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6 PERMANENT SELECT COMMITTEE ON INTELLIGENCE,

7 joint with the

8 COMMITTEE ON OVERSIGHT AND REFORM

9 and the

10 COMMITTEE ON FOREIGN AFFAIRS,

11 U.S. HOUSE OF REPRESENTATIVES,

12 WASHINGTON, D.C.

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14

15 DEPOSITION OF: MARK SANDY

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19 Saturday, November 16, 2019

20 Washington, D.C.

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23 The deposition in the above matter was held in Room HVC-304,

24 Capitol Visitor Center, commencing at 10:08 a.m.

25 Present: Representatives Swalwell, Heck, and Wenstrup.

- 1 Also Present: Representatives Costa, DeSaulnier, Maloney,
- 2 Norton, Raskin, Jordan, Meadows, and Zeldin.

1 Appearances:

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4 For the PERMANENT SELECT COMMITTEE ON INTELLIGENCE:

5

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17

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19 For the COMMITTEE ON OVERSIGHT AND REFORM:

20

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

1 For the COMMITTEE ON FOREIGN AFFAIRS:

2

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

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9

10 For MARK SANDY:

11

12 BARBARA VAN GELDER

13 ALLEGRA KAUFFMAN

14 KAREN D. WILLIAMS

15 COZEN O'CONNOR

16 1200 Nineteenth Street NW

17 Washington, D.C. 20036

1 MR. SWALWELL: Good morning, Mr. Sandy, counsel, and colleagues,
2 and welcome to the House Permanent Select Committee on Intelligence,
3 which, along with the Foreign Affairs and Oversight Committees, is
4 conducting this investigation as a part of the official impeachment
5 inquiry of the House of Representatives.

6 Today's deposition is being conducted as a part of the impeachment
7 inquiry. In light of attempts by the Office of Management and Budget
8 and the administration to direct you to not cooperate with the inquiry,
9 the committee had no choice but to compel your appearance. We thank
10 you for complying with the duly authorized congressional subpoena, as
11 other current and former officials from across the Federal Government
12 have done.

13 Mr. Sandy is currently the Deputy Associate Director for National
14 Security Programs at the Office of Management and Budget, a position
15 that he has held since 2013. He was also the Acting Director of OMB
16 in 2017 until a new OMB Director was confirmed.

17 His over two decades of public service have included roles as the
18 managing director of the Millennium Challenge Corporation, an
19 independent U.S foreign assistance agency established by Congress in
20 2004 with strong bipartisan support, and staffing three White Houses
21 of both Democratic and Republican Presidents. Mr. Sandy also served
22 over 21 years in the Navy Reserve, under 11 Secretaries and Acting
23 Secretaries of Defense.

24 Mr. Sandy, thank you again for your service. We look forward to
25 your testimony today, including your knowledge of and involvement in

1 key policy discussions, meetings, and decisions on Ukraine that relate
2 directly to areas under investigation by the committees.

3 Today, we will be primarily focusing on the administration's
4 placement of a hold on Ukrainian security assistance in the summer of
5 this year through the lifting of the hold on September 11. We will
6 also have question about OMB's response to the impeachment inquiry,
7 including the committee's subpoena which OMB continues to defy despite
8 the fact that we know that it has already collected significant
9 documentary evidence that goes to the heart of our inquiry.

10 Finally, to restate what our chairman and others have emphasized
11 in these interviews, Congress will not tolerate any reprisal, threat
12 of reprisal, or any attempt to retaliate against any U.S. Government
13 official for testifying before Congress, including you or any of your
14 colleagues.

15 It is disturbing that the Office of Management and Budget, in
16 coordination with the White House, has sought to prohibit its employees
17 from cooperating with the inquiry and with Congress and have tried to
18 limit what they can say. We find this unacceptable.

19 Thankfully, consummate public servants like you have
20 demonstrated remarkable courage in coming forward to testify and to
21 tell the truth.

22 Before I turn to committee counsel to begin the interview, I
23 invite the ranking member or, in the absence of a ranking member, any
24 member of the Foreign Affairs or Oversight Committee to make an opening
25 remark.

1 Mr. Jordan?

2 MR. JORDAN: Thank you, Mr. Chairman. I just wanted to welcome
3 Mr. Sandy.

4 And, again, thank you for your service to the country.

5 MR. SWALWELL: Mr. Mitchell?

6 MS. VAN GELDER: He would just like to say two sentences.

7 MR. MITCHELL: Well, I am going to go over the preamble first,
8 and then he can have any opening remarks he wishes.

9 MS. VAN GELDER: Thank you.

10 MR. MITCHELL: This is the deposition of Mark Sandy conducted by
11 the House Permanent Select Committee on Intelligence, or HPSCI,
12 pursuant to the impeachment inquiry announced by the Speaker of the
13 House on September 24th.

14 Mr. Sandy, please state your full name and spell your last name
15 for the record.

16 MR. SANDY: Mark Steven Sandy, S-a-n-d-y.

17 MR. MITCHELL: Along with other proceedings in furtherance of the
18 inquiry to date, this deposition is part of a joint investigation led
19 by the Intelligence Committee in coordination with the Committees on
20 Foreign Affairs and Oversight and Reform.

21 In the room today are majority staff and minority staff from all
22 three committees, and this will be a staff-led deposition. Members
23 of course may ask questions during their allotted time, as has been
24 the case in every deposition since the inception of this investigation.

25 My name is Nicolas Mitchell, senior investigative counsel for

1 HPSCI. I want to thank you for coming in today to this deposition.

2 I'd like to do brief introductions. To my right is Daniel
3 Goldman, director of investigations for the HPSCI majority staff.
4 Mr. Goldman and I will be conducting most of the interview for the
5 majority.

6 I will let my counterparts from the minority introduce
7 themselves.

8 MR. CASTOR: Good morning. Steve Castor with the Republican
9 staff of the Oversight Committee and HPSCI.

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 MR. MITCHELL: This deposition will be conducted entirely at the
15 unclassified level. However, the deposition is being conducted in
16 HPSCI's secure spaces and in the presence of staff with appropriate
17 security clearances. We understand that your attorneys also have
18 security clearances?

19 MS. VAN GELDER: No.

20 MR. MITCHELL: No.

21 Nevertheless, it's the committees' expectation that neither
22 questions asked of you nor answers provided by you will require a
23 discussion of any information that is currently or at any point could
24 be properly classified under Executive Order 13526.

25 You're reminded that E.O. 13526 states that in no case shall

1 information be classified, continue to be maintained as classified,
2 or fail to be declassified for the purpose of concealing any violations
3 of law or preventing embarrassment of any person or entity.

4 If any of our questions can only be answered with classified
5 information, please inform us of that and we will adjust accordingly.

6 Today's deposition is not being taken in executive session, but
7 because of the sensitive and confidential nature of some of the topics
8 and materials that will be discussed, access to the transcript of the
9 deposition will be limited to the three committees in attendance.

10 Under the House deposition rules, no Member of Congress nor any
11 staff member can discuss the substance of the testimony you provide
12 today.

13 You and your attorney will have an opportunity to review the
14 transcript.

15 Before we begin, I would like to go over the ground rules for this
16 deposition. We will be following the House regulations for
17 depositions, which we have previously provided to your counsel.

18 The deposition will proceed as follows. The majority will be
19 given 1 hour to ask questions; then the minority will be given 1 hour
20 to ask questions. Thereafter, we will alternate back and forth between
21 majority and minority in 45-minute rounds until questioning is
22 complete. We will take periodic breaks, but if you need a break at
23 any time, do let us know.

24 Under the House deposition rules, counsel for other persons or
25 government agencies may not attend. You are permitted to have an

1 attorney present during the deposition, and I see you have brought some.

2 At this time, if counsel could please state their appearance for
3 the record.

4 MS. VAN GELDER: Barbara Van Gelder, Cozen O'Connor.

5 MS. WILLIAMS: Karen Williams, Cozen O'Connor.

6 MS. KAUFFMAN: Allegra Kauffman, Cozen O'Connor.

7 MS. VAN GELDER: Training session.

8 MR. MITCHELL: There is a stenographer taking down everything
9 that is said here today in order to make a written record of the
10 deposition. For the record to be clear, please wait until each
11 question is completed before you begin your answer and we will wait
12 until you finish your response before asking the next question.

13 The stenographer cannot record nonverbal answers such as shaking
14 your head, so it's important that you answer each question with an
15 audible verbal answer.

16 We ask that you give complete replies to questions based on your
17 best recollection. If a question is unclear or you are uncertain in
18 your response, please let us know. And if you do not know the answer
19 to a question or cannot remember, simply say so.

20 You may only refuse to answer a question to preserve a privilege
21 recognized by the committee. If you refuse to answer a question on
22 the basis on privilege, staff may either proceed with the deposition
23 or seek a ruling from the chairman on the objection. If the chair
24 overrules any such objection, you're required to answer the question.

25 Finally, you're reminded that it is under lawful to deliberately

1 provide false information to Members of Congress or staff. It is
2 imperative that you not only answer our questions truthfully but that
3 you give full and complete answers to all questions asked of you.
4 Omissions may also be considered as false statements.

5 As this deposition is under oath, Mr. Sandy, would you please
6 stand and raise your right hand to be sworn?

7 Do you swear that your testimony provided here today will be the
8 whole truth and nothing but the truth?

9 MR. SANDY: I do.

10 MR. MITCHELL: Let the record reflect that the witness has been
11 sworn.

12 You may be seated.

13 Mr. Sandy, if you have an opening statement or your attorney has
14 any matters to discuss, now would be the time.

15 MR. SANDY: Thank you.

16 Ladies and gentleman, I am here today as a fact witness and as
17 a nonpartisan civil servant and military veteran who proudly serves
18 the Executive Office of the President across administrations. I am
19 not here to advocate for any outcome but simply to honor the oath we
20 all share.

21 Thank you.

22 MR. SWALWELL: All right. Mr. Mitchell?

23 MR. MITCHELL: Thank you. We will now begin our 1-hour first
24 round.

25 BY MR. MITCHELL:

1 Q So, Mr. Sandy, what's your current title?

2 A Deputy Associate Director for National Security at the
3 Office of Management and Budget.

4 Q Okay. And how long have you had that title?

5 A Since December of 2013.

6 Q And when did you start working for OMB?

7 A Initially, I began in 1993. I worked there until 1997 and
8 then returned in 2011.

9 Q So I take it that you are a career civil servant, not a
10 political appointee, in your current post. Is that correct?

11 A Yes, sir.

12 Q Okay. Can you just generally describe the organizational
13 structure of your particular division or group at OMB?

14 A Certainly. I lead the National Security Division, which
15 includes four branches. And we have responsibility for overseeing the
16 budget and programs of the Department of Defense, the National Nuclear
17 Security Administration, the Intelligence Community, and the
18 Department of Veterans Affairs principally, as well as a few small
19 agencies.

20 Q Okay. And what is above the National Security Division?

21 A The Associate Director, who leads the so-called Resource
22 Management Organization, or RMO.

23 Q And who is that?

24 A Mr. Michael Duffey.

25 Q And is that your immediate supervisor?

1 A Yes.

2 Q Okay. And how many people do you have working below you in
3 the National Security Division?

4 A Approximately 35 when we are fully staffed, give or take a
5 few detailees.

6 Q Okay. And just generally, without going into too much
7 detail, can you just describe your duties and responsibilities in your
8 current position?

9 A In my position, I lead the division. The division, overall,
10 is responsible for overseeing the agencies and departments that I
11 mentioned, in terms of their budgets and programs and policy priorities
12 of the administration.

13 Q Okay. And before I forget, Mr. Duffey, who's your
14 supervisor, is he a career civil servant or is he a political appointee?

15 A Political.

16 Q Okay. In your current role, have you ever had any
17 responsibilities with regard to apportionments?

18 A Yes.

19 Q And are you familiar with the term "apportionment official"?

20 A We don't use that term very often, but -- if you mean the
21 individual who is responsible for approving apportionments?

22 Q Yes, okay. Were you an apportionment -- did you have the
23 responsibility of approving apportionments at any given time during
24 this current role?

25 A Yes, I did.

1 Q Okay. Generally, what is an apportionment?

2 A An apportionment is a legal document, consistent with
3 provisions in Title XXXI of U.S. Code, which basically sets parameters
4 on agencies' use of appropriated funds.

5 Q So, once funds are appropriated by Congress, is an
6 apportionment required for those funds to be spent?

7 A Yes. With very few exceptions, for nearly all accounts, an
8 apportionment is required.

9 Q And, just generally, what does an apportionment look like?
10 It's a physical document, presumably?

11 A Well, when printed -- most of our work is now electronic,
12 of course, but when printed, it would have basically columns of
13 information about budgetary sources and then the application or uses
14 of those sources, as well as a number of accompanying -- if you look
15 at it as a spreadsheet, you would have accompanying tabs with footnotes,
16 for example, a signature block, et cetera.

17 Q Okay. And, again, during this current role, there was a time
18 where you were responsible for signing apportionments. Is that
19 correct?

20 A For approving them, yes.

21 Q Approving them and physically signing them?

22 A The signature is automatically loaded into the system, so
23 it will appear on any apportionment that I approved.

24 Q Okay. Can you just generally describe the process for
25 reviewing and approving apportionments?

1 A The agency typically submits a request, which comes into us
2 electronically. It would have an agency request column, and then it
3 will have a separate column for OMB action.

4 The examiner -- and that's the staff level at OMB -- would first
5 review that apportionment request, go back to the agency with any
6 questions, and then, when he or she had completed their review, would
7 route that forward to a branch chief, who would conduct a review and
8 then route it forward to the approving official.

9 Q Okay. And the examiner and branch chief, are those among
10 the 35 individuals that you oversee?

11 A Correct.

12 Q And when you said the approving official, here we're talking
13 about you, correct?

14 A Previously, yes.

15 Q Okay. And you indicated that the examiner, he or she, might
16 consult with the agencies that are submitting the request?

17 A Certainly.

18 Q Okay. Can you just generally describe the nature of those
19 conversations, how that back-and-forth would work?

20 A Well, the examiners have contacts at their respective
21 agencies. And so, if they had questions or concerns about the
22 requested allocation of funds -- so, for example, a common allocation
23 would be an allocation across the four quarters of the fiscal year.
24 And if an examiner was concerned about ensuring that enough resources
25 were left for, say, the fourth quarter, the examiner may ask how the

1 agency came up with the allocations that it's requesting.

2 Q Okay. And would those communications between the examiner
3 and the agency typically be documented in one form or another?

4 A It really depends. There could be email questions and
5 answers, or it could simply be a phone call.

6 Q Okay. And then you indicated that the examiner would then
7 provide some sort of report or recommendation to the branch chief?

8 A Correct.

9 Q And what form would that take?

10 A That would be an electronic note with whatever information
11 the examiner deemed relevant that would be routed forward in our online
12 system.

13 Q What's the name of your online system?

14 A MAX.

15 Q Do the examiners communicate with branch chiefs about their
16 review solely through MAX, or could it also be done through email as
17 well?

18 A It could also be done via email, but MAX auto-generates
19 emails to alert people that information is awaiting their action.

20 Q Okay. So if an examiner had any concerns about a particular
21 request by an agency, would those be reflected in the MAX system?

22 A They could be. It depends on how the examiner chooses to
23 communicate that information.

24 Q Well, where else could it be?

25 A It could also be in an email or in a conversation.

1 Q Okay. Once the branch chief receives, either through email,
2 the MAX system, or some sort of oral communication, an examiner's report
3 or concerns, what does the branch chief do next?

4 A The branch chief has responsibility for reviewing the
5 apportionment, a second review and, again, if the branch chief has
6 questions, going back to the examiner, or if he or she supports the
7 apportionment, routing it forward.

8 Q Okay. So it's an iterative process between a branch chief
9 and the examiner, or it can be?

10 A It can be. The branch chief has authority, for example, to
11 basically send an apportionment back to an examiner or route it forward.

12 Q Okay. And then, once the branch chief -- or how does the
13 branch chief go about routing it forward?

14 A That, again, would be within the electronic MAX system.

15 Q Okay. Also through email as well, possibly?

16 A Again, if the branch chief wanted to communicate additional
17 information, email is an option, but the system auto-generates emails
18 to the approving official.

19 Q Okay. So you, as the approving official, when you did have
20 that role --

21 A Yes.

22 Q -- would you see the recommendations of the branch chief as
23 well as the comments or recommendations of the lower-level examiners?

24 A Yes.

25 Q Okay. Did you typically accept the recommendations of your

1 staff with regard to whether to approve an apportionment or not?

2 A Generally. The vast majority of apportionments are quite
3 routine.

4 Q Okay. Can you recall an instance when you disagreed with
5 your staff's recommendations?

6 A Yes.

7 Q Okay. Without getting into specifics, necessarily, can you
8 just generally describe the circumstances under which you would
9 disagree or have questions about what was presented to you?

10 A Well, one key example is, if you have an apportionment, you
11 cannot change the allocations for a previous quarter. So if you're
12 in the second quarter of a fiscal year and the agency submits a request
13 and it changes the allocation for the first quarter, you can't do that.
14 So if the examiner or the branch chief didn't catch that error, I would
15 just catch the error and have it corrected.

16 Q Okay. All right. And was that sort of thing a frequent
17 occurrence?

18 A No. Generally, by the time it reached the third level of
19 review, those sorts of issues have been resolved.

20 Q It sounds like what you're describing is kind of more of a
21 technical issue that was mere oversight, not a larger issue that
22 required further consultation with any other entity within OMB. Is
23 that generally accurate?

24 A Generally, that's the case, yes.

25 Q Okay.

1 What is OMB's Budget Review Division?

2 A The Budget Review Division coordinates exercises across the
3 entire agency, particularly with respect to the development of the
4 annual President's budget, but it also runs number of drills to collect
5 information, often at the behest of policy officials. It also has
6 experts in many of our circulars -- for example, Circular A-11.

7 Q Okay. To your knowledge, have you or branch chiefs or any
8 examiners ever consulted with OMB's Budget Review Division about
9 particular apportionments just to seek advice?

10 A Absolutely.

11 Q Okay. And when you were responsible for reviewing and
12 approving apportionments, how often would you receive an apportionment
13 to approve?

14 A I received hundreds every year. And they came in large
15 tranches, depending upon, for example, when we had a new appropriation.
16 You could always expect heavy volume at the end of the fiscal year and
17 at the beginning of a fiscal year or around key events such as the
18 enactment of appropriations or a continuing resolution.

19 Q Okay. And when you received these apportionments, is it
20 fair to say that -- well, tell me. Was it a matter of routine that
21 you would simply sign them? Or would you carefully scrutinize them
22 and potentially have discussions with branch chief, examiners, and
23 others about the apportionments, if appropriate?

24 A I'd certainly have discussions if I had questions or they
25 had flagged anything we needed to discuss. But the vast majority of

1 these are quite routine, particularly if you've done this -- you've
2 seen them before.

3 Q Okay.

4 All right. So today we're going to focus on two different types
5 of security assistance, specifically to Ukraine. The first is the DOD
6 Ukraine Security Assistance Initiative, USAI, and then the second is
7 the State-administered foreign military financing.

8 Can you just generally describe and compare USAI versus FMF? And
9 I'm also going to ask you what your experience is with respect to both.

10 A Okay. Let me say at the start that FMF is not within the
11 purview of my division. So I will not speak to that, because that is
12 handled by our counterpart division, the International Affairs
13 Division. But I'm glad to speak to USAI.

14 USAI, as appropriated in the defense appropriations bill and as
15 authorized in the National Defense Authorization Act, broadly is
16 designed to provide training, equipment, and other forms of assistance
17 to Ukraine. I know in fiscal year 2019 there was an appropriation for
18 \$250 million.

19 Q Okay. I understand that your current role does not involve
20 FMF, but at any point during your career did you have any exposure to
21 FMF issues?

22 A I previously worked in the International Affairs Division,
23 but FMF was not handled by my branch.

24 Q Okay. All right.

25 So you mentioned the \$250 million in USAI funds for 2019. Are

1 you generally aware of the congressional notifications that went out
2 with regard to this \$250 million in 2019?

3 A Yes.

4 Q So the first notification was around March 5th. Is that
5 correct?

6 A I recall the month of March.

7 [Majority Exhibit No. 1
8 was marked for identification.]

9 BY MR. MITCHELL:

10 Q I'm going to hand you exhibit No. 1. Do you recognize what
11 this is, sir?

12 A Yes.

13 Q And what is it?

14 A It looks to be a congressional notification consistent with
15 the statutory requirements vis-a-vis USAI.

16 Q And this was for the first tranche of USAI aid in 2019. Is
17 that correct?

18 A Correct.

19 Q Were you all --

20 MS. VAN GELDER: Excuse me.

21 Have you ever seen this before?

22 MR. SANDY: I have not seen the actual document. I'm just
23 recognizing it based upon doing a quick scan.

24 BY MR. MITCHELL:

25 Q Okay, but you're familiar with the fact that there was a

1 congressional notification for two different tranches of aid in 2019
2 related to USAI?

3 A Yes.

4 Q Okay. And exhibit No. 1 is the first tranche. Is that your
5 understanding?

6 A Yes, that's my understanding.

7 Q Okay. Have you seen the congressional notification for the
8 second tranche?

9 A I have not.

10 [Majority Exhibit No. 2
11 was marked for identification.]

12 BY MR. MITCHELL:

13 Q Okay. Well, just so the record is complete, I'm handing you
14 exhibit No. 2.

15 A Thank you.

16 Q And what's the date of this particular document? There
17 should be two dates up at the top.

18 A I see the dates stamped as May 23rd and May 28th.

19 Q Okay. And it's your understanding that there was a second
20 congressional notification, which was in the May time period, for the
21 second tranche of USAI funds. Is that right?

22 A Yes.

23 Q Okay. Are you aware of, generally, the interagency process
24 that led up to these two CNs?

25 A I don't participate in the interagency process, so I don't

1 have detailed knowledge.

2 Q Okay. But are you aware of any concerns that were raised
3 either during the interagency process or during your time at OMB during
4 the spring of 2019 that led up to either of these congressional
5 notifications regarding the CNs for the first and second tranche of
6 USAI?

7 A I was not aware of anything prior to the notifications.

8 Q To the best of your recollection, did OMB issue any
9 apportionments for USAI funds between March, which was the first CN,
10 and mid-June of 2019?

11 A The USAI funds are actually included in a larger account.
12 That account is the Defense-wide operation and maintenance account.
13 So we would have issued apportionments for that account earlier in the
14 fiscal year.

15 Q Okay. And do you know -- so can you distinguish between USAI
16 funds that would've been included in an apportionment versus the larger
17 funds that were in that account, or are they all commingled?

18 A They were commingled.

19 Q Okay.

20 When did you first learn that security assistance funds related
21 to Ukraine were being withheld or might be withheld?

22 A I'm just consulting my calendar. I was on leave through July
23 17th. I returned to the office on July 18th. And I learned of that
24 shortly after my return, so I would say it was either July 18th or July
25 19th.

1 MS. VAN GELDER: And I'd just like the record to reflect, this
2 is a blank calendar, just for his -- when he says "my calendar," it's
3 not his actual office calendar.

4 BY MR. MITCHELL:

5 Q Okay. When did you go on leave?

6 A I was out of the office starting on Monday, July 8th.

7 Q So you did not hear anything about Ukraine security
8 assistance possibly being on hold at any time during the month of June
9 or during that first week of July?

10 A No.

11 Q Did you hear of any questions that were being raised by OMB
12 about Ukraine security assistance at the end of June or the beginning
13 of July?

14 A Yes.

15 Q Can you describe what you heard?

16 A I heard that the President had seen a media report and he
17 had questions about the assistance.

18 [Discussion off the record.]

19 BY MR. MITCHELL:

20 Q When did you hear that the President had seen a media report
21 and had questions about the assistance?

22 A On June 19th.

23 Q Do you know what media report that was?

24 A I don't recall the specific article.

25 Q Who told you that the President had these concerns or these

1 questions?

2 A Mike Duffey.

3 Q And that was the conversation that you had with Mr. Duffey
4 on June 19th?

5 A I believe it was an email.

6 Q Okay. Can you describe what that email said?

7 A The email expressed an interest in getting more information
8 from the Department of Defense.

9 Q And what kind of additional information?

10 A A description of the program.

11 Q What exactly did Mr. Duffey say, to the best of your
12 recollection, in that email?

13 A That the President had questions about the press report and
14 that he was seeking additional information.

15 Q Anything else in that email?

16 A Not that I recall.

17 Q Did you have a conversation with Mr. Duffey about this
18 request?

19 A I only recall the email.

20 Q Okay. Did you have a conversation with anyone else
21 following this email from Mr. Duffey?

22 A The email was directed to the Department of Defense, and I
23 received information the following day.

24 Q Okay. So you were copied on this email?

25 A Correct.

1 Q Okay. And who did Mr. Duffey send the email to at DOD?

2 A As I recall, Ms. Elaine McCusker.

3 Q And who was she?

4 MS. VAN GELDER: Do you want to spell that last name for the
5 reporter?

6 MR. SANDY: Sure. M-c-C-u-s-k-e-r.

7 BY MR. MITCHELL:

8 Q And who was she?

9 A Deputy Comptroller.

10 Q Okay. Is that someone that you communicate with as part of
11 your normal course of business?

12 A Yes.

13 Q Did you have any conversations with Ms. McCusker following
14 this request by Mike Duffey?

15 A She provided me with a hard-copy summary the following day.

16 Q And when you say she provided you with a hard copy, she
17 physically gave you a hard copy?

18 A She did, because she was attending a meeting at OMB.

19 Q Okay. Did she ever send you any electronic communication
20 as well in response to Mike Duffey's email?

21 A I only recall the hard copy.

22 Q Okay. And what was that hard copy?

23 A It was an overview of USAI.

24 Q Had you seen this overview before? Was it a precooked
25 document?

1 A I hadn't seen it before, so I can't speak to its origin.

2 Q Okay. And what did you do with this hard-copy document that
3 Ms. McCusker gave you?

4 A We shared it with Mike Duffey.

5 Q Who's "we"?

6 A Sorry. When I say "we," I generally refer to NSD staff.

7 Q Okay. And how did you share it with him? Did you physically
8 give it to him, or did you scan it and email it to him?

9 A I recall he was out of the office that day, so I don't recall
10 exactly how it was shared.

11 Q Okay. Did you eventually have a conversation with
12 Mr. Duffey about the information that Ms. McCusker gave you?

13 A I don't recall a specific conversation on that.

14 Q What about email exchanges?

15 A Not that I recall.

16 Q Did Mr. Duffey come back to you with any additional
17 questions?

18 A He came back to members of my staff.

19 Q Okay. Can you describe what you know about that?

20 A He had a number of followup questions related to the program.

21 Q And what were those?

22 A And I don't recall all the specifics, but more information
23 on the financial resources associated with the program, in particular.

24 Q I don't -- what does that mean?

25 A Oh, sorry. It would be in terms of the history of the

1 appropriations, any more details about the intent of the program.

2 Q And was that information provided to Mr. Duffey?

3 A Yes.

4 Q And how?

5 A So one of my staff members provided that information
6 electronically.

7 Q Were you copied on those emails?

8 A Yes.

9 Q Okay.

10 Are you aware that OMB has received a subpoena from Congress for
11 documents related to some of the topics that you've already discussed
12 here today?

13 A Yes.

14 Q Have you undertaken any sort of efforts to gather documents
15 that might be relevant to the subpoena?

16 A Those efforts within OMB are led by our Office of the General
17 Counsel.

18 Q Have you personally gone through any of your emails or other
19 records to find documents that might be responsive to the subpoena?

20 A My understanding from counsel is that they --

21 [Discussion off the record.]

22 MR. SANDY: I have not undertaken that in response to such a
23 request.

24 [Discussion off the record.]

25 MR. SANDY: Sorry. I just want to explain that when OMB decides

1 to collect information electronically, it is done centrally.

2 BY MR. MITCHELL:

3 Q Okay. Is it possible that you also -- well, have you seen
4 the subpoena that was issued?

5 A I have seen the subpoena --

6 Q Okay.

7 A -- yes.

8 Q And so you're generally aware of the information that the
9 committees are seeking. Is that correct?

10 A Yes.

11 Q Okay. Do you generally keep hard-copy notes in your office?

12 A Some notes. And we were advised to retain all that
13 information.

14 Q Okay. Do you know whether those notes -- did you provide
15 copies of those notes to anyone?

16 A I have not been requested to do so.

17 Q Okay. So they've been preserved. Is that correct?

18 A Correct.

19 Q Okay. But no one has actually collected them, to your
20 knowledge.

21 A Correct.

22 Q All right.

23 Now, you indicated that Mr. Duffey had some additional questions
24 and members of your staff provided additional information to him
25 electronically. Is that correct?

1 A Correct.

2 Q Okay. Were you copied on those communications as well?

3 A Well, I was copied on them, yes.

4 Q Okay. And did you have any conversation with Mr. Duffey
5 about any of the additional information that was provided to him?

6 A Not that I recall.

7 Q Do you know what Mr. Duffey did with that information?

8 A I do not know.

9 Q Do you know whether he provided that information back to the
10 White House?

11 A I was not copied on any sharing of that information, so the
12 short answer is I don't know.

13 Q Okay. Well, have you had any conversations with anyone
14 about whether Mr. Duffey shared that information with the White House?

15 A I do not recall.

16 Q Okay. All right.

17 So Mr. Duffey has these questions on June 19th, and there is a
18 back-and-forth between Mr. Duffey -- a request from Mr. Duffey to DOD.
19 Is that correct?

20 A The initial request was to DOD, yes.

21 Q And DOD responds through you with this hard-copy document,
22 correct?

23 A Correct.

24 Q And then Mr. Duffey asks for additional information, which
25 your staff then gathers and submits to Mr. Duffey. Is that right?

1 A Correct.

2 Q And you don't have any conversations with Mr. Duffey about
3 any of these requests, either on email or in person or over the phone,
4 during this time period?

5 A I don't recall the specifics.

6 Q Okay. So Mr. Duffey never provided any more color on what
7 the President had concerns about or questions about with regard to USAI?

8 A Later he did.

9 Q Okay. When was that?

10 A When I returned from leave July 18th, I was informed of the
11 President's direction to hold military support funding for Ukraine.

12 Q Who communicated that to you?

13 A Mike Duffey.

14 Q How?

15 A I recall a conversation.

16 Q Can you describe that conversation?

17 A He communicated that that was the direction he had received.

18 Q Okay. I want to know everything that you can possibly recall
19 about that conversation with Mr. Duffey on or about July 18th or 19th
20 in which he told you that the President had decided to put a hold on
21 Ukraine security assistance.

22 A Okay. On the 19th, he shared that he had communicated this
23 direction to the Department of Defense.

24 Q "He" being Mr. Duffey?

25 A I'm sorry. Yes. Mr. Duffey.

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1 Q Okay.

2 A He also expressed a desire to create an apportionment that
3 would implement the hold.

4 Q What else?

5 A And he --

6 MS. VAN GELDER: Go ahead. Are you done?

7 Are you ready?

8 MR. GOLDMAN: I am.

9 MS. VAN GELDER: Any more dentist jokes over there?

10 MR. SANDY: And we had a conversation about that request on Friday
11 the 19th.

12 MR. SWALWELL: Mr. Sandy, where was the conversation?

13 MR. SANDY: I recall a conversation in the Eisenhower Executive
14 Office Building. And then he also followed up with me by phone later
15 that day, on the 19th.

16 MR. SWALWELL: So the first conversation was on July 19 in the
17 EEOB. Is that right?

18 MR. SANDY: I returned on the 18th, and so I don't recall exactly
19 what happened on the 18th versus the 19th in terms of getting caught
20 up after having been on leave for nearly 2 weeks. But I do recall
21 specifically the nature of that request.

22 MR. SWALWELL: And could you set the scene for us? Is this in
23 a common space? Your office? His office? Where was the
24 conversation?

25 MR. SANDY: As I recall, it was in a hallway after a meeting where

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1 we had an initial conversation, but the specific request was
2 communicated to me via phone later on the 19th. So I was in my office,
3 and I presume he was in his.

4 MR. SWALWELL: Okay. And you received a phone call from
5 Mr. Duffey to you in your office.

6 MR. SANDY: He sent me an email saying we needed to connect. I
7 probably called him.

8 MR. SWALWELL: And, in the email, did he reference what you needed
9 to connect about, or did he just say he wanted to connect?

10 MR. SANDY: As I recall, it was about Ukraine.

11 MR. SWALWELL: Okay.

12 Mr. Mitchell?

13 BY MR. MITCHELL:

14 Q But it sounds like you had a subsequent conversation with
15 him on the 19th. Is that right?

16 A So that was the conversation I was describing with the
17 specific request.

18 Q All right. And you indicated that Mr. Duffey said he wanted
19 to create an apportionment that would implement the hold. Can you
20 describe the conversation surrounding how to create this apportionment
21 or what that apportionment might look like with Mr. Duffey on that day?

22 A Right. So, on that day, I emphasized that that would raise
23 a number of questions that we would need to address. And so I advised
24 that we would want to consult with our Office of the General Counsel
25 on those questions first.

1 Q When you were speaking with Mr. Duffey, putting aside any
2 subsequent conversation you might have had with legal counsel, what
3 were those questions that you raised with him?

4 A I just made a general reference to the Impoundment Control
5 Act --

6 Q Okay.

7 A -- and said that we would have to assess that with the advice
8 of counsel before proceeding.

9 Q Okay. And you're not an attorney, correct?

10 A That is correct.

11 Q What is your training with -- your professional training
12 with regard to accounting, for example?

13 A Well, I would say, all career staff who work in these resource
14 management offices generally have general awareness of, for example,
15 in this case, the Impoundment Control Act --

16 Q Okay.

17 A -- enough knowledge to know when to ask for advice.

18 Q Okay. So, in these specific circumstances --

19 A Yes.

20 Q -- when you raised the Impoundment Control Act with
21 Mr. Duffey during this conversation on July 19th, why did you think
22 that a modification to the apportionment to account for the hold might
23 implicate the Impoundment Control Act?

24 A Ah. Because these moneys are what we call 1-year funds,
25 which means that their period of availability was expiring on September

1 30th. And consistent with a layman's understanding of the Impoundment
2 Control Act, we need to ensure that agencies are able to obligate funds
3 before they expire.

4 Q And what is your understanding of, if those funds cannot be
5 obligated before they expire, what happens?

6 A Then they basically expire and they return to the Treasury.

7 Q And there could be a violation of the Impoundment Control
8 Act if they expire in that way?

9 A Potentially.

10 Q Okay. And that was your concern July 19th when you had this
11 conversation with Mr. Duffey?

12 A My concern was that there was -- I asked about the duration
13 of the hold and was told there was not clear guidance on that. So that's
14 what prompted my concern.

15 Q Okay. So you asked Mr. Duffey about the duration of the
16 hold.

17 A That is correct.

18 Q Okay. What was Mr. Duffey's reaction when you mentioned the
19 Impoundment Control Act?

20 A I think he appreciated my concern and acknowledged that I
21 offered to take the lead in terms of following up with the Office of
22 General Counsel.

23 Q Okay. So did he direct you to consult with General Counsel?

24 A I was doing that in my own initiative, but he certainly didn't
25 object.

1 Q Okay.

2 Now, Mr. Duffey, you indicated, was a political appointee. Is
3 that correct?

4 A Yes, he is.

5 Q Do you have general understanding of Mr. Duffey's
6 familiarity with apportionments and the Impoundment Control Act at the
7 time that you had this conversation on July 19th?

8 A I was not aware of any previous experience of his.

9 Q All right. Just to be clear, are you saying that you don't
10 believe that he had any prior experience on July 19th regarding the
11 Impoundment Control Act or apportionments generally?

12 A I was not aware of any prior experience that he had.

13 Q Okay.

14 This conversation that you had with Mr. Duffey, did you document
15 it in any way?

16 A No.

17 Q Okay. Did you have any followup emails or any sort of
18 memoranda that would reflect the fact of the conversation on July 19th
19 with Mr. Duffey?

20 A No. I followed up by phone with the Office of General
21 Counsel.

22 Q Okay. What about in a calendar? Is there any sort of
23 calendar record of this meeting on July 19th?

24 A No.

25 MR. SWALWELL: What day did you follow up by phone with General

1 Counsel?

2 MR. SANDY: I followed up with an initial conversation that
3 evening and then scheduled a subsequent call for Monday morning, the
4 22nd.

5 MR. SWALWELL: So July 19, in the evening, by phone, you contact
6 General Counsel.

7 MR. SANDY: Correct.

8 MR. SWALWELL: Okay.

9 BY MR. MITCHELL:

10 Q You indicated, when you got back from leave, I think you said
11 you received an email from Mr. Duffey saying, "Call me." Is that
12 right?

13 A Yes.

14 Q Okay. Do you know whether anyone told Mr. Duffey to talk
15 to you about the hold?

16 A So he shared with me an email that described the desire -- the
17 President's direction with respect to the hold.

18 Q How did he share this email with you? Did he forward it to
19 you?

20 A Yes, he did.

21 Q What was the date of that email?

22 A As I recall, the date of the email was July 12th.

23 Q While you were on leave?

24 A Correct.

25 Q And who was that email from?

1 A Office of the Chief of Staff.

2 Q Which Chief of Staff?

3 A Oh. Chief of Staff of the White House, that office.

4 Q So Mick Mulvaney's office?

5 A Correct.

6 Q And who from the Office of Chief of Staff sent this email?

7 A Mr. Robert Blair.

8 Q Who is Robert Blair?

9 A He is a senior advisor to the Acting Chief of Staff.

10 Q Have you ever had any interactions with Mr. Blair during the
11 course of your duties?

12 A Yes. Previously, he was the Associate Director for National
13 Security Programs -- in essence, Mike Duffey's predecessor.

14 Q Okay. So he was your immediate supervisor for some period
15 of time at OMB?

16 A Correct.

17 Q And then did Mr. Blair go to the Office of Chief of Staff
18 more or less when Mr. Mulvaney went from OMB to Office of Chief of Staff?

19 A Shortly thereafter, as I recall.

20 Q And Mr. Mulvaney was also, during this time period, the
21 Acting Director of OMB, correct? He was dual-hatted? Let me be
22 precise about my time period. In mid-July of 2019.

23 A So he retains the title of Director of OMB, but he does not
24 perform those functions.

25 Q Okay.

1 So this July 12th email from Mr. Blair, what did it say?

2 A To the best of my recollection, that the President is
3 directing a hold on military support funding for Ukraine.

4 Q What else was in that email?

5 A Nothing that I recall.

6 Q Was any other country mentioned?

7 A No.

8 Q Any other security assistance package?

9 A No.

10 Q Any other aid of any sort?

11 A Not to my recollection.

12 Q Any other topic at all in this email?

13 A No.

14 Q Who did Mr. Blair send this email to?

15 A Mr. Duffey.

16 Q Who else was on the email?

17 A I don't recall anybody else being copied.

18 Q And you indicated that Mr. Duffey forwarded this email to
19 you?

20 A Correct.

21 Q To the best of your knowledge, has that email been retained
22 by OMB?

23 A Yes.

24 Q Was there anything else in this email string, or was it just
25 that one communication that you've already described?

1 A The only -- that was just the one communication.

2 Q Okay. And what did you do with that email?

3 A I retained it.

4 Q Anything else? Did you forward it to anyone?

5 A I am pretty confident that I would have forwarded that to
6 members of my staff.

7 Q Okay. All right. And remind me again when you received
8 this July 12th email.

9 A So he had made a reference to that direction, but, as I
10 recall, I didn't actually receive it until Monday the 22nd.

11 Q Monday the 22nd. Okay. So between -- well, let's take back
12 the clock a couple of days.

13 A Uh-huh.

14 Q You had this communication with Mr. Duffey on July 19th at
15 EOB. You indicated that there might be -- you had concerns about the
16 Impoundment Control Act. And did you then consult with OMB counsel?

17 A I did.

18 Q Okay. I don't want to -- I'm not going to get into what they
19 might've told you. But did you -- I think you indicated that you called
20 OMB counsel. Is that correct?

21 A Yes. I spoke to OMB counsel Friday evening and arranged for
22 a conference call Monday morning.

23 Q All right. I don't have the calendar in front of me. What's
24 the date of that Friday?

25 A Friday the 19th.

1 Q Okay. And you arranged for a conference call?

2 A Yes, for Monday morning.

3 Q The 22nd.

4 A Correct.

5 Q Okay. At the time that you spoke with OMB counsel, did you
6 have copy of this July 12th email from Rob Blair?

7 A No. As I recall, I received the actual email on the 22nd.

8 Q Okay. After your conference call with legal counsel?

9 A I don't recall the specific time of day that I received the
10 email.

11 Q Okay.

12 Between July 19th and July 22nd, including July 22nd, did
13 Mr. Duffey provide you any explanation as to why the President wanted
14 to place a hold on Ukraine security assistance?

15 A No.

16 Q Did you ask?

17 A Yes.

18 Q And what was the response?

19 A He was not aware of the reason.

20 Q To the best of your recollection, what precisely did he say
21 to you when you asked for the reason for the President's decision to
22 place a hold on security assistance?

23 A That he was not aware.

24 Q He simply said, "I don't know"?

25 A Yes.

1 Q Did he indicate that he was going to try to get more
2 information as to why the President was placing a hold on security
3 assistance?

4 A I am pausing because I -- there was certainly a desire to
5 learn more about the rationale.

6 Q Whose desire?

7 A A desire on the part of Mike Duffey, myself, and other people
8 working on this issue. So I want to answer your question accurately
9 in terms of saying, that desire was acknowledged.

10 Q All right. Did Mr. Duffey say that he was going to try to
11 get additional information as to the reason for the hold?

12 A Yes. He certainly said that if he got additional
13 information he would share it with us.

14 Q Okay. At any point in time, from the moment that you walked
15 into the SCIF to anytime in history, has Mr. Duffey ever provided to
16 you a reason why the President wanted to place a hold on security
17 assistance?

18 A I recall in early September an email that attributed the hold
19 to the President's concern about other countries not contributing more
20 to Ukraine.

21 Q What was the date of this email? You said early September.

22 A I don't recall the specific date.

23 Q Who was the email from?

24 A Mike Duffey.

25 Q To who?

1 A To me.

2 Q Was anyone else on the email?

3 A I don't recall.

4 Q Do you recall whether this email was before September 9th
5 or after September 9th?

6 A Before.

7 Q How do you know that?

8 A I recall early September, but not the precise date.

9 Q Was there anything else in this email?

10 A Not that I recall.

11 Q Was it in response to an email that you had sent?

12 A No, not that I recall.

13 Q Do you know what prompted this email from Mr. Duffey to you?
14 If you know.

15 A I don't know. We have had multiple conversations
16 throughout -- starting in July and continuing about what the reason
17 for the hold was.

18 Q Well, do you know whether -- did you have any followup
19 conversations with Mr. Duffey about this email?

20 A No.

1 [11:07 a.m.]

2 BY MR. MITCHELL:

3 Q Was this the first time that you heard that the hold might
4 be about some sort of concern that other countries are not providing
5 sufficient support to Ukraine?

6 A We had received information requesting -- sorry. We had
7 received requests for additional information on what other countries
8 were contributing to Ukraine.

9 Q Okay. Did you have any other conversations with Mr. Duffey
10 following this email in early September about this email or about the
11 fact --

12 A May I consult with counsel?

13 Q Sure. Let me finish the question, though. Or about the
14 substance of the email, the fact of the other countries not providing
15 sufficient assistance?

16 [Discussion off the record?]

17 MR. SANDY: I just want to clarify, I do recall in early September
18 that we got requests for information on what additional countries were
19 contributing to Ukraine. I would want to be accurate in recollecting
20 the precise date of the email, so I'd like to amend my previous comment
21 and say, I just don't want to provide something false, because I don't
22 remember the specific date.

23 BY MR. MITCHELL:

24 Q Okay. So it may have been before or it may have been after
25 the 9th of September. You just recall that it was the beginning of

1 September.

2 A That's correct, yes.

3 Q Okay. And you indicated that there were some communications
4 or requests at the beginning of September, generally, about what other
5 countries were contributing to Ukraine?

6 A Yes.

7 Q Can you describe how those came about?

8 A I don't recall all the details. We often -- and when I say
9 "we," sorry, I mean the National Security Division staff and I -- will
10 often receive requests, and I do recall those requests for information.

11 Q From whom?

12 A The requests were from Mike Duffey.

13 Q Did he indicate who the requests were coming from?

14 A As I recall, the information was going to be shared with Rob
15 Blair.

16 Q Okay. Do you recall seeing any emails from Mr. Blair about
17 this topic at the beginning of September? Or was Mr. Duffey the one
18 who was the messenger?

19 A Mr. Duffey was the messenger.

20 Q Okay. And were these email communications, or were they in
21 some other form?

22 A Email communications.

23 Q Okay. Did you or your staff diligently respond to Mr.
24 Duffey's requests?

25 A Yes.

1 Q Okay. And what were those responses?

2 A Data on other countries' contributions to Ukraine.

3 Q Okay. And, again, was that an email?

4 A Yes.

5 Q And what did Mr. Duffey do with that information, to the best
6 of your knowledge?

7 A I presume he shared it with Rob Blair.

8 Q Okay. But you don't know that for a fact?

9 A I do not recall whether I was copied on that email.

10 Q Okay.

11 When you say it's information about other countries'
12 contributions, can you just put a little bit more color on that?

13 A Well, multiple countries are providing various types of
14 assistance to Ukraine. So it would've been data on the magnitude and
15 types of assistance that other countries are providing.

16 Q Okay. And what's your understanding of that?

17 A I don't recall all the specific numbers.

18 Q Okay. Do you generally recall how the assistance from other
19 countries compared to the assistance provided by the United States,
20 both in magnitude and type?

21 A I do not recall the details.

22 Q Okay. Were you the one who was responsible for gathering
23 this information, or was it one of your staff members?

24 A One of my staff members.

25 Q And that information was provided to you, but you weren't

1 the one who was actually compiling the data or researching it or
2 necessarily reviewing it in a great amount of detail. Is that fair
3 to say?

4 A That's correct. And that's common at OMB, where we are a
5 very flat organization. So, often, examiners will take the lead in
6 responding to what are purely information requests.

7 Q Okay. Did you have any conversations with Mr. Duffey about
8 why this request was coming from Mr. Blair?

9 A Not that I recall.

10 Q Does Mr. Duffey work in the same building as you?

11 A No.

12 Q So where does he work, physically, in respect to where your
13 office is located?

14 A So my staff and I work in the New Executive Office Building,
15 and he works in the Eisenhower Executive Office Building, which is
16 across Pennsylvania Avenue.

17 Q Okay. So, as far as personal interactions are concerned,
18 is it fair to say that you see your staff far more frequently than you
19 see Mr. Duffey?

20 A Correct.

21 Q And, presumably, you interact with your staff far more
22 frequently than you interact with Mr. Duffey as well. Is that correct?

23 A Yes.

24 Q Okay.

25 MR. SWALWELL: Mr. Sandy, how many times did you follow up with

1 Mr. Duffey to ask for a rationale on why the security assistance was
2 being held?

3 MR. SANDY: It was an open question over the course of late July
4 and pretty much all of August, as I recall.

5 MR. SWALWELL: And were these in-person questions you were
6 raising? On the phone? Email? Or all of the above?

7 MR. SANDY: Typically, the discussions were in person in late
8 July. And then I think we were more just awaiting any updates that
9 we would receive. So it wasn't as though it came up every day.

10 MR. SWALWELL: And why were you asking Mr. Duffey so often for
11 a rationale? Why were you in need of a rationale?

12 MR. SANDY: I think we just wanted to understand and --

13 MR. SWALWELL: But was it for your curiosity, or was it for
14 concerns that you had about why and legal justification?

15 MR. SANDY: And when you say "so often," it came up mostly in early
16 July, and then we were awaiting updates.

17 I think, in order to execute policy, we often -- it's helpful for
18 us to understand what the underlying goal is, but we execute based upon
19 direction, even if it's not always explained to us.

20 MR. SWALWELL: You said "early July" -- sorry. Go ahead.

21 [Discussion off the record.]

22 MR. SWALWELL: When you said "early July," did you mean July 18,
23 19 when you first --

24 MR. SANDY: I'm sorry. Yes. I meant earlier in this period,
25 meaning when I returned from leave in late July.

1 MR. SWALWELL: Can you recall another time in your duties at the
2 Office of Management and Budget where a significant amount of
3 assistance was being held up and you didn't have a rationale for as
4 long as you didn't have a rationale in this case?

5 MR. SANDY: Not that I recall.

6 MR. SWALWELL: All right.

7 We're going to kick it over to the minority. If you want to take
8 a brief break to go to the bathroom, you're welcome to, get a drink,
9 but I'm inclined to keep going if you want to keep going.

10 MR. SANDY: That's fine.

11 MR. SWALWELL: One hour to the minority.

12 MR. SANDY: Yes, sir.

13 BY MR. CASTOR:

14 Q Good morning, sir.

15 Could you just pick up the story from -- on Monday, July 22nd,
16 you had a -- was it an in-person meeting with OGC? And I'm not going
17 to ask you about what OGC told you. I understand those are subject
18 to privilege. I'm just trying to understand the mechanics here.

19 So, on Monday, July 22nd, you had a conference call with OGC?

20 A Correct.

21 Q And you didn't meet with them in person; it was just over
22 the telephone?

23 A Correct.

24 Q And you were seeking legal advice, presumably, on
25 whether -- or how to implement the next step?

1 A Correct.

2 Q And did you get that advice? Not asking you what the advice
3 was, but did OGC provide you with guidance?

4 A [Nonverbal response.]

5 Q And when did they do that?

6 A So those conversations lasted over several days.

7 Q Okay.

8 A And the answer to your question is yes.

9 Q Okay. And was the guidance -- not asking about the content
10 of the guidance, but did it come over email? Was it an official letter?
11 And when did it arrive, finally?

12 A There were email exchanges, and I recall an email that
13 concluded those exchanges on Wednesday, July 24th.

14 Q Okay. And I believe you indicated the question was relating
15 to the Impoundment Control Act.

16 A My questions, yes.

17 Q Right. Okay. And the issue is resolved on Wednesday, July
18 24th. And, obviously, because of what happened, the hold was
19 implemented. Is that correct?

20 A The issues addressed questions that I had vis-a-vis an
21 apportionment.

22 Q Right.

23 A And so -- I just want to answer your question precisely.

24 Q Uh-huh.

25 A So that apportionment was finalized on July 25th.

1 Q Okay. And --

2 MS. VAN GELDER: Can I talk to him for a second?

3 MR. CASTOR: Of course.

4 [Discussion off the record.]

5 MR. SANDY: So I also had conversations with DOD during this
6 period as well.

7 BY MR. CASTOR:

8 Q Okay. And what can you tell us about those conversations?

9 A I wanted to get their insights on these same questions
10 vis-a-vis the Impoundment Control Act.

11 Q Okay. And who were you speaking with at DOD?

12 A Ms. Elaine McCusker.

13 Q Okay. And did you ask her to seek -- did you seek
14 information from her, or did you ask her to get a legal opinion from
15 her lawyers? Or what did you ask her? Or what was she asking you?
16 What was the nature of the communication?

17 A The nature of the communication was that -- how could we
18 institute a temporary hold consistent with the Impoundment Control Act.
19 And, yes, to your question, we also discussed including DOD counsel
20 in those conversations.

21 Q Okay. And these communications with Ms. McCusker were
22 occurring when?

23 A I initially called her Monday evening, July 22nd.

24 Q So the same timeframe?

25 A Same timeframe. And they also extended over the course of

1 those 4 days.

2 Q Okay. And were there any other conversations going on at
3 any other agency or any other -- you're talking to DOD, you're talking
4 to OMB OGC. Any other communications of this sort with other entities?

5 A I was not, no.

6 Q Okay.

7 A Those were the only.

8 Q And OMB issued its first written apportionment with the USAI
9 footnote restricting the obligations on July 25th, correct?

10 A Correct.

11 Q And, in effect, that is the technical terminology for
12 implementing the hold, correct?

13 A Correct.

14 Q Okay.

15 And then what can you tell us as the next step in this issue?

16 A And when you say "this issue," I just --

17 Q Well, the funds are held.

18 A Correct.

19 Q And so what is the next event involved here? Are you just
20 waiting for the authorization to lift the hold, or are you continuing
21 to do work on the program?

22 A So we are continuing to work with our policy officials to
23 get additional guidance.

24 Q Okay. And policy officials inside of OMB or policy
25 officials at DOD?

1 A Chiefly through Mike Duffey --

2 Q Okay.

3 A -- but also in the interagency processes of the National
4 Security Council.

5 Q Okay. And did you get additional guidance?

6 And just to be clear, the footnote restricting the obligations,
7 how long is that in effect for? Is that a 2-week hold?

8 A It was through August 5th, as I recall.

9 Q Okay.

10 [Discussion off the record.]

11 BY MR. CASTOR:

12 Q So the first written apportionment with the footnote
13 restricting the funds goes out on July 25th.

14 A Yes, sir.

15 Q And that's holding the funds, in effect, until August 5th;
16 that's the next date?

17 A Correct.

18 Q Okay. And during that time period, you said you were seeking
19 guidance from policy officials, and you mentioned DOD and the National
20 Security Council?

21 A Through the National Security Council process.

22 Q Okay.

23 A Yes.

24 Q And what can you tell us about those communications? Like,
25 who were you dealing with at the NSC?

1 A So we were -- we prepared Mike Duffey for a meeting that was
2 scheduled on Friday, July 26th. He represented OMB.

3 Q At the PCC?

4 A No. That would've been at a deputies level.

5 Q Okay. And so there was a meeting on Friday, July 26th?
6 Mike Duffey represented OMB?

7 A Correct.

8 Q And what can you tell us about that meeting?

9 A We prepared Mike by raising a number of questions that we
10 thought it would be useful to discuss.

11 Q Okay. What were those questions?

12 A Our principal questions were: What was the reason for the
13 hold? The extent? The duration?

14 And, depending upon the ultimate policy decision, we also said
15 that at the appropriate time the policy process should address a
16 congressional affairs approach, a diplomatic approach, and potentially
17 a public affairs -- again, depending upon when there was a policy
18 decision.

19 Q Okay. So if the policy decision was to permanently withhold
20 the money, then you'd have to interact with Congress, you'd have to
21 interact with the Ukrainians, and you'd have to interact with the
22 public. Is that right?

23 A These would be general points that we would make for any
24 significant policy.

25 Q Okay.

1 A And, finally, we also raised legal questions that would need
2 to be addressed by attorneys.

3 Q Okay. And the legal questions relate to whether the money
4 would have to go through the rescission process or reprogramming?

5 A Correct. Depending upon the policy decision, it would raise
6 legal questions about implementation.

7 Q Okay. But if the hold was lifted, then --

8 A Then those questions would become moot.

9 Q Okay.

10 So those were the four areas you prepared Mike Duffey? Reason
11 for the hold, extent of the hold, duration of the hold, and, depending
12 on the outcome, what would come next.

13 A Those were what we saw were the key questions. To my
14 knowledge, going into that meeting, he only had knowledge of the
15 President's guidance.

16 Q Okay. And did you attend that meeting?

17 A I did not.

18 Q Okay. Did you get a readout from Mr. Duffey about the
19 meeting?

20 A Yes. He expressed the support of other agencies for
21 providing the assistance.

22 Q Okay. So everybody was -- as we understand it from talking
23 to other witnesses, everyone was of the same mind, that they were hoping
24 the hold would be lifted?

25 A Correct.

1 Q Okay.

2 Did any other decision or information come out of the July 26th
3 meeting, or was it just a gathering to take stock of the situation?

4 A I think it was a gathering at that level, but there was no
5 resolution.

6 Q Okay. And did you ever get answers to the first three
7 questions -- the reason for the hold, the extent of the hold, and the
8 duration of the hold?

9 A Well, I'll go back to my previous response about information
10 that I received vis-a-vis the rationale for the hold, but that wasn't
11 until September. We did not get immediate responses on the duration.

12 Q Okay.

13 A With regard to the extent, in my area, it only affected USAI.

14 Q Okay. Was FMF involved too, to your knowledge?

15 A Yes.

16 Q Okay. But that just isn't your area.

17 A That's not my area, so I'm --

18 Q So you can't provide testimony.

19 A Correct. Correct.

20 Q Okay.

21 After the July 26th meeting, what's the next meeting or decision
22 point?

23 A So, after that, we were awaiting what we presumed would be
24 a, what I'll call principals-level discussion.

25 Q Okay. And was that scheduled ever?

1 A I don't recall. There were multiple instances in which we
2 heard the topic may come up --

3 Q Okay.

4 A -- but I don't recall there ever being a definitive
5 meeting --

6 Q Of the principals?

7 A Correct.

8 Q Are you aware if there was a meeting on July 31st with any
9 of the relevant components here?

10 A I'm not aware of that meeting.

11 Q Okay. Any other meetings you're aware of, other
12 than -- obviously, there's the 7/18 and then the 7/26 meeting that you
13 just described.

14 A Again, we often heard that there was a possibility that this
15 topic would come up as part of another meeting, but we did not get a
16 definitive guidance.

17 Q Okay. So you prepared Mike Duffey for the 7/26 meeting, and
18 that's the last PCC type of meeting that you prepared him for?

19 A For an NSC meeting, yes, but we also provided information
20 for our Acting Director.

21 Q Okay. And what information was that, and what date was that?

22 A I recall information that we initially drafted on August 2nd
23 and then information that we drafted for the Acting Director on August
24 7th.

25 Q And you say "drafted." Was it also transmitted to Mr.

1 Vought?

2 A My understanding is the information on August 7th was, yes.

3 Q But not August 2nd?

4 A I don't recall whether that went beyond Mike Duffey.

5 Q Okay. And what was included in the August 7th
6 communication? Was it by email?

7 A It was a memorandum.

8 Q Okay. And who was the drafter of the memorandum?

9 A It was a joint effort by National Security Division;
10 International Affairs Division, which oversees State and USAID; and
11 Office of Legal Counsel.

12 Q What was the content of the memo?

13 MS. VAN GELDER: With respect to what he provided.

14 MR. CASTOR: The ultimate memo.

15 MS. VAN GELDER: Right, but it contains sections from OGC and what
16 he provided. And so I'm saying, as long as we go with what he provided
17 as opposed to what he knows OGC provided.

18 MR. CASTOR: Okay.

19 MS. VAN GELDER: You got that?

20 MR. SANDY: Yes. Yes.

21 Within our area, it was a description of the current state of play
22 vis-a-vis USAI.

23 BY MR. CASTOR:

24 Q And what was the current state of play?

25 A The funds were still on hold at that point, but -- because

1 there had been a subsequent apportionment.

2 Q When was the subsequent apportionment? That was on August
3 5th, you said?

4 A It would've come shortly after the first one, which expired
5 on August 5th. So I believe it was on August 5th.

6 Q How long was the memo? Do you remember?

7 A Oh, maybe three or four pages with content from those
8 different contributing components.

9 Q Okay. Three or four pages, and each of the three components
10 had a piece to the memo?

11 A That's correct.

12 Q Okay. And for your piece, do you remember anything more
13 about it?

14 A I do remember that we provided our recommendation.

15 Q Okay. And what was the recommendation?

16 A The recommendation was to --

17 [Discussion off the record.]

18 MR. SANDY: The recommendation was to remove the hold --

19 MR. CASTOR: Okay.

20 MR. SANDY: -- on certain policy arguments.

21 BY MR. CASTOR:

22 Q Okay. Do you remember what the policy arguments were?

23 A One was that the assistance to Ukraine is consistent with
24 the national security strategy --

25 Q Okay.

1 A -- in terms of supporting a stable, peaceful Europe. Second
2 was the benefit from the program in terms of opposing Russian
3 aggression. Another argument pertained to the bipartisan support for
4 the program.

5 Q At this point in time, everyone -- and by "everyone," I mean
6 the National Security Council, DOD, OMB -- were hopeful that the hold
7 would be lifted?

8 A I don't want to speak for my policy officials. That was,
9 again, staff-level recommendation. And so I will not speak for my
10 policy officials in terms of their position.

11 Q Your policy officials being Mr. Duffey and his --

12 A And the Acting Director.

13 Q Okay. Who does Mr. Duffey report to?

14 A At that time -- well, he reports to the Acting Director. We
15 did not have an Acting Deputy at that point.

16 Q Okay.

17 And the memo that went on August 7th to Acting Director Vought,
18 did he have an action item, or was it informational?

19 A It was informational in anticipation of a principals-level
20 discussion to address this topic.

21 Q Okay. Now, at that point in time, did Mr. Duffey have a
22 different view than you? You said you didn't want to speak for
23 Mr. Duffey or Mr. Vought. You prepared the memo. Did the memo go
24 through Mr. Duffey?

25 A It did.

1 Q And did he okay it, approve it?

2 A Yes.

3 Q Okay. So you shared the same views as Mr. Duffey on this
4 issue at this time?

5 A In terms of --

6 Q In terms of policy recommendation?

7 A In terms of that recommendation.

8 Q Okay.

9 And then what happened next, after the memo was transmitted to
10 Mr. Vought?

11 A I don't recall getting clarity.

12 Q And was there a meeting that Mr. Vought was preparing for,
13 to represent OMB at the --

14 MS. VAN GELDER: My apology.

15 [Discussion off the record.]

16 MS. VAN GELDER: Again, not trying to take sides here, but I think
17 we've jumped from the 25th of July to the 7th of August, and you might
18 want to ask if anything intervened vis-a-vis my client between those
19 two dates.

20 MR. CASTOR: All right.

21 MR. GOLDMAN: You don't want to stay here all day?

22 MS. VAN GELDER: I just lost my 2 o'clock Pilates.

23 BY MR. CASTOR:

24 Q Yeah. I'm trying to hit the relevant --

25 A I understand.

1 Q -- you know, the relevant events that happened. The hold
2 is issued on the 25th, or the footnote restricting the obligations.

3 A Correct.

4 Q And then July 26th, you walked us through preparing for the
5 meeting.

6 A Correct.

7 Q No real clarity came out of the meeting, as I understood your
8 testimony.

9 A Correct. My understanding was that the President's
10 guidance --

11 Q Right.

12 A -- remained the same.

13 Q Okay. And then, from July 26th, my next understanding of
14 facts relevant here was you began drafting a memo, and a draft was sent
15 on August 2nd, presumably to Mr. Duffey?

16 A I know that there was information that was shared with him
17 on August 2nd, but more prominent in my recollection is the August 7th.

18 Q Okay. And have we missed anything between the July 26th and
19 August 2nd?

20 A Well, in terms of the apportionment process, you mentioned
21 the subsequent apportionment, but that was not -- I did not sign that
22 apportionment --

23 Q Okay.

24 A -- because there had been a change in the delegation.

25 Q Okay. So up to August 2nd, though, we're still good, right?

1 We've covered all the relevant facts? We had the meeting on July 26th,
2 which was a Friday, right?

3 A Correct.

4 Q Okay. So any relevant facts between Friday, July 26th, and
5 the August 2nd?

6 A Yes. So, on Tuesday, July 30th, the delegation for
7 approving apportionments made Mike Duffey the approver.

8 Q Okay. And what can you tell us about that?

9 A The delegation is from the President to the Acting Director,
10 and then the Acting Director issued a change in delegation.

11 Q Okay. And do you know why?

12 A We met with Mike Duffey -- sorry -- "we" is my
13 division -- met with Mike Duffey on the 31st, in which he explained
14 that there was interest among the leadership in tracking the uses of
15 moneys closely. He had an interest -- sorry -- "he," Mike Duffey, had
16 an interest in being more involved in daily operations.

17 Q Okay.

18 A And he regarded this responsibility as a way for him to learn
19 more about the specific accounts within his area.

20 Q And you are the Deputy Associate Director. And, as I
21 understand it, there's another Deputy Associate Director that reports
22 to Mr. Duffey?

23 A Yes.

24 Q And was he taking that authority from both or just your --

25 A Yes, the change applied to both National Security Division

1 and International Affairs Division, both of which report to Mike
2 Duffey.

3 Q Okay. And was this change -- did it have anything to do with
4 the Ukraine funds?

5 A I'm not aware of a connection.

6 Q Okay. So this decision of Mr. Duffey was just an
7 organizational decision, unrelated to this particular hold, to the best
8 of your knowledge?

9 A I shared with you the reasons that he provided.

10 Q Okay.

11 A And, also, just to be clear, the memorandum is signed by the
12 Acting Director to make that change.

13 Q Okay. And did you have any meetings with him where he
14 explained the rationale to you?

15 A Just those three reasons that he shared with my entire
16 division when we discussed this on the 31st.

17 Q Okay. But, prior to the meeting with the entire division,
18 did he have a personal communication with you, whether it's in-person
19 or on the phone?

20 A He had alerted me in person earlier that week, but basically
21 had explained it in the same terms.

22 Q Okay. And did you express any concern to him?

23 A Yes.

24 Q And what were those concerns?

25 A The concerns that staff and I expressed included that it's

1 a substantial workload, and we usually are very protective of the
2 Associate Director's time, so we were concerned about how much time
3 this would consume.

4 Q Okay.

5 A I think people were curious what he thought he would learn
6 from apportionments about the accounts as opposed to the other, you
7 know, sources of information. And staff wanted to ensure that this
8 did not reflect any sort of loss of trust.

9 Q Okay. And did he communicate to the group that it did not,
10 in fact, constitute a loss of trust, that he was just trying to learn
11 more about his job?

12 A Yes, he did.

13 Q Okay. So it had nothing to do with the competence of your
14 team.

15 A Correct. He said it had nothing to do with that.

16 Q Okay. And did you feel like he was being straight with you?

17 A Yes, I took him at his word.

18 Q Okay. And so he became the approving official through this
19 delegation?

20 A Correct, as of July 30th.

21 Q Okay. And the approving official is the third level of
22 review, I think you mentioned?

23 A Yes.

24 Q There's the examiner, the branch chief, and the approving
25 official?

1 A Correct.

2 Q Did this add, in effect, a fourth level?

3 A No, it did not. The way it was implemented was that he
4 basically replaced me as the third level.

5 Q Okay. And did that loss of job responsibilities -- was that
6 okay with you?

7 A It removed an administrative -- largely administrative
8 task --

9 Q Okay.

10 A -- so I was not upset about the -- I mean, I shared the same
11 concerns about the burden it would place on him. We also prioritized
12 the timeliness of our responses to agencies, so we wanted to ensure
13 that we could continue to support that.

14 Q Okay. And after the branch chief completes his or her
15 assessment work, it went straight to Mr. Duffey, then, under the new
16 arrangement?

17 A Correct, once that was implemented.

18 Q So you didn't review it at all?

19 A Correct. Apportionments no longer flow to me.

20 Q Okay. Okay. Unless, of course, a particular branch chief
21 had questions and wanted to lean on your expertise?

22 A Correct.

23 Q Okay.

24 And, as you sit here today, it's, you know, been a number of
25 months. Do you genuinely believe that Mr. Duffey's stated reasons

1 were, in fact, what he said they were?

2 A Again, I took him at his word. He also has the option to
3 delegate further, and we simply said, particularly if the workload
4 becomes overwhelming, that he always has that option, which can be the
5 case at the end of the fiscal year and the beginning of the fiscal year.

6 Q Okay. And has he?

7 A To date, he has not.

8 Q Okay. So has the arrangement worked out okay, in your
9 opinion, or is it problematic?

10 A I mean, we are -- we continue to process apportionments.

11 Q Okay. It hasn't created a problem in the organization in
12 terms of delay?

13 A There was a slight delay because we had to get him set up
14 in the system.

15 Q Okay.

16 A But it seems to be working smoothly now.

17 Q Okay.

18 So he communicates that to the group on Wednesday, July 31st.

19 A Correct.

20 Q So, back to the calendar --

21 A Okay.

22 Q -- did anything relevant happen between Wednesday, July
23 31st, and -- you mentioned the memo, drafts of the memo, were occurring
24 on Friday, August 2nd. Any other relevant --

25 A Nothing comes to mind, other than that there was another

1 apportionment in that period.

2 Q Okay. So Friday, August 2nd, you started working on the
3 memo, or at least a draft of the memo, to the Acting Director, which
4 was ultimately transmitted on August 7th?

5 A Just to clarify, I recall some information went to Mike
6 Duffey on the 2nd. I recall more clearly the information that was
7 prepared on the 7th for the Acting Director.

8 Q Okay. And, on August 5th, the second hold occurred, and
9 Mr. Duffey signed that one?

10 A That's correct.

11 Q Okay. What's the next key event in this matter?

12 [Discussion off the record.]

13 BY MR. CASTOR:

14 Q And maybe I should do a regular check-in. Have I missed any
15 key events?

16 MS. VAN GELDER: I am sorry. I just --

17 MR. CASTOR: You wanted to walk through the --

18 MS. VAN GELDER: No. I'm just saying that, since he's now
19 removed from the process, you would have to define what a "key event"
20 is. You're assuming he knows what a key event is.

21 BY MR. CASTOR:

22 Q Do you have any firsthand knowledge of other facts related
23 to this matter after Mr. Duffey takes the authority?

24 A So I was aware of the series of apportionments.

25 Q Okay.

1 A I don't have all the dates memorized.

2 Q Okay. So we go from August 5th, and then there's
3 subsequent --

4 A Yes.

5 Q -- apportionments?

6 A Correct.

7 Q How many, approximately? Every week? Every 2 weeks or 10
8 days?

9 A The time periods varied, but I recall at least another
10 half-dozen apportionments --

11 Q Okay.

12 A -- from the period of early August until September 12th.

13 Q Okay.

14 MR. MEADOWS: Mr. Sandy, I want to make sure I -- you said a
15 half-dozen? Another half-dozen?

16 MR. SANDY: Another half-dozen.

17 MR. MEADOWS: As it relates to Ukraine?

18 MR. SANDY: Yes, sir, with the footnote.

19 MR. MEADOWS: Okay.

20 BY MR. CASTOR:

21 Q And did you have any communications during this timeframe
22 with Mr. Duffey about that decision, or was it just the same set of
23 information, the money is on hold and --

24 A That was kind of the status quo, as I recall, through much
25 of August --

1 Q Okay.

2 A -- in terms of, there was processing of the subsequent
3 apportionments; we were waiting to hear of a policy decision; and, of
4 course, the subsequent apportionments continued the hold on USAI funds,
5 obligations.

6 Q Okay. And did you have any meetings during that timeframe?

7 A I mean, we meet frequently on a range of different topics.

8 Q About the Ukraine --

9 A I don't recall a significant meeting specifically on this
10 topic.

11 Q But did you ever get any feedback from the
12 Associate Director -- I'm sorry, the Acting Director, Mr. Vought, from
13 the memo on August 7th?

14 A No. Our understanding was that both Mike Duffey and Russ
15 Vought would alert us if there were any updates.

16 Q Okay.

17 A But we were awaiting information.

18 Q And just to go back to the change in delegation --

19 A Yes.

20 Q -- you stated Mr. Duffey told you that he just wanted to learn
21 more about the process. And it was never, in your mind, some sort
22 of -- his reasoning had nothing to do with political considerations,
23 did it?

24 A Again, I took Mike at his word.

25 Q Okay.

1 [Minority Exhibit No. 3
2 was marked for identification.]

3 BY MR. CASTOR:

4 Q I'm going to mark as exhibit 3 -- this is a three-page
5 document. The first two pages are identical letters to the Budget
6 chairman and the Appropriations chairwoman in the House, and then the
7 third page is an attachment.

8 And I'll just read the cover letter portion to identify this.
9 It's dated October 3rd. And this is a letter from the Leg Affairs
10 department at OMB?

11 A Yes.

12 Q "Mr. Chairman" -- reading the Yarmuth letter dated October
13 3rd -- "The Office of Management and Budget received your September
14 27, 2019, letter requesting information and documents about OMB's
15 apportionment actions. Per your request, please find enclosed a
16 preliminary response. We will be in contact about the remaining
17 requests in your letter."

18 And there's an attachment that walks through a two-paragraph
19 explanation. And I'm going to identify -- or read the sentence about
20 halfway down the first paragraph beginning with "in its apportionment."
21 And it comes right after the cite to the DOD account TAFS 97-0100/2019.

22 A Yes.

23 Q I'm going to read this sentence.

24 A Yes.

25 Q "In its apportionment, OMB noted that it 'understands from

1 the Department that this brief pause in obligations will not preclude
2 DOD's timely execution of the final policy direction. DOD may continue
3 its planning and casework for the Initiative during this period.' The
4 remaining unobligated USAI funds were made available for use by DOD
5 for FY 2019 on September 12, 2019."

6 A Yes.

7 Q Have you seen this letter or explanation before?

8 A Yes, I have.

9 Q Okay. And is this consistent with your understanding of
10 what had happened, that --

11 A Yes.

12 Q Okay. So the pause in funds didn't preclude DOD from
13 continuing its planning and casework?

14 A Correct.

15 Q Okay. And so, during this time period, if the hold was
16 lifted, then the work that needed to be performed would have, in fact,
17 been performed?

18 A So the hold pertained explicitly to obligations.

19 Q Uh-huh. So do you interpret this that the hold would
20 ultimately, hopefully, be lifted? I mean, if it was going to go through
21 a rescission or a reprogramming effort, the planning and casework
22 probably would not continue. Is that fair?

23 A So let me answer -- the footnotes, again, only restricted
24 obligation, and the footnotes all allowed for the continued work on
25 planning and casework, and the footnotes all had distinct periods of

1 time.

2 Q Okay. Did you consult with the Leg Affairs office before
3 they sent this letter out?

4 A Yes.

5 Q Okay. And did you help prepare this --

6 A Yes.

7 Q -- or just review it?

8 A I reviewed it and provided edits.

9 Q Okay. And were your edits reflected in the final outcome?

10 A Yes.

11 Q Okay. And this is accurate, to the best of your knowledge?

12 A Yes. I'm speaking to the first paragraph because the second
13 is not within my purview.

14 Q Okay. Is there any other information that I haven't asked
15 you about this letter and the attachment that you want to tell us about?

16 A Again, as I said, this is a summary of multiple
17 apportionments --

18 Q Right.

19 A -- so -- and I believe you've received the apportionments.
20 Is that correct?

21 Q Yes.

22 A Okay.

23 Q Were there any briefings with the Hill on this?

24 A Not to my knowledge.

25 Q Okay. Was there any other information transmitted to the

1 Hill?

2 A Transmitted when?

3 Q Subsequent to this.

4 A Not to my knowledge.

5 Q Okay. Is it fair to say that holds of this type do happen
6 from time to time for any number of reasons?

7 A I guess it depends on when you say "of this type." So,
8 consistent with title 31 of U.S. Code, apportionments can restrict
9 funds based upon a time period, a purpose, or a combination of the two.

10 Q Uh-huh.

11 A So, in many of the routine apportionments, we would, for
12 example, apportion the moneys by quarter. Another example would be
13 apportioning by specific purpose. And another would be apportioning
14 subject to, for example, an agency providing a spend plan.

15 Q Uh-huh. Okay.

16 MS. VAN GELDER: Spend, s-p-e-n-d?

17 MR. SANDY: Spend.

18 BY MR. CASTOR:

19 Q Did your communications with Elaine McCusker -- did you have
20 subsequent communications after the apportionment that you were
21 responsible for?

22 A I was copied on communications that she had with Mike Duffey.

23 Q Okay. And what do you remember about those communications?
24 How often, and what were the content?

25 A So, again, setting aside -- I had several communications

1 prior to the apportionment that I signed.

2 Q Correct.

3 A So setting that aside?

4 Q Yes.

5 A Okay. I know that she and Mike Duffey were in communication
6 surrounding the subsequent apportionments, and there was a concern
7 about -- she expressed a concern about the impact of the continued
8 periods restricting obligation.

9 Q Okay. And what were her concerns? That the money wouldn't
10 be able to be spent if the hold was lifted?

11 A Yes, that was the concern.

12 Q Okay.

13 A That it fully -- fully obligated.

14 Q Okay. And what do you recall from the nature of those
15 concerns? Like, what did she say? And this is on email?

16 A Correct. Well, I'm aware of the emails, obviously, on which
17 I was copied.

18 Q Right.

19 A I'm also aware that they had phone conversations of which
20 I was not a part.

21 Q Okay. And did you receive readouts of those phone
22 conversations or no?

23 A No.

24 Q Did you ever, for the apportionment that you were responsible
25 for, did you object? Did you object to implementing it?

1 A No. I worked very carefully on the footnote to address the
2 questions that I had and then was confident in signing it with that
3 footnote.

4 Q Okay. And your decisions were also based in part on
5 consultations with the lawyers, right?

6 A Absolutely.

7 Q Okay.

8 MR. CASTOR: I want to make sure that there are some Member
9 opportunities here.

10 Mr. Meadows?

11 MR. MEADOWS: Thank you, Mr. Sandy, for your testimony. And so
12 I'm going to try to understand this process that is so foreign to me,
13 and I appreciate that it's not foreign to you.

14 So what you're saying is, the first apportionment -- and for
15 layman terms, the first hold that was put on Ukraine -- would it be
16 accurate to say a hold instead of apportionment? Or the first hold
17 was put on sometime in July. Is that correct?

18 MR. SANDY: That is correct. I signed that on July 25th.

19 MR. MEADOWS: And the word "hold," is that, for a layman's
20 term -- I know you're more sophisticated on this, but from a layman's
21 term, is that an accurate reflection of --

22 MR. SANDY: Yes.

23 MR. MEADOWS: -- an administrative hold?

24 MR. SANDY: Yes. I would say that the apportionment held the
25 funding insofar as DOD could not obligate the funds, but it was very

1 explicit about allowing the planning and casework to continue.

2 MR. MEADOWS: So the holds that were placed on there said: Go
3 ahead and plan on as if you're going to obligate these funds. We're
4 not going to stop you from doing your planning process to obligate.
5 We're just going to put a hold on you making that final declaration
6 to obligate. Is that correct?

7 MR. SANDY: Yes, sir.

8 MR. MEADOWS: Okay. And you mentioned a half-dozen holds that
9 were put on in the months of August and September. Is that correct?

10 MR. SANDY: At least a half-dozen, yes.

11 MR. MEADOWS: Okay. So I guess the -- and, again, from a
12 layman's term, the first holds were longer than that, were they not?
13 Because if we had a half-dozen that happened in a 34-day period, it's
14 almost like they were saying, well, we're going to hold it for a few
15 more days to see if we get a resolution, a few more days. Is that what
16 happened?

17 MR. SANDY: Yes, sir. They were of varying lengths.

18 MR. MEADOWS: Okay. So these varying lengths that they're
19 putting these holds on, they're saying, well, we're hopeful that not
20 only can we continue to plan, but we want to obligate, and so we were
21 doing these in a few days or a week or smaller time periods than the
22 original hold. Is that correct?

23 MR. SANDY: Sir, I don't recall all the specific timeframes. I
24 would have to check records to know the exact dates, but they were of
25 varying lengths and --

1 MR. MEADOWS: But you're a math guy. So let's take 35 days or
2 so from the time period that we're looking at until ultimately the funds
3 were allowed to be obligated on September the 11th.

4 MR. SANDY: Right.

5 MR. MEADOWS: And you divide that by six. The average would've
6 had to have been just a few days in duration. Is that correct?

7 MR. SANDY: Yes.

8 MR. MEADOWS: Okay. And so, if we have a few days in duration
9 and we're going with this process and you're having all of these -- then
10 all of a sudden, sometime in September, you get a request for additional
11 information that says, "By the way, what are other countries
12 contributing to Ukraine in terms of aid?" Is that correct? That was
13 reflected in your previous testimony. Is that correct?

14 MR. SANDY: That is correct.

15 MR. MEADOWS: All right. And so, all of a sudden, we're having
16 these short-term holds. The whole time, the DOD is planning to
17 obligate these funds. You're not working on any rescission packages.
18 Is that correct?

19 MR. SANDY: I was not.

20 MR. MEADOWS: Okay. So would you normally work on a rescission
21 package if the administration had made a final determination that these
22 funds were never going to be obligated?

23 MR. SANDY: There was no decision to propose a rescission.

24 MR. MEADOWS: Right. But I guess, previously, throughout your
25 entire career, have you ever worked on a rescission package?

1 MR. SANDY: I'm not sure that I've worked on one, but I'm familiar
2 with them.

3 MR. MEADOWS: But would that be under your area of
4 responsibility?

5 MR. SANDY: Oh, certainly. No, if there had been a request to
6 rescind --

7 MR. MEADOWS: All right.

8 MR. SANDY: -- the fund, we would've worked on it.

9 MR. MEADOWS: So I'm just, again, trying to get the context of
10 all of this. What we have is, we have a period of time where these
11 short-term holds are being placed on. There's the planning process
12 that allows them to continue to work on their due diligence, is what
13 a real estate guy would say. They can still work on their due
14 diligence. Is that correct?

1 [12:08 p.m.]

2 MR. SANDY: Yes, the planning and casework.

3 MR. MEADOWS: Okay. And so they are working on their due
4 diligence. They just can't make that final obligation. You're making
5 short-term holds on it with the anticipation that one day that hold
6 will get pulled off because everybody was in agreement that that was
7 in the United States' best interest to do that. Is that correct?

8 MR. SANDY: Just I want to clarify --

9 MR. MEADOWS: Were you in agreement that that was what you were
10 hopeful that the hold would be removed? Was that your personal view?

11 MR. SANDY: Yes.

12 MR. MEADOWS: I thought that was a softball question so -- and
13 so, as we look at this, I guess what I'm trying to take all of this,
14 the last 2 hours, and boil it down into just one area for me, and that
15 is that we had the short-term holds. And, all of a sudden, we get some
16 additional information that's provided in terms of what other countries
17 contribute to Ukraine aid, and then the aid was released. Is that a
18 fair characterization?

19 MR. SANDY: In terms of the sequencing, yes.

20 MR. MEADOWS: Okay. And so, as we look at the other countries,
21 would you say that the United States has a disproportionate role in
22 Ukrainian aid or aid to the Ukraine Government, a disproportionate role
23 based on the research that was provided. Do we provide more aid than
24 our European counterparts?

25 MR. SANDY: Sir, I'm sorry I probably should have studied those

1 data before coming. I don't recall the specifics, and I would defer
2 to other departments and agencies.

3 MR. MEADOWS: All right. Would it surprise you that we've had
4 other witnesses that have told us under sworn testimony that, indeed,
5 the United States plays a larger role in Ukraine aid than our European
6 counterparts? Would that surprise you?

7 MR. SANDY: A larger role individually or collectively?

8 MR. MEADOWS: Well, financially. Would we provide more than say
9 Germany or France?

10 MR. GOLDMAN: Are you talking about the military aid or all aid?

11 MR. MEADOWS: What we're talking about is -- well he is only able
12 to talk to this particular DOD aid. So let's just keep it specifically
13 in terms of what he's there -- I would place it in a -- since
14 Mr. Goldman's the attorney and I'm not, why don't we look at it as
15 security assistance. How about that? Do you believe -- is it your
16 personal belief that the United States provides more security
17 assistance to Ukraine than say Germany or France?

18 MR. SANDY: I am aware that other countries provide other types
19 of aid. Sir, I'm reluctant to ask, just as a data person, because I
20 don't have the --

21 MR. MEADOWS: Well, I only want your informed opinions. So we'll
22 go on to one other final question, and then I will yield back.

23 MR. SANDY: Okay.

24 MR. MEADOWS: When we look at the key events in September and that
25 information and by that information, the information that would say

1 that the administration made a request for additional information from
2 OMB in terms of what other countries provided to the Ukraine, you
3 followed up on that request. Is that correct?

4 MR. SANDY: My staff did, yes.

5 MR. MEADOWS: And your staff provided that information. And you
6 would say that that information was provided some -- sometime in the
7 first week of September.

8 MR. SANDY: As I recall, yes.

9 MR. MEADOWS: All right. I would yield back.

10 MR. CASTOR: Any other member questions?

11 Mr. Zeldin.

12 MR. ZELDIN: Mr. Sandy, thank you for being here.

13 MR. SANDY: Yes.

14 MR. ZELDIN: Can you speak to what other countries there
15 have -- and programs -- there have been holds placed on aid during your
16 time at OMB?

17 MR. SANDY: None that I'm aware of within my purview. So, again,
18 I'm not speaking for anything in the State USAID.

19 MR. ZELDIN: But you're not aware -- I mean, open source,
20 publicly reported of many different countries and programs getting
21 holds placed on aid since the President's been there, correct?

22 MR. SANDY: Oh, in State and AID I'm aware of that reporting, but
23 again I don't oversee those programs.

24 MR. ZELDIN: Well, it would just be in a different department of
25 OMB.

1 MR. SANDY: Yes, it would be in a different division.

2 MR. ZELDIN: Okay. But you are aware of all -- what reporting
3 are you aware of?

4 MR. SANDY: I'm aware of -- again internal conversations but I'm
5 not -- this is not within my purview with respect to other countries.
6 But I can't speak to the specific nature of how those -- how funds were
7 restricted. So --

8 MR. ZELDIN: And you got to your current position what year?

9 MR. SANDY: In December 2013.

10 MR. ZELDIN: You've been serving the same position since October
11 2013?

12 MR. SANDY: December.

13 MR. ZELDIN: December 2013.

14 MR. SANDY: Yes.

15 MR. ZELDIN: Can you fill me in on, towards the end of the Obama
16 administration, fiscal year 2016, there was an appropriation for this
17 pot of money that we're discussing today, correct?

18 MR. SANDY: For USAI?

19 MR. ZELDIN: Yes.

20 MR. SANDY: Yes. There's been an appropriation for multiple
21 years.

22 MR. ZELDIN: Were you involved at all in the decisionmaking
23 process? Are you familiar with the decisionmaking process with
24 regards to not providing lethal aid towards the end of the Obama
25 administration?

1 MR. SANDY: I do not have a recollection of that. I think that
2 was principally -- well, I do not have a recollection.

3 MR. ZELDIN: Those conversations just didn't take place with you?

4 MR. SANDY: That is correct.

5 MR. ZELDIN: After the hold was lifted, are you involved at all
6 with the process of obligating funds by September 30th, or is that done
7 outside of your department?

8 MR. SANDY: Involved with the process of obligation so the
9 Department of Defense takes the lead on the actual implementation of
10 the program in terms of obligation. Our role was principally in terms
11 of the apportionments. So the apportionment on September 12th removed
12 the restriction, which enabled DOD to proceed with obligations.

13 MR. ZELDIN: And the funds had to be obligated by September 30th,
14 but the hold was lifted almost 3 weeks beforehand in order to obligate
15 by September 30th.

16 MR. SANDY: That is correct.

17 MR. CASTOR: Our hour is complete. It was an exciting hour, and
18 we'll turn it back to you.

19 MR. SWALWELL: So, actually, we will return at 12:25.

20 [Recess.]

21 MR. SWALWELL: Back on the record. It is 45-minute block with
22 majority, Mr. Mitchell.

23 BY MR. MITCHELL:

24 Q We're going to cover much of the same ground as Mr. Castor
25 with regard to the time period.

1 A Yes.

2 Q But I am going to try to ask some followup questions. So
3 I do apologize that it might sound a little bit repetitive, but we are
4 going to try to see if we can get a little bit more information about
5 some of these key events.

6 So my understanding is that mid-June you learn of these questions
7 from the President about Ukraine security assistance through an email
8 that Mr. Duffey sent to DOD. Is that correct?

9 A That's correct.

10 Q And you and your staff gather information in response to
11 Mr. Duffey, and you provide it to him.

12 A That is correct.

13 Q And then you go on leave?

14 A Correct.

15 Q At the beginning of July through July 17th?

16 A I returned on the 18th, yes to the office.

17 Q And then, on July 18th and 19th, you have several
18 conversations with Mr. Duffey regarding specifically Ukraine security
19 assistance. Is that right?

20 A That is correct.

21 Q Okay. And you have this one conversation where you suggest
22 that you have concerns about the Impoundment Control Act and that you
23 wanted to confer with legal counsel and specifically OMB General
24 Counsel's Office. Is that correct?

25 A That is correct.

1 Q Did you also consult with OMB's Budget Review Division about
2 any of your concerns about any of your concerns about the Impoundment
3 Control Act at the end of July?

4 A Yes. My staff was in contact with the Budget Review Division
5 the week of July 22nd.

6 Q Okay. And what was the nature of those conversations with
7 the Budget Review Division?

8 A It was similar to the conversations with Office of General
9 Counsel.

10 Q I don't want to know anything about your conversation with
11 the Office of General Counsel, but I do want to hear everything you
12 have to say about the communications with OMB's Budget Review Division?

13 A Okay. Well, and I appreciate your respecting of
14 attorney-client privilege. Let me focus in terms of questions about
15 crafting a footnote.

16 Q Well, let me interrupt you. Were these conversations solely
17 to do with crafting the footnote?

18 A Yes, they were.

19 Q Okay. And, again, can you explain what the purpose of the
20 footnote was?

21 A So the purpose of the footnote was to preclude obligation
22 for a limited period of time but enable planning and casework to
23 continue. And the footnote explicitly referenced the concurrence of
24 the Department of Defense that this would not impinge upon their ability
25 to fully obligate by the end of the year.

1 Q Okay. And the effect of the apportionment, an approved
2 apportionment is to allow, in this case DOD, to actually put money on
3 the contract, correct?

4 A You mean a normal apportionment?

5 Q Correct.

6 A Okay, without this type of --

7 Q Correct.

8 A Correct. Normally apportionments enable departments and
9 agencies to obligate their funding.

10 Q Okay. When you first learned of this hold in mid-July, prior
11 to that date, had you ever had to deal with adding a footnote to an
12 apportionment to implement a hold of this sort?

13 A I don't recall an example just like this.

14 Q Have you ever worked on any holds that came after a
15 congressional notification?

16 A Not to my recollection.

17 Q And you've been dealing with apportionments for how long in
18 your career?

19 A At this level since -- well, since I took this position in
20 terms of approving apportionments since December 2013.

21 Q What about in any position?

22 A Any position, well, also in my prior experience as a branch
23 chief and as an examiner, I also worked on apportionments. So, across
24 my 12 years -- roughly 12 years of OMB experience.

25 Q So is it fair to say that this was an unusual event for you?

1 A Yes.

2 Q A unique event?

3 A I do not recall another event like it.

4 Q In mid-June, as we've discussed, there were questions coming
5 from the White House about the hold -- excuse me -- about the Ukraine
6 security assistance, but at that time period, you weren't aware of any
7 hold, correct?

8 A That is correct. And you asked a question before, and I want
9 to be clear because, again, I'm not speaking for the State component
10 of this assistance.

11 Q All right.

12 A I do recall there were questions about our -- is there
13 guidance forthcoming related to this. So I do recall questions, but
14 I don't -- I know I did not see anything that was definitive guidance
15 until I returned from leave on the 18th and 19th.

16 Q Questions from whom?

17 A Questions from staff within NSD to Mike Duffey.

18 Q And what did he respond?

19 A I don't have any recollection of guidance on a hold until
20 I returned on the 18th.

21 Q And when you returned on the 18th and you learned
22 definitively there was a hold in place for Mr. Duffey, you said you
23 expressed concerns about the implications of that hold on the
24 Impoundment Control Act, but was the fact of the hold unexpected at
25 that point to you, or did you see this coming?

1 A Let me just also clarify your remarks. My concern was about
2 implementing it via an apportionment, that's the specific concern that
3 came to mind on the 19th.

4 Q But your concern was not just a technical one on how to
5 implement an apportionment, but was it also with regard to the whether
6 the funds would be able to be obligated prior to the close of the fiscal
7 year?

8 A Yes, it raises those legal questions.

9 Q Okay. So, again, was the fact of the hold when you came back
10 from vacation was that a complete surprise to you, or did you have a
11 sense that this was coming?

12 A Well, we're well aware that the President is not a fan of
13 foreign assistance. So, to the extent that we were getting questions
14 about a foreign assistance program, again, this administration has not
15 been a fan of foreign assistance in some ways so.

16 Q Okay, but the circumstances of this particular hold --

17 A Right.

18 Q -- were unique in so far as this is was after a congressional
19 notification. And, therefore, you needed -- OMB needed to figure out
20 a way to actually implement this hold and deal with the apportionments
21 issue and how that might affect the Impoundment Control Act. Correct?

22 A That is correct.

23 Q And is it your understanding that the President also signed
24 the law that appropriated these funds previously, prior to the CN?

25 A That is correct. These funds were appropriated as part of

1 the defense appropriations for fiscal year 2019.

2 Q Which was signed by President Trump?

3 A Yes, enacted legislation.

4 Q Now, you returned from vacation on July 18th. Are you aware
5 of a sub PCC that occurred that same day?

6 A Yes, I am.

7 Q Did you attend that sub-PCC?

8 A I did not.

9 Q Did you get a readout of that sub-PCC?

10 A Yes.

11 Q And what was in that readout?

12 A The readout was that two colleagues had attended and that
13 they had shared the President's direction to hold military support
14 funding for Ukraine.

15 Q Now you were on vacation. Did you help prepare your
16 colleagues for that sub PCC?

17 A I did not.

18 Q There was a PCC on July 23rd.

19 A Yes.

20 Q Are you -- did you attend that PCC?

21 A I did not.

22 Q Did you prepare anyone for it?

23 A I was aware of a member of my staff who was attending.

24 Q Did you help prepare that person?

25 A No.

1 Q Did you get a readout of the PCC that occurred on July 23rd?

2 A Yes, I did.

3 Q What was the readout?

4 A The readout was quite similar to the previous, which was that
5 he had simply indicated that remained the guidance as we understood
6 it from it the President, that we did not know the reason for the hold,
7 and that other agencies had expressed concerns.

8 Q And what was your understanding of those concerns?

9 A Concerns about understanding why -- what the rationale for
10 the hold was. Concerns about the implications for our assistance and
11 overall policy toward Ukraine and concerns about how similar legal
12 questions vis-a-vis a hold on appropriated funds.

13 Q And during the same time period around July 23rd is when you
14 were having -- you and your staff were having communications with the
15 DOD comptroller Ms. McCusker about these very same issues. Is that
16 right?

17 A Yes. I was having those conversations.

18 Q And what sorts of concerns was Ms. McCusker raising?

19 A Similar to those that I had raised, which was, how would we
20 implement a hold consistent with the Impoundment Control Act, number
21 one, but also the need for policy clarity during that timeframe.

22 Q And you had those communications with Ms. McCusker between
23 July 22nd and July 24th, as well as with Office of General Counsel.
24 And the result of those communications was a July 25th apportionment?

25 A That's correct. And the communications with DOD extended

1 through the 25th.

2 MR. MITCHELL: Handing you exhibit No. 4.

3 [Majority Exhibit No. 4
4 was marked for identification.]

5 MR. MITCHELL: This is a three-page document I'll represent to
6 you it as, if not the entire apportionment, it consists of the first
7 page is a signature page and the following two pages are footnotes.
8 I'll direct your attention to the first page here -- oh, I'm sorry.
9 I think I may have handed you the wrong one. Let's mark this as No.
10 5.

11 Let's go off the record.

12 [Discussion off the record.]

13 BY MR. MITCHELL:

14 Q So you have in front of you exhibit No. 4, it is dated July
15 25th on the first page. Do you see that, sir?

16 A Yes.

17 Q Do you recognize this document?

18 A Absolutely.

19 Q And what is it?

20 A This is the apportionment I signed on July
21 25th -- sorry -- that I approved, and so it reflects my signature.

22 Q And that's your signature here on the first page?

23 A Yes.

24 Q And below that it says: Sent by [REDACTED]. Who is
25 that?

1 A She is an examiner in my division.

2 Q And what's her job? She is not the branch chief?

3 A She is not. Though, I don't recall if she was acting as a
4 branch chief. During summer, it is a common time for people to take
5 leave, so it is also the case that sometimes people are in acting
6 positions.

7 Q Did [REDACTED] talk to you any concerns that she might have
8 had about this particular apportionment in the application of the hold
9 to the best of your recollection?

10 A No, I don't -- no, I don't recall that. Among the staff
11 working on this issue, we had talked about the issues associated with
12 the apportionment through the course of the week.

13 Q All right. Were concerns expressed by your staff over the
14 course of the week generally?

15 A So I think they had the same questions that I had in terms
16 of developing an apportionment that would not run into issues with the
17 Impoundment Control Act.

18 Q And these were career staffers with long-time experience?

19 A Yes, they are.

20 Q Turning to the footnote on page 2 of exhibit No. 4, turning
21 to footnote A4. Do you see that, sir?

22 A Yes.

23 Q Is this the footnote that you were describing earlier in your
24 testimony today?

25 A Yes, it is.

1 Q Okay. And it reads: Amounts apportioned but not obligated
2 as of the date of this reapportionment for the Ukraine Security
3 Assistance Initiative are not available for obligation until August
4 5th, 2019, to allow for an interagency process to determine the best
5 use of such funds.

6 I will stop there, August 5th, 2019. Where did that date come
7 from?

8 A That date reflected consultations with both Mike Duffey and
9 Elaine McCusker about what was a reasonable timeframe for an
10 interagency process in hopes of getting clear guidance, number one.
11 And, also, that date helped inform the very next sentence.

12 Q So the interagency process is the second part of that
13 sentence.

14 A Right.

15 Q And the interagency process, is that the July 18th, sub-PCC,
16 the July 23rd PCC that we were just discussing, as well as the July
17 26 deputies committee meeting that you were talking about earlier with
18 minority counsel?

19 A Yes. I think our understanding of that is that it would be
20 an NSC-led process.

21 Q Okay. But that's what this footnote means by an interagency
22 process.

23 A That is correct.

24 Q And then the next sentence says, based on OMB's communication
25 with DOD on July 25th, 2019, OMB understands from the Department that

1 this brief pause in obligations will not preclude DOD's timely
2 execution of the final policy direction. Explain what is meant by that
3 sentence.

4 A Well, that gets to the heart of that issue about ensuring
5 that we don't run afoul of the Impoundment Control Act, which means
6 that you have to allow for the timely execution. And this reflects
7 my conversation with -- conversations plural with Elaine McCusker that
8 they can confirm that, during this brief period, they would not foresee
9 any problem fully executing the program by the end of the fiscal year.

10 Q When you say "fully executing the program" or you say "allow
11 for timely execution," what you mean is to allow time for DOD to put
12 funds under contract -- in other words, to obligate those funds -- prior
13 to the end of the fiscal year, which is September 30th of 2019?

14 A That is correct.

15 Q So this sentence and this date of August 5th was based on
16 feedback provided by DOD as to how much time DOD required in order to
17 put funds under contract, in other words to put -- to obligate those
18 funds. Is that right?

19 A Well, let me put it this way, she said that basically she
20 didn't foresee any issue with, and I'm going to say 2 weeks because
21 we had started these conversations at the beginning of this week. So
22 we were always talking about a 2-week timeframe. And as I recall, her
23 assessment was there certainly shouldn't be any issues for that brief
24 period of time.

25 Q Okay. And "she" being?

1 A Elaine McCusker.

2 Q The comptroller for DOD?

3 A Deputy comptroller.

4 Q So the next sentence says: DOD may continue its planning
5 and casework for the initiative during this period.

6 I think you have mentioned a couple of times during your testimony
7 planning and casework. What is your understanding of what is meant
8 by that?

9 A So I am not an expert on the implementation of USAI, but I
10 am aware that it is -- it represents a number of different so-called
11 cases that pertain to different types of assistance and equipment, for
12 example, and that multiple military services are involved in those
13 components. So that would be the planning in terms of what sort of
14 materiel it would be envisioned to provide and the casework in terms
15 of the actual contracting process for example.

16 Q But it does not include actually spending those funds or
17 obligating those funds, correct?

18 A That is correct, up to the point of obligation.

19 Q Okay. The day after you signed this apportionment was the
20 deputies committee meeting on July 26th, correct?

21 A Correct.

22 Q And you indicated earlier during testimony that you helped
23 prepare Mr. Duffey for that DC?

24 A Correct.

25 Q And you indicated that there were at least six different

1 areas that you helped Mr. Duffey prepare on. The first was the reason
2 for the hold, correct?

3 A When you say "prepare," these were what we envisioned as six
4 critical questions in which we would -- it would be helpful to get
5 policy guidance.

6 Q Okay. So these were questions to be raised at the meeting.
7 But did OMB have an understanding of the reason for the hold on July
8 26th?

9 A No.

10 Q Was there any discussion about the amount of money that was
11 being contributed by other countries on July 26th?

12 A Not within OMB.

13 Q You said that duration was another question. Did you know
14 what the duration of the hold was on July 26th?

15 A No.

16 Q You said extent of the hold was also a question. Do you know
17 what the extent of the hold was on July 26th?

18 A Within DOD, our understanding -- I'm sorry, within DOD
19 programs, our understanding was just USAI, but that question pertained
20 perhaps more to State programs.

21 Q And was it -- now you did not have responsibility for the
22 apportionments regarding FMF. That fell under a different division.
23 That fell under the International Affairs Division of OMB. Is that
24 right?

25 A Correct.

1 Q But Mr. Duffey oversaw that division as well, correct?

2 A Yes.

3 Q Was it your understanding on July 26th that this hold applied
4 to FMF funds as well?

5 A Yes, that is how I would have interpreted military support
6 funding.

7 Q For Ukraine?

8 A For Ukraine, yes.

9 Q There was also a public affairs question. What did that
10 mean?

11 A So these are just general questions that we would flag for
12 the policy level to say, depending on or once we have policy guidance,
13 people should also think through those components of implementing any
14 policy.

15 Q On July 26th, the hold was not public yet, as far as you know.

16 A As far as I know, correct.

17 Q You said congressional affairs was also a consideration.
18 Could you explain what you mean by that?

19 A So we, again, depending upon what the policy was, would
20 always ask the question of what is the strategy for updating
21 congressional stakeholders.

22 Q And what was the strategy?

23 A We were not aware of one.

24 Q So was Congress notified?

25 A Not to my knowledge.

1 Q Was there any discussion that you recall about whether to
2 notify Congress?

3 A No, I didn't attend the DC so --

4 Q In preparation for the DC?

5 A No, because it was all predicated on getting clarity on the
6 policy first.

7 Q Well, did you get a readout of the July 26th DC?

8 A I got readout that it was not conclusive.

9 Q Well, not conclusive, but is it your understanding that OMB
10 was the only agency who attended that meeting that was insisting that
11 the hold continue?

12 A Yes, that's my understanding.

13 Q And that was the case for the July 23rd PCC and the July 18th
14 sub-PCC as well, correct?

15 A In those PCCs, yes, OMB was communicating the guidance that
16 we had received.

17 Q Had all the other agencies there wanted the lifting of the
18 hold?

19 A That's my understanding.

20 Q And OMB is not a policymaking entity, correct?

21 A We do weigh in on policy matters so we are part of the
22 interagency policy process led by NSC.

23 Q But here OMB wasn't expressing its policy views, rather they
24 were relaying the President's decision to withhold security assistance
25 for Ukraine, correct?

1 A That is correct.

2 Q And in fact I think you testified at least as of early August,
3 Mr. Duffey and you, as well as your staff, all believed that the hold
4 should be lifted. Is that correct?

5 A Yes, we supported the continuation of a USAI program.

6 Q And lifting of the hold?

7 A Yes, yes.

8 Q You indicated there was -- you recall an email on August 2nd
9 to Mr. Duffey related to, I believe, some guidance or a memo that
10 would -- whose purpose was to be transmitted to Acting Director Vought.
11 Do I have is that right?

12 A For August 2nd?

13 Q Yes.

14 A I recall that that information went to Mike Duffey. I do
15 not recall whether it was intended to go beyond him.

16 Q Okay. What is that information?

17 A It was just an update on the state of play.

18 Q And what was the state of play?

19 A Well, for USAI, it was that the funds were currently on hold
20 pending a policy decision or, you know, direction from the President.

21 Q Was this in the form of a memo this August 2nd communication?

22 A No, it was written so, yes.

23 Q Well, was it an email or --

24 A No, it was not; it was a written document. Excuse me.

25 Q And you describe in some detail the August 7th memo that was

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1 transmitted to Vought with certain policy recommendations. Were there
2 policy recommendations in the August 2nd memo as well?

3 A Not that I recall.

4 Q So it simply described the state of play?

5 A Correct.

6 Q Did anything happen between July -- well, you indicated that
7 I think you said at the end of July your duties as approver of
8 apportionments was removed from you and that was delegated to
9 Mr. Duffey. Is that right?

10 A That's correct, effective July 30th.

11 Q And you had some conversation with Mr. Duffey by telephone
12 prior to July 30th or in person?

13 A About that?

14 Q Yes.

15 A I recall his alerting me the day before on July 29th in
16 person.

17 Q In person.

18 A Yes.

19 Q Can you describe that conversation? What did he say to you?

20 A He relayed to me that there was going to be a change in the
21 apportionment approval delegation. And he relayed basically the
22 justification that I shared earlier in testimony.

23 Q Did he tell you --

24 A -- or the explanation, excuse me.

25 Q Did he tell you that he petitioned for this change, i.e.,

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1 Mr. Duffey petitioned for this change?

2 A No, he did not say that. And let me just answer what I
3 anticipate your next question to be, which is, when asked about that,
4 he said it was in essence a joint decision reflecting both guidance
5 from the Acting Director and also his support.

6 Q Prior to July 29th, had you -- had Mr. Duffey ever expressed
7 an interest to you in being the approver of apportionments?

8 A No.

9 Q Had he ever taken an interest generally in apportionments,
10 in the process of reviewing and approving apportionments?

11 A I think he had gotten involved on some issues related to
12 apportionments with my counterparts in the International Affairs
13 Division. But again, I don't know the specifics there.

14 Q Were those related to FMF for Ukraine?

15 A They pertained to congressional notifications, but that's
16 the extent of my knowledge.

17 Q Okay. Are you aware that there was a congressional
18 notification that was held up by OMB on or about June 21st regarding
19 FMF funds to Ukraine?

20 A I do not have knowledge --

21 Q Is it possible that that's the -- what you're referring to
22 with regard to Mr. Duffey's interest in apportionments on the --

23 A He had knowledge of apportionments based upon the
24 congressional notification. But, again, I'm not -- I was not part of
25 those conversations.

1 Q And prior to the change in delegation of the approval process
2 for apportionments regarding USAI, which took that responsibility away
3 from you, a career official, to Mr. Duffey, a political official, you
4 had raised concerns about the hold on Ukraine security assistance with
5 Mr. Duffey, correct? Prior to July 29th?

6 A Yes. I had raised concerns about the implementation.

7 Q And specifically how to implement it in light of the
8 Impoundment Control Act?

9 A That's correct.

10 Q The August 7th memo that was transmitted to Mr. Vought, you
11 described your portion of it, which had this recommendation to remove
12 the hold, and that was for several different reasons which you described
13 earlier, all of which were shared by Mr. Duffey. Were there other
14 parts of this memo as well?

15 A So there were also sections drafted by the International
16 Affairs Division and by Office of Legal Counsel.

17 Q Okay. I'm not interested in the Office of Legal Counsel
18 section.

19 A Understood.

20 Q What was in the Office of International Affairs Division
21 section?

22 A I do not recall the specifics.

23 Q After this memo was transmitted to Mr. Vought, I believe you
24 indicated that you -- well, what did you hear happened after this memo
25 was transmitted to Mr. Vought?

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1 A We didn't hear any specific readout other than that there
2 was a desire on the part of principals to find an occasion to receive
3 guidance.

4 Q And when you say the principals to receive guidance, you mean
5 guidance from the President, correct?

6 A That is correct.

7 Q Did you ever have any conversations with anyone other than
8 Mr. Duffey about the fact that this apportionment approval authority
9 was being taken away from you?

10 A Certainly with my staff.

11 Q And what was their reaction?

12 A They were surprised, and they were concerned for the reasons
13 I mentioned before.

14 Q Did you talk to anyone at Mr. Duffey's level or above about
15 this issue, other than Mr. Duffey?

16 A Not that I recall. It was -- certainly talked to other
17 deputy associate directors about this.

18 Q In your career at OMB or otherwise, are you aware of any other
19 political appointee being given the responsibility to authorize
20 apportionments as happened here with Mr. Duffey?

21 A The short answer is, no, I am not aware. I would just note
22 for the record that because the apportionment authority comes through
23 the Acting Director, the Acting Director always has retained that
24 authority to exercise it if he so chooses.

25 Q Are you aware of any situations in which the Acting Director

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1 has exercised an authority?

2 A I understand that there was one case in another division in
3 which he signed an apportionment.

4 Q Do you know the circumstances related to that?

5 A I'm not familiar with the details.

6 Q Do you know generally what it was about?

7 A I think it pertained to a deficiency apportionment, but again
8 that's a very technical matter in another division that I do not have
9 expertise on.

10 MR. GOLDMAN: Mr. Jordan, do you mind if I ask a quick
11 question to follow up?

12 MR. SWALWELL: You have 10 more minutes

13 MR. GOLDMAN: But technically one counsel per hour.

14 MR. SWALWELL: Okay.

15 MS. VAN GELDER: I --

16 MR. SWALWELL: Please, save us.

17 BY MR. GOLDMAN:

18 Q Mr. Sandy, without getting into legal advice that you may
19 have received, in that August 7th memo, were you aware of any concerns
20 expressed to Mr. Vought about the legality of doing this -- sorry, of
21 continuing the hold?

22 A I think the best way to characterize this is that we said
23 if there was a desire to continue the hold, that the Office of Legal
24 Counsel would have to opine on any such options.

25 Q And are you aware of whether the Office of Legal Counsel ever

1 did opine on this topic?

2 A I'm aware that they contributed to this memo.

3 Q The Office of Legal Counsel, the Department of Justice
4 contributed to --

5 A I'm sorry, sorry.

6 Q You're talking about the Office of Legal Counsel at OMB?

7 A Yeah.

8 Q I'm sorry.

9 A I'm sorry. I used the wrong term. It is Office of General
10 Counsel, my apologies. Office of General Counsel would have to take
11 the lead on those questions.

12 Q As of August 7th?

13 A Sorry as -- they contributed to that memo.

14 Q I right. I guess I'm -- they would have to opine on what,
15 the continuation of the hold?

16 A They -- it would pertain to the duration.

17 Q So what exactly would the Office of General Counsel need to
18 do pertaining to the duration after August 7th?

19 A So, if the policy guidance or the Presidential guidance was
20 to have, for example, an indefinite hold, then the Office of Legal
21 Counsel would have to opine on any options to implement that.

22 Q What options would there be, to your knowledge?

23 A That is a legal question.

24 Q But you were not aware -- you did not learn at that time that
25 there were other options?

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1 MS. VAN GELDER: -- is that what he learned was through the memo
2 what the options are, so to say what he learned would be divulging
3 attorney-client information. I think it is sufficient to say that --

4 BY MR. GOLDMAN:

5 Q Well, let me ask you this: Did you hear any concerns from
6 the Budget Review Division about the ongoing legality of this hold?

7 A I did not. We consulted with the Budget Review Division on
8 the first footnote so just to set the record straight. In terms of
9 subsequent apportionments, I do not recall -- I do not recall specific
10 conversations about that.

11 Q All right. I want to just try to whiz through -- I'm going
12 to ask to sort of whiz through -- that same footnote that was in the
13 July 25th call -- apportionment, also it was included on the August
14 6th one. Is that right?

15 A Correct, with a different date.

16 Q Obviously, with a different date.

17 A Correct.

18 Q And that August 6th one was signed by Mr. Duffey?

19 A That is correct.

20 Q Not you?

21 A Correct.

22 Q Thereafter, you mentioned there were a number of different
23 apportionments?

24 A Correct.

25 Q Was that same footnote -- sorry. Okay, so -- all right,

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1 we'll get to this in a second.

2 I want to go back before we go through this; the apportionment
3 process you said is an administrative process?

4 A Largely, yes.

5 Q And one of the concerns that you raised to Mr. Duffey when
6 he told you that he was taking over the approval of that is that, if
7 he really wanted to learn more about this process, there were other
8 better ways of doing that?

9 A Oh, no, it was really more if he wanted to learn more about
10 the accounts.

11 Q So his explanation was that he wanted to learn more about
12 the accounts?

13 A The accounts and the programs.

14 Q The accounts and the programs.

15 A Correct.

16 Q And what was your reaction to -- did you think that by taking
17 over the approval of the apportionments that he would be able to learn
18 more about the accounts and the programs in the most efficient way?

19 A It would not be my choice, but --

20 Q Why not?

21 A Well, the associate director operates at a very -- at a high
22 level with a very broad purview. So I can think of other ways -- other
23 materials that I personally would find more informative. If this was
24 his preference, that was his prerogative. I think we also thought,
25 well, we'll wait and see. If he finds this useful, then okay. And

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1 if he doesn't, then he had the ability to delegate it.

2 Q What -- you said that it takes a fair amount of time. Is
3 that right?

4 A Particularly in certain times of year, yes.

5 Q So, certainly, if you wanted to learn more about the
6 programs, there would be other ways that would be much more efficient
7 and effective than doing that in your estimation. Is that right?

8 A Again, it would not be my choice.

9 Q It would not be your choice because there are other more
10 efficient ways of doing it?

11 A For me, yes.

12 Q So that explanation of his really did not make sense to you
13 at that time. Is that right?

14 A Let me just say people have different ways of learning and
15 different interests. So, again, I took him at his word.

16 Q No, I understood you took him at --

17 MR. SWALWELL: Mr. Sandy, would it be fair to say that his
18 objectives may have been different than your objectives?

19 MR. SANDY: His objectives with respect to?

20 MR. SWALWELL: Why he wanted to put himself in this role.

21 MR. SANDY: To the extent that he was looking to learn about
22 accounts, that would not be my focus of the apportionment process.

23 MR. SWALWELL: Mr. Goldman.

24 MR. MITCHELL: We have 1 minute. I'm going to ask one question.

25 MR. SANDY: I'm sorry. Could I come back to this just for the

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1 record?

2 So I am aware of one member within the Budget Review Division who
3 expressed some general concerns so I just want to --

4 BY MR. GOLDMAN: What

5 Q What general concerns?

6 A Concerns about questions vis-a-vis the Impoundment Control
7 Act and the withholding of funds.

8 Q Meaning concerns that withholding the funds would violate
9 the Impoundment Control Act?

10 A Yes, that was her opinion.

11 MR. SWALWELL: Time --

12 MR. SANDY: It may -- let me just say "may." I just want to make
13 the point that neither my division nor the Budget Review Division are
14 attorneys, and we're just very respectful of the role of attorneys in
15 terms of providing legal advice so --

16 MR. GOLDMAN: True, and we can discuss with your attorney some
17 of the limits here. But, obviously, the whether or not this was deemed
18 by OMB to be legally deficient is of course of concern to the committees.
19 And while we are trying to respect attorney-client privilege as much
20 as we can, even though Congress does not recognize it, we do need to
21 understand the answers to internal concerns about the legality of
22 pursuing this hold.

23 So, with that, I yield to the minority.

24 MR. SWALWELL: Mr. Castor.

25 MR. CASTOR: Mr. Anderson

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1 BY MR. ANDERSON:

2 Q Mr. Sandy, I am Doug Anderson with the Foreign Affairs
3 Committee. Let me make sure I've understood your testimony today
4 correctly. You testified that the apportionment approval authority
5 transferred to Mr. Duffey on July 30th and that are not aware of a
6 Ukraine specific reason for that transfer. Is that correct?

7 A Correct. I was not aware of that.

8 Q Is it true that, at the beginning of August, OMB placed a
9 broad hold on unobligated U.S. foreign assistance, that the
10 administration was contemplating compiling a rescissions package at
11 that time?

12 A Sir, that is my understanding, and I think materials have
13 probably been shared. I just want to be quick to note because that's
14 not my area, my area of responsibility, I don't feel comfortable
15 speaking to the specifics.

16 Q Understood. And I'm glad to deal with your general
17 awareness. In fact, The Washington Post reported, I believe, around
18 August 5th on an August 3rd OMB letter detailing that broader hold that,
19 again, was not Ukraine specific. Are you aware of a decision around
20 that timeframe?

21 A I am aware of that memo being signed.

22 Q And I'm glad to submit it or provide copies if people want
23 to see, although I can hardly read the small type or I'm glad to read
24 into the record.

25 MR. MITCHELL: We would like a copy, please.

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1 This is number 6.

2 [Minority Exhibit No. 6
3 was marked for identification.]

4 BY MR. ARMSTRONG:

5 Q And I just want to read the portion beneath the first break
6 that apparently an advertisement was supposed to be printed in, that,
7 according to this, it said the OMB letter listed eight areas that cover
8 a variety of assistance: international organizations; peacekeeping
9 operations and activities; international narcotics control and law
10 enforcement; development aid; assistance for Europe, Eurasia and
11 Central Asia; economic support funding; foreign military financing
12 programs; and global health programs.

13 So, in so far as you're aware of this discussion of a rescissions
14 package, were you aware that those discussions were going on and related
15 holds?

16 A I was aware that my counterparts in the International Affairs
17 Division were involved in those discussions.

18 Q And were the discussions that were ongoing, were they country
19 specific? In other words, this is broader than Ukraine; this is a
20 global approach reflecting, as I think you said previously, the
21 skepticism of the administration towards foreign assistance generally?

22 A My understanding is it was broader, but again I am not
23 knowledgeable about the details.

24 Q Okay. Are you aware of whether this was the first attempted
25 broad-based foreign assistance rescissions package by this

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1 administration? Are you aware of an effort in I think approximately
2 August of last year also?

3 A Again, I have awareness of that effort.

4 Q And do you know, was that rescissions package attempt
5 consummated or successful? At that point in time, did they
6 submit -- did they finalize and submit a rescissions package?

7 A Not to my knowledge.

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1 [1:15 p.m.]

2 MR. ANDERSON: And so this was the second time around. And
3 roughly the same timeframe that they are contemplating this global
4 rescissions package based on holds on these multiple foreign assistance
5 accounts was roughly the same timeframe that the decisional authority
6 for approving apportionments was transferred to Mr. Duffey?

7 MR. SANDY: Yes, roughly the same timeframe.

8 MR. ANDERSON: Okay. Thank you.

9 MR. MEADOWS: Mr. Sandy, let me just come back, because in the
10 previous 45 minutes, you know, I see my colleagues opposite trying to
11 make some kind of nefarious purpose over the fact that what you've
12 already testified to was just a transition between you and Mr. Duffey
13 in terms of who approves the apportionment.

14 I believe I heard this correct, and I want to make sure it is
15 correct. The Acting Director of OMB has the ability to approve
16 apportionments now. Is that correct?

17 MR. SANDY: Yes, sir.

18 MR. MEADOWS: Has the Director of OMB always had the ability to
19 approve apportionments?

20 MR. SANDY: That is my understanding, yes.

21 MR. MEADOWS: And that's my understanding too. And I
22 guess here's -- you know, because they're trying to make this
23 transition, and they've asked you about 10 different ways for you to
24 opine on this ability to approve apportionments being removed from you
25 and going to Mr. Duffey, as to suggest that there is some kind of

1 connection.

2 But, indeed, if someone wanted to overrule you in terms of
3 approving an apportionment, that has been there in the process the
4 entire time you've been at OMB, has it not?

5 MR. SANDY: Yes.

6 MR. MEADOWS: And so, when we start to look at this -- Mr. Sandy,
7 I want to thank you for your service. You know, I was trying to figure
8 out who this Mark Sandy -- you know, unfortunately, everybody is going
9 to know who Mark Sandy is pretty soon. But, you know, what came back
10 to me from OMB was a dedicated, career public servant that called balls
11 and strikes. I've seen that here today, trying to answer their
12 questions and my questions equally without a partisan tinge, and I want
13 to thank you for that.

14 I also wanted to go a little bit further, though, into one area.
15 Majority counsel indicated that OMB typically doesn't have any
16 responsibility in the policy side of things. You disagree with that,
17 from your testimony. Is that correct?

18 MR. SANDY: We are certainly involved in the policy process,
19 number one. We are mindful that we are not an implementing agency,
20 but we do have a responsibility, as part of the Executive Office of
21 the President, to ensure that executive branch actions are consistent
22 with the President's direction.

23 MR. MEADOWS: In fact, it's been characterized to me that OMB and
24 this area that most Americans have never heard of, the Office of
25 Management and Budget, indeed is one of the most powerful groups in

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1 the executive branch because they indeed control the purse strings over
2 and over again on almost everything that gets spent in one way or
3 another. Would you agree with that?

4 MR. SANDY: So, as an agency, we do have oversight over basically
5 the entire executive branch.

6 MR. MEADOWS: And then, finally, let me --

7 MR. SANDY: I'm sorry, sir. Just a point of clarification:
8 over the departments and agencies. Obviously not --

9 MR. MEADOWS: Right.

10 MR. SANDY: -- our colleagues within the Executive Office of the
11 President.

12 MR. MEADOWS: Right.

13 You've never acted in a nefarious purpose as it relates to any
14 of the decisions that are the subject of this particular inquiry, have
15 you?

16 MR. SANDY: No, sir.

17 MR. MEADOWS: You've always acted as a professional?

18 MR. SANDY: Yes, sir.

19 MR. MEADOWS: Again, another softball question.

20 MR. SANDY: I appreciate that.

21 MR. MEADOWS: Are you aware of anyone acting in a nefarious
22 purpose? You know, we've asked these questions today, and I think
23 that's where everybody is trying to -- are you aware of anyone within
24 OMB acting in a nefarious way?

25 MR. SANDY: No, sir.

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1 MR. MEADOWS: All right. I'll yield back.

2 BY MR. CASTOR:

3 Q Just to be clear, this decision to take control of the
4 apportionments by Mr. Duffey, you're not aware of any political
5 purpose, you're not aware of any reason other than the stated reason,
6 which was that he wanted to learn more about how to do this?

7 A I, again, take him at his word, in terms of his explanation.

8 Q Okay. And you have no reason to think that there's a
9 different reason, correct?

10 A I do not have a reason, no.

11 Q Okay.

12 And following up on Mr. Meadows's question, the further
13 apportionments that were implemented after Mr. Duffey took over that
14 responsibility, to the extent you have firsthand information about
15 them, do you have any concerns? Or were they implemented in the same
16 way that the one that you signed was?

17 A So my staff and I did have concerns.

18 Q Okay. And what --

19 A Yes.

20 Q -- were those concerns?

21 A So the concerns were basically that the longer you go into
22 the fiscal year with a hold on obligations, the greater risk that you
23 create in terms of the ability to ensure that all the funds can be
24 obligated in a proper fashion before the end of the fiscal year.

25 Q Okay. That decision was being made over Mr. Duffey's

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1 responsibility level, right? That was coming from his superiors.

2 A I'm sorry. Which decision?

3 Q The decision for the apportionment.

4 A Oh. I do not know who was providing -- we received from
5 Mike Duffey each time the request for the specific timeframes for the
6 apportionments.

7 Q Okay.

8 A He did not provide the explicit explanation of where the
9 timeframes were coming from.

10 Q Okay. Was it your understanding that they were coming from
11 Mr. Duffey personally or coming from Mr. Blair or some other higher
12 authority?

13 A So our presumption was it was informed by projections of when
14 we might get final clarity on the overall policy.

15 Q Okay. But the initial implementation of a hold came from
16 higher than Mr. Duffey's authority.

17 A You mean the initial direction?

18 Q Yeah.

19 A It came from the President, as it was communicated to us.

20 Q Okay. So it wasn't a Mr. Duffey decision?

21 A Oh, on the hold? No.

22 Q Okay. And the subsequent holds.

23 A Again, our understanding was those all reflected the
24 direction of the President, which, our presumption was, had not changed
25 because we weren't lifting the hold.

1 Q Okay.

2 MR. CASTOR: Yield back.

3 MR. SWALWELL: Mr. Sandy, whether or not you have any knowledge
4 of nefarious activities at OMB, you are aware that both Mr. Duffey and
5 Mr. Vought were asked to come in and have refused to do so. Is that
6 right?

7 MR. SANDY: I'm aware of that.

8 MR. SWALWELL: Mr. Meadows, my colleague, referenced that prior
9 to your appearance today he reached out to OMB about who you are. I
10 can assure you that we have not had any conversations with OMB, but
11 I do want you to also know that we will not tolerate, as I said at the
12 beginning, any reprisals for your testimony here today.

13 I'm going to yield, actually, to Mr. Goldman.

14 MR. GOLDMAN: Just to follow up a little bit on what Mr. Meadows
15 was asking you about, whatever the reason that you were provided for
16 why your approval over the apportionment process was changed to the
17 political appointee, Mr. Duffey, am I correct that never in your career
18 at OMB has that precise situation occurred?

19 MR. SANDY: That's correct.

20 MR. GOLDMAN: I am going to turn it over to Mr. Mitchell to go
21 through some of the -- oh, Mr. Heck has a followup.

22 MR. HECK: Thank you.

23 I just want to make sure, Mr. Sandy, that Mr. Goldman's asking
24 of that question is what you understood it to mean. I don't think he
25 meant in your career at OMB have you ever seen or experienced either

1 National Security or International Affairs having their apportionment
2 authority removed, but have you ever seen any division's apportionment
3 authority ever removed by a political appointee.

4 MR. SANDY: Not to my knowledge.

5 MR. HECK: Thank you.

6 MR. SWALWELL: Mr. Mitchell.

7 BY MR. MITCHELL:

8 Q There was one final interagency meeting that I did not ask
9 you any questions about, which was a July 31st PCC. Are you aware
10 of -- or sub-PCC. Are you aware of that interagency meeting?

11 A Actually, I do not have a recollection of that.

12 Q Okay. So you don't recall getting a readout from that
13 meeting?

14 A I do not.

15 Q And fair to say you didn't prepare anybody --

16 A Right.

17 Q -- for that meeting either?

18 A Right.

19 Q Okay.

20 [Majority Exhibit No. 5
21 was marked for identification.]

22 BY MR. MITCHELL:

23 Q All right. Back to apportionments. So exhibit No. 5 is the
24 August 6th apportionment.

25 I think you have copies already.

1 MR. CASTOR: Just need one more for the court reporter.

2 BY MR. MITCHELL:

3 Q So this is, again, a three-page document. The first page
4 is a signature page. The next two pages are footnotes. It's dated
5 August 6th, and it's signed by Michael Duffey. Is that correct?

6 A Yes.

7 Q And this is the first one that was signed by Mr. Duffey. Is
8 that right?

9 A That's correct.

10 Q All right. And below, it says "Sent By: [REDACTED]." Who
11 is [REDACTED]?

12 A She is a branch chief within my division.

13 Q Okay. And this apportionment, on the second page, footnote
14 A4 has a very similar footnote to the one that I read you earlier on
15 the July 25th apportionment. Is that right?

16 A Yes. Similar.

17 Q It's almost identical except the dates are slightly
18 different. In the first sentence it says August 12th, 2019, and then
19 in the second sentence it references an OMB communication with DOD on
20 August 6th of 2019. Do you see that?

21 A Yes.

22 Q Okay. What do you know about OMB's communication with DOD
23 on or about August 6th, 2019?

24 A The communications regarding subsequent apportionments were
25 almost exclusively with Mike Duffey.

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1 Q So you were not involved in any communications with DOD
2 regarding apportionments after July 30th when this authority was taken
3 away from you?

4 A Correct. I was copied on emails that pertained to
5 apportionments, but I was not involved in the process for selecting
6 the dates, nor -- so, in the first apportionment, for example, when
7 it references OMB's communication with DOD on July 25th, that was my
8 communication.

9 Q Okay.

10 A This communication would not have been mine with DOD on
11 August 6th.

12 Q Okay. Were you copied on the August 6th communication?

13 A Not that I recall.

14 Q So you were completely out of the loop on this communication
15 with DOD?

16 A Again, I have no recollection of being looped in.

17 Q But, from OMB's side, it's your understanding that it
18 would've been Mr. Duffey?

19 A Yes.

20 Q And from DOD's side, would that be Ms. McCusker?

21 A I presume. Because I wasn't included in this, I can't say
22 that for certain.

23 Q But based on past practice, she would be the natural person
24 to be on this communication?

25 A She -- on the communications on which I was copied, she was

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1 the primary contact within DOD Comptroller.

2 Q And on those communications in which you were copied, you
3 said they were about apportionments. What with respect to
4 apportionments did those communications discuss?

5 A You mean throughout the month of August?

6 Q Yeah. Well, let's start at the beginning of August.

7 A Okay.

8 Q On or around the date of this particular apportionment.

9 A I don't recall any communications on or around this one.

10 Q All right. Well, we'll step through them then.

11 A Okay.

12 Q And the first sentence also says August 12th, 2019. You were
13 not involved in setting that date either then?

14 A No. In the subsequent apportionments, the dates came from
15 Mike Duffey.

16 Q How do you know that?

17 A Because we -- OMB and specifically my staff -- would generate
18 these apportionments for his signature. So he would provide the
19 direction on the periods of the holds.

20 Q Where did he get those dates?

21 A I do not know.

22 Q Did you ever talk to Mr. Duffey about those dates?

23 A Not explicitly. Our understanding was that there were
24 ongoing efforts to get policy clarity. And so our presumption was that
25 each period reflected another short period of time in which we hoped

1 to have clarity.

2 [Majority Exhibit No. 7
3 was marked for identification.]

4 BY MR. MITCHELL:

5 Q I'm handing you exhibit No. 7. And this is an August 15th
6 apportionment also signed by Mr. Duffey. It's also three pages. Page
7 2 has the footnote A4. This footnote, again, is almost identical to
8 the prior two except the dates are different. Is that right?

9 A Actually, this footnote is, I believe, identical to the
10 previous exhibit you gave me.

11 Q Okay. So it's -- and the --

12 MS. VAN GELDER: You might've given him the wrong copy.

13 BY MR. MITCHELL:

14 Q I think it's actually a typographical error, perhaps, in the
15 footnote itself?

16 A No, actually, it's not.

17 Q Okay. Can you explain to us what's going on?

18 A Sure. So keep in mind that USAI is just one piece of a much
19 larger account. There was, I believe, on this occasion, a need for
20 us to do a reapportionment that pertained to something totally
21 unrelated to USAI. So I think this just was retained. And the key
22 distinction in this apportionment was for another program funded out
23 of operations and maintenance Defense-wide.

24 Q Right. But this particular apportionment is dated August
25 15th, correct?

1 A Yes, it is.

2 Q And the footnote allows for obligation until August 12th.
3 So isn't there a period of time between the 12th and the 15th for which
4 there was no footnote actually implementing the hold?

5 A That is correct.

6 Q Okay. So this footnote had not been updated to have a date
7 after August 15th to implement the hold.

8 A That's correct.

9 Q All right.

10 A Yep.

11 Q Were you involved in this particular apportionment in any
12 way?

13 A I was not. I'm aware that it was for an internal
14 reprogramming.

15 Q Okay. But were you involved in any discussion about this
16 footnote, A4, which has a date that's prior to the date of the
17 apportionment itself?

18 A No. I anticipate that was just a leftover from the previous
19 apportionment.

20 Q A typographical error?

21 A No, it's just that the apportionment no longer would've
22 constrained anything, and it was probably just left in. Because the
23 point of this apportionment wasn't to update that footnote.

24 Q So, in fact, for this period that we're looking at here on
25 August 15th, there was no hold.

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1 A That's correct.

2 Q Okay.

3 A Right.

4 Q So, for at least a short period of time, from August 12th
5 through the next apportionment, which I'll show you momentarily,
6 August --

7 A Twentieth.

8 Q -- 20th, there actually was no hold in place.

9 A That is correct.

10 Q Do you know whether DOD was obligating funds during that
11 period?

12 A Not to my knowledge.

13 Q Do you know whether there was a change in position with regard
14 to the hold from the President?

15 A No, not to my knowledge.

16 Q So it was your understanding that the hold was still in place
17 during this August-12th-through-August-20th time period, despite the
18 fact that the footnote didn't reflect that.

19 A So my understanding was that the direction remained but it
20 was not an explicit part of the apportionment.

21 Q Okay. Thank you.

22 [Majority Exhibit No. 8
23 was marked for identification.]

24 BY MR. MITCHELL:

25 Q Okay. I'm going to hand you exhibit 8, which is going to

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1 be a series of apportionments from August 20th through September 10th.
2 It's going to be apportionments for August 20th, 27th, 31st; September
3 5th, 6th, and 10th.

4 All of these apportionments were signed by Mr. Duffey as well.
5 Is that right?

6 A That's correct.

7 Q And the first one, the August 20th one, has a different name,
8 [REDACTED], on the "Sent By." Who is that?

9 A Sorry. That's [REDACTED], a branch chief in my
10 division.

11 Q Okay. Also a career employee of OMB?

12 A Yes.

13 Q How long has she been at OMB?

14 A Oh. Over a decade.

15 Q Okay.

16 All of these apportionments in exhibit No. 8 contain a footnote,
17 footnote A4. Is that right?

18 A Yes.

19 Q And the language of these footnotes, however, are different
20 than the last three that we've looked at.

21 A That's correct.

22 Q How are they different?

23 A They do not include the previously included sentence that
24 stated: "Based on OMB's communication with DOD on" -- date -- "OMB
25 understands from the Department that this brief pause in obligations

1 will not preclude DOD's timely execution of the final policy
2 direction," end quote.

3 Q Why was that portion of the footnote omitted?

4 A DOD stated it could no longer support that sentence.

5 Q When did DOD state that?

6 A Middle of August, at some point prior to the August 20th
7 apportionment.

8 Q And did DOD explain why?

9 A They were concerned about execution risk associated with an
10 ongoing hold and how it might affect their ability to fully obligate
11 by the end of the fiscal year.

12 Q Which raised a potential violation of the Impoundment
13 Control Act?

14 A Which raises concerns, yes.

15 Q So DOD, at some point prior to August -- or between August
16 6th and August 20th, presumably --

17 A Yes.

18 Q -- took the position that there might be insufficient time
19 for DOD to obligate the funds prior to the end of the fiscal year, which
20 could result in a violation of the Impoundment Control Act if there
21 were unobligated funds remaining on the table?

22 A So DOD expressed concerns about its potential ability to
23 fully execute.

24 Q All of these footnotes in exhibit 8, this series of
25 apportionments, also continue to have the language saying, "DOD may

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1 continue its planning and casework for the Initiative during this
2 period."

3 Do you know what DOD was doing?

4 A I'm sorry. When you say do I know what they were doing --

5 Q In their planning and casework?

6 A So I am not familiar with the -- I know there is a lot of
7 preparatory work that goes into this program before they hit the point
8 of obligation, but I'm not an expert on all those individual steps.

9 Q But the DOD was expressing a concern that they still would
10 not have sufficient time to conduct all of those steps and put these
11 moneys on the contract despite the fact that they were allowed to
12 continue with their planning and casework?

13 A That they may not.

14 Q Okay.

15 These footnotes also talk about an interagency process. It says
16 that the hold is being put in place "to allow for an interagency process
17 to determine the best use of such funds."

18 Now, we discussed earlier that the interagency process -- that
19 it was occurring in July of 2019. Are you aware of any interagency
20 meetings that occurred between August 20th and September 10th, during
21 the time of these apportionments?

22 A I'm not aware, but I wouldn't necessarily be aware of every
23 consultation, obviously, at a high policy level.

24 Q But it's your understanding that, at least during this time
25 period that we've just been discussing, the President had not made the

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1 decision to lift the hold. Or, at least, that had not been communicated
2 to you.

3 A Correct.

4 Q And then, finally, on August 12th -- excuse me. During this
5 August-to-beginning-of-September timeframe, August 20th to September
6 10th, did you have any discussions with anyone about this footnote and
7 specifically the removal of that sentence that we just described?

8 A Yes. I had a conversation with [REDACTED] in my
9 division.

10 Q And who is that?

11 A She is a branch chief.

12 Q Oh, the individual who actually sent that first
13 apportionment that we looked at on August 20th?

14 A That's correct.

15 Q Okay. What was that conversation?

16 A We were aware of the concern as expressed by DOD, and we
17 flagged that -- Mike Duffey was also aware of the concern, but we
18 flagged that as an issue in terms of the change that would be required
19 for the footnote.

20 Q Okay. What were her concerns?

21 A Sorry. [REDACTED]?

22 Q Yes.

23 A Well, her concern was that the footnote was going to be
24 changing, and we wanted to make sure that -- two things. And maybe
25 this would be a good opportunity for me to make a general statement

1 about these apportionments.

2 As the hold was extended, we continued to express concerns about
3 the potential implications vis-a-vis the Impoundment Control Act. We
4 expressed those concerns to Mike Duffey, and, on every occasion, we
5 advised him to speak to the general counsel. We take the general
6 approach that, as I've mentioned before, we are not attorneys in my
7 division, but we were flagging these concerns for Mike Duffey as the
8 apportionment approval official.

9 Q Okay. And you indicated earlier that, as part of the review
10 process and approval process of apportionments, concerns and
11 recommendations are communicated through the -- I think you said the
12 EMAX system?

13 A MAX.

14 Q MAX system. Were the concerns that you just described, as
15 well as your recommendation that Mr. Duffey should seek an opinion from
16 the General Counsel's Office, were those made through the MAX system?

17 A I know at least some were. Because I was no longer in the
18 chain of approval in MAX, I did not see those. But I advised staff,
19 if they had concerns, that they could use that avenue for expressing
20 them.

21 Q And did they?

22 A Again, because I wasn't in the chain, I didn't see them, but
23 my understanding is that people did, yes.

24 Q Well, you worked, I think you testified earlier, right next
25 to your staff --

1 A Yes.

2 Q -- geographically, correct?

3 A Right.

4 Q Were they on the same hall as you?

5 A The same floor.

6 Q The same floor?

7 A Yeah.

8 Q And you had conversations -- you had an opportunity,
9 certainly, to have conversations with your staff members who were
10 actually responsible for preparing and reviewing these apportionments.
11 Is that right?

12 A Correct.

13 Q Okay. And you had relationships with them, presumably, for
14 a significant period of time, even outside the context of these
15 particular apportionments.

16 A Yes.

17 Q And even if you were outside of the loop with regard to the
18 approval authority, is it fair to say that they -- or is it fair to
19 assume that they came and talked to you on occasion about these
20 particular apportionments?

21 A Yes.

22 Q Like [REDACTED] did?

23 A Yes.

24 Q And did others?

25 A Yes.

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1 Q Okay.

2 MR. SWALWELL: Ms. Holmes Norton.

3 MS. NORTON: I'd just like to clarify the concerns you expressed
4 because of the impoundment statute, because time was running out. Were
5 you ever given any reason for those holds or any reason when the holds
6 were lifted?

7 MR. SWALWELL: Did you hear the question?

8 MR. SANDY: I believe I heard two questions, so, ma'am, confirm
9 if I answer both of them.

10 The first was, were we ever given any reason for the hold? And
11 I would say only in September did we receive an explanation that the
12 hold -- that the President's direction reflected his concerns about
13 the contributions from other countries for Ukraine.

14 MS. NORTON: That was going to be my next question. That was the
15 one and only reason you gave, that other countries -- I think Mr.
16 Meadows raised this notion, tried to link it -- that other countries
17 may not have given their own contributions to Ukraine, and that was
18 the only reason ever given to you as a reason for the hold.

19 MR. SANDY: That was the one definitive reason that I recall
20 seeing during this period.

21 MS. NORTON: Thank you very much.

22 MR. SWALWELL: Thank you, Ms. Holmes Norton.
23 Mr. Mitchell.

24 BY MR. MITCHELL:

25 Q So you indicated that you had a conversation with [REDACTED].

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1 A Yes.

2 Q Was that in the context of this August 20th apportionment?

3 A Yes, it was.

4 Q Was it also throughout the course of the month of August that
5 you were having these conversations with [REDACTED]?

6 A There were multiple conversations, starting at this point,
7 through the lifting of the hold in September.

8 Q With [REDACTED]?

9 A Yes.

10 Q What about with [REDACTED]?

11 A So the other individuals who are responsible for this work
12 all report to [REDACTED], and so [REDACTED] would relay their concerns
13 as well.

14 Q Okay. So she was expressing not only her own concerns but
15 [REDACTED] was expressing concerns of other staff?

16 A That's correct.

17 Q And what were those concerns?

18 A The concerns were vis-a-vis the Impoundment Control Act and
19 the ability of DOD to fully execute the appropriated funds before they
20 expire.

21 Q Did [REDACTED] have any communications with the Budget
22 Review Division about these concerns?

23 A She may have. I was not a part of that if she did, so I can't
24 know definitively.

25 Q What about any other members of your staff? Did they have

1 any communications with DOD about these same issues?

2 A They very well may have. And, as I said, I'm aware of one
3 individual in BRD who expressed similar concerns.

4 Q Okay. Were those expressed to you?

5 A On one occasion that I definitely recall, yes.

6 Q Okay. And who was that individual at BRD?

7 A [REDACTED].

8 Q What did [REDACTED] tell you?

9 A I think she just -- it was more of a -- it was not, like,
10 a meeting in my office, as I recall. It was a -- we ran into each other,
11 and she just made a general comment that reflected a concern about the
12 apportionments.

13 Q What was her concern about apportionments?

14 A Her concern was vis-a-vis the Impoundment Control Act.

15 Q And when was this conversation with [REDACTED]?

16 A I don't remember that precise date.

17 Q Do you recall whether it was in July or August?

18 A It was definitely not in July. So it was after July.

19 Q Was it August or September?

20 A I think it was September.

21 Q Okay. So it was during this time period where the footnote
22 did not include this language from DOD. Is that right?

23 A That's correct.

24 Q Did you talk about the change in this footnote with
25 [REDACTED]?

1 A No. I talked about it with my own staff.

2 Q Do you recall ever hearing any concerns from OMB Legal about
3 the footnote post-August-20th?

4 A Directly from OMB Legal. As I mentioned, our advice to Mike
5 Duffey was to consult with the Office of the General Counsel on every
6 single footnote. And I am well aware that the general counsel was in
7 direct communication with the General Counsel's Office at DOD on these
8 topics.

9 Q How are you aware of that?

10 A Because I was copied on emails. I cannot know if I was copied
11 on -- I certainly wasn't included in telephone conversations, but I
12 was copied on emails.

13 Q In August as well?

14 A I recall emails from late August and early September.

15 Q Okay. And what was the topic of discussion in those emails?

16 MS. VAN GELDER: I'm not going to -- it's between counsel. He's
17 aware of OMB counsel and DOD counsel. And so I think you can ask, as
18 a result of those, did anything change, but I am not having him answer
19 those questions.

20 BY MR. MITCHELL:

21 Q As a result of the communications between counsels from OMB
22 and DOD, did anything change with regard to the processing of
23 apportionments with regard to the footnote or with anything else
24 related to this particular issue of Ukraine security assistance?

25 A Part of the communications between OMB and DOD focused on

1 maximizing the extent to which DOD could lay the groundwork for
2 obligations in advance of obligating. So I think that was part of the
3 focus. In other words, how do you make the most out of the permission
4 to continue planning and casework so that you are prepared to make the
5 obligations as soon as the restriction is lifted. So that was a big
6 part of the communication.

7 And those communications, as well as the broader concerns -- you
8 know, I'm aware of those communications with DOD Comptroller. Again,
9 I'm aware that our general counsel was in direct communication with
10 DOD general counsel.

11 Q Okay. So, as I understand it in layman's terms, one of the
12 issues was what DOD could be doing during this time period in which
13 the communications were being had between counsel in spite of the hold.

14 A Right.

15 Q Okay.

16 [Discussion off the record.]

17 Q To your knowledge, did OMB General Counsel's Office bless
18 the manner in which these apportionments were issued?

19 A With every single apportionment that we sent forward to Mike
20 Duffey, at his request, we advised him to seek general counsel guidance.
21 To my recollection, he confirmed that he did that, consistent with our
22 recommendation.

23 Q So your understanding is that Mr. Duffey -- you recommended
24 that Mr. Duffey seek OGC guidance, correct?

25 A Correct.

1 Q And he confirmed for you that he, in fact, did consult with
2 OGC, correct?

3 A Correct.

4 Q But you don't know whether he followed OGC's advice or not.

5 A Let me put it this way. I'm not aware of any -- it's hard
6 for --

7 [Discussion off the record.]

8 MR. SANDY: Okay. My understanding from Mr. Duffey was that he
9 had general counsel support with these apportionments.

10 BY MR. MITCHELL:

11 Q Okay.

12 Now, the hold was lifted on September -- it's been reported
13 roughly September 11th, and the first apportionment was September 12th?
14 Is --

15 A Correct.

16 Q -- that correct?

17 A Yes.

18 [Majority Exhibit No. 9
19 was marked for identification.]

20 BY MR. MITCHELL:

21 Q I'm going to give you exhibit No. 9, which is an apportionment
22 signed by Mr. Duffey, dated September 12th, which, if you'll look at
23 page 2, does not contain this footnote that we've been spending the
24 last several hours on.

25 Were you involved in this particular apportionment?

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1 A I was aware of the instruction from Mike Duffey to the team
2 to lift the hold.

3 Q How did you learn that the hold was being lifted?

4 A Via email.

5 Q From whom?

6 A From Mike Duffey.

7 Q When?

8 A It would've been either on the 11th or the 12th of September.

9 Q Okay. Who else was in the email?

10 A I think probably [REDACTED]. Certainly, if it
11 pertained to the apportionment specifically, it would've been [REDACTED]

12 Q Did Mr. Duffey forward an email to you, or was this his own
13 email?

14 A As I recall, it was his own email.

15 Q And that was the first time that you heard that the hold was
16 being lifted, was through that email?

17 A That's correct.

18 Q Did you have any conversations or communications of any sort
19 with Mr. Duffey following this email on September 11th -- or 12th, I
20 think you said?

21 A And this is where -- apologies -- I probably need to go back
22 and confirm the date of the email that attributed the hold to the
23 President's concerns about other countries' contributions. I know it
24 was in early September that we were asked to pull together the data.
25 I would like to confirm whether this was the point at which he shared

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1 that that was the rationale for the hold.

2 Q So you need to confirm, it sounds like --

3 A Yeah.

4 Q -- but it's possible that you learned for the first time that
5 the reason for the hold was the fact that other countries were not
6 providing sufficient assistance to Ukraine at the same time that the
7 hold was lifted?

8 A On or about the same time.

9 Q Did you have any conversations with Mr. Duffey after you
10 received this email about the lifting of the hold?

11 A No. I think we were just relieved, in terms of we had clear
12 direction now, and the presumption was that this was clear guidance
13 going forward.

14 Q But you had no conversations with Mr. Duffey seeking further
15 clarification about why the hold was in place, what precipitated the
16 lifting of the hold, how Mr. Duffey found out about the lifting of the
17 hold? You didn't have any of those conversations with Mr. Duffey?

18 A I don't recall receiving any other information along those
19 lines.

20 Q Okay. Did you speak with anyone else, other than
21 Mr. Duffey or your counsel, about the lifting of the hold?

22 A Yes. Rob Blair stopped by my office one day, and we asked
23 him this question. And we received -- I'm sorry. We asked him the
24 question about why there had been a hold, and we received a similar
25 verbal response, meaning pertaining to the President's concern about

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1 the contributions of other countries.

2 Q When did you have this conversation with Mr. Blair?

3 A That I do not recall, but I'm sure it was in September after
4 the lifting of the hold.

5 Q Had you spoken with Mr. Blair at any point prior to that time
6 about the hold on Ukrainian security assistance?

7 A No. I don't regularly interact with him in his new position.

8 Q How did Mr. Blair come to stop by the office one day?

9 A Well, he used to lead our resource management organization.
10 So I don't know -- and I think he was in the building and he stopped
11 by. This was not his purpose. We were just catching up with him.

12 Q Are you aware of any -- I believe you testified earlier about
13 at least one communication between Mr. Blair and Mr. Duffey during the
14 period of the hold.

15 A Correct.

16 Q Are you aware of any other communications, conversations,
17 email, any discussions between Mr. Blair and anyone else at OMB during
18 the pendency of the holds? So, in other words, from anytime in
19 June through September 11th.

20 A Yes. I'm aware of one other email exchange between Mike
21 Duffey and Rob Blair.

22 Q When was that email exchange?

23 A As I recall, it was on or about July 17, 18.

24 Q So right before you returned back from leave?

25 A Correct.

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1 Q And this was an email exchange?

2 A Yes.

3 Q Was it forwarded to you?

4 A It was forwarded, yes.

5 Q By Mr. Duffey?

6 A Yes.

7 Q And was anyone else on this email exchange?

8 A Another examiner in my division named [REDACTED].

9 Q And what did this email say?

10 A Mike was asking about the reason for the hold.

11 Q So Mr. Duffey was asking Mr. Blair?

12 A That's correct. Yeah. Sorry. Mike Duffey was asking Rob
13 Blair about the reason for the hold.

14 Q And what did Mr. Blair say?

15 A He said -- he didn't provide an explicit response on the
16 reason. He simply said, we need to let the hold take place -- and I'm
17 paraphrasing here -- and then revisit this issue with the President.

18 Q Did you have any conversations with anyone about what Mr.
19 Blair said in this email?

20 A With [REDACTED], yes, because he'd also received it.

21 Q And was that conversation with [REDACTED] right around the
22 same time as this email, so mid-July?

23 A I think it -- I remember the dates of the conversation. I
24 don't remember exactly when it was forwarded. So it would've been
25 around the time that we received the email, yes.

1 Q Okay. And what was that conversation?

2 A With [REDACTED]?

3 Q Yes.

4 A I think it was just acknowledging that we didn't have a clear
5 reason for the hold. I mean, we didn't know the reason for the hold.

6 Q This email that you saw dated July 17th from Mr. Duffey to
7 Mr. Blair, when was the last time you saw that email?

8 MS. VAN GELDER: Other than with preparation with counsel?

9 BY MR. MITCHELL:

10 Q Well, no. Have you seen it recently?

11 A Have I seen it recently? You mean in terms of going back
12 and looking at it electronically or --

13 Q Have you read this email within the last week?

14 A Yes, I have.

15 Q Okay. And you indicated that Mr. Blair did not provide an
16 explanation for the hold in this email.

17 A That is correct.

18 Q Did he say that he did not have an explanation for the hold?
19 Did he attempt to answer that question?

20 A As I recall, he did not provide an answer and simply
21 acknowledged the need to let the hold take effect and then revisit.

22 Q Okay. Did he say he did not have a reason for why the hold
23 was in place?

24 MS. VAN GELDER: I'm sorry. He has answered it the best he can.
25 He said what the email said, and that's what he recalls the email saying.

1 BY MR. MITCHELL:

2 Q Well, okay, so the email said, "We need to let the hold take
3 place and then we can revisit this issue with the President" is, in
4 sum and substance, what Mr. Blair said.

5 A Correct.

6 Q Do you recall whether in this email Mr. Blair said, "I don't
7 know why the hold is in place"?

8 A I don't recall anything explicit along those lines. I just
9 remember that there was no explanation for the hold.

10 Q This email from July 17th, was it only pertaining to Ukraine
11 security assistance?

12 A No. There was another -- and, honestly, it -- there was
13 another question that was not in my purview, so I didn't focus on the
14 other part.

15 Q Did it have to do with a hold?

16 A Not that I recall. No, it wasn't pertaining to Ukraine or
17 a hold.

18 Q Okay. But with regard to the hold that Mr. Blair was
19 discussing in this email, that hold applied only to Ukraine security
20 assistance. Is that right?

21 A That is correct.

22 Q Okay.

23 MR. MITCHELL: I think my time is up. We can yield to the
24 minority.

25 MR. CASTOR: Can we go off the record for a second?

1

[Recess.]

1 [2:24 p.m.]

2 BY MR. MITCHELL:

3 Q We were talking about communications between Mr. Blair and
4 individuals at OMB. Do you have any knowledge of Mr. Bolton
5 communicating with Mr. Vought on or around September 9th or 10th
6 regarding the hold and lifting the hold on Ukraine security assistance?

7 A I do not have any knowledge.

8 Q Do you have any knowledge of any communications between
9 Mr. Vought and anyone at the White House about Ukraine security
10 assistance at any time?

11 A No. I mean, I was -- we anticipated that he would be
12 involved in meetings, but I never got a specific readout about a
13 specific meeting.

14 Q Okay. Doesn't mean he didn't have those communications;
15 you're --

16 A Exactly.

17 Q -- just not aware of it.

18 A Correct. Correct.

19 Q Okay.

20 Do you know whether DOD was able to put all the -- or was able
21 to obligate all the USAI funds between September 12th and the end of
22 the fiscal year, September 30th?

23 A No. No, they were not able to do so.

24 Q Okay. How much was left unspent or unobligated?

25 A According to the data we received from DOD, approximately

1 36 million -- sorry, 35.

2 Q And is it your understanding that that 35 -- well, do you
3 have an understanding as to why that 35 million was left unobligated?

4 A I do not, no. And, in fact, I'd like to clarify my previous
5 comment to say, I know that they did not fully obligate the full amount
6 of the appropriations and that 35, roughly 35 million, was left
7 unobligated at the end of the year.

8 Q Okay. And are you aware that Congress had to pass a law as
9 part of the 2019 continuing resolution to extend the deadline so that
10 the \$35 million could be obligated past September 30th?

11 A I'm aware that that was a provision within the continuing
12 resolution.

13 Q Well, what would have happened if this provision had not been
14 included in the continuing resolution with the \$35 million?

15 A Had that provision not been included, then any unobligated
16 funds as of September 30th would have expired.

17 Q In violation of the Impoundment Control Act?

18 A Expired funds, in and of themselves, I would not presume
19 represent a violation, but I'm also very mindful of not providing a
20 legal opinion.

21 Q Okay. But you're also not aware of any sort of rescission
22 or reprogramming of these funds at any time prior to September 30th.
23 Is that right? Let me be precise: the USAI, Ukraine security
24 assistance funds.

25 A Correct. There was no proposed rescission and no

1 reprogramming.

2 Q Have you calculated, before coming in today, what the
3 percentage of unobligated funds was? In other words, 250 million
4 versus 35 million, what that percentage is?

5 A I think it's approximately 14 percent. Is that correct?

6 Q I have the same math as you. Based on your experience, is
7 14 percent higher than what you've seen in the past?

8 A In terms of amounts that would not be fully obligated?

9 Q Correct, at the end of the fiscal year.

10 A That would vary by program. I know it is DOD's intent to
11 obligate for many programs not quite at 100 percent insofar as they
12 don't want to run afoul of the Antideficiency Act. I do not have
13 precise data on their averages, so I guess what I can say is 14 percent
14 is an accurate characterization of that.

15 Q I'm sorry. Is an accurate characterization of what?

16 A Well, of the amount that was not fully obligated.

17 Q Okay. But because you don't have any data in front of, you
18 can't compare that to historical averages for this particular account
19 or any other accounts that might relate to similar funds for security
20 assistance?

21 A Again, I don't have precise data, so I feel like I need to
22 answer this question consistently with how I answered a previous
23 question about precise data.

24 Q So I understand that you're a data guy and you don't have
25 any data in front of you. But based on your experience and your

1 understanding, funds left unobligated at the end of the fiscal year
2 for programs involving security assistance of the type that we're
3 discussing here today, would they be in the realm of somewhere between
4 perhaps 2, 5, 6 percent, as opposed to twice that amount, more than
5 twice that amount, 14 percent?

6 [Discussion off the record.]

7 MR. SANDY: So, again, I know that they aspired -- sorry, DOD
8 would aspire to use as high a percentage as possible without running
9 a risk of violating the Antideficiency, but I just don't have a precise
10 point of comparison.

11 BY MR. MITCHELL:

12 Q All right. Are you aware of anyone resigning or leaving OMB
13 under any circumstances at least in part because of the manner in which
14 OMB was handling Ukraine security assistance?

15 A I'm aware of one colleague who left in September. I'm always
16 reluctant to speak to someone else's motivations.

17 Q Well, did you speak with this person who left in September
18 about their departure from OMB?

19 A Yes, I did.

20 Q And did that person express to you, either in that
21 conversation or in any other prior conversations, their position with
22 regard to Ukraine's security assistance?

23 A Yes, this individual did express frustrations.

24 Q And what were those frustrations that that individual
25 expressed to you?

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1 MS. VAN GELDER: Are you going after the whistleblower? I just
2 want to know whether we can just cut this off now.

3 MR. MITCHELL: No.

4 MR. MEADOWS: I don't know that they know who the whistleblower
5 is, according to previous testimony. So I don't know how they would
6 know whether they're going after them or not.

7 MR. MITCHELL: Well, this is an OMB employee, not in the IC.

8 MR. SANDY: I think the frustrations related more to
9 apportionment issues on the IAD side.

10 BY MR. MITCHELL:

11 Q So when you say --

12 A International Affairs --

13 Q -- "apportionment issues on the IAD side," do you
14 specifically mean the Department-of-State-sponsored FMF program for
15 Ukraine assistance?

16 A No. He did not oversee that program.

17 Q Okay. So did this person have any concerns regarding
18 Ukraine security assistance that this person expressed to you?

19 A Yes. So this person had also received -- and I don't recall
20 the specifics of the request. He was also concerned about requests
21 similar to the one that I received on Friday, July 19th, in terms of
22 executing apportionments. And I don't know the specifics in his area.

23 So, again, I can speak to how I responded to the request that I
24 received on Friday the 19th, and I can say that he expressed some
25 frustrations --

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1 Q But my question was, did this individual express any concerns
2 about Ukraine security assistance?

3 A I'm honestly just trying to recall. I'm not trying to parse
4 my words.

5 As I recall, he expressed some frustrations about not
6 understanding the reason for the hold. That's my recollection.

7 Q Was this individual within the Legal Division?

8 A No.

9 Q Are you aware of any individual in the Legal Division
10 resigning or leaving OMB --

11 A Oh.

12 Q -- at least in part because of Ukraine security assistance?

13 A Oh. Yes, I am.

14 Q And what do you know about that?

15 [Discussion off the record.]

16 MS. VAN GELDER: I'm assuming, just so we make it clear --

17 MR. MITCHELL: Would you mind just speaking into the microphone?

18 MS. VAN GELDER: -- the question is, what did the departing person
19 tell him about why they were departing?

20 MR. MITCHELL: Why don't we start with that.

21 MS. VAN GELDER: Okay.

22 MR. SANDY: This person expressed to me concerns about actions
23 vis-a-vis the Impoundment Control Act.

24 BY MR. MITCHELL:

25 Q In the context of Ukraine security assistance and the hold?

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1 A Yes. I never want to attribute that as the, you know, sole
2 purpose for an individual's actions, but I am aware of their
3 frustrations in that area, yes.

4 Q Okay. So this person who worked at OMB Legal expressed
5 concerns about the hold on Ukraine security assistance and resigned
6 from OMB. And did that person tell you that he or she resigned from
7 OMB at least in part because of concerns with security assistance?

8 [Discussion off the record.]

9 MR. SANDY: I'm sorry. Can you repeat the question?

10 BY MR. MITCHELL:

11 Q Sure. Did this person at OMB Legal tell you that they were
12 leaving or resigning from OMB at least in part because of their concerns
13 or frustrations about the hold on Ukraine security assistance?

14 A Yes, in terms of how -- yes, in terms of that process, in
15 part.

16 Q Okay. What were the concerns about the process?

17 MS. VAN GELDER: If he can explain that process without
18 explaining what would've been something that was privileged, he can
19 explain it. "Unhappy with the process," whatever, but I'm not going
20 to allow him to answer a question that a lawyer at OMB is explaining
21 to them.

22 MR. SWALWELL: And, Counsel, the way I interpret this, with your
23 concerns, if he's going to talk about counsel to Mr. Sandy,
24 conversations during the process, that you would deem that as
25 privileged. But I think our concern is that, if this is a conversation

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1 post-process but around why this individual is leaving, that that was
2 not fall under attorney-client.

3 MS. VAN GELDER: I --

4 MR. SWALWELL: Not that we acknowledge that as a
5 Congress-recognized privilege.

6 MS. VAN GELDER: Right. And I understand that. But I still, to
7 leave just a wide berth here, if the person is saying -- and I don't
8 know what the person is going to say, because this is news to me -- "I
9 disagree with counsel's interpretation of that," I'm going to instruct
10 him not to answer that.

11 If you want to say, "I have a generalized disagreement on how they
12 are doing something," I'm fine, but we're not going to get granular
13 with this. And --

14 MR. GOLDMAN: Okay. But the fact of the disagreement is not
15 privileged.

16 MS. VAN GELDER: The fact of the disagreement is not privileged.

17 MR. GOLDMAN: Okay.

18 BY MR. MITCHELL:

19 Q Okay. So let me ask it this way. So did this individual
20 who resigned from OMB disagree with OMB general counsel's advice or
21 other individuals from the General Counsel's Office about how to handle
22 the hold on Ukraine security assistance?

23 MS. VAN GELDER: Yeah, if we say, did he explain to him. You're
24 giving the reason why, but did the person tell you that was the reason?
25 Do you understand that you just didn't start it off with a preface.

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1 Do you understand the question?

2 [Discussion off the record.]

3 MR. SANDY: I'll note the disagreement.

4 BY MR. MITCHELL:

5 Q Okay. So the person who resigned did have a disagreement.

6 A If I'm not violating privilege --

7 [Discussion off the record.]

8 MR. SANDY: So the individual did note a disagreement --

9 BY MR. MITCHELL:

10 Q I'm sorry?

11 A So the individual did note a disagreement on this topic.

12 Q And "this topic" being the hold on Ukraine security
13 assistance?

14 A Correct.

15 Q Okay.

16 MR. GOLDMAN: Just one more thing, just to be clear. The
17 disagreement was with -- what was the disagreement with? Not the
18 specific details of it, but was the disagreement with the fact that
19 OMB was putting the -- implementing the hold? Was the disagreement
20 with how the General Counsel's Office was handling it? What was the
21 disagreement? What was the topic of the disagreement?

22 [Discussion off the record.]

23 MR. SANDY: I think the best way to characterize it would be a
24 dissenting opinion vis-a-vis the Impoundment Control Act provisions.

25 MR. GOLDMAN: And whether or not they apply to the Ukraine

1 security assistance hold?

2 MS. VAN GELDER: That goes back to -- I think all he -- he can
3 say that he disagreed with the way the Counsel --

4 MR. SWALWELL: Please use the microphone.

5 MS. VAN GELDER: Thank you. I apologize.

6 -- he disagreed with how the Counsel's Office may have interpreted
7 the Impoundment Control Act, but I don't think he can go into specifics
8 as to --

9 MR. GOLDMAN: That's fine. He didn't say that.

10 MS. VAN GELDER: I thought he said dissenting opinion over how
11 the act was --

12 MR. GOLDMAN: He just said a dissenting opinion about the
13 Impoundment Control Act.

14 BY MR. GOLDMAN:

15 Q So I would just like to understand what the dissenting
16 opinion more specifically related to.

17 A In the context of the hold on Ukrainian assistance.

18 Q Okay.

19 And just while we're on this topic, can I -- you indicated that
20 you recommended at every step of the way in the apportionment process
21 at the end of August and early September that Mr. Duffey speak to the
22 General Counsel's Office prior to signing off on the apportionments.
23 Is that right?

24 A That's correct.

25 Q Did you ever determine whether he did speak to the General

1 Counsel's Office?

2 A Yes.

3 Q And he did?

4 A He confirmed that on more than one occasion.

5 Q And did you ever confirm that he was acting in accordance
6 with the recommendation from the General Counsel's Office?

7 [Discussion off the record.]

8 MR. SANDY: Yes.

9 BY MR. GOLDMAN:

10 Q Okay. And he was acting in accordance with the guidance from
11 the General Counsel's Office?

12 A That's correct.

13 BY MR. MITCHELL:

14 Q After you learned of these committees' interest in speaking
15 to you, did you have any communications with anyone at OMB about the
16 possibility that you were testifying before Congress?

17 A Yes.

18 Q And you're laughing and smiling. And why is that?

19 A It was a matter of great interest within OMB, particularly
20 among career staff.

21 Q Okay.

22 A Sorry. Are you talking about just the fact that I was
23 requested and then anticipated receiving a subpoena, or are you talking
24 about something else?

25 Q Well, did anyone at OMB tell you that you should not appear

1 voluntarily?

2 A So, as I recall, my counsel sent --

3 MS. VAN GELDER: Not this counsel.

4 MR. SANDY: Sorry. Yes. I'm sorry.

5 My Office of the General Counsel provided an email response to
6 the committee on the -- sorry. It was the Thursday evening after I
7 received the request letter. So I think that email best describes the
8 OMB Office of General Counsel position. So that's the first answer
9 to your question.

10 BY MR. MITCHELL:

11 Q And their position was that you should not testify
12 voluntarily absent the presence or the ability for agency counsel to
13 be present for that interview?

14 A That is correct.

15 Q Okay. And subsequent to that exchange that you just
16 described, did you -- I'm not asking about your counsel, but did you
17 have any communications or conversations with anyone at OMB about
18 testifying before Congress?

19 A Well, I did when I informed my general -- so I had a
20 conversation with my general counsel in advance of that email response.
21 I also alerted my general counsel when I had retained private counsel.
22 And I also alerted general counsel to my intent to appear if subpoenaed.

23 Q Okay. And what was their reaction?

24 A Their reaction has been consistent in terms of, I understand
25 that their preference would be for me not to appear in the absence of

1 agency counsel. So that has been their preference. That is one of
2 the reasons that I specifically requested that agency counsel be able
3 to accompany me. And, obviously, that request was declined. So that
4 was their guidance.

5 [Discussion off the record.]

6 MR. SANDY: Subsequent to that, I have heard that agency
7 leadership respects my decision.

8 BY MR. MITCHELL:

9 Q But it appears that that may have been in doubt?

10 A Well, again, the initial position of agency counsel, as
11 reflected in that email, was that I should only appear if accompanied
12 by agency counsel.

13 Q But that is still their position today, is it not?

14 A To my understanding, yes, that is still their position.

15 Q So they don't necessarily -- haven't changed their
16 preference.

17 A That is correct, consistent with the Office of Legal Counsel
18 opinion.

19 Q Okay. When you say "the Office of Legal Counsel opinion,"
20 do you mean -- well, what do you mean by that?

21 MS. VAN GELDER: If you're aware.

22 MR. SANDY: Okay.

23 So I am aware -- and I hope I'm using the correct legal
24 terminology -- about an Office of Legal Counsel opinion that suggests
25 that executive branch officials should be accompanied by agency counsel

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1 in order to protect the prerogatives or executive -- sorry -- in order
2 to represent agency interests at the hearing.

3 BY MR. MITCHELL:

4 Q What was OMB general counsel's reaction -- and when I say
5 "general counsel," I mean General Counsel's Office -- reaction when
6 you told them that you were going to be appearing today pursuant to
7 a subpoena?

8 You're smiling again.

9 A Well, I'm smiling because I want to portray this accurately,
10 and it wasn't one reaction. It started with a concern about my
11 appearing and that not support for my decision. And by the time I
12 finished my conversations, I appreciated -- my statement was, I realize
13 people may not agree with my decision, but I appreciate that they have
14 expressed respect for it.

15 Q You testified earlier that you're aware that Mr. Duffey has
16 not taken the same path as you and has refused to appear, despite having
17 received a subpoena. Have you had a conversation with him?

18 A Since he is my supervisor, I alerted him when I received the
19 letter, and I alerted him of my retention of private counsel and my
20 plan to appear if subpoenaed.

21 Q And what was Mr. Duffey's reaction when you told him that
22 you were going to appear if subpoenaed?

23 A He was -- I would say, as a supervisor, he was gracious in
24 acknowledging the difficult situation that this put me in and, I think,
25 gracious in understanding that I needed to make a decision in

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1 consultation with my private counsel.

2 Q Did he try to convince you to change your decision?

3 A Mr. Duffey? No.

4 Q Did he at any time advise you not to come in voluntarily?

5 A No.

6 Q Have you had any conversations with Mr. Vought about
7 appearing before Congress?

8 A Yes. He called me yesterday morning. And while I don't
9 remember his precise words, again, I had the sense that he respected
10 my decision and wished me well.

11 Q At any point during that conversation did he try to encourage
12 you to change your decision?

13 A No.

14 Q Have you received any correspondence from anyone at OMB
15 regarding your appearance before Congress?

16 A Any correspondence -- do you mean in terms of official
17 correspondence?

18 Q Official correspondence.

19 A No. The only official correspondence that I'm aware of was
20 addressed to my private counsel.

21 Q Have you seen that official correspondence?

22 A I have seen it, yes.

23 Q Was that official correspondence received prior to the
24 issuance of the subpoena, which was this morning?

25 A Yes.

1 Q Okay. And did that official correspondence express what you
2 described as OMB's preference that you not appear voluntarily for a
3 deposition?

4 A It expressed, yes, the preference that I -- well, let me put
5 it this way -- that I only appear if accompanied by agency counsel.

6 Q Okay. Did it direct you not to appear if agency counsel
7 could not be present, voluntarily?

8 MS. VAN GELDER: If you recall.

9 MR. SANDY: I did not read it as a direction.

10 BY MR. MITCHELL:

11 Q And did it say anything about what to do if you were
12 subpoenaed?

13 A No. Again, it just -- I think, consistent that -- their
14 preference for me to appear with agency counsel.

15 MR. GOLDMAN: All right, Mr. Duffey -- or, Mr. Sandy, you can
16 speak with your lawyer.

17 [Discussion off the record.]

18 MR. SANDY: Sorry. It did direct me to have my personal counsel
19 ask for a postponement until agency counsel could accompany me.

20 BY MR. GOLDMAN:

21 Q Mr. Sandy, we're almost done, but we've been jumping around
22 a lot over the past several hours, so I just want to run through the
23 timeline quickly to make sure that we understand everything from your
24 perspective as it relates to Ukraine security assistance, all right?

25 So, in June, you received a request from Mr. Duffey to gather some

1 information about Ukraine security assistance. Is that accurate?

2 A Correct. Technically, my staff did. Yes.

3 Q Right, but you received the request.

4 A Yes. I was copied on it.

5 Q Okay. Oh, so he -- Mr. Duffey asked your staff, and you were
6 copied on it.

7 A As I recall, yes.

8 Q All right. And you provided some information to Mr. Duffey
9 about Ukraine security assistance. Is that right?

10 A My staff did, yes.

11 Q And then you were asked for more information, or your staff
12 was asked for more information?

13 A Well, as I recall, there may have been two or three emails
14 with, like, followup questions along the same lines.

15 Q Okay.

16 You go on vacation for most of the first half of July. And when
17 you get back, you are forwarded two emails from Rob Blair, Mr.
18 Mulvaney's deputy, to Mr. Duffey, related to the hold on Ukraine
19 security assistance. Is that right?

20 A That is correct.

21 Q Okay. And, in both of those emails, it says to the effect
22 of that this hold is being requested from the White House for OMB to
23 implement. Is that correct?

24 A It explains that -- yes, that their direction is coming from
25 the President and it applies to military support funding for Ukraine

1 and -- yes.

2 Q And, just to be clear, there was no reason provided for that
3 decision.

4 A That is correct.

5 Q Okay. And, to your knowledge, this is the very first time
6 in your career where a hold has been placed on security assistance after
7 the CN has been sent.

8 A I don't recall a precedent like this.

9 Q Subsequent to learning about this hold, you and your staff
10 took a number of actions to implement the hold, including the drafting
11 of a footnote as part of an apportionment sent over to Congress. Is
12 that right?

13 A To DOD.

14 Q I mean, sorry, to DOD.

15 A Yes.

16 Q In consultation with DOD, but prior to sending that
17 apportionment. Is that right?

18 A Correct. In consultation with OMB Office of General Counsel
19 with DOD and with DOD general counsel.

20 Q And you also expressed concern to your supervisor,
21 Mr. Duffey, related to whether this hold could be legally implemented
22 under the Impoundment Control Act -- is that correct? -- around that
23 time in mid- to late July.

24 A The way I would characterize it is, it raised questions that
25 we needed to work through, and only after working through those

1 questions and developing the footnote could we be confident in terms
2 of executing that apportionment.

3 Q And one aspect of the footnote that was particularly
4 important to you was that DOD would still have sufficient time to
5 obligate all of the funds by the end of the fiscal year. Is that
6 accurate?

7 A Correct.

8 Q And that was included in a footnote on the July 25th
9 apportionment.

10 A Correct.

11 Q Following the July 25th apportionment, you were removed as
12 the approver for the apportionments for Ukraine security assistance.
13 Is that correct?

14 A I was removed as the approver for all apportionments in my
15 area. So, yes, it's correct, but I want to make sure it's clear that
16 it's for all apportionments.

17 Q It was for everything.

18 A That's correct.

19 Q And Mr. Duffey then became the approver.

20 A Correct.

21 Q Okay. And one of the reasons that Mr. Duffey gave to you
22 for why he wanted to -- why he was going -- well, withdrawn.

23 Mr. Duffey indicated to you that this was a decision from the
24 Acting Director that he concurred with. Is that right?

25 A Yes. It was a decision that was jointly supported.

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1 Q And understanding, of course, that the Acting Director, as
2 the Acting Director, has ultimate authority for who approves
3 apportionments, to your knowledge, this was the first time in your
4 career at OMB where a political appointee was delegated the approval
5 authority over the apportionments in your area. Is that right?

6 A That's correct.

7 Q Following that change in delegation of approval authority,
8 Mr. Duffey approved another apportionment on August 6 that also
9 included that same footnote. Is that right?

10 A With changes to two dates.

11 Q Understood. So without regard to the dates. Obviously,
12 the dates then move out.

13 A Right.

14 Q On August 7th, you contributed to a memo to the Acting
15 Director related to the hold on Ukraine security assistance. Is that
16 right?

17 A Correct.

18 Q And it was the recommendation of you and your team to lift
19 the hold for policy reasons that were uniformly supported by the entire
20 interagency. Is that correct?

21 A When you say "the entire interagency," I would just say, I
22 was not aware of another agency that had a different opinion and that
23 that was a staff-level recommendation on policy grounds, yes.

24 Q Right. And you agreed with that staff-level
25 recommendation.

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1 A Yes.

2 Q And you were not aware of anyone in the staff level at OMB
3 that disagreed with that recommendation.

4 A Correct.

5 Q Okay.

6 Then, subsequently, on August 15th, another apportionment was
7 signed by Mr. Duffey that also included the same footnote, although
8 the dates did not match up. Is that right?

9 A I think, technically, the one on the 15th was for another
10 purpose, and so it kind of had the -- the old footnote was just sort
11 of left over.

12 Q Understood.

13 A Right.

14 Q Well, on that, were you aware that DOD supported that
15 footnote as of August 15th, or was that an error?

16 A So, as I recall -- I'm sorry, I don't have them in front of
17 me. As I recall, there was a gap in there. And so I think --

18 Q Okay. We don't need to get back into it.

19 A Okay.

20 Q This just is more of summary.

21 But then on August 20th, August 27th, August 31st, September 5th,
22 September 6th, and September 10th, Mr. Duffey approved apportionments
23 that did not contain that language that DOD would still be able to
24 obligate all of the funds by the end of the fiscal year. Is that your
25 recollection?

1 And if you're not certain of the dates, just let us know.

2 A I just want to check one other piece of that.

3 Q Yeah. It's exhibit 8.

4 A So, just to be very precise, it did not include the sentence
5 that, quote, "OMB understands from the Department that this brief pause
6 in obligations will not preclude DOD's timely execution of the final
7 policy direction," end quote.

8 Q And that was because DOD could not certify to OMB that they
9 would be able to obligate all of the USAI funds by the end of the fiscal
10 year. Was that your understanding?

11 A It was my understanding that DOD could not support that
12 sentence. It didn't mean that it would be impossible. I just want
13 to make that clarification.

14 Q Well, the language I used is they could not certify that they
15 would be able to use all the funds. That does not imply that it would
16 be impossible.

17 A That DOD was no longer comfortable with that
18 footnote and -- with that sentence in the footnote. Understood.

19 Q Right. But you also had conversations with DOD, and I'm
20 trying to understand that the reason that they were not comfortable
21 with that is that they could not guarantee that they would be able to
22 obligate all of the funds by the end of the fiscal year, and that's
23 why that sentence in the footnote was taken out.

24 A Yes, that was my understanding from DOD.

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1 [3:06 p.m.]

2 BY MR. GOLDMAN:

3 Q And you had conversations during this period from August 20th
4 until September 10th with other people in your office, within the Office
5 of General Counsel, within BRD, and with DOD where people expressed
6 concerns about whether or not this hold was consistent with the
7 Impoundment Control Act. Is that an accurate assessment, summary?

8 A Yes. They expressed concerns about the ability of DOD to
9 fully obligate the funds before they expired. And, therefore, they
10 expressed concerns vis-a-vis the Impoundment Control Act. That's
11 correct.

12 Q And, Mr. Sandy, were you relieved that you didn't have to
13 put your name on these apportionments?

14 A I will just note this factually that my role changed and that
15 Mike Duffey took the lead on the interactions with DOD and the
16 interactions with OMB's general counsel to inform him vis-a-vis his
17 responsibilities in approving apportionments.

18 Q But that had been your role as of the end of July?

19 A It had been my role, yes.

20 Q And so were you relieved that that was now his role and not
21 your role?

22 A I did not recommend the change in apportionment
23 responsibilities more broadly. So you're asking a question, but I want
24 to say that I did not recommend that change in apportionment
25 responsibility so it wasn't as though I was seeking that change in

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1 apportionment responsibilities.

2 Q Understood. But with respect to these specific
3 apportionments, which fell within your --

4 A Right.

5 Q -- previous purview. Now you are -- you do not have to put
6 your name on them, and you had expressed concerns about the hold. So
7 the question for you is, did at any point you feel any relief that you
8 no longer had this responsibility as it related to these specific
9 apportionments?

10 A Perhaps in the sense that I spent less time working on this
11 issue. But let me just -- I will just be quick to note that I obviously
12 would have continued to work on it just as I had done at the last week
13 of July so --

14 Q Did any of your staff members whose names did appear on them
15 express concerns to you about the fact that their name was included
16 on these apportionments?

17 A They expressed concerns about their roles insofar as they
18 were receiving direction from Mike Duffey about the apportionments to
19 route forward. And my advice to them was that we register the concerns
20 and continue to advise Mike Duffey to consult with general counsel and
21 to consult with the Department of Defense.

22 Q During this period --

23 Do you want to jump in, Mr. Swalwell?

24 MR. SWALWELL: No. Let's kick it to the minority.

25 MR. GOLDMAN: Oh, sorry.

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1 BY MR. CASTOR:

2 Q Just in summary, the reason for the change in delegation for
3 apportionment authority was communicated to you by Mr. Duffey as a
4 vehicle for him to gain more experience with the process, correct?

5 A That was one of reasons, yes.

6 Q Okay. Were there any other reasons?

7 A Just reiterating the ones I stated before in terms of being
8 more involved in day-to-day operations and senior leadership interest
9 in more insights on amounts that are going to specific purposes.

10 Q Okay. Did any of that, to your knowledge, have to do with
11 the President's concern for spending, specifically foreign aid?

12 A That could have played a factor on the State USAID side.

13 Q Okay. Now, Mr. Duffey is the -- he's a PAD -- he's the
14 program associate director, correct?

15 A Correct.

16 Q How many PADs are there?

17 A There are five.

18 Q Okay. Did any of the other four PADs take this apportionment
19 authority?

20 A No.

21 Q Okay.

22 A And I'm sorry. There are five who lead resource management
23 organizations. So there are four other comparable positions.

24 Q So this decision was a Duffey-specific change?

25 A That is correct.

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1 Q So nobody at the leadership of OMB wanted the PADs generally,
2 all the politically appointed folks, to take this authority on?

3 A I was not aware that that was under consideration.

4 Q Okay. You understand my question, though?

5 A You mean in terms of making the change more widespread?

6 Q Yes.

7 A Again, I just know it was only implemented for our resource
8 management organization.

9 Q Okay. And to your knowledge, this decision wasn't made by
10 Mr. Vought or any senior person at OMB to bring more political control
11 of the situation?

12 A It was not characterized as such.

13 Q Okay. You indicated Mr. Vought called you yesterday when
14 he learned that you were appearing here today?

15 A Yes.

16 Q And you also said that OMB leadership respects your decision
17 to testify?

18 A That was my takeaway from the conversation.

19 Q Okay. Meaning that they are not mad at you, they are not
20 going to retaliate against you. They want you to come in and cooperate
21 to the extent you are coming in with your lawyer instead of agency
22 counsel?

23 A Again, I did -- there was a letter to counsel. So I think
24 the official position of OMB has remained the same.

25 Q Okay. But that official position, if I may, involves a

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1 policy concern with having agency officials appearing before Congress
2 without agency counsel to protect the interest of the agency?

3 A That is the position, as I understand it, yes.

4 Q To your knowledge, OMB and the lawyers at OMB, they weren't
5 concerned about Mr. Sandy's specific testimony. It was more a
6 widespread policy consideration?

7 A Correct.

8 Q Okay. So they didn't have any specific fear of the testimony
9 you would offer. They were concerned about having their lawyers locked
10 out of the room when, in their mind, agency equities are at play?

11 A Correct. I would also just, in the spirit of a complete
12 answer, say that there was also a concern about a precedent of having
13 a career staff person testify.

14 Q Okay. But, again, it had nothing to do with your specific
15 testimony here today.

16 A Well, I did not discuss my testimony of course in advance.

17 Q But you were called here to testify today about specifically
18 identified matters?

19 A Right.

20 Q This is an impeachment initiative about these Ukraine
21 issues. So nobody at OMB leadership or the lawyers expressed any
22 concern about the specific testimony you were going to offer. It was
23 consistently a policy concern about having their lawyers locked out
24 of the room.

25 A Correct. I think they would have taken a similar position

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1 with other staff as well.

2 Q Okay. And is it your understanding that if agency counsel
3 had been able to participate in these proceedings, that other OMB
4 witnesses would have been able to come in as well.

5 MS. VAN GELDER: I'm not going to have him answer that. That
6 would be a discussion that would be with his --

7 MR. CASTOR: Okay.

8 BY MR. CASTOR:

9 Q And nobody at OMB, correct me if I am wrong, tried to
10 influence your testimony here today, correct?

11 A No.

12 Q Okay. They didn't tell you what not to discuss, other than
13 privilege issues?

14 A And those communications went through my personal attorney.

15 Q Okay. So nobody at OMB told you, "please do not give facts
16 about X, Y or Z"?

17 A No.

18 Q The only instruction you were given were through your lawyer
19 about privilege considerations?

20 A Correct.

21 Q Okay. Whether it be executive privilege or attorney-client
22 privilege?

23 A Correct.

24 Q And, again, given the communication you had with Mr. Vought,
25 you're going to go back to work on Monday and you feel like you don't

1 expect to be retaliated against for participating in this process,
2 correct?

3 A I have received no indication at this point that that's a
4 concern.

5 Q Okay. And you feel like you're -- I mean, you're a highly
6 valued member of the OMB team, correct? I mean, you used to be the
7 acting -- you were the acting director for a stint?

8 A Correct.

9 Q Okay. So no one's given you any indication that you've
10 fallen out of favor because you've decided to potentially testify here
11 today?

12 A No. I've gotten no indication of that thus far.

13 MR. CASTOR: Mr. Meadows.

14 MR. MEADOWS: Mr. Sandy, I want to come back to OMB broadly
15 because I think a lot of questioning today is trying to figure out what's
16 unique and what's different.

17 Are you aware of other efforts within OMB outside of your direct
18 responsibility where OMB has looked at reorganizing the way that
19 they're structured, the way that they interact with other agencies,
20 specifically Ms. Weichert and other areas? Are you aware that there
21 are other organizational changes that are happening or contemplated
22 in OMB?

23 MR. SANDY: I am somewhat familiar, but yes.

24 MR. MEADOWS: So, as you talk to some of your OMB career
25 professionals that have been there a long time, would you agree that

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1 or has there been discussions among some of your colleagues that things
2 have changed in other areas other than just your specific
3 responsibility that we discussed here today? Has that been ever
4 communicated to you at all, Mr. Sandy?

5 MR. SANDY: I'm sorry. Changed in what way?

6 MR. MEADOWS: Just organizationally, the roles of the OMB
7 Management and Budget Director, some of those responsibilities, as we
8 look at the responsibilities within OMB -- you've been there a long
9 time, and some of those I have knowledge of just because we have
10 oversight over OPM and other areas. Are you aware of any contemplated
11 organizational changes or directions that have happened in other areas
12 of OMB?

13 MR. SANDY: Again, I'm most knowledgeable about the resource
14 management organization so I'm not aware of any organizational change.
15 You referred to the reorganizational plan that Deputy Director Weichert
16 is championing, so I think that's the biggest. But that's much more
17 of a, of course, OPM-GSA related --

18 MR. MEADOWS: Have you read about or are you aware of in any other
19 way that the President of the United States has a general concern about
20 the amount of money that we are spending on foreign aid broadly, not
21 specifically, just with Ukraine but just broadly?

22 MR. SANDY: So I'm aware of the proposed reductions in the
23 President's budget.

24 MR. MEADOWS: And do you help prepare part of that budget, or do
25 you provide input on an annual basis for the Presidential budget that

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1 is published?

2 MR. SANDY: Certainly, not in the foreign assistance realm, other
3 than for programs under DOD.

4 MR. MEADOWS: All right. So, as you look at those programs
5 broadly, is it a fair characterization of the budget that generally
6 moneys for foreign assistance and other State Department related
7 activities get reduced in the annual budget and those annual priorities
8 for the President are not necessarily aligned with what gets
9 appropriated?

10 MR. SANDY: Yes. My understanding is congressional action has
11 been different from the President's request in foreign assistance.

12 MR. MEADOWS: And wouldn't you say that Congress generally spends
13 a lot more time and effort and makes a priority of foreign aid a lot
14 more than the President's budget?

15 MR. SANDY: Certainly by virtue of the relative request in
16 appropriations, it is a lower priority for the President.

1 [3:22 p.m.]

2 MR. MEADOWS: And so, as we look at foreign aid generally and your
3 portfolio -- I know the question has been asked in different formats,
4 but we've had other witnesses that would suggest that there have been
5 holds on other aid to foreign nations, i.e., Lebanon. I think there
6 was some foreign assistance holds on other countries, maybe in the
7 Balkans. Are you aware of those?

8 MR. SANDY: Yes. Again, not my lead area, but I'm aware of them.

9 MR. MEADOWS: Are you aware that there's still a hold on aid to
10 Lebanon? We've had another witness testify to that.

11 MR. SANDY: I'm not aware of the specifics because that doesn't
12 affect my area.

13 MR. MEADOWS: Mr. Castor, I'll yield back.

14 BY MR. GOLDMAN:

15 Q We're almost done here.

16 You're obviously aware that Mr. Vought defied the subpoena to come
17 testify here. Is that right?

18 A I'm aware of his response.

19 Q And Mr. Duffey as well?

20 A Yes, I'm aware.

21 Q And so, when you had any conversations with them, did they
22 express any concerns related to the -- oh, and you're also aware that
23 we have no documents, right, from OMB?

24 A That's -- I'm aware of that.

25 Q Even though we subpoenaed the documents?

1 A I'm aware of that.

2 Q So, did they express any concerns that you were breaking the
3 widespread policy at OMB to obstruct this investigation?

4 A I would stick by my previous answers about -- in terms of
5 their preferences.

6 Q Just following up on Mr. Meadows' questions, that whatever
7 review the President may be undertaking to look into foreign aid, that's
8 all looking ahead to the future, right? That has nothing to do with
9 the Ukraine security assistance that we've been discussing here today,
10 which is already a part of the law, correct?

11 A So, if you're talking about, obviously, budget requests
12 pertaining to future appropriations --

13 Q Right.

14 A -- advice, this was an FY19 issue.

15 Q In early September, you testified that you received a request
16 for information about other -- the aid provided by other countries to
17 Ukraine. Is that right?

18 A Correct.

19 Q And you don't remember the specific date; you just know it
20 was in September.

21 A As I recall, early September.

22 Q And prior to that request, you were unaware of any reason
23 for the hold. Is that right?

24 A I was unaware of a definitive reason.

25 Q And did you provide information about what other countries

1 have -- the aid that other countries have given to Ukraine?

2 A Again, the staff did, yes.

3 Q Your staff did.

4 A Yes.

5 Q And do you know if that aid included both security assistance
6 or military aid as well as other economic aid?

7 A I believe so, but, again, I don't recall the specifics.

8 Q So it wasn't necessarily specific to military aid.

9 A I don't believe so.

10 Q So are you aware, actually, that the European countries
11 provide a lot more broad economic aid to Ukraine than the United States
12 does?

13 A Again, I don't have specific data. To be consistent with
14 my previous responses, I am aware of -- I am aware of having read
15 something along those lines in press reporting.

16 Q And then, at some point in early September, Mr. Blair stopped
17 by your office and told you that the reason for the hold was out of
18 concern that the United States gives more aid to Ukraine than other
19 countries? Or, rather, that other countries should give more as well?

20 A That's correct.

21 Q And do you know when that conversation was?

22 A I'm sorry. I don't recall the --

23 Q Do you know if it was before or after the hold was lifted?

24 A It was after.

25 Q It was after. And that that was the first time that you had

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1 received a definitive answer. Is that right?

2 A No. As I referred -- as I mentioned earlier in my testimony,
3 I also received an email along those lines, and I apologize that I don't
4 recall the specific date.

5 Q I guess the confusion I have is, was that email the same email
6 as asking for information about other countries' aid, or was it a
7 different email?

8 A It was a different email. It was subsequent, and that's why
9 I would need to go back and confirm. I know it was in September.

10 Q But what is relevant here is that that email was after the
11 request for information about other countries' aid?

12 A That's correct.

13 Q And you just don't remember it, but it may have been right
14 around September 11 when the aid was lifted?

15 A It very well may have been. I think I was thinking early
16 September for the request, and I know the other email came later. So
17 I apologize that I don't recall the specific date.

18 Q And between the date that you got the email request for more
19 information and the day that the aid was lifted on September 11th, are
20 you aware of whether any other countries had agreed to provide more
21 aid to Ukraine in that period of time?

22 A I'm not aware of anything.

23 MR. SWALWELL: Do you guys have anything else? I was going to
24 conclude if you don't.

25 MR. CASTOR: We had one matter we wanted to bring up after the

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1 witness leaves.

2 MS. CASULLI: Stick around for that.

3 MR. SWALWELL: Mr. Sandy, I want to thank you for coming in. Your
4 testimony today as was unique, I would say, in three ways: One in that
5 you described that you had not seen, other than in this instance, such
6 a significant amount of aid held up for no apparent reason; two, in
7 your experience, you've never seen a political appointee assume the
8 role of apportionments as was done in your case; but, I think, most
9 importantly to us today, three, you are the first OMB witness to be
10 willing to come forward and honor our request to provide information
11 for this inquiry.

12 So, for the third one, we are very grateful, and thank you for
13 doing that.

14 Again, as I mentioned in the beginning, we will not tolerate any
15 reprisal, and if there is anything like that, we hope that you let us
16 know.

17 [REDACTED] [REDACTED]
18 [REDACTED] [REDACTED]
19 [REDACTED] [REDACTED]
20 [REDACTED]
21 [REDACTED] [REDACTED]
22 [REDACTED] [REDACTED]
23 [REDACTED] [REDACTED]
24 [REDACTED] [REDACTED]
25 [REDACTED]

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MR. SWALWELL: We are adjourned.

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[Whereupon, at 3:29 p.m., the deposition was concluded.]

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