

Subject: RE: FOIA Request (USTR-19-1349)
Date: Friday, December 6, 2019 at 2:05:57 PM Eastern Standard Time
From: Ricker, Monique T. EOP/USTR
To: FOIA, FN-USTR-FOIA
Attachments: USTR_FY20-011_Partial Release_1_Redacted.pdf

Mr. McGrath,

This email is a partial response from the Office of the United States Trade Representative (USTR) to the Freedom of Information Act (FOIA) request FY20-11 submitted on October 24, 2019 requesting emails sent from various USTR employees containing one of the following terms: Rudy, Rudolph, Giuliani, Giuiliani, Guliani, Guiliani, Toensing, diGenova, Kislin, Burisma, Parnas, Fruman, Firtash, Kolomoisky, Klitschko, Burisma, Shokin, Lutsenko, Zelensky, Zelenskyy, Zelenskiy, Yermak, Bakanov, Bohdan, Hunter, Biden, Rybolovlev, Bannon, Schweizer, "Secret Empires," Gaffney, Pillsbury, Bohai, BHR, Rosemont, Seneca, Heinz, Archer, Thornton, or Warren. The timeframe for the search was between March 1, 2019 and October 24, 2019, the date the search was conducted.

Attached please find seven pages of responsive documents. We redacted one non-public cell phone number because we reasonably foresee that disclosure would harm an interest protected by FOIA Exemption 6.

Personal circumstances kept me away from the office this week, but I anticipate we will wrap up your request next week. If you have any questions or would like help refining your search, please contact me or my colleague Janice Kaye at FOIA@ustr.eop.gov or 202-395-3419.

Thank you,
Monique

Monique T. Ricker
FOIA Program Manager/Attorney

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON DC 20508

From: American Oversight FOIA <foia@americanoversight.org>
Sent: Thursday, October 24, 2019 2:05 PM
To: FN-USTR-FOIA <FN-USTR-FOIA@ustr.eop.gov>
Subject: [EXTERNAL] FOIA Request (USTR-19-1349)

Dear FOIA Officer:

Please find attached and see below for a request for records under the Freedom of Information Act.

Sincerely,

Vibha
Paralegal

American Oversight
foia@americanoversight.org
>www.americanoversight.org< | @weareoversight

FOIA: USTR-19-1349:

VIA EMAIL

USTR FOIA Office, GSD/RDF
Attn: Chief FOIA Officer Janice Kaye
Office of the U.S. Trade Representative
Anacostia Naval Annex, Building 410/Door 123,
250 Murray Lane SW
Washington, DC 20509
FOIA@ustr.eop.gov

Re: Expedited Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of your agency, American Oversight makes the following request for records.

On May 9, 2019, President Trump’s personal lawyer, Rudolph Giuliani, announced that he would travel to Ukraine to meet with the country’s president-elect to urge the Ukrainian government to pursue an investigation related to the son of former Vice President Biden—a potential electoral opponent of the president.^[1] Mr. Giuliani, reportedly aided by the president’s former attorneys Victoria Toensing and Joseph E. diGenova, defended his planned trip by stating that “[w]e’re not meddling in an election, we’re meddling in an investigation.”^[2] Subsequent reports indicate that Mr. Giuliani engaged a State Department official—U.S. Special Representative for Ukraine Negotiations Kurt D. Volker—in his efforts.^[3] The State Department has acknowledged that Mr. Volker helped arrange talks between Mr. Giuliani and a Ukrainian official.^[4] Additionally, the U.S. Ambassador to the European Union, Gordon Sondland, has reportedly been included in calls with Giuliani regarding Ukraine, and recently released text messages show that Ambassador Sondland regularly corresponded via text message on the WhatsApp messaging platform with Special Representative Volker and others regarding official State business related to Ukraine.^[5]

Material provided by the State Department Inspector General to Congress suggest that State Department officials—including those in the Office of the Legal Advisor—were involved in following up on Giuliani’s requests to investigate certain matters related to Ukraine as early as March 2019.^[6] Reports also indicate that Giuliani’s meeting with a Ukrainian official occurred shortly after the President Trump’s July 25, 2019, call with Ukraine’s president, in which President Trump reportedly asked Ukraine’s government to prioritize “corruption” investigations.^[7] Reports now indicate that the administration acted to withhold vital aid to Ukraine days before President Trump’s July phone call with Ukraine’s President Zelensky.^[8] President Trump has also now acknowledged—following reports of a whistleblower complaint that the administration has refused to provide to Congress—that he discussed his potential political opponent, Joe Biden, with Ukraine’s president in the July call.^[9] A transcript or summary of the call released by the White House shows, further, that the president stated that he would direct Attorney General Barr to call the president of Ukraine with the president’s personal attorney, Mr. Giuliani, regarding his request that Ukraine investigate his political opponent.^[10]

On October 3, 2019, President Trump publicly stated that China should investigate former Vice President Biden and

his son.^[11] Press reporting also indicates that Trump previously discussed Biden’s and Senator Elizabeth Warren’s political prospects on a phone call with Chinese President Xi on June 18, 2019, and that conservative allies of the President, including Giuliani, have discussed allegations regarding Biden’s involvement in China since spring 2019.^[12] On October 10, 2019, one of Trump’s China advisors, Michael Pillsbury, who visited China last month, wrote to a journalist claiming “Actually I got a quite a bit of background on Hunter Biden from the Chinese.”^[13]

American Oversight seeks records with the potential to shed light on whether and to what extent the political interests of the president have influenced the administration’s policies overseas, including actions related to the efforts of the president’s personal attorney to persuade foreign governments to conduct an investigation connected to a political opponent of the president.

Requested Records

American Oversight seeks expedited review of this request for the reasons identified below and requests that the U.S. Trade Representative (USTR) produce the following records as soon as practicable, and at least within twenty business days:

All email communications (including email messages, calendar invitations, and attachments thereto, and including complete email chains) sent by the USTR officials specified below containing any of the following key terms:^[14]

- i. Rudy
- ii. Rudolph
- iii. Giuliani
- iv. Giuiliani
- v. Guliani
- vi. Guiliani
- vii. Toensing
- viii. diGenova
- ix. Kislin
- x. Burisma
- xi. Parnas
- xii. Fruman
- xiii. Firtash
- xiv. Kolomoisky
- xv. Klitschko
- xvi. Burisma

- xvii. Shokin
- xviii. Lutsenko
- xix. Zelensky
- xx. Zelenskyy
- xxi. Zelenskiy
- xxii. Yermak
- xxiii. Bakanov
- xxiv. Bohdan
- xxv. Hunter
- xxvi. Biden
- xxvii. Rybolovlev
- xxviii. Bannon
- xxix. Schweizer
- xxx. "Secret Empires"
- xxxi. Gaffney
- xxxii. Pillsbury
- xxxiii. Bohai
- xxxiv. BHR
- xxxv. Rosemont
- xxxvi. Seneca
- xxxvii. Heinz
- xxxviii. Archer
- xxxix. Thornton
- xl. Warren

Specified Officials:

- i. USTR Robert Lighthizer
- ii. Deputy USTRs Jeff Gerrish and C.J. Mahoney

- iii. Chief of Staff Jamieson Greer
- iv. Deputy Chiefs of Staff Pamela Marcus and Stewart Ackerly
- v. Chief Scheduler Abigail Bacak
- vi. Anyone serving in the capacity of White House Liaison
- vii. General Counsel Joseph Barloon, and former General Counsel Stephen Vaughn
- viii. Assistant U.S. Trade Representative for Congressional Affairs Christopher Jackson
- ix. Acting USTR for China Affairs Terrence McCartin

American Oversight has limited its request to sent messages of each official to reduce the volume of potentially responsive records. American Oversight still requests complete email chains. So, for example, if the specified official sent a response to an incoming message containing a key term listed above, the email chain containing the initially received message and the response is responsive to this request.

Please provide all responsive records from March 1, 2019, through the date the search is conducted.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's regulations, American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes.

American Oversight requests a waiver of fees because disclosure of the requested information is "in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government."^[15] The subject matter of the requested records specifically relates to the operations or activities of the government, including communications surrounding an effort by the personal attorney to the president to persuade the foreign government to investigate a family member of one of the president's potential political opponents,^[16] and actions reportedly taken by the U.S. Government to aid those efforts. There is significant public interest in understanding whether and to what extent the perceived political interests of the president are influencing U.S. foreign policy, including whether administration officials are involved in an effort to use the president's private attorney to lobby foreign government officials,^[17] or whether other U.S. Government actions are being undertaken to pressure a foreign government to investigate the president's political opponent for President Trump's electoral advantage. The subject of this request is a matter of public interest, and the public's understanding of the government's activities and use of resources would be enhanced through American Oversight's analysis and publication of these records.

This request is primarily and fundamentally for non-commercial purposes.^[18] As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight's financial interest. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.^[19]

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.^[20] Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department's process for issuing such waivers;^[21] posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze information related to the administration's proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;^[22] posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;^[23] posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;^[24] posting records and analysis regarding the Department of Justice's decision in response to demands from Congress to direct a U.S. Attorney to undertake a wide-ranging review and make recommendations regarding criminal investigations relating to the President's political opponents and allegations of misconduct by the Department of Justice itself and the Federal Bureau of Investigation.^[25]

Accordingly, American Oversight qualifies for a fee waiver.

Application for Expedited Processing

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and the implementing regulations of your agency, American Oversight requests that your agency expedite the processing of this request.

I certify to be true and correct to the best of my knowledge and belief that there is a compelling need for expedited processing of the above request because the information requested is urgently needed in order to inform the public concerning actual or alleged government activity, and American Oversight is primarily engaged in disseminating the information it received from public records requests to the public.

Recent reporting demonstrates that there is clearly an urgent need to inform the public regarding the matters that are the subject of American Oversight's FOIA request. First, American Oversight has requested records with the potential to shed light on whether the current administration has, potentially at the behest of President Trump, undertaken inappropriate actions to pressure a foreign government to conduct an investigation of one of the president's political opponents in order to give the president an electoral advantage. Because voting in the presidential primary elections—in which both President Trump and candidate Joe Biden will be candidates—is scheduled to commence in less than five months, on February 3, 2020, and voting in the general election will start in just over a year, there is plainly an urgent need to inform the public about the administration's actions that would be revealed by the records requested here.^[26] Second, factual developments in the last month have demonstrated that there are immense public concerns that the president, his administration, and his private attorney, Mr. Giuliani, may be continuing or intensifying their efforts to use the authority and resources of the federal government to pressure foreign governments to undertake an investigation of presidential candidate Joe Biden and his family. There is also widespread public concern that a whistleblower complaint within the intelligence community relates to the president's efforts to pressure the Ukrainian government to conduct an investigation of a political opponent for the president's electoral benefit.^[27] Mr. Giuliani, the president's personal lawyer, has again confirmed that he has endeavored to pressure Ukrainian authorities to begin an investigation.^[28] As a result, the House of Representatives has undertaken a fast-moving impeachment inquiry focused on the president, and the public has a right to have the requested information within a timeframe that will meaningfully allow citizens to petition their representatives on the merits of impeachment.

American Oversight's request seeks information that can shed light on whether and to what extent the Trump administration is attempting to use government resources to pressure a foreign nation to undertake actions designed to threaten, weaken, or otherwise target the president's political opponent for the purpose of giving him an electoral advantage. The public urgently needs the information American Oversight has requested before voting in the 2020

presidential election, including before voting in the primaries of that election. The public has a right to know if the president's administration has inappropriately used government power to gain electoral advantage against an opponent through pressure on a foreign nation.

I further certify that American Oversight is primarily engaged in disseminating information to the public. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. Similar to other organizations that have been found to satisfy the criteria necessary to qualify for expedition,^[29] American Oversight "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience."^[30] American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, and other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.^[31] As discussed previously, American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content.^[32]

Accordingly, American Oversight's request satisfies the criteria for expedition.

Guidance Regarding the Search & Processing of Requested Records

In connection with its request for records, American Oversight provides the following guidance regarding the scope of the records sought and the search and processing of records:

- Our request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. To the extent that an email is responsive to our request, our request includes all prior messages sent or received in that email chain, as well as any attachments to the email.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.^[33] It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.^[34]
- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to government-wide requirements to manage agency information electronically,^[35] and many agencies have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency's archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.
- In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the

agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

Conclusion

If you have any questions regarding how to construe this request for records or believe that further discussions regarding search and processing would facilitate a more efficient production of records of interest to American Oversight, please do not hesitate to contact American Oversight to discuss this request. American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in an electronic format by email. Alternatively, please provide responsive material in native format or in PDF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, please contact Dan McGrath at foia@americanoversight.org or 202.897.4213. Also, if American Oversight's request for expedition is not granted or its request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

Austin R. Evers
Executive Director
American Oversight

[1] Kenneth P. Vogel, *Rudy Giuliani Plans Ukraine Trip to Push for Inquiries That Could Help Trump*, N.Y. Times, May 9, 2019, ><https://www.nytimes.com/2019/05/09/us/politics/giuliani-ukraine-trump.html><.

[2] *Id.*

[3] Kenneth P. Vogel & Andrew E. Kramer, *Giuliani Renews Push for Ukraine to Investigate Trump's Political Opponents*, N.Y. Times, Aug. 21, 2019, ><https://www.nytimes.com/2019/08/21/us/politics/giuliani-ukraine.html?smid=nytcore-ios-share><.

[4] Kenneth P. Vogel (@kenvogel), Twitter (Aug. 22, 2019, 6:30 PM), ><https://twitter.com/kenvogel/status/1164666081501470727?s=20><.

[5] Meagan Flynn, *How Gordon Sondland, a Wealthy Hotelier Turned Ambassador, Became the Latest Key Player in the Ukraine Inquiry*, Wash. Post (Oct. 4, 2019, 7:27 AM), ><https://www.washingtonpost.com/nation/2019/10/04/gordon-sondland-ukraine-texts-ambassador/><; Erin Banco, et al., *U.S. Ambassador Roped Into Rudy's Quest to Smear Biden*, The Daily Beast (Sept. 25, 2019, 7:26 AM), ><https://www.thedailybeast.com/impeachment-inquiry-us-ambassador-roped-into-rudy-giulianis-quest-to-smear-biden><.

[6] Leigh Ann Caldwell, et al., *Giuliani Says State Dept. Vowed to Investigate After He Gave Ukraine Docs to Pompeo*, NBC News (Oct. 4, 2019, 8:09 AM), ><https://www.nbcnews.com/politics/trump-impeachment-inquiry/giuliani-says-state-dept-vowed-investigate-after-he-gave-ukraine-n1061931><.

- [7] Letter from Chairs Rep. Engel, Rep. Schiff, & Rep. Cummings, U.S. House of Representatives Committees on Foreign Affairs, Intelligence, and Oversight and Reform, to Michael Pompeo, Secretary, U.S. Dep't of State, Sept. 9, 2019, ><https://www.politico.com/f/?id=0000016d-16fe-d466-a36d-d6ff7a9c0000><.
- [8] Karoun Demirjian, et al., *Trump Ordered Hold on Military Aid Days Before Calling Ukraine President*, Wash. Post (Sept. 23, 2019, 10:40 PM), >https://www.washingtonpost.com/national-security/trump-ordered-hold-on-military-aid-days-before-calling-ukrainian-president-officials-say/2019/09/23/df93a6ca-de38-11e9-8dc8-498eabc129a0_story.html<.
- [9] Devan Cole, *Trump Says He Discussed Biden with Ukrainian President and Democrats Threaten 'New Stage of Investigation'*, CNN (Sept. 22, 2019, 6:41 PM), ><https://www.cnn.com/2019/09/22/politics/adam-schiff-donald-trump-ukraine-whistleblower-investigation-impeachment/index.html><.
- [10] The White House, Memorandum of Telephone Conversation with President Zelenskyy of Ukraine, July 25, 2019, <https://www.whitehouse.gov/wp-content/uploads/2019/09/Unclassified09.2019.pdf>.
- [11] Zachary Basu, *Trump Says China Should Investigate Bidens*, Axios, Oct. 3, 2019, ><https://www.axios.com/trump-china-investigate-joe-biden-f7d034bf-91ea-4ede-a879-6b86c36e719a.html><.
- [12] Kylie Atwood, et al., *Trump Raised Biden with Xi in June Call Housed in Highly Secure Server*, CNN (Oct. 3, 2019, 10:30 PM), ><https://www.cnn.com/2019/10/03/politics/trump-biden-call-xi-secure-server/index.html><; Lachlan Markey and Asawin Suebsaeng, *Not Just Ukraine: Rudy and Bannon Try a Whole New Way to Slime Biden*, The Daily Beast (Sept. 24, 2019, 12:22 PM), ><https://www.thedailybeast.com/rudy-giuliani-and-steve-bannon-are-going-after-hunter-biden-not-just-on-ukraine-but-on-china-too><.
- [13] David Lynch & Josh Dawsey, *Trump Adviser Gives Conflict Accounts on Whether Chinese Offered Information About Hunter Biden*, Wash. Post (Oct. 10, 2019, 2:27 PM), >https://www.washingtonpost.com/business/economy/trump-advisor-gives-conflicting-accounts-on-whether-chinese-offered-information-about-hunter-biden/2019/10/10/35f32a14-eb80-11e9-9306-47cb0324fd44_story.html<.
- [14] To be clear, American Oversight requests all emails sent by the specified officials containing the key terms listed here without subject matter limitation. American Oversight has provided significant contextual background information concerning the reasons for its request, and the key terms listed are those likely to be used in communications concerning vitally important matters related to the matters discussed in this letter, but the contextual information American Oversight provided should not be used to exclude, or treat as non-responsive, any email communications sent by specified officials containing these key terms.
- [15] 5 U.S.C. § 552(a)(4)(A)(iii).
- [16] See Vogel *supra* note 1.
- [17] See Vogel *supra* note 3.
- [18] See 5 U.S.C. § 552(a)(4)(A)(iii).
- [19] American Oversight currently has approximately 12,300 page likes on Facebook and 54,500 followers on Twitter. American Oversight, Facebook, ><https://www.facebook.com/weareoversight/>< (last visited Sept. 20, 2019); American Oversight (@weareoversight), Twitter, ><https://twitter.com/weareoversight>< (last visited Sept. 20, 2019).
- [20] News, American Oversight, ><https://www.americanoversight.org/blog><.
- [21] *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, American Oversight, ><https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance><; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, American Oversight, ><https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents><.
- [22] See generally *Audit the Wall*, American Oversight, ><https://www.americanoversight.org/investigation/audit-the-wall><; see, e.g., *Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, American Oversight, ><https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall><.
- [23] *Documents Reveal Ben Carson Jr.'s Attempts to Use His Influence at HUD to Help His Business*, American Oversight, ><https://www.americanoversight.org/documents-reveal-ben-carson-jr-s-attempts-to-use-his-influence-at-hud-to-help-his-business><.

- [24] *Investigating the Trump Administration's Efforts to Sell Nuclear Technology to Saudi Arabia*, American Oversight, ><https://www.americanoversight.org/investigating-the-trump-administrations-efforts-to-sell-nuclear-technology-to-saudi-arabia><.
- [25] *Sessions' Letter Shows DOJ Acted On Trump's Authoritarian Demand to Investigate Clinton*, American Oversight, ><https://www.americanoversight.org/sessions-letter><.
- [26] Catherine Kim, *The 2020 Election Calendar*, Vox (Sept. 12, 2019, 11:56 PM), ><https://www.vox.com/2019/6/26/18693259/2020-presidential-election-calendar-primaries><.
- [27] See, e.g., John Wagner, *Trump Declines to Say Whether He Discussed Joe Biden in Call with Ukrainian President*, Wash. Post (Sept. 20, 2019, 12:27 PM), >https://www.washingtonpost.com/politics/trump-issues-fresh-denial-of-a-dicey-conversation-with-a-foreign-leader/2019/09/20/00da79dc-dba3-11e9-a688-303693fb4b0b_story.html<; Phil Helsel, *Whistleblower Complaint About Trump Involves Ukraine, Report Says*, NBC News (Sept. 19, 2019, 9:54 PM), ><https://www.nbcnews.com/politics/white-house/whistleblower-complaint-about-trump-involves-ukraine-report-says-n1056751><.
- [28] Robert Legare, *Rudy Giuliani Says He Didn't Ask Ukraine to Investigate Biden—And Then Says He Did*, CBS News (Sept. 20, 2019, 10:31 AM) ><https://www.cbsnews.com/news/rudy-giuliani-chris-cuomo-interview-did-not-ask-ukraine-to-investigate-biden-and-then-says-he-did-cnn-appearance/><.
- [29] See *ACLU v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 30–31 (D.D.C. 2004); *EPIC v. Dep't of Defense*, 241 F. Supp. 2d 5, 15 (D.D.C. 2003).
- [30] *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).
- [31] American Oversight currently has approximately 12,300 page likes on Facebook and 54,500 followers on Twitter. American Oversight, Facebook, ><https://www.facebook.com/weareoversight>< (last visited Sept. 20, 2019); American Oversight (@weareoversight), Twitter, ><https://twitter.com/weareoversight>< (last visited Sept. 20, 2019).
- [32] See generally *News*, American Oversight, ><https://www.americanoversight.org/blog><; see, e.g., *DOJ Civil Division Response Noel Francisco Compliance*, American Oversight, ><https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance><; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, American Oversight, ><https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents><; *Audit the Wall*, American Oversight, ><https://www.americanoversight.org/investigation/audit-the-wall><; *Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, American Oversight, ><https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall><; *Documents Reveal Ben Carson Jr.'s Attempts to Use His Influence at HUD to Help His Business*, American Oversight, ><https://www.americanoversight.org/documents-reveal-ben-carson-jr-s-attempts-to-use-his-influence-at-hud-to-help-his-business><; *Investigating the Trump Administration's Efforts to Sell Nuclear Technology to Saudi Arabia*, American Oversight, ><https://www.americanoversight.org/investigating-the-trump-administrations-efforts-to-sell-nuclear-technology-to-saudi-arabia><; *Sessions' Letter Shows DOJ Acted On Trump's Authoritarian Demand to Investigate Clinton*, American Oversight, ><https://www.americanoversight.org/sessions-letter><.
- [33] See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).
- [34] See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).
- [35] Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), ><https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records><; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), ><https://www.archives.gov/files/records-mgmt/m-12-18.pdf><.

Re: Pillsbury on China

From: jamieson.l.greer@ustr.eop.gov
To: "White, Christopher M. EOP/USTR" <christopher.m.white@ustr.eop.gov>
Date: Tue, 02 Apr 2019 20:43:13 -0400

Thanks

Sent from my iPhone

On Apr 2, 2019, at 7:34 PM, White, Christopher M. EOP/USTR <Christopher.M.White@ustr.eop.gov> wrote: 

Talking about how China is closing in on us with Panama deal. China building 1.4bil bridge over Panama canal, direct flights from Shanghai to Panama City. Also talking about how Italy embraced one belt one road. Says POTUS needs more people with him who think like him on China. Cited that General Mattis made his first trip to China ever during his time as Sec. Of Defense and said we need more people at top of government who aren't so clueless about China. Says we need all intelligence committees to come out and say we got China for a long time. Also said Germany has gone too far with embracing Huawei. Closed with saying there's good news on the trade talks

Christopher M. White
Confidential Assistant to Ambassador Lighthizer
Executive Office of the President
Office of the United States Trade Representative
C. (b) (6) | O. 202.395.9477

Fwd: Letter from Senator Warren and members of the MA Congressional Delegation

From: christopher.l.jackson@ustr.eop.gov
To: "Brennan, Bridget A. EOP/USTR" <bridget.a.brennan@ustr.eop.gov>
Cc: "Ekmark, Kimberly K. EOP/USTR" <kimberly.k.ekmark@ustr.eop.gov>, "Carr, Kerrie L. EOP/USTR" <kerrie.l.carr@ustr.eop.gov>, "Givens, Shelia R. EOP/USTR" <shelia_givens@ustr.eop.gov>, "Bishop, Cameron M. EOP/USTR" <cameron.m.bishop@ustr.eop.gov>
Date: Mon, 16 Sep 2019 17:55:25 -0400
Attachments: 9.16.19 - MA delegation letter to USTR Lighthizer re MA lobster industry - WARREN.pdf (2.45 MB)

Incoming letter

Sent from my iPhone

Begin forwarded message:

From: "Coulombe, Ashley (Warren)" <Ashley_Coulombe@warren.senate.gov>
To: "Jackson, Christopher L. EOP/USTR" <Christopher.L.Jackson@ustr.eop.gov>
Cc: "Siegel, Julie (Warren)" <Julie_Siegel@warren.senate.gov>, "Freitas, Bruno (Warren)" <Bruno_Freitas@warren.senate.gov>, "Gabriel, Nairobi (Warren)" <Nairobi_Gabriel@warren.senate.gov>
Subject: Letter from Senator Warren and members of the MA Congressional Delegation

Hi Christopher –

Please find attached letter to Ambassador Lighthizer from Senator Warren and members of the Massachusetts congressional delegation, including Senator Markey and U.S. Representatives Lynch, Keating, Kennedy, and Moulton. Please acknowledge receipt, and let me know if you have any questions.

Best-
Ashley

Ashley Coulombe
State Policy Director
Senator Elizabeth Warren
(617)565-3170

Congress of the United States
Washington, DC 20510

September 16, 2019

The Honorable Robert Lighthizer
United States Trade Representative
600 17th Street NW
Washington, DC 20508

Dear Ambassador Lighthizer,

We write urging you to explore new markets for American lobster exports to compensate for the impact of China's 25 percent tariffs on imported American lobsters.¹ As indicated in a June 29, 2018 letter by Senator Warren, these tariffs continue to have material impacts on the Massachusetts lobster industry.^{2,3}

U.S. lobster exports to China are down more than 80 percent since June 2018, which is reflected in the losses reported by local Massachusetts lobster companies.⁴ At least two businesses have been forced to cease operations, leaving more than 250 employees out of work, and the U.S. lobster industry more vulnerable to long-term decline and competition from Canada.⁵

While Massachusetts state legislators are exploring solutions for economic relief at the state level, it is imperative that there be federal resolve to assist the Massachusetts lobstermen whose livelihoods heavily relied on exports to China.

In your written response letter to Senator Warren's letter, you acknowledged concerns about the impacts the Chinese tariffs would have on Massachusetts families that work in the lobster industry.⁶ In that same response, you indicated that the trade agreements with countries in Africa

¹ New York Times, "Lobsters, Small-Batch Whiskey, and Trump's Trade War," Alan Rappeport, June 22, 2018, <https://www.nytimes.com/2018/06/22/us/politics/donald-trump-tariffs-trade-war.html>

² Letter from Senator Elizabeth Warren to U.S. Trade Representative Robert Lighthizer, June 29, 2018, [on file with Senator Warren's office]

³ WGBH, "Gloucester Lobster Industry Feeling The Pinch From China Trade War," Stephanie Leydon, July 10, 2019, <https://www.wgbh.org/news/local-news/2019/07/10/gloucester-lobster-industry-feeling-the-pinch-from-china-trade-war>.

⁴ AP News, "US exports to lobster-loving China go off cliff amid tariffs," Patrick Whittle, August 26, 2019, <https://www.apnews.com/6482bb8522ef427c8dba0d117327f1b2>.


⁵ State House News Service, "State House hearing on tariffs, lobster industry will wait 'til September," July 8, 2019, <https://gloucester.wickedlocal.com/news/20190708/state-house-hearing-on-tariffs-lobster-industry-will-wait-til-september>

⁶ Letter from United States Trade Representative Robert Lighthizer to Senator Elizabeth Warren, July 3, 2018, [on file with Senator Warren's office]

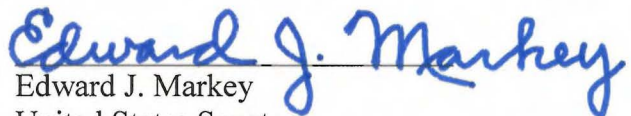
and South East Asia and the U.S. Department of Commerce's Foreign Commercial Service could be avenues of mitigation to replace the loss of the Chinese market.⁷ We would like to highlight that the Canadian-European Union Comprehensive Economic and Trade Agreement provides tariff-free access for Canadian lobster products being sold in the European Union,⁸ putting American lobster products at a serious disadvantage.

We urge you to work with the Massachusetts lobster industry to provide specific solutions and resources to end the dire losses to the Massachusetts economy. We thank you for your prompt attention to this issue and request a response by September 30, 2019.

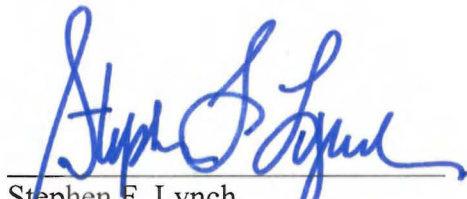
Sincerely,



Elizabeth Warren
United States Senator




Edward J. Markey
United States Senator




Stephen F. Lynch
Member of Congress



William R. Keating
Member of Congress



Seth Moulton
Member of Congress



Joseph P. Kennedy III
Member of Congress

⁷ Letter from United States Trade Representative Robert Lighthizer to Senator Elizabeth Warren, July 3, 2018, [on file with Senator Warren's office]

⁸ Lobster Council Canada. "Canada-European Union Comprehensive Economic and Trade Agreement (CETA)." <http://lobstercouncilcanada.ca/market-access/canada-european-union-comprehensive-economic-and-trade-agreement-ceta/>

Fwd: [EXTERNAL] China trade talks and Biden

From: jamieson.l.greer@ustr.eop.gov
To: "Lighthizer, Robert E. EOP/USTR" <robert.e.lighthizer@ustr.eop.gov>
Date: Thu, 03 Oct 2019 13:12:42 -0400

This a crazy question. Let's talk to see if/how you want to respond.

Sent from my iPhone

Begin forwarded message:

From: "Emerson, Jeffrey W. EOP/USTR" <Jeffrey.W.Emerson@ustr.eop.gov>
Date: October 3, 2019 at 11:26:17 AM EDT
To: "Greer, Jamieson L. EOP/USTR" <Jamieson.L.Greer@ustr.eop.gov>, "Gerrish, Jeffrey D. EOP/USTR" <Jeffrey.D.Gerrish@ustr.eop.gov>, "Ackerly, Stewart H. EOP/USTR" <Stewart.H.Ackerly@ustr.eop.gov>, "Morris, Rachel M. EOP/USTR" <Rachel.M.Morris@ustr.eop.gov>, "Davis, Emily K. EOP/USTR" <Emily.K.Davis@ustr.eop.gov>
Subject: FW: [EXTERNAL] China trade talks and Biden

FYI -

From: James Politi <james.politi@ft.com>
Sent: Thursday, October 3, 2019 11:22 AM
To: Emerson, Jeffrey W. EOP/USTR <Jeffrey.W.Emerson@ustr.eop.gov>; Davis, Emily K. EOP/USTR <Emily.K.Davis@ustr.eop.gov>
Subject: [EXTERNAL] China trade talks and Biden

Hi there

In light of president Trump's remarks this morning calling on China to investigate Joe Biden and his son, can you say whether administration officials discussed this demand in the trade negotiations, either on phone or video-calls, or in face-to-face negotiations ?

Thanks James

Fwd: [EXTERNAL] China

From: jamieson.l.greer@ustr.eop.gov
To: "Lighthizer, Robert E. EOP/USTR" <robert.e.lighthizer@ustr.eop.gov>
Date: Thu, 03 Oct 2019 22:07:05 -0400

From: "Davis, Emily K. EOP/USTR" <Emily.K.Davis@ustr.eop.gov>
Date: October 3, 2019 at 9:51:36 PM EDT
To: "Greer, Jamieson L. EOP/USTR" <Jamieson.L.Greer@ustr.eop.gov>, "Ackerly, Stewart H. EOP/USTR" <Stewart.H.Ackerly@ustr.eop.gov>, "Emerson, Jeffrey W. EOP/USTR" <Jeffrey.W.Emerson@ustr.eop.gov>
Subject: Fwd: [EXTERNAL] China

Absurd.

Sent from my iPhone

Begin forwarded message:

From: "Farhi, Arden" <FarhiA@cbsnews.com>
Date: October 3, 2019 at 8:58:07 PM EDT
To: "emily.k.davis@ustr.eop.gov" <emily.k.davis@ustr.eop.gov>
Cc: "@Wash Booth" <WashBooth@cbsnews.com>
Subject: [EXTERNAL] China

Emily -

Has Joe Biden or his son ever played a role in US trade talks with China?

Have the Bidens been brought up in talks at any level?

If so, in what context?

Does Ambassador Lighthizer wish to set the record straight on whether a trade deal with China is contingent on anything involving Joe or Hunter Biden?

Is he comfortable with the CNN report that President Trump invoked Joe Biden's name in a call about trade with Xi in June? If so, can you provide the context of that conversation?

Was there any deal made between the US and China regarding a trade deal and the protests in Hong Kong.

Thank you.

646.761.1168

Arden Farhi
White House producer

CBS News
646.761.1168

RE: FOIA Request (USTR-19-1349)

Ricker, Monique T. EOP/USTR <Monique_T_Ricker@ustr.eop.gov>

Tue 12/10/2019 11:39 AM

To: FOIA <foia@americanoversight.org>; FN-USTR-FOIA <FN-USTR-FOIA@ustr.eop.gov>

1 attachments (8 MB)

USTR_FY20-011_Final Release_2_Redacted.pdf;

Mr. McGrath,

This email is the final response from the Office of the United States Trade Representative (USTR) to the Freedom of Information Act (FOIA) request FY20-11 submitted on October 24, 2019 requesting emails sent from various USTR employees containing one of the following terms: Rudy, Rudolph, Giuliani, Giuliani, Guliani, Gulliani, Toensing, diGenova, Kislin, Burisma, Parnas, Fruman, Firtash, Kolomoisky, Klitschko, Burisma, Shokin, Lutsenko, Zelensky, Zelenskyy, Zelenskiy, Yermak, Bakanov, Bohdan, Hunter, Biden, Rybolovlev, Bannon, Schweizer, "Secret Empires," Gaffney, Pillsbury, Bohai, BHR, Rosemont, Seneca, Heinz, Archer, Thornton, or Warren. The timeframe for the search was between March 1, 2019 and October 24, 2019, the date the eDiscovery search was conducted. We have previously partially responded to this request on December 6, 2019.

Attached please find 12 additional pages of responsive emails. We continued to redact non-public information pursuant to Exemption 6. We also redacted two lines on page 11 because we reasonably foresee that disclosure would harm an interest protected by FOIA Exemption 5. The redacted materials are exempt under the deliberative process privilege, which protects the decision making processes of the executive branch in order to safeguard the quality and integrity of governmental decisions. The redacted information is pre-decisional, deliberative, and reflects the personal opinions of the writer rather than the policy of the agency.

This constitutes a complete response to your request. You may contact me or my colleague Janice Kaye at FOIA@ustr.eop.gov or 202-395-3419 for further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with the response to this request, you may also administratively appeal by writing to: FOIA Office, ATTN: Janice Kaye, Office of the US Trade Representative, Anacostia Naval Annex, Bldg. 410/Door 123, 250 Murray Lane, S.W., Washington, D.C. 20509.

Your appeal must be postmarked or electronically transmitted within 90 days of the date of the response to your request. Both the letter and the envelope should be clearly marked: "Freedom of Information Act Appeal" and should include a reference to the FOIA Case File number listed above. Heightened security in force may delay mail delivery; therefore we suggest that you also email any such appeal to foia@ustr.eop.gov.

In the event you are dissatisfied with the results of any such appeal, judicial review will thereafter be available to you in the United States District Court for the judicial district in which you reside or have your principal place of business, or in the District of Columbia, where we searched for the records you requested.

Thank you,
Monique

Monique T. Ricker
FOIA Program Manager/Attorney

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON DC 20508

From: American Oversight FOIA <foia@americanoversight.org>
Sent: Thursday, October 24, 2019 2:05 PM
To: FN-USTR-FOIA <FN-USTR-FOIA@ustr.eop.gov>
Subject: [EXTERNAL] FOIA Request (USTR-19-1349)

Dear FOIA Officer:

Please find attached and see below for a request for records under the Freedom of Information Act.

Sincerely,

Vibha
Paralegal
American Oversight
foia@americanoversight.org
>www.americanoversight.org<|@weareoversight

FOIA: USTR-19-1349:

VIA EMAIL

USTR FOIA Office, GSD/RDF
Attn: Chief FOIA Officer Janice Kaye
Office of the U.S. Trade Representative
Anacostia Naval Annex, Building 410/Door 123,
250 Murray Lane SW
Washington, DC 20509
FOIA@ustr.eop.gov

Re: Expedited Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of your agency, American Oversight makes the following request for records.

On May 9, 2019, President Trump's personal lawyer, Rudolph Giuliani, announced that he would travel to Ukraine to meet with the country's president-elect to urge the Ukrainian government to pursue an investigation related to the son of former Vice President Biden—a potential electoral opponent of the president.^[1] Mr. Giuliani, reportedly aided by the president's former attorneys Victoria Toensing and Joseph E. diGenova, defended his planned trip by stating that "[w]e're not meddling in an election, we're meddling in an investigation."^[2] Subsequent reports indicate that Mr. Giuliani engaged a State Department official—U.S. Special Representative for Ukraine Negotiations Kurt D. Volker—in his efforts.^[3] The State Department has acknowledged that Mr. Volker helped arrange talks between Mr. Giuliani and a Ukrainian official.^[4] Additionally, the U.S. Ambassador to the European Union, Gordon Sondland, has reportedly been included in calls with Giuliani regarding Ukraine, and recently released text messages show that Ambassador Sondland regularly corresponded via text message on the WhatsApp messaging platform with Special Representative Volker and others regarding official State business related to Ukraine.^[5]

Material provided by the State Department Inspector General to Congress suggest that State Department officials—including those in the Office of the Legal Advisor—were involved in following up on Giuliani's requests to investigate certain matters related to Ukraine as early as March 2019.^[6] Reports also indicate that Giuliani's meeting with a Ukrainian official occurred shortly after the President Trump's July 25, 2019, call with Ukraine's president, in which President Trump reportedly asked Ukraine's government to prioritize "corruption" investigations.^[7] Reports now indicate that the administration has acted to withhold vital aid to Ukraine days before President Trump's July phone call with Ukraine's President Zelensky.^[8] President Trump has also now acknowledged—following reports of a whistleblower complaint that the administration has refused to provide to Congress—that he discussed his potential political opponent, Joe Biden, with Ukraine's president in the July call.^[9] A transcript or summary of the call released by the White House shows, further, that the president stated that he would direct Attorney General Barr to call the president of Ukraine with the president's personal attorney, Mr. Giuliani, regarding his request that Ukraine investigate his political opponent.^[10]

On October 3, 2019, President Trump publicly stated that China should investigate former Vice President Biden and his son.^[11] Press reporting also indicates that Trump previously discussed Biden's and Senator Elizabeth Warren's political prospects on a phone call with Chinese President Xi on June 18, 2019, and that conservative allies of the President, including Giuliani, have discussed allegations regarding Biden's involvement in China since spring 2019.^[12] On October 10, 2019, one of Trump's China advisors, Michael Pillsbury, who visited China last month, wrote to a journalist claiming "Actually I got a quite a bit of background on Hunter Biden from the Chinese."^[13]

American Oversight seeks records with the potential to shed light on whether and to what extent the political interests of the president have influenced the administration's policies overseas, including actions related to the efforts of the president's personal attorney to persuade foreign governments to conduct an investigation connected to a political opponent of the president.

Requested Records

American Oversight seeks expedited review of this request for the reasons identified below and requests that the U.S. Trade Representative (USTR) produce the following records as soon as practicable, and at least within twenty business days:

All email communications (including email messages, calendar invitations, and attachments thereto, and including complete email chains) sent by the USTR officials specified below containing any of the following key terms: [\[4\]](#)

- i. Rudy
- ii. Rudolph
- iii. Giuliani
- iv. Giuiliani
- v. Guliani
- vi. Guiliani
- vii. Toensing
- viii. diGenova
- ix. Kislin
- x. Burisma
- xi. Parnas
- xii. Fruman
- xiii. Firtash
- xiv. Kolomoisky
- xv. Klitschko
- xvi. Burisma
- xvii. Shokin
- xviii. Lutsenko
- xix. Zelensky
- xx. Zelenskyy
- xxi. Zelenskiy
- xxii. Yermak
- xxiii. Bakanov
- xxiv. Bohdan
- xxv. Hunter
- xxvi. Biden
- xxvii. Rybolovlev
- xxviii. Bannon
- xxix. Schweizer
- xxx. "Secret Empires"
- xxxi. Gaffney
- xxxii. Pillsbury
- xxxiii. Bohai
- xxxiv. BHR
- xxxv. Rosemont
- xxxvi. Seneca
- xxxvii. Heinz
- xxxviii. Archer
- xxxix. Thornton
- xl. Warren

Specified Officials:

- i. USTR Robert Lighthizer
- ii. Deputy USTRs Jeff Gerrish and C.J. Mahoney
- iii. Chief of Staff Jamieson Greer
- iv. Deputy Chiefs of Staff Pamela Marcus and Stewart Ackerly
- v. Chief Scheduler Abigail Bacak
- vi. Anyone serving in the capacity of White House Liaison
- vii. General Counsel Joseph Barloon, and former General Counsel Stephen Vaughn
- viii. Assistant U.S. Trade Representative for Congressional Affairs Christopher Jackson
- ix. Acting USTR for China Affairs Terrence McCartin

American Oversight has limited its request to sent messages of each official to reduce the volume of potentially responsive records. American Oversight still requests complete email chains. So, for example, if the specified official sent a response to an incoming message containing a key term listed above, the email chain containing the initially received message and the response is responsive to this request.

Please provide all responsive records from March 1, 2019, through the date the search is conducted.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's regulations, American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes.

American Oversight requests a waiver of fees because disclosure of the requested information is "in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government."^[15] The subject matter of the requested records specifically relates to the operations or activities of the government, including communications surrounding an effort by the personal attorney to the president to persuade the foreign government to investigate a family member of one of the president's potential political opponents,^[16] and actions reportedly taken by the U.S. Government to aid those efforts. There is significant public interest in understanding whether and to what extent the perceived political interests of the president are influencing U.S. foreign policy, including whether administration officials are involved in an effort to use the president's private attorney to lobby foreign government officials,^[17] or whether other U.S. Government actions are being undertaken to pressure a foreign government to investigate the president's political opponent for President Trump's electoral advantage. The subject of this request is a matter of public interest, and the public's understanding of the government's activities and use of resources would be enhanced through American Oversight's analysis and publication of these records.

This request is primarily and fundamentally for non-commercial purposes.^[18] As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight's financial interest. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.^[19]

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.^[20] Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department's process for issuing such waivers;^[21] posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze information related to the administration's proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;^[22] posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;^[23] posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;^[24] posting records and analysis regarding the Department of Justice's decision in response to demands from Congress to direct a U.S. Attorney to undertake a wide-ranging review and make recommendations regarding criminal investigations relating to the President's political opponents and allegations of misconduct by the Department of Justice itself and the Federal Bureau of Investigation.^[25]

Accordingly, American Oversight qualifies for a fee waiver.

Application for Expedited Processing

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and the implementing regulations of your agency, American Oversight requests that your agency expedite the processing of this request.

I certify to be true and correct to the best of my knowledge and belief that there is a compelling need for expedited processing of the above request because the information requested is urgently needed in order to inform the public concerning actual or alleged government activity, and American Oversight is primarily engaged in disseminating the information it received from public records requests to the public.

Recent reporting demonstrates that there is clearly an urgent need to inform the public regarding the matters that are the subject of American Oversight's FOIA request. First, American Oversight has requested records with the potential to shed light on whether the current administration has, potentially at the behest of President Trump, undertaken inappropriate actions to pressure a foreign government to conduct an investigation of one of the president's political opponents in order to give the president an electoral advantage. Because voting in the presidential primary elections—in which both President Trump and candidate Joe Biden will be candidates—is scheduled to commence in less than five months, on February 3, 2020, and voting in the general election will start in just over a year, there is plainly an urgent need to inform the public about the administration's actions that would be revealed by the records requested here.^[26] Second, factual developments in the last month have demonstrated that there are immense public concerns that the president, his administration, and his private attorney, Mr. Giuliani, may be continuing or intensifying their efforts to use the authority and resources of the federal government to pressure foreign governments to undertake an investigation of presidential candidate Joe Biden and his family. There is also widespread public concern that a whistleblower complaint within the intelligence community relates to the president's efforts to pressure the Ukrainian government to conduct an investigation of a political opponent for the president's electoral benefit.^[27] Mr. Giuliani, the president's personal lawyer, has again confirmed that he has endeavored to pressure Ukrainian authorities to begin an investigation.^[28] As a result, the House of Representatives has undertaken a fast-moving impeachment inquiry focused on the president, and the public has a right to have the requested information within a timeframe that will meaningfully allow citizens to petition their representatives on the merits of impeachment.

American Oversight's request seeks information that can shed light on whether and to what extent the Trump administration is attempting to use government resources to pressure a foreign nation to undertake actions designed to threaten, weaken, or otherwise target the president's political opponent for the purpose of giving him an electoral advantage. The public urgently needs the information American Oversight has requested before voting in the 2020 presidential election, including before voting in the primaries of that election. The public has a right to know if the president's administration has inappropriately used government power to gain electoral advantage against an opponent through pressure on a foreign nation.

I further certify that American Oversight is primarily engaged in disseminating information to the public. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. Similar to other organizations that have been found to satisfy the criteria necessary to qualify for expedition,^[29] American Oversight "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience."^[30] American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, and other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.^[31] As discussed previously, American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content.^[32]

Accordingly, American Oversight's request satisfies the criteria for expedition.

Guidance Regarding the Search & Processing of Requested Records

In connection with its request for records, American Oversight provides the following guidance regarding the scope of the records sought and the search and processing of records:

- Our request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. To the extent that an email is responsive to our request, our request includes all prior messages sent or received in that email chain, as well as any attachments to the email.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.^[33] It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.^[34]
- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to government-wide requirements to manage agency information electronically,^[35] and many agencies have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency's archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.
- In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

Conclusion

If you have any questions regarding how to construe this request for records or believe that further discussions regarding search and processing would facilitate a more efficient production of records of interest to American Oversight, please do not hesitate to contact American Oversight to discuss this request. American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in an electronic format by email. Alternatively, please provide responsive material in native format or in PDF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, please contact Dan McGrath at foia@americanoversight.org or 202.897.4213. Also, if American Oversight's request for expedition is not granted or its request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

Austin R. Evers
Executive Director
American Oversight

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- [6] Leigh Ann Caldwell, et al., *Giuliani Says State Dept. Vowed to Investigate After He Gave Ukraine Docs to Pompeo*, NBC News (Oct. 4, 2019, 8:09 AM), ><https://www.nbcnews.com/politics/trump-impeachment-inquiry/giuliani-says-state-dept-vowed-investigate-after-he-gave-ukraine-n1061931><.
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- [8] Karoun Demirjian, et al., *Trump Ordered Hold on Military Aid Days Before Calling Ukraine President*, Wash. Post (Sept. 23, 2019, 10:40 PM), >https://www.washingtonpost.com/national-security/trump-ordered-hold-on-military-aid-days-before-calling-ukrainian-president-officials-say/2019/09/23/d93a6ca-dc38-11e9-8dc8-498cabc129a0_story.html<.
- [9] Devan Cole, *Trump Says He Discussed Biden with Ukrainian President and Democrats Threaten 'New Stage of Investigation'*, CNN (Sept. 22, 2019, 6:41 PM), ><https://www.cnn.com/2019/09/22/politics/adam-schiff-donald-trump-ukraine-whistleblower-investigation-impeachment/index.html><.
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- [12] Kylie Atwood, et al., *Trump Raised Biden with Xi in June Call Housed in Highly Secure Server*, CNN (Oct. 3, 2019, 10:30 PM), ><https://www.cnn.com/2019/10/03/politics/trump-biden-call-xi-secure-server/index.html><; Lachlan Markey and Asawin Suebsaeng, *Not Just Ukraine: Rudy and Bannon Try a Whole New Way to Slime Biden*, The Daily Beast (Sept. 24, 2019, 12:22 PM), ><https://www.thedailybeast.com/rudy-giuliani-and-steve-bannon-are-going-after-hunter-biden-not-just-on-ukraine-but-on-china-too><.
- [13] David Lynch & Josh Dawsey, *Trump Adviser Gives Conflicting Accounts on Whether Chinese Offered Information About Hunter Biden*, Wash. Post (Oct. 10, 2019, 2:27 PM), >https://www.washingtonpost.com/business/economy/trump-advisor-gives-conflicting-accounts-on-whether-chinese-offered-information-about-hunter-biden/2019/10/10/35f32a14-eb80-11e9-9306-47cb0324fd44_story.html<.
- [14] To be clear, American Oversight requests all emails sent by the specified officials containing the key terms listed here without subject matter limitation. American Oversight has provided significant contextual background information concerning the reasons for its request, and the key terms listed are those likely to be used in communications concerning vitally important matters related to the matters discussed in this letter, but the contextual information American Oversight provided should not be used to exclude, or treat as non-responsive, any email communications sent by specified officials containing these key terms.
- [15] 5 U.S.C. § 552(a)(4)(A)(iii).
- [16] See Vogel *supra* note 1.
- [17] See Vogel *supra* note 3.
- [18] See 5 U.S.C. § 552(a)(4)(A)(iii).
- [19] American Oversight currently has approximately 12,300 page likes on Facebook and 54,500 followers on Twitter. American Oversight, Facebook, ><https://www.facebook.com/weareoversight>< (last visited Sept. 20, 2019); American Oversight (@weareoversight), Twitter, ><https://twitter.com/weareoversight>< (last visited Sept. 20, 2019).
- [20] News, American Oversight, ><https://www.americanoversight.org/blog><.
- [21] DOJ Records Relating to Solicitor General Noel Francisco's Recusal, American Oversight, ><https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance><; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, American Oversight, ><https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents><.
- [22] See generally *Audit the Wall*, American Oversight, ><https://www.americanoversight.org/investigation/audit-the-wall><; see, e.g., *Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, American Oversight, ><https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall><.
- [23] *Documents Reveal Ben Carson Jr.'s Attempts to Use His Influence at HUD to Help His Business*, American Oversight, ><https://www.americanoversight.org/documents-reveal-ben-carson-jr-s-attempts-to-use-his-influence-at-hud-to-help-his-business><.
- [24] *Investigating the Trump Administration's Efforts to Sell Nuclear Technology to Saudi Arabia*, American Oversight, ><https://www.americanoversight.org/investigating-the-trump-administrations-efforts-to-sell-nuclear-technology-to-saudi-arabia><.
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- [26] Catherine Kim, *The 2020 Election Calendar*, Vox (Sept. 12, 2019, 11:56 PM), ><https://www.vox.com/2019/6/26/18693259/2020-presidential-election-calendar-primaries><.
- [27] See, e.g., John Wagner, *Trump Declines to Say Whether He Discussed Joe Biden in Call with Ukrainian President*, Wash. Post (Sept. 20, 2019, 12:27 PM), >https://www.washingtonpost.com/politics/trump-issues-fresh-denial-of-a-dicey-conversation-with-a-foreign-leader/2019/09/20/00da79dc-dba3-11e9-a688-303693fb4b0b_story.html<; Phil Helsel, *Whistleblower Complaint About Trump Involves Ukraine, Report Says*, NBC News (Sept. 19, 2019, 9:54 PM), ><https://www.nbcnews.com/politics/white-house/whistleblower-complaint-about-trump-involves-ukraine-report-says-n1056751><.
- [28] Robert Legare, *Rudy Giuliani Says He Didn't Ask Ukraine to Investigate Biden—And Then Says He Did*, CBS News (Sept. 20, 2019, 10:31 AM) ><https://www.cbsnews.com/news/rudy-giuliani-chris-cuomo-interview-did-not-ask-ukraine-to-investigate-biden-and-then-says-he-did-cnn-appearance/><.
- [29] See *ACLU v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 30–31 (D.D.C. 2004); *EPIC v. Dep't of Defense*, 241 F. Supp. 2d 5, 15 (D.D.C. 2003).
- [30] *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).
- [31] American Oversight currently has approximately 12,300 page likes on Facebook and 54,500 followers on Twitter. American Oversight, Facebook, ><https://www.facebook.com/weareoversight>< (last visited Sept. 20, 2019); American Oversight (@weareoversight), Twitter, ><https://twitter.com/weareoversight>< (last visited Sept. 20, 2019).
- [32] See generally News, American Oversight, ><https://www.americanoversight.org/blog><; see, e.g., *DOJ Civil Division Response Noel Francisco Compliance*, American Oversight, ><https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance><; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, American Oversight, ><https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents><; *Audit the Wall*, American Oversight, ><https://www.americanoversight.org/investigation/audit-the-wall><; *Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, American Oversight, ><https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall><; *Documents Reveal Ben Carson Jr.'s Attempts to Use His Influence at HUD to Help His Business*, American Oversight, ><https://www.americanoversight.org/documents-reveal-ben-carson-jr-s-attempts-to-use-his-influence-at-hud-to-help-his-business><; *Investigating the Trump Administration's Efforts to Sell Nuclear Technology to Saudi Arabia*, American Oversight, ><https://www.americanoversight.org/investigating-the-trump-administrations-efforts-to-sell-nuclear-technology-to-saudi-arabia><; *Sessions' Letter Shows DOJ Acted On Trump's Authoritarian Demand to Investigate Clinton*, American Oversight, ><https://www.americanoversight.org/sessions-letter><.
- [33] See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).
- [34] See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).
- [35] Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), ><https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records><; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M–12–18 (Aug. 24, 2012), ><https://www.archives.gov/files/records-mgmt/m-12-18.pdf><.

Michael Pillsbury

From: "Lighthizer, Robert E. EOP/USTR" <robert.e.lighthizer@ustr.eop.gov>
To: "Greer, Jamieson L. EOP/USTR" <jamieson.l.greer@ustr.eop.gov>, "Gerrish, Jeffrey D. EOP/USTR" <jeffrey.d.gerrish@ustr.eop.gov>
Date: Wed, 25 Sep 2019 06:33:36 -0400

We may want to get him in next week if he is back from China

Fwd: PAC Letter

From: jamieson.l.greer@ustr.eop.gov
To: "Lighthizer, Robert E. EOP/USTR" <robert.e.lighthizer@ustr.eop.gov>
Cc: "Barloon, Joseph L. EOP/USTR" <joseph.l.barloon@ustr.eop.gov>
Date: Tue, 08 Oct 2019 20:33:50 -0400
Attachments: PAC Letter 10.08.2019.pdf (1.12 MB)

Impeachment inquiry letter from POTUS to Hill

From: "Nevins, Kristan K. EOP/WHO" <(b) (6)@who.eop.gov>
Date: October 8, 2019 at 8:15:55 PM EDT
To: "Symonds, Tori Q. EOP/WHO" <(b) (6)@who.eop.gov>
Subject: PAC Letter

Good evening,

The President asked that I share with the Cabinet the letter sent up to the Hill this afternoon.

Kristan

THE WHITE HOUSE

WASHINGTON

October 8, 2019

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

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

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

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

Dear Madam Speaker and Messrs. Chairmen:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁹ The Federalist No. 65 (Alexander Hamilton).

²⁰ See *id.*

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

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

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

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

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

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

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

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

* * *

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

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

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

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

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

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

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

Sincerely,

A handwritten signature in black ink that reads "Pat A. Cipollone". The signature is written in a cursive, flowing style with a large initial "P".

Pat A. Cipollone
Counsel to the President

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

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

²⁹ *Id.* at 1.

Fwd: story -- on deadline

From: jamieson.l.greer@ustr.eop.gov
To: "Barloon, Joseph L. EOP/USTR" <joseph.l.barloon@ustr.eop.gov>
Date: Thu, 24 Oct 2019 14:25:01 -0400

Sent from my iPhone

Begin forwarded message:

From: "Lyons, Derek S. EOP/WHO" <(b) (6)@who.eop.gov>
Date: October 24, 2019 at 1:57:20 PM EDT
To: "Greer, Jamieson L. EOP/USTR" <Jamieson.L.Greer@ustr.eop.gov>
Subject: FW: story -- on deadline

This is what I have. Just an FYI from me.

From: Deere, Judd P. EOP/WHO <(b) (6)@who.eop.gov>
Sent: Thursday, October 24, 2019 1:53 PM
To: Lyons, Derek S. EOP/WHO <(b) (6)@who.eop.gov>
Cc: Grisham, Stephanie A. EOP/WHO <(b) (6)@who.eop.gov>
Subject: FW: story -- on deadline

Derek, as you predicted, they followed up.

(b) (5)
Story will run today.

From: Dawsey, Joshua <josh.dawsey@washpost.com>
Sent: Thursday, October 24, 2019 1:51 PM
To: Deere, Judd P. EOP/WHO <(b) (6)@who.eop.gov>
Subject: [EXTERNAL] RE: story -- on deadline

Yes, I do, but we have additional reporting now that Lighthizer withdrew recommendation after Bolton told him Trump didn't want to do anything to help Ukraine. Did you see exactly what I wrote you below?

From: Deere, Judd P. EOP/WHO <(b) (6)@who.eop.gov>
Sent: Thursday, October 24, 2019 1:50 PM
To: Dawsey, Joshua <josh.dawsey@washpost.com>
Subject: RE: story -- on deadline

CAUTION: EXTERNAL SENDER

Off record – this is the one we chatted about before? You remember this proclamation included several countries, not just Ukraine?

From: Dawsey, Joshua <josh.dawsey@washpost.com>
Sent: Thursday, October 24, 2019 1:46 PM
To: Deere, Judd P. EOP/WHO (b) (6) <[@who.eop.gov](mailto: @who.eop.gov)>
Subject: [EXTERNAL] story -- on deadline

Hey – we are reporting the following this afternoon. Let me know if you all want to comment, etc. I'm also available by phone if you want to talk.

Best, Dawsey

Robert E. Lighthizer, the White House's U.S. trade representative, in late August withdrew a recommendation to restore some of Ukraine's duty-free trade privileges after then-National Security Advisor John Bolton warned him that the president would likely oppose any action that benefited the government in Ukraine.

"It was pulled back shortly before it was going to POTUS' desk," one administration official said. "Bolton intervened with Lighthizer to block it."

Bolton's intervention came as the president was telling White House aides that any assistance for Ukraine depended upon Zelensky publicly stating that his government would investigate Hunter Biden's role as a board member of the Ukrainian gas company Burisma, according to congressional testimony this week by acting U.S. ambassador William B. Taylor Jr.

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