

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

V.

JOHN R. BOLTON,

Defendant.

Civil Action No. 20-1580 (RCL)

**EMERGENCY APPLICATION FOR TEMPORARY RESTRAINING ORDER
AND MOTION FOR PRELIMINARY INJUNCTION**

Pursuant to Federal Rule of Civil Procedure 65, Plaintiff, the United States of America, by and through its attorneys, respectfully files this Emergency Application for Temporary Restraining Order and Motion for Preliminary Injunction (“Application”) against Defendant John R. Bolton seeking to enjoin publication of a book containing classified information. Prior to filing this Application, and consistent with Local Civil Rule 65.1(a), the United States contacted counsel for Mr. Bolton, provided him notice that the United States would be filing this Application today, and sent him copies of all papers submitted with the United States’ complaint in this action and the materials submitted herewith (except for the classified declarations noted below). The United States understands the Mr. Bolton opposes the relief sought by this Application.

The United States respectfully requests that the Court schedule a hearing on this Application at the Court's earliest convenience on Friday, June 19, 2020, because Mr. Bolton's book is scheduled to be released on Tuesday, June 23, 2020.

In support of this Application, Plaintiff refers the Court to (1) the Complaint and relevant attachments thereto; (2) Plaintiff's Memorandum of Law In Support of Its Application for Temporary Restraining Order and Preliminary Injunction, attached to this Application; (3) the

unclassified declarations attached to this Application; and (4) the classified declarations of Michael Ellis and William R. Evanina, which have been lodged with the Court *ex parte* for purposes of *in camera* review. A proposed order is attached for the Court's consideration.

Dated: June 17, 2020

Respectfully submitted,

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UNITED STATES DISTRICT COURT
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**MEMORANDUM OF LAW IN SUPPORT OF THE UNITED STATES’ APPLICATION
FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

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INTRODUCTION

A National Security Advisor to a sitting President possesses national security information like few others. Were such a person to offer such information for sale to foreign governments, all would readily acknowledge the wrongdoing involved. That is why, when similar risks occur from the proposed dissemination of books, such individuals are required by contractual and fiduciary obligations to submit their manuscripts for prepublication review and not to publish them without having received written approval to do so. In this case, defendant John Bolton has not received any such approval, but unilaterally has decided to abandon the prepublication review process that he agreed to and instead plans to disseminate classified information as he sees fit in order to profit from his book. To be clear: Defendant's manuscript still contains classified information, as confirmed by some of the Government's most senior national-security and intelligence officials—the Director of National Intelligence, the Director of the National Security Agency (“NSA”), the Director of the National Counterintelligence and Security Center, and the National Security Counsel's (“NSC's”) Senior Director for Intelligence Programs. Disclosure of the manuscript will damage the national security of the United States. The United States asks this Court to hold Defendant to the legal obligations he freely assumed as a condition of receiving access to classified information and prevent the harm to national security that will result if his manuscript is published to the world.

FACTUAL BACKGROUND

Defendant is an experienced public official, with nearly four decades of service in positions of public trust in the United States Government. He is an attorney, having graduated from Yale Law School, who previously served as, among other things, General Counsel and Assistant Administrator for the U.S. Agency for International Development; Assistant Attorney General at

the Department of Justice; Assistant Secretary and Under Secretary at the Department of State; and as U.S. Ambassador to the United Nations. This case arises out of Defendant's most recent service—his appointment by the President as National Security Advisor on April 9, 2018, and his voluntary acceptance of that appointment. Compl. ¶ 9. As National Security Advisor, Defendant directed and supervised the work of the National Security Council staff on behalf of the President. Defendant knew he would be privy to and responsible for safeguarding the Nation's most sensitive national-security matters, and that his responsibilities would entail access to sensitive classified materials of the highest order. Compl. ¶ 21. The President entrusted this position to Defendant and gave him access to classified information so that he could serve the Nation and carry out his responsibilities as National Security Advisor.

A. Defendant Assumed Statutory and Contractual Obligations Not to Disclose Classified Information, to Submit Manuscripts for Prepublication Review, and to Abide by the Results of Such Review.

When he assumed the role of National Security Advisor, and in consideration for his appointment and access to classified information, Defendant entered into a series of agreements setting forth binding nondisclosure and prepublication review obligations. In particular, he executed a Classified Information Nondisclosure Agreement, titled Standard Form 312 ("SF 312"), and two Sensitive Compartmented Information ("SCI") Nondisclosure Agreements,¹ each titled Standard Form 4414 ("Form 4414").² By signing the SF 312, Defendant acknowledged that "the unauthorized disclosure . . . of classified information by me could cause damage or irreparable

¹ SCI is "[a] subset of [Classified National Intelligence] concerning or derived from intelligence sources, methods or analytical processes that is required to be protected within formal access control systems established by the [Director of National Intelligence]." Intelligence Community Directive 703 (June 21, 2013), <https://www.dni.gov/files/documents/ICD/ICD%20703.pdf>

² These agreements between Defendant and the United States are included in Exhibit A to the Declaration of Matthias Mitman ("Mitman Decl.").

injury to the United States” and agreed “never [to] divulge classified information” without “prior written notice of authorization from” the relevant government agency. SF 312 ¶ 3. By signing the Form 4414, he similarly promised “never [to] divulge anything marked as SCI or that I know to be SCI to anyone who is not authorized to receive it without prior written authorization.” Form 4414 ¶ 3. In both agreements, Defendant acknowledged the disclosure of classified information “may constitute a violation, or violations, of United States criminal laws.” SF 312 ¶ 4; Form 4414 ¶ 6. He further agreed that he would “submit for security review . . . any writing or other preparation in any form . . . that contains or purports to contain any SCI or description of activities that produce or relate to SCI or that I have reason to believe are derived from SCI, that I contemplate disclosing to any person not authorized to have access to SCI or that I have prepared for public disclosure.” Form 4414 ¶ 4. Defendant also committed “to make any required submissions prior to discussing the preparation with, or showing it to, anyone who is not authorized to have access to SCI,” and “not [to] disclose the contents of such preparation with, or show it to, anyone who is not authorized to have access to SCI until I have received written authorization[.]”

Id. In the event Defendant was “uncertain about the classification status of information,” Defendant agreed that he would be “required to confirm from an authorized official that the information is unclassified before [he could] disclose it” to an unauthorized recipient. SF 312 ¶ 3. These obligations were reinforced in multiple post-employment memoranda. Mitman Decl., Exh. B, Memo. From S. Gast to J. Bolton, Sept. 13, 2019; Exh. C, Letter from J. Eisenberg to J. Bolton, Sept. 10, 2019.

When a former NSC employee, like Defendant, submits a manuscript for prepublication review pursuant to these obligations, the proposed publication is reviewed by the Records Access and Information Security Management Directorate at NSC. Compl. ¶ 25. NSC staff reviews the

submitted written work, requests removal of any classified information (or suggests edits to make otherwise classified language unclassified), and concludes the process by providing written authorization for the former employee to disseminate the revised materials once all classified information has been removed. Compl. ¶¶ 26-28. NSC staff may also work with the former employee on an iterative basis to ensure the final product is free of classified information. Compl. ¶ 27. The duration of the review can depend on many factors, such as the length of the written work, the amount of classified information, the sensitivity of classified information included, and how recent the information might be. Compl. ¶ 26.

B. Defendant Wrote a Book Subject to Prepublication Review, Submitted it for Prepublication Review, and Did Not Receive Written Authorization to Publish the Book, which Continues to Contain Classified Information.

Defendant's service as National Security Advisor concluded on September 10, 2019. Compl. ¶ 9. By November 9, 2019, Defendant had a book deal with publisher Simon & Schuster for the rights to a memoir of his time in the White House. Compl. ¶ 23. Public reports suggest that Defendant received approximately \$2 million in the deal. *Id.* By late January 2020, Defendant's book was being marketed for pre-sale under the title *The Room Where It Happened*, Compl. ¶ 34—in apparent reference to the song, “The Room Where It Happens,” from the hit Broadway musical *Hamilton*. At the same time, the *New York Times* published an article that purported to describe the contents of Defendant's manuscript. *See* Compl. ¶ 35.

Four weeks before this media surge, on December 30, 2019, counsel for Defendant initiated the prepublication review process by submitting a hard copy of Defendant's manuscript to Ellen Knight, the Senior Director for Records Access and Information Security Management Directorate at the NSC. Mitman Decl., Exh. D, Letter from C. Cooper to E. Knight, Dec. 30, 2019. Ms. Knight is an Original Classification Authority, meaning she is “authorized to classify information in the first instance.” Executive Order 13,526, § 6.1(gg). After conducting an initial review of the

manuscript, on January 23, 2020, Ms. Knight informed Defendant, through his counsel, that the manuscript “appears to contain significant amounts of classified information,” including information classified at the Top Secret level. Mitman Decl., Exh. E, Letter from E. Knight to C. Cooper, Jan. 23, 2020. Ms. Knight thus instructed Defendant that his manuscript “may not be published or otherwise disclosed without the deletion of this classified information.” *Id.*

Over the next few months, Ms. Knight worked with Defendant to review his manuscript and to excise classified information. *See* Compl. ¶¶ 32-46. On multiple occasions, Defendant was told that he would need final written approval before he could proceed with publication.³ By April 27, Ms. Knight had completed her review and was of the view that the manuscript draft did not contain classified information. Compl. ¶ 46; Unclassified Declaration of Michael Ellis (“Ellis Decl.”) ¶ 9. Ms. Knight did not, however, provide Defendant with written authorization to proceed with publishing the manuscript. *See* Ellis Decl. ¶ 13. To the contrary, on May 7, 2020, Ms. Knight informed Defendant that “[t]he process remains ongoing” and that her staff would “reach out as soon as there is an update to provide.” Mitman Decl., Exh. I, E-mail from E. Knight to J. Bolton, May 7, 2020. This was Ms. Knight’s last communication with Defendant.

In the meantime, after Ms. Knight’s review of the draft manuscript, the Assistant to the President for National Security Affairs (“APNSA”) reviewed the manuscript and concluded that it still appeared to contain classified information. Ellis Decl. ¶ 10. The APNSA asked the NSC’s

³ Mitman Decl., Exh. F, Letter from K. Knight to C. Cooper, Feb. 7, 2020, at 1 (“In the meantime, your client has a duty not to publish or otherwise disclose the manuscript or any of its underlying information until he has addressed our concerns and received authorization to do so from our office.”); Mitman Decl., Exh. G, Letter from K. Knight to C. Cooper, Feb. 24, 2020, at 2 (“Please note that the prepublication review remains in process, and your client may not publish or further disseminate the manuscript or any of its contents until authorized.”); *Id.*, Exh. H, E-Mail from K. Knight to J. Bolton, Mar. 27, 2020 (“I must reiterate that the prepublication review remains in process. Even after making the edits, you are not authorized to publish or further disseminate the manuscript or its contents until expressly given clearance by me to do so.”).

Senior Director for Intelligence Programs, Michael Ellis, to conduct a further review of the manuscript and on May 2, 2020, Mr. Ellis commenced that review. Ellis Decl. ¶¶ 10-11. Like Ms. Knight, Mr. Ellis is an Original Classification Authority. Ellis Decl. ¶ 8. Mr. Ellis completed his initial review of the manuscript on June 9. Ellis Decl. ¶ 12. Mr. Ellis concluded that the manuscript contains information subject to both the Standard Form 312 and the Form 4414 signed by Defendant, and that the revisions already made to the manuscript had not removed all classified information, including information classified at the Confidential, Secret, Top Secret, and Top Secret/SCI levels. Ellis Decl. ¶¶ 19, 20. In Mr. Ellis’s judgment, disclosure of certain passages in the manuscript “will damage the national security of the United States.” Ellis Decl. ¶ 22. A description of examples of classified information that remains in the manuscript—and the basis for Mr. Ellis’s determination that their disclosure reasonably could be expected to cause damage to national security—appears in the classified Declaration of Michael Ellis, which will be made available to the Court solely for *in camera*, *ex parte* review. *See* Classified Decl. of Michael Ellis (lodged *ex parte* with the Court).

Mr. Ellis’s conclusion is shared by other senior intelligence officials. John L. Ratcliff, the Director of National Intelligence, has concluded “that the[] passages of the manuscript” reviewed by Mr. Ellis “contain classified national security information” and “if made public, will damage national security.” Decl. of John L. Ratcliff (“Ratcliff Decl.”) ¶¶ 6-7. William R. Evanina, the Director of the National Counterintelligence and Security Center, concluded “that the information contained in the passages I have reviewed is precisely what foreign adversaries’ intelligence services seek to target and collect,” and “unauthorized disclosure of this information could reasonably be expected to enable foreign threat actors to cause serious, and sometimes grave, damage to our national and economic security.” Decl. of William R. Evanina ¶ 6; *see also*

Classified Decl. of William R. Evanina (lodged *ex parte* with the Court). And Paul M. Nakasone, the Director of the National Security Agency and a general in the U.S. Army, concluded that disclosure of some of the classified information contained in the manuscript “could result in the permanent loss of a valuable [signal intelligence] source and cause irreparable damage to the U.S. [singal intelligence] system.” Decl. of Paul M. Nakasone (“Nakasone Decl.”) ¶ 8.

Neither Ms. Knight, nor Mr. Ellis, nor any other NSC official provided written authorization for Defendant to proceed with publication of his manuscript. *See* Ellis Decl. ¶ 13.

C. Without Written Authorization and Without Notice, Defendant Submitted His Book to Simon & Schuster For Publication Containing Classified Material.

The Government learned through June 7, 2020 press reports that Defendant already had submitted his manuscript for publication and that he and Simon & Schuster were “planning to publish even if the White House does not give publication approval.” Compl. ¶ 53; Mitman Decl., Exh. J, Letter from J. Eisenberg to C. Cooper, June 8, 2020. On June 8, 2020, the NSC Legal Adviser wrote to Defendant, through Defendant’s counsel, reminding him that he was not authorized to publish his book because it contained classified material and because he had not yet completed prepublication review. Mitman Decl., Exh. J. The NSC Legal Adviser further indicated that the NSC would provide Defendant with a copy of Defendant’s manuscript, with redactions for classified information, on or before June 19, 2020. *Id.* Two days later, on June 10, Defendant’s counsel informed the Government that Defendant “and his publisher, Simon & Schuster, moved forward with publication” scheduled for June 23, 2020, and that the book had already been “printed, bound, and shipped to distributors across the country.” Compl. ¶ 55; Mitman Decl., Exh. K, Letter from C. Cooper to J. Eisenberg, June 10, 2020.

On June 11, 2020, the NSC Legal Advisor wrote to Defendant’s counsel, emphasizing that “the manuscript still contains classified information, because, among other things, it includes

information that he himself classified and designed for declassification only after the lapse of twenty-five years.” Mitman Decl., Exh. L, Letter from J. Eisenberg to C. Cooper, June 11, 2020. The Legal Advisor further reminded Defendant that he “remains under an obligation to stop the dissemination of the manuscript, which still contains classified information that belongs to the United States Government, the unauthorized disclosure of which could reasonably be expected to cause serious damage to national security.” *Id.* This suit followed.

On June 16, 2020—three days in advance of the June 19 date Mr. Eisenberg had indicated in his June 8 letter—Mr. Ellis sent Defendant a complete marked copy of the current version of the manuscript identifying passages that he had determined, based on his initial review, appeared to contain classified information. He offered to meet with Defendant “to discuss the removal of classified information from the manuscript.”

LEGAL STANDARD

“To obtain a preliminary injunction, the movant must establish that: (a) it is likely to succeed on the merits; (b) it is likely to suffer irreparable harm in the absence of preliminary relief; (c) the balance of equities tips in its favor; and (d) an injunction is in the public interest.” *Fox TV Stations, Inc. v. FilmOn X LLC*, 966 F. Supp. 2d 30, 37 (D.D.C. 2013) (citing *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008)). “The D.C. Circuit has further instructed that ‘the movant has the burden to show that all four factors . . . weigh in favor of the injunction.’” *Id.* (quoting *Davis v. PBGC*, 571 F.3d 1288, 1292 (D.C. Cir. 2009)).⁴ “The court considers the same factors in ruling on a motion for a temporary restraining order and a motion for preliminary injunction.” *Elec.*

⁴ The D.C. Circuit “has, in the past, followed the ‘sliding scale’ approach to evaluating preliminary injunctions The continued viability of the sliding scale approach is highly questionable, however, in light of the Supreme Court’s holding in *Winter*[.]” *Singh v. Carter*, 185 F. Supp. 3d 11, 16 (D.D.C. 2016) (citing *In re Navy Chaplaincy*, 738 F.3d 425, 428 (D.C. Cir. 2013)); *see also Davis v. PBGC*, 571 F.3d 1288, 1295-96 (D.C. Cir. 2009) (Kavanaugh, J., concurring).

Privacy Info. Ctr. v. FTC, 844 F. Supp. 2d 98, 101 (D.D.C. 2012) (quoting *Morgan Stanley DW Inc. v. Rothe*, 150 F. Supp. 2d 67, 72 (D.D.C. 2001)).

ARGUMENT

I. The Government Is Likely to Succeed on the Merits.

The basis for preliminary relief in this matter is straightforward: Defendant, who as National Security Advisor enjoyed access to the most sensitive information in the Government’s possession, has decided to publish a work containing classified information without completing prepublication review and without receiving written authorization to publish. This action is contrary to Defendant’s fiduciary duties toward the Government, and puts Defendant in breach of his non-disclosure agreements. Defendant assumed the obligations in these agreements as a condition of both obtaining his employment in one of the most sensitive and important national security positions in the United States Government and of gaining access to the highly classified information necessary to perform his job. These obligations are not mere bureaucratic contrivances; indeed, Defendant acknowledged that the “unauthorized disclosure of classified information by me may constitute a violation, or violations, of United States criminal laws.” SF 312 ¶ 4; *see also* Form 4414 ¶ 6. The criminal penalties associated with unauthorized disclosure of classified information underscore the seriousness of the Defendant’s commitments. *See, e.g.*, 18 U.S.C. §§ 641, 793, 794, 798, 952, 1924. Courts routinely enforce secrecy agreements between the United States and former Government personnel who, like Defendant, have been given access to classified information as a necessary part of their employment. The United States is therefore likely to succeed on its request for specific performance of his contractual and fiduciary obligations not to publish classified information without completing prepublication review and receiving written authorization to publish.

A. By Publishing Classification Information Without Written Approval After Completion Of Prepublication Review, Defendant Has Breached His Secrecy Obligations To the Federal Government.

As one of the most senior national security officials of the United States, Compl. ¶ 7, Defendant has a fiduciary relationship with the United States Government based on his placement in a position of trust and special confidence. *See United States v. Ring*, 628 F. Supp. 2d 195, 207 (D.D.C. 2009) (recognizing that a public official acts as ‘trustee for the citizens and the State . . . and thus owes the normal fiduciary duties of a trustee, e.g., honesty and loyalty’ to them”) (quoting *United States v. Silvano*, 812 F.2d 754, 759 (1st Cir.1987)); *Armenian Assembly of Am. v. Cafesjian*, 692 F. Supp. 2d 20, 43 (D.D.C. 2010) (recognizing protection of proprietary information as among fiduciary duties). The National Security Advisor to the President has unique access to classified information based on his position atop the NSC hierarchy, his responsibility to make recommendations to the President regarding national security and foreign policy, and his representation of the United States in its relations with other countries. Compl. ¶ 8. In this capacity, Defendant was entrusted with classified and SCI information that related to some of the most sensitive matters of national security, and Defendant owes to the United States a fiduciary duty of loyalty to protect from unauthorized disclosure classified information. This duty of loyalty includes his duty to submit to the United States Government for review any materials subject to his prepublication review obligations and to refrain from the dissemination of those materials or information unless and until the United States Government completes its prepublication review processes and affirmatively and expressly approves disclosure. *See Snepp*, 544 U.S. 515 n. 11.

At the heart of this case are the three confidentiality agreements Defendant executed to protect the classified information to which he gained access as the National Security Advisor to the President. While “the law would probably imply a secrecy agreement” where the information involved is “highly sensitive to the conduct of foreign affairs and the national defense,” *United*

States v. Marchetti, 466 F.2d 1309, 1316 (4th Cir. 1972), the duty of confidentiality undoubtedly arises where there is an express agreement. The three agreements entered into by Defendant included Classified Information Nondisclosure Agreement (a Standard Form 312 or SF 312), and two SCI Nondisclosure Agreements (titled a Standard Form 4414 or Form 4414). *See* Compl. at Exh. A (hereafter “NDAs”). Each of these NDAs was signed by Defendant at the White House in connection with his duties as National Security Advisor to the President. Compl. ¶ 11. Defendant reaffirmed his obligations when his employment as National Security Advisor ended, acknowledging that he understood that he continued to be “prohibited from disclosing any classified or confidential information,” and that he “may not use or disclose nonpublic information,” including information that is “confidential or classified.” Mitman Decl., Exh. B; *see also* Exh. C. Before Defendant signed this acknowledgment, the NSC Legal Advisor reminded Defendant that his obligations included the submission for “security review [of] . . . any writing or other material in any form that could contain classified information before” sharing that information with anyone. Mitman Decl., Exh. B.

As Defendant’s own conduct tacitly conceded, he was obligated to undertake the prepublication review process, and the contents of Defendant’s manuscript fall within the scope of the NDAs. *See* Ellis Decl. ¶¶ 19-20. The premise of Defendant’s book is that it is a “White House Memoir” recounting information from “The Room Where it Happened,” *i.e.*, material obtained by Defendant in the course of his employment as National Security Advisor, where he gained access to highly classified national security information. Compl. ¶ 34. Defendant apparently recognized that nothing about his position, his manuscript, his contract, or his separation from Government service exempted him from the routine obligation imposed on Government personnel to complete pre-publication review prior to disclosures like those Defendant seeks to make, and he initiated

the prepublication review process. Mitman Decl., Exh. D. Initial review of Defendant's manuscript identified numerous instances of classified information in various categories—so many instances, in fact, that a single four-hour meeting proved adequate to cover only three chapters in detail. Mitman Decl., Exh. G. In recognition of the need to revise his manuscript to protect classified information, Defendant then made edits and submitted revised manuscripts and pages in both March, 2020 and April, 2020. Compl. ¶ 45; Mitman Decl., Exh. H. Even after that, however, the draft manuscript still contains classified information, including information classified at the Secret and Top Secret/SCI levels. Ellis Decl. ¶ 19.

All of this demonstrates that the requirement of pre-publication review applies, and in that review, the authority to determine when review is complete rests with the Executive Branch, not with a self-serving, unilateral judgment by Defendant to withdraw from the review process. *See Dep't of Navy v. Egan*, 484 U.S. 518, 527 (1988) (the protection of classified information “is committed by law to the appropriate agency of the Executive Branch,” and “flows primarily from [a] constitutional investment of power in the President”) (citing U.S. Const., Art. II, § 2); *Marchetti*, 466 F.2d at 1317 (noting that burden is on the author, not the Government, to seek judicial review of prepublication process). As explained below, Defendant's decision to proceed with publication of classified material before completion of this process violated his ongoing contractual obligations to the Government.

1. Defendant Breached His Form 4414 Agreement by Walking Away From the Pre-Publication Process Before It Was Complete

Defendant's actions to date, including his unilateral decision to proceed with publication before receiving official authorization to do so, cannot be reconciled with the obligations imposed by his Form 4414. Indeed, as the unclassified Ellis Declaration explains, even after making changes to the manuscript, the latest manuscript contains information classified at the Top Secret/

SCI level and is subject to the Form 4414 signed by Defendant. *See* Ellis Decl. ¶¶ 19-20. Under that agreement, Defendant was required to “submit for security review” to the United States Government “any writing or other preparation in any form, including a work of fiction, that contains or purports to contain any SCI or description of activities that produce or relate to SCI or that [he has] reason to believe are derived from SCI.” Form 4414 ¶ 4. He further agreed he “will not disclose the contents of such preparation with, or show it to, anyone who is not authorized to have access to SCI until [he had] received written authorization . . . that such disclosure is permitted.” *Id.*

Defendant is proceeding, and already has advanced substantially, on a course that defies his obligations to complete pre-publication review of, and obtain written approval to publish, his manuscript. As noted, Defendant tacitly acknowledged that his manuscript must be submitted for such review by commencing and participating in an iterative process to finalize a manuscript that did not disclose classified information. Mitman Decl., Exh. D. Defendant then decided to walk away from that process prior to completion, and to move forward with the printing and distribution of his book based only on edits provided to that point by the Government but without further edits that would be required to complete the pre-publication review, including a final, written authorization to proceed. Mitman Decl., Exh. K. This unilateral decision to disregard the final steps in the pre-publication review process and to publish without the required approval cannot be reconciled with Defendant’s contractual and fiduciary duties.

Defendant’s disregard for his obligations is underscored by how abruptly he shifted from participating in the pre-publication review process to deciding unilaterally—and without any notice to the Government—to defy that process and to publish his book before the process was complete. Defendant was participating in the pre-publication review process by submitting

changes to the manuscript based on feedback from the NSC’s review. Mitman Decl., Exh. L. On May 6, 2020—just ten days after his last submission—Defendant dispatched a follow-up inquiry to Ms. Knight, who responded that “[t]he process remains ongoing.” Mitman Decl., Exh. I. Defendant did not communicate further with the Government until after it had already been reported in the press that he had decided to release the book on June 23, without completing the review process. After the NSC Legal Advisor wrote to defendant’s counsel on June 8, Defendant informed the NSC, through counsel, that his book had already been “printed, bound, and shipped to distributors across the country.” Mitman Decl., Exh. K. By sharing his manuscript with his publisher—and preparing to share it with the world—before completing prepublication review, Defendant breached his contractual obligations to complete prepublication review.

2. Defendant Breached His SF 312 Agreement By Disclosing Classified Information Without Prior Approval.

Defendant has also violated his SF 312 agreement by proceeding with publication of his book without receiving appropriate authorization. Defendant acknowledged in that agreement that “the unauthorized disclosure . . . of classified information by me could cause damage or irreparable injury to the United States” and agreed “never [to] divulge classified information” without “prior written notice of authorization from” the relevant government agency. SF 312 ¶ 3. Defendant has violated that contractual duty by proceeding with publication of his book containing classified material without receiving written authorization. Moreover, Defendant was required “to confirm from an authorized official that [any other] information is unclassified” before disclosing such information whenever “[he is] uncertain about the classification status.” *Id.*, SF 312 ¶ 3.

Defendant has disregarded these requirements. As early as January 2020, it was reported that he had disseminated copies of his manuscript to members of the press—a manuscript Ms. Knight later concluded was rife with classified information, and that Defendant removed from the

manuscript at her request. Compl. ¶¶ 35-36. And even after Defendant made changes to the manuscript, it still contains classified information, including information classified at the Confidential, Secret, Top Secret, and Top Secret/SCI levels. *See* Ellis Decl. ¶ 19. This means that in some instances disclosure reasonably could be expected to cause serious damage, or exceptionally grave damage, to the national security of the United States. *Id.* Defendant nevertheless decided, on his own accord, not only again to share the manuscript with his publisher but to authorize its printing and distribution to the public. By so doing, Defendant has violated the obligations he accepted by signing the SF 312. Publication of the book in its current state would constitute additional unauthorized disclosures of classified information in violation of Defendant's SF 312 obligations.

B. Courts Consistently Have Upheld, Over First Amendment Objections, the Government's Right To Enforce Secrecy Agreements Like Those Defendant Signed

Nothing in the First Amendment prevents the United States from securing an injunction requiring a former high-ranking official with unique access to sensitive information, such as Defendant, to abide by the agreements he signed. It is settled law that restrictions on the publication of classified information are judicially enforceable. Where “a government employee signs an agreement not to disclose information properly classified pursuant to executive order, that employee ‘simply has no first amendment right to publish’ such information.” *Wilson v. CIA*, 586 F.3d 171, 183 (2d Cir. 2009) (quoting *Stillman v. CIA*, 319 F.3d 546, 548 (D.C. Cir. 2003)). The Government is thus “entitled to enforce its agreements to maintain the confidentiality of classified information,” *United States v. Pappas*, 94 F.3d 795, 801 (2d Cir.1996), without needing to comply with “the same stringent standards that would apply to efforts to impose restrictions on unwilling members of the public,” *United States v. Aguilar*, 515 U.S. 593, 606 (1995).

The seminal case in this area is *Snepp v. United States*, 444 U.S. 507 (1980), which involved a former CIA agent who, in violation of his secrecy agreement, published a book about CIA activities without first obtaining the Agency's approval. After the book had been published, the United States sued Snepp for breach of contract and breach of fiduciary duties. The government secured not only the imposition of a constructive trust over all of Snepp's profits from the book, but also a forward-looking injunction against future unauthorized disclosures by Snepp. *See id.* at 508. The Supreme Court affirmed both remedies. *See id.* at 514-16.

The Supreme Court explained that a prepublication review requirement imposed on a government employee with access to classified information is not an unconstitutional prior restraint. *See id.* at 510-11. The Court found the secrecy agreement to be a "reasonable means" for vindicating the Government's "compelling interest in protecting both the secrecy of information important to our national security and the appearance of confidentiality so essential to the effective operation of our foreign intelligence service." *Id.* at 509 n.3. The Court also concluded that "[w]hether Snepp violated his trust does not depend upon whether his book actually contained classified information." *Id.* at 511. Rather, Snepp violated that trust when he published his book without first obtaining authorization from the CIA to do so, as required by his secrecy agreement. "When a former agent relies on his own judgment about what information is detrimental, he may reveal information that the CIA—with its broader understanding of what may expose classified information and confidential sources—could have identified as harmful." *Id.* at 512. The Court held that, because Snepp "deliberately and surreptitiously violated his obligation to submit all material for prepublication review," *id.* at 511, a constructive trust over his book's proceeds would appropriately "require[] him to disgorge the benefits of his faithlessness." *Id.* at 515.

Even before *Snepp*, the Fourth Circuit upheld the validity and enforceability of secrecy agreements in *United States v. Marchetti*, 466 F.2d 1309 (4th Cir. 1972). In *Marchetti*, as in *Snepp* and the instant case, the United States sued a former employee to enforce a secrecy agreement; the United States sought to prevent Marchetti from publishing a book about his intelligence experiences in the CIA. *Id.* at 1311. The court held that the United States could properly require Marchetti to submit all intelligence-related materials intended for publication for prepublication review to protect classified information. *Id.* at 1313-17. The court further held that there was no First Amendment problem with the secrecy agreements, because Marchetti could seek judicial review of any action by the CIA disapproving publication of the material. *Id.*; see also *United States v. Snepp*, 897 F.2d 138, 143 (4th Cir. 1990) (confirming that the burden is on the author to seek judicial review of any agency decision not to approve publication).

Consistent with these authorities, courts regularly have upheld the validity of secrecy agreements in the face of First Amendment challenges. In *Stillman v. CIA*, for example, a former employee of the Los Alamos National Laboratories sought to publish a book about China's nuclear weapons program and challenged the delay on publication imposed by pre-publication review, as well as determinations by various agencies that portions of his manuscript were classified. See 517 F. Supp. 2d 32, 34 (D.D.C. 2007) ("*Stillman II*"). In rejecting Stillman's First Amendment challenge, this Court explained that "[c]ourts have uniformly held that current and former government employees have no First Amendment right to publish properly classified information to which they gain access by virtue of their employment." *Id.* at 38. The D.C. Circuit, in earlier proceedings in *Stillman*, had reached the same conclusion: "If the Government classified the information properly, then Stillman simply has no first amendment right to publish

it.” *Stillman v. CIA*, 319 F.3d 546, 548 (D.C. Cir. 2003) (“*Stillman I*”) (reversing district court’s preliminary order granting Stillman’s counsel access to the manuscript and remanding for further proceedings). Relying on *Snepp*, this Court granted judgment to the Government, emphasizing that “the government’s ability to maintain secrecy is essential and [recognizing] that the government is in the best position to judge the harm that would result from disclosure.” *Stillman II*, 517 F. Supp. 2d at 39.

Likewise, in *McGehee v. Casey*, a former CIA officer brought a declaratory judgment action, before publication, challenging “an agreement that on its face bar[red] him from revealing classified information without prior . . . approval.” This Court denied relief, and the D.C. Circuit affirmed. 718 F.2d 1137, 1139 (D.C. Cir. 1983). The D.C. Circuit reasoned that the “classification and censorship scheme,” including the requirement of pre-publication review, “protects critical national interests” and “satisf[ies] the applicable constitutional tests.” *Id.* The court further added that, even though the CIA officer had “adhered to his secrecy agreement[,] submitted his manuscript for prepublication review, and deleted portions” of it in accordance with Government instructions, he was not entitled to declassification of portions of a magazine article he published that the CIA had determined to be classified, because affidavits gave the court “reason to believe that disclosure of the censored portions of McGehee’s article could reasonably be expected to cause serious damage to the national security.” *Id.* at 1149-50.⁵

⁵ In dicta, the court noted that the CIA had “not sought an injunction against publication of the censored items” and stated that if the CIA had sought “judicial action to restrain publication, it would [have borne] a much heavier burden.” *McGehee*, 718 F.2d at 1147 n. 22 (citing, e.g., *Snepp*, 444 U.S. at 513 n. 8, and *N.Y. Times Co. v. United States*, 403 U.S. 713, 714 (1971) (*per curiam*)). But the cited language in *Snepp* does not support this assertion. Indeed, the cited portion of *Snepp* cited to two cases, which include language that, if anything, undermines the notion that the government would bear a heavier burden where it—rather than the author—sought relief. See *Alfred A. Knopf, Inc. v. Colby*, 509 F.2d 1362 (4th Cir. 1975) (“We decline to modify our previous holding that the First Amendment is no[] bar against an injunction forbidding the disclosure of

It follows from these decisions that there is no First Amendment bar to enforcement of Defendant's secrecy agreements here. The Government is seeking, as it has done in the past, to enforce the terms of its NDAs regarding classified information executed by Defendant when he joined the Government as National Security Advisor. Defendant willingly accepted the terms of these NDAs in consideration for his access to this information, and there is no valid constitutional objection to the Government seeking relief under their terms.

C. Defendant Lacks Any Valid Defenses, Contractual or Otherwise, to Enforcement of His Secrecy Obligations.

To date, Defendant has refused to accept that he is in breach of his obligations to the Government. In a June 10, 2020 letter from his counsel, he asserts that he has substantially complied with the prepublication review requirement and that, in light of his purported "substantial compliance" and supposed assurances from Ms. Knight, he should be excused from the remainder of his fiduciary and contractual obligations. Mitman Decl., Exh. K. Neither this argument, nor any other effort to defend his about-face on pre-publication review, can justify his unilateral decision to print and distribute copies of his book without prior written authorization.

At the outset, the express terms of the NDAs make clear that Defendant has not "substantially compl[ied]" with his obligations by submitting his manuscript and engaging with the Government for a time; rather, the NDAs required *full* compliance. Defendant is expressly required to obtain express and "written notice of authorization" before making a disclosure of

classifiable information within the guidelines of the Executive Orders when (1) the classified information was acquired, during the course of his employment, by an employee of a United States agency or department in which such information is handled and (2) its disclosure would violate a solemn agreement made by the employee at the commencement of his employment. With respect to such information, by his execution of the secrecy agreement and his entry into the confidential employment relationship, he effectively relinquished his First Amendment rights."); *United States v. Marchetti*, 466 F.2d 1309 (4th Cir. 1972) (granting the United States' request for injunction against future publication in violation of secrecy agreement).

classified information. SF 312 ¶ 3; *see also* Form 4414 ¶ 4. He never received such notice. Even though Ms. Knight had completed her review in April and was of the view that the manuscript did not contain classified information, Compl. ¶ 46; Ellis Decl. ¶ 9, Ms. Knight did not authorize Mr. Bolton to proceed with publication, and instead informed him that “[t]he process remain[ed] ongoing,” Mitman Decl., Exh. I. That process involved an additional classification review by Mr. Ellis, who concluded that the manuscript, even as revised, contained classified material, including information classified at the Confidential, Secret, Top Secret, and Top Secret/SCI levels. In other words, as Mr. Ellis explains, the manuscript, even as revised, contains instances of information that, if disclosed, reasonably could be expected to cause serious damage, or exceptionally grave damage, to the national security of the United States—and, indeed, Mr. Ellis concluded that disclosure of “certain passages in the draft manuscript ... will damage the national security of the United States.” *See* Ellis Decl. ¶¶ 19, 22. The conclusion that the draft still contains classified information is shared by Mr. Ratcliffe, Mr. Evanina, and Gen. Nakasone. Ratcliffe Decl. ¶ 7; Evanina Decl. ¶¶ 6-7; Nakasone Decl. ¶ 8. Mr. Bolton’s decision nevertheless to proceed with the publication of a book containing such material is a breach of his contractual and fiduciary duties.

Nor does Mr. Bolton have a First Amendment right to publish classified information that would allow him to sidestep the breach of his contractual duties. As previously discussed, the legal obligations he freely assumed—namely, his obligation to obtain authorization before publishing classified information—is fully in accord with constitutional requirements, as the Supreme Court and the D.C. Circuit have confirmed. *See Snepp*, 444 U.S. at 509 n.3; *McGehee*, 718 F.2d at 1139. Where “a government employee signs an agreement not to disclose information properly classified pursuant to executive order, that employee ‘simply has no first amendment right to publish’ such information.” *Wilson v. CIA*, 586 F.3d 171, 183 (2d Cir. 2009) (quoting

Stillman v. CIA, 319 F.3d 546, 548 (D.C. Cir. 2003)). Defendant signed *three* such agreements in this case. He affirmatively agreed that he “will never divulge classified information to anyone unless: (a) [he has] officially verified that the recipient has been properly authorized by the United States Government to receive it; or (b) [he has] been given prior written notice of authorization from the United States Government Department . . . that such disclosure is permitted.” SF 312 ¶ 3. And he twice agreed to “submit for security review” “any writing . . . that contains or purports to contain any SCI or description of activities that produce or relate to SCI or that I have reason to believe are derived from SCI . . . that I have prepared for public disclosure” and “further agree[d] that I will not disclose the contents of such preparation with, or show it to, anyone who is not authorized to have access to SCI until I have received written authorization from the Department or Agency that last authorized my access to SCI until I have received written authorization . . . that such disclosure is permitted.” Form 4414 ¶ 4. Defendant further attested his understanding that “the United States Government may seek any remedy available to it to enforce this Agreement, including, but not limited to, application for a court order prohibiting disclosure of information in breach of this Agreement.” SF 312 ¶ 6; *see also* Form 4414 ¶ 7 (same).

Accordingly, even assuming that the First Amendment applies in the context of a former high-ranking government employee disclosing classified information without authorization after completion of prepublication review, any such rights would be waived by the agreements that Defendant entered into. Waiver of a constitutional right must be knowing and voluntary. *Cf. Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). There can be no suggestion that Defendant, a Yale-trained attorney and sophisticated public official with decades of experience in positions of trust within the Federal Government, did not know and understand these obligations. Indeed, the text of Defendant’s security agreements make clear that he could not release such material absent

written confirmation at the end of the prepublication review process. These provisions also provide that the United States would and could seek to enforce these agreements via a court order preventing disclosure, *see* SF 312 ¶ 6; Form 4414 ¶ 7, contract terms that would be superfluous if they did not constitute an acknowledgement that those very proceedings were proper. *See Veit & Co. v. United States*, 46 Fed. Cl. 30, 35 (2003) (“The Court is to attempt to avoid an interpretation that leaves a portion of the contract useless, inexplicable, inoperative, void, insignificant, meaningless, superfluous, or achieves a weird and whimsical results.”) (citation and internal quotation marks omitted). Nor can Defendant claim that such provisions constitute a prior restraint, as courts have recognized that such prepublication review, as here, “is not . . . a ‘system of prior restraints’ in the classic sense.” *Edgar v. Coats*, No. GJH-19-985, 2020 WL 1890509, at *19 (D. Md. Apr. 16, 2020) (quoting *Wilson v. CIA*, 586 F.3d 171, 183 (2d Cir. 2009), and additionally citing *McGehee v. Casey*, 718 F.2d 1137, 1147-48 (D.C. Cir. 1983)) *appeal docketed* No. 20-1568 (4th Cir.). Defendant should be held to the obligations of his bargain.

Moreover, to the extent Defendant contends he has a constitutional right to publish his book in its current form, the proper course would have been to complete the prepublication review or to seek judicial review of any alleged denial or undue delay of permission to publish. Indeed, case law makes clear that it is the *author’s* burden to seek judicial review of the Government’s denial or delay of permission to publish. *See Snepp*, 897 F.2d at 143; *Marchetti*, 466 F.2d at 1317. What is not Defendant’s right is to decide for the Executive Branch—indeed, for the entire nation—that sufficient edits have been made and thereby usurp the Government’s proper role in determining whether a manuscript contains classified information.

II. The United States Will Be Irreparably Harmed Without an Injunction.

The United States will be irreparably injured absent preliminary relief. The book Defendant intends to publish on June 23 contains classified information, including information

classified at the Confidential, Secret, Top Secret, and Top Secret/SCI levels. This means it contains instances of information that, if disclosed, reasonably could be expected to cause serious damage, or exceptionally grave damage, to the national security of the United States. *See* Ellis Decl. ¶ 19. And Mr. Ellis specifically concluded, moreover, that “certain passages in the draft manuscript . . . , if disclosed, will damage the national security of the United States.” Ellis Decl. ¶ 22; *see also* Ratcliffe Decl. ¶¶ 6-7; Evanina Decl. ¶ 6; Nakasone Decl. ¶ 8. The rights that the United States contracted for to protect national security—including the right to prepublication review of writings that Defendant might disseminate with sensitive information—will be severely undermined, if not entirely lost, if Defendant is not enjoined from further disseminating this information. *See Snepp*, 444 U.S. at 513 (“both the District Court and the Court of Appeals recognized that Snepp’s breach of his explicit obligation to submit his material—classified or not—for prepublication clearance has irreparably harmed the United States Government.”); *cf. Providence Journal v. FBI*, 595 F.2d 889, 890 (1st Cir. 1979) (“Once the documents are surrendered pursuant to the lower court’s order, confidentiality will be lost for all time. The status quo could never be restored.”); *In re Papandreou*, 139 F.3d 247, 251 (D.C. Cir. 1998) (“Disclosure followed by appeal after final judgment is obviously not adequate in such cases [where privilege is claimed over information] – the cat is out of the bag.”); *John Doe Agency v. John Doe Corp.*, 488 U.S. 1306, 1309 (1989) (Marshall, J., in chambers) (disclosure of materials pending a stay would create an irreparable injury). Only by completing the review process can the Government ensure that any personal benefits Defendant hopes to reap from this writing will not come at the expense of the national security.

Courts routinely grant equitable relief to prevent the public release of confidential information of all sorts on the ground that such public disclosure necessarily constitutes irreparable

harm given that the confidentiality of information, once lost, can never be restored. For example, courts will stay pending appeal orders to the Government to release documents, on the ground that the public disclosure of information constitutes irreparable harm. *See Providence Journal*, 595 F.2d at 890 (granting stay of disclosure pending final appeal, as “denial of a stay will utterly destroy the status quo”); *Dep’t of Health & Human Servs. v. Alley*, 556 U.S. 1149 (2009) (ordering stay of district court’s order that directed agency to disclose records to plaintiff pending final disposition of appeal); *People for the Am. Way Found. v. U.S. Dep’t of Educ.*, 518 F. Supp. 2d 174, 177 (D.D.C. 2007) (stay necessary “to avoid irreparable injury [to the government] by having to release documents prior to having the opportunity to seek meaningful appellate review”). While the forced disclosure of non-public information alone may constitute irreparable harm, that harm is heightened where classified information is involved. Unlike ordinary confidential information the Government holds, the information at stake here is classified, including in some instances at the Secret or Top Secret/SCI levels, which means by definition that its disclosure reasonably could be expected to cause serious damage, or exceptionally grave damage, to the national security of the United States. Ellis Decl. ¶ 19. And, in Mr. Ellis’s judgment, certain passages, if disclosed, “will damage the national security of the United States.” Ellis Decl. ¶ 22; *see also* Ratcliffe Decl. ¶¶ 6–7; Evanina Decl. ¶ 6; Nakasone Decl. ¶ 8.

This is not surprising. When an official leaks classified information to the world it can cause serious damage to the United States’ relationships with foreign powers or endanger future military and intelligence activities by revealing U.S. intelligence capabilities or gaps in those capabilities. And, as common sense suggests, “it is practically impossible to remedy the damage of an unauthorized disclosure [of classified information] *ex post*.” *United States v. Bin Laden*, 58 F. Supp. 2d 113, 122 (S.D.N.Y. 1999); *see also Snepp*, 444 U.S. at 514; *United States v. Hashmi*,

621 F. Supp. 2d 76, 83 (S.D.N.Y. 2008) (“The Government has a strong interest in preventing the irreparable harm of disclosing classified information, which might jeopardize national security.”). Defendant knows well the threat posed by disclosing classified information that might benefit the Nation’s adversaries. *See* John Bolton, “Edward Snowden’s leaks are a grave threat to US national security,” *The Guardian*, <https://www.theguardian.com/commentisfree/2013/jun/18/edward-snowden-leaks-grave-threat> (June 18, 2013). Congress does as well, as reflected in its decision to criminalize the unauthorized disclosure of classified information. *See, e.g.*, 18 U.S.C. §§ 641, 793, 794, 798, 952, 1924.

III. The Balance of Equities and Public Interest Factors Also Weigh In Favor of an Injunction

“The final two factors in the Court’s analysis of a request for preliminary relief [are] the balance of equities and the public interest.” *U.S. Ass’n of Reptile Keepers, Inc. v. Jewell*, 103 F. Supp. 3d 133, 163 (D.D.C. 2015). These two factors “merge” in cases where one of the parties is the Government. *Cf. Nken v. Holder*, 556 U.S. 418, 435 (2009). This is particularly true in the context of the possible disclosure of classified information, where the public interest is served by ensuring that classified information vital to our nation’s security is protected from either intentional or inadvertent disclosure.

In evaluating the equities, the Court is to “balance the competing claims of injury and . . . consider the effect on each party of the granting or withholding of the requested relief.” *Winter*, 555 U.S. at 24 (internal quotation marks omitted). Here, the effect on the national security, the responsibility for which is entrusted to the Government, is immense: the manuscript—even as revised—contains instances of information that, if disclosed, reasonably could be expected to cause serious damage, or exceptionally grave damage, to the national security of the United States—and Mr. Ellis concluded that release of certain passages “will damage the national security

of the United States.” *See* Ellis Decl. ¶¶ 19, 22; *see also* Ratcliffe Decl. ¶¶ 6-7; Evanina Decl. ¶ 6; Nakasone Decl. ¶ 8. As discussed above, *see supra* Part II, this kind of harm is not reversible or remediable once it occurs. In balancing the equities, the Court must “pay particular regard for the[se] public consequences” *Winter*, 555 U.S. at 7. In contrast, any harm to Defendant is merely a delay of the publication of his book for the duration of the preliminary injunction (*i.e.*, until the Court can render a decision on the merits of the claims raised by the United States), or until Defendants removes the remaining classified information from the manuscript. In fact, that delay need only encompass the time required to complete the very pre-publication review process that Defendant voluntarily commenced. And any concern Defendant raises about the effect of an injunction on his ability to speak is diminished, if not altogether eliminated, by the fact that Defendant voluntarily agreed to condition his right to speak on securing a determination from the Government that what he wanted to say would not reveal the classified information he was sworn to protect. Defendant’s interest in disregarding that agreement does not outweigh the government’s substantial interest in adhering to it. At bottom, any delay is simply the consequence of Defendant’s voluntary decision to accept a position of confidence and trust as National Security Advisor to the President and to agree to the contractual obligations attendant to that position.

Permitting the final resolution of the instant dispute will further the Government’s interest and the broader public interest in the observance of proper procedures to control national security information and reduce the possibility of serious damage to the national security. As against an interim delay in Defendant’s ability to reap the financial rewards from trading on the confidential information he learned in his position of public trust, the merged public-interest and balance-of-equities prongs overwhelmingly favor the requested injunction.

IV. The Injunction Should Provide Full Relief to the United States

For the reasons discussed above, the United States is entitled to an injunction barring Defendant from publishing the book. To ensure that the injunction cannot be circumvented, the injunction should also prohibit the Defendant from proceeding with the publication of his book in any form or media; require Defendant to notify his publisher that the book contains classified information that he was not authorized to disclose; instruct his publisher to delay the release date of the book; and to instruct his publisher to take any and all available steps to retrieve and destroy any copies of the book that may be in the possession of any third party. The Court should further enjoin Defendant from taking any additional steps towards publicly disclosing classified information without first obtaining authorization from the United States through the prepublication review process.

Furthermore, if this Court enjoins Defendant from distributing his book until he receives written authorization after the conclusion of the government's prepublication review, then that injunction should also bind his publisher, Simon & Schuster.

Under Federal Rule of Civil Procedure 65(d)(2), an injunction binds not only "the parties" but also their "officers, agents, servants, employees, and attorneys," and all "other persons who are in active concert or participation with" them and who have "actual notice" of the injunction. This rule "is derived from the common law doctrine that a decree of injunction not only binds the parties defendant but also those identified with them in interest, in 'privity' with them, represented by them or subject to their control." *Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 14 (1945). It provides, "[i]n essence[,] . . . that defendants may not nullify a decree by carrying out prohibited acts through aiders and abettors, although they were not parties to the original proceeding." *Id.*; *see also Marshak v. Treadwell*, 595 F.3d 478, 486 (3d Cir. 2009) ("non-parties 'guilty of aiding or

abetting or acting in concert with a named defendant or his privy in violating the injunction may be held in contempt.”” (quoting *Savarese v. Agriss*, 883 F.2d 1194, 1209 (3d Cir. 1989)).

Under these principles, when the producer of a product is enjoined from distributing it, courts have subjected the product’s distributors to the same injunction. For example, in *Aevoe Corp. v. AE Tech Co.*, 727 F.3d 1375 (Fed. Cir. 2013), the Federal Circuit explained that the distributor of an infringing product—which obtained the product from the infringing producer and sold it in the marketplace—was “‘acting in concert’ with [the producer] in connection with the resale of” the product and thus was bound by an injunction against the sale of the product. *Id.* at 1384. “Failure to enjoin” the distributor’s conduct, the court explained, “would thwart the purposes of that injunction.” *Id.*; see also, e.g., *CBS, Inc. v. PrimeTime 24 Joint Venture*, 9 F. Supp. 2d 1333, 1325 (S.D. Fla. 1998) (distributors were bound by an injunction because, “[i]f the injunction did not apply to [them], the injunction would be effectively nullified”). That basic principle of federal remedies applies equally where the product at issue is a book, because the Free Speech Clause does not entitle book sellers to special exemptions from the application of general, speech-neutral laws such as Rule 65. See *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 707 (1986) (“[T]he First Amendment is not implicated by the enforcement of a public health regulation of general application against the physical premises in which respondents happen to sell books.”); see also *Branzburg v. Hayes*, 408 U.S. 665, 682-83 (1972) (“[O]therwise valid laws serving substantial public interests may be enforced against the press as against others, despite the possible burden that may be imposed.”); cf. *Bartnicki v. Vopper*, 532 U.S. 514, 526-27 (2001) (applying First Amendment scrutiny to suit against recipient of unlawfully obtained information under a statute that specifically regulated the disclosure and use of such information and thus was not speech-neutral, although it was content-neutral in certain applications).

These principles subject Simon & Schuster to any injunction against Defendant's distribution of his book. As in *Aevoe*, Simon & Schuster is the exclusive commercial distributor of Defendant's book and obtained the book exclusively from him. Defendant can properly be enjoined from unlawfully disseminating the book to the public, *see supra* pp. 23–26, and he therefore cannot be permitted to circumvent that injunction by unlawfully delivering the manuscript to Simon & Schuster before an injunction is entered—indeed, before press reports even revealed that he and Simon & Schuster intended to release the book prior to the completion of the prepublication review process.⁶

* * *

⁶ Commercial resellers further down the distribution chain, such as booksellers, likewise would be subject to the injunction under Rule 65(d) once they have actual notice of it, as Simon & Schuster does.

CONCLUSION

For the foregoing reasons, the Court should grant the motion for a temporary restraining order and preliminary injunction. A proposed order accompanies this motion.

Dated: June 17, 2020

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

MICHAEL SHERWIN
Acting United States Attorney

ETHAN P. DAVIS
Principal Deputy Assistant Attorney General

DAVID M. MORRELL
Deputy Assistant Attorney General

ALEXANDER K. HAAS
Director
Federal Programs Branch

/s/ Daniel F. Van Horn

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/s/ Michael J. Gerardi

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Counsel for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:20-cv-01580-RCL
)	
JOHN R. BOLTON,)	
)	
Defendant.)	
)	
)	

DECLARATION OF MICHAEL J. ELLIS

I, Michael J. Ellis, declare the following to be true and correct:

1. I serve as Senior Director for Intelligence Programs at the National Security Council (NSC). I have held this position since March 1, 2020. This declaration is based on my personal knowledge and information I received in my official capacity. I submit this declaration in support of the United States Government's motion for a preliminary injunction in the above captioned matter.

2. I have worked in a variety of national security positions for more than 12 years. In my current position, I am responsible for planning, directing, and coordinating the development of policies related to the intelligence activities of the United States Government. As part of my duties, I support the Assistant to the President for National Security Affairs in advising the President, representing the NSC in senior-level meetings with executive departments and agencies, and engaging in negotiations with representatives of foreign governments on sensitive national security issues. In my

current position, I am also responsible for, among other things, protecting classified information against unauthorized disclosure.

3. Before starting in my current position, I served from February 2017 to February 2020 as Special Assistant to the President, Senior Associate Counsel to the President, and Deputy Legal Advisor at the NSC. Previously, I served from August 2013 to February 2017 in a number of positions on the staff of the U.S. House Permanent Select Committee on Intelligence, including as General Counsel of the Committee.

4. Since September 2007, I have served as an intelligence officer in the U.S. Navy Reserve. I currently hold the rank of Lieutenant Commander, and my assignments have included the Defense Intelligence Agency, the Joint Staff Directorate for Intelligence (J-2), the Office of Naval Intelligence, and the U.S. Africa Command Intelligence Directorate (J-2), where I received security and foreign disclosure training.

5. The National Security Act of 1947, as amended, established the NSC to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security. Under National Security Presidential Memorandum (NSPM)-4, the Assistant to the President for National Security Affairs and the staff of the NSC advise the President, convene meetings to develop and implement national security policies by executive departments and agencies, and help coordinate the national-security-related policies of the United States.

6. My current position and duties, including policy responsibilities related to the intelligence activities of the United States Government, necessarily require me to have extensive knowledge about the full range of United States Government intelligence activities, as well as related confidential deliberations on matters of national security and

foreign policy, that is more comprehensive than the knowledge of most other NSC officials. Additionally, I routinely attend senior-level meetings related to national security and foreign policy decisions, including meetings of the Principals Committee and Deputies Committee convened under NSPM-4; convene Policy Coordination Committee meetings on intelligence activities related to national security and foreign policy decisions; and provide advice to the Assistant to the President for National Security Affairs and other senior White House officials on national security and foreign policy decisions. As such, I am aware of intelligence information and internal foreign policy deliberations and developments that others of the NSC staff are not and have a broader base of knowledge than others to identify and determine information that is classified.

7. Most others of the NSC staff do not have access to the same quantity of classified intelligence reporting that I do. Neither do most NSC staff routinely attend senior-level meetings related to national security and foreign policy decisions, as I do.

8. The President's Order of December 29, 2009 delegated TOP SECRET Original Classification Authority to the Assistant to the President for National Security Affairs. Under a delegation of authority from the Assistant to the President for National Security Affairs dated March 29, 2017, I am a TOP SECRET Original Classification Authority. This means that I am authorized to classify information up to the TOP SECRET level. I have held Original Classification Authority since March 1, 2020. I can also assess the current and proper classification of information at the TOP SECRET/Sensitive Compartmented Information (SCI) level.

9. My understanding is that another Original Classification Authority within the NSC staff, Ms. Ellen Knight, had reviewed the draft manuscript submitted by John Bolton (Author) and had been engaged in an ongoing process with the Author regarding the need to remove classified information from the draft manuscript. I understand that Ms. Knight believed that the manuscript as revised had removed all classified information.

10. After Ms. Knight completed her review of the draft manuscript, the Assistant to the President for National Security Affairs reviewed the manuscript and concluded that it still appeared to contain classified information. For this reason, the Assistant to the President for National Security Affairs asked me, as the Senior Director for Intelligence Programs, to review the manuscript.

11. On Saturday, May 2, 2020, I began my review of the draft manuscript that reflected Ms. Knight's latest guidance to the Author.

12. I completed my initial review of the draft manuscript on Tuesday, June 9, 2020.

13. I understand that neither Ms. Knight nor her staff has provided the Author or his counsel written authorization to publish the manuscript, and that the prepublication review process remains ongoing.

14. Based on my professional training and experience, I have determined that the manuscript in its present form contains certain passages—some up to several paragraphs in length—that contain classified national security information.

15. Based on my professional training and experience, it is my opinion that certain passages of the manuscript, if made public, reasonably could be expected to cause

damage, serious damage, or exceptionally grave damage to the national security of the United States. In this Declaration, I describe the regulatory basis for classifying national security information. In a classified declaration submitted with this declaration, solely for *ex parte*, *in camera* review, I describe six examples of passages in the manuscript that require protection under the national security information classification system, and the reasons for classifying each example. Because the prepublication review of the manuscript remains ongoing, these examples are not an exhaustive list of the passages in the manuscript that contain classified information. These descriptions of the examples, as well as my reasons for determining that they are classified, are being provided in a classified declaration because to disclose them on the public record would expose classified information, and, as a result, damage national security.

16. Section 1.1(a) of Executive Order 13526, "Classified National Security Information," provides that information may be originally classified if: (1) an original classification authority is classifying the information; (2) the information is owned by, produced by or for, or is under the control of the United States Government; (3) the information falls within one or more of the categories of information listed in section 1.4 of the Executive Order; and (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, and the original classification authority is able to identify or describe the damage.

17. Section 1.4 of the Executive Order provides that information shall not be considered for classification unless it pertains to one or more of eight specifically

enumerated categories of information. The examples described in my classified declaration fall within the following categories of section 1.4:

- (a) military plans, weapons systems, or operations;
- (b) foreign government information;
- (c) intelligence activities (including covert action), intelligence sources or methods, or cryptology; and
- (d) foreign relations or foreign activities of the United States, including confidential sources.

18. Section 1.1(d) of the Executive Order provides that the unauthorized disclosure of foreign government information is presumed to cause damage to the national security.

19. The examples from the manuscript described in my classified declaration are all classified at the SECRET, TOP SECRET, or TOP SECRET/SCI level. The manuscript also contains information classified at the CONFIDENTIAL level. Section 1.2 of Executive Order 13526 describes classification at the CONFIDENTIAL level as information that “the unauthorized disclosure of which reasonably could be expected to cause damage to the national security,” classification at the SECRET level as information that “the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security,” and classification at the TOP SECRET level as information that “the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security.” Intelligence Community Directive 703 defines SCI as “a subset of CNI [classified national intelligence] concerning or derived from intelligence sources, methods or analytical processes that is

required to be protected within formal access control systems established by the DNI [Director of National Intelligence].”

20. The information identified in the examples from the manuscript is owned by the United States Government. Moreover, it is information specifically covered by the nondisclosure agreements signed by the Author, which I have reviewed. The Standard Form 312, Classified Information Nondisclosure Agreement states, in relevant part, that “I understand that all classified information to which I have access or may obtain access by signing this Agreement is now and will remain the property of, or under the control of the United States Government unless and until otherwise determined by an authorized official or final ruling of a court of law.” The Form 4414, Sensitive Compartmented Information Nondisclosure Agreement states, in relevant part, that “In consideration of being granted access to SCI and of being assigned or retained in a position of special confidence and trust requiring access to SCI, I hereby agree to submit for security review by the Department or Agency that last authorized my access to such information or material, any writing or other preparation in any form, including a work of fiction, that contains or purports to contain any SCI or description of activities that produce or relate to SCI or that I have reason to believe are derived from SCI, that I contemplate disclosing to any person not authorized to have access to SCI or that I have prepared for public disclosure. I understand and agree that my obligation to submit such preparations for review applies during the course of my access to SCI and thereafter, and I agree to make any required submissions prior to discussing the preparation with, or showing it to, anyone who is not authorized to have access to SCI. I further agree that I will not disclose the contents of such preparation with, or show it to, anyone who is not

authorized to have access to SCI until I have received written authorization from the Department or Agency that last authorized my access to SCI that such disclosure is permitted.” Based on my review, the draft manuscript contains information subject to both the Standard Form 312 and the Form 4414 signed by the Author.

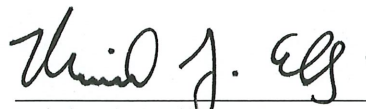
21. All of the examples described in my classified declaration remain classified.

22. In summary, it is my judgment that certain passages in the draft manuscript in its present form are properly classified in accordance with E.O. 13526 and, if disclosed, will damage the national security of the United States.

23. Attached as Exhibit M is a true and correct copy of a letter I sent to the Author, dated June 16, 2020. The letter states that “your manuscript in its current form is still not approved for public release and will not be approved until the pre-publication review process is complete. The manuscript still contains classified information. The review process required by the agreements you signed has not been completed.” I refer the Court to Exhibit M for a complete and accurate statement of its contents.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed this 17th day of June, 2020 in the City of Washington, District of Columbia.



Michael J. Ellis

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN R. BOLTON,

Defendant.

Civil Action No. 20-cv-1580

DECLARATION OF WILLIAM R. EVANINA

I, William R. Evanina, declare under penalty of perjury that the following is true and correct:

1. I am the Director of the National Counterintelligence and Security Center and have led this organization since June 2, 2014. And, on May 6, 2020, I was confirmed by the Senate into the position. In this role, I lead Counterintelligence for the United States Government and am the principal counterintelligence and security advisor to the Director of National Intelligence. I am responsible for leading and supporting the counterintelligence and security activities of the U.S. Intelligence Community, the U.S. Government, and U.S. private sector entities at risk from intelligence collection or attack by foreign adversaries. I am also responsible for overseeing production of the President's National Counterintelligence Strategy of the United States of America. I have served in the federal government for over 30 years, and have been a member of the Senior Executive Service since 2013.

2. I chair both the National Counterintelligence Policy Board and the Allied Security and Counterintelligence Forum of senior counterintelligence and security leaders

from Australia, Canada, New Zealand, and the United Kingdom. I also serve as Chair of NATO's Counterintelligence Panel.

3. Previously, I served as the Chief of the Central Intelligence Agency's Counterespionage Group. Under my leadership, the Intelligence Community agencies identified, prevented, and neutralized espionage-related activities by foreign intelligence services. I also have 23 years of experience as a Special Agent with the Federal Bureau of Investigation (FBI). Among other positions held during my tenure with the FBI, I served as the Assistant Special Agent in Charge of the FBI's Washington Field Office, where I led the Counterintelligence and Counterterrorism Divisions. I also served on the FBI's Joint Terrorism Task Force, where I was selected as a Supervisory Special Agent and received the FBI Director's Award for Excellence.

4. This declaration is based on my personal knowledge and information provided to me in my official capacity.

5. I have reviewed several passages from what I understand is the current version of the draft manuscript authored by the former Assistant to the President for National Security Affairs, John Bolton. I have also reviewed the classified declaration submitted by Michael Ellis, Senior Director for Intelligence Programs at the National Security Council detailing why these passages are currently and properly classified.

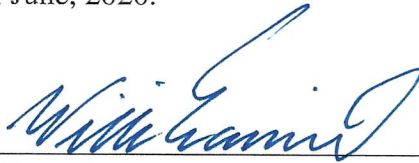
6. Based on my background, knowledge, and experience, as well as information available to me as Director of the National Counterintelligence and Security Center, it is my judgment that the information contained in the passages I have reviewed is precisely what foreign adversaries' intelligence services seek to target and collect. The unauthorized disclosure of this information could reasonably be expected to enable

foreign threat actors to cause serious, and sometimes grave, damage to our national and economic security.

7. I have submitted a classified declaration with this declaration for *ex parte*, *in camera* review to explain the passages that I have reviewed and my reasons for determining that public disclosure of the passage can reasonably be expected to enable foreign threat actors to cause at least serious damage to the national security of the United States.. This information is being provided in a classified declaration because to disclose them on the public record would expose classified information, and, as a result, damage national security.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed this 17th day of June, 2020.

A handwritten signature in blue ink, appearing to read "William R. Evanina", written over a horizontal line.

William R. Evanina
Director, National Counterintelligence and Security Center

Affairs (National Security Advisor), including a Classified Information Nondisclosure Agreement, titled Standard Form 312 (“SF 312”), and two Sensitive Compartmented Information (“SCI”) Nondisclosure Agreements, each titled Form 4414 (“Form 4414”). SF 312 states, “I hereby agree that I will never divulge classified information to anyone unless: (a) I have officially verified that the recipient has been properly authorized by the United States Government to receive it; or (b) I have been given prior notice of authorization from the United States Government Department or Agency (hereinafter Department or Agency) responsible for the classification of information or last granting me a security clearance that such disclosure is permitted.” SF 312 ¶ 3. Form 4414 states, “I further agree that I will not disclose the contents of such preparation with, or show it to, anyone who is not authorized to have access to SCI until I have received written authorization from the Department or Agency that last authorized my access to SCI that such disclosure is permitted.” Form 4414 ¶ 4. I refer the Court to Exhibit A for a complete and accurate statement of its contents.

3. Attached as Exhibit B is a true and correct copy of a Memorandum for Ambassador John R. Bolton, National Security Advisor, from Scott Gast, Senior Counsel to the President, regarding post-employment obligations, dated September 13, 2019. The memorandum states that, “You also may not use or disclose nonpublic information in any post-employment teaching, speaking, or writing.” The memorandum further states that, “Nonpublic information includes information that (1) is exempt from disclosure by statute, Executive Order or regulations; (2) is designated as confidential or classified; or (3) has not been disseminated to the general public and is not [sic] authorized to be made available to the public upon request.” I refer the Court to Exhibit B for a complete and accurate statement of its contents.

4. Attached as Exhibit C is a true and correct copy of a letter from John A. Eisenberg, Assistant to the President, Deputy Counsel to the President and Legal Advisor to the NSC, to Defendant, dated September 10, 2019. The letter states, “I write to remind you of your continuing obligations and responsibilities to protect all confidential, privileged, and classified information, and to provide for the safe return of all government property that you received in connection with your position at the Executive Office of the President (‘EOP’).” I refer the Court to Exhibit C for a complete and accurate statement of its contents.

5. Attached as Exhibit D is a true and correct copy of a letter from Charles J. Cooper to Ellen Knight, Senior Director for Records, Access, and Information Security Management, dated December 30, 2019. The letter states that Mr. Cooper, on behalf of Defendant, was “submitting [Defendant’s] manuscript out of an abundance of caution” for prepublication security review, “as contemplated by the nondisclosure agreements that [Defendant] entered, commencing with those of April 5, 2018 immediately prior to his entry on duty.” I refer the Court to Exhibit D for a complete and accurate statement of its contents.

6. Attached as Exhibit E is a true and correct copy of a letter from Ms. Knight to Mr. Cooper, dated January 23, 2020. The letter states, “As we discussed, the National Security Council (NSC) Access Management directorate has been provided the manuscript submitted by your client, [Defendant], for prepublication review. Based on our preliminary review, the manuscript appears to contain significant amounts of classified information.” I refer the Court to Exhibit E for a complete and accurate statement of its contents.

7. Attached as Exhibit F is a true and correct copy of a letter from Ms. Knight to Mr. Cooper, dated February 7, 2020. The letter states that, “Given the volume of classified information currently contained in the draft, [Defendant] should modify and revise the

manuscript to remove all classified information and resubmit it to us for review. To further the iterative review process, it would be most efficient for me to meet with your client to review each instance of classified information in detail and, as necessary, assist in the prioritization of any particular portions. I am available any day next week.” I refer the Court to Exhibit F for a complete and accurate statement of its contents.

8. Attached as Exhibit G is a true and correct copy of a letter from Ms. Knight to Mr. Cooper, dated February 24, 2020. The letter describes a meeting between Defendant and Ms. Knight on February 21, 2020. The letter states that, “During our meeting, which lasted four hours and was most productive, I discussed with your client our use of the classification standards and categories found in Executive Order 13526, ‘Classified National Security Information,’ to identify classified information found in the draft manuscript, and he appeared to acknowledge the need to revise the manuscript to address our concerns regarding classified information.” The letter further states that, “It became apparent during our meeting that it would be most helpful to the process if we hold one or more follow-on meetings.” I refer the Court to Exhibit G for a complete and accurate statement of its contents.

9. Attached as Exhibit H is a true and correct copy of an e-mail from Ms. Knight to Defendant, dated March 27, 2020. The letter states, “I appreciate your efforts to address the classification concerns in the latest draft version you submitted. Many of the changes are satisfactory. However, additional edits are required to ensure the protection of national security information.” I refer the Court to Exhibit H for a complete and accurate statement of its contents.

10. Attached as Exhibit I is a true and correct copy of an e-mail from Ms. Knight to Defendant, dated May 7, 2020. The letter states, “I do not have any new information to provide

at this time. The process remains ongoing. I will reach out as soon as there is an update to provide.” I refer the Court to Exhibit I for a complete and accurate statement of its contents.

11. Attached as Exhibit J is a true and correct copy of a letter from Mr. Eisenberg to Mr. Cooper, dated June 8, 2020. The letter states, “As we explained on January 23, February 7, February 24, and March 27, 2020, until the prepublication review process is complete and [Defendant] receives the necessary authorization at the conclusion of that process, he may not publish or disseminate the manuscript.” I refer the Court to Exhibit J for a complete and accurate statement of its contents.

12. Attached as Exhibit K is a true and correct copy of a letter from Mr. Cooper to Mr. Eisenberg, dated June 10, 2020. The letter states, “In reliance on Ms. Knight’s assurances that his manuscript contained no classified information, that she had no further changes to his manuscript, and that she would attempt to deliver promptly the pro-forma closing letter, and after hearing *nothing* for weeks in response to his urgent requests for the closing letter, Ambassador Bolton and his publisher, Simon & Schuster, moved forward with publication of his book. The book has now been printed, bound, and shipped to distributors across the country. Ambassador Bolton has no authority to stop the book from being made available to the public on June 23.” I refer the Court to Exhibit K for a complete and accurate statement of its contents.

13. Attached as Exhibit L is a true and correct copy of a letter from Mr. Eisenberg to Mr. Cooper, dated June 11, 2020. The letter states that, “[Defendant] is well aware that the manuscript still contains classified information, because, among other things, it includes information that he himself classified and designated for declassification only after the lapse of twenty-five years.” It further states, “[Defendant] remains under an obligation to stop the dissemination of the manuscript, which still contains classified information that belongs to the

United States Government, the unauthorized disclosure of which could reasonably be expected to cause serious damage to national security.” I refer the Court to Exhibit L for a complete and accurate statement of its contents.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed this 16th day of June, 2020 in the City of Washington, District of Columbia.

A handwritten signature in black ink, appearing to read 'Matthias Mitman', written over a horizontal line.

MATTHIAS MITMAN

UNCLASSIFIED

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:20-cv-01580-RCL
)	
JOHN R. BOLTON,)	
)	
Defendant.)	
)	
)	

DECLARATION OF PAUL M. NAKASONE

(U) I, Paul M. Nakasone, make the following Declaration pursuant to 28 U.S.C. § 1746, and state that under penalty of perjury the following is true and correct to the best of my knowledge and belief:

1. (U) I am the Director of the National Security Agency (NSA) and have served in that position since May 4, 2018. In my role as NSA Director, I am responsible the collection and maintenance of foreign Signals Intelligence (SIGINT). I am also the Commander of United States Cyber Command and Chief of the Central Security Service. I am a General in the U.S. Army and previously commanded U.S. Army Cyber Command. I commanded the Cyber National Mission Force at U.S. Cyber Command, as well as a company, battalion, and brigade; and I have served as the senior intelligence officer at the battalion, division, and corps levels. I have held command and staff positions across all levels of the Army, with assignments in the United States, the Republic of Korea, Iraq,

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and Afghanistan. On two occasions, I served as a staff officer on the Joint Chiefs of Staff.

2. (U) As the Director of the NSA, I am responsible for planning, organizing, directing, and managing all NSA-assigned missions and resources. I am accountable to the Director of National Intelligence ("DNI"), the Under Secretary of Defense for Intelligence, and the Department of Defense Chief Information Officer. Further, by specific charge of the President and the DNI, I am ultimately responsible for protecting NSA activities and intelligence sources and methods. I have been designated an original TOP SECRET classification authority under Executive Order No. 13526, 75 Fed. Reg. 707 (Jan. 5, 2010), and Department of Defense Manual No. 5200.1, Vol. 1, Information and Security Program (Feb. 24, 2012).
3. (U) The NSA was established by Presidential Directive in 1952 as a separately organized agency within the Department of Defense. The NSA's foreign intelligence mission includes the responsibility to collect, process, analyze, produce, and disseminate signals intelligence ("SIGINT") information for (a) national foreign intelligence purposes, (b) counterintelligence purposes, and (c) the support of military operations. See Executive Order 12333, § 1.7(c), as amended.
4. (U) SIGINT consists of three subcategories: (1) communications intelligence ("COMINT"); (2) electronic intelligence ("ELINT"); and (3) foreign instrumentation signals intelligence ("FISINT"). COMINT is defined as "all procedures and methods used in the interception of communications and the obtaining of information from such communications by other than the intended recipients." 18 U.S.C. § 798. COMINT includes information derived from the interception of foreign and international

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communications, such as voice, facsimile, and computer-to-computer information conveyed via a number of means (e.g., microwave, satellite links, HF/VHF broadcast). ELINT is technical intelligence information derived from foreign non-communications electromagnetic radiations except atomic detonation or radioactive sources—in essence, radar systems affiliated with military weapons platforms (e.g., anti-ship) and civilian systems (e.g., shipboard and air traffic control radars). FISINT is derived from the intercept of foreign electromagnetic emissions associated with the testing and operational deployment of non-U.S. aerospace, surface, and subsurface systems.

5. (U) The NSA's SIGINT responsibilities include establishing and operating an effective unified organization to conduct SIGINT activities set forth in E.O. 12333, § 1.7(c)(2), as amended. In performing its SIGINT mission, the NSA has developed a sophisticated worldwide SIGINT collection network that acquires, among other things, foreign and international electronic communications and related information. The technological infrastructure that supports the NSA's foreign intelligence information collection network has taken years to develop at a cost of billions of dollars and untold human effort. It relies on sophisticated electronic data collection and processing technology.
6. (U) There are two primary reasons for gathering and analyzing foreign intelligence information. The first, and most important, is to gain information required to direct U.S. resources as necessary to counter external threats and in support of military operations. The second reason is to obtain information necessary to the formulation and promotion of U.S. foreign policy. Foreign intelligence information provided by the NSA is thus relevant to a wide range of important issues, including military order of battle; threat

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warnings and readiness; cyber-security; arms proliferation; international terrorism; counter-intelligence; and foreign aspects of international narcotics trafficking.

7. (U) The NSA's ability to produce foreign intelligence information depends on its access to foreign and international electronic communications. Foreign intelligence produced by COMINT activities is an extremely important part of the overall foreign intelligence information available to the United States and is often unobtainable by other means. Public disclosure of either the capability to collect specific communications or the substance of the information derived from such collection itself can easily alert targets to the vulnerability of their communications. Disclosure of even a single communication holds the potential of revealing intelligence collection techniques that are applied against targets around the world. Once alerted, targets can frustrate COMINT collection by using different or new encryption techniques, by disseminating disinformation, or by utilizing a different communications link. Such evasion techniques may inhibit access to the target's communications and therefore deny the United States access to information crucial to the defense of the United States both at home and abroad. COMINT is provided special statutory protection under 18 U.S.C. § 798, which makes it a crime to knowingly disclose to an unauthorized person classified information "concerning the communication intelligence activities of the United States or any foreign government."
8. (U) At the request of the National Security Council legal advisor, I have reviewed a limited portion of the Defendant's draft manuscript, and have identified classified information in that portion of the manuscript. Compromise of this information could result in the permanent loss of a valuable SIGINT source and cause irreparable damage to the U.S. SIGINT system. Significant manpower and monetary investments have been and

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continue to be made to enable and maintain this capability. Further, exposure of this information could also cause considerable difficulties in U.S. and allied relations with specific nations and other entities. In particular, I have determined that the unauthorized disclosure of the classified information in the draft manuscript reasonably could be expected to result in exceptionally grave damage to the national security of the United States.

9. The information supporting my determination is highly classified and extraordinarily sensitive and cannot be described in an unclassified declaration. Specifically, a portion of the manuscript implicates sensitive information at the TOP SECRET/Sensitive and Compartmented Information (SCI) level. That information should only be disclosed to individuals with the appropriate security clearance and an official need to know the information. In relation to civil proceedings, the disclosure of that information would normally occur only to the assigned District Judge, ex parte and in camera with appropriate security precautions as arranged through the Court Security Office at the Department of Justice with appropriate security precautions in place to ensure that we appropriately safeguard this intelligence information.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed this 17th day of June, 2020 in the City of Washington, District of Columbia.



PAUL M. NAKASONE

UNCLASSIFIED

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

V.

JOHN R. BOLTON,

Defendant.

Civil Action No. 20-cv-1580

DECLARATION OF JOHN L. RATCLIFFE

I, John L. Ratcliffe, make the following Declaration pursuant to 28 U.S.C. § 1746,
and state that under penalty of perjury the following is true and correct to the best of my
knowledge and belief:

1. Currently, I serve as the Director of National Intelligence at the Office of the Director of National Intelligence. In my current position, I oversee all 17 elements of the Intelligence Community, including the Central Intelligence Agency, the National Security Agency, the National Geospatial-Intelligence Agency, the Defense Intelligence Agency, the National Reconnaissance Office, and the intelligence elements of the military services, the Federal Bureau of Investigation, the Department of Treasury, the Department of Energy, the Department of State, the Department of Homeland Security, and the Drug Enforcement Administration.

2. The responsibilities and authorities of the DNI are set forth in the National Security Act of 1947, as amended. *See* 50 U.S.C. § 3024. The National Security Act provides, among other things, that “[t]he Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure.” 50 U.S.C. § 3024(i)(1). Consistent with this

responsibility, the DNI establishes and implements guidelines for the IC for classification of information under applicable law, Executive orders, or other Presidential directives, and access to and dissemination of intelligence. *Id.* § 3024(i)(2)(A), (B). By virtue of my position as DNI, and unless otherwise directed by the President, I have access to all intelligence related to the national security that is collected by any department, agency, or other entities of the United States. *See* 50 U.S.C. § 3024(b); section 1.3(a) of Executive Order 12333, as amended.

3. Prior to assuming my current position, I represented the people of the Fourth District of Texas in the U.S. House of Representatives for three terms. During that time, I served on the House Permanent Select Committee on Intelligence, the House Judiciary Committee, the House Committee on Homeland Security, and the House Committee on Ethics.

4. Prior to serving in the U.S. House of Representatives, from 2007 to 2008, I served as the United States Attorney in the U.S. Attorney's Office for the Eastern District of Texas. From 2005 to 2007, I served as the First Assistant United States Attorney, as well as Chief of the Anti-Terrorism and National Security Section, in the U.S. Attorney's Office for the Eastern District of Texas. In these positions, I managed the investigations and prosecutions of numerous national security and anti-terrorism cases and represented the United States in connection with these cases. I also managed the Department of Justice Joint Terrorism Task Force for the Eastern District of Texas.

5. I have reviewed what I understand to be the draft manuscript submitted by John Bolton (Author) as modified by the Author during the pre-publication review process by the National Security Council (NSC).

6. I have reviewed selected excerpts from the current version of the draft manuscript, identified by the Senior Director for Intelligence Programs at the NSC (Senior Director). In addition, I have reviewed the classified declaration submitted by the Senior

Director. Based on my professional training and experience, as well as the information available to me as Director of National Intelligence, I concur that these passages contain classified national security information.

7. Based on my professional training and experience, as well as the information available to me as Director of National Intelligence, it is my opinion that these passages of the manuscript, if made public, will damage national security. The type of classified information in these passages is the type of information that foreign adversaries of the United States seek to obtain, at great cost, through covert intelligence collection. Unauthorized disclosure of these types of classified information could reveal, in some instances, the limits and, in some instances, the capabilities of U.S. intelligence collection and would cause irreparable damage to national security.

Executed this 17th day of June 2020.



JOHN L. RATCLIFFE

Exhibit A

CLASSIFIED INFORMATION NONDISCLOSURE AGREEMENT**AN AGREEMENT BETWEEN****John Robert Bolton****AND THE UNITED STATES***(Name of Individual - Printed or typed)*

1. Intending to be legally bound, I hereby accept the obligations contained in this Agreement in consideration of my being granted access to classified information. As used in this Agreement, classified information is marked or unmarked classified information, including oral communications, that is classified under the standards of Executive Order 13526, or under any other Executive order or statute that prohibits the unauthorized disclosure of information in the interest of national security, and unclassified information that meets the standards for classification and is in the process of a classification determination as provided in sections 1.1, 1.2, 1.3 and 1.4(e) of Executive Order 13526, or under any other Executive order or statute that requires protection for such information in the interest of national security. I understand and accept that by being granted access to classified information, special confidence and trust shall be placed in me by the United States Government.

2. I hereby acknowledge that I have received a security indoctrination concerning the nature and protection of classified information, including the procedures to be followed in ascertaining whether other persons to whom I contemplate disclosing this information have been approved for access to it, and that I understand these procedures.

3. I have been advised that the unauthorized disclosure, unauthorized retention, or negligent handling of classified information by me could cause damage or irreparable injury to the United States or could be used to advantage by a foreign nation. I hereby agree that I will never divulge classified information to anyone unless: (a) I have officially verified that the recipient has been properly authorized by the United States Government to receive it; or (b) I have been given prior written notice of authorization from the United States Government Department or Agency (hereinafter Department or Agency) responsible for the classification of information or last granting me a security clearance that such disclosure is permitted. I understand that if I am uncertain about the classification status of information, I am required to confirm from an authorized official that the information is unclassified before I may disclose it, except to a person as provided in (a) or (b), above. I further understand that I am obligated to comply with laws and regulations that prohibit the unauthorized disclosure of classified information.

4. I have been advised that any breach of this Agreement may result in the termination of any security clearances I hold; removal from any position of special confidence and trust requiring such clearances; or termination of my employment or other relationships with the Departments or Agencies that granted my security clearance or clearances. In addition, I have been advised that any unauthorized disclosure of classified information by me may constitute a violation, or violations, of United States criminal laws, including the provisions of sections 641, 793, 794, 798, *952 and 1924, title 18, United States Code; *the provisions of section 783(b), title 50, United States Code; and the provisions of the Intelligence Identities Protection Act of 1982. I recognize that nothing in this Agreement constitutes a waiver by the United States of the right to prosecute me for any statutory violation.

5. I hereby assign to the United States Government all royalties, remunerations, and emoluments that have resulted, will result or may result from any disclosure, publication, or revelation of classified information not consistent with the terms of this Agreement.

6. I understand that the United States Government may seek any remedy available to it to enforce this Agreement including, but not limited to, application for a court order prohibiting disclosure of information in breach of this Agreement.

7. I understand that all classified information to which I have access or may obtain access by signing this Agreement is now and will remain the property of, or under the control of the United States Government unless and until otherwise determined by an authorized official or final ruling of a court of law. I agree that I shall return all classified materials which have, or may come into my possession or for which I am responsible because of such access: (a) upon demand by an authorized representative of the United States Government; (b) upon the conclusion of my employment or other relationship with the Department or Agency that last granted me a security clearance or that provided me access to classified information; or (c) upon the conclusion of my employment or other relationship that requires access to classified information. If I do not return such materials upon request, I understand that this may be a violation of sections 793 and/or 1924, title 18, United States Code, a United States criminal law.

8. Unless and until I am released in writing by an authorized representative of the United States Government, I understand that all conditions and obligations imposed upon me by this Agreement apply during the time I am granted access to classified information, and at all times thereafter.

9. Each provision of this Agreement is severable. If a court should find any provision of this Agreement to be unenforceable, all other provisions of this Agreement shall remain in full force and effect.



10. These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.

(Continue on reverse.)

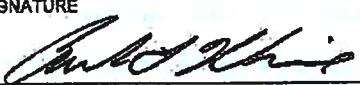
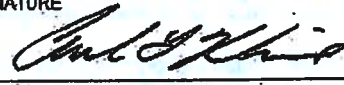
11. These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 13526 (75 Fed. Reg. 707), or any successor thereto section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); section 2302(b) (8) of title 5, United States Code, as amended by the Whistleblower Protection Act of 1989 (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); sections 7(c) and 8H of the Inspector General Act of 1978 (5 U.S.C. App.) (relating to disclosures to an inspector general, the inspectors general of the Intelligence Community, and Congress); section 103H(g)(3) of the National Security Act of 1947 (50 U.S.C. 403-3h(g)(3)) (relating to disclosures to the inspector general of the Intelligence Community); sections 17(d)(5) and 17(e)(3) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403g(d)(5) and 403g(e)(3)) (relating to disclosures to the Inspector General of the Central Intelligence Agency and Congress); and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, *952 and 1924 of title 18, United States Code, and *section 4 (b) of the Subversive Activities Control Act of 1950 (50 U.S.C. section 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by said Executive Order and listed statutes are incorporated into this agreement and are controlling.

12. I have read this Agreement carefully and my questions, if any, have been answered. I acknowledge that the briefing officer has made available to me the Executive Order and statutes referenced in this agreement and its implementing regulation (32 CFR Part 2001, section 2001.80(d)(2)) so that I may read them at this time, if I so choose.

* NOT APPLICABLE TO NON-GOVERNMENT PERSONNEL SIGNING THIS AGREEMENT.

SIGNATURE	DATE	SOCIAL SECURITY NUMBER (See Notice below)
	04/05/2018	
ORGANIZATION (IF CONTRACTOR, LICENSEE, GRANTEE OR AGENT, PROVIDE: NAME, ADDRESS, AND, IF APPLICABLE, FEDERAL SUPPLY CODE NUMBER) (Type or print)		

EOP/WHO

WITNESS		ACCEPTANCE	
THE EXECUTION OF THIS AGREEMENT WAS WITNESSED BY THE UNDERSIGNED.		THE UNDERSIGNED ACCEPTED THIS AGREEMENT ON BEHALF OF THE UNITED STATES GOVERNMENT.	
SIGNATURE	DATE	SIGNATURE	DATE
	04/05/2018		04/05/2018
NAME AND ADDRESS (Type or print)		NAME AND ADDRESS (Type or print)	
Carl L. Kline 725 17th Street, NW Washington, DC 20503		Carl L. Kline 725 17th Street, NW Washington, DC 20503	

SECURITY DEBRIEFING ACKNOWLEDGEMENT

I reaffirm that the provisions of the espionage laws, other federal criminal laws and executive orders applicable to the safeguarding of classified information have been made available to me; that I have returned all classified information in my custody; that I will not communicate or transmit classified information to any unauthorized person or organization; that I will promptly report to the Federal Bureau of Investigation any attempt by an unauthorized person to solicit classified information, and that I (have) (have not) (strike out inappropriate word or words) received a security debriefing.

SIGNATURE OF EMPLOYEE	DATE
NAME OF WITNESS (Type or print)	SIGNATURE OF WITNESS

NOTICE: The Privacy Act, 5 U.S.C. 552a, requires that federal agencies inform individuals, at the time information is solicited from them, whether the disclosure is mandatory or voluntary, by what authority such information is solicited, and what uses will be made of the information. You are hereby advised that authority for soliciting your Social Security Number (SSN) is Public Law 104-134 (April 26, 1996). Your SSN will be used to identify you precisely when it is necessary to certify that you have access to the information indicated above or to determine that your access to the information indicated has been terminated. Furnishing your Social Security Number, as well as other data, is voluntary, but failure to do so may delay or prevent you being granted access to classified information.

UNCLASSIFIED

Apply appropriate classification level and any control markings (if applicable) when filled in.

(U) SENSITIVE COMPARTMENTED INFORMATION NONDISCLOSURE AGREEMENT

An Agreement between

John Robert Bolton

and the United States.

(Name - Printed or Typed)

1. (U) Intending to be legally bound, I hereby accept the obligations contained in this Agreement in consideration of my being granted access to information or material protected within Special Access Programs, hereinafter referred to in this Agreement as Sensitive Compartmented Information (SCI). I have been advised that SCI involves or derives from intelligence sources or methods and is classified or is in process of a classification determination under the standards of Executive Order 13526 or other Executive order or statute. I understand and accept that by being granted access to SCI, special confidence and trust shall be placed in me by the United States Government.
2. (U) I hereby acknowledge that I have received a security indoctrination concerning the nature and protection of SCI, including the procedures to be followed in ascertaining whether other persons to whom I contemplate disclosing this information or material have been approved for access to it, and I understand these procedures. I understand that I may be required to sign subsequent agreements upon being granted access to different categories of SCI. I further understand that all my obligations under this agreement continue to exist whether or not I am required to sign such subsequent agreements.
3. (U) I have been advised that the unauthorized disclosure, unauthorized retention, or negligent handling of SCI by me could cause irreparable injury to the United States or be used to advantage by a foreign nation. I hereby agree that I will never divulge anything marked as SCI or that I know to be SCI to anyone who is not authorized to receive it without prior written authorization from the United States Government department or agency (hereinafter Department or Agency) that last authorized my access to SCI. I understand that it is my responsibility to consult with appropriate management authorities in the Department or Agency that last authorized my access to SCI, whether or not I am still employed by or associated with that Department or Agency or a contractor thereof, in order to ensure that I know whether information or material within my knowledge or control that I have reason to believe might be, or related to or derived from SCI, is considered by such Department or Agency to be SCI. I further understand that I am also obligated by law and regulation not to disclose any classified information or material in an unauthorized fashion.
4. (U) In consideration of being granted access to SCI and of being assigned or retained in a position of special confidence and trust requiring access to SCI, I hereby agree to submit for security review by the Department or Agency that last authorized my access to such information or material, any writing or other preparation in any form, including a work of fiction, that contains or purports to contain any SCI or description of activities that produce or relate to SCI or that I have reason to believe are derived from SCI, that I contemplate disclosing to any person not authorized to have access to SCI or that I have prepared for public disclosure. I understand and agree that my obligation to submit such preparations for review applies during the course of my access to SCI and thereafter, and I agree to make any required submissions prior to discussing the preparation with, or showing it to, anyone who is not authorized to have access to SCI. I further agree that I will not disclose the contents of such preparation with, or show it to, anyone who is not authorized to have access to SCI until I have received written authorization from the Department or Agency that last authorized my access to SCI that such disclosure is permitted.
5. (U) I understand that the purpose of the review described in paragraph 4 is to give the United States a reasonable opportunity to determine whether the preparation submitted pursuant to paragraph 4 sets forth any SCI. I further understand that the Department or Agency to which I have made a submission will act upon it, coordinating within the Intelligence Community when appropriate, and make a response to me within a reasonable time, not to exceed 30 working days from date of receipt.
6. (U) I have been advised that any breach of this Agreement may result in my termination of my access to SCI and removal from a position of special confidence and trust requiring such access, as well as the termination of my employment or other relationships with any Department or Agency that provides me with access to SCI. In addition, I have been advised that any unauthorized disclosure of SCI by me may constitute violations of United States criminal laws, including provisions of Sections 793, 794, 798, and 952, Title 18, United States Code, and of Section 783(b), Title 50, United States Code. Nothing in this agreement constitutes a waiver by the United States of the right to prosecute me for any statutory violation.
7. (U) I understand that the United States Government may seek any remedy available to it to enforce this Agreement including, but not limited to, application for a court order prohibiting disclosure of information in breach of this Agreement. I have been advised that the action can be brought against me in any of the several appropriate United States District Courts where the United States Government may elect to file the action. Court costs and reasonable attorney's fees incurred by the United States Government may be assessed against me if I lose such action.
8. (U) I understand that all information to which I may obtain access by signing this Agreement is now and will remain the property of the United States Government unless and until otherwise determined by an appropriate official or final ruling of a court of law. Subject to such determination, I do not now, nor will I ever, possess any right, interest, title, or claim whatsoever to such information. I agree that I shall return all materials that may have come into my possession or for which I am responsible because of such access, upon demand by an authorized representative of the United States Government or upon the conclusion of my employment or other relationship with the United States Government entity providing me access to such materials. If I do not return such materials upon request, I understand this may be a violation of Section 793, Title 18, United States Code.
9. (U) Unless and until I am released in writing by an authorized representative of the Department or Agency that last provided me with access to SCI, I understand that all conditions and obligations imposed on me by this Agreement apply during the time I am granted access to SCI, and at all times thereafter.
10. (U) Each provision of this Agreement is severable. If a court should find any provision of this Agreement to be unenforceable, all other provisions of this Agreement shall remain in full force and effect. This Agreement concerns SCI and does not set forth such other

SECURITY FILE NUMBER (AIN)

SENSITIVE COMPARTMENTED INFORMATION NONDISCLOSURE AGREEMENT

An agreement between

John Robert Bolton

and the United States.

(Name - Printed or Typed)

1. Intending to be legally bound, I hereby accept the obligations contained in this Agreement in consideration of my being granted access to information or material protected within Special Access Programs, hereinafter referred to in this Agreement as Sensitive Compartmented Information (SCI). I have been advised that SCI involves or derives from intelligence sources or methods and is classified or is in process of a classification determination under the standards of Executive Order 12958 or other Executive order or statute. I understand and accept that by being granted access to SCI, special confidence and trust shall be placed in me by the United States Government.
2. I hereby acknowledge that I have received a security indoctrination concerning the nature and protection of SCI, including the procedures to be followed in ascertaining whether other persons to whom I contemplate disclosing this information or material have been approved for access to it, and I understand these procedures. I understand that I may be required to sign subsequent agreements upon being granted access to different categories of SCI. I further understand that all my obligations under this agreement continue to exist whether or not I am required to sign such subsequent agreements.
3. I have been advised that the unauthorized disclosure, unauthorized retention, or negligent handling of SCI by me could cause irreparable injury to the United States or be used to advantage by a foreign nation. I hereby agree that I will never divulge anything marked as SCI or that I know to be SCI to anyone who is not authorized to receive it without prior written authorization from the United States Government department or agency (hereinafter Department or Agency) that last authorized my access to SCI. I understand that it is my responsibility to consult with appropriate management authorities in the Department or Agency that last authorized my access to SCI, whether or not I am still employed by or associated with that Department or Agency or a contractor thereof, in order to ensure that I know whether information or material within my knowledge or control that I have reason to believe might be, or related to or derived from SCI, is considered by such Department or Agency to be SCI. I further understand that I am also obligated by law and regulation not to disclose any classified information or material in an unauthorized fashion.
4. In consideration of being granted access to SCI and of being assigned or retained in a position of special confidence and trust requiring access to SCI, I hereby agree to submit for security review by the Department or Agency that last authorized my access to such information or material, any writing or other preparation in any form, including a work of fiction, that contains or purports to contain any SCI or description of activities that produce or relate to SCI or that I have reason to believe are derived from SCI, that I contemplate disclosing to any person not authorized to have access to SCI or that I have prepared for public disclosure. I understand and agree that my obligation to submit such preparations for review applies during the course of my access to SCI and thereafter, and I agree to make any required submissions prior to discussing the preparation with, or showing it to, anyone who is not authorized to have access to SCI. I further agree that I will not disclose the contents of such preparation with, or showing it to, anyone who is not authorized to have access to SCI until I have received written authorization from the Department or Agency that last authorized my access to SCI that such disclosure is permitted.
5. I understand that the purpose of the review described in paragraph 4 is to give the United States a reasonable opportunity to determine whether the preparation submitted pursuant to paragraph 4 sets forth any SCI. I further understand that the Department or Agency to which I have made a submission will act upon it, coordinating within the Intelligence Community when appropriate, and make a response to me within a reasonable time, not to exceed 30 working days from date of receipt.
6. I have been advised that any breach of this Agreement may result in my termination of my access to SCI and removal from a position of special confidence and trust requiring such access, as well as the termination of my employment or other relationships with any Department or Agency that provides me with access to SCI. In addition, I have been advised that any unauthorized disclosure of SCI by me may constitute violations of United States criminal laws, including provisions of Sections 793, 794, 798, and 952, Title 18, United States Code, and of Section 783(b), Title 50, United States Code. Nothing in this agreement constitutes a waiver by the United States of the right to prosecute me for any statutory violation.
7. I understand that the United States Government may seek any remedy available to it to enforce this Agreement including, but not limited to, application for a court order prohibiting disclosure of information in breach of this Agreement. I have been advised that the action can be brought against me in any of the several appropriate United States District Courts where the United States Government may elect to file the action. Court costs and reasonable attorneys fees incurred by the United States Government may be assessed against me if I lose such action.
8. I understand that all information to which I may obtain access by signing this Agreement is now and will remain the property of the United States Government unless and until otherwise determined by an appropriate official or final ruling of a court of law. Subject to such determination, I do not now, nor will I ever, possess any right, interest, title, or claim whatsoever to such information. I agree that I shall return all materials that may have come into my possession or for which I am responsible because of such access, upon demand by an authorized representative of the United States Government or upon the conclusion of my employment or other relationship with the United States Government entity providing me access to such materials. If I do not return such materials upon request, I understand this may be a violation of Section 793, Title 18, United States Code.
9. Unless and until I am released in writing by an authorized representative of the Department or Agency that last provided me with access to SCI, I understand that all conditions and obligations imposed on me by this Agreement apply during the time I am granted access to SCI, and at all times thereafter.
10. Each provision of this Agreement is severable. If a court should find any provision of this Agreement to be unenforceable, all other provisions of this Agreement shall remain in full force and effect. This Agreement concerns SCI and does not set forth such other conditions and obligations not related to SCI as may now or hereafter pertain to my employment by or assignment or relationship with the Department or Agency.

11. I have read this Agreement carefully and my questions, if any, have been answered to my satisfaction. I acknowledge that the briefing officer has made available Sections 793, 794, 798 and 952 of Title 18, United States Code, and Section 783(b) of Title 50, United States Code, and Executive Order 12958, as amended, so that I may read them at this time, if I so choose.

12. I hereby assign to the United States Government all rights, title and interest, and all royalties, remunerations, and emoluments that have resulted, will result, or may result from any disclosure, publication, or revelation not consistent with the terms of this Agreement.

13. These restrictions are consistent with and do not supersede conflict with or otherwise alter the employee obligations rights or liabilities created by Executive Order 12958; Section 7211 of Title 5, United States Code (governing disclosures to Congress); Section 1034 of Title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosures to Congress by members of the Military); Section 2302(b)(8) of Title 5, United States Code, as amended by the Whistleblower Protection Act (governing disclosure of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 USC 421 et seq.) (governing disclosures that could expose confidential Government agents), and the statutes which protect agent disclosure which may compromise the national security, including Section 641, 793, 794, 798, and 952 of Title 18, United States Code, and Section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. Section 783(b)). The definitions, requirements, obligations, rights, sanctions and liabilities created by said Executive Order and listed statutes are incorporated into this Agreement and are controlling.

14. This Agreement shall be interpreted under and in conformance with the law of the United States.

15. I make this Agreement without any mental reservation or purpose of evasion.

X John R Bolton
Signature

20180405

Date

The execution of this Agreement was witnessed by the undersigned who accepted it on behalf of the United States Government as a prior condition of access to Sensitive Compartmented Information.

Fritzeen Brent W

Digitally signed by Fritzeen Brent W

BFritzeen

Date: 2018.04.05 10:17:48 -04'00'

20180405

Date

WITNESS and ACCEPTANCE:

BFritzeen

Signature

SECURITY BRIEFING / DEBRIEFING ACKNOWLEDGMENT

FOR ALD

ASP BIR

BON CAC

CHE EBY

HOL MES

RSE OLI

IRO JUN

MAP MYR

PER PNE

PLU RED

SGB TEA

WAL WIL

MAH CYP

(Special Access Programs by Initials Only)

SSN (See Notice Below)

John Robert Bolton

Printed or Typed Name

WH/NSC/APNSA

Organization

BRIEF

DATE 20180405

I hereby acknowledge that I was briefed on the above SCI Special Access Program(s):

X John R Bolton
Signature of Individual Briefed

DEBRIEF

DATE

Having been reminded of my continuing obligation to comply with the terms of this Agreement, I hereby acknowledge that I was debriefed on the above SCI Special Access Program(s):

Signature of Individual Debriefed

I certify that the briefing presented by me on the above date was in accordance with relevant SCI procedures.

Fritzeen Brent W BFritzeen

Digitally signed by Fritzeen Brent W BFritzeen
Date: 2018.04.05 10:18:02 -04'00'

Signature of Briefing/Debriefing Officer

Brent W. Fritzeen

Printed or Typed Name

SSN (See Notice Below)

NSC (INTELLIGENCE PROGRAMS)

Organization (Name and Address)

NOTICE: The Privacy Act, 5 U.S.C. 522a, requires that federal agencies inform individuals, at the time information is solicited from them, whether the disclosure is mandatory or voluntary, by what authority such information is solicited, and what uses will be made of the information. You are hereby advised that authority for soliciting your Social Security Account Number (SSN) is Executive Order 9397. Your SSN will be used to identify you precisely when it is necessary to 1) certify that you have access to the information indicated above, 2) determine that your access to the information has terminated, or 3) certify that you have witnessed a briefing or debriefing. Although disclosure of your SSN is not mandatory, your failure to do so may impede such certifications or determinations.

FORM
8-99

4414 (EF)

Page 2 of 2

Exhibit B

THE WHITE HOUSE

WASHINGTON, D.C.

September 13, 2019

MEMORANDUM FOR AMBASSADOR JOHN R. BOLTON, ASSISTANT TO THE
PRESIDENT FOR NATIONAL SECURITY AFFAIRS (NATIONAL SECURITY ADVISOR)

FROM: SCOTT GAST, SENIOR COUNSEL TO THE PRESIDENT

SUBJECT: POST-EMPLOYMENT OBLIGATIONS

This memo provides an overview of the Executive Branch post-employment restrictions that our office discussed with you prior to your departure from the White House. As a former Assistant to the President, you are covered by certain post-employment restrictions under both the criminal law, 18 U.S.C. § 207, and the Ethics Pledge you signed under Executive Order 13770. As a commissioned officer, you are also required to file a termination financial disclosure report within 30 days of leaving Government service.

These restrictions limit: the appearances and communications that you may make on behalf of a third party back to the federal government; certain other types of assistance that you may provide to third parties; and your profit-sharing with a future employer who did business with the government during your tenure here. The purpose behind the restrictions is threefold: to prevent you from "switching sides" on a matter in which you were involved when you worked in the Executive Office of the President (EOP); to provide a "cooling off" period in which you may not seek official action on behalf of a third party from EOP and other federal officials on any matter; and to preclude you from sharing in certain profits that your new employer may have received in connection with a matter that was pending before the government during your White House tenure.

Many of the post-employment restrictions carry criminal penalties, so please review the entire memorandum carefully, sign the last page where indicated, and provide a copy of the signature page to Counsel's Office. Our office remains available to answer any questions you may have about any post-employment restrictions.

I. SUMMARY AND ANALYSIS OF CRIMINAL POST-EMPLOYMENT RULES

As a former Executive Branch official, you are subject to two criminal statutes that limit your post-employment activities. Generally, 18 U.S.C. § 207 limits your ability, depending on the circumstances, to communicate to or appear before many federal officials, both within and outside EOP, and 18 U.S.C. § 203 prohibits you from receiving compensation for any representational services that were provided by a former employer in which the United States was a party or had a direct and substantial interest during the time that you were a government employee. You are also subject to post-employment restrictions included in the Ethics Pledge (Executive Order 13770).

A. The Lifetime Ban on "Switching Sides": 18 U.S.C. § 207(a)(1)

This lifetime ban aims to prevent Executive Branch employees who have participated in particular matters from later "switching sides" and representing someone else on the same matter before the United States. Under 18 U.S.C. § 207(a)(1), you are prohibited from communicating with, or appearing before, any employee of the United States, with the intent to influence that employee on behalf of another person (other than yourself), on any particular matter involving specific parties in which you "personally" and "substantially" participated at any time during your White House employment. This is a permanent restriction commencing upon your termination from government service and lasting for the lifetime of all such particular matters as they existed during your tenure.

- For purposes of this rule, an "employee of the United States" includes the President as well as any current officer or employee of any department, agency (including a government corporation), court or court-martial of the United States or the District of Columbia. It does not, however, include a member of Congress.
- A communication or appearance can be formal or informal, and includes telephone calls and emails.
- A "particular matter involving a specific party or parties" is a fairly case-specific restriction that "typically involves a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identified parties, such as a specific contract, grant, license, product approval application, enforcement action, administrative adjudication, or court case." 5 C.F.R. § 2641.201(h)(1). It does not include rulemaking, legislation, or policy-making unless it focuses narrowly on identified parties. *See* 5 C.F.R. § 2641.201(h)(2).
- To "participate" means to take action as an employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action, or to purposefully forbear in order to affect the outcome of a matter. An employee does not participate in a matter merely because he had knowledge of its existence or because it was pending under his official responsibility. A government employee participates "personally" even when he merely directs a subordinate's participation. He participates "substantially" if his involvement is "of significance" to the matter. Thus, while a series of peripheral involvements may be insubstantial, participation in a single critical step may be substantial. *See* 5 C.F.R. § 2641.201(i).

B. Two-Year Ban on Matters Pending Under an Employee's Official Responsibility: 18 U.S.C. § 207(a)(2)

This two-year ban covers the same types of representational contacts as Section 207(a)(1), except that it extends to all matters involving a specific party or parties that were pending under the government employee's "official responsibility" during his last year of service—not only those in which he participated personally and substantially. An employee has "official responsibility" over a particular matter when he has "direct administrative or operating authority, whether

intermediate or final," to approve, disapprove, or otherwise direct governmental action, including when he delegates his authority to others. 5 C.F.R. § 2641.202(j)(1).

C. The One-Year Ban on Participating in Ongoing Trade or Treaty Negotiations: 18 U.S.C. § 207(b)

For one year from the date you terminate Government service, you may not knowingly represent, aid, or advise any other person concerning any ongoing trade or treaty negotiation in which, during your last year of Government service, you participated personally and substantially as an employee, on the basis of covered information.

The definition of "covered information" is any information which you know or should have known were designated as exempt from release under the Freedom of Information Act. A "Trade Negotiation" refers only to those ongoing trade negotiations that the President determines to undertake pursuant to section 1102 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. § 2902). That authority has lapsed. A "treaty" is an international agreement made by the President that requires the advice and consent of the Senate. A negotiation on a treaty commences to be "ongoing" at the point when both (1) the determination has been made by a competent authority that the outcome of a negotiation will be a treaty, and (2) discussions with a foreign government have begun on a text.

It is important to note that even if a post-employment activity is not prohibited by section 207(b), the negotiation may nevertheless have had specific parties identified to it, thus triggering the lifetime restriction set forth in section 207(a)(1).

D. Communicating with Former Colleagues and Other Government Officials: Two-Year "Cooling Off Period for Very Senior Employees: 18 U.S.C. § 207(d)

As an Assistant to the President you are considered a "Very Senior Employee" for purposes of the criminal post-employment laws. See 18 U.S.C. § 207(d)(1)(C).

For two years after leaving the White House, it is a crime for you to communicate to, or appear before, any EOP employee (including the President) and certain other high-level government officials not in EOP (see Attachment A) (collectively, "covered employees"), if the communication or appearance is made on behalf of another person and is intended to influence official action on any matter.

For purposes of this prohibition, the EOP includes all components (WHO, OVP, EXR, NSC, OA, OMB, ONDCP, OSTP, PIAB, USTR, CEA, CEQ). As you'll see from Attachment A, the prohibition also extends to communications with Cabinet officials and high-level officials in most Executive Branch agencies.

This restriction is broader than the others in Section 207 as it applies to any matter on which official action is sought, *regardless* of whether you worked on the matter or whether it was pending before you, or whether it involves specific parties. Notably, like Sections 207(a)(1) and (a)(2), the restriction does not apply to your communications to or appearances before Members of Congress.

- Representation. Like the restrictions in Section 207(a)(1) and (a)(2), § 207(d) prohibits only representational communications and appearances – i.e., only those made on behalf of someone else. It does not limit your ability to talk to the President or any of your friends and colleagues in government on your own behalf or in your personal capacity on any topic.

You communicate or appear on behalf of another when you act as the other person/company's agent, or if you act with the express or implied consent of the person/company and subject to some degree of control or direction by the person/company in relation to the communication or appearance. 5 C.F.R.

§ 2641.201(g)(1)(i). An "appearance" extends to mere physical presence (i.e., non-speaking) at a meeting when the circumstances make it clear that attendance is intended to influence the United States. *Id.* at § 2641.201(e)(4).

You do not act on behalf of another merely because your communication or appearance is consistent with the interests of another person/company, is in support of another person/company, or may cause another person/company to derive some benefit as a consequence of your activity. *Id.* at § 2641.201(g)(1)(ii).

- Behind the Scenes Assistance. Section 207(d) does not restrict your "behind-the-scenes" assistance to your employer; it only prohibits your oral and written communications to or physical appearances before the designated government employees. *Id.* at § 2641.201(d)(1)-(3). Note, however, that "behind-the-scenes" assistance does not include communications conveyed by another that are intended to be attributed to you, even if you are not recognized as the source of the information. *See id.* at § 2641.201(d)(1).
- Matter. A "matter" includes not only those involving specific parties (as above), but also "the consideration or adoption of broad policy options that are directed to the interests of a large and diverse group of persons." 5 C.F.R. § 2641.205(i)(2)(ii). Further, the definition includes "new matters" (i.e., it is not limited to matters previously pending or of interest to the White House), as well as matters currently "pending at any other agency in the executive branch, an independent agency, the legislative branch, or the judicial branch." *Id.* at § 2641.204(i)(2)(iii - iv).
- Intent to influence official action. To commit a § 207(d) crime, a former employee must, in making his representational communication or appearance, "seek[] official action" with an "intent to influence." An employee "seeks official action" if his communication aims to induce a current employee to make a decision or otherwise act "in his official capacity." *See* 5 C.F.R. § 2641.204(i)(1).

A communication or appearance is made with an "intent to influence" when it is made for the purpose of "[s]eeking a Government ruling, benefit, approval, or other discretionary Government action," or "[a]ffecting Government action in connection with an issue or aspect of a matter which involves an appreciable element of actual or potential dispute or controversy." 5 C.F.R. § 2641.201(e)(1).

If, over the next two years, a question arises about a particular circumstance, feel free to contact us for fact-specific guidance.

Exceptions to 207(d)

As noted, 18 U.S.C. § 207(d) does not restrict contacts made on your own behalf, contacts where you are not seeking official action, or contacts of a purely personal nature.

Additionally, there are several statutory exceptions to the prohibitions of § 207(d) that permit you to represent another person before covered employees on official matters during your two-year cooling off period. *See* 18 U.S.C. § 207(d); 5 C.F.R. § 2641.301. While these other exceptions do not appear immediately relevant to your new position, we note them briefly for your awareness.

First, none of the restrictions apply to representational activities that you may perform on behalf of the United States or the District of Columbia or as an elected official of a State or local government. 18 U.S.C. § 207(a)(1), 207(j)(1)(A). There is also an exception for certain acts that you may perform on behalf of tribal governments. *See id.* at § 207(j)(1)(B).

Second, additional exceptions apply for the provision of testimony, the provision of scientific or technological information under certain circumstances, and the provision of information about which the former employee has special knowledge when no compensation is received, *id.* at §§ 207(j)(4)-(6), but you should consult with Counsel's Office before attempting to rely on any of these exceptions.

Third, the restrictions on communications with White House or other senior administration officials will not apply to you if you become exclusively employed by certain purely political entities (i.e., a candidate in his capacity as a candidate for Federal or State office; an authorized committee; a national committee; a national Federal campaign committee; a State committee; or a political party) or a person or entity that exclusively represents, aids, or advises only such political entities. *See* 18 U.S.C. § 207(j)(7); 5 C.F.R. § 2641.301(g). This exception is not available to you if you are employed by a firm that represents both political entities and private industry clients. *This exception does not apply to political action committees (PACs) or super PACs or any other political entity (such as a social welfare organization engaged in political activity).*

E. Criminal Restrictions Relating to Foreign Entities: 18 U.S.C. § 207(f)

For one year from the date of your departure from the EOP as a "Very Senior Employee," you may not represent *or aid or advise* a government of a foreign country or a foreign political party with the intent to influence an agency or department of the United States, *including Members of Congress and the legislative branch*. A foreign commercial corporation is not generally covered under § 207(f) unless it exercises the functions of a sovereign. Please note that, unlike the other provisions we have discussed, Section 207(f) goes beyond representational activities and extends to providing any assistance to an instrumentality of a foreign government. This provision would thus bar a former "Very Senior Employee" for one year from providing a covered foreign entity with such "behind-the-scenes" assistance as, for example, drafting a proposed communication to

a U.S. agency, advising on an appearance before Congress, or consulting on other strategies designed to persuade departmental or agency decision-makers to take action.

F. Restriction on Compensation for Representational Services Provided by Another:
18 U.S.C. § 203

It is a crime for you to receive compensation for representational services rendered by another on particular matters in which the United States was a party or had a direct and substantial interest during the time that you were a government employee. Section 203 does not apply to a fixed salary. Nor would Section 203 apply to payments that are fixed or based on your personal job performance, your seniority, or your position. *See* OGE Opinion 99x24 (Dec. 14, 1999), *Receipt for Compensation for Representational Services under 18 U.S.C. § 203* (summarizing prior opinions).

If, in the future, your compensation involves equity participation (i.e., profit-sharing, bonuses, or other compensation tied to the company's actual profits from its representational services before the government), you may not receive or accept compensation for any representational services rendered at any time by a future employer on particular matters that were pending before any United States department, agency, court, officer, or commission during your tenure at EOP.

If the Section 203 prohibition is implicated in the future and you need further guidance, please feel free to contact us.

II. EXECUTIVE ORDER 13770, ETHICS PLEDGE PROHIBITIONS

As a Trump Administration appointee you were required to sign the "Ethics Pledge" set forth in section 1 of Executive Order 13770. Under the Pledge, you have agreed to certain restrictions after you leave your appointee position. Violation of any of these provisions may result in your debarment from the EOP, or civil judicial proceedings for declaratory, injunctive, or monetary relief, including the establishment of a constructive trust and the requirement that you pay all money or things of value received by, or payable to, you as a result of your breach.

A. 5-Year Ban on Lobbying Former Agency

For five years from the date on which an appointee leaves an appointee position, he or she is precluded from engaging in lobbying activities, as that term is defined in the Lobbying Disclosure Act and Exec. Ord. 13770, with respect to any EOP component (WHO, OVP, EXR, NSC, OA, OMB, ONDCP, OSTP, PIAB, USTR, CEA, CEQ).

OGE has determined that for purposes of this provision, lobbying activities are deemed to be carried out "with respect to" an agency only to the extent that they involve the following:

1. Any oral or written communication to a covered executive branch official of that agency; or
2. Efforts that are intended, at the time of performance, to support a covered lobbying contact to a covered executive branch official of that agency.

B. Administration-Long Ban on Lobbying Covered Non-Career Officials

Upon terminating government service, you are precluded from engaging in lobbying activities with respect to any covered executive branch official or non-career Senior Executive Service appointee in any agency of the Executive Branch or any component of the EOP for the remainder of the Trump Administration. "Covered executive branch official" includes those positions listed in Attachment A.

OGE has determined that for purposes of this provision, lobbying activities are deemed to be carried out "with respect to" covered executive branch official or non-career Senior Executive Service appointee only to the extent that they involve the following:

1. Any oral or written communication to a covered executive branch official or non-career Senior Executive Service appointee; or
2. Efforts that are intended, at the time of performance, to support a covered lobbying contact to a covered executive branch official or non-career Senior Executive Service appointee of that agency.

C. Permanent Ban on Acting as an Agent of a Foreign Entity

Upon terminating government service, you are permanently prohibited from engaging in any activity on behalf of any foreign government or foreign political party which would require you to register under the Foreign Agents Registration Act of 1938, as amended.

III. NONPUBLIC INFORMATION AND SPEAKING ENGAGEMENTS

A. Use of Nonpublic Information

You are prohibited from disclosing any classified or confidential information. 18 U.S.C. § 1905; 18 U.S.C. § 798; Executive Order 13526.

You also may not use or disclose nonpublic information in any post-employment teaching, speaking or writing. Nonpublic information is information gained by reason of your federal employment and that you know or should know has not been made available to the general public. *See* 5 C.F.R. § 2635.703(b). Nonpublic information includes information that (1) is exempt from disclosure by statute, Executive Order or regulations; (2) is designated as confidential or classified; or (3) has not been disseminated to the general public and is not authorized to be made available to the public upon request. *Id.* This limitation does not restrict your ability to teach, speak or write on a subject within your area of expertise based on publicly available information, your educational background or your personal experiences, even if that teaching, speaking or writing deals generally with a subject related to your former area of responsibility.

B. Public Speaking and Media Appearances

None of the post-employment rules prohibits you from teaching, speaking publicly, or making media appearances, provided that your activity does not otherwise run afoul of the

representational prohibitions under Section 207 (i.e., you aren't communicating to or appearing before a covered official, on behalf of someone else, with the intent to influence official action) or the restrictions on the disclosure of nonpublic information. If you decide to address a public gathering during your two-year cooling-off period, OGE regulations provide the following guidance:

- The forum must not be sponsored or co-sponsored by EOP;
- A large number of people must attend the event; and
- A significant portion of attendees must not be EOP employees.

See 5 C.F.R. § 2641.204(g)(4). If these criteria are met, you may engage in exchanges with any other speaker or with any member of the audience. You may also permit the publication of your statements and opinions in a newspaper, periodical, or similar widely available publication.

IV. TERMINATION FINANCIAL DISCLOSURE REQUIREMENT

You are required to file a termination Public Financial Disclosure Report (OGE 278) with the White House Counsel within 30 days of your departure. The form will be sent to your *Integrity.gov* account. To ensure that we can reach you, you are required to provide a personal email address to the White House Counsel's Office before you leave. Similarly, it is your responsibility to reach out to the White House Counsel's Office to ensure that you can access the form in the event of technical issues. Your form will be forwarded to the Office of Government Ethics for final certification, as required by 5 C.F.R. § 2634.602(c)(1)(5).

Failure to file your form timely can result in a late filing penalty and may lead to civil or criminal prosecution. 5 U.S.C. app § 104.

V. FOR FURTHER INFORMATION

The White House Counsel's Office has a continuing obligation to provide you with post-employment advice, even after you leave government service. Please feel free to contact us if you have a question about how the post-employment rules might apply to a specific situation, please feel free to contact Scott Gast, 202-456- [REDACTED] ([REDACTED]@who.eop.gov) or David Jones, 202-456- [REDACTED] ([REDACTED]@who.eop.gov) in the Office of the White House Counsel.

ACKNOWLEDGMENT OF RECEIPT

SIGNATURE: _____

J. R. Bolton

DATE: _____

7/13/19

PERSONAL EMAIL ADDRESS: _____

[REDACTED]

ATTACHMENT A

Executive Schedule Positions listed in 5 U.S.C. §§ 5312-5316 (as of March 30, 2017)

(No Contact List for 18 U.S.C. § 207(d))

Executive Schedule I (5 U.S.C. § 5312)

Secretary of State.

Secretary of the Treasury.

Secretary of Defense.

Attorney General.

Secretary of the Interior.

Secretary of Agriculture.

Secretary of Commerce.

Secretary of Labor.

Secretary of Health and Human Services.

Secretary of Housing and Urban Development.

Secretary of Transportation.

United States Trade Representative.

Secretary of Energy.

Secretary of Education.

Secretary of Veterans Affairs.

Secretary of Homeland Security.

Director of the Office of Management and Budget.

Commissioner of Social Security, Social Security Administration.

Director of National Drug Control Policy.

Chairman, Board of Governors of the Federal Reserve System.

Director of National Intelligence.

Executive Schedule II (5 U.S.C. § 5313)

Deputy Secretary of Defense.

Deputy Secretary of State.

Deputy Secretary of State for Management and Resources.

Administrator, Agency for International Development.
Administrator of the National Aeronautics and Space Administration.
Deputy Secretary of Veterans Affairs.
Deputy Secretary of Homeland Security.
Under Secretary of Homeland Security for Management.
Deputy Secretary of the Treasury.
Deputy Secretary of Transportation.
Chairman, Nuclear Regulatory Commission.
Chairman, Council of Economic Advisers.
Director of the Office of Science and Technology.
Director of the Central Intelligence Agency.
Secretary of the Air Force.
Secretary of the Army.
Secretary of the Navy.
Administrator, Federal Aviation Administration.
Director of the National Science Foundation.
Deputy Attorney General.
Deputy Secretary of Energy.
Deputy Secretary of Agriculture.
Director of the Office of Personnel Management.
Administrator, Federal Highway Administration.
Administrator of the Environmental Protection Agency.
Under Secretary of Defense for Acquisition, Technology, and Logistics.
Deputy Secretary of Labor.
Deputy Director of the Office of Management and Budget.
Independent Members, Thrift Depositor Protection Oversight Board.
Deputy Secretary of Health and Human Services.
Deputy Secretary of the Interior.
Deputy Secretary of Education.
Deputy Secretary of Housing and Urban Development.

Deputy Director for Management, Office of Management and Budget.
Director of the Federal Housing Finance Agency.
Deputy Commissioner of Social Security, Social Security Administration.
Administrator of the Community Development Financial Institutions Fund.
Deputy Director of National Drug Control Policy.
Members, Board of Governors of the Federal Reserve System.
Under Secretary of Transportation for Policy.
Chief Executive Officer, Millennium Challenge Corporation.
Principal Deputy Director of National Intelligence.
Director of the National Counterterrorism Center.
Director of the National Counter Proliferation Center.
Administrator of the Federal Emergency Management Agency.
Federal Transit Administrator.

Executive Schedule III (5 U.S.C. § 5314)

Solicitor General of the United States.
Under Secretary of Commerce, Under Secretary of Commerce for Economic Affairs, Under Secretary of Commerce for Export Administration, and Under Secretary of Commerce for Travel and Tourism.
Under Secretaries of State (6).
Under Secretaries of the Treasury (3).
Administrator of General Services.
Administrator of the Small Business Administration.
Deputy Administrator, Agency for International Development.
Chairman of the Merit Systems Protection Board.
Chairman, Federal Communications Commission.
Chairman, Board of Directors, Federal Deposit Insurance Corporation.
Chairman, Federal Energy Regulatory Commission.
Chairman, Federal Trade Commission.
Chairman, Surface Transportation Board.
Chairman, National Labor Relations Board.

Chairman, Securities and Exchange Commission.
Chairman, National Mediation Board.
Chairman, Railroad Retirement Board.
Chairman, Federal Maritime Commission.
Comptroller of the Currency.
Commissioner of Internal Revenue.
Under Secretary of Defense for Policy.
Under Secretary of Defense (Comptroller).
Under Secretary of Defense for Personnel and Readiness.
Under Secretary of Defense for Intelligence.
Deputy Chief Management Officer of the Department of Defense.
Under Secretary of the Air Force.
Under Secretary of the Army.
Under Secretary of the Navy.
Deputy Administrator of the National Aeronautics and Space Administration.
Deputy Director of the Central Intelligence Agency.
Director of the Office of Emergency Planning.
Director of the Peace Corps.
Deputy Director, National Science Foundation.
President of the Export-Import Bank of Washington.
Members, Nuclear Regulatory Commission.
Members, Defense Nuclear Facilities Safety Board.
Director of the Federal Bureau of Investigation, Department of Justice.
Administrator of the National Highway Traffic Safety Administration.
Administrator of the Federal Motor Carrier Safety Administration.
Administrator, Federal Railroad Administration.
Chairman, National Transportation Safety Board.
Chairman of the National Endowment for the Arts the incumbent of which also serves as
Chairman of the National Council on the Arts.
Chairman of the National Endowment for the Humanities.
Director of the Federal Mediation and Conciliation Service.

President, Overseas Private Investment Corporation.

Chairman, Postal Regulatory Commission.

Chairman, Occupational Safety and Health Review Commission.

Governor of the Farm Credit Administration.

Chairman, Equal Employment Opportunity Commission.

Chairman, Consumer Product Safety Commission.

Under Secretaries of Energy (3).

Chairman, Commodity Futures Trading Commission.

Deputy United States Trade Representatives (3).

Chief Agricultural Negotiator, Office of the United States Trade Representative.

Chief Innovation and Intellectual Property Negotiator, Office of the United States Trade Representative.

Chairman, United States International Trade Commission.

Under Secretary of Commerce for Oceans and Atmosphere, the incumbent of which also serves as Administrator of the National Oceanic and Atmospheric Administration.

Under Secretary of Commerce for Standards and Technology, who also serves as Director of the National Institute of Standards and Technology.

Associate Attorney General.

Chairman, Federal Mine Safety and Health Review Commission.

Chairman, National Credit Union Administration Board.

Deputy Director of the Office of Personnel Management.

Under Secretary of Agriculture for Farm and Foreign Agricultural Services.

Under Secretary of Agriculture for Food, Nutrition, and Consumer Services.

Under Secretary of Agriculture for Natural Resources and Environment.

Under Secretary of Agriculture for Research, Education, and Economics.

Under Secretary of Agriculture for Food Safety.

Under Secretary of Agriculture for Marketing and Regulatory Programs.

Director, Institute for Scientific and Technological Cooperation.

Under Secretary of Agriculture for Rural Development.

Administrator, Maritime Administration.

Executive Director Property Review Board.

Deputy Administrator of the Environmental Protection Agency.
Archivist of the United States.
Executive Director, Federal Retirement Thrift Investment Board.
Principal Deputy Under Secretary of Defense for Acquisition, Technology, and Logistics.
Director, Trade and Development Agency.
Under Secretary for Health, Department of Veterans Affairs.
Under Secretary for Benefits, Department of Veterans Affairs.
Under Secretary for Memorial Affairs, Department of Veterans Affairs.
Under Secretaries, Department of Homeland Security.
Director of the Bureau of Citizenship and Immigration Services.
Director of the Office of Government Ethics.
Administrator for Federal Procurement Policy.
Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget.
Director of the Office of Thrift Supervision.
Chairperson of the Federal Housing Finance Board.
Executive Secretary, National Space Council.
Controller, Office of Federal Financial Management, Office of Management and Budget.
Administrator, Office of the Assistant Secretary for Research and Technology of the Department of Transportation.
Deputy Director for Demand Reduction, Office of National Drug Control Policy.
Deputy Director for Supply Reduction, Office of National Drug Control Policy.
Deputy Director for State and Local Affairs, Office of National Drug Control Policy.
Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.
Register of Copyrights.
Commissioner of U.S. Customs and Border Protection, Department of Homeland Security.
Under Secretary of Education.
Administrator of the Centers for Medicare & Medicaid Services.
Administrator of the Office of Electronic Government.
Administrator, Pipeline and Hazardous Materials Safety Administration.

Director, Pension Benefit Guaranty Corporation.

Deputy Administrators, Federal Emergency Management Agency.

Chief Executive Officer, International Clean Energy Foundation.

Independent Member of the Financial Stability Oversight Council (1).

Director of the Office of Financial Research.

Executive Schedule IV (5 U.S.C. § 5315)

Deputy Administrator of General Services.

Associate Administrator of the National Aeronautics and Space Administration.

Assistant Administrators, Agency for International Development (6).

Regional Assistant Administrators, Agency for International Development (4).

Assistant Secretaries of Agriculture (3).

Assistant Secretaries of Commerce (11).

Assistant Secretaries of Defense (14).

Assistant Secretaries of the Air Force (4).

Assistant Secretaries of the Army (5).

Assistant Secretaries of the Navy (4).

Assistant Secretaries of Health and Human Services (6).

Assistant Secretaries of the Interior (6).

Assistant Attorneys General (11).

Assistant Secretaries of Labor (10), one of whom shall be the Assistant Secretary of Labor for Veterans' Employment and Training.

Administrator, Wage and Hour Division, Department of Labor.

Assistant Secretaries of State (24) and 4 other State Department officials to be appointed by the President, by and with the advice and consent of the Senate.

Assistant Secretaries of the Treasury (10).

Members, United States International Trade Commission (5).

Assistant Secretaries of Education (10).

General Counsel, Department of Education.

Director of Civil Defense, Department of the Army.

Deputy Director of the Office of Emergency Planning.

Deputy Director of the Office of Science and Technology.
Deputy Director of the Peace Corps.
Assistant Directors of the Office of Management and Budget (3).
General Counsel of the Department of Agriculture.
General Counsel of the Department of Commerce.
General Counsel of the Department of Defense.
General Counsel of the Department of Health and Human Services.
Solicitor of the Department of the Interior.
Solicitor of the Department of Labor.
General Counsel of the National Labor Relations Board.
General Counsel of the Department of the Treasury.
First Vice President of the Export-Import Bank of Washington.
Members, Council of Economic Advisers.
Members, Board of Directors of the Export-Import Bank of Washington.
Members, Federal Communications Commission.
Member, Board of Directors of the Federal Deposit Insurance Corporation.
Directors, Federal Housing Finance Board.
Members, Federal Energy Regulatory Commission.
Members, Federal Trade Commission.
Members, Surface Transportation Board.
Members, National Labor Relations Board.
Members, Securities and Exchange Commission.
Members, Merit Systems Protection Board.
Members, Federal Maritime Commission.
Members, National Mediation Board.
Members, Railroad Retirement Board.
Director of Selective Service.
Associate Director of the Federal Bureau of Investigation, Department of Justice.
Members, Equal Employment Opportunity Commission (4).
Director, Community Relations Service.

Members, National Transportation Safety Board.
General Counsel, Department of Transportation.
Deputy Administrator, Federal Aviation Administration.
Assistant Secretaries of Transportation (5).
Deputy Federal Highway Administrator.
Administrator of the Saint Lawrence Seaway Development Corporation.
Assistant Secretary for Science, Smithsonian Institution.
Assistant Secretary for History and Art, Smithsonian Institution.
Deputy Administrator of the Small Business Administration.
Assistant Secretaries of Housing and Urban Development (8).
General Counsel of the Department of Housing and Urban Development.
Commissioner of Interama.
Federal Insurance Administrator, Federal Emergency Management Agency.
Executive Vice President, Overseas Private Investment Corporation.
Members, National Credit Union Administration Board (2).
Members, Postal Regulatory Commission (4).
Members, Occupational Safety and Health Review Commission.
Deputy Under Secretaries of the Treasury (or Assistant Secretaries of the Treasury) (2).
Members, Consumer Product Safety Commission (4).
Members, Commodity Futures Trading Commission.
Director of Nuclear Reactor Regulation, Nuclear Regulatory Commission.
Director of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission.
Director of Nuclear Regulatory Research, Nuclear Regulatory Commission.
Executive Director for Operations, Nuclear Regulatory Commission.
President, Government National Mortgage Association, Department of Housing and Urban Development.
Assistant Secretary of Commerce for Oceans and Atmosphere, the incumbent of which also serves as Deputy Administrator of the National Oceanic and Atmospheric Administration.
Director, Bureau of Prisons, Department of Justice.
Assistant Secretaries of Energy (8).
General Counsel of the Department of Energy.

Administrator, Economic Regulatory Administration, Department of Energy.
Administrator, Energy Information Administration, Department of Energy.
Director, Office of Indian Energy Policy and Programs, Department of Energy.
Director, Office of Science, Department of Energy.
Assistant Secretary of Labor for Mine Safety and Health.
Members, Federal Mine Safety and Health Review Commission.
President, National Consumer Cooperative Bank.
Special Counsel of the Merit Systems Protection Board.
Chairman, Federal Labor Relations Authority.
Assistant Secretaries, Department of Homeland Security.
General Counsel, Department of Homeland Security.
Officer for Civil Rights and Civil Liberties, Department of Homeland Security.
Chief Financial Officer, Department of Homeland Security.
Chief Information Officer, Department of Homeland Security.
Deputy Director, Institute for Scientific and Technological Cooperation.
Director of the National Institute of Justice.
Director of the Bureau of Justice Statistics.
Chief Counsel for Advocacy, Small Business Administration.
Assistant Administrator for Toxic Substances, Environmental Protection Agency.
Assistant Administrator, Office of Solid Waste, Environmental Protection Agency.
Assistant Administrators, Environmental Protection Agency (8).
Director of Operational Test and Evaluation, Department of Defense.
Director of Cost Assessment and Program Evaluation, Department of Defense.
Special Representatives of the President for arms control, nonproliferation, and disarmament matters, Department of State.
Ambassadors at Large.
Assistant Secretary of Commerce and Director General of the United States and Foreign Commercial Service.
Assistant Secretaries, Department of Veterans Affairs (7).
General Counsel, Department of Veterans Affairs.
Commissioner of Food and Drugs, Department of Health and Human Services [1]

Chairman, Board of Veterans' Appeals.
Administrator, Office of Juvenile Justice and Delinquency Prevention.
Director, United States Marshals Service.
Chairman, United States Parole Commission.
Director, Bureau of the Census, Department of Commerce.
Director of the Institute of Museum and Library Services.
Chief Financial Officer, Department of Agriculture.
Chief Financial Officer, Department of Commerce.
Chief Financial Officer, Department of Education.
Chief Financial Officer, Department of Energy.
Chief Financial Officer, Department of Health and Human Services.
Chief Financial Officer, Department of Housing and Urban Development.
Chief Financial Officer, Department of the Interior.
Chief Financial Officer, Department of Justice.
Chief Financial Officer, Department of Labor.
Chief Financial Officer, Department of State.
Chief Financial Officer, Department of Transportation.
Chief Financial Officer, Department of the Treasury.
Chief Financial Officer, Department of Veterans Affairs.
Chief Financial Officer, Environmental Protection Agency.
Chief Financial Officer, National Aeronautics and Space Administration.
Commissioner, Office of Navajo and Hopi Indian Relocation.
Principal Deputy Under Secretary of Defense for Policy.
Principal Deputy Under Secretary of Defense for Personnel and Readiness.
Principal Deputy Under Secretary of Defense (Comptroller).
Principal Deputy Under Secretary of Defense for Intelligence..
General Counsel of the Department of the Army.
General Counsel of the Department of the Navy.
General Counsel of the Department of the Air Force.
Liaison for Community and Junior Colleges, Department of Education.

Director of the Office of Educational Technology.

Director of the International Broadcasting Bureau.

The [2] Commissioner of Labor Statistics, Department of Labor.

Administrator, Rural Utilities Service, Department of Agriculture.

Chief Information Officer, Department of Agriculture.

Chief Information Officer, Department of Commerce.

Chief Information Officer, Department of Defense (unless the official designated as the Chief Information Officer of the Department of Defense is an official listed under section 5312, 5313, or 5314 of this title).

Chief Information Officer, Department of Education.

Chief Information Officer, Department of Energy.

Chief Information Officer, Department of Health and Human Services.

Chief Information Officer, Department of Housing and Urban Development.

Chief Information Officer, Department of the Interior.

Chief Information Officer, Department of Justice.

Chief Information Officer, Department of Labor.

Chief Information Officer, Department of State.

Chief Information Officer, Department of Transportation.

Chief Information Officer, Department of the Treasury.

Chief Information Officer, Department of Veterans Affairs.

Chief Information Officer, Environmental Protection Agency.

Chief Information Officer, National Aeronautics and Space Administration.

Chief Information Officer, Agency for International Development.

Chief Information Officer, Federal Emergency Management Agency.

Chief Information Officer, General Services Administration.

Chief Information Officer, National Science Foundation.

Chief Information Officer, Nuclear Regulatory Agency.

Chief Information Officer, Office of Personnel Management.

Chief Information Officer, Small Business Administration.

Chief Information Officer of the Intelligence Community.

General Counsel of the Central Intelligence Agency.

Principal Deputy Administrator, National Nuclear Security Administration.

Additional Deputy Administrators of the National Nuclear Security Administration (3), but if the Deputy Administrator for Naval Reactors is an officer of the Navy on active duty, (2).

Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.

General Counsel of the Office of the Director of National Intelligence.

Chief Medical Officer, Department of Homeland Security.

Executive Schedule V (5 U.S.C. § 5316)

Administrator, Bonneville Power Administration, Department of the Interior.

Administrator of the National Capital Transportation Agency.

Associate Administrators of the Small Business Administration (4).

Associate Administrators, National Aeronautics and Space Administration (7).

Associate Deputy Administrator, National Aeronautics and Space Administration.

Deputy Associate Administrator, National Aeronautics and Space Administration.

Archivist of the United States.

Assistant Secretary of Health and Human Services for Administration.

Assistant Attorney General for Administration.

Assistant and Science Adviser to the Secretary of the Interior.

Chairman, Foreign Claims Settlement Commission of the United States, Department of Justice.

Chairman of the Renegotiation Board.

Chairman of the Subversive Activities Control Board.

Chief Counsel for the Internal Revenue Service, Department of the Treasury.

Commissioner, Federal Acquisition Service, General Services Administration.

Director, United States Fish and Wildlife Service, Department of the Interior.

Commissioner of Indian Affairs, Department of the Interior.

Commissioners, Indian Claims Commission (5).

Commissioner, Public Buildings Service, General Services Administration.

Commissioner of Reclamation, Department of the Interior.

Commissioner of Vocational Rehabilitation, Department of Health and Human Services.

Commissioner of Welfare, Department of Health and Human Services.

Director, Bureau of Mines, Department of the Interior.
Director, Geological Survey, Department of the Interior.
Deputy Commissioner of Internal Revenue, Department of the Treasury.
Associate Director of the Federal Mediation and Conciliation Service.
Associate Director for Volunteers, Peace Corps.
Associate Director for Program Development and Operations, Peace Corps.
Assistants to the Director of the Federal Bureau of Investigation, Department of Justice (2).
Assistant Directors, Office of Emergency Planning (3).
Fiscal Assistant Secretary of the Treasury.
General Counsel of the Agency for International Development.
General Counsel of the Nuclear Regulatory Commission.
General Counsel of the National Aeronautics and Space Administration.
Manpower Administrator, Department of Labor.
Members, Renegotiation Board.
Members, Subversive Activities Control Board.
Assistant Administrator of General Services.
Director, United States Travel Service, Department of Commerce.
Assistant Director (Program Planning, Analysis and Research), Office of Economic Opportunity.
Deputy Director, National Security Agency.
Director, Bureau of Land Management, Department of the Interior.
Director, National Park Service, Department of the Interior.
National Export Expansion Coordinator, Department of Commerce.
Staff Director, Commission on Civil Rights.
Assistant Secretary for Administration, Department of Transportation.
Director, United States National Museum, Smithsonian Institution.
Director, Smithsonian Astrophysical Observatory, Smithsonian Institution.
Administrator of the Environmental Science Services Administration.
Associate Directors of the Office of Personnel Management (5).
Assistant Federal Highway Administrator.
Deputy Administrator of the National Highway Traffic Safety Administration.

Deputy Administrator of the Federal Motor Carrier Safety Administration.
Assistant Federal Motor Carrier Safety Administrator.
Director, Bureau of Narcotics and Dangerous Drugs, Department of Justice.
Vice Presidents, Overseas Private Investment Corporation (3).
Deputy Administrator, Federal Transit Administration, Department of Transportation.
General Counsel of the Equal Employment Opportunity Commission.
Executive Director, Advisory Council on Historic Preservation.
Additional Officers, Department of Energy (14).
Additional officers, Nuclear Regulatory Commission (5).
Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration.
Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.
Assistant Administrators (3), National Oceanic and Atmospheric Administration.
General Counsel, National Oceanic and Atmospheric Administration.
Members, Federal Labor Relations Authority (2) and its General Counsel.
Additional officers, Institute for Scientific and Technological Cooperation (2).
Additional officers, Office of Management and Budget (6).
Chief Scientist, National Oceanic and Atmospheric Administration.
Director, Indian Health Service, Department of Health and Human Services.
Commissioners, United States Parole Commission (8).
Commissioner, Administration on Children, Youth, and Families.
Chairman of the Advisory Council on Historic Preservation.

ATTACHMENT B

Intent to influence (5 C.F.R. § 2641.201(e)) and Examples

With the intent to influence- (l) Basic concept. The prohibition applies only to communications or appearances made by a former Government employee with the intent to influence the United States. A communication or appearance is made with the intent to influence when made for the purpose of:

- (i) Seeking a Government ruling, benefit, approval, or other discretionary Government action;
- or
- (ii) Affecting Government action in connection with an issue or aspect of a matter which involves an appreciable element of actual or potential dispute or controversy.

Example 1 to paragraph (e)(l): A former employee of the Administration on Children and Families (ACF) signs a grant application and submits it to ACF on behalf of a nonprofit organization for which she now works. She has made a communication with the intent to influence an employee of the United States because her communication was made for the purpose of seeking a Government benefit.

Example 2 to paragraph (e)(l): A former Government employee calls an agency official to complain about the auditing methods being used by the agency in connection with an audit of a Government contractor for which the former employee serves as a consultant. The former employee has made a communication with the intent to influence because his call was made for the purpose of seeking Government action in connection with an issue involving an appreciable element of dispute.

(2) Intent to influence not present. Certain communications to and appearances before employees of the United States are not made with the intent to influence, within the meaning of paragraph (e)(l) of this section, including, but not limited to, communications and appearances made solely for the purpose of:

- (i) Making a routine request not involving a potential controversy, such as a request for publicly available documents or an inquiry as to the status of a matter;
- (ii) Making factual statements or asking factual questions in a context that involves neither an appreciable element of dispute nor an effort to seek discretionary Government action, such as conveying factual information regarding matters that are not potentially controversial during the regular course of performing a contract;
- (iii) Signing and filing the tax return of another person as preparer;
- (iv) Signing an assurance that one will be responsible as principal investigator for the direction and conduct of research under a Federal grant (see example 4 to paragraph (d) of this section);

- (v) Filing a Securities and Exchange Commission (SEC) Form 10-K or similar disclosure forms required by the SEC;
- (vi) Making a communication, at the initiation of the Government, concerning work performed or to be performed under a Government contract or grant, during a routine Government site visit to premises owned or occupied by a person other than the United States where the work is performed or would be performed, in the ordinary course of evaluation, administration, or performance of an actual or proposed contract or grant; or
- (vii) Purely social contacts (see example 4 to paragraph (t) of this section).

Example 1 to paragraph (e)(2): A former Government employee calls an agency to ask for the date of a scheduled public hearing on her client's license application. This is a routine request not involving a potential controversy and is not made with the intent to influence.

Example 2 to paragraph (e)(2): In the previous example, the agency's hearing calendar is quite full, as the agency has a significant backlog of license applications. The former employee calls a former colleague at the agency to ask if the hearing date for her client could be moved up on the schedule, so that her client can move forward with its business plans more quickly. This is a communication made with the intent to influence.

Example 3 to paragraph (e)(2): A former employee of the Department of Defense (DOD) now works for a firm that has a DOD contract to produce an operator's manual for a radar device used by DOD. In the course of developing a chapter about certain technical features of the device, the former employee asks a DOD official certain factual questions about the device and its properties. The discussion does not concern any matter that is known to involve a potential controversy between the agency and the contractor. The former employee has not made a communication with the intent to influence.

Example 4 to paragraph (e)(2): A former medical officer of the Food and Drug Administration (FDA) sends a letter to the agency in which he sets out certain data from safety and efficacy tests on a new drug for which his employer, ABC Drug Co., is seeking FDA approval. Even if the letter is confined to arguably "factual" matters, such as synopses of data from clinical trials, the communication is made for the purpose of obtaining a discretionary Government action, i. e., approval of a new drug. Therefore, this is a communication made with the intent to influence.

Example 5 to paragraph (e)(2): A former Government employee now works for a management consulting firm, which has a Government contract to produce a study on the efficiency of certain agency operations. Among other things, the contract calls for the contractor to develop a range of alternative options for potential restructuring of

certain internal Government procedures. The former employee would like to meet with agency representatives to present a tentative list of options developed by the contractor. She may not do so. There is a potential for controversy between the Government and the contractor concerning the extent and adequacy of any options presented, and, moreover, the contractor may have its own interest in emphasizing certain options as opposed to others because some options may be more difficult and expensive for the contractor to develop fully than others.

Example 6 to paragraph (e)(2): A former employee of the Internal Revenue Service (IRS) prepares his client's tax return, signs it as preparer, and mails it to the IRS. He has not made a communication with the intent to influence. In the event that any controversy should arise concerning the return, the former employee may not represent the client in the proceeding, although he may answer direct factual questions about the records he used to compile figures for the return, provided that he does not argue any theories or positions to justify the use of one figure rather than another.

Example 7 to paragraph (e)(2): An agency official visits the premises of a prospective contractor to evaluate the testing procedure being proposed by the contractor for a research contract on which it has bid. A former employee of the agency, now employed by the contractor, is the person most familiar with the technical aspects of the proposed testing procedure. The agency official asks the former employee about certain technical features of the equipment used in connection with the testing procedure. The former employee may provide factual information that is responsive to the questions posed by the agency official, as such information is requested by the Government under circumstances for its convenience in reviewing the bid. However, the former employee may not argue for the appropriateness of the proposed testing procedure or otherwise advocate any position on behalf of the contractor.

Exhibit C

THE WHITE HOUSE
WASHINGTON

September 10, 2019

The Hon. John R. Bolton
9107 Fernwood Road
Bethesda, MD 20817
[REDACTED]

Dear Ambassador Bolton:

I write to continue the orderly process of your separation from service following your resignation as Assistant to the President for National Security Affairs. I know that you are committed to protecting confidential information you received while at the White House, but in an abundance of caution, I write to remind you of your continuing obligations and responsibilities to protect all confidential, privileged, and classified information and to provide for the safe return of all government property that you received in connection with your position at the Executive Office of the President ("EOP"). As the Assistant to the President for National Security Affairs, you were entrusted with information protected from disclosure, including classified information that related to some of the most sensitive matters of national security. You were previously advised that unauthorized disclosure, unauthorized retention, or negligent handling of certain classified information could cause irreparable injury to the United States or be used to advantage by a foreign nation. You agreed to consult with the EOP, even after your employment, regarding whether information in your possession might be classified. You also agreed to submit for security review to the EOP any writing or other material in any form that could contain classified information *before* submitting the writing or material to anyone without proper authorization to access such information. You also agreed to secure written authorization from the EOP before disclosing or showing such classified information to any unauthorized individual. All of these obligations extend beyond your period of employment at the EOP and the period in which you have access to classified information.

I understand that NSC security and information technology personnel visited your home today to begin the retrieval of both any classified information stored at your home and any government property provided for your use for secure communications or storage of classified material. Thank you for your cooperation in that process. Please ensure that all classified information or government property has been returned to NSC security and information technology personnel. In addition, given the nature of your former position advising the President on national security affairs, any documents that you created that have not yet been subject to classification review, including notes of meetings or telephone calls, must be submitted for a classification review before you retain them in an unsecured manner.

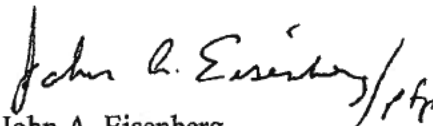
You also must return all U.S. government property in your possession, custody, or control, including handwritten notes, electronic notes, faxes, documents, memoranda, calendar entries, address book entries, voicemail, and other electronic data, regardless of the form in

which you have possession, custody, or control. Please contact my office to schedule a mutually convenient time for the return or affirm in writing that you have no U.S. government property in your possession, custody, or control.

Your obligations under the terms of your nondisclosure agreements concerning classified information and other obligations of confidentiality remain binding, and we will take all appropriate steps, which we are sure you will cooperate with, to ensure compliance. Any confidential, privileged, or classified information provided to you during your employment must be kept confidential, and under no circumstances are you authorized to reveal any such information.

My office will follow up with you separately to discuss other post-government employment matters, including your ethics and financial disclosure obligations. Please let me know if you would like to discuss any of the points above, and thank you for your continued cooperation in these matters.

Sincerely,

A handwritten signature in dark ink, appearing to read "John A. Eisenberg", followed by a stylized flourish or initials.

John A. Eisenberg
*Assistant to the President, Deputy Counsel to the
President and Legal Advisor to the NSC*

Exhibit D

Cooper & Kirk

Lawyers

A Professional Limited Liability Company

1523 New Hampshire Avenue, N.W.

Washington, D.C. 20036

Charles J. Cooper
(202) 220-9660
ccooper@cooperkirk.com

(202) 220-9600
Fax (202) 220-9601

December 30, 2019

BY HAND

Ellen J. Knight
Senior Director, Records Management Directorate
Executive Office of the President
Washington, D.C. 20500

Re: Prepublication Security Review of Book Manuscript by Ambassador John Bolton

Dear Ms. Knight:

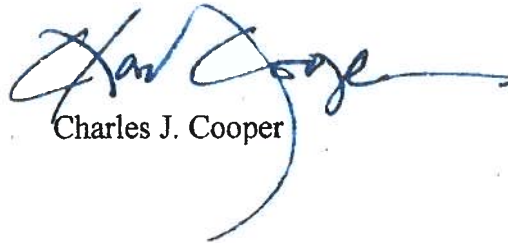
Thank you again for your helpful guidance in our telephone conversation earlier today concerning my submission, on behalf of Ambassador John Bolton, for prepublication security review of the enclosed manuscript of a book that he has prepared relating in large part to his service as National Security Advisor to the President. As I mentioned, Ambassador Bolton has carefully sought to avoid any discussion in the manuscript of sensitive compartmented information ("SCI") or other classified information, and we accordingly do not believe that prepublication review is required. We are nonetheless submitting this manuscript out of an abundance of caution, as contemplated by the nondisclosure agreements that he entered, commencing with those of April 5, 2018 immediately prior to his entry on duty.

I appreciate your assurance that the sole purpose of prepublication security review is to ensure that SCI or other classified information is not publicly disclosed. In keeping with that purpose, it is our understanding that the process of reviewing submitted materials is restricted to those career government officials and employees regularly charged with responsibility for such reviews. Accordingly, we understand that the contents of Ambassador Bolton's manuscript will not be reviewed by or otherwise disclosed to any persons not regularly involved in that process. See 28 CFR § 17.18(h) ("Material submitted for pre-publication review will be reviewed solely for the purpose of identifying and preventing the disclosure of sensitive compartmented information and other classified information. . . . Materials submitted for review will be disseminated to other persons or agencies only to the extent necessary to identify classified information.") (Justice Department prepublication review regulation). Ambassador Bolton is relying specifically on this understanding of the prepublication review process in submitting his manuscript for such review.

Ellen J. Knight
December 30, 2019
Page 2

Finally, I reiterate that the editorial and publication schedule for the manuscript is highly time sensitive, and so any efforts to complete the review before expiration of the 30-working-day deadline established in the April 5, 2018, agreement will be greatly appreciated. Please do not hesitate to contact me if you have any questions. We stand ready to be of assistance in any way possible in order to expedite your review.

Sincerely,

A handwritten signature in blue ink, appearing to read "Charles J. Cooper", with a long, sweeping horizontal line extending to the right.

Charles J. Cooper

Exhibit E

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

January 23, 2020

Charles J. Cooper
Cooper & Kirk
1523 New Hampshire Avenue NW
Washington, DC 20036

SENT VIA ELECTRONIC MAIL TO CCOOPER@COOPERKIRK.COM

Dear Mr. Cooper:

Thank you for speaking yesterday by telephone. As we discussed, the National Security Council (NSC) Access Management directorate has been provided the manuscript submitted by your client, former Assistant to the President for National Security Affairs John Bolton, for prepublication review. Based on our preliminary review, the manuscript appears to contain significant amounts of classified information. It also appears that some of this classified information is at the TOP SECRET level, which is defined by Executive Order 13526 as information that "reasonably could be expected to cause exceptionally grave harm to the national security" of the United States if disclosed without authorization. Under federal law and the nondisclosure agreements your client signed as a condition for gaining access to classified information, the manuscript may not be published or otherwise disclosed without the deletion of this classified information.

The manuscript remains under review in order for us to do our best to assist your client by identifying the classified information within the manuscript, while at the same time ensuring that publication does not harm the national security of the United States. We will do our best to work with you to ensure your client's ability to tell his story in a manner that protects U.S. national security. We will be in touch with you shortly with additional, more detailed guidance regarding next steps that should enable you to revise the manuscript and move forward as expeditiously as possible.

Sincerely,



Ellen J. Knight
Senior Director for Records, Access, and
Information Security Management

Exhibit F

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

February 7, 2020

Charles J. Cooper
Cooper & Kirk
1523 New Hampshire Avenue NW
Washington, DC 20036

SENT VIA ELECTRONIC MAIL TO CCOOPER@COOPERKIRK.COM

Dear Mr. Cooper:

As you are aware, Executive Order 13526 defines "classified information" as information, the unauthorized disclosure of which could reasonably be expected to cause at the very least "identifiable or describable damage to the national security" of the United States. In order to avoid such damage, as a condition for access to classified national security information, the Executive Branch has long required its employees to submit to a critically important prepublication review process with respect to any such information in advance of publication. These nondisclosure requirements, agreed to by your client as a condition of access to classified information, supplement the legal obligations that federal law imposes upon all persons who receive access to classified information. I would be happy to provide you copies of agreements signed by your client if that would be helpful.

As I noted in my letter of January 23, 2020, our preliminary review determined that the draft contains numerous instances of classified information. For example, the draft contains classified discussions between the President and foreign heads of state, classified foreign government information, details about classified military plans and operations, and classified details about intelligence sharing and activities. As the former Assistant to the President for National Security Affairs, your client understands the sensitivity of these categories of information and the potential harm that could be expected to result from its unauthorized disclosure.

Given the volume of classified information currently contained in the draft, your client should modify and revise the manuscript to remove all classified information and resubmit it to us for review. To further the iterative review process, it would be most efficient for me to meet with your client to review each instance of classified information in detail and, as necessary, assist in the prioritization of any particular portions. I am available any day next week. In the meantime, your client has a duty not to publish or otherwise disclose the manuscript or any of its underlying information until he has addressed our concerns and received authorization to do so from our office.

As written, the manuscript is very detailed, suggesting that it was likely produced from notes written by your client during his service at the White House. When your client received his employee debriefing, he stated that he did not have any notes or other records from his government service. Any notes that remain in your client's possession regarding the accounts in

the manuscript may fall under the requirements of the Presidential Records Act and be subject to litigation holds. Please confirm whether your client has retained any notes or other records from his government service.

Of more immediate concern, as my letter of January 23, 2020, informed you, is that the manuscript contains classified information. NSC staff will be in contact with your client to provide additional guidance on how to safeguard any classified information in your client's possession and in the possession of anyone with whom your client has shared the draft manuscript or any of the manuscript's underlying information. In that regard, please also provide us, as soon as possible, with the names and contact information of anyone with whom your client has shared the manuscript or its underlying information or confirm that he has not shared it.

Please note that this letter, along with my letter of January 23, 2020, constitute NSC's initial response for the purposes of the nondisclosure agreements signed by your client.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ellen J. Knight", written in a cursive style.

Ellen J. Knight
Senior Director for Records, Access,
and Information Security Management

Exhibit G

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

February 24, 2020

Charles J. Cooper
Cooper & Kirk
1523 New Hampshire Avenue NW
Washington, DC 20036

SENT VIA ELECTRONIC MAIL TO CCOOPER@COOPERKIRK.COM

Dear Mr. Cooper:

Last Friday, I was pleased to meet with your client, Ambassador John Bolton, to discuss our preliminary review results concerning the draft manuscript submitted for prepublication review on December 30, 2019. As I noted in my letters dated January 23, 2020, and February 7, 2020, our preliminary review determined that the draft contains numerous instances of classified information. The meeting furthered the iterative review process by providing an opportunity to inform your client of many of the specific instances of classified information identified in the draft manuscript and offer guidance to prevent unauthorized disclosure of this information for the protection of national security.

During our meeting, which lasted four hours and was most productive, I discussed with your client our use of the classification standards and categories found in Executive Order 13526, "Classified National Security Information," to identify classified information found in the draft manuscript, and he appeared to acknowledge the need to revise the manuscript to address our concerns regarding classified information. I provided guidance as to when and how he should modify language that is classified in its current form so that it no longer meets the standards to be classified. In addition, we discussed with your client guidance as to when he should delete instances of classified information found in the draft manuscript, as even with revisions the information would remain classified and thus would not be publicly releasable. Finally, I advised him on the use of citations of authorized releases and publicly available information related to national security.

I reviewed the preliminary results of three chapters in the draft manuscript in detail with your client during our meeting. Additionally, I discussed the details of a sample of review findings throughout the draft manuscript to convey instances of identified classified information. We discussed how your client can potentially avoid including classified information when discussing matters related to national security. These examples should aid your client as he revises the draft manuscript.

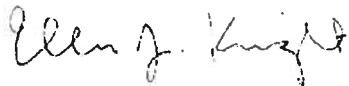
It became apparent during our meeting that it would be most helpful to the process if we hold one or more follow-on meetings. We agreed to meet again at my office to discuss the remaining portions of the draft manuscript. In order to ensure the safeguarding of identified classified

information, we discussed your proposal to locate a secure facility for your client to complete the edits of the draft manuscript. Once we complete our follow-on meetings, your client may then implement the required changes in a secure location. We can discuss the appropriate method for resubmitting the manuscript as the process moves forward.

The notes your client took at our meeting, as well as the draft manuscript he annotated, remain secured at my office. I have reviewed your client's notes to identify and redact any classified information and am enclosing a copy with this letter.

Please note the prepublication review remains in process, and your client may not publish or further disseminate the manuscript or any of its contents until authorized. Please feel free to contact me if you have any questions about next steps in the prepublication review process.

Sincerely,

A handwritten signature in black ink, appearing to read "Ellen J. Knight". The signature is fluid and cursive, with the first name "Ellen" and last name "Knight" clearly distinguishable.

Ellen J. Knight
Senior Director for Records Access,
and Information Security Management

Enclosure: a/s

Exhibit H

Knight, Ellen J. EOP/NSC

From: Knight, Ellen J. EOP/NSC
Sent: Friday, March 27, 2020 3:52 PM
To: John R. Bolton
Cc: Christine Samuelian
Subject: Prepublication Review Edits for Pick-Up

Good afternoon Ambassador Bolton,

Thank you for submitting your revised manuscript to the National Security Council (NSC) Access Management directorate for pre-publication review. I appreciate your efforts to address the classification concerns in the latest draft version you submitted. Many of the changes are satisfactory. However, additional edits are required to ensure the protection of national security information.

To assist in making the additional required changes, I will provide a list of required edits and language substitutions to guide you in this next stage of revising the draft. I have made this list available in printed copy for you or a courier to pick-up as it contains unclassified information. After receiving the list, I ask that you review the edits and make the changes to the draft. To expedite the review process, I ask that you use "track changes" or another type of formatting convention to identify all of the edits you make so that I may distinguish between the version just reviewed and the new version you plan to submit.

It would be helpful for you to note on the list provided those edits you did not make and/or those you wish to discuss with me. Please let me know when you have finished editing the draft manuscript and completed the annotations to the list and we can then discuss the best way to address any concerns you may have with the required changes. We can also discuss the most efficient method for resubmitting the revised manuscript.

Please note I will have to review the edited manuscript again to ensure the edits were completed, checking both your work and mine to ensure no classified information remains in the manuscript. As such, I must reiterate that the prepublication review remains in process. Even after making the edits, you are not authorized to publish or further disseminate the manuscript or its contents until expressly given clearance by me to do so.

Please feel free to contact me if you have any questions about next steps in the prepublication review process.

Thank you,
Ellen

Ellen J. Knight | Senior Director
Records Access and Information Security Management
National Security Council
Executive Office of the President
202.456. [REDACTED] (desk)
202.456.9201 (main office)
[REDACTED]@nsc.eop.gov

Exhibit I

Knight, Ellen J. EOP/NSC

From: Knight, Ellen J. EOP/NSC
Sent: Thursday, May 7, 2020 9:56 AM
To: John R. Bolton
Subject: Re: [EXTERNAL] Checking in

Hi Amb. Bolton,

I do not have any new information to provide at this time. The process remains ongoing. I will reach out as soon as there is an update to provide.

Thank you,
Ellen

Ellen J. Knight
Senior Director
Records Access & Information Security Management
National Security Council
Executive Office of the President
202-456-██████████
██████████@nsc.eop.gov

On May 6, 2020, at 4:32 PM, John R. Bolton <██████████> wrote:

Ellen: Hope springs eternal - any news on the letter? Thanks, John Bolton

Exhibit J

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

June 8, 2020

Charles J. Cooper
Cooper & Kirk, PLLC
1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036

SENT VIA ELECTRONIC MAIL TO CCOOPER@COOPERKIRK.COM

Dear Mr. Cooper:

Recently, we have become aware of press reports indicating that your client, John Bolton, intends to publish his manuscript imminently. This is inconsistent with the prepublication review process under the agreements signed by your client and under which we have been proceeding thus far. As we explained on January 23, February 7, February 24, and March 27, 2020, until the prepublication review process is complete and he receives the necessary authorization at the conclusion of that process, he may not publish or disseminate the manuscript.

The current draft manuscript still contains classified information. As we advised your client when he signed the nondisclosure agreements, and as he should be well aware as a former Assistant to the President for National Security Affairs in this Administration, the unauthorized disclosure of classified information could be exploited by a foreign power, thereby causing significant harm to the national security of the United States.

As we work to finish the iterative prepublication review process, we will provide you, no later than June 19, 2020, a copy of your client's draft manuscript with redactions for the information that has been identified as classified. Please confirm by June 10, 2020, that your client understands his legal obligations under the nondisclosure agreements and that he will not publish or disseminate any portion of the manuscript until after the prepublication review process has concluded and he has received the necessary authorization.

Please contact me if you have any questions.

Sincerely,



John A. Eisenberg
Assistant to the President,
Deputy Counsel to the President, and
Legal Advisor to the National Security Council

Exhibit K

Cooper & Kirk

Lawyers

A Professional Limited Liability Company

Charles J. Cooper
(202) 220-9660
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June 10, 2020

Via Electronic Mail

John A. Eisenberg
Assistant to the President,
Deputy Counsel to the President, and
Legal Advisor to the National Security Council
1600 Pennsylvania Ave., NW,
Washington, DC 20500

Re: Prepublication review of Ambassador John Bolton's manuscript

Dear Mr. Eisenberg:

I write in response to your letter of June 8, 2020. Ambassador Bolton has fully discharged all duties that the Federal Government may lawfully require of him under the nondisclosure agreements that he signed upon assuming the office of National Security Advisor. As described below, Ambassador Bolton undertook, in good faith, an exhaustive and lengthy prepublication review process of his book, *The Room Where It Happened: A White House Memoir*, and the senior career professional at the National Security Council (NSC) tasked with performing such a review, Ms. Ellen Knight, assured Ambassador Bolton that there were no remaining issues of classified information in his manuscript. His own independent judgment, based on decades of experience handling classified information, confirms that his manuscript contains no classified information. It is readily apparent that the White House seeks to block publication of Ambassador Bolton's book for purely political reasons, in violation of the First and Fifth Amendments to the United States Constitution, the covenant of good faith and fair dealing implicit in the nondisclosure agreements, and the executive order and regulations governing the classification of information.

Ambassador Bolton's long and distinguished service to the government of the United States, in senior positions both in national security and law enforcement, testifies to his close familiarity with classified information at the highest levels and his extensive experience in handling it properly. And his well-deserved reputation as a fierce defender of American interests in dealing with foreign powers, both allies and enemies, establish that he would never — *never* — take an action that would compromise the national security of the United States. In drafting the manuscript for his book, Ambassador Bolton was careful to avoid including any

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classified information. Nonetheless, to ensure that there could be no question of his good-faith compliance with the nondisclosure agreements he signed in April 2018, Ambassador Bolton instructed me, as his lawyer, to submit the draft of his manuscript to the National Security Council for a prepublication review. As you know, the purpose of this review, as stated in one of the agreements, is “to give the United States a reasonable opportunity to determine whether the [manuscript] . . . sets forth any” classified information, and it gives the NSC 30 business days to review the material and provide its response.

I submitted the manuscript on December 30, 2019, to Ms. Knight, Senior Director for Records, Access, and Information Security Management at the National Security Council, the office responsible for conducting the prepublication review process for the NSC. In doing so, I emphasized to Ms. Knight that Ambassador Bolton was relying on regulations restricting the scope of prepublication reviews to “identifying and preventing the disclosure of . . . classified information,” and limiting disclosure of the material under review to those government officials necessary for carrying out that responsibility. These regulations are in line with Executive Order 13526’s prohibition on classifying information “in order to prevent embarrassment to a person” or to “prevent or delay the release of information that does not require protection in the interest of national security.” Ms. Knight assured me that the sole purpose of the NSC’s review would be to ensure that Ambassador Bolton’s manuscript did not disclose classified information.

Over the course of four months, Ambassador Bolton and Ms. Knight, who personally conducted the review with the assistance of a senior member of Ms. Knight’s staff, painstakingly reviewed the nearly 500-page manuscript *four times*, page by page and often line by line. During that period, the book’s announced publication date had to be pushed back twice.

Round one of the process began on January 23, as the President’s impeachment trial was getting underway on the Senate floor. Ms. Knight wrote to say that Ambassador Bolton’s manuscript contained “significant amounts of classified information” and that she would provide “detailed guidance regarding next steps that should enable [Bolton] to revise the manuscript and move forward as expeditiously as possible.” A few days later, *Vanity Fair* reported that “the president is out for revenge against his adversaries.” The article stated that the President “has an enemies list,” that “Bolton is at the top of the list,” and that the “campaign against Bolton” included Ms. Knight’s January 23 letter asserting that the manuscript contained classified information. It also reported that the President “wants Bolton to be criminally investigated.” Six days later, the President tweeted that the Ambassador had written “a nasty & untrue book”—an assessment of the book’s content that he could only have made if the manuscript had been shared with those outside the normal prepublication-review process—and he described the book as “All Classified National Security.” Notwithstanding these alarming

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indications that the prepublication-review process had already been corrupted, Ambassador Bolton pressed onward and continued to cooperate in good faith with the review.

On February 7 (after the White House acknowledged that NSC staff had provided a briefing about the book to White House Counsel Pat Cipollone, then leading President Trump's impeachment defense), Ms. Knight advised that "to further the iterative process, it would be most efficient for me to meet with [Ambassador Bolton] to review each instance of classified information in detail." Their first meeting took place on February 21, the same day on which the *Washington Post* reported that "President Trump has directly weighed in on the White House [prepublication] review of a forthcoming book by his former national security adviser, telling his staff that he views John Bolton as 'a traitor,' that everything he uttered to the departed aide about national security is classified and that he will seek to block the book's publication." The story also reported that the President vowed to a group of television news anchors that "we're going to try and block publication of [his] book. After I leave office, he can do this."

In the February 21 meeting, which lasted four hours, Ms. Knight, as she described it, "reviewed the preliminary results of three chapters in the draft manuscript in detail with" Ambassador Bolton. The Ambassador took five pages of handwritten notes, as he and Ms. Knight discussed her specific concerns page by page, line by line, and sometimes word by word. Three days later, Ms. Knight wrote that the meeting had been "most productive," and she suggested that "it would be most helpful to the process if we hold one or more following meetings . . . to discuss the remaining portions of the draft manuscript." Ambassador Bolton and Ms. Knight met again three times, on March 2 (approximately four hours), March 3 (over four hours), and March 4 (approximately three hours). In these meetings, they reviewed in meticulous detail each of Ms. Knight's concerns in the remaining 11 chapters, producing 34 pages of handwritten notes. Following his notes and the guidance provided by Ms. Knight, Ambassador Bolton revised his manuscript, and by March 9 he had resubmitted all 14 chapters to begin the second round of the iterative review process.

Ambassador Bolton did not hear from Ms. Knight again until March 27, when she wrote: "I appreciate your efforts to address the classification concerns in the latest draft version you submitted. Many of the changes are satisfactory. However, additional edits are required to ensure the protection of national security information. To assist in making the additional required changes, I will provide a list of required edits and language substitutions to guide you in this next stage of revising the draft." Her list amounted to 17 typed, single-spaced pages of comments, questions, suggestions of specific alternative language, and citations to publicly available source material. Working through the weekend, Ambassador Bolton responded to all

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17 pages on Monday, March 30, accepting the vast majority of Ms. Knight's suggestions and proposing alternative solutions to others.

The third round in the iterative review process occurred on April 13, in a telephone conversation in which Ms. Knight provided her much shorter list of remaining concerns after reviewing Ambassador Bolton's March 30 revisions. Their conversation resulted in entirely agreed-upon language changes, which were delivered to Ms. Knight the next day, April 14.

During the April 13 call, Ms. Knight also said she would review the entire manuscript one more time, to recheck the issues previously resolved and ensure that she had not overlooked any. That final review resulted in two further telephone calls, on April 21 and 24, in which she conveyed her final round of edits and some additional citations to publicly available sources. Ambassador Bolton promptly responded with the requested revisions, and on April 27, Ms. Knight, after clarifying one previously discussed edit, confirmed "that's the last edit I really have to provide for you." Thus, the lengthy, laborious process finally came to an end.

When Ambassador Bolton asked when he could expect to receive the pro-forma closing letter confirming that the prepublication review process had been concluded, Ms. Knight cryptically replied that her "interaction" with unnamed others in the White House about the book had "been very delicate," and that there were "some internal process considerations to work through." She nonetheless thought the letter might be ready that afternoon but would "know more by the end of the day." They even discussed whether the letter should be transmitted by electronic transmission or by him physically picking up the hard copy. It has now been more than six weeks since the final revisions to the book, and Ambassador Bolton has not received the letter to which Ms. Knight thought he was entitled. His inquiries of Ms. Knight as to when he would receive the letter documenting her agreement that the book contains no classified information have been answered with stiff and formal replies that she had nothing new to report. He had not heard from her, or anyone else at the NSC, since May 7, until I received your letter two days ago.

In light of the foregoing, there can be no serious dispute that Ambassador Bolton discharged in good faith any duty, contractual or otherwise, he had to undertake the prepublication-review process. The process was exhaustive, involving innumerable, often picayune changes to his manuscript. It required multiple delays in the publication date for the book, which Ambassador Bolton accommodated to allow the prepublication-review process to continue. It ended with the career professional in charge of the prepublication-review process at NSC determining that the manuscript contained no classified information and that no further changes to the manuscript were required. And it continued for four months – with Ambassador

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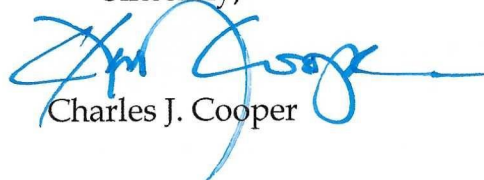
Bolton's full cooperation—even though the President repeatedly made clear throughout the review that he would seek to block the book's publication. Ambassador Bolton has fulfilled any lawful obligations he had under his nondisclosure agreements or otherwise.

Again, your June 8 letter was the first communication we have received from the White House (including from Ms. Knight) concerning the Ambassador's manuscript since May 7, and it is the first time anyone from the White House has suggested that any remaining information in the book is classified since Ms. Knight signed off on the manuscript on April 27. This last-minute allegation of classified information, coming as it does after weeks of silence from the NSC despite Ambassador Bolton's urgent inquiries, after the conclusion of an intensive four-months-long review, and—as you acknowledge—only after press reports alerted you that the Ambassador's book would be published on June 23, is a transparent attempt on the part of the White House to use national security concerns as a pretext to censor, or at least indefinitely delay, Ambassador Bolton's constitutional right to speak on matters of the utmost public import. The attempt to suppress Ambassador Bolton's book is a clear violation of the First and Fifth Amendments and the covenant of good faith and fair dealing governing the nondisclosure agreements.

It also, as a practical matter, comes too late. In reliance on Ms. Knight's assurances that his manuscript contained no classified information, that she had no further changes to his manuscript, and that she would attempt to deliver promptly the pro-forma closing letter, and after hearing *nothing* for weeks in response to his urgent requests for the closing letter, Ambassador Bolton and his publisher, Simon & Schuster, moved forward with publication of his book. The book has now been printed, bound, and shipped to distributors across the country. Ambassador Bolton has no authority to stop the book from being made available to the public on June 23.

I trust that this will conclude the matter.

Sincerely,



Charles J. Cooper

Exhibit L

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

June 11, 2020

Charles J. Cooper
Cooper & Kirk, PLLC
1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036

SENT VIA ELECTRONIC MAIL TO CCOOPER@COOPERKIRK.COM

Dear Mr. Cooper:

I was shocked and dismayed to learn from your letter of June 10, 2020, that—in brazen disregard of his obligations under his nondisclosure agreements and applicable law—your client has already provided his manuscript to a publisher, which has now printed, bound, and shipped copies to distributors across the country. Your client is well aware that the manuscript still contains classified information, because, among other things, it includes information that he himself classified and designated for declassification only after the lapse of twenty-five years. He is also well aware that the prepublication review process was still ongoing and that he never received clearance to disseminate the manuscript in its current form to *anyone* who was not authorized to handle classified information. You expressly admit that you have received no written prepublication clearance from the National Security Council. To the contrary, your client was repeatedly warned, in writing, that he was not authorized to publish the manuscript and that the process remained ongoing. Any suggestion that your client believed he had completed the prepublication process is preposterous.

By authorizing the publisher to proceed, your client has plainly violated both the classified information nondisclosure agreements that he signed and applicable law, and has betrayed his obligations to the Nation in a manner that threatens to cause significant harm to the national security of the United States. Your client is well aware that publicizing information that he learned when he served as a principal national security official would aid our Nation's adversaries. Yet he was willing to sell the Nation's secrets for a book contract. At this point, your client must do everything in his power to prevent further dissemination of the manuscript until the classified information can be removed. Your client's refusal to do so would only prove further that he is acting in his own personal interest without concern for the harm that he is causing to our Nation.

I also write to correct some of the more serious mischaracterizations and falsehoods in your letter.

First, the NSC never represented that “there were no remaining issues of classified information in [your client's] manuscript” or that “no further changes to the manuscript were required.”¹ To the contrary, Ms. Knight repeatedly explained that the prepublication process remains ongoing

¹ Letter from Charles J. Cooper to John A. Eisenberg at 1, 4 (June 10, 2020) (June 10 Letter).

and that until that process is complete and your client receives the necessary authorization at its conclusion, he may not publish or disseminate the manuscript.²

Second, the NSC did not advise your client that it had provided its “last edit” for the prepublication process on April 27, 2020.³ In fact, even after the April 27, 2020 exchange, your client repeatedly reached out to NSC to seek “news” regarding the progress of the prepublication process. Subsequently, on April 28 and again on May 7, your client was explicitly informed that the “process remains ongoing.”⁴

Third, you suggest that NSC needed to conclude the entire review process within 30 working days of your client’s first submission.⁵ As you are well aware, that claim is absurd. The relevant nondisclosure agreement provides that NSC has 30 working days to *respond* to the submission. And we did.⁶ But nothing in the nondisclosure agreement requires the prepublication process to *conclude* within 30 working days or any other set period of time.⁷ The length of the process depends on a host of factors, including the volume and type of information contained in the draft. In this case, your client’s manuscript was roughly 500 pages, and your client knowingly included voluminous amounts of classified information in it. As a result, it has required substantial effort to assess the full extent of the classified information contained within it to ensure that it is removed.

Fourth, your self-serving insinuations that the NSC review process has been directed at anything other than a good faith effort to protect national security information is offensive. Your client has taken classified information, including some that he himself classified, and sold it to the highest bidder in an attempt to make a personal profit from information that he held in trust as a public servant—and has done so without regard for the harm it would do to the national security

² See, e.g., Letter from Ellen J. Knight to Charles J. Cooper at 2 (Feb. 24, 2020) (“Please note the prepublication review remains in process, and *your client may not publish or further disseminate the manuscript or any of its contents until authorized.*”) (Emphasis added); Email from Ellen J. Knight to Charles J. Cooper (March 27, 2020) (“I must reiterate that the prepublication review remains in process. Even after making the edits, you are not authorized to publish or further disseminate the manuscript or its contents *until expressly given clearance by me to do so.*”) (Emphasis added); Email from Ellen J. Knight to Charles J. Cooper (May 7, 2020) (“I do not have any new information to provide at this time. *The process remains ongoing.* I will reach out as soon as there is an update to provide.”) (Emphasis added.).

³ June 10 Letter at 4.

⁴ Email from Ellen J. Knight to John R. Bolton (April 28, 2020); Email from Ellen J. Knight to John R. Bolton (May 7, 2020).

⁵ June 10 Letter at 2.

⁶ See Letter from Ellen J. Knight to Charles J. Cooper (Jan. 23, 2020) (“Based on our preliminary review, the manuscript appears to contain significant amounts of classified information.”); Letter from Ellen J. Knight to Charles J. Cooper at 1 (Feb. 7, 2020) (“In the meantime, your client has a duty not to publish or otherwise disclose the manuscript or any of its underlying information until he has addressed our concerns and received authorization to do so from our office.”).

⁷ See Sensitive Compartmented Information Nondisclosure Agreement Between John Robert Bolton and the United States § 5 (April 5, 2018) (“I further understand that the Department or Agency to which I have made a submission will . . . *make a response* to me within a reasonable time, not to exceed 30 working days from date of receipt.”) (Emphasis added.).

of the United States. The NSC's sole interest in this matter is to protect the national security of the United States.

Although your client has plainly placed personal profit ahead of duty to country at this point, he still has binding obligations under the nondisclosure agreements he signed and applicable law. He is under a continuing obligation to prevent the unauthorized disclosure of classified information.⁸ In addition, as your client acknowledged, "all classified information to which I have access or may obtain access by signing this Agreement is now and will remain the property of, or under the control of the United States Government unless and until otherwise determined by an authorized official or final ruling of a court of law."⁹

Accordingly, and for the reasons discussed above, your client remains under an obligation to stop the dissemination of the manuscript, which still contains classified information that belongs to the United States Government, the unauthorized disclosure of which could reasonably be expected to cause serious damage to national security. Please be advised that we have also referred this matter to the Department of Justice for appropriate action.

Please confirm immediately that your client will take all actions necessary to halt dissemination of his manuscript.

Sincerely,



John A. Eisenberg
Assistant to the President,
Deputy Counsel to the President, and
Legal Advisor to the National Security Council

⁸ See, e.g., Classified Information Nondisclosure Agreement Between John Robert Bolton and the United States § 8 (April 5, 2018) ("Unless and until I am released in writing by an authorized representative of the United States Government, I understand that all conditions and obligations imposed upon me by this Agreement apply during the time I am granted access to classified information, and at all times thereafter.").

⁹ *Id.* § 7.

Exhibit M

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

June 16, 2020

John R. Bolton
9107 Fernwood Road
Bethesda, Maryland 20817

SENT VIA HAND DELIVERY

Dear Mr. Bolton:

As you know, the pre-publication review process for your manuscript remains ongoing. To further that process, enclosed is a copy of the latest version of your manuscript with redactions identifying passages that, based on my initial review, appear to contain classified information.

As you and your counsel have been repeatedly informed, your manuscript in its current form is still not approved for public release and will not be approved until the pre-publication review process is complete. The manuscript still contains classified information. The review process required by the agreements you signed has not been completed. Dissemination of this manuscript in its current form would constitute a breach of your nondisclosure agreements and laws governing access to classified information and could have serious legal consequences.

I am available to meet with you to discuss the removal of classified information from the manuscript.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Ellis".

Michael J. Ellis
Deputy Assistant to the President and
Senior Director for Intelligence Programs

cc: Charles J. Cooper, Esq. (by email, w/o enclosure)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN R. BOLTON,

Defendant.

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Civil Action No. 20-1580 (RCL)

[PROPOSED] ORDER

It is hereby ORDERED that the United States' Motion for a [Temporary Restraining Order] [Preliminary Injunction] is GRANTED. It is FURTHER ORDERED that:

Defendant is enjoined from proceeding with the publication of his book in any form or media without first obtaining written authorization from the United States through the prepublication review process;

Defendant is required to ensure that his publisher and resellers receive notice that the book contains classified information that he was not authorized to disclose;

Defendant is required to instruct his publisher to delay the release date of the book pending the completion of the prepublication review process and authorization from the United States that no classified information remains in the book;

Defendant is required to instruct his publisher to take any and all available steps to retrieve and destroy any copies of the book that may be in the possession of any third party;

Defendant is further enjoined from taking any additional steps toward public disclosing classified information without first obtaining authorization from the United States through the prepublication review process;

Defendant is required to ensure that his publisher and resellers receive notice of this Order;
and

This injunction binds Defendant, along with his “officers, agents, servants, employees, and attorneys,” and “all other persons who are in active concert or participation with” him, if they receive actual notice of the order, Fed. R. Civ. P. 65(d)(2), including Defendant’s publisher, Simon & Schuster, and other such persons in the commercial distribution chain of Defendant’s book.

SO ORDERED:

DATE: _____

ROYCE C. LAMBERTH
United States District Judge