



United States Department of State

Washington, D.C. 20520

January 8, 2020

Case No. F-2019-06332

Segment: S/ES-S-0024

S/ES-S-0027

Melanie Sloan
American Oversight
1030 15th Street NW, B255
Washington, DC 20005

Dear Ms. Sloan:

I refer to our letter dated December 9, 2019, regarding the release of certain Department of State material under the Freedom of Information Act (the "FOIA"), 5 U.S.C. § 552. The Department has located 18 additional documents responsive to the priority portion of your request. We have determined that 9 documents may be released in full and 9 documents may be released in part.

An enclosure explains the FOIA exemptions and other grounds for withholding material. Where we have made excisions, the applicable FOIA exemptions are marked. All non-exempt material that is reasonably segregable from the exempt material has been released and is enclosed

We will keep you informed as your case progresses. If you have any questions, your attorney may contact Joshua C. Abbuhl, Trial Attorney at joshua.abbuhl@usdoj.gov; 202-616-8366. Please refer to the case number, F-2019-06332, and the civil action number, 19-cv-02934, in all correspondence about this request.

Sincerely,

Susan C. Weetman
Deputy Director
Office of Information Programs and Services

Enclosures: As stated.

The Freedom of Information Act (5 USC 552)

FOIA Exemptions

(b)(1) Information specifically authorized by an executive order to be kept secret in the interest of national defense or foreign policy. Executive Order 13526 includes the following classification categories:

- 1.4(a) Military plans, systems, or operations
- 1.4(b) Foreign government information
- 1.4(c) Intelligence activities, sources or methods, or cryptology
- 1.4(d) Foreign relations or foreign activities of the US, including confidential sources
- 1.4(e) Scientific, technological, or economic matters relating to national security, including defense against transnational terrorism
- 1.4(f) U.S. Government programs for safeguarding nuclear materials or facilities
- 1.4(g) Vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to US national security, including defense against transnational terrorism
- 1.4(h) Weapons of mass destruction

(b)(2) Related solely to the internal personnel rules and practices of an agency

(b)(3) Specifically exempted from disclosure by statute (other than 5 USC 552), for example:

ARMSEXP	Arms Export Control Act, 50a USC 2411(c)
CIA PERS/ORG	Central Intelligence Agency Act of 1949, 50 USC 403(g)
EXPORT CONTROL	Export Administration Act of 1979, 50 USC App. Sec. 2411(c)
FS ACT	Foreign Service Act of 1980, 22 USC 4004
INA	Immigration and Nationality Act, 8 USC 1202(f), Sec. 222(f)
IRAN	Iran Claims Settlement Act, Public Law 99-99, Sec. 505

(b)(4) Trade secrets and confidential commercial or financial information

(b)(5) Interagency or intra-agency communications forming part of the deliberative process, attorney-client privilege, or attorney work product

(b)(6) Personal privacy information

(b)(7) Law enforcement information whose disclosure would:

- (A) interfere with enforcement proceedings
- (B) deprive a person of a fair trial
- (C) constitute an unwarranted invasion of personal privacy
- (D) disclose confidential sources
- (E) disclose investigation techniques
- (F) endanger life or physical safety of an individual

(b)(8) Prepared by or for a government agency regulating or supervising financial institutions

(b)(9) Geological and geophysical information and data, including maps, concerning wells

Other Grounds for Withholding

NR Material not responsive to a FOIA request excised with the agreement of the requester

From: [REDACTED]
Sent: Mon, 16 Sep 2019 20:48:08 +0000
To: Kurt Volker; Kent, George P; Brechbuhl, Thomas U; Marie Yovanovitch; Yovanovitch, Marie L; Volker, Kurt D; Brechbuhl, Thomas U
Cc: [REDACTED]
Subject: Congressional inquiry regarding Ukraine

RELEASE IN
PART B5, B6

B6

B6

Attach: ELE Schiff Cummings Letter to Sec Pompeo on Ukraine.pdf, ELE Schiff Cummings Letter to Pompeo Ukraine 9-13.pdf

Good afternoon,

You likely have seen the two attached letters from the House Committees. I wanted to reach out to each of you directly to share the Congressional letters regarding Ukraine.

B5
B5

I have copied [REDACTED] who is available should you have any concerns or questions.

B6

Regards,

[REDACTED]

B6

[REDACTED]

B6

Senior Congressional Advisor
United States Department of State
Room 7805
Office: (202) 647-4243
Cell: [REDACTED]

B6

SBU - Deliberative Process



Congress of the United States
Washington, DC 20515

RELEASE IN FULL

September 9, 2019

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

Dear Mr. Secretary:

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

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

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

¹ See tweet @realDonaldTrump, July 25, 2017 ("Ukrainian efforts to sabotage Trump campaign — 'quietly working to boost Clinton.' So where is the investigation A.G. @seanhannity") (online at: <https://twitter.com/realDonaldTrump/status/88978820172780544?s=20>). This tweet was also referenced by Special Counsel Robert Mueller in his investigation of President's Trump's possible obstruction of justice. See Mueller Report, Vol. II, at p 96, FN 660.

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

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

AMERICAN
OVERSIGHT

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The Honorable Mike Pompeo
 September 9, 2019
 Page Two

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

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

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

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

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

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

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

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

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

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

The Honorable Mike Pompeo
 September 9, 2019
 Page Three

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

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

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

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

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

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

The Honorable Mike Pompeo
September 9, 2019
Page Four

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

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

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

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



The Honorable Mike Pompeo
September 9, 2019
Page Five

Sincerely,



ELIOT L. ENGEL
Chairman
House Foreign Affairs Committee



ADAM SCHIFF
Chairman
House Permanent Select Committee
On Intelligence



ELIJAH E. CUMMINGS
Chairman
House Committee on Oversight and Reform



Congress of the United States
Washington, DC 20515

RELEASE IN FULL

September 13, 2019

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

Dear Mr. Secretary:

We write to follow up on the September 9 letter we sent you regarding reported efforts by President Trump and his associates to improperly pressure the Ukrainian government to assist the President's bid for reelection.

As we noted in that letter, a growing body of public reporting indicates that the President and his associates may be engaged in efforts to coerce the Ukrainian government into pursuing two politically-motivated investigations under the guise of anti-corruption activity. Public reports further indicate that the President, in turn, threatened to withhold more than \$250 million in security assistance that Congress has appropriated, the Pentagon supports, and Ukraine greatly needs. It is incumbent upon our Committees to ensure that any attempts by the State Department to abet this scheme are fully understood and appropriately addressed.

As part of our investigation, we ask that you make the following individuals available for transcribed interviews with Committee staff as expeditiously as possible:

- Ambassador Marie "Masha" Yovanovitch, who was recalled early from her post in Kiev on May 20, 2019;
- Ambassador Kurt Volker, U.S. Special Representative for Ukraine;
- Deputy Assistant Secretary George Kent, who formerly served as Deputy Chief of Mission in Kiev; and
- Counselor T. Ulrich Brechbuhl.

Each of these individuals has been identified through various means as having direct knowledge of and/or involvement in the matters under investigation.

Please provide, no later than **Friday, September 20**, the dates on which each of these individuals will be available for an interview. Please contact the Committee on Foreign Affairs at (202) 225-5021 to coordinate scheduling and logistics.

Sincerely,



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The Honorable Mike Pompeo
September 13, 2019
Page Two



ELIOT L. ENGEL
Chairman
House Foreign Affairs Committee



ADAM SCHIFF
Chairman
House Permanent Select Committee
On Intelligence



ELIJAH E. CUMMINGS
Chairman
House Committee on Oversight and Reform

RELEASE IN
PART B5,B6

From: [REDACTED]
Sent: Fri, 27 Sep 2019 20:48:23 +0000
To: Kent, George P; Kurt Volker; Brechbuhl, Thomas U; Marie Yovanovitch; Yovanovitch, Marie L; Volker, Kurt D; Sondland, Gordon D (USEU)
Cc: [REDACTED]
Subject: RE: Congressional inquiry regarding Ukraine - tweets of deposition schedules

B6

B6

Attach: 2019-09-27.EEC Engel Schiff to Pompeo- State re Depositions.pdf

B6

Thanks George. [REDACTED]

B5

[REDACTED] We will be in touch.

B5

B6

From: Kent, George P
Date: September 27, 2019 at 4:43:07 PM EDT
To: [REDACTED], Kurt Volker, Brechbuhl, Thomas U, Marie Yovanovitch, Yovanovitch, Marie L, Volker, Kurt D, Brechbuhl, Thomas U
Cc: [REDACTED]
Subject: RE: Congressional inquiry regarding Ukraine - tweets of deposition schedules

B6

B6

[REDACTED] - I have received no such request from Congress, but there are tweets out now indicating a deposition schedule (below). I just got a call [REDACTED] saw the below on twitter - Politico tweeting an alleged schedule of depositions.

B6

B6

<https://twitter.com/AndrewDesiderio>

BREAKING: House Foreign Affairs Committee has subpoenaed Mike Pompeo for Ukraine docs. The following State Dept officials have also been scheduled for depositions.



- October 2, 2019: Ambassador Yovanovitch
- October 3, 2019: Ambassador
- October 7, 2019: Deputy As George Kent
- October 8, 2019: Counselor Brechbuhl
- October 10, 2019: Ambassador Sondland

1:04 PM - 27 Sep 2019

Note: I am meant to be flying to Bratislava on October 7 (late afternoon) to participate as the US rep in 5+2 talks on Transnistria (flying back 11 October). Welcome guidance. George

SBU - DELIBERATIVE PROCESS



From: [REDACTED]
Sent: Friday, September 27, 2019 12:38 PM
To: Kurt Volker ; Kent, George P ; Brechbuhl, Thomas U ; Marie Yovanovitch ; Yovanovitch, Marie L ; Volker, Kurt D ; Brechbuhl, Thomas U

Cc: [REDACTED]
Subject: RE: Congressional inquiry regarding Ukraine

Good Afternoon,

I wanted to follow up with you on my earlier email. Consistent with the longstanding standard practice of the Department of State, [REDACTED]

[REDACTED] H and L remain ready to assist you as needed in connection with any such Congressional request. If you have retained counsel and would like us to communicate directly with them in connection with this matter, please let us know.

Regards,

[REDACTED]

SBU - DELIBERATIVE PROCESS

From: [REDACTED]
Sent: Monday, September 16, 2019 4:48 PM
To: Kurt Volker <[REDACTED]>; Kent, George P <KentGP@state.gov>; Brechbuhl, Thomas U <BrechbuhlTU@state.gov>; Marie Yovanovitch <[REDACTED]>; Yovanovitch, Marie L <YovanovitchML2@state.gov>; Volker, Kurt D <VolkerKD@state.gov>; Brechbuhl, Thomas U <BrechbuhlTU@state.gov>

Cc: [REDACTED]
Subject: Congressional inquiry regarding Ukraine

Good afternoon,

You likely have seen the two attached letters from the House Committees. I wanted to reach out to each of you directly to share the Congressional letters regarding Ukraine. [REDACTED]

[REDACTED] I have copied [REDACTED] who is available should you have any concerns or questions.

Regards,

[REDACTED]

Senior Congressional Advisor
United States Department of State
Room 7805
Office: (202) 647-4243
Cell: [REDACTED]
SBU - Deliberative Process



Congress of the United States
Washington, DC 20515

September 27, 2019

The Honorable Michael R. Pompeo
Secretary of State
U.S. Department of State
2201 C Street, N.W.
Washington, D.C. 20520

RELEASE IN FULL

Dear Mr. Secretary:

Pursuant to the House of Representatives' impeachment inquiry, we write to inform you that depositions for each of the following State Department officials will be scheduled on the dates indicated below:

- October 2, 2019: Ambassador Marie "Masha" Yovanovitch
- October 3, 2019: Ambassador Kurt Volker
- October 7, 2019: Deputy Assistant Secretary George Kent
- October 8, 2019: Counselor T. Ulrich Brechbuhl
- October 10, 2019: Ambassador Gordon Sondland

These depositions will be conducted jointly by the Committee on Foreign Affairs, the Permanent Select Committee on Intelligence, and the Committee on Oversight and Reform. The deposition transcripts shall be part of the impeachment inquiry and shared among the Committees. The failure of any of these Department employees to appear for their scheduled depositions shall constitute evidence of obstruction of the House's impeachment inquiry.

The Committees are investigating the extent to which President Trump jeopardized national security by pressing Ukraine to interfere with our 2020 election and by withholding security assistance provided by Congress to help Ukraine counter Russian aggression.

On September 13, the Committees wrote to request that you make State Department employees available for transcribed interviews.¹ We asked you to provide, by September 20, dates by which the employees would be made available for transcribed interviews.² You failed to comply with the Committees' request.

Your actions are all the more troubling given that since our September 13 request, it has become clear that multiple State Department officials have direct knowledge of the subject

¹ Letter from Chairman Eliot L. Engel, House Committee on Foreign Affairs, Chairman Adam Schiff, House Permanent Select Committee on Intelligence, and Chairman Elijah E. Cummings, House Committee on Oversight and Reform to Secretary Mike Pompeo, Department of State (Sept. 13, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-09-13.EEC%20ELE%20Schiff%20re%20Ukraine.pdf>).

² *Id.*



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The Honorable Michael R. Pompeo
Page 2

matters of the House's impeachment inquiry. On September 25, the White House released a summary of a July 25, 2019, telephone call during which President Trump directly and repeatedly urged President Volodymyr Zelensky of Ukraine to initiate an investigation into former Vice President Biden.³ On September 25, the Office of the Director of National Intelligence declassified a whistleblower complaint, which indicates that T. Ulrich Brechbuhl, the Counselor of the Department, listened in on President Trump's July 25 call.⁴ The Department has also acknowledged that Special Representative for Ukraine Kurt Volker played a direct role in arranging meetings between Rudy Giuliani, who has no official role in the U.S. government, and representatives of President Zelensky.⁵ In addition, the whistleblower complaint indicates that "multiple U.S. officials" were "deeply concerned by what they viewed as Mr. Giuliani's circumvention of national security decisionmaking processes to engage with Ukrainian officials and relay messages back and forth between Kyiv and the President."⁶ These officials reported that "State Department officials" had spoken with Mr. Giuliani "in an attempt to 'contain the damage' to U.S. national security," as well as to the new Ukrainian administration to help it "understand and respond to" Mr. Giuliani's backchanneling.⁷

Mr. Giuliani's recent public statements raise more troubling questions about State Department officials' possible involvement in the President's efforts to press Ukraine to interfere in the 2020 U.S. election. During a televised interview, Mr. Giuliani claimed that the State Department asked him to take on this mission and that he had proof of the Department's request. He stated: "I never talked to a Ukrainian official until the State Department called me and asked me to do it and then I reported every conversation back to them."⁸ On September 26, Mr. Giuliani tweeted what appears to be a screenshot of a text message from Ambassador Kurt Volker dated July 19—six days before the President's July 25 call with the Ukrainian president—which stated: "Mr. Mayor—really enjoyed breakfast this morning. As discussed, connecting you here with Andrey Yermak, who is very close to President Zelensky. I suggest we schedule a call together on Monday."⁹ That introduction appears to have led to precisely the meeting that Mr. Trump urged in the July 25 phone call: in early August, Mr. Yermak and Mr.

³ The White House, *Memorandum of Telephone Conversation* (July 25, 2019) (online at www.whitehouse.gov/wp-content/uploads/2019/09/Unclassified09.2019.pdf).

⁴ Letter to Chairman Richard Burr, Senate Select Committee on Intelligence, and Chairman Adam Schiff, Chairman, House Permanent Select Committee on Intelligence (Aug. 12, 2019) (online at https://intelligence.house.gov/uploadedfiles/20190812_-_whistleblower_complaint_unclass.pdf).

⁵ State Department Spokesperson Statement, Twitter (Aug. 22, 2019) (online at <https://twitter.com/kenvogel/status/1164666081501470727/photo/1>).

⁶ Letter to Chairman Richard Burr, Senate Select Committee on Intelligence, and Chairman Adam Schiff, Chairman, House Permanent Select Committee on Intelligence (Aug. 12, 2019) (online at https://intelligence.house.gov/uploadedfiles/20190812_-_whistleblower_complaint_unclass.pdf).

⁷ *Id.*

⁸ "Shut Up, Moron": Rudy Giuliani Lashes Out at Critics, Defends His Ukraine Involvement, Washington Post (Sept. 25, 2019) (online at www.washingtonpost.com/nation/2019/09/25/giuliani-shut-up-moron-fox-news-ukraine/).

⁹ Rudy Giuliani, Twitter (Sept. 26, 2019) (online at <https://twitter.com/RudyGiuliani/status/1177346278004539392>).

The Honorable Michael R. Pompeo
Page 3

Giuliani met in Spain,¹⁰ where Mr. Giuliani admits he pressured Mr. Yermak to pursue the investigations President Trump was seeking.¹¹

The Committees are conducting this investigation in an expeditious, coordinated manner. The Inspector General of the Intelligence Community has determined that the whistleblower complaint raises a matter of “urgent concern,” is “credible,” and “relates to one of the most significant and important of the DNI’s responsibilities to the American people”: our free and fair elections.¹²

Your refusal to provide the requested documents and interviews not only prevents our Committees from fully investigating these matters, but impedes Congress’ ability to fulfill its Constitutional responsibilities to protect our national security and the integrity of our democracy.

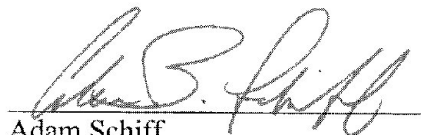
Enclosed is a copy of the House Deposition Rules for your information and to provide to the witnesses.

If you have any questions, please contact staff for the Committee on Foreign Affairs at (202) 225-5021.

Sincerely,



Eliot L. Engel
Chairman
House Committee on Foreign Affairs



Adam Schiff
Chairman
House Permanent Select Committee
On Intelligence



Elijah E. Cummings
Chairman
House Committee on Oversight and Reform

¹⁰ *Giuliani Sits at the Center of the Ukraine Controversy*, Wall Street Journal (Sept. 26, 2019) (online at www.wsj.com/articles/giuliani-sits-at-the-center-of-the-ukraine-controversy-11569546774).

¹¹ *Giuliani Renews Push for Ukraine to Investigate Trump's Political Opponents*, New York Times (Aug. 21, 2019) (online at www.nytimes.com/2019/08/21/us/politics/giuliani-ukraine.html).

¹² Letter from Michael K. Atkinson, Inspector General of the Intelligence Community, to Chairman Adam Schiff, House Permanent Select Committee on Intelligence (Sept. 17, 2019) (online at https://intelligence.house.gov/uploadedfiles/20190917_-_ic_ig_second_letter_to_hpsci_on_whistleblower.pdf).

The Honorable Michael R. Pompeo
Page 4

Enclosure

cc: The Honorable Michael McCaul, Ranking Member
House Committee on Foreign Affairs

The Honorable Devin Nunes, Ranking Member
House Permanent Select Committee on Intelligence

The Honorable Jim Jordan, Ranking Member
House Committee on Oversight and Reform



RELEASE IN PART B6

From: Atwood, Kylie [REDACTED]
Sent: Mon, 30 Sep 2019 14:13:24 +0000
To: Brechbuhl, Thomas U
Subject: Comment / chat? / deposition?

B6

Hi Counselor Brechbuhl -
Kylie Atwood with CNN here. I'd like to chat with you either on the record, on background or off the record regarding Ukraine. Specifically, I'm told you were directly involved in recalling Ambassador Yovanovitch.

Also, will you attend your deposition on the hill they have scheduled for October 8?

My cell / WhatsApp: [REDACTED]

B6

Thank you very much, Kylie

Kylie Atwood
CNN National Security Reporter
Cell, Signal, WhatApp: [REDACTED]

B6



From: Kenna, Lisa D [REDACTED]
Sent: Tue, 1 Oct 2019 18:31:56 +0000
To: S_SpecialAssistants [REDACTED]; Buangan, Richard L
Subject: letter to Secretary Pompeo re Amb. Yovanovitch

RELEASE IN PART
B5, B6

B6

B6

Attach: Open Letter 2 Secretary Pompeo, 10-1-19.docx

Received today for S. [REDACTED] Thank you.

B5

SENSITIVE BUT UNCLASSIFIED



October 1, 2019

RELEASE IN FULL

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

Dear Mr. Secretary:

We the undersigned – former career diplomats and political appointees from both sides of the aisle – write to express our full and strong support for Ambassador Marie Yovanovitch, whose name has appeared in the whistleblower controversy.

Each of us knows and has worked with Ambassador Yovanovitch in one capacity or another and believe she represents the finest in the Foreign Service. A career diplomat for 33 years, Ambassador Yovanovitch has served as ambassador in three countries – Kyrgyzstan, Armenia and Ukraine. Her performance and leadership have been exemplary. She has represented and advanced U.S. national interests consistently and unwaveringly, including in her last post, Ukraine. She has been a mentor to many junior Foreign Service officers and has earned the highest respect among her peers.

We were disturbed to read reports in the spring that Ambassador Yovanovitch was called back from her assignment in Ukraine earlier than planned in the face of absurd and unfounded allegations. Since then, she has been attacked by the President of the United States, as reflected in his July 25 conversation with Ukrainian President Volodymyr Zelensky, and by the President's personal attorney, Rudy Giuliani.

We are particularly concerned by President Trump's reported statement that "she's going to go through some things." Such language could be interpreted as a threat of some kind. Such language and the broader attack on Ambassador Yovanovitch should be condemned unequivocally.

Ambassador Yovanovitch deserves your unstinting support, as do other career diplomats who may become ensnared in the upcoming Congressional investigation and impeachment process. All employees of the Department – Foreign Service officers, civil servants, and political appointees – need to know that you have their backs against scurrilous political attacks and smears.

Thank you for your attention to this matter.

Daniel Baer
John Beyrle
Antony Blinken
Spencer Boyer
Nicholas Burns
William Burns



Michael Carpenter
Derek Chollet
Eric Edelman
Evelyn Farkas
John Herbst
Colin Kahl
Richard Kauzlarich
Ian Kelly
Laura Kennedy
David J. Kramer
Michael McFaul
Richard Morningstar
Steven Pifer
Ned Price
Benjamin Rhodes
Julianne Smith
Jake Sullivan
John Tefft
Jim Townsend
Alexander Vershbow
Celeste Wallander



From: [REDACTED]
Sent: Tue, 1 Oct 2019 22:33:41 +0000
To: SES-ExecTech_MC
Cc: S_SpecialAssistants; [REDACTED] Kenna, Lisa D
Subject: MC PRINT: EUR Trip Tranche 1

RELEASE IN
PART B5,B6

B6

B6

Attach: Public Statement Decision Memo Jamal Khashoggi One Year Anniversary.docx, S Greece Speech 10 05 19.docx, S Upcoming Remarks Book TOC 10.01.2019.docx, S Upcoming Remarks Book TOC 10.01.2019 V2.docx, Open Letter 2 Secretary Pompeo re Amb. Yovanovitch 10-1-19.docx

MC Colleagues,

Please print the attached documents and pass to Richard.

This Email includes:

- Open Letter to Secretary Pompeo Regarding Amb. Yovanovitch [REDACTED]

B5

- Public State Decision Memo Regarding Jamal Khashoggi [REDACTED]

B5

- Greece Speech

- Updated Remarks Book TOC. (Two versions.) [REDACTED]

B5

[REDACTED]
Special Assistant
Office of the Secretary of State
Office: 202-647-9573

B6

SENSITIVE BUT UNCLASSIFIED



October 1, 2019

RELEASE IN FULL

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

Dear Mr. Secretary:

We the undersigned – former career diplomats and political appointees from both sides of the aisle – write to express our full and strong support for Ambassador Marie Yovanovitch, whose name has appeared in the whistleblower controversy.

Each of us knows and has worked with Ambassador Yovanovitch in one capacity or another and believe she represents the finest in the Foreign Service. A career diplomat for 33 years, Ambassador Yovanovitch has served as ambassador in three countries – Kyrgyzstan, Armenia and Ukraine. Her performance and leadership have been exemplary. She has represented and advanced U.S. national interests consistently and unwaveringly, including in her last post, Ukraine. She has been a mentor to many junior Foreign Service officers and has earned the highest respect among her peers.

We were disturbed to read reports in the spring that Ambassador Yovanovitch was called back from her assignment in Ukraine earlier than planned in the face of absurd and unfounded allegations. Since then, she has been attacked by the President of the United States, as reflected in his July 25 conversation with Ukrainian President Volodymyr Zelensky, and by the President's personal attorney, Rudy Giuliani.

We are particularly concerned by President Trump's reported statement that "she's going to go through some things." Such language could be interpreted as a threat of some kind. Such language and the broader attack on Ambassador Yovanovitch should be condemned unequivocally.

Ambassador Yovanovitch deserves your unstinting support, as do other career diplomats who may become ensnared in the upcoming Congressional investigation and impeachment process. All employees of the Department – Foreign Service officers, civil servants, and political appointees – need to know that you have their backs against scurrilous political attacks and smears.

Thank you for your attention to this matter.

Daniel Baer
John Beyrle
Antony Blinken
Spencer Boyer
Nicholas Burns
William Burns



Michael Carpenter
Derek Chollet
Eric Edelman
Evelyn Farkas
John Herbst
Colin Kahl
Richard Kauzlarich
Ian Kelly
Laura Kennedy
David J. Kramer
Michael McFaul
Richard Morningstar
Steven Pifer
Ned Price
Benjamin Rhodes
Julianne Smith
Jake Sullivan
John Tefft
Jim Townsend
Alexander Vershbow
Celeste Wallander



RELEASE IN PART B6

From: Atwood, Kylie [REDACTED]
Sent: Wed, 2 Oct 2019 23:26:23 +0000
To: Brechbuhl, Thomas U
Subject: Comment?

B6

Hi Counselor Brechbuhl - have a minute to chat about these emails that were sent to you regarding stories about Ambassador Yovanovitch which were shared with the State Department inspector general and then shared with congress today?

Wondering why those emails were given to the inspector general.

I'm also told that Pompeo did his due diligence and passed the documents in the packet over to AG Barr. Know anything on that?

I'm on cell - [REDACTED]

Thanks!

B6

Kylie Atwood

CNN National Security Reporter

Cell, Signal, WhatsApp: [REDACTED]

B6



ROBBINS | RUSSELL

Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP

RELEASE IN FULL

Lawrence S. Robbins

202.775.4501

lrobbins@robbinsrussell.com

October 11, 2019

The Honorable Brian Bulatao
Under Secretary of State for Management
U.S. Department of State
Washington, D.C. 20520

Dear Mr. Bulatao:

In my capacity as counsel for Ambassador Marie Yovanovitch, I have received your letter of October 10, 2019, directing the Ambassador not to appear voluntarily for her scheduled deposition testimony on October 11, 2019 before the Committee on Foreign Affairs, the Permanent Select Committee on Intelligence, and the Committee on Oversight and Reform in connection with the House of Representatives's impeachment inquiry. Just this morning, the Ambassador received a subpoena issued by the House Permanent Select Committee on Intelligence, requiring her to appear for the deposition as scheduled.

Although the Ambassador has faithfully and consistently honored her professional duties as a State Department employee—including at all times following her abrupt termination as U.S. Ambassador to Ukraine—she is unable to obey your most recent directive. As the recipient of a duly issued congressional subpoena, Ambassador Yovanovitch is, in my judgment, legally obligated to attend the deposition as scheduled. *See United States v. Nixon*, 418 U.S. 683, 706 (1974) (“[N]either the doctrine of separation of powers, nor the need for confidentiality of high-level communications, without more, can sustain an absolute, unqualified Presidential privilege of immunity from judicial process under all circumstances.”); *Nixon v. Adm’r of Gen. Servs.*, 433 U.S. 425, 454 (1977) (“[W]e believe that the claims of Presidential privilege clearly must yield to the important congressional purposes of preserving the materials and maintaining access to them for lawful governmental and historical purposes”); *In re Sealed Case*, 121 F.3d 729, 752 (D.C. Cir. 1997) (“Not every person who plays a role in the development of presidential advice, no matter how remote and removed from the President, can qualify for the [presidential communications] privilege. In particular, the privilege should not extend to staff outside the White House in executive branch agencies.”).



2000 K Street, NW | 4th Floor | Washington, DC 20006

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www.robbinsrussell.com

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The Honorable Brian Bulatao
October 11, 2019
Page 2

Accordingly, barring some intervening court order to the contrary, Ambassador Yovanovitch intends to comply with the subpoena and attend today's scheduled deposition.

Sincerely,

/s/ Lawrence S. Robbins
Lawrence S. Robbins
Counsel to Amb. Marie Yovanovitch



RELEASE IN PART
B5, B6

From: [REDACTED]
Sent: Fri, 11 Oct 2019 15:22:47 +0000
To: Sullivan, John J [REDACTED]
Subject: RE: Question

B6

B6

Thanks, sir. We're on it.

UNCLASSIFIED

From: Sullivan, John J
Sent: Friday, October 11, 2019 11:14 AM
To: Ehlinger, Jennifer T ; Frideres, Taryn F ; Nanavatty, Katharine B
Subject: FW: Question

UNCLASSIFIED

From: Hudson, John [REDACTED]
Sent: Friday, October 11, 2019 10:51 AM
To: Sullivan, John J <SullivanJJ2@state.gov>
Subject: Question

B6

Hi Deputy Secretary Sullivan,

We understand you're the person who informed Amb. Yovanovitch that she was being removed from her job. We're trying to understand why she was removed and whether you believed it was justified.

Thanks,
John

John Hudson
National Security Reporter
The Washington Post
Cell/Signal/WhatsApp: [REDACTED]
@John_Hudson

B6



From: [REDACTED]
Sent: Fri, 11 Oct 2019 15:44:35 +0000
To: [REDACTED]
Subject: FW: wanted to flag this SFRC all Ds letter

RELEASE IN PART
B6

B6

B6

Attach: 10-10-19 Yovanovitch letter signed.pdf

UNCLASSIFIED

From: [REDACTED]
Sent: Friday, October 11, 2019 9:57 AM
To: [REDACTED]
Subject: wanted to flag this SFRC all Ds letter

B6

B6

[REDACTED]
Director, Congressional Oversight and Investigations
United States Department of State
Room 7805
Office: (202) 647-4243
Cell: [REDACTED]

B6

B6

UNCLASSIFIED



JAMES E. RISH, IDAHO, CHAIRMAN

MARCO RUBIO, FLORIDA
RON JOHNSON, WISCONSIN
CORY GARDNER, COLORADO
MITT ROMNEY, UTAH
LINDSEY GRAHAM, SOUTH CAROLINA
JOHNNY ISAKSON, GEORGIA
JOHN BARRASSO, WYOMING
BOB PORTMAN, OHIO
RAND PAUL, KENTUCKY
TODD YOUNG, INDIANA
TED CRUZ, TEXAS

ROBERT MENENDEZ, NEW JERSEY
BENJAMIN L. CARDIN, MARYLAND
JEANNE SHAHEEN, NEW HAMPSHIRE
CHRISTOPHER A. COONS, DELAWARE
TOM UDALL, NEW MEXICO
CHRISTOPHER MURPHY, CONNECTICUT
TIM Kaine, VIRGINIA
EDWARD J. MARKEY, MASSACHUSETTS
JEFF MERKLEY, OREGON
CORY A. BOOKER, NEW JERSEY

RELEASE IN FULL

United States Senate

COMMITTEE ON FOREIGN RELATIONS

WASHINGTON, DC 20510-6225

October 10, 2019

The Honorable Mike Pompeo
Secretary of State
U.S. Department of State
2201 C Street, N.W.
Washington, D.C. 20520

Secretary Pompeo:

As Secretary of State, you have a responsibility to stand up for and defend all State Department personnel and protect them against unfair attacks and political retaliation. Yet, as an August 2019 State Department's Inspector General report shows, under the Trump administration, dedicated public servants have suffered retaliation and attacks that have damaged their reputations, subjected them to threats, and left their careers in limbo. For months, you have tried to delay and avoid many of our congressional requests related to these actions. This week, the Department blocked employees from speaking, even voluntarily, to Congress. We call on you to stop impeding congressional inquiries, and start standing up for the Department's dedicated public servants.

While we have many questions about the role you and the Department have played in the Trump-Ukraine scandal, an important part of that inquiry is why the former U.S. Ambassador to Ukraine, Marie "Masha" Yovanovitch, was recalled earlier this year. In particular, her early recall raises questions about whether you put the personal interests of the President above the Department's career personnel or U.S. foreign policy.

It also raises the question of what you and the Department did to protect Ambassador Yovanovitch against improper political pressure.

For months, Ambassador Yovanovitch faced political attacks based on disinformation and statements later proven to be false. Based on her work advancing the official position of the U.S. government, she became the target of false accusations by Ukrainian Prosecutor General Yuriy Lutsenko.¹ Although Lutsenko later recanted his statements, Ambassador Yovanovitch remained the target of unfounded conspiracy theories, advanced in part by the President's agent, Rudy Giuliani, and his son, Donald Trump, Jr.²

¹ "Ukraine Prosecutor General Lutsenko admits U.S. ambassador didn't give him a do not prosecute list," UNIAN, Apr. 18, 2019, <https://www.unian.info/politics/10520715-ukraine-prosecutor-general-lutsenko-admits-u-s-ambassador-didn-t-give-him-a-do-not-prosecute-list.html>; U.S. State Department, "US-Ukraine Joint Statement," Nov. 2018, <https://ua.usembassy.gov/joint-statement-on-u-s-ukraine-strategic-partnership/>.

² See Giuliani says State Dept vowed to investigate after he gave Ukraine docs to Pompeo, *NBC News*, Oct. 3, 2019, <https://www.nbcnews.com/politics/trump-impeachment-inquiry/giuliani-says-state-dept-vowed-investigate-after-he->

Throughout these events, you have said nothing publicly in her defense. You have not made a single remark defending Ambassador Yovanovitch or heralding her more than three decades of service to the American people. According to recent reports, you even supported her early removal—which, in the absence of any logical explanation, appears tied to the President's effort to use U.S. policy in Ukraine to pursue his own personal political interests.³

Yet, Ambassador Yovanovitch is only the latest example of Department personnel who have paid a heavy price for their continued public service. Recently, the State Department's Inspector General detailed the mistreatment and politically-motivated targeting of career personnel by senior officials at the Department.⁴ One of the senior officials the Department found to have engaged in these practices, Assistant Secretary Kevin Moley, has suffered no consequence, while dozens of employees suffered damage to their careers, and worse.

Over the last several weeks, you have been similarly silent about the rights of whistleblowers to come forward about matters of national security. Despite the President's comments equating whistleblowers with "spies," you said nothing. After he made false and misleading statements about the whistleblower, you did not, as the former head of the CIA, point out that this whistleblower did precisely what someone who wants to report an urgent concern about harm to national security should do: follow the law.

As the head of our country's global diplomatic force, your refusal to stand up for career employees and support whistleblowers is disturbing. It is incumbent on you not to further the President's damaging and unfounded attacks, but to send a simple message to everyone who works at the Department of State—that you have their backs.

We hope that you will swiftly, and clearly, send that message far and wide.

In case there is any confusion: those working for the federal government, including civil service, foreign service, and contractors, who possess information they reasonably believe demonstrates a violation of law; gross mismanagement; gross waste of funds; abuse of authority; a substantial and specific danger to public health or safety; or censorship related to research, analysis, or technical information are protected and entitled under federal law to raise those concerns through authorized channels, including to Congress or Inspectors General, without fear of retribution or reprisal. Even in cases where information is required to be kept secret in the interest of national defense or the conduct of foreign affairs, disclosure to Inspectors General or the Special Counsel is still protected.

It is imperative that senior officials throughout government ensure that employees know their rights, and that employees are not discouraged from raising valid concerns.

[gave-ukraine-n1061931](https://twitter.com/donaldjtrumpjr/status/1109850575926108161); Donald Trump Jr., @DonaldJTrumpJr, <https://twitter.com/donaldjtrumpjr/status/1109850575926108161>, Mar. 24, 2019.

³ Rebecca Ballhaus et al., "Trump Ordered Ukraine Ambassador Removed After Complaints From Giuliani, Others," *The Wall Street Journal*, Oct. 3, 2019.

⁴ U.S. Department of State, Office of Inspector General, Review of Allegations of Politicized and Other Improper Personnel Practices in the Bureau of International Organization Affairs, Aug. 2019.

Your failure to intervene when the White House or your subordinates targeted career personnel and the Department's efforts earlier this week to prevent Ambassador Gordon Sondland from testifying before Congress send the wrong message. As you know, Ambassador Yovanovitch is scheduled to testify to Congress. We call on you to abide by the ethos you have set for the Department, to stand up for those who serve in the Department and the nation, and not further impede their testimony.


In addition, to assist the Committee with its oversight responsibilities over the Department's operations and treatment of employees, we request that you respond to the following, no later than October 16, 2019.

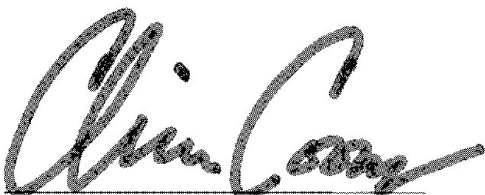
1. What, specifically, has the State Department done to protect Ambassador Yovanovitch from political retaliation?
2. How did you defend Ambassador Yovanovitch in the face of attempts by President Trump, the President's agent Rudy Giuliani, and Donald Trump, Jr. to discredit her by echoing now-debunked conspiracy theories?
3. Following the July 25, 2019 call, did you speak with President Trump about his comments regarding Ambassador Yovanovitch, particularly that she "was bad news" and "[s]he's [Yovanovitch] going to go through some things"?
4. Why was Ambassador Yovanovitch removed early from her post in Kyiv?
5. Did you receive instructions from the President, the White House, or the President's agent Rudy Giuliani regarding Ambassador Yovanovitch prior to her removal on May 7, 2019? If so, what were they?
6. Do you agree with the President's statements on whistleblowers?
7. What are you doing to ensure that all Department personnel know and understand their rights under federal whistleblower laws?
8. Has the Department issued any communications or documents to staff regarding whistleblower rights or communicating or cooperating with Congress since January 2017? If so, please provide a copy of each such communication or document.

We look forward to your immediate responses on this important matter.

Sincerely,


Robert Menendez
Ranking Member


Jeanne Shaheen
United States Senator



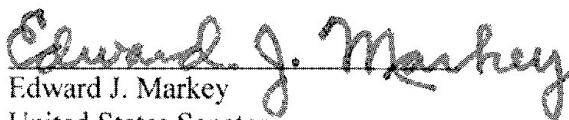
Christopher A. Coons
United States Senator



Tom Udall
United States Senator



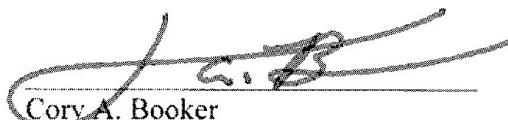
Tim Kaine
United States Senator



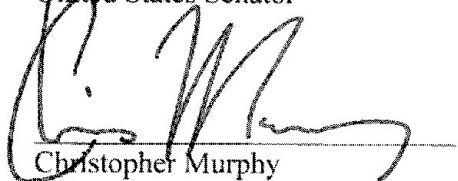
Edward J. Markey
United States Senator



Jeffrey A. Merkley
United States Senator



Cory A. Booker
United States Senator



Christopher Murphy
United States Senator



Benjamin L. Cardin
United States Senator

[RELEASE IN PART B6]

From: Michele Kelemen <[REDACTED]>
Sent: Tue, 15 Oct 2019 17:20:58 +0000
To: [REDACTED]
Subject: would you be willing

B6

B6

To chat on background with my colleague David Welna? Contacts below?
He's been asked to do a profile of Mike McKinley and I'm not sure where to steer him. Just FYI – I told him that when I was talking with McKinley OFF record just a few weeks ago, he was defending Pompeo's handling of Yovanovitch, to a certain extent, telling me that Pompeo delayed pulling her back and then made sure she had another option – at Georgetown. But since that was off record, I can't use it. Thought maybe you may have heard similar from him and can confirm? Or maybe he said things differently to you?
Here's David's contacts
David Welna National Security Correspondent | [REDACTED]

B6





RELEASE IN FULL

United States Department of State

Washington, D.C. 20520

October 10, 2019

Lawrence S. Robbins
Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP
2000 K Street NW
4th Floor
Washington, DC 20006

Dear Mr. Robbins:

On October 8, 2019, Counsel to the President Pat Cipollone sent the attached letter to the Speaker of the House, Chairman Schiff, Chairman Engel, and Chairman Cummings concerning various demands, including a request for the voluntary appearance of your client for a deposition as part of the so-called “impeachment inquiry.”

In that letter, Mr. Cipollone identified several procedural, legal, and constitutional infirmities in the process by which the Committees have purported to pursue an impeachment inquiry. As a threshold matter, the Committees have refused to allow counsel from the Department of State to be present during the testimony of current and former employees, a practice that the Executive Branch has previously recognized to be unconstitutional. *See Attempted Exclusion of Agency Counsel from Congressional Depositions of Agency Employees*, 43 Op. O.L.C. __ (May 23, 2019), available at <https://www.justice.gov/olc/file/1171671/download>. Refusing to permit the attendance of counsel from the employees’ agency impermissibly hobbles the ability of the Executive Branch to protect constitutionally-based confidentiality interests and privileges. More broadly, Mr. Cipollone noted that the Committees have no authority to pursue an impeachment in the first place, because the House of Representatives has not authorized them to pursue such an inquiry. He further explained that the Committees’ purported inquiry is completely bereft of the procedures historically provided by the House in past impeachment inquiries.

In light of these defects, Mr. Cipollone wrote: “Consistent with the duties of the President of the United States, and in particular his obligation to preserve the rights of future occupants of his office, President Trump cannot permit his Administration to participate in this partisan inquiry under these circumstances.” As Mr. Cipollone noted in his letter, “[c]urrent and former State Department officials are duty bound to protect the confidentiality interests of the Executive Branch.” Accordingly, in accordance with applicable law, I write on behalf of the Department of State, pursuant to the President’s instruction reflected in Mr. Cipollone’s letter, to instruct your client (as a current employee of the Department of State), consistent with Mr. Cipollone’s letter, not to appear before the Committees under the present circumstances.

This instruction likewise applies to the Committees’ request that your client produce documents or other records, irrespective of their format or the device on which they may be stored. As stated in the October 1, 2019 letter from Secretary Pompeo to the Chairmen of the three



Committees, “the requested records constitute the property of the Department of State and are subject to restrictions on the unauthorized disclosure of classified information and various Executive Branch privileges.” *See, e.g.*, 5 FAM 414.8, 5 FAM 474.1(a), and 12 FAM 543. Moreover, these document requests duplicate the subpoena that was previously served on the Secretary. The Department is the legal custodian of these records and is responsible for determining whether and what to produce in response to the subpoena. The Department is in the process of collecting such records and will respond to the Committees, as appropriate and consistent with Mr. Cipollone’s letter. In this regard, it is important to remind your client of the responsibility under the Federal Records Act to ensure that all Department records currently in your client’s possession, in whatever format, are transferred into the control and possession of the Department as soon as possible, to the extent such action has not already been undertaken.

As noted in Mr. Cipollone’s letter, should the present circumstances change we stand ready to update this guidance as warranted.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Brian Bulatao", with a stylized flourish at the end.

Brian Bulatao
Undersecretary of State

RELEASE IN FULL

THE WHITE HOUSE

WASHINGTON

October 8, 2019

The Honorable Nancy Pelosi
Speaker
House of Representatives
Washington, D.C. 20515

The Honorable Eliot L. Engel
Chairman
House Foreign Affairs Committee
Washington, D.C. 20515

The Honorable Adam B. Schiff
Chairman
House Permanent Select Committee on
Intelligence
Washington, D.C. 20515

The Honorable Elijah E. Cummings
Chairman
House Committee on Oversight and Reform
Washington, D.C. 20515

Dear Madam Speaker and Messrs. Chairmen:

I write on behalf of President Donald J. Trump in response to your numerous, legally unsupported demands made as part of what you have labeled—contrary to the Constitution of the United States and all past bipartisan precedent—as an “impeachment inquiry.” As you know, you have designed and implemented your inquiry in a manner that violates fundamental fairness and constitutionally mandated due process.

For example, you have denied the President the right to cross-examine witnesses, to call witnesses, to receive transcripts of testimony, to have access to evidence, to have counsel present, and many other basic rights guaranteed to all Americans. You have conducted your proceedings in secret. You have violated civil liberties and the separation of powers by threatening Executive Branch officials, claiming that you will seek to punish those who exercise fundamental constitutional rights and prerogatives. All of this violates the Constitution, the rule of law, and *every past precedent*. Never before in our history has the House of Representatives—under the control of either political party—taken the American people down the dangerous path you seem determined to pursue.

Put simply, you seek to overturn the results of the 2016 election and deprive the American people of the President they have freely chosen. Many Democrats now apparently view impeachment not only as a means to undo the democratic results of the *last* election, but as a strategy to influence the *next* election, which is barely more than a year away. As one member of Congress explained, he is “concerned that if we don’t impeach the President, he will get reelected.”¹ Your highly partisan and unconstitutional effort threatens grave and lasting damage to our democratic institutions, to our system of free elections, and to the American people.

¹ Interview with Rep. Al Green, MSNBC (May 5, 2019).



Speaker Pelosi, and Chairmen Engel, Schiff, and
Cummings
Page 2

For his part, President Trump took the unprecedented step of providing the public transparency by declassifying and releasing the record of his call with President Zelenskyy of Ukraine. The record clearly established that the call was completely appropriate and that there is no basis for your inquiry. The fact that there was nothing wrong with the call was also powerfully confirmed by Chairman Schiff's decision to create a false version of the call and read it to the American people at a congressional hearing, without disclosing that he was simply making it all up.

In addition, information has recently come to light that the whistleblower had contact with Chairman Schiff's office before filing the complaint. His initial denial of such contact caused *The Washington Post* to conclude that Chairman Schiff "clearly made a statement that was false."² In any event, the American people understand that Chairman Schiff cannot covertly assist with the submission of a complaint, mislead the public about his involvement, read a counterfeit version of the call to the American people, and then pretend to sit in judgment as a neutral "investigator."

For these reasons, President Trump and his Administration reject your baseless, unconstitutional efforts to overturn the democratic process. Your unprecedented actions have left the President with no choice. In order to fulfill his duties to the American people, the Constitution, the Executive Branch, and all future occupants of the Office of the Presidency, President Trump and his Administration cannot participate in your partisan and unconstitutional inquiry under these circumstances.

I. Your "Inquiry" Is Constitutionally Invalid and Violates Basic Due Process Rights and the Separation of Powers.

Your inquiry is constitutionally invalid and a violation of due process. In the history of our Nation, the House of Representatives has never attempted to launch an impeachment inquiry against the President without a majority of the House taking political accountability for that decision by voting to authorize such a dramatic constitutional step. Here, House leadership claims to have initiated the gravest inter-branch conflict contemplated under our Constitution by means of nothing more than a press conference at which the Speaker of the House simply announced an "official impeachment inquiry."³ Your contrived process is unprecedented in the

² Glenn Kessler, *Schiff's False Claim His Committee Had Not Spoken to the Whistleblower*, Wash. Post (Oct. 4, 2019).

³ Press Release, Nancy Pelosi, Pelosi Remarks Announcing Impeachment Inquiry (Sept. 24, 2019).

Speaker Pelosi, and Chairmen Engel, Schiff, and
Cummings
Page 3

history of the Nation,⁴ and lacks the necessary authorization for a valid impeachment proceeding.⁵

The Committees' inquiry also suffers from a separate, fatal defect. Despite Speaker Pelosi's commitment to "treat the President with fairness,"⁶ the Committees have not established any procedures affording the President even the most basic protections demanded by due process under the Constitution and by fundamental fairness. Chairman Nadler of the House Judiciary Committee has expressly acknowledged, at least when the President was a member of his own party, that "[t]he power of impeachment . . . demands a rigorous level of due process," and that in this context "due process mean[s] . . . the right to be informed of the law, of the charges against you, the right to confront the witnesses against you, to call your own witnesses, and to have the assistance of counsel."⁷ All of these procedures have been abandoned here.

These due process rights are not a matter of discretion for the Committees to dispense with at will. To the contrary, they are constitutional requirements. The Supreme Court has recognized that due process protections apply to all congressional investigations.⁸ Indeed, it has been recognized that the Due Process Clause applies to impeachment proceedings.⁹ And precedent for the rights to cross-examine witnesses, call witnesses, and present evidence dates back nearly 150 years.¹⁰ Yet the Committees have decided to deny the President these elementary rights and protections that form the basis of the American justice system and are protected by the Constitution. No citizen—including the President—should be treated this unfairly.

⁴ Since the Founding of the Republic, under unbroken practice, the House has never undertaken the solemn responsibility of an impeachment inquiry directed at the President without first adopting a resolution authorizing a committee to begin the inquiry. The inquiries into the impeachments of Presidents Andrew Johnson and Bill Clinton proceeded in multiple phases, each authorized by a separate House resolution. *See, e.g.*, H.R. Res. 581, 105th Cong. (1998); H.R. Res. 525, 105th Cong. (1998); III Hinds' Precedents §§ 2400-02, 2408, 2412. And before the Judiciary Committee initiated an impeachment inquiry into President Richard Nixon, the Committee's chairman rightfully recognized that "a[n] [inquiry] resolution has always been passed by the House" and "is a necessary step." III Deschler's Precedents ch. 14, § 15.2. The House then satisfied that requirement by adopting H.R. Res. 803, 93rd Cong. (1974).

⁵ Chairman Nadler has recognized the importance of taking a vote in the House before beginning a presidential impeachment inquiry. At the outset of the Clinton impeachment inquiry—where a floor vote was held—he argued that even limiting the time for *debate* before that vote was improper and that "an hour debate on this momentous decision is an insult to the American people and another sign that this is not going to be fair." 144 Cong. Rec. H10018 (daily ed. Oct. 8, 1998) (statement of Rep. Jerrold Nadler). Here, the House has dispensed with any vote and any debate *at all*.

⁶ Press Release, Nancy Pelosi, Transcript of Pelosi Weekly Press Conference Today (Oct. 2, 2019).

⁷ *Examining the Allegations of Misconduct Against IRS Commissioner John Koskinen (Part II): Hearing Before the H. Comm. on the Judiciary*, 114th Cong. 3 (2016) (statement of Rep. Jerrold Nadler); *Background and History of Impeachment: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 105th Cong. 17 (1998) (statement of Rep. Jerrold Nadler).

⁸ *See, e.g., Watkins v. United States*, 354 U.S. 178, 188 (1957); *Quinn v. United States*, 349 U.S. 155, 161 (1955).

⁹ *See Hastings v. United States*, 802 F. Supp. 490, 504 (D.D.C. 1992), *vacated on other grounds by Hastings v. United States*, 988 F.2d 1280 (D.C. Cir. 1993).

¹⁰ *See, e.g.*, III Hinds' Precedents § 2445.



Speaker Pelosi, and Chairmen Engel, Schiff, and
Cummings
Page 4

To comply with the Constitution's demands, appropriate procedures would include—at a minimum—the right to see all evidence, to present evidence, to call witnesses, to have counsel present at all hearings, to cross-examine all witnesses, to make objections relating to the examination of witnesses or the admissibility of testimony and evidence, and to respond to evidence and testimony. Likewise, the Committees must provide for the disclosure of all evidence favorable to the President and all evidence bearing on the credibility of witnesses called to testify in the inquiry. The Committees' current procedures provide *none* of these basic constitutional rights.

In addition, the House has not provided the Committees' Ranking Members with the authority to issue subpoenas. The right of the minority to issue subpoenas—subject to the same rules as the majority—has been the standard, bipartisan practice in all recent resolutions authorizing presidential impeachment inquiries.¹¹ The House's failure to provide co-equal subpoena power in this case ensures that any inquiry will be nothing more than a one-sided effort by House Democrats to gather information favorable to their views and to selectively release it as only they determine. The House's utter disregard for the established procedural safeguards followed in past impeachment inquiries shows that the current proceedings are nothing more than an unconstitutional exercise in political theater.

As if denying the President basic procedural protections were not enough, the Committees have also resorted to threats and intimidation against potential Executive Branch witnesses. Threats by the Committees against Executive Branch witnesses who assert common and longstanding rights destroy the integrity of the process and brazenly violate fundamental due process. In letters to State Department employees, the Committees have ominously threatened—without any legal basis and before the Committees even issued a subpoena—that “[a]ny failure to appear” in response to a mere letter *request* for a deposition “shall constitute evidence of obstruction.”¹² Worse, the Committees have broadly threatened that if State Department officials attempt to insist upon the right for the Department to have an agency lawyer present at depositions to protect legitimate Executive Branch confidentiality interests—or apparently if they make any effort to protect those confidentiality interests *at all*—these officials will have their salaries withheld.¹³

The suggestion that it would somehow be problematic for anyone to raise long-established Executive Branch confidentiality interests and privileges in response to a request for a deposition is legally unfounded. Not surprisingly, the Office of Legal Counsel at the Department of Justice has made clear on multiple occasions that employees of the Executive Branch who have been instructed not to appear or not to provide particular testimony before Congress based on privileges or immunities of the Executive Branch cannot be punished for

¹¹ H.R. Res. 581, 105th Cong. (1998); H.R. Res. 803, 93rd Cong. (1974).

¹² Letter from Eliot L. Engel, Chairman, House Committee on Foreign Affairs, et al., to George P. Kent, Deputy Assistant Secretary, U.S. Department of State 1 (Sept. 27, 2019).

¹³ See Letter from Eliot L. Engel, Chairman, House Committee on Foreign Affairs, et al., to John J. Sullivan, Deputy Secretary of State 2-3 (Oct. 1, 2019).

Speaker Pelosi, and Chairmen Engel, Schiff, and
Cummings
Page 5

following such instructions.¹⁴ Current and former State Department officials are duty bound to protect the confidentiality interests of the Executive Branch, and the Office of Legal Counsel has also recognized that it is unconstitutional to exclude agency counsel from participating in congressional depositions.¹⁵ In addition, any attempt to withhold an official's salary for the assertion of such interests would be unprecedented and unconstitutional.¹⁶ The Committees' assertions on these points amount to nothing more than strong-arm tactics designed to rush proceedings without any regard for due process and the rights of individuals and of the Executive Branch. Threats aimed at intimidating individuals who assert these basic rights are attacks on civil liberties that should profoundly concern all Americans.

II. The Invalid "Impeachment Inquiry" Plainly Seeks To Reverse the Election of 2016 and To Influence the Election of 2020.

The effort to impeach President Trump—without regard to any evidence of his actions in office—is a naked political strategy that began the day he was inaugurated, and perhaps even before.¹⁷ In fact, your transparent rush to judgment, lack of democratically accountable authorization, and violation of basic rights in the current proceedings make clear the illegitimate, partisan purpose of this purported "impeachment inquiry." The Founders, however, did not create the extraordinary mechanism of impeachment so it could be used by a political party that feared for its prospects against the sitting President in the next election. The decision as to who will be elected President in 2020 should rest with the people of the United States, exactly where the Constitution places it.

Democrats themselves used to recognize the dire implications of impeachment for the Nation. For example, in the past, Chairman Nadler has explained:

The effect of impeachment is to overturn the popular will of the voters. We must not overturn an election and remove a President from office except to defend our system of government or our constitutional liberties against a dire threat, and we must not do so without an overwhelming consensus of the American people. There must never be a narrowly voted impeachment or an impeachment supported by one of our major political parties and opposed by another. Such an impeachment will produce divisiveness and bitterness in our

¹⁴ See, e.g., *Testimonial Immunity Before Congress of the Former Counsel to the President*, 43 Op. O.L.C. __, *19 (May 20, 2019); *Prosecution for Contempt of Congress of an Executive Branch Official Who Has Asserted a Claim of Executive Privilege*, 8 Op. O.L.C. 101, 102, 140 (1984) ("The Executive, however, must be free from the threat of criminal prosecution if its right to assert executive privilege is to have any practical substance.")

¹⁵ *Attempted Exclusion of Agency Counsel from Congressional Depositions of Agency Employees*, 43 Op. O.L.C. __, *1-2 (May 23, 2019).

¹⁶ See President Donald J. Trump, Statement by the President on Signing the Consolidated Appropriations Act, 2019 (Feb. 15, 2019); *Authority of Agency Officials To Prohibit Employees From Providing Information to Congress*, 28 Op. O.L.C. 79, 80 (2004).

¹⁷ See Malca Gold, *The Campaign To Impeach President Trump Has Begun*, Wash. Post (Jan. 21, 2017) ("At the moment the new commander in chief was sworn in, a campaign to build public support for his impeachment went live").

Speaker Pelosi, and Chairmen Engel, Schiff, and
Cummings
Page 6

politics for years to come, and will call into question the very legitimacy of our political institutions.¹⁸

Unfortunately, the President's political opponents now seem eager to transform impeachment from an extraordinary remedy that should rarely be contemplated into a conventional political weapon to be deployed for partisan gain. These actions are a far cry from what our Founders envisioned when they vested Congress with the "important trust" of considering impeachment.¹⁹ Precisely because it nullifies the outcome of the democratic process, impeachment of the President is fraught with the risk of deepening divisions in the country and creating long-lasting rifts in the body politic.²⁰ Unfortunately, you are now playing out exactly the partisan rush to judgment that the Founders so strongly warned against. The American people deserve much better than this.

III. There Is No Legitimate Basis for Your "Impeachment Inquiry"; Instead, the Committees' Actions Raise Serious Questions.

It is transparent that you have resorted to such unprecedented and unconstitutional procedures because you know that a fair process would expose the lack of any basis for your inquiry. Your current effort is founded on a completely appropriate call on July 25, 2019, between President Trump and President Zelenskyy of Ukraine. Without waiting to see what was actually said on the call, a press conference was held announcing an "impeachment inquiry" based on falsehoods and misinformation about the call.²¹ To rebut those falsehoods, and to provide transparency to the American people, President Trump secured agreement from the Government of Ukraine and took the extraordinary step of declassifying and publicly releasing the record of the call. That record clearly established that the call was completely appropriate, that the President did nothing wrong, and that there is no basis for an impeachment inquiry. At a joint press conference shortly after the call's public release, President Zelenskyy agreed that the call was appropriate.²² In addition, the Department of Justice announced that officials there had reviewed the call after a referral for an alleged campaign finance law violation and found no such violation.²³

Perhaps the best evidence that there was no wrongdoing on the call is the fact that, after the actual record of the call was released, Chairman Schiff chose to concoct a false version of the call and to read his made-up transcript to the American people at a public hearing.²⁴ This

¹⁸ 144 Cong. Rec. H1 1786 (daily ed. Dec. 18, 1998) (statement of Rep. Jerrold Nadler).

¹⁹ The Federalist No. 65 (Alexander Hamilton).

²⁰ See *id.*

²¹ Press Release, Nancy Pelosi, Pelosi Remarks Announcing Impeachment Inquiry (Sept. 24, 2019).

²² *President Trump Meeting with Ukrainian President*, C-SPAN (Sept. 25, 2019).

²³ Statement of Kerri Kupec, Director, Office of Public Affairs, Dept. of Justice (Sept. 25, 2019) ("[T]he Department's Criminal Division reviewed the official record of the call and determined, based on the facts and applicable law, that there was no campaign finance violation and that no further action was warranted.").

²⁴ See *Whistleblower Disclosure: Hearing Before the H. Select Comm. on Intel.*, 116th Cong. (Sept. 26, 2019) (statement of Rep. Adam Schiff).

Speaker Pelosi, and Chairmen Engel, Schiff, and
Cummings
Page 7

powerfully confirms there is no issue with the actual call. Otherwise, why would Chairman Schiff feel the need to make up his own version? The Chairman's action only further undermines the public's confidence in the fairness of any inquiry before his Committee.

The real problem, as we are now learning, is that Chairman Schiff's office, and perhaps others—despite initial denials—were involved in advising the whistleblower before the complaint was filed. Initially, when asked on national television about interactions with the whistleblower, Chairman Schiff unequivocally stated that “[w]e have not spoken directly with the whistleblower. We would like to.”²⁵

Now, however, it has been reported that the whistleblower approached the House Intelligence Committee with information—and received guidance from the Committee—*before* filing a complaint with the Inspector General.²⁶ As a result, *The Washington Post* concluded that Chairman Schiff “clearly made a statement that was false.”²⁷ Anyone who was involved in the preparation or submission of the whistleblower's complaint cannot possibly act as a fair and impartial judge in the same matter—particularly after misleading the American people about his involvement.

All of this raises serious questions that must be investigated. However, the Committees are preventing anyone, including the minority, from looking into these critically important matters. At the very least, Chairman Schiff must immediately make available all documents relating to these issues. After all, the American people have a right to know about the Committees' own actions with respect to these matters.

* * *

Given that your inquiry lacks any legitimate constitutional foundation, any pretense of fairness, or even the most elementary due process protections, the Executive Branch cannot be expected to participate in it. Because participating in this inquiry under the current unconstitutional posture would inflict lasting institutional harm on the Executive Branch and lasting damage to the separation of powers, you have left the President no choice. Consistent with the duties of the President of the United States, and in particular his obligation to preserve the rights of future occupants of his office, President Trump cannot permit his Administration to participate in this partisan inquiry under these circumstances.

Your recent letter to the Acting White House Chief of Staff argues that “[e]ven if an impeachment inquiry were not underway,” the Oversight Committee may seek this information

²⁵ Interview with Chairman Adam Schiff, MSNBC (Sept. 17, 2019).

²⁶ Julian Barnes, et al., *Schiff Got Early Account of Accusations as Whistle-Blower's Concerns Grew*, N.Y. Times (Oct. 2, 2019).

²⁷ Glenn Kessler, *Schiff's False Claim His Committee Had Not Spoken to the Whistleblower*, Wash. Post (Oct. 4, 2019).

Speaker Pelosi, and Chairmen Engel, Schiff, and
Cummings
Page 8

as a matter of the established oversight process.²⁸ Respectfully, the Committees cannot have it both ways. The letter comes from the Chairmen of three different Committees, it transmits a subpoena “[p]ursuant to the House of Representatives’ impeachment inquiry,” it recites that the documents will “be collected as part of the House’s impeachment inquiry,” and it asserts that the documents will be “shared among the Committees, as well as with the Committee on the Judiciary as appropriate.”²⁹ The letter is in no way directed at collecting information in aid of legislation, and you simply cannot expect to rely on oversight authority to gather information for an unauthorized impeachment inquiry that conflicts with all historical precedent and rides roughshod over due process and the separation of powers. If the Committees wish to return to the regular order of oversight requests, we stand ready to engage in that process as we have in the past, in a manner consistent with well-established bipartisan constitutional protections and a respect for the separation of powers enshrined in our Constitution.

For the foregoing reasons, the President cannot allow your constitutionally illegitimate proceedings to distract him and those in the Executive Branch from their work on behalf of the American people. The President has a country to lead. The American people elected him to do this job, and he remains focused on fulfilling his promises to the American people. He has important work that he must continue on their behalf, both at home and around the world, including continuing strong economic growth, extending historically low levels of unemployment, negotiating trade deals, fixing our broken immigration system, lowering prescription drug prices, and addressing mass shooting violence. We hope that, in light of the many deficiencies we have identified in your proceedings, you will abandon the current invalid efforts to pursue an impeachment inquiry and join the President in focusing on the many important goals that matter to the American people.

Sincerely,

Pat A. Cipollone
Counsel to the President

cc: Hon. Kevin McCarthy, Minority Leader, House of Representatives
Hon. Michael McCaul, Ranking Member, House Committee on Foreign Affairs
Hon. Devin Nunes, Ranking Member, House Permanent Select Committee on Intelligence
Hon. Jim Jordan, Ranking Member, House Committee on Oversight and Reform

²⁸ Letter from Elijah E. Cummings, Chairman, House Committee on Oversight and Government Reform, et al., to John Michael Mulvaney, Acting Chief of Staff to the President 3 (Oct. 4, 2019).

²⁹ *Id.* at 1.