

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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MEMORANDUM

October 2, 2019

To: Members of the Committee on Oversight and Reform

Fr: Chairman Elijah E. Cummings

Re: Notice of Intent to Issue Subpoena

Pursuant to the House of Representatives' impeachment inquiry, this memorandum provides Committee Members with notice of my intent to issue a subpoena to the White House.

This subpoena will be issued by the Committee on Oversight and Reform on Friday, October 4, 2019, under the Rules of the House of Representatives in exercise of its oversight and legislative jurisdiction and after consultation with the Committee on Foreign Affairs and the Permanent Select Committee on Intelligence.

The Committees are investigating the extent to which President Trump jeopardized national security by pressing Ukraine to interfere with our 2020 election and by withholding security assistance provided by Congress to help Ukraine counter Russian aggression, as well as any efforts to cover up these matters.

I do not take this step lightly. Over the past several weeks, the Committees tried several times to obtain voluntary compliance with our requests for documents, but the White House has refused to engage with—or even respond to—the Committees.

Only after overwhelming public pressure did the Trump Administration finally release the incriminating record of the President's July 25, 2019, call with the Ukrainian President and reverse its misguided decision to block the whistleblower complaint submitted to the Inspector General of the Intelligence Community from being transmitted to Congress as required by federal law.

The White House's flagrant disregard of multiple voluntary requests for documents—combined with stark and urgent warnings from the Inspector General about the gravity of these allegations—have left us with no choice but to issue this subpoena.

I. BACKGROUND

On September 9, 2019, the Committee on Oversight and Reform, the Permanent Select Committee on Intelligence, and the Committee on Foreign Affairs sent a letter to White House Counsel Pat Cipollone requesting that the White House produce documents relating to these matters by September 16, 2019.¹ This request, along with a separate joint request to Secretary of State Mike Pompeo, was based on a growing public record that staff began examining months earlier relating to efforts by the President and his agent, Rudy Giuliani, to press Ukraine to pursue politically-motivated investigations into the President’s domestic political rival.

The White House did not produce any documents by the requested date, did not send any reply letter, and did not acknowledge receipt of the request.

On September 24, 2019, the Committees sent a follow-up letter warning that the Chairmen would be forced to consider compulsory process if the White House continued to ignore the request. The Chairmen noted: “If the recent reports are accurate, it means the President raised with a foreign leader pursuing investigations related to a political opponent in an upcoming U.S. election.”²

The letter continued:

Our Committees have a constitutional duty to serve as an independent check on the Executive Branch and to determine the facts regarding the actions of the President. Any attempt by a President to use the office of the presidency of the United States for personal political gain—rather than the national interest—fundamentally undermines our sovereignty, democracy, and the Constitution.³

The Committees set a new deadline of September 26, 2019, for the White House to produce these documents.⁴ Again, the White House failed to comply and did not acknowledge receipt of our follow-up letter.

II. NEW EVIDENCE OF PRESIDENTIAL ABUSE OF POWER

Since the Committees sent these letters, new evidence has emerged regarding the actions of the President and his agents in these matters.

¹ Letter from Chairman Eliot L. Engel, House Committee on Foreign Affairs, Chairman Adam Schiff, House Permanent Select Committee on Intelligence, and Chairman Elijah E. Cummings, House Committee on Oversight and Reform, to Pat Cipollone, White House Counsel (Sept. 9, 2019) (online at https://intelligence.house.gov/uploadedfiles/ele_schiff_cummings_letter_to_cipollone_on_ukraine.pdf).

² Letter from Chairman Eliot L. Engel, House Committee on Foreign Affairs, Chairman Adam Schiff, House Permanent Select Committee on Intelligence, and Chairman Elijah E. Cummings, House Committee on Oversight and Reform, to Pat Cipollone, White House Counsel (Sept. 24, 2019) (online at https://intelligence.house.gov/uploadedfiles/2019-09-24.eec_engel_schiff_to_cipollone-wh_re_potus_ukraine.pdf).

³ *Id.*

⁴ *Id.*

In response to overwhelming congressional and public pressure, on September 25, 2019, the White House finally released a call summary of the July 25, 2019, telephone call, in which President Trump directly and repeatedly urged President Volodymyr Zelensky of Ukraine to investigate former Vice President Joseph Biden. According to the call summary, when the Ukrainian President raised his desire to obtain U.S.-manufactured Javelin missiles to counter Russian aggression, President Trump responded:

I would like you to do us a favor though because our country has been through a lot and Ukraine knows a lot about it. I would like you to find out what happened with this whole situation with Ukraine, they say CrowdStrike... I guess you have one of your wealthy people... The server, they say Ukraine has it... I would like to have the Attorney General call you or your people and I would like you to get to the bottom of it. As you saw yesterday, that whole nonsense ended with a very poor performance by a man named Robert Mueller, an incompetent performance, but they say a lot of it started with Ukraine. Whatever you can do, it's very important that you do it if that's possible.⁵

The Ukrainian President replied: "I guarantee as the President of Ukraine that all the investigations will be done openly and candidly. That I can assure you."⁶

President Trump then stated:

There's a lot of talk about Biden's son, that Biden stopped the prosecution and a lot of people want to find out about that so whatever you can do with the Attorney General would be great. Biden went around bragging that he stopped the prosecution so if you can look into it.⁷

On September 26, 2019, the Intelligence Committee publicly released a whistleblower complaint that the Office of the Director of National Intelligence declassified and made available to the Intelligence Committee for the first time the evening before. The whistleblower complaint raises additional concerns about the White House's role in these matters, including restricting access to records of President Trump's call with President Zelensky. Specifically, the whistleblower alleges that White House lawyers "directed" officials to transfer the call records to a separate "codeword-level" computer system "of an especially sensitive nature."⁸

⁵ The White House, *Memorandum of Telephone Conversation* (July 25, 2019) (online at www.whitehouse.gov/wp-content/uploads/2019/09/Unclassified09.2019.pdf).

⁶ *Id.*

⁷ *Id.*

⁸ Letter to Chairman Richard Burr, Senate Select Committee on Intelligence, and Chairman Adam Schiff, House Permanent Select Committee on Intelligence (Aug. 12, 2019) (online at https://intelligence.house.gov/uploadedfiles/20190812_-_whistleblower_complaint_unclass.pdf).

One day later, the White House confirmed that White House attorneys had in fact directed that the July 25 call summary be placed onto a highly classified computer system.⁹

One former national security official who served in both Republican and Democratic Administrations stated: “In my almost six years on the NSC staff, I never personally saw or heard of the records of a presidential call being moved to the ‘code word’ system.” She added:

It is difficult to overstate just how abnormal and suspicious treating the call in that manner would be. It strongly suggests White House staff knew of serious wrongdoing by the President and attempted to bury it—a profound abuse of classified systems for political, and possibly criminal, purposes.¹⁰

More recently, press reports have indicated that additional documents relating to other Presidential calls and meetings also may have been restricted in similar ways.¹¹

III. AUTHORITY FOR SUBPOENA AND URGENT CIRCUMSTANCES

The Committees’ investigation may inform not only the House impeachment inquiry, but also Congress’ power of appropriations, multiple laws enacted by Congress, and legislative reforms that the House may consider.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. In addition, House Rule X, clause 3(i) specifically charges the Committee with conducting oversight of “the operation of Government activities at all levels, including the Executive Office of the President.” Finally, Rule X, clause 4 provides: “The findings and recommendations of the committee in such an investigation shall be made available to any other standing committee having jurisdiction over the matter involved.”

The Committee intends to issue a subpoena on Friday, October 4, 2019, consistent with the bipartisan agreement reached during the Committee’s organizational meeting on January 29, 2019. According to that agreement, a subpoena “should be used only when attempts to reach an accommodation with a witness have reached an impasse.” As described above, the White House has refused to even acknowledge the Committees’ requests.

⁹ *White House Classified Computer System is Used to Hold Transcripts of Sensitive Calls*, New York Times (Sept. 27, 2019) (online at www.nytimes.com/2019/09/27/us/politics/nsc-ukraine-call.html).

¹⁰ *I Helped Classify Calls for Two Presidents. The White House Abuse of the System is Alarming*, Washington Post (Sept. 29, 2019) (online at www.washingtonpost.com/outlook/2019/09/29/i-helped-classify-calls-two-presidents-white-house-abuse-system-is-alarming/).

¹¹ See, e.g., *White House Restricted Access to Trump’s Calls with Putin and Saudi Crown Prince*, CNN (Sept. 28, 2019) (online at www.cnn.com/2019/09/27/politics/white-house-restricted-trump-calls-putin-saudi/index.html); *Trump Pressed Australian Leader to Help Barr Investigate Mueller Inquiry’s Origins*, New York Times (Sept. 30, 2019) (online at www.nytimes.com/2019/09/30/us/politics/trump-australia-barr-mueller.html).

This is an urgent matter. The Inspector General of the Intelligence Community has determined that the core allegation under investigation raises a matter of “urgent concern,” is “credible,” and “relates to one of the most significant and important of the DNI’s responsibilities to the American people”: our free and fair elections.¹²

Due to the exigent nature of these matters, and since we are in recess for this two-week period, the calendar does not permit scheduling a business meeting to hold a vote on this subpoena without causing undue delay to the investigation. With respect to holding a Committee vote, our agreement states that “[t]here will be exceptions to this policy,” such as when “the calendar does not permit the Committee to schedule a markup.”

Although we will not hold a markup, I am attaching a copy of the subpoena schedule for your review, I am providing this memorandum to all Members with additional background, and I am seeking feedback through a poll of individual Member offices, which are requested to provide any information they would like to be considered on their positions with respect to this subpoena.

If you have any questions or would like more information, please contact Committee staff at (202) 225-5051.

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

SCHEDULE

In accordance with the attached Definitions and Instructions, you, John Michael “Mick” Mulvaney, in your capacity as Acting Chief of Staff to President Donald J. Trump, are hereby required to produce, for the time period from January 20, 2017, to the present, all documents and communications referring or relating to:

1. The potential or suggested investigations and legal cases referenced in the letter sent to White House Counsel Pat Cipollone on September 9, 2019, from Chairmen Eliot L. Engel, Adam B. Schiff, and Elijah E. Cummings (attached as Exhibit 1), including but not limited to those relating to Paul Manafort, Serhiy Leshchenko, the “Black Ledger,” Hunter Biden, and Burisma Holdings Ltd.;
2. President Trump’s April 21, 2019, and July 25, 2019, telephone conversations with Ukrainian President Volodymyr Zelensky, including but not limited to:
 - a. All recordings, transcripts, notes (including electronic and hand-written notes), summaries, and draft versions of the official “Memorandum of Telephone Conversation”;
 - b. All preparatory memoranda and materials; and
 - c. The identity of all individuals who listened to, participated in, assisted in preparation for, transcribed, took notes during, or received information about the April 21, 2019, and July 25, 2019, telephone conversations;
3. Communications between or among any of the following referring or relating in any way to the July 25, 2019, telephone conversation:
 - a. Current or former White House officials, employees, and detailees, including within the White House Counsel’s Office, the White House Situation Room, and the National Security Council (NSC), including but not limited to:
 - i. The Assistant to the President for National Security Affairs;
 - ii. The Deputy Assistant to the President for National Security Affairs;
 - iii. The Senior Director for European Affairs;
 - iv. All Directors within the Directorate or Directorates involved in European and Russian Affairs;
 - v. All Directors covering energy affairs;
 - vi. The Senior Director for the Directorate of International Economics;
 - vii. All White House Situation Room Duty Officers who staffed the call and produced the original draft “Memorandum of Telephone Conversation”;
 - viii. The Senior White House Situation Room Duty Officer during the telephone conversation;
 - ix. The NSC Legal Advisor;

- x. The NSC Executive Secretary and any other staff from NSC’s Executive Secretary office involved in preparing the “Memorandum of Telephone Conversation” and any preparatory materials for the President prior to the telephone conversation; and
 - xi. The Office of the Vice President, to include Vice President Michael R. Pence and Lieutenant General Keith Kellogg;
 - b. Current or former employees or officials of the Department of Justice, including but not limited to Attorney General William “Bill” Barr and Assistant Attorney General John Demers;
 - c. Current or former employees or officials of the Department of State, including but not limited to Secretary Michael R. Pompeo, Counselor T. Ulrich Brechbuhl, former Special Representative for Ukraine Negotiations Ambassador Kurt Volker, Deputy Assistant Secretary George Kent, U.S. Embassy in Ukraine Charge d’Affaires William B. Taylor, U.S. Embassy in Ukraine Deputy Chief of Mission Kristina Kvien, and Ambassador to the European Union Gordon Sondland;
 - d. Current or former employees or officials of the Department of Energy, including but not limited to Secretary Rick Perry and Special Advisor Samuel Buchan;
 - e. Current or former employees or officials of the Office of the Director of National Intelligence (ODNI), including but not limited to Acting Director Joseph Maguire and ODNI’s Office of General Counsel;
 - f. Current or former employees or officials of the Central Intelligence Agency, including but not limited to General Counsel Courtney Simmons Elwood; and
 - g. Current or former employees or officials of the Department of Defense, including but not limited to Secretary of Defense Mark Esper and Undersecretary for Policy John C. Rood;
4. Any and all recordings, transcripts, notes (including electronic and hand-written notes), summaries, memoranda of conversation, readouts, or other documents memorializing communications between President Trump and the leader of any other foreign country that refer or relate to the subject matters of the July 25 telephone conversation between President Trump and President Zelensky, including but not limited to pursuing investigations of President Trump’s political rivals and Ukrainian foreign aid;
5. The actual or potential suspension, withholding, delaying, freezing, or releasing of foreign assistance of any kind, including but not limited to security assistance, to Ukraine;
6. Any of the following meetings or potential meetings:

- a. All telephone calls, meetings, visits, or other communication involving President Trump and President Zelensky, including but not limited to requests, suggestions, proposals, or other communications;
 - b. A meeting at the White House on or around May 23, 2019, involving President Trump, former Special Representative for Ukraine Negotiations Ambassador Kurt Volker, Energy Secretary Rick Perry, or Ambassador Gordon Sondland;
 - c. President Zelensky's inauguration on May 20, 2019, in Kiev, Ukraine, including but not limited to President Trump's decision not to attend and not to send Vice President Pence to lead the U.S. delegation and to instead send Energy Secretary Rick Perry;
 - d. A meeting on or about July 10, 2019, at the White House between Ukrainian officials Andriy Yermak and Oleksander Danylyuk and U.S. government officials, including Energy Secretary Perry, former National Security Advisor John Bolton, former Special Representative for Ukraine Negotiations Ambassador Kurt Volker, and Ambassador Gordon Sondland, including but not limited to the proposed or actual participation of President Trump and Vice President Pence in the meeting;
 - e. A potential meeting between President Trump and President Zelensky in Warsaw, Poland in or around September 2019, including but not limited to President Trump's decision to cancel his attendance;
 - f. All meetings and communications between U.S. officials, including but not limited to Vice President Pence, Energy Secretary Perry, and Senior Advisor Jared Kushner, and President Zelensky or other Ukrainian government officials in Warsaw, Poland in or around September 2019; and
 - g. All meetings between President Trump and President Zelensky during the United Nations General Assembly in or around September 2019, including but not limited to any discussion of their July 25, 2019, telephone conversation, as well as any preparatory memoranda and materials generated for the meeting; any notes, readouts, summaries of the same; and any follow-up directives and guidance issued to NSC staff, as well as relevant departments and agencies, either formally or informally;
7. Efforts by any current or former member of the Trump Administration or Rudolph ("Rudy") W. Giuliani, Igor Fruman, Lev Parnas, Semyon ("Sam") Kislin, Joseph diGenova, Victoria Toensing, Vitaly Pruss or any of their associates, to induce, compel, petition, press, solicit, request, or suggest that current or former Ukrainian government officials, politicians, or other persons or entities associated with or acting in any capacity as a representative, agent, or proxy for any such individuals, investigate matters related to Burisma Holdings Ltd., Paul Manafort, Hunter Biden, Joseph Biden, the Democratic National Committee, Hillary Clinton, or any U.S. persons or entities;

8. All meetings or communications between any current or former White House officials, employees, or detailees, including President Trump, and Attorney General William Barr or any other Department of Justice official or employee, relating to the investigations described in paragraph 7;
9. All meetings between or among current or former White House officials or employees, including President Trump, and Rudolph W. Giuliani, including but not limited to requests for meetings or telephone calls, scheduling items, calendar entries, White House visitor records, and email or text messages using personal or work-related devices;
10. Former U.S. Ambassador to Ukraine Marie “Masha” Yovanovitch, including but not limited to the decision to end her tour or recall her from the U.S. Embassy in Kiev;
11. With respect to the storage of documents regarding telephone conversations:
 - a. Documents sufficient to show the dates and times when any documents referring or relating to the April 21, 2019, or July 25, 2019, telephone conversations between President Trump and President Zelensky were moved or transferred from one electronic system or server into another electronic system or server, the names, descriptions, and levels of classification of each electronic system or server involved, and the identity of all individuals who were involved in the transfer of any such documents;
 - b. Efforts to restrict access to, or limit the distribution of, documents referring or relating to the April 21, 2019, and July 25, 2019, telephone conversations, including but not limited to the transfer to, or placement of documents on, an electronic system or server cleared to hold codeword-level classified information, or the request or direction to do so; and
 - c. All policies, procedures, practices, or guidance at or from the White House or NSC referring or relating to the aforementioned electronic system or server, including all policies, procedures, practices, or guidance referring or relating to the transfer or placement of transcripts, summaries, memos, and notes of the President’s meetings and phone calls with foreign leaders on such system or server;
12. Efforts by any current or former White House officials, employees, or detailees, including President Trump, to identify or retaliate against the whistleblower who filed the complaint with the Inspector General of the Intelligence Community that was released by the House Permanent Select Committee on Intelligence on September 26, 2019, or against any individual who provided information to, or raised concerns to, the whistleblower or the Inspector General, including but not limited to any documents or communications referring or relating to searching communications, telephone records, telephones, or any other information to identify any of these individuals; and

13. Efforts to conceal, destroy, or otherwise dispose of any documents, records, or communications referring or relating to any of the foregoing matters.