenko." She continues, "Sean Hannity made Solomon the star of his prime-time show that evening. Trump watches Hannity, reportedly speaks with him multiple times daily, and [tweeted](#) the title of Solomon's story. More than 25,000 retweets later, the Ukrainian collusion narrative went viral."

March 24, 2019 – Donald Trump Jr. [tweets criticism of U.S. Ambassador to Ukraine Yovanovitch](#), calling her a "joker" and linking to a conservative media outlet's article about calls for her ouster. The two incidents are part of a pattern of conservative attacks against the ambassador. Within less than two months, Yovanovitch is [recalled](#) to Washington.

March 31, 2019 — First round of Ukraine's presidential election, which results in runoff between Zelenskyy and Poroshenko scheduled for April 21.

April 1, 2019 – *The Hill* newspaper publishes another [article online](#) by the same conservative investigative columnist **John Solomon** that **advances the Trump-Giuliani story about Biden**. (See entry on March 20 about Solomon and conspiracy theories.) The article reports that Shokin had said in written answers to questions that he had planned an investigation of Burisma before he was fired, including questioning all executive board members. The article says Lutsenko, Shokin's successor, and "a case file" indicate that the Prosecutor General's Office had handled three cases related to Burisma, and that the "most prominent" case was transferred to the National Anti-Corruption Bureau of Ukraine (NABU), which Solomon describes suggestively as "closely aligned with the U.S."

Embassy in Kiev,” even though it had long been public knowledge that Western supporters of Ukraine and Ukrainian anti-corruption activists strongly backed the bureau. The article says NABU closed that case.

April 2019 – Hunter Biden leaves the board of Burisma Holdings, as his father announces his candidacy for the Democratic presidential nomination.

April 21, 2019 – New Ukrainian President elected on anti-corruption agenda

Volodymyr Zelenskyy is elected president of Ukraine, to succeed Petro Poroshenko. He ran on a “[zero tolerance](#)” anti-corruption agenda.

April 21, 2019 – First Trump-Zelenskyy Phone Call

President Trump calls to congratulate him, their first known direct communication. Trump “**urged Mr. Zelensky to coordinate with Mr. Giuliani and to pursue investigations of ‘corruption,’**” the *New York Times* reports (on Sept. 25, 2019).

April 25, 2019 – Joe Biden formally announces campaign for President.

April 25, 2019 – President Trump tells *Fox News*’s Sean Hannity that Attorney General Bill Barr is considering allegations that Ukrainians sought to help Hillary Clinton’s 2016 presidential campaign by revealing damaging information about Paul Manafort. “I would imagine [Barr] would want to see this. ... I would certainly defer to the attorney general, and we’ll see what he says about it,” Trump said. “He calls ’em straight” ([transcript](#)). *Fox News reports* that “Trump echoed his personal attorney Rudy Giuliani, who wrote on Twitter on Wednesday [April 24]: ‘Keep your eye on Ukraine.’”

On or about April 29, 2019 – “U.S. officials with direct knowledge of the situation” told the whistleblower that U.S. **Ambassador Yovanovitch was being “suddenly recalled” to Washington for “consultations” and “would most likely be removed from her position.” The **State Department announced on May 6 that she would be ending her assignment.** They said it was “as planned,” but in fact, her assignment had been curtailed because of Lutsenko’s allegations. Giuliani told a Ukrainian journalist in an interview published May 14 that Yovanovitch was “removed...because she was part of the efforts against the President,” the whistleblower wrote.**

Around the same time, the whistleblower writes that he “learned from a U.S. official that ‘associates’ of Mr. Giuliani were trying to make contact with the incoming Zelenskyy team.” He didn’t know whether the associates were the same two businessmen (Parnas and Fruman (see entry under “late 2018”) who connected Giuliani with Shokin and Lutsenko.

May 1, 2019 — Attorney General William Barr stumbles and appears to try to avoid answering U.S. Senator Kamala Harris during a Senate Judiciary Committee hearing when she asks, “Has the President or anyone at the White House ever asked or suggested that you open an investigation of anyone?” He finally states in his answer, “I don’t know.”

May 9, 2019 – Giuliani plans trip to Kyiv as part of pressure campaign

Giuliani tells the *New York Times* he plans to travel to Kyiv and meet with President-elect Zelenskyy to urge him to investigate the Bidens as well as Ukrainians who might have worked with Hillary Clinton’s campaign to reveal the Manafort information. “We’re not meddling in an election, we’re meddling in an investigation, which we have a right to do,” Giuliani tells the newspaper. “There’s nothing illegal about it,” he said. “Somebody could say it’s improper.”

The newspaper notes the trip is “part of a **months-long effort** by the former New York mayor and a small group of Trump allies working to build interest in the Ukrainian inquiries. Their motivation is to try to discredit the special counsel’s investigation; undermine the case against Paul Manafort, Mr. Trump’s imprisoned former campaign chairman; and potentially to damage Mr. Biden, the early front-runner for the 2020 Democratic presidential nomination.” The news ignites a firestorm of **bipartisan condemnation** that Giuliani is improperly seeking the help of a foreign government to benefit Trump’s re-election campaign.

In a later editorial for the *Washington Post* (on Sept. 21, 2019), former Ukrainian anti-corruption activist and member of Parliament Serhiy Leshchenko writes:

“Giuliani attempted to visit Ukraine in May 2019 with the express purpose of involving Zelensky [cq] in this process. His aim was quite clear: He was planning to ask Zelensky to intervene in an American election on the side of Trump.

...

I had been helping Zelenksy’s team since January

...

As a person who has had direct experience of many of these events, I express my readiness to testify to the U.S. Congress about what has been happening for the past six months.”

May 9, 2019 – Giuliani, in an [interview with Fox News](#), raises his theory of Ukrainian collusion with Hillary Clinton’s campaign in 2016 to smear Trump with Manafort payments allegations. Giuliani says he received such information “about **three or four months ago**.” Giuliani also discusses his theory about the Bidens in Ukraine, and he tries to implicate the U.S. Embassy in both.

May 10, 2019 – President Trump says in an interview with [Politico](#), “Certainly it would be an appropriate thing” for him to ask Attorney General Barr to open an investigation on Biden. “I have not spoken to him about it. Would I speak to him about it? I haven’t thought of that,” he adds. **Trump says he sees Biden as the clear front-runner in the Democratic race and likens it to his own surge toward the Republican nomination in 2016. He also says he will speak with Giuliani about the former mayor’s planned trip to Ukraine and that they hadn’t discussed it “at any great length.”**

May 11, 2019 – Giuliani cancels trip to Ukraine

Giuliani [tells Fox News](#) he called off his trip to Ukraine because he believes he would be “walking into a group of people that are enemies of the president, and in some cases, enemies of the United States,” a particularly harsh reference that sounds like it is meant for Ukrainian anti-corruption reformers who are rejecting his and Trump’s conspiracy theories. The decision follows bipartisan backlash in the United States over Giuliani’s seeking foreign support for Trump’s re-election (see May 2 above).

Former Ukrainian member of Parliament [Serhiy Leshchenko](#) and former U.S. Ambassador to Ukraine John Herbst say Zelenskyy actually had declined Giuliani’s request for a meeting, which could explain Giuliani’s tone of rejection. Herbst [commented](#), “My

understanding is that the president-elect's party and his group said that the President-elect [Zelenskyy] sees no reason to have a meeting about an issue which is so transparently an American domestic political issue."

On or about May 14, 2019 — President Trump instructs Vice President Mike Pence "to cancel his planned trip to Ukraine to attend President Zelenskyy's inauguration. Secretary of Energy Rick Perry led the U.S. delegation instead," writes the whistleblower, who cites unnamed "U.S. officials." "According to these officials, it was also 'made clear' to them that the President did not want to meet with Mr. Zelenskyy until he saw how Zelenskyy 'chose to act,'" the whistleblower wrote.

May 14, 2019 – Ukraine's Prosecutor General Lutsenko tells *Bloomberg News* that he has "no evidence of wrongdoing" by either of the Bidens and that neither Hunter Biden nor Burisma were the focus of any current investigation. He said he planned to give U.S. authorities information about Burisma board payments, so that the U.S. could check whether Hunter Biden had paid taxes on his income, though there were no restrictions in Ukraine on how much a company could pay to its board members.

May 20-24, 2019 – Zelenskyy is inaugurated as president, taking over from Poroshenko. Shortly afterwards, the whistleblower writes, "it was publicly reported that Mr. Giuliani met with two other Ukrainian officials: Ukraine's Special Anticorruption Prosecutor, Mr. Nazar Kholodnytskyy, and a former Ukrainian diplomat named Andriy Telizhenko." (Public reports of these meetings included Ukrainian and US media outlets.) Both, the whistleblower continues, "are allies of Mr. Lutsenko and made similar allegations" in a series of articles in *The Hill*. The two businessmen Parnas and Fruman who connected Giuliani with Shokin and Lutsenko (see entry for "late 2018") reportedly join the meeting with Giuliani and Kholodnytskyy in Paris.



Nazar Kholodnytskyy (L), Rudolph Giuliani (C), and Charles Pratt (R), May 22, 2019, Paris, France

Mid May to early July – According to the whistleblower’s complaint, in this period, “multiple U.S. officials told me that the Ukrainian leadership was led to believe that a meeting or phone call between the President and President Zelenskyy would depend on whether Zelenskyy showed willingness to ‘play ball’ on the issues that had been publicly aired by Mr. Lutsenko and Mr. Giuliani.”

June 11, 2019 – Zelenskyy sends a motion to Parliament asking that it [dismiss](#) sitting Prosecutor General Lutsenko.

June 13, 2019 – President Trump says he would accept dirt on his political rivals from a foreign government, a statement noted by the whistleblower, whose complaint references the relevant interview of the president with ABC News’s George Stephanopoulos.

June 21, 2019 – Giuliani tweets, “New Pres of Ukraine still silent on investigation of Ukrainian interference in 2016 election and alleged Biden bribery of Pres Poroshenko. Time for leadership and investigate both if you want to purge how Ukraine was abused by Hillary and Obama people.”

Early to mid-July – Trump orders suspension and review of U.S. aid to Ukraine

President Trump tells his acting chief of staff, Mick Mulvaney, to hold back almost \$400 million in aid to Ukraine at least a week before his phone call with Ukraine's President Zelenskyy, the *Washington Post* [reports](#). The decision was communicated by OMB to State and Defense department officials on **July 18**. The *Post* includes details of internal processes, including that “besides Bolton [the president's national security adviser], several other administration officials said they did not know why the aid was being canceled or why a meeting was not being scheduled.”

About July 19, 2019 — Andriy Yermak, a top aide to Zelenskyy, [reportedly](#) requests assistance from the State Department's special representative for Ukraine negotiations, Kurt Volker, to be put in touch with Giuliani. On July 19, Volker sends a text message to Giuliani saying, “Mr. Mayor—really enjoyed breakfast this morning. As discussed, connecting you here with Andrey Yermak, who is very close to President Zelensky.”

Yermak [speaks with Giuliani](#) for the first time by phone. They discuss the Trump-Giuliani demands for investigations and the new Ukrainian leader's desire for a White House meeting to affirm continued U.S. support for Ukraine. “Mr. Giuliani in television appearances over the summer had repeatedly singled out Ukraine over corruption, putting pressure on Mr. Zelensky's new administration. Yermak called Mr. Giuliani to ask him to tone it down, according to a person familiar with the call. Mr. Giuliani in response suggested that Ukraine investigate Hunter Biden's relationship with Burisma,” the *Wall Street Journal* [reports](#) (on Sept. 26).

July 23-26, 2019 — “During interagency meetings on 23 July and 26 July, OMB officials again stated explicitly that the instruction to suspend this assistance had come directly from the President, but they still were **unaware of a policy rationale**,” the whistleblower wrote.

July 25, 2019 — Trump and Zelenskyy speak by phone for the first time since the call on May 20.

The two presidents have their second conversation. An English-language [press release](#) issued by Zelenskyy's office about the call says:

“Donald Trump is convinced that the new Ukrainian government will be able to quickly improve [the] image of Ukraine, **complete investigation of corruption cases, which inhibited the interaction between Ukraine and the USA**. He also confirmed continued support of the sovereignty and territorial integrity of Ukraine by the United States and the **readiness** of the American side **to fully contribute** to the implementation of a Large-Scale Reform Program in our country.”

The two presidents “agreed to substantively discuss practical issues of Ukrainian-American cooperation during the visit of the Ukrainian head of state to the United States,” the release continued.

Zelenskyy had been hoping for a warm reception from the U.S. president and a White House meeting as an important signal to affirm continued American support for Ukraine’s war against Russian forces controlling the country’s east and for comprehensive reform and economic development efforts. Ukraine advocates in the U.S. also had thought a White House invitation would be forthcoming any day, but it was never scheduled.

An intelligence community whistleblower complaint revealed in September that reportedly involves the Trump-Zelenskyy July 25 call prompts a flurry of revelations about the conversation until the declassification of [a transcript](#) of the call.

Before the release of the transcript, Trump admits he discussed Biden on the call (see Sept. 22 below) and says U.S. funding for Ukraine is at stake (see Sept. 22-23 below).

July 26, 2019 — U.S. Special Representative for Ukraine Negotiations Kurt Volker meets with Zelenskyy in Kyiv.

Volker was accompanied by U.S. Ambassador to the European Union Gordon Sondland. The two advised the Ukrainian leader on “how to `navigate’ the demands that the President had made of Mr. Zelenskyy,” according to the whistleblower’s complaint.

July 28, 2019 – Director of National Intelligence Dan Coats [submits his resignation](#), effective Aug. 15. One of President Trump’s longest-serving Cabinet members, Coats also stirred his boss’s ire at times with his policy disagreements and lukewarm endorsements of the President’s positions.

July 31, 2019 – Giuliani [meets](#) in New York with Kyiv Mayor Vitali Klitschko, who is in a power struggle with Zelenskyy over a second title he holds as head of the city's administration. Giuliani and Klitschko have [known each other for years](#) – the former Ukrainian boxing champion hired the former New York mayor as a consultant on his Kyiv mayoral campaign in 2008. On Sept. 4, Zelenskyy [stripped Klitschko of the head of administration post](#), apparently in a move to restore checks-and-balances in the capital.

On or about Aug. 2, 2019 – **Giuliani [meets](#) in Madrid with Andriy Yermak, a top aide to Zelenskyy.**

Having been rebuffed in June for a meeting in Kyiv with Zelenskyy personally, Giuliani flies to Madrid to press the new Ukrainian president's aide, Yermak, for an investigation of the Bidens as well as a probe of the allegation that Ukrainians conspired with Hillary Clinton's campaign in 2016 to release damaging information about Paul Manafort. [The Madrid meeting was a “direct followup” to the July 25 Trump-Zelenskyy phone call and specifically to their discussion of the cases the U.S. president raised in that conversation, according to the whistleblower's complaint.](#) From Madrid, Giuliani resurfaces his allegations against the Bidens in a [tweet on Aug. 3](#).

Giuliani has said Yermak seemed open to considering the investigations, but also pressed for a Trump-Zelenskyy meeting as a sign of continued U.S. support to Ukraine in its war against Russia and its economic development and internal reform efforts. **“I talked to him about the whole package,”** Giuliani told the [Washington Post](#). The Post reported that “U.S. officials and members of the Trump administration wanted the meeting [between the two Presidents] to go ahead, but Trump personally rejected efforts to set it up, according to three people familiar with the discussions.”

Aug. 12, 2019 – **A [whistleblower files a complaint](#) to Intelligence Community Inspector General (ICIG) Michael Atkinson related to an alleged “urgent concern”** that news reports later reveal likely centers on activities involving President Trump and Ukraine. The ICIG determines the complaint meets the definition of an “urgent concern” and is credible, and forwards it on Aug. 26 to Acting Director of National Intelligence (DNI) Joseph Maguire, who under the law was required to transmit the complaint to the congressional intelligence committees within seven days. The [Justice Department](#), however, takes the position that the statute does not apply on the ground that the complaint does not involve “an intelligence activity within the responsibility and

authority of the Director of National Intelligence.” The complaint remains under wraps until House Intelligence Committee Chairman reveals its existence on Sept. 13 (see below).

Aug. 15, 2019 – DNI Coats leaves office. Principal Deputy Director Sue Gordon resigns too, after it [became clear](#) that Trump would not select her to succeed Coats.

Aug. 26, 2019 – The Inspector General forwards the intelligence community whistleblower complaint to Acting DNI Maguire.

Aug. 28, 2019 – Then-U.S. National Security Advisor John Bolton becomes the first high-level Trump administration official to [visit Kyiv](#) since President Zelenskyy’s inauguration. Bolton [says](#) the two discussed a possible meeting between the two presidents during a trip Trump planned at the time to Poland.

Aug. 28, 2019 – *Politico* breaks the [news](#) that **President Trump was delaying the distribution of \$250 million of fiscal 2019 security assistance that Ukraine needs to fight its war with Russia** on its eastern flank, by asking his administration to review how it was being spent. The hold on the aid package at the same time as Trump and Giuliani were agitating publicly for Ukraine to investigate Biden raises the specter that the U.S. president was using congressionally appropriated taxpayer dollars as leverage to coerce a foreign government to investigate his potential rival in the 2020 election. The hold also constitutes a reversal of the Trump administration’s stance toward Ukraine, after having approved lethal defensive weapons sales in 2017, a move the Obama administration had resisted. It is unclear exactly when the review was ordered, but the suspension pending review was in place during the July 25 call. The Department of Defense determined that the support should continue and informed the White House of its recommendation, according to *Politico* and [CNN](#). National Security Adviser John Bolton also wanted to release the funds to help Ukraine curtail Russian aggression, the Washington Post [reports](#).

Aug. 29, 2019 – Zelenskyy [appoints](#) lawyer and former Deputy Minister of Justice Ruslan Riaboshapka as the new prosecutor general, replacing Yuriy Lutsenko, who steps down the same day.

Sept. 2019 – The *Wall Street Journal* [reports](#), “Ukrainian officials earlier this month expressed concern to U.S. senators that the aid had been held up as a penalty for resisting that pressure.”

Sept. 2, 2019 – Vice President Mike Pence, a day after meeting with the new Ukrainian president, [doesn't directly answer](#) a reporter's [question](#) about whether he can assure Ukrainians that the delay in \$250 million of U.S. security assistance for Ukraine is unrelated to President Trump's and Rudy Giuliani's pressure on Ukraine to investigate the Bidens.



Sept. 5, 2019 — New Prosecutor General Ruslan Riaboshapka [brings Vitaliy Kasko back](#) to the office as First Deputy Prosecutor General, a move that promises to [help restore integrity](#) to the office. Kasko is the former deputy of Shokin's who had quit out of frustration.

Sept. 9, 2019 Inspector General for the Intelligence Community Michael Atkinson informs House Intelligence Committee Chair Adam Schiff and Ranking Member Devin Nunes of the whistleblower complaint's existence (full text of the Inspector General's [letter](#))

Sept. 9, 2019 – **Three U.S. House committees launch probe into Trump and Giuliani pressure campaign**

The House Foreign Affairs, Intelligence and Oversight and Reform committees announce a joint investigation of Trump and Giuliani's alleged efforts to strongarm Ukraine into pursuing two investigations for the president's political gain, including by threatening to withhold \$250 million in security assistance. The joint [press release](#) says public records show the efforts have continued "for **nearly two years**" and were conducted "under the guise of anti-corruption activity."

Sept. 11, 2019 – Trump releases the hold on U.S. security assistance to Ukraine

State Department [notifies](#) Congress that it will provide Ukraine with \$141.5 million of military equipment and other assistance under its "Foreign Military Financing" program that is available for a number of countries. The news emerges the next day, Sept. 12, at the same time that U.S. Senator Lindsey Graham says the administration has released its hold on the separate \$250 million of military assistance for Ukraine from the Defense Department under a program known as the Ukraine Security Assistance Initiative. President Trump [gave](#) permission to the OMB's acting director, Russell Vought, to release the funds. The timing of the news on both aid packages leads to speculation that the Trump administration was topping up its bribe/extortion of Ukraine, but the [Foreign Military Financing](#) likely had been in the works for months, possibly a year.

Sept. 13, 2019 – Intelligence community whistleblower complaint revealed

House Intelligence Committee Chair Schiff [announces](#) that he has issued a subpoena to Acting DNI Maguire to obtain a complaint from a whistleblower filed under the Intelligence Community Whistleblower Protection Act (ICWPA) that, [under the law](#), should have been provided to the congressional intelligence committees. Schiff says he is concerned the complaint is being withheld "to cover up serious misconduct" and "to protect the President or other Administration officials."

Sept. 17, 2019 – The Inspector General for the Intelligence Community sends [letter](#) to House Intelligence Chairman Schiff and Ranking Member Nunes outlining his disagreement with the administration's decision to withhold the whistleblower's complaint from the congressional intelligence committees. The Inspector General's letter states, "the subject matter involved in the complainant's disclosure not only falls within the DNI's jurisdiction, but relates to **one of the most significant and important of the DNI's responsibilities to the American people.**"

Sept. 18, 2019 – Vice President Pence speaks with Ukrainian President Zelenskyy by phone, discussing a scheduled meeting between the two presidents during the United Nations General Assembly meetings in New York the following week. Pence “commended President Zelenskyy’s administration for its bold action to tackle corruption through legislative reforms, and offered full U.S. support for those efforts,” according to a U.S. Embassy [statement](#).

Sept. 20, 2019 – A senior advisor to Ukraine’s Interior Minister challenges Trump to make official U.S. government request if he wants an investigation of Biden. The adviser, Anton Geraschenko, told [The Daily Beast](#) that “currently there is no open investigation.” He adds, “Clearly, Trump is now looking for kompromat to discredit his opponent Biden, to take revenge for his friend Paul Manafort, who is serving seven years in prison.”

Sept. 22, 2019 – After days of insisting there was nothing inappropriate about his telephone call with Zelenskyy, President Trump [acknowledges](#) discussing Joe Biden with the Ukrainian leader during their July 25 phone call. “The conversation I had was largely congratulatory, with largely corruption, all of the corruption taking place and largely the fact that we don’t want our people like Vice President Biden and his son creating to the corruption already in the Ukraine,” Mr. Trump [told reporters](#).

Sept. 22 and 23, 2019 – Trump himself connects phone call on Biden to US aid to Ukraine

President Trump, in [two](#) sets of remarks to reporters asking about his July 25 phone call with Zelenskyy, [appears to confirm a connection](#) between U.S. financial assistance for Ukraine and his pressure for the country’s leaders to pursue the investigations he wants.

On Sept. 22 Trump says, “Certainly I’d have every right to [raise Biden with the Ukrainian President] if there’s corruption and we are paying lots of money to a country.”

Trump has repeatedly referred to what he falsely claims the Bidens to have done as “corruption.” “It’s very important to talk about corruption,” Trump [tells](#) the reporters on Sept. 23. “If you don’t talk about corruption, why would you give money to a country that you think is corrupt?...It’s very important that on occasion you speak to somebody about corruption.”

Sept. 23, 2019 – The chairmen of the three House committees conducting the joint investigation into Trump and Giuliani’s efforts to pressure the Ukrainian government [write](#) Secretary of State Pompeo demanding he turn over the documents the committees had requested on Sept. 9. The [letter](#) characterizes Trump’s actions as “seeking to enlist a foreign actor to interfere with an American election,” and says, “if press reports are accurate, such corrupt use of presidential power for the President’s personal political interest – and not for the national interest – is a betrayal of the President’s oath of office and cannot go unchecked.” The chairmen note the earlier deadline of Sept. 16 to produce the material had passed and give a new deadline of Sept. 26 to notify the committees whether the State Department intends to comply.

Sept. 25, 2019 – Trump and Zelenskyy are scheduled to meet for the first time

The two presidents are scheduled to meet on the sidelines of the opening sessions of the United Nations General Assembly in New York. The meeting between the presidents has been [delayed](#) since the Ukrainians began requesting it in early summer, and still doesn’t equate to an invitation for a formal meeting at the White House that Zelenskyy has sought as an important signal of continued U.S. support for Ukraine’s war against Russia and its battle against corruption.

** The timeline, originally published on Sept. 24, 2019, has been updated as of Sept. 26-27, 2019, to add new items ([indicated in red](#)) at the following dates: late 2018; January 2019; mid-February 2019; March 31, 2019; April 21, 2019, on or about April 29, 2019; May 1, 2019; on or about May 14, 2019; June 13, 2019; June 21, 2019; July 18, 2019; and July 26, 2019. The updates also add details for the items dated May 10, 2019; May 20, 2019; July 25, 2019; July 28, 2019; and on or about Aug. 2, 2019 (previously late July-early August).)*

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The Iceberg's Tip: Ukraine Phone Call and the Months-Long Conspiracy to Violate Federal Campaign Finance Laws

by Paul Seamus
Ryan

September 27, 2019

Earlier this week the White House released a [rough transcript](#) of President Donald Trump's July 25 phone conversation with Ukraine's President Volodymyr Zelensky. Understandably, there's been much scrutiny of the transcript. Is the transcript complete? What exactly did Trump ask Zelensky for? Was there a "quid pro quo" exchange? To be clear, the transcript is incriminating on its face. But this narrow and granular analysis on one conversation risks missing the big picture.

The most important takeaway from the call transcript and the now-public [whistleblower complaint](#) is that President Trump seemingly orchestrated a months-long conspiracy to obtain Ukrainian government assistance in his 2020 reelection campaign—in violation of federal campaign finance laws and, perhaps, other statutes. The Department of Justice (DOJ) decision not to investigate these violations has no basis in law. And it turns out Attorney General William Barr had no business being involved in the matter, as he is implicated both in the whistleblower complaint and by the transcript of President Trump's call with the Ukrainian president.

July 25 Phone Call Only the Tip of the Iceberg

To be certain, President Trump solicited a political contribution from President Zelensky during the July 25 call—asking President Zelensky to "look into" Joe Biden—but that was neither the first nor the last time President Trump, either directly or through his agents, solicited a political contribution from the Ukraine government. Trump's illegal efforts to gain Ukraine's assistance in his 2020 reelection campaign date back at least to January and continued after his July 25 call with Zelensky.

On September 23, Common Cause filed a [complaint](#) with DOJ and the Federal Election Commission (FEC) alleging reason to believe that President Trump, Rudy Giuliani and at least three other Trump allies (Victoria Toensing, Lev Parnas and Igor Fruman) violated

the federal law ban on soliciting, or substantially assisting the solicitation of, a political “contribution” from a foreign national through numerous meetings and phone calls with Ukrainian officials.

Back in May, the *New York Times* reported that Giuliani was planning a trip to Ukraine to meet with recently-elected President Zelensky “to urge him to pursue inquiries that allies of the White House contend could yield new information about two matters of intense interest to Mr. Trump”: the “origin of the special counsel’s investigation into Russia’s interference in the 2016 election” and the “involvement of former Vice President Joseph R. Biden Jr.’s son in a gas company owned by a Ukrainian oligarch.”

Giuliani’s planned trip was reportedly “part of a monthslong effort” by Giuliani and “a small group of Trump allies working to build interest in the Ukrainian inquiries. Their motivation is to try to discredit the special counsel’s investigation; undermine the case against Paul Manafort ...; and potentially to damage Mr. Biden.” Over the course of several months, Giuliani and his allies had numerous telephonic and in-person meetings with Ukrainian officials to advance President Trump’s personal political agenda.

The *New York Times*’ report was followed by a late July *BuzzFeed News* deep dive into the months-long effort by Giuliani and “[t]wo unofficial envoys reporting directly” to him to obtain Ukraine’s assistance in Trump’s 2020 reelection efforts. *BuzzFeed News* wrote:

In a whirlwind of private meetings, Lev Parnas and Igor Fruman—who pumped hundreds of thousands of dollars into Republican campaigns and dined with the president—gathered repeatedly with top officials in Ukraine and set up meetings for Trump’s attorney Rudy Giuliani as they turned up information that could be weaponized in the 2020 presidential race.

Parnas and Fruman reportedly “helped arrange meetings in New York between the [Ukraine’s top prosecutor Lutsenko] and Giuliani in January” and in “February, Giuliani and Parnas met privately again with Lutsenko” on the sidelines of a meeting “that included US Secretary of State Mike Pompeo and the Russian President Vladimir Putin.” Then in May, Parnas and Fruman “flew to Paris, where they joined Giuliani in talks with” another Ukrainian prosecutor, Nazar Kholodnytsky.

In April, within hours of President Zelensky's election, President Trump called him and, according to several sources, urged him to coordinate with Giuliani and "pursue investigations of 'corruption,'" as [revealed this week by the *New York Times*](#).

[Days after](#) President Trump's July 25 call with President Zelensky, on or about August 2 according to the [whistleblower complaint](#), Giuliani "met with an aide to the Ukrainian president in Madrid and spelled out two specific cases he believed Ukraine should pursue," an investigation of Joe Biden and his son, and an investigation of whether Democrats colluded with Ukraine to release information on Paul Manafort during the 2016 election. The complaint notes that Giuliani had "privately reached out to a variety of other Zelenskyy advisers" and that some of these advisors "intended to travel to Washington in mid-August." The whistleblower complaint goes on to note many of these meetings.

Rudy Giuliani is referenced [five times in the rough transcript](#) of the July 25 call, with President Zelensky first bringing up Giuliani and mentioning that one of his assistants "spoke with Mr. Giuliani recently" and that he hoped "very much that Mr. Giuliani will be able to travel to Ukraine and we will meet once he comes to Ukraine." President Trump then noted three times that he would have Giuliani call President Zelensky, saying: "If you could speak to him, that would be great."

Giuliani is Trump's personal attorney, not a diplomat. Giuliani has [stated](#): "My only client is the president of the United States[.] He's the one I have an obligation to report to, tell him what happened." He has also said that his Ukraine efforts have the full support of Trump, and that Trump "knows what I'm doing, sure, as his lawyer." Giuliani also made clear that his work with Ukrainian officials "isn't foreign policy" and that he's urging investigations of Biden "because that information will be very, very helpful to my client, and may turn out to be helpful to my government."

Giuliani was representing the interests of candidate Trump, not the interests of the American people. Giuliani was taking direction from his client, President Trump, and keeping Trump fully informed of his actions. Together, they conspired for months to violate federal campaign finance laws by soliciting Ukrainian support for Trump's 2020 reelection campaign.

DOJ Decision Not to Investigate Campaign Finance Violations Has No Basis in Law

In the [complaint](#) Common Cause filed Monday with the DOJ and FEC, and in a [piece I wrote earlier this week for *Just Security*](#), I explained in detail how Trump and Giuliani seemingly violated the campaign finance law prohibition on soliciting, or substantially assisting solicitation of, a “contribution” from a foreign national in connection with a U.S. election.

We now know that the Inspector General of the Intelligence Community [reached the same conclusion](#) in August, when considering the whistleblower complaint. And we know that some White House lawyers recognized the implications of the July 25 call because they soon thereafter took steps to severely restrict access to the transcript of the call by moving it from the computer system where it would typically be stored to a separate system reserved for certain types of classified materials of “an especially sensitive nature.”

Remarkably, the DOJ [said this week](#) that the Department “explored whether the July call merited opening a criminal investigation into potential campaign finance violations by the president” and “concluded it did not—that the information discussed on the call **didn’t amount to a ‘thing of value’ that could be quantified**, which is what the campaign finance laws require.” This determination by the DOJ flies in the face of Special Counsel Robert Mueller’s interpretation of the same provision of law.

As I explained in a [summary of a section of the Mueller Report that I wrote for *Just Security*](#), Special Counsel Mueller considered charging Donald Trump Jr., Paul Manafort and Jared Kushner with violating ban on soliciting a contribution from a foreign national for their June 2016 meeting with Russians at Trump Tower to receive opposition research on Hillary Clinton.

Mueller began an overview of the ban on soliciting a contribution from foreign nationals by quoting now-Supreme Court Justice Brett Kavanaugh’s [lower court decision in *Bluman v. FEC*](#), upholding the foreign contribution ban against First Amendment challenge: “[T]he United States has a compelling interest ... in limiting the participation of foreign citizens in activities of democratic self-government, and in thereby preventing foreign influence over the U.S. political process.”

In explaining the “threshold legal question” of whether providing “documents and information” to a campaign would constitute a “contribution,” Mueller noted the “foreign contribution ban is not limited to contributions of money.” It includes a

contribution of “money or *other thing of value*.” According to Mueller, “[t]he phrases ‘thing of value’ and ‘anything of value’ are broad and inclusive enough to encompass at least some forms of valuable information.”

Mueller concluded:

[C]andidate-related opposition research given to a campaign for the purpose of influencing an election could constitute a contribution to which the foreign-source ban could apply. A campaign can be assisted not only by the provision of funds, but also by the provision of derogatory information about an opponent. Political campaigns frequently conduct and pay for opposition research. A foreign entity that engaged in such research and provided resulting information to a campaign could exert a greater effect on an election, and a greater tendency to ingratiate the donor to the candidate, than a gift of money or tangible things of value.

Mueller’s conclusion that opposition research “could constitute a contribution” under campaign finance law was consistent with [my analysis](#) in July 2017, when the Trump Tower story broke and [Common Cause filed a complaint with Mueller](#) and the DOJ.

In the end, however, Mueller decided not to prosecute Trump Jr., Manafort and Kushner because of the difficulty he believed he would have proving beyond a reasonable doubt that (1) they knew that solicitation of a contribution from a foreign national was illegal; and (2) the information they solicited was worth at least \$2,000 (for a federal misdemeanor) or \$25,000 for a felony.

Mueller concluded that opposition research could constitute a “thing of value” for the purposes of campaign finance law, but the DOJ concluded in Ukrainegate it could not. What might explain these conflicting interpretations of the law?

We don’t yet know. But one very troubling aspect of the DOJ’s handling of the whistleblower complaint is Attorney General Barr’s involvement. Barr is named on the first page of the complaint as “involved,” yet [reportedly was briefed](#) on the matter as soon as the DOJ learned of the complaint. In President Trump’s July 25 phone call with President Zelensky, Trump asked Zelensky to work with both Barr and Giuliani to investigate Joe Biden. Trump referred to Barr being the point person, alongside Giuliani, four times in the thirty-minute conversation. Barr is implicated in Trump’s campaign

finance violations—at a minimum, Barr is a witness. Barr should have recused himself entirely from the DOJ's handling of the whistleblower complaint and the ensuing conflict between the White House, DOJ and Congress over this matter. Instead, Barr is at the center of it all.

Representative Jerrold Nadler, chair of the House Judiciary Committee, has [called on Barr to recuse himself](#) from the matter going forward. Ultimately, the investigation may lead to Barr's impeachment and potentially the impeachment of others complicit in these campaign finance violations, their coverup, and other abuses of the office of the President.

For now, DOJ should reverse its decision not to investigate Trump, Giuliani and others implicated in the whistleblower complaint. If Barr and the DOJ will not do so, Congressional impeachment proceedings are the last hope for the rule of law. The whistleblower complaint provides a roadmap for the congressional impeachment investigation as it seeks to uncover the full extent of the criminal violations that have occurred. The phone call between President Trump and President Zelensky is only one action in a systematic plan to manufacture opposition information from Ukraine to influence the outcome of the 2020 election.

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Ukraine cloud over Attorney General William Barr is thick. He should step aside.

Ryan Goodman, Opinion contributor

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President Trump and Rudy Giuliani aren't the only players tied to this controversy

One of the most shocking revelations in the transcript of President Donald Trump's phone call with President Volodymyr Zelensky was that so much of what Trump had to say on the call focused just on getting Ukrainian officials to investigate Trump's political opponents. Another surprise was the fact that President Trump said repeatedly — five times, in fact — that Attorney General William Barr would be running point, working with Trump's private attorney Rudy Giuliani, on these matters.

Make no mistake, these facts now implicate the attorney general, the nation's chief law enforcement officer, directly in the commission of acts that many of the country's leading legal experts consider federal crimes — whether as [election law violations](#), [bribery](#) or [other offenses concerning public corruption](#).

This doesn't look good for the AG

The revelation of Barr's possible involvement should alarm all of us concerned about the rule of law in this country. At a minimum, it's no longer sustainable for this attorney general to oversee the Justice Department's handling of the Ukraine scandal.

Consider a contrast: One of the most egregious acts revealed in the Mueller report was when the president asked then-Attorney General Jeff Sessions to "take (a) look" at investigating Trump's political rival, Hillary Clinton. Sessions, to his credit, refused. Not to his great credit, though, because the right answer is so obviously to refrain.

Ukraine whistleblower: [It's time for all the cards to be laid out for Congress](#)

Even Barr seems to understand the extreme impropriety of what the transcript suggests about his using the power of his office to go after the president's political rivals. Hence Barr's [formal statement](#), issued within 30 minutes of the transcript's release, suggesting that what Trump told Ukraine's president about the attorney general's role was essentially false.

But Barr [long ago](#) lost the [benefit of the doubt](#). We cannot accept at face value what he says when it comes to the defense of the president or himself.

What's even more egregious here is to think of the transcript in relation to what else Barr may have been doing in handling the Ukraine matter.

It's deeply concerning to now know that Barr's Justice Department told the director of national intelligence to withhold the whistleblower's complaint from Congress, while Barr [admits](#) he knew at the time that he was named on the phone call at the heart of the whistleblower's allegations. Perhaps that would be excusable if the Justice Department's advice to the director was ordinary and well within the law. But the DOJ [advice](#) was not close to that line. Even Fox News' Judge Andrew Napolitano has called the DOJ legal theory for withholding the whistleblower's complaint "[cockamamie](#)."

Pushing aside reports

Layer onto all of these concerns another revelation in Wednesday's news — according to The New York Times, the director of national intelligence and the inspector general of the intelligence community [each](#) referred the whistleblower's complaint to the Justice Department for a possible criminal investigation into the president's actions. Within a matter of days, it seems Barr's Justice Department somehow reached the conclusion that the complaint could not even trigger an investigation because the allegations could not involve a crime. The legal reasoning that has been reported would put the administration "[on very thin ice](#)," as Judge Napolitano might say.

McMullin: [If Congress doesn't stand up to Trump on Ukraine, his abuse of power will only escalate](#)

Apparently, Barr's Justice Department came up with the idea that "the information discussed on the call didn't amount to a 'thing of value' that could be quantified," according to BuzzFeed News. That logic [flies in the face](#) of what the nation's foremost legal experts, including Trump's deputy solicitor general, concluded in the Mueller report. In the case of Ukraine, just chalking up all of Giuliani's out-of-pocket expenses in the hunt for fake dirt on Biden would likely show the immense value that he and Trump placed on the information.

Finally, what makes matters worse for Barr is that the president has [twice](#) publicly [discussed](#) having the attorney general investigate allegations involving Ukraine, Clinton and Biden. And the attorney general famously [tried to avoid](#) answering Sen. Kamala Harris' simple question whether the White House ever asked him to investigate anyone.

After the release of the Ukrainegate transcript, the cloud over Bill Barr is thick. There's one way for him to remove it. Step aside.

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Trump's Preference for Acting Officials Puts National Security at Risk

by Carrie Cordero
and Joshua Geltzer

May 20, 2019

This article is cross-posted on *Lawfare*.

President Trump recently [announced](#) that his intended nominee for secretary of defense will be Patrick Shanahan, who became—way back in March—[America's longest-serving acting secretary of defense](#). It's tempting to think that finally having a nomination for this critical position will end worries over the effects of having a long-term acting secretary of defense, [alongside an acting secretary of homeland security and, previously, an acting attorney general and acting secretary of the interior](#). But Shanahan's nomination doesn't mark the end of this concern. To the contrary, there's real reason to worry about Trump's stated preference for acting secretaries, as acting cabinet members and other senior officials are less likely to speak truth to power—especially while serving [a president who demands unquestioning "loyalty."](#) Auditioning for a job may not be the best way to *do* that job, and the policies that an acting secretary like Shanahan indulged while seeking a nomination can endure long after the period of serving as an acting secretary has concluded.

Having acting cabinet members for long periods is generally bad governance, given that such unilateral appointments by the president skirt the constitutional requirement that the president submit such important officials to the Senate for its consideration and—if they're deemed to be qualified—consent. While acting secretaries are generally able to exercise the technical legal authorities of their positions, they don't have the same practical ability to push back against a president where doing so is justified, drive change within their organizations internally or raise issues for congressional attention. And that's bad for U.S. national security.

Shanahan's tenure as acting secretary of defense underscores the concern that acting secretaries may be less likely to push back on the president at whose pleasure they serve. It was only after [James Mattis resigned as defense secretary](#) and [Shanahan became acting secretary](#) that [President Trump declared the situation at America's southern border a national emergency](#), purportedly triggering authorities that the president says allow him to shift funds allocated for other military construction projects to building a border wall. (We disagree with the president on that, but it's his claim.) A Senate-confirmed defense secretary might have been better-positioned to resist Trump on this outlandish claim either privately or publicly, by stressing, first, that [there simply is no national security emergency at the southern border](#)—as Trump's own intelligence chiefs already [indicated by their lack of any mention of it in their annual worldwide threats briefing to Congress](#)—and, second, that the funds already allocated to other military construction should in fact go to that intended construction. Senate-confirmed secretaries aren't looking to be nominated for the jobs they already possess; they have received the imprimatur of Senate support; and, perhaps most significantly, the political costs associated with their resignation or firing are higher.

It's not just that acting secretaries have less ability to push back on the president; it's also that they have less ability to lead their own organizations, both internally and across the government's national security apparatus. (We saw this tension play out just last week when Acting Homeland Security Secretary Kevin McAleenan [reportedly had to threaten to resign](#) to hold off White House pressure to make more agency leadership changes.) An example from Robert Gates's tenure as defense secretary illustrates this point. As Gates later described in his book [Duty](#), he directed an aggressive purchase and deployment of mine-resistant ambush-protected vehicles (MRAPs), which evidence had determined could significantly reduce mortality rates for soldiers deployed in Iraq facing improvised explosive devices. To achieve the accelerated deployment of MRAPs in 2007, Gates had to steamroll traditional bureaucratic procurement processes within the Department of Defense. He also had to overcome bureaucratic resistance to the expenditure. To do so internally, Gates carefully cultivated allies externally—including, perhaps most importantly, in Congress. It's the type of agency leadership—requiring an internal exercise of authority and external credibility—that only a Senate-confirmed national security leader could take on successfully, given the added gravitas a Senate-confirmed secretary has within the department and the greater sway he or she has across the government, thanks to the Senate's vote of support. And, simply put, it saved American lives.

At key moments, it can require a fully installed cabinet member—with the boost in influence that Senate confirmation provides—to elicit congressional attention and support. Around the same time that Gates was driving accelerated deployment of MRAPs, Director of National Intelligence Michael McConnell, in coordination with Attorney General Michael Mukasey, prioritized a legislative initiative to modernize and reform foreign intelligence collection by grounding it in an updated federal statutory framework. While the full background of this push is complicated and still hotly debated in some quarters, the key point is that changes in technology and national security threats meant that the preexisting legal framework was no longer consistent with collection needs and legal protections. Working with Mukasey and an interagency team, and coordinating closely with the White House, McConnell invested significant personal attention and capital in pushing proposed legislative reforms first through the interagency process and ultimately through Congress. He was personally invested in conducting classified national security briefings with members of Congress, ensuring that relevant departments and agencies were properly coordinating at the working level, and inserting himself into bureaucratic battles and providing top cover for those working for him (including one of the authors) when needed. The result was a set of legislative changes that continue to provide key intelligence collection authorities, and the intense political and personal capital that was needed to achieve those changes required the full stature of a Senate-confirmed director of national intelligence.

As former national security officials, we recognize that there may be periods of time when it's necessary for government agencies to be run by acting leaders. Cabinet members sometimes suddenly resign or move on to new positions inside or outside of government for professional or personal reasons, and transitions between administrations often create at least temporary gaps between Senate-confirmed officials. But what's happening in the Trump administration is something different from what we've observed firsthand working for prior administrations of both parties. Trump has [said](#) that he “like[s] acting” cabinet members because, in his words: “It gives me more flexibility.” For Trump, that's another way of saying it leaves him with weakened leaders vying for his nomination—a perpetual season of “The Apprentice” with officials endlessly auditioning for top roles. This makes these weakened leaders less likely to push back against him, drive change in their organizations or work directly with Congress on challenging problems. That may be good for Trump, but it's bad for the country.

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POLITICO



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LAW AND ORDER

Trump Didn't Bribe Ukraine. It's Actually Worse Than That.

Mislabeling what the president has done could make impeachment more difficult to achieve.

By RENATO MARIOTTI | September 21, 2019

Reports that President Donald Trump pressured Ukrainian President Volodymyr Zelensky to investigate the son of Democratic presidential candidate Joe Biden has prompted a flurry of speculation Trump, by withholding military aid, has committed bribery or extortion.

This is wrong and even counterproductive to efforts to hold Trump accountable.

If what Trump is accused of doing is true, it is a kind of corrupt conduct that the criminal system is not equipped to handle. Labeling his behavior with criminal terms such as bribery and extortion not only misunderstands the statutory language, it gives Trump and his supporters ammunition with which to defend themselves, making impeachment—the proper constitutional remedy for presidential corruption—harder to achieve.

It's easy to see why Trump's alleged conduct has generated outrage and why lay people have rushed to describe it as categorically criminal. Using presidential power to withhold aid to a nation that was recently invaded by Russia unless it investigates your political rival sounds like the definition of a criminal *quid pro quo*. The possibility that Trump pressured another nation to interfere in the next presidential election on his behalf—not long after the completion of a multiyear investigation into interference in the 2016 presidential election by Russia on his behalf—is jaw-dropping.

But the impulse to label this as a potential crime, as many respected former prosecutors and legal analysts have done, is flawed legally and even strategically. Even if true, this is not a case that would end up in a criminal proceeding even if Trump were no longer in office.

Let's look at the actual law. Even if Trump explicitly offered \$250 million in military aid to Ukraine in exchange for an investigation of Biden's son, that wouldn't fit the federal bribery statute, which prohibits public officials from taking or soliciting bribes. In this case, Trump would be "bribing" the Ukrainians, who are not "public officials" for purposes of the statute.

The argument would have to be that Trump is soliciting a bribe in exchange for granting foreign aid to the Ukraine, with the investigation of Biden's son being the thing of value demanded in exchange for granting the aid. While the statute defines "anything of value" very broadly, it is odd to think of a foreign government launching an investigation as "payment" of a bribe. The investigation itself would be an official governmental act and the result of the investigation would be uncertain. What if the investigation turned up no wrongdoing by either Hunter Biden or his father? Would that still be a thing of value?

ADVERTISING



Besides, presidents push foreign governments to take official acts all the time. The Constitution contemplates that the president will interact with foreign leaders and use his or her power to persuade them to do things that help the United States. What is abhorrent about the alleged conduct here is not that Trump is pushing a foreign government to do something, but rather that he might have used his presidential power to get a foreign government to help him win the next election.

This is self-serving and corrupt, but it is difficult to think of this alleged activity as “extortion.” It is true that there are multiple federal statutes that make extortion a crime, but extortion is defined as “the extraction of anything of value from another person by threatening or placing that person in fear of injury to any person or kidnapping of any person.”

It is hard to construe the alleged conduct as a “threat” against Ukraine in the manner contemplated by the extortion statute. Presidents threaten to withhold aid, send troops, or impose sanctions against foreign governments. I have trouble believing that a federal judge would permit an indictment to move forward against a president for “extorting” a foreign government through his or her official duties as president.

This is not to say there aren’t crimes on the books that better match what Trump is alleged to have done. For instance, it is a campaign finance crime to knowingly and willfully solicit a campaign contribution from a foreign national. Given that Biden could be Trump’s next political opponent, an argument can be made that the Ukrainian investigation would be an in-kind contribution—a “thing of value,” as defined by the statute—to Trump’s campaign. The bribery of a foreign official, such as the Ukrainian president, can also be a criminal violation of the Foreign Corrupt Practices Act.

But both of these statutes contain at least some of the problems presented by the bribery and extortion statutes. Courts won’t send presidents to prison for cajoling foreign

governments to do things, even if that involves horse trading an official act by our government in exchange for an official act by someone else's.

What Trump is alleged to have done is not a garden variety crime; it's worse. It involved misusing \$250 million in aid appropriated by Congress for his benefit—the kind of gross misconduct that easily clears the bar of high crimes and misdemeanors set by the Constitution when impeaching a president. Which means the best way to hold Trump accountable for that misconduct isn't a criminal trial; it's for Congress to impeach him.

Pursuing criminal cases that won't stand legal scrutiny, or arguing that Trump has violated a criminal statute, risks undermining that goal.

First, it gives the false impression that this is something the criminal justice system can deal with. But the criminal system is not built to handle misconduct by a president who is acting corruptly through the use of his or her immense constitutional powers in this manner.

Second, it suggests that if critics can point out that it is not really bribery or extortion, then it is not a huge problem, which is not true. This is already happening, as allies of the president assert that there was no explicit quid pro quo.

Third, it may give the public a false impression about what happened. Impeachment in many respects is a political act, and that means Congress needs public support to pursue it. Anything that confuses or fails to convince the public is therefore counterproductive.

Finally, it understates the magnitude of the alleged misconduct. Labeling Trump's alleged conduct as "bribery" or "extortion" cheapens what is alleged to have occurred and does not capture what makes it wrongful. It's not a crime—it's a breach of the president's duty to not use the powers of the presidency to benefit himself. And he invited a foreign nation to influence the 2020 presidential election on the heels of a nearly three-year investigation that proved Russia had tried to influence the 2016 presidential election.

No one should expect law enforcement to act if our elected representatives are unwilling to do so.

Outlook Perspective

The U.S. has no rules for when the president is a national security threat

+ Add to list

The whistleblower controversy reveals the limits of our system's defenses.

By [Asha Rangappa](#)

On the surface, the latest confrontation between Congress and the White House involves the Trump administration's refusal to hand over to the House Intelligence Committee a [whistleblower complaint](#) deemed an "urgent concern" by the inspector general for the U.S. intelligence community.

But the showdown is really about the government's inability to cope with an unprecedented problem: what to do when the president of the United States poses a national security threat.

The case involves a complaint by an intelligence official about communications between President Trump and a foreign leader and a "promise" Trump made, which the intelligence official found alarming enough to notify the inspector general about it. People familiar with the case [told The Washington Post](#) that it centers on Ukraine, whose president, Volodymyr Zelensky, spoke with Trump two and a half weeks before the complaint was filed. Trump, [reportedly](#), pressed Zelensky to investigate former vice president Joe Biden's son Hunter Biden, at a time when the U.S. was weighing whether to send millions of dollars in military aid to Ukraine, though the aid allegedly didn't come up on the call.

Presidents have, of course, acted inappropriately in the past, and our constitutional system has a framework in place for addressing misconduct by the chief executive. But it's designed to deal with straightforward criminal activity, not national security threats. The [special counsel regulations](#), for example, were created to deal with a Watergate-like situation as a worst-case scenario. So they take into account the need for an investigation insulated from political influence and give special counsels the ability to make prosecutorial decisions independently of the rest of the Justice Department or the attorney general. The rules even envision a report that might be made public.

This approach is appropriate when an investigation involves collecting evidence that can hold up in a court of law. But it is inadequate to address potentially noncriminal conduct that may nevertheless endanger the national security of the United States.

This split was evident in the [report on the Trump campaign's possible collusion](#) with Russia in the 2016 election, submitted by then-special counsel Robert S. Mueller III. Although Mueller's mandate was broad, and potentially encompassed a counterintelligence investigation, he narrowed the scope of his inquiry to criminal matters. The [final report](#) lays out only the decisions to charge or not charge individuals based on the evidence collected, noting only briefly that counterintelligence information was shared with the FBI for use in its (presumably ongoing) classified investigation. As a result, the public remains in the dark on whether Trump may be wittingly or unwittingly compromised in his dealings with Russia, or if the FBI and the intelligence community have information to explain his oddly submissive behavior with world leaders like Russian President Vladimir Putin.

Very few people seem to know what's going on with the counterintelligence investigation: Rep. Adam Schiff (D-Calif.), the House Intelligence Committee chairman, has said that his panel [doesn't know the status](#) of the probe, or even if it's still going on, even though the law requires the administration to keep the lawmakers up to date.

But counterintelligence investigations are stymied if they involve the president.

In a criminal investigation, the public can get glimpses into its stages: Search warrants, subpoenas for documents and interviews of witnesses typically make it into the press. Counterintelligence investigations, though, differ in that they do not ultimately end up in a courtroom. Rather, they seek to monitor and neutralize national security threats behind the scenes, which means the public has no way of tracking their progress. And the normal ways of resolving counterintelligence threats — like blocking a compromised subject's access to classified information — [don't work with the president](#), who controls what is and isn't classified and is the ultimate consumer of the intelligence the government collects.

The current showdown shows how the president's position and powers work at cross-purposes to the law. In a typical whistleblower scenario where the inspector general determines a complaint to be credible and urgent, there would be no colorable legal basis for the complaint to not reach Congress. In fact, Schiff says there has never been a previous instance when the inspector general's decision to forward a complaint to Congress has been blocked by the director of national intelligence, as has happened this time.

In a normal case not involving the president, the inspector general's conclusion that a complaint was credible and urgent would make it to Congress, with commentary from the director of national intelligence if he chose to add it. Congress would review the complaint and decide whether to take action: Lawmakers could hold

hearings, request additional information from the agency involved in the complaint, and ensure that any misconduct is addressed or corrected within the agency.

When a case involves the president, however, it enters a constitutional thicket: The president enjoys wide latitude in conducting foreign affairs on behalf of the United States under his Article II authority. Congressional oversight in this instance becomes necessarily intertwined with separation-of-powers concerns. If a call is about official foreign policy positions of the executive branch, for example, the president might have strong grounds to keep the content confidential — part of the president’s job is negotiating with foreign leaders, and to do that he must be able to assure his counterparts that their discussions won’t be made public. Even George Washington [refused to turn over](#) diplomatic communications to Congress.

And because the procedure for handling whistleblower complaints related to intelligence doesn’t address — or really even contemplate — what might happen if the president is endangering national security, there’s plenty of room for the chief executive to cloak unlawful actions in presidential authority, making them harder to detect. The president, by virtue of his office, can easily “go dark” when it comes to conversations with foreign leaders, even if he makes promises or assurances that run contrary to the interests of the United States or even place the country in danger. Without oversight or accountability, neither Congress nor the public has a way to know, for example, if the president is using his powers as leverage for a country to confer a benefit to him personally or to undermine the integrity of our democratic processes in his favor.

The president’s foreign affairs powers are certainly not absolute, and if the case ends up in court, invoking privilege on these grounds is not a slam dunk for the White House. But the judiciary does not have a precedent for determining the limits of presidential power when the occupant of the office may be using those powers in a way that creates a national security threat. And if Trump wins any litigation, that might mean that even the ultimate check on presidential abuse — impeachment — would be nearly impossible on national security grounds: Congress isn’t likely to bring articles of impeachment if it is prevented from obtaining the evidence that would form the basis for them.

The framers of the Constitution did foresee the possibility of a presidential candidate who might be compromised or beholden to a foreign power: The electoral college was intended to act as a second fail-safe in the event of poor voter judgment, if a truly dangerous candidate came along. (In this case, it failed.) Unfortunately, once a person who is willing to act against the interests of the United States assumes the awesome powers of the presidency, the laws and investigative techniques we use in ordinary national security situations are woefully inadequate. Like the breach of multiple hulls in the Titanic, the mechanisms designed to keep our democracy afloat are giving way one by one.

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